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Humanitarian debate: Law, policy, action

Women

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EDITORIAL

Over the centuries, our perception of the protagonists in warfare has been shaped by stereotypes of men as the aggressors and women as peace-loving and passive bystanders. Public opinion and the media commonly reflect this supposed passive victimization of women, who tend to be portrayed as victims of fighting – a poignant story to elicit a compassionate response. However, the reality is that women also take an active role in hostilities and in their aftermath: as politicians, combatants, leaders of non-governmental organizations and social or political groups, and peace campaigners.

Women often assume many of the support roles during conflict, and women fighters can be extremely useful to an armed group. Moreover, the mobilization of Soviet women in the Second World War legitimized their active participation in war on an unprecedented scale; and nowadays women are integrated into the armed forces, in particular in the Western world. To varying degrees, women have always participated in armed struggles, especially in those such as civil wars that have mobilized large sections of the population and in wars where the survival of the nation was at stake.

The dichotomies between military and civilian, public and private, front line and home front, victims and perpetrators, and wartime and post-war societies are being steadily eroded. As the borders between military and civilian become blurred, so too does the distinction between the male warrior and the innocent woman. The assumption that women are harmless and arouse less suspicion can make them the preferred choice when it comes to transporting munitions, gathering intelligence, or deploying combatants and suicide bombers. A case in point is the Rwandan genocide of 1994, during which many women assumed a significant role as perpetrators of violence. This underscores the part played by women in sustaining conflict and their potential for inflicting extraordinary cruelty. Such examples, recurring throughout history, dismiss the myth that women are solely innocent and vulnerable victims of conflict.

What is clear is that it is simplistic to judge vulnerability on the basis of stereotypes. In all situations of conflict, a thorough assessment should be carried out to identify which social group is the most vulnerable, and why. Women are not a homogeneous group and, as shown above, they experience war in a multitude of ways – as victims, combatants, and promoters of peace. This issue of the *Review* moves away from stereotypical depictions of women in war towards a better understanding of the plurality of roles, responsibilities,

and challenges that shape the way women experience armed conflict and its effects.

Armed conflicts – and especially internal conflicts – have a devastating impact on civilian populations. For women, there used to be a perceived security – a sense that as a woman, and especially as a mother, one would be spared the excesses of warfare. Present conflicts show that all too often this perception does not correspond to reality. On the contrary, civilian victims have frequently been the victims of choice and women are on many occasions targeted precisely because they are women.

Conflict and displacement have a unique impact on women, exposing them to specific dangers and threats and engendering a social transformation in which they are forced to assume new roles and responsibilities. Of course, women, men, boys, and girls face different risks. Whereas men make up the vast majority of those killed, held captive, or forcibly ‘disappeared’ during war, women are increasingly targeted as civilians and exposed to sexual violence.

Sexual violence is one of the most frequent and most traumatic violations that women suffer in wartime and strikes at the very heart of human dignity and physical integrity. By violating women, arms-bearers are able to humiliate and demoralize the community that could not protect them. Rape can be used as a deliberate tactic to destabilize families and communities whose integrity is perceived as inseparably linked to the ‘virtue’ of women. Such an assault causes immeasurable physical and psychological suffering and can also result in the victim being abandoned by her family or ostracized by the community.

Although sexual violence in conflict zones is as old as warfare itself, the international community has only devoted serious attention to it since the 1990s. In ancient times, the widespread abduction of women for sexual purposes was the very purpose of wars; they were the prize to be won. Sexual violence is nowadays expressly prohibited in international humanitarian law, encompassed by the ban on ‘wilfully causing great suffering or serious injury to body or health’, and acts of sexual violence are specifically included as individual crimes in the statutes of the international criminal courts. Thus, crimes of sexual violence have attained greater visibility and received marked importance in terms of prosecution under humanitarian law. Sexual violence is prohibited against men, women, girls, or boys. Appropriate punishment of breaches of this law and of instructions given to arms-bearers is mandatory. Rape is preventable; this must be recognized and action taken accordingly.

Women’s experience of war is multifaceted: it can mean separation from or the death of loved ones, the loss of their livelihood, a greater risk of forced displacement, deprivation, sexual violence, physical injury, or death. Throughout the world women are continuing to respond to war with remarkable courage, resourcefulness, and resilience, facing up to the effects of war and to the tremendous strain it imposes on their ability to sustain and protect themselves and their families. Present-day humanitarian operations increasingly reflect the growing

awareness of the unique roles that women assume in wartime. States and humanitarian organizations alike must be made responsible for alleviating the plight of women in times of war, and women themselves must be more closely involved in everything that is done on their behalf. Appropriate action requires a greater understanding of the impact of armed conflict on women and of the particular vulnerabilities with which they have to contend. It is vital to ensure that teams of both men and women work in the field so that access is also possible to women with a low social status who might be kept out of the public sphere. Understanding reality as experienced by women enables humanitarian organizations and personnel to respond more appropriately to their needs and improve their situation.

The focus has also been on the position of women within society, the characteristics that a society or culture defines as masculine or feminine, and the interaction of women with a society or culture in war. Men were seldom included in consideration of 'gender aspects' except as analysed in their traditional roles as combatants, and gender aspects are often synonymous with women's aspects. International humanitarian law is, however, based on equality of protection for all human beings and the prohibition of any adverse distinction founded on sex, and is therefore intended to be gender-neutral. Women benefit from the general protection afforded by this branch of law. Along with the rest of the civilian population, they must be protected from intimidation and abuse. Yet the law does also include a specific protection regime for women, primarily relating to their health and hygiene needs and their role as mothers. Human rights law and refugee law provide further protection for women in times of violence.

The challenge lies in ensuring that the existing rules are duly implemented and respected. Mechanisms to enforce rights and redress violations are of crucial importance. The UN Security Council has adopted several resolutions to protect women in situations of armed conflict. Moreover, the recent developments embodied in the international criminal courts and the prosecution of persons responsible for war crimes are a very important step forward in the fight against impunity, and may serve as a general deterrent against any repetition of such heinous conduct in future conflicts.

Constant efforts must be made to promote knowledge of and compliance with the obligations of international humanitarian law by as wide an audience as possible, and using all available means. The responsibility for improving the plight of women in times of war must be shared by everyone. Indeed, a gender-sensitive implementation of the law – attuned to the diverse experiences, perceptions, skills, attributes, and vulnerabilities of both men and woman – is vital to respond adequately to their needs.

Toni Pfanner
Editor-in-Chief

Interview with Mary Robinson*

Mary Robinson, the first woman President of Ireland (1990–1997), former United Nations High Commissioner for Human Rights (1997–2002), and current President of Realizing Rights: The Ethical Globalization Initiative, has spent most of her life as a human rights advocate. As an academic (Trinity College Law Faculty), legislator, and barrister, she has always sought to use law as an instrument for social change. The recipient of numerous honours and awards throughout the world, Mary Robinson is a member of The Elders, co-founder and former Chair of the Council of Women World Leaders, and Vice President of the Club of Madrid. She chairs the GAVI Alliance (Global Alliance for Vaccines and Immunisation) Board and the Fund for Global Human Rights and is Honorary President of Oxfam International, Patron of the International Community of Women Living with AIDS (ICW), and President of the International Commission of Jurists.

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In your experience of working with women in situations of conflict, how have you perceived the effect of conflict on them?

Women often bear the brunt of coping with conflict. While I was serving as UN High Commissioner for Human Rights, I heard firsthand accounts and grievous stories of the deliberate targeting of women, particularly for rape. Rape took on the character of a weapon. That's why I was very pleased that the ICTY [International Criminal Tribunal for the former Yugoslavia] found rape to be a war crime in the conflict in Bosnia. It is a war crime, and certainly a form of warfare. And this problem hasn't gone away. I came across it again last March when I was going out to the camps in Goma, in the Democratic Republic of Congo (DRC). When you hear of the savagery of attacks on women, clearly it goes beyond sexual. It's about a sort of deep power relationship, an intention of

* The interview was conducted in Geneva on 13 January 2010 by Toni Pfanner, Editor-in-Chief of the *International Review of the Red Cross*, and Deborah Casalin, Assistant Editor.

utterly subjugating the woman and womanhood; even the mentality behind it is very hard to understand. It's clearly a pattern in situations of conflict and, sadly, almost a trend.

How did women cope with their fate?

When listening to the accounts of women in such situations, I'm continually struck by their resilience: how, despite the brutality they experienced, they still tried to look after their children; how much it mattered that their children would have an education, even in the refugee camp; how much they tried to make things normal in a very abnormal situation. But even in the camps there were very often inequities – it was the men who were in charge of the food and other resources, which made it much more difficult for women.

I saw that again recently when we were in eastern Chad, in an initiative to bring international women leaders to link up with women on the ground and help to get their voices heard. We went to the refugee camp first where the women had come across from Darfur, and some of their stories about what forced them to leave still stay with me.

Can you share any of these stories in particular?

One woman described 'men on horseback, and planes shooting from the sky' – words which point to government complicity in the situation. She gathered up her twin babies and ran as far away as she could, and then felt she had to know what had happened to the rest of her family. She left the babies by a high tree where she would be able to find them again, and went back. Her husband had been killed, her older child had been killed, and she was immediately seized and raped multiple times. She then crawled back to where her babies were and eventually got herself across to the camp.

This is just one of many stories. However, the woman who was telling this story said, too, that she was more vulnerable in the camp itself, because she was a widow and was poorer and had to go out for firewood. So, instead of being more protected because of her situation, she was actually more vulnerable.

A number of the women who spoke to us told similar stories. Because we were women leaders coming to listen to them, and they were with a small NGO that had been working in trauma counselling with them, they were more open in talking to us than they would otherwise have been. We didn't know them, and it's hard to open up about such things, but they felt we were there to listen to their story. Part of the story wasn't only what had happened to them across in Darfur; it was also that they were not safe in the camp – an official refugee camp established by the UN High Commissioner for Refugees. When we tried to probe who the attackers were, the answer was that they were men in uniform. It didn't matter whether they were inside or outside the camp; rebels or government soldiers – men in uniform – would just take them as if they were property. It was quite harrowing to hear.

How are women affected outside the refugee camps?

Among the people displaced internally by the conflict in eastern Chad, the conditions were noticeably worse. Paradoxically, the living conditions of those women and families – citizens of Chad – was both less secure and of a lesser standard in every sense than in the refugee camp. Those people had been displaced by conflict from about sixty or seventy miles away. Because it was a makeshift camp and they were looking for land, they would tend to be in the wrong areas, where flooding occurred, and there had been flooding in that internal camp. The women complained about the fact that they were second-class citizens there. Again, the stories were that the food supply was not as regular, and that the men dominated. We actually attended a literacy course where the women were learning to read and write, so that they could get into the queue to claim their own food and be able to sign for it.

What I'm trying to convey is that it's only when you really listen to the women that you understand the multiple ways in which they suffer – from being displaced, from the killing of members of their family, from the savage abuse sometimes inflicted upon them, which is literally aimed at trying to destroy them in order to destroy the identity of their clan or group – and that they can suffer a second-class situation even within the camps.

Women are often broadly categorized – even stereotyped – as helpless victims of war, yet you have mentioned examples of women in camps taking action to improve their situation and that of their family. How else have you seen women moving beyond the label of 'victim'?

I would say that a number of the women I have met in situations of conflict started as victims, and then became agents of change and tried to help others in the group. That is a very important part of the resilience, of the inner strength shown by many of these women in situations that are really very difficult indeed. This struck me – in a slightly different context – when seeing the people who gave their personal testimonies during the World Conference against Racism held in South Africa. Gay McDougall [UN Independent Expert on minority issues] had organized a series of panels, with four or five victims together on each one, many of whom had been in some way affected by conflict as well as racism. She started by calling the sessions 'Voices of victims', and then realized that it was wrong, because these were victims who had become agents for change.

Most of the women we met in Darfur and Chad had lost their husbands in the conflict, so they were widows, and many of them had been raped multiple times. Often the women feel ashamed of themselves as a result of the rape, and sometimes their families reject them, so there is that internal problem as well. What struck me, when we began to discuss further with them, was they didn't want to be seen just as victims. They wanted, in fact, to have the dignity of being able to work, to take decisions on their own, and they felt a sort of helplessness at being in the camp. The real problem for them was the lack of security, but they were trying to group together and make their voices heard.

What can be done to empower women in such situations?

What we are trying to do in the Women Leaders Intercultural Forum of Realizing Rights¹ is to engage women who have access to and opportunities for influence. By linking women who are prominent international leaders with women working to address conflict at local levels, we are really trying to listen to these women facing conflict, to draw them out and understand what they want and what their priorities are, then to convey those messages where we can to governments, at the United Nations and in other international fora. We make it clear that's the purpose: not to impose our solutions, but to support *them* and help make their voices heard.

In the case of Chad it was in fact good timing when we did so, because Europe was just deciding whether to put a military presence in the country. This happened relatively soon afterwards. After meeting with women in Chad we went to Paris; to Berlin, because one of the people with us was a former minister from Germany; and to London, where we had about three-quarters of an hour in Downing Street with Prime Minister Gordon Brown. I think that, by the timing, which was deliberately chosen so as to maximize our influence, we did actually bring home the realities that persuaded leaders to take that step. I'm certainly of the view that this was why the Irish decided to put in a contingent, because the stories got back to Ireland in a fairly substantial way.

How did you involve the local actors?

Realizing Rights and the Women Leaders Intercultural Forum is a small but effective team. So we always work with partners. We have worked with *Femmes Africa Solidarité*, for example, to support the Sudanese Women's Forum on Darfur. It's a remarkable forum, bringing together women from Khartoum and from Juba who were interested in supporting their sisters in the three regions of Darfur. They were doing what the men had not been able to do – getting together across all the divides of class, tribe, and even religion, as some are Christians and some are Muslims.

Even when the International Criminal Court (ICC) indictment was lodged against [the Sudanese President Omar] Al-Bashir, this group did not break up. That was an extremely tough challenge, because it was a divisive issue. There were all kinds of different opinions, but the women coped.

All in all, I would say that the aim of the Forum is to be an amplifier of women's voices, and an advocate for them having a place in peace talks and reconciliation efforts. We want to help ensure that these women really feel they are making their own stories heard.

Did the Forum make representations to the authorities in Sudan and Chad?

Yes, and to the African Union too. We actually managed, in Addis Ababa, to have a meeting with the African Union where we had two Darfuri women with us. One of

1 For further information, see <http://www.realizingrights.org> (last visited 12 March 2010).

the male leaders from the African Union wanted to talk to me particularly, and I kept starting and then giving the floor to the Darfuri women. It was very interesting because it was quite clear that, culturally, there wasn't much of a disposition to listen to women. This was despite the fact that one of the Commissioners of the African Union, who was present, was herself a woman. They were putting me up on the rostrum with the African Union Commissioners. I said no, and insisted that the leader of the Sudanese women – chair of the Steering Committee – should be up on the rostrum. They were shocked at the idea of an ordinary woman being up there!

I'm giving this as one example of how we consciously try to amplify women's voices. If the women are present, as in this case, it's their voices that should be heard, and we create space for them. Otherwise, in contexts where they have no access, we make their voices heard on their behalf.

I'm very supportive of African women's groups: those of us that come from the outside can facilitate and can have a different kind of access, but actually it's the reinforcing of the work of local groups and of groups like *Femmes Africa Solidarité* that I think is sustainable. That's the way that we create a context for the future. So my colleagues in the Women Leaders Intercultural Forum are building partnerships with a view to creating sustainable ideas for African groups to continue this work.

When considering women as actors rather than victims in war, another aspect that comes to mind is women's increased participation in hostilities. In your work, what have your experiences been with female arms-bearers?

In fact, one of the participants in the second Sudanese Women's Forum on Darfur was an active combatant. The member of the Steering Committee for the West Darfur region was a remarkable leader, a young, natural leader. She felt that it would be important to have representation from refugee women as combatants too. She went out and found this group of women combatants and asked them to be part of the forum. I was very happy about that because I felt it was a real reaching out.

I've had some experience as well with girl soldiers in Sierra Leone. I remember one discussion with a number of girls who had been with the soldiers but hadn't actually been fighting – they had been sex slaves more than child soldiers. In Freetown, we also met a group of former child soldiers. We saw that there wasn't any difference between what the boys and girls wanted. Essentially, they just wanted to find their families.

A striking illustration of how images of women in war are used to evoke emotion is the example of Jessica Lynch, the United States soldier captured in Iraq, who says she was inaccurately portrayed as a hero and a victim for propaganda purposes. What do you make of the way that women in conflict are portrayed in the media?

To some extent I think that when any of us hear that three soldiers were killed, and find out that one of them was a woman and happened to be a mother of three

children, we all instantly react a little bit: ‘Oh my God, a woman, a mother!’ I think we’re still not accustomed to seeing this in quite the same way. The military do try to make heroes, and sometimes they will be women. We saw bad examples of that tendency in relation to Afghanistan, too – the well-known footballer [Pat Tillman] who had signed up after 9/11 and was killed in friendly fire, and then they tried to make a huge hero out of him and his family were rightly outraged.

What role do women play in armed forces?

You’ve triggered a memory which was really an extraordinary affirmation of the role that women in uniform can play. I was at an international colloquium in March of last year which was co-organized and co-hosted by Ellen Johnson Sirleaf [President of Liberia] and Tarja Halonen [President of Finland]. We had two days at the colloquium, which united a remarkable number of women from inside and outside Liberia. On the third day there was a commemoration of Liberia’s adoption of the plan of action under Security Council Resolution 1325 on the role of women in peace and security, which marks its tenth anniversary later this year. There must have been about 2,000 Liberian women there along with their president.

We were sitting beside Ellen Johnson Sirleaf in a large covered part of the stadium, and there were various presentations. We could see a large number of women gathering outside, even young girls. Then Ellen went out to take the salute from those women in uniform in the protection of Liberia, and invited me to accompany her. There were women in the army, the police, in social services, girl guides, all of these. They marched past their president and saluted, and she kind of chivvied them along and half saluted, and they came in their hundreds. I found tears in my eyes, thinking of the background of those women – how many of them would have been subjected to rape and abuses – and here they were so proud. The teenagers, their feet didn’t even hit the ground – it was just such a moment of pride for them, for the president, and for the country.

What impact could a larger number of women in the armed forces have?

It’s very important that women are involved in peacekeeping in particular. In Liberia, for example, the Indian all-female contingent of peacekeepers is an important statement and an important involvement. In the camps in Chad, where the women wanted internal policing, they wanted women to be involved because the fear is that any man in uniform would be a potential attacker. In Chad, for example, some soldiers based near the camps came from the other end of the country, so they were out of their village context and saw women as fair game. Equally, a problem that I came across as High Commissioner for Human Rights was that of peacekeepers assaulting and raping or trafficking women in several contexts. Quite a number of the women, when they came forward with these harrowing stories, found that there was a lack of understanding and were treated very poorly in some situations. That’s why the women in the camps wanted to have more women visibly involved in policing them.

How can gender-based violence be fought?

There is also a group in Ireland that I'm quite proud of – I didn't initiate it but I play a kind of mentoring role in it. I would wish that other countries interested in conflict-affected and post-conflict developing countries would take a similar approach. It was decided by Irish aid agencies that they had not taken gender-based violence seriously enough in their work in developing countries, so they came together as a coalition to address such violence. The Irish government, through Irish Aid, became part of that coalition, as did the Irish Defence Forces. They've been doing a lot of work; I go back to Ireland once a year in November to meet with them and we have a serious exchange as to their experiences. I've now met them four times, and in the first two years most of the discussion was on how we never realized how much more work we needed to do to combat gender-based violence, both ourselves and with our partners on the ground. Now, they're building from strength in terms of what they want to do in that regard, and Ireland is in a cross-learning process with Liberia and Timor-Leste and developing a national plan of action based on UN Security Council Resolution 1325.

The Irish Defence Forces found it hugely important, because they are not only peacekeepers themselves but also train a lot of peacekeepers. They found that they had no idea how important it was to address gender-based violence in their training. I've learned quite a lot myself about how much work you need to do in highlighting and focusing on all the issues that arise in relation to gender-based violence. It has had a big impact on all of the Irish aid agencies, and that includes Oxfam and Christian Aid in Ireland, as well as Concern and GOAL. They're much more sensitized, they have become very aware of the need to put in place approaches they would not have put in place before: zero tolerance of gender violence, being very supportive of those who suffer, etc. As I say, the Irish Defence Forces are delighted that they had this opportunity, and have now built it into the courses they offer to our own peacekeepers and others.

A recommendation that I would make is that developed countries involved in supporting projects in countries in a conflict and post-conflict situation ought to take gender-based violence much more seriously, and invest much more in learning, training, and awareness in this area.

There has been criticism of peacekeeping forces regarding sexual violence, use of forced prostitution, and so on. While there are international legal obligations in this regard, there do not seem to have been many consequences for perpetrators. Where does the problem lie?

I agree, this is a real problem. We saw it in Sierra Leone, and Bosnia in particular. The trouble is that perpetrators are just sent home and in many cases nothing happens. This impunity reflects a deeper dismissal of the importance of these crimes. It's humiliating, when you think about it, that there is such broad impunity – it means that these women don't really matter.

I was struck, in a completely different context, by a similar kind of problem. There's a health project in Malawi addressing some of the problems of why

pregnant women stay at home instead of going to clinics when facing complications. This listening project, quite different from the usual sort, ascertained that the main reason women don't go to the hospitals and clinics is that they are disregarded – even slapped. They are treated as non-persons. This happens in refugee or IDP [internally displaced persons] camps as well. I'm afraid that in an awful lot of these situations, that's part of the problem: women are not seen as important people or as citizens, they are just shuffled along.

So at the root of the problem is the undervaluing of the humanity and the human rights of women in that situation. I think it's as serious as that.

Do you have the impression that some of the issues that women are facing need specific conventions or resolutions, such as those recently passed by the Security Council?

I welcome the strengthening of Security Council Resolution 1325, as well as the national and even regional plans of action that we're seeing. Women are able to use that resolution to have more of a voice, more participation. The recent Resolutions 1820, 1888, and 1889, and the mandates that have come out of them, show that the UN, very late in the day, is coming to recognize the serious nature of gender-based violence in conflict.

Do women have a particular role to play in humanitarian organizations and in humanitarian action, whether international or community-based?

As humanitarian action is a particularly sensitive area of services to vulnerable populations, I would say 'Yes'. Women are tending to play much more of a role in these kinds of services anyway. I wouldn't say that it should be primarily women – I always feel that balanced is best, because that is also better from the point of view of combining various talents and approaches. However, I do think that the role of women is important in trauma counselling, so that women have an opportunity to tell their stories and open up to other women. I think there's no doubt that generally it's much harder for women to tell intimate details of an attack or traumatic situation to a man who is almost a stranger.

When I went with some colleagues to Albania to talk to refugees from Kosovo, we were trying to identify some of the worst cases that we would quietly pass on to be taken forward as possible cases by the ICC. In that situation, my women colleagues were infinitely better at being able to listen and hear the real stories. But I was always conscious that, at a certain point, after seeing the victim side of it, you learned to see the resilience: what those women were contributing and what they were doing.

After the conflict, what role do women have to play in healing and building bridges?

Rwanda is the great example of that. I went to Rwanda in September/October 1994 as President of Ireland, and the aftermath of that genocidal killing was something that I will never forget. At the time, there were a number of NGOs working, but

they were mainly foreign NGOs. I went back a year later, in 1995, because the UN was marking its Fiftieth Anniversary and I was determined to bring the failures of the international community in Rwanda to the table. When we were there the second time, there were already local women's organizations who were urging that the one thing nobody seemed to understand was the need for trauma counselling.

The third time I went to Rwanda was in March of 1997 for a Pan-African Women's Conference which these women, these widows of Rwanda, had organized. Now, you might say: why have a women's conference when there are so many other problems to deal with? Well, why is Rwanda doing so much better than many other African countries? It's because women are involved, and it was that conference that set the trend. Women are in every sense part of the country's resources, and, because these women were in a majority after the genocide, they were able to influence in a particular way. What made a difference was actually the fact that women became so involved in ministries and so on – of necessity, because they had to take on such a role in the country. The lesson is that we can't wait until after a terrible conflict to involve women in decision-making.

What about areas where there is a purportedly religious basis for discrimination against women? What are the opportunities for women to become involved in such areas?

I'm proud to be a member of The Elders, one of the groups that was brought together by Nelson Mandela and Graça Machel. We're small in number and have no capacity to run programmes, but as part of our efforts we wanted to address women's empowerment and women's rights. We spent quite a long time deciding what exactly we would do. We've decided to focus on the way that religion, tradition, and sometimes culture are distorted to subjugate women, because we believe it is a really very important issue. What we're saying is that these distortions are wrong. Changing the way women are treated requires changing the hierarchical structures within some cultures and some religions, or women will inevitably continue to have that second-class position. This was at the heart of the Afghanistan problem – this was why the Taliban was able to carry out such a crude, total subjugation of women.

Often it is argued that all people are affected in a situation of war, and that placing a particular focus on women may sideline others. How would you respond to this?

Yes, I've heard that argument. I do believe we don't pay enough attention to boys and men in the context of addressing situations of violence against women. We tend to focus on the violence against women, and it's a woman-to-woman discussion. We don't focus enough on engaging men and boys, provincial chiefs, and traditional chiefs – those who can really make a difference.

There is a bishop from Nigeria who says that he doesn't like the term 'gender-based violence', because it posits that women are as much involved as men. He was making the point, I think, that the language was wrong, since most of the

violence was from men to women. However, we do have very bad cases of the reverse, and women can be very violent in different ways, even without hitting anybody. They can freeze somebody out and in some situations can make life extremely difficult.

I still feel that it's right to address specifically the issue of women in conflict – without disregarding others – since in many countries which are experiencing conflicts, women are still second-class citizens. But I think boys and men and traditional chiefs must be part of that discourse, and must also be part of the solution. In that sense, there's a lot of work to be done.

Between Amazons and Sabines: a historical approach to women and war

Irène Herrmann and Daniel Palmieri*

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Abstract

Today, war is still perceived as being the prerogative of men only. Women are generally excluded from the debate on belligerence, except as passive victims of the brutality inflicted on them by their masculine contemporaries. Yet history shows that through the ages, women have also played a role in armed hostilities, and have sometimes even been the main protagonists. In the present article, the long history and the multiple facets of women's involvement in war are recounted from two angles: women at war (participating in war) and women in war (affected by war). The merit of a gender-based division of roles in war is then examined with reference to the ancestral practice of armed violence.

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Since time immemorial, war has been an integral part of the history of humankind.¹ Yet this age-old activity seems to have been the preserve of only part of humankind, since war is still perceived as being essentially a male affair. Many arguments have been put forward to explain this male predominance. 'Innate violence', 'the predator instinct', or even 'the death wish', traits believed to be particularly developed in men, are said to explain their propensity to go to war. Cultural traditions which instil the cult of war into boys from an early

* The views expressed in this article reflect only the authors' opinions.

age – training them to regard it as glorious and status-enhancing, and initiating them into waging war through competition and displays of strength – are further deemed responsible for this dichotomy. Similarly, anthropological studies have shown that war could be seen as an extension of hunting, and that in traditional or pre-industrial societies, the purpose of many warlike expeditions was to ‘hunt’ men for economic reasons or to satiate the demands of gods greedy for human lives, if not to assuage their own cannibalistic appetites!²

The other half of the human race is rarely the focus of the debate on belligerence, except as victims. Whether as prey or plunder, women are supposedly merely the passive objects of men’s warrior instincts. Better still, they are said to be by nature more peaceably inclined in contrast to their combative male counterparts. As the ‘givers of life’, they do not belong on the deadly battlefield other than as involuntary victims of the throes of war.

The latter statement can be disproved by only a glance at the situation today, where women soldiers are present in both regular and irregular armed forces, and at the very scene of hostilities. In retrospect, too, a case can be made against such a clear-cut distinction between male combatants and female victims, for like their male counterparts, women through the ages have certainly joined in the waging of war. As in certain traditional American Indian societies, the ‘fairer sex’ has often been mobilized in the event of war, whether symbolically – by performing rituals intended to bring victory – or in practical terms, by helping to prepare for military expeditions or attending to the consequences (caring for the wounded or supervising prisoners). The direct participation of women in combat has been a relatively rare event, however, although certain American Indian peoples (the Delaware, Navajo and Cheyenne tribes) have women warriors.³ Some authors argue that this absence is due primarily to a gender-based division of the use of objects: although war is not formally prohibited for women, they nevertheless lack the means of engaging in it, since the monopoly on weapons is reserved exclusively for men.⁴ This would also explain why the Amazons, those legendary women warriors, have made such a lasting impression on people’s minds – precisely because they possessed the warrior attributes to which men alone were entitled until then.

In the present article the long history of women’s involvement in war is recounted from two angles: women at war and women in war. The merit of a

- 1 Jean Guilaine and Jean Zammit, *Le sentier de la guerre: Visages de la violence préhistorique*, Le Seuil, Paris, 2000; Lawrence Keeley, *War before Civilization: The Myth of the Peaceful Savage*, Oxford University Press, Oxford, 1996; Pierre Clastres, *Archéologie de la violence: La guerre dans les sociétés primitives*, Éditions de l’Aube, La Tour d’Aigues, 2005.
- 2 A custom that struck fear into the first European visitors – see Jean de Léry, *Histoire d’un voyage fait en la terre de Brésil*, Le livre de poche, Paris, 1994; see also Marvin Harris, *Cannibals and Kings: The Origins of Culture*, Vintage, New York, 1977, pp. 47–64.
- 3 Emmanuel Reynaud, *Les femmes, la violence et l’armée*, Fondation pour les études de défense nationale, Paris, 1988.
- 4 Paola Tabet, *La construction sociale de l’inégalité des sexes: Des outils et des corps*, L’Harmattan, Paris, 2000.

gender-based distinction is then examined with regard to the ancestral practice of armed violence.

Women at war

While the Amazons are surrounded by myth, they had very real equals whose existence has been established since very ancient times. These warrior women were mostly sovereigns. The earliest-known, Queen Ahhotep I of Egypt, is said to have led her troops into battle against the Hyksos invaders some sixteen centuries before our era began.

Her example was followed by others, such as the Chinese military leader Fu Hao,⁵ the ancient British queen Boudica (Boadicea),⁶ and Zenobia, Queen of Palmyra,⁷ to name but the most famous figures of antiquity. Women of more lowly rank have also commanded armies. The most famous is of course Joan of Arc, who was sentenced to be burnt at the stake – not because she had taken up arms, but because she had adopted men's clothing (including armour) in order to enter combat.⁸ This serves as further evidence of the taboo surrounding women's use of objects of war. The fact that women sometimes succeeded in donning military dress and even masquerading as men in order to wage war is closely related to the absence of medical examinations for future soldiers, a practice that was not introduced until the nineteenth century.

More recently, Laskarina Bouboulina⁹ won fame as the heroine of the Greek War of Independence, and several streets named after her in Greece still commemorate her life today. In the United States, a certain Calamity Jane served as a scout in the American army and took part in several military campaigns against the American Indians. 'La Norita' (whose real name was Nora Astorga Gadea) fought alongside the Sandinists before becoming the Vice Minister of Justice and then Ambassador of Nicaragua to the United Nations. In Africa, Nehanda Nyakasikana led the revolt against British rule in Mashonaland and Matabeleland (present-day Zimbabwe) as the nineteenth century drew to a close,¹⁰ while approximately one century later, Alice Auma (or Alice Lakwena, from the name of the spirit believed to command her actions) led the notorious Holy Spirit Movement in its struggle against the Ugandan government.¹¹

5 The British Museum, *The Tomb of Lady Fu Hao*, available at <http://www.ancientchina.co.uk/staff/resources/background/bg7/bg7pdf.pdf> (last visited 19 November 2009).

6 History UK, *Boudica – Britain's Warrior Queen*, available at <http://www.historic-uk.com/HistoryUK/England-History/Boudica.htm> (last visited 19 November 2009).

7 Maurice Sartre, *D'Alexandre à Zénobie: Histoire du Levant antique*, Fayard, Paris, 2001.

8 Georges and Andrée Duby, *Les procès de Jeanne d'Arc*, Gallimard, Folio Histoire, Paris, 1995.

9 Her story is the subject of a novel, *La Bouboulina*, by Michel De Grèce (Pocket, Paris, 2003).

10 David Lan, *Guns and Rain: Guerrillas and Spirit Medium in Zimbabwe*, University of California Press, Berkeley/Los Angeles/London, 1985.

11 Heike Behrend, *La guerre des esprits en Ouganda: Le Mouvement du Saint-Esprit d'Alice Lakwena (1985–1996)*, L'Harmattan, Paris, 2000.

Many women have fought under these female commanders and other leaders, often alongside their male counterparts. During the Cimbrian War (113–101 BC), for example, the Germanic army also included women warriors, who according to the Roman Chronicles were fiercer than their male counterparts. It is reported that after the final Battle of Vercellae (101 BC), when these women saw that their companions had been killed and that defeat was imminent, they preferred to kill their children and then commit suicide rather than fall into the hands of the troops of Consul Marius¹² (the practice of mass suicide – *jauhar* – when military defeat was predictable was also widespread amongst Rajput women in India from the fourteenth to the seventeenth century). In his *Gallic Wars*, Caesar in turn cites a large number of examples where women took part in battles. When the Swiss rose up against the French occupying forces in Nidwalden (central Switzerland) in 1798, the numerous women in the ranks of the insurgents fought with tremendous tenacity. The suppression of the revolt by the French armed forces also caused many casualties among the women of that canton's population.¹³ However, the most famous women soldiers are without a doubt the Amazons of the kings of Dahomey.¹⁴ This female corps – comprised of troops who were trained, equipped with guns and wore a uniform – was first formed in the eighteenth century. A hundred years later it had become an army of up to 7000 women – one-third of the kingdom's fighting forces. These Amazons were known for their cruelty and their courage; they amazed the European visitors/colonials and deeply offended their bourgeois principles. When King Behanzin attacked the French forces in 1890, they were in the front line of his troops. Confronted with these women, their opponents – to their own great misfortune – initially hesitated to open fire on them. In the end it was the superiority of the French weapons – and the use of machine guns – that finally got the better of this elite corps.

For a long time, such examples of female troops nevertheless remained relatively few and far between. This changed with the two world wars (in particular World War II), which not only resulted in a 'feminization' of the armed forces but also brought an impressive upsurge in the number of female fighters.

This phenomenon was truly remarkable in Russia. In World War I, under the Kerensky government, a unit of women soldiers known as the 'Battalion of Death' (!) and consisting of 2000 volunteers was already sent to fight on the front with Germany. However, it was during the Great Patriotic War, from 1941 onwards, that large numbers of women joined the ranks of the Soviet Army or the partisans. It is estimated that there were one million female soldiers, constituting 8% of the total armed forces.¹⁵ Half of them served on the front, either in support jobs or in actual combat. Women also enlisted *en masse* in resistance movements

12 Florus, *Epitome rerum Romanarum*, III, IV, partim.

13 This was when the famous educationist Johann Heinrich Pestalozzi was appointed director of the orphanage in Stans (the chief city of the canton), where the many children who were orphaned in the revolt and the ensuing suppression were looked after.

14 Joshua S. Goldstein, *War and Gender*, Cambridge University Press, Cambridge, 2001, pp. 60–64.

15 E. Reynaud, above note 3, p. 20.

and took part in armed violence, particularly in Italy and Yugoslavia.¹⁶ Although the armies of other States engaged in the second global conflict – both on the Allied side and among the Axis Powers – also occasionally had extensive recourse to female auxiliaries, they rarely deployed them on the front line.

In subsequent conflicts, during wars of national liberation, women also took an active part in the fighting, particularly in Vietnam where several hundred thousand women were engaged in combat between 1946 and 1975, first against the French occupying forces and then the American and South Vietnamese troops. The Zimbabwe African National Liberation Army guerrillas, who fought the racist regime in Salisbury, included some 4000 women soldiers, i.e. 6% of the movement's forces.¹⁷ Over 30% of the Tamil Tiger fighters were women.¹⁸ The participation of women in armed opposition movements is now a permanent feature.¹⁹

Although women were sometimes equal to men in the face of enemy fire, this had little effect on their status within the society for which they took up arms. King Behanzin's Amazons were no better treated in everyday life than the other women in Dahomey, despite their obvious warrior qualities. In the Viet Cong army, female soldiers were generally considered inferior to their male counterparts, a prejudice that reflected the position of women in Vietnamese society. Furthermore, like the army of the Soviet Union where the proportion of female soldiers dropped to 0.2% of the total forces in the post-war period, armies reverted to their essentially male composition once a war was over.²⁰ Similarly, the aforementioned tendency in non-industrial societies to withhold weapons from women continued in the twentieth century, even if women did take part in war. The Soviet Union with its hundreds of thousands of female soldiers between 1941 and 1945 can be regarded as an exception. It is therefore more appropriate to refer to women *in* war rather than women *at* war.

Women in war

The reference to women in war first brings to mind the image of women as victims of armed violence: because they constitute the majority of the myriad group of people known as 'civilians' and because that non-combatant population is often in the firing line in armed conflicts, they are the first to suffer from the excesses of human aggression. We shall return to this specific category later, but we must first mention other women who play a part in warfare without firing a single shot and whose fate is admittedly sometimes similar to that of war victims.

16 In France, on the other hand, the resistance networks largely excluded women from any active combat.

17 J. S. Goldstein, above note 14, p. 82.

18 *Ibid.*, p. 83.

19 This fact indicates a need for women combatants to be taken into account in demobilization processes and measures for reintegration into civilian society – at present, these are generally geared only towards men.

20 E. Reynaud, above note 3, p. 21.

As shown above, women have been involved for centuries in preparations for war and in the war effort itself. This involvement became widespread and institutionalized with the advent of what are known as total wars, beginning with the American Civil War (1861–1865), which mobilize a country's entire resources, both economic and human. This is epitomized by the two world wars. In situations where all energies were summoned for war work, women were thus assigned roles and tasks unfamiliar to them in peacetime. Often the first call upon the female population was to replace the men who were leaving for the front. In rural areas this hardly diverged from previous traditions; women stood in for their absent male counterparts as they had done in the past. Conversely, in urban areas, World War I had the effect of feminizing occupations (such as those of tram driver or post office worker) that had hitherto been reserved exclusively for men. Female workers often formed the bulk of the workforce in factories, particularly in those which produced military equipment and supplies. In France, for example, the women who worked in arms factories were dubbed 'munitionnettes'.

This involvement of women in the war industry reached its height in World War II, and 'Rosie' (the nickname coined in the United States initially for women riveters and welders and then extended to female factory workers in general) became iconic in all countries, though to varying degrees. It must be stated that for reasons of ideology or tradition, the countries of the Pact of Steel (Germany, Italy and Japan) were more reluctant to employ female labour than were the Allies, since they did not consider war a sufficient justification to override the customary policy of women's segregation.²¹ There were also cultural differences among the nations of the Grand Alliance, such as those between France and the United Kingdom, whose womenfolk joined the war effort in far greater numbers and for longer than their French counterparts.

The 'home front', as it soon came to be called, also took on a strictly military dimension with women enlisting to protect the country and its inhabitants. Various auxiliary corps consisting essentially of women were thus created in the armed forces. These volunteers – who were known as 'Lottas' in Finland, 'grey mice' in Germany, and 'marinettes' in France – performed all of the non-combatant functions: administration, supplies and materials management, driving and maintenance of vehicles, communication, air surveillance, and passive defence. At the end of the war, there were over 400,000 women enlisted in Britain's various armed services, almost 10% of the total armed forces personnel.²²

However, the uniform that women don most frequently in wartime is that of nurses. In many cultures, caring for wounded soldiers is an activity traditionally reserved for women. In western societies, before the nursing profession was established, that task was often performed by religious orders. In France, for example, the Daughters of Charity worked on various battlefields from the seventeenth century onwards, as they did during the Algerian Campaign in

21 Claude Quétel, *Femmes dans la guerre, 1939–1945*, Larousse, Paris, 2004, pp. 77ff.

22 *Ibid.*, p.136.

1836.²³ Furthermore, during the *Ancien Régime* the armies on campaign were accompanied by a cohort of civilians – soldiers' wives, victuallers, canteen women, laundresses, prostitutes – who were expected to take care of the male victims when necessary. These 'daughters of the regiment', to quote the title of Donizetti's famous opera, were soon superseded by the emergence of a new category of rescuers from civil society.

The advent of women as professional nurses is generally traced back to the Crimean War (1853–1856). While Grand Duchess Elena Pavlovna organized a corps of 'Sisters of Mercy' on the Russian side,²⁴ Florence Nightingale, 'the Lady with the Lamp', arrived among the British forces with a group of 38 volunteer nurses whom she had trained herself. The sudden emergence of women other than nuns and soldiers' whores at the scene of battle inevitably met with considerable resistance by the military medical corps. The Victorian morals of the time were opposed to such a transgression of the boundaries of a world that was composed of, and exclusively reserved for, men. However, the main underlying grievance against those women was that their work revealed the incompetence and inadequacy of the existing medical services. This did not prevent such nurses from working in all theatres of operations between 1870 and 1914. In some countries, civilian nurses were even incorporated in the armed forces through the creation of *ad hoc* units. Later, all countries fighting in the two world wars had nurses as part of their armed forces' medical services, often in hospitals behind the lines but also on the front or under shellfire.

Although the names of some nurses are recorded in the annals of history, this was not always in the way they would have chosen. Edith Cavell, for instance, was a British nurse who was shot by the German army in 1915 for helping Allied soldiers to escape from Belgium; in the United Kingdom she was, and still is, the epitome of martyrdom. Another nurse and national heroine, the Belgian Gabrielle Petit, was executed in 1916 by the Germans on charges of having helped British military intelligence. Indeed, women were often used in both industrial and pre-industrial societies as auxiliaries to the armed forces' intelligence services,²⁵ if not quite simply as spies. Mata Hari (whose real name was Margaretha Geertruida Zelle) obviously remains the most legendary of them; she suffered the same fate as Cavell and Petit, but was shot by the French.²⁶

Whereas women were often the eyes of the enemy, in some cases they also spoke on the enemy's behalf. The part they played in the propaganda war was particularly significant in World War II. Pictures of Marlene Dietrich entertaining

23 Renée Lelandais, 'Les Filles de la Charité sur les champs de bataille, 1847–1863', in *Préludes et pionniers: Les précurseurs de la Croix-Rouge, 1840–1860*, Henry Dunant Society, Geneva, 1991, pp. 299–319.

24 Walter Gruber, 'La grande-duchesse Hélène Pavlovna et ses auxiliaires en Crimée', in *Préludes et pionniers*, above note 23, pp. 119–129.

25 In the Fiji Islands, for example, women were frequently deployed as scouts or lookouts who subsequently passed on information to the combatants – see *Under the Protection of the Palm: Wars of Dignity in the Pacific*, ICRC, 2009, p. 16.

26 Pat Shipman, *Femme Fatale: Love, Lies and the Unknown Life of Mata Hari*, William Morrow & Company, New York, 2007.

crowds of enthusiastic GIs (or later of Marilyn Monroe performing for American troops engaged in the Korean War) were widely disseminated. The Axis Powers used the same stratagem: 'Tokyo Rose' tried to demoralize the American soldiers fighting on the Pacific front by broadcasting the latest American hit parades and making cruel insinuations about what had become of their wives or sweethearts back home.²⁷

Finally, there were the humanitarian workers, the last category of women in war. Like the nurses, with whom they could be confused, such women have mainly been present in the history of armed conflict since the latter half of the nineteenth century. They were far removed from the battlefield to begin with, organized as temporary groups of well-meaning helpers who endeavoured to provide wounded soldiers with bandages and other dressings, or items to give them comfort (tobacco, wine, liqueurs, etc.). These 'ladies' associations' gradually became institutionalized or simply merged with the National Red Cross Societies set up in Europe at the end of the century. The presence of women aid workers close to the victims of armed violence (particularly civilians, in this case) only began after World War I with the gradual creation of institutions such as the Save the Children Fund. The development of the 'without borders' movement in the 1970s meant that women started to work directly in war zones, and had the effect of 'obliging' certain humanitarian organizations previously composed essentially of men (such as the International Committee of the Red Cross) to admit women to their ranks.

Women war victims

Women can also become war victims as a result of their voluntary participation in conflicts, either as combatants or in support of the war effort. The most disastrous outcome in the case of women soldiers is of course death, which often shows that they were engaged in combat on an equal footing with men. In Tito's National Liberation Army, for example, 25% of the female personnel were killed during the war, compared with 11% of the male personnel.²⁸ Many women members of resistance networks also lost their lives for that commitment.

Capture is in principle a less tragic fate, although this depends entirely on the goodwill of the detaining authority. Whereas the German army auxiliaries held in the American camp at Chalon-sur-Saône took advantage of the pleasant living conditions there in order to sunbathe (and, according to the ICRC delegate who visited them, their suntan was as good as any Polynesian tan!),²⁹ the Polish women from General Bor-Komorowski's army (*Armia Krajowa*), who were prisoners of war in Germany, endured severe hardship which prompted their male fellow

27 C. Quézel, above note 21, pp. 110–111.

28 E. Reynaud, above note 3, p. 22.

29 ICRC Archives, C SC, France 1945, Camps US C.C.E. 29, Chalon-sur-Saône, Subcamp no. 1, Château de Loyère, Report of the visit of 18–20 July 1945, p. 4.

prisoners to request the ICRC to take them specifically under its protection.³⁰ The ICRC also sent a note to the German, American, British and French governments in 1945 pointing out that the 1929 Geneva Convention protecting prisoners of war also applied to female prisoners, since ‘...women are entitled to the same treatment as [male] Prisoners of War, and even to preferential treatment...’.³¹

More generally, however, women suffer war more than they wage it. Their exposure to its dire consequences is thus very often dictated by circumstance. The massive bombing of cities that became common practice from the Spanish Civil War onwards is a form of indiscriminate violence that takes a heavy toll on women, who are an integral part of the non-combatant civilian population. Even the targeted shelling of strategic objects is likely to kill or injure many women, due to their involvement as labour in the war economy. In a mass exodus, most of the refugees are often women too. At least since the Balkan Wars of 1912–1913, modern technology has recorded images of the long lines of civilians fleeing the fighting.

Deportation is another form of forced departure. The deportation of civilian populations, which was often used as a means of forcing combatants to yield by exerting pressure on their families, was common practice in the twentieth century. Deportation was very often the prelude to a policy of extermination, as was the case with the Herero, the Armenians, and later the Jewish populations in Europe. Although things were not always taken to that extreme, the internment of these large numbers of forcibly displaced people in so-called concentration camps, with the unhealthy conditions prevailing there, had disastrous effects upon them. A quarter of the approximately 100,000 people – most of whom were women and children – who were sent to British concentration camps during the Second Boer War (1899–1902) died of starvation or disease.³²

Women frequently become the target of sexual violence when separated from their communities and isolated.³³ Since ancient times, rape has been a cruel corollary of war. In *City of God*, Saint Augustine writes that in the pillage of cities that have been conquered, it is just as customary to rape the women as it is to massacre the men. Rape in war is a feature of all conflicts that has nothing to do with cultural background, and differs only in intensity. From the mass rapes committed before and during World War II (Anthony Beevor estimates that two million German women were raped by the Soviet army at the fall of the Third Reich in April 1945)³⁴ to those perpetrated during more recent conflicts (in Bosnia-Herzegovina, Cyprus, Rwanda, etc.), this sexual brutality penalizes the victims on two accounts – in addition to suffering the act itself, women who have been raped are often excluded by their communities of origin. The consequences of rape

30 ICRC Archives, B G 25/40, *Femmes polonaises de l’Armée du Général Bor-Komorowsky, P.G. en Allemagne*.

31 ICRC Archives, B G 25/40, *Appel aux gouvernements*, letter from President Burckhardt to Anthony Eden, 9 January 1945.

32 Martin Meredith, *Diamonds, Gold and War: The British, the Boers, and the Making of South Africa*, Public Affairs, New York, p. 457.

33 Even when woman are combatants, this does not necessarily protect them in practice from sexual assault.

34 Anthony Beevor, *Berlin: The Downfall*, Viking, London, 2002, p. 414.

(unwanted pregnancies or sexually transmitted diseases) are further factors that exacerbate the victims' isolation. Moreover, women are not equal to men when it comes to sexuality in wartime. The so-called 'horizontal' collaboration between women and foreign occupying forces was often severely punished (the women's heads were shaved,³⁵ they were exhibited naked to public view, or their bodies were branded) by post-war cleansing committees. No account whatsoever was taken of the intrinsic reasons leading to those relationships (love affairs, need for protection, material constraints, etc.). Prostitutes who continued to carry out their profession during the occupation of their country, on the other hand, were not affected by this spirit of revenge, perhaps because they were already regarded as lost women.

Finally, even if they escaped these various tragic destinies, women were still war victims by the very fact that the war could all too easily wipe out their husbands, sons, fathers or brothers who had left for the front. Widowed or orphaned, either in actual fact or in effect (e.g. when their relatives were reported missing), women had to get on with their lives while bearing the burden of that absence.

Conclusion

'Men invented war so that they could get away from [women] and be amongst themselves', quipped French writer Jean Giraudoux,³⁶ who was also the author of the famous drama *Tiger at the Gates*. Both his humorous comment and the French title of that theatrical work (literally 'The Trojan War will not take place') sum up the common perception of how women approach armed violence. Deliberately ousted from the battlefield – the ultimate domain of virility – women are, however, often the subject of male quarrels and coveted as booty. The Yanomani Indians of the tropical forests of South America, for example, freely admit that they only wage war to seize women,³⁷ who are thus the victims *par excellence* of the men's bellicose brutality.

The above remarks demonstrate, however, that the demarcation between gender and belligerence is not as clear-cut as one might imagine. Through the ages women have played a role, albeit small, in war when they were not themselves the main protagonists. Although the feminization of contemporary armies remains a minor phenomenon (according to Goldstein, only 3% of the world's armed forces personnel are women),³⁸ it is the result of a long narrowing of the divide between femininity and conflict, a process favoured today by the progressive decline in mass mobilization (beginning with the French Revolution in 1789), and by the professionalization of the soldier's trade. Moreover, women warriors are very

35 For practices in France, see Fabrice Virgili, *La France 'virile': Des femmes tondues à la Libération*, Payot, Paris, 2003.

36 In *Sodome et Gomorrhe*, Grasset, Paris, 1943, p. 130. Own translation.

37 J. S. Goldstein, above note 14, p. 7.

38 *Ibid.*, p. 10.

much alive in the national imagination, particularly as a symbol associated with defending the country. One need only think of the allegories of Marianne, Helvetia, Germania or Britannia to appreciate this. The idea that the mother country – in danger, but prepared to defend itself at all costs – is a female figure is not in itself surprising. This can easily be linked with the animal world, where females fight, often to the death, to protect their offspring from danger.

This latter point brings us back to the question of how women relate to the violence of war, a question that is generally evaded. The act of killing is commonly viewed as a typically male gesture. Women, regarded as the ‘givers of life’, are deemed to fill by procreation the void that men’s martial activities create in society, and even to continue to supply ‘cannon fodder’. A whole series of stereotypes have developed from this fundamental societal dichotomy – arising with anti-militarism at the end of the nineteenth century, accentuated during the 1914–1918 wholesale slaughter, and partly revived by the feminist movements in the early 1970s in the context of the Vietnam War. These stereotypes depict women as frail and innocent creatures (the famous ‘weaker sex’), incapable of shedding blood and thus intrinsically more inclined to make peace than war, since their role of bringing forth life makes them aware of its value. However, the fact that wars are (statistically speaking) the doing of men is primarily due to factors of discrimination against the ‘fairer sex’ rather than to atavistic traits. On the contrary, anthropologist Margaret Mead³⁹ postulated that in situations of armed conflict, women are more inclined to kill than men. She argues that, mainly for cultural reasons, ‘the controls which operate on male aggression seem to be lacking in females’. It is true that, unlike boys, girls are not brought up learning how ‘to use violence in a disciplined way [...] and how to subject aggressive physical behaviour to rules of fair play and appropriateness’, as in certain sports (such as rugby) that are regarded as essentially male. Mead writes that ‘it may be highly undesirable to permit women, trained to inhibit aggressive behaviour, to take part in offensive warfare. Defensive warfare, on the other hand, does not have the same disadvantages, as it invokes the biological basis of defence of the nest and the young.’⁴⁰ If this view is substantiated, it would at all events explain why so many women fight in wars of resistance against a foreign invader.⁴¹

A further controversial issue is women’s close connection with the violence of war. Although history shows that women have taken part in armed conflicts since ancient times, it also implies between the lines that to some extent, they have done so against their will, precisely because there was a major threat to

39 Margaret Mead, ‘A national service system as a solution to a variety of national problems’, in M. Anderson (ed), *The Military Draft: Selected Readings on Conscription*, Hoover Institution Press, Stanford, California, 1982, p. 441 (original edn 1967, paper reprinted by permission of the publisher from *The Draft: A Handbook of Facts and Alternatives*, edited by Sol Tax, University of Chicago Press, Chicago, 1967).

40 *Ibid.*

41 This hypothesis is further supported by the fact that joining in hostilities has very often been the only chance for women – most of whom had no political rights at all until the end of World War II – to help shape the national destiny.

the existence of the community. Other than in these exceptional situations, the instinct to harm one's fellow human being supposedly remains the 'prerogative' of men.

However, certain historical events refute this angelic vision, demonstrating that torturers are found among women too. To cite only a recent example, what is known in the media as the Iraq prison abuse scandal at Abu Ghraib shows that women can also, without any constraint, commit acts as hideous as torture, and take perverse pleasure in doing so. The female American soldiers involved in those practices are every bit as obnoxious as Ilse Koch, the 'Bitch of Buchenwald' or Irma Grese, the 'Beast of Auschwitz', who had indulged in their sadism and brutality some sixty years before. Similarly, the fact that there are women amongst the suicide bombers who blow themselves up in Iraq, Chechnya or elsewhere shows that they too are prepared to become the vectors of indiscriminate violence. This is further confirmed by the participation of female soldiers such as the women Tamil Tigers in the massacre of civilians. Even nurses, the very image of compassion, have been able to pervert their ideals for the needs of a totalitarian ideology.⁴² Rape, a war crime hitherto regarded as exclusively male, can also be committed by women... against other women. A recent study on the civil war in Sierra Leone showed that it was neither unknown nor even rare for women to take direct part in sexual torture inflicted on female victims.⁴³

The existence of these 'black sheep' certainly does not change the fact that the majority of women in conflict situations still belong to the category of victims. This basic tenet of humanitarian organizations is upheld all the more strongly as it does not, in our societies, call into question the precepts of child-rearing, a certain social order, or even how we envision gender. In other words, it is easier to relegate women everywhere to a passive role than to consider that they are all capable of full participation in war or other situations.

By stigmatizing warriors and regarding the mother figure as essentially innocent, this dichotomy between the two also means that the awkward truth can be evaded – namely, the fact that war and the violence associated with it are not a matter of gender, but first and foremost of individuals, and that we must therefore regard aggression as a human rather than a male activity. To put it more bluntly, it means that each and every one of us, whether man or woman, could one day lapse into barbarity.

42 On the participation of German nurses in the euthanasia programme launched by the Third Reich, see Rebekah Bronwyn McFarland-Icke, *Nurses in Nazi Germany*, Princeton University Press, Princeton, 1999.

43 Dara Kay Cohen, 'The role of female combatants in armed groups: Women and wartime rape in Sierra Leone (1991–2002)', communication presented at the international colloquium on 'Rape in Wartime: A History to be Written', Paris, 11–13 May 2009.

The dialogue of difference: gender perspectives on international humanitarian law

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Abstract

This article examines the meaning and potential usefulness of a 'gender perspective' on international humanitarian law (IHL). In order to do so, it considers a number of 'gendered' themes found within IHL, including the role of women as combatants, and the gendered use of sexual violence during times of armed conflict. The authors suggest that further development and understanding of a gender perspective will contribute to the resilience and effectiveness of IHL as a system of law, and will strengthen the protection of those who are victimized and disempowered during times of war.

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In 2007, a meeting was held in Stockholm to examine gender perspectives on international humanitarian law. In issuing the invitation, the senior representative from the Swedish Ministry for Foreign Affairs was very clear – 'This is not a meeting about women and war. This is very different: this is about gender and international humanitarian law.'

* The views expressed in this article are the authors' alone and do not represent any institutional position.

For many of us who have spent considerable time researching and working as practitioners in the area of women and war, the stark reminder that 'gender is not only about women' provided a chance for reflection. For professionals engaged in the practical implementation of international law, the provision of humanitarian assistance, and the development of international policy in this area, the term 'gender' is often synonymous with the needs of women. However, in the context of the increasingly complex environments in which armed conflict is experienced and the growing challenges many societies are facing in relation to the role of men and women, a more nuanced understanding of the broader application of the concept of gender is necessary to ensure that IHL provides the most resilient protection available. This article examines the meaning and potential usefulness of a 'gender perspective' on IHL. To do so it considers a number of 'gendered' themes found within IHL, including the role of women as combatants, and the gendered use of sexual violence during times of armed conflict. Treating women and men as if they were fixed and unchangeable categories can exclude the experience of those people who do not fit neatly into the assumption about how 'men' and 'women' are supposed to behave. This article builds upon the document 'International Humanitarian Law and Gender: Report Summary of the International Experts'¹ (Expert Report Summary) and aims to further encourage dialogue and reflection on this emerging topic.

What does a 'gender perspective' really mean?

Within scholarly research on international law, there is a range of definitions for the term 'gender'.² The common element in each articulation of the term is the distinction drawn between differences based on sex (biology) and differences based on social assumptions about masculine and feminine behaviours (social constructs). In its Guidance Document entitled 'Addressing the Needs of Women Affected by Armed Conflict', the ICRC writes clearly of this differentiation:

'The term "gender" refers to the culturally expected behaviours of men and women based on roles, attitudes and values ascribed to them on the basis of their sex, whereas "sex" refers to biological and physical characteristics.'³

1 *International Humanitarian Law and Gender*, Report Summary, International Expert Meeting: 'Gender Perspectives on International Humanitarian Law', 4–5 October 2007, Stockholm, Sweden, available at [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/ihl-women-report-051008/\\$File/ihl%20and%20gender.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/ihl-women-report-051008/$File/ihl%20and%20gender.pdf) (last visited 10 December 2009).

2 See Dianne Otto, 'Lost in translation: re-scripting the sexed subjects of international human rights law', in Anne Orford (ed), *International Law and its Others*, Cambridge University Press, Cambridge, 2006, pp. 318–356; Carol Cohn, 'War, Wimps and Women: Talking Gender and Thinking War' in Miriam Cooke and Angela Woollacott (eds), *Gendering War Talk*, Princeton University Press, Princeton, NJ, 1993, pp. 227–246; Rosemarie Putnam Tong, 'Introduction: The Diversity of Feminist Thinking' in *Feminist Thought*, Westview Press, 1998, pp. 1–9.

3 International Committee of the Red Cross (ICRC), *Addressing the Needs of Women Affected by Armed Conflict*, ICRC, Geneva, 2004, p. 7.

In a similar vein, Hilary Charlesworth has written that:

‘The term “gender ... refers to the social construction of differences between women and men as ideas of “femininity” and “masculinity” – the excess cultural baggage associated with biological sex.’⁴

Patricia Viseur Sellers has critiqued the common perception of ‘gender’ in the context of war crimes prosecutions as exclusively an issue of women and rape. She writes:

‘Gender depends on the meaning given to males and females in the context of a society. So we often speak in “reductionist” terms, reducing gender to women, and when we refer to gender strategy reducing it to sexual violence committed against women and girls. This is unfortunate. There is room for growth.’⁵

Sandra Whitworth expounds on feminist conceptions of gender as follows:

‘When feminists use the term gender, they are usually signalling a rejection of essentialized categories of women and men. Using gender means pointing instead to the ways in which the assumptions that prevail about women and men, and femininity and masculinity, shape (and are in turn shaped by) the real lived conditions of specific people and the institutions they create. Feminists argue that the assumptions that prevail in any given time or place – about what it is to be a man or a woman, or what is considered appropriately feminine or masculine behaviour – has effects on people’s lives. Those assumptions and ideas can be used as rationales for exclusion, or privilege, used to discipline, or used to justify and make appear natural a whole variety of expected behaviours, or policy options.’⁶

Even in recent treaty law there have been some attempts to capture what is meant by the term ‘gender’. The Rome Statute of the International Criminal Court (ICC Statute) contains one of the few legal definitions of ‘gender’ (and in these authors’ view, a very limited one) in article 7(3) as follows:

‘For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.’

However, as noted by the Expert Report Summary, it can be a complex process to operationalize these insights, as gender is a subject that is both highly

4 Hilary Charlesworth, ‘Feminist Methods in International Law’, in *American Journal of International Law*, vol. 93, 1999, p. 379.

5 Patricia Viseur Sellers, ‘Gender strategy is not a luxury for international courts’, in *American University Journal of Gender, Social Policy and the Law*, vol. 17, 2009, p. 301.

6 Sandra Whitworth, ‘Globalizing Gender: Who Gets It? Who Doesn’t?’ in Ryerson Christie and Elizabeth Dauphinee (eds), in *The Ethics of Building Peace in International Relations: Selected Proceedings of the Twelfth Annual Conference of the Centre for International and Security Studies*, York Centre for International and Security Studies, Toronto, 2005, p. 120 (citations omitted).

personal and strongly public. Definitions of masculine and feminine roles within society are often shaped by public institutions and deal with the allocation of power within communities.⁷ Despite the range of ways men and women are attributed roles in public and private life, a gender perspective challenges the view that differences between men and women can be accounted for exclusively with biological explanations. Rather, using gender as a category of analysis can open up discussion on the construction of social rules (both formal and informal) that impact upon communities, and how these roles can and do change.

This article begins with a summary of some of the contemporary feminist critiques of IHL, and then moves on to specific subject areas within IHL. Within the themes to be examined in this article, a gender perspective also provides a timely reminder that developing neat categories of 'men' and 'women' (as 'violators' and 'victims') can detract from a deeper examination of needs during times of armed conflict.

Feminist critics of IHL

Over the last decade, some feminist legal theorists have advanced a range of critiques on the 'gendered' nature of IHL.⁸ Concerns generally centre on the challenges that arise where systems of formal equality, such as IHL, are required or expected to deliver substantively equal outcomes, particularly given the fundamentally diverse ways armed conflict impacts upon men and women. In short, these academics have argued that IHL is inherently discriminatory, as it is a legal regime that prioritizes men – specifically male combatants – and often either relegates women to the status of victims, or accords them legitimacy only in their role as child-rearers. Gardam and Jarvis state that of the 42 specific provisions relating to women within the Geneva Conventions⁹ and their 1977 Additional Protocols¹⁰, almost half deal with women in their roles as expectant or nursing mothers.¹¹ Similarly these authors argue that the other category of protection,

7 Report Summary, International Expert Meeting, above note 1, p. 6.

8 See in particular Judith Gardam and Michelle Jarvis, *Women, Armed Conflict and International Law*, Kluwer Law International, 2001; see also the review of this book in Helen Durham, 'Women, armed conflict and international law', in *International Review of the Red Cross*, vol. 84, no. 847, September 2002, p. 655.

9 International Committee of the Red Cross (ICRC), *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 12 August 1949, 75 UNTS 31 (Geneva Convention I); *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 12 August 1949, 75 UNTS 85 (Geneva Convention II); *Geneva Convention Relative to the Treatment of Prisoners of War*, 12 August 1949, 75 UNTS 135 (Geneva Convention III); *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, 75 UNTS 287 (Geneva Convention IV).

10 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, (Protocol I), and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977, (Protocol II).

11 J. Gardam and M. Jarvis, above note 8, p. 93.

specifically the crime of sexual violence, is couched in terms of chastity and modesty of women.¹² Evidence of this claim is provided in the wording of Article 27 of Geneva Convention IV which states that ‘women shall be especially protected against any attack on their honour...’. Much has also been written in the past decades about the historical lack of prosecution of rape as a war crime, as well as the fact that it is not listed within the ‘grave breach’ provisions of the Geneva Conventions, which appears to give it a lesser status within the strict hierarchy of war crimes.¹³

On the other hand, some writers have acknowledged the use of outdated language within the body of IHL, but argue that like any text, the Geneva Conventions must be read with a temporal understanding of views in the 1940s and within a range of cultural constructs. As Lindsey notes:

‘... honour is a code by which many men and women are raised, and by which they define and lead their lives. Therefore the concept of honour is more complex than merely a “value” term.’¹⁴

Furthermore, the language used to articulate crimes involving sexual violence during armed conflict has been updated over time; for example, the wording used in the 1977 Additional Protocols (which does not include the term ‘honour’),¹⁵ and the wider codification of prohibitions on sexual violence under the

12 *Ibid.*, pp. 96–97.

13 Susan Brownmiller, *Against Our Will: Men, Women and Rape*, Simon and Schuster, New York, 1975; Theodor Meron, ‘Rape as a Crime under International Humanitarian Law’, in *American Journal of International Law*, vol. 87, no. 3, 1993, p. 424; Alexandra Stiglsmayer (ed.), *Mass Rape: The War Against Women in Bosnia-Herzegovina*, University of Nebraska Press, Lincoln, NE, 1994; Kelly Dawn Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals*, Kluwer Law International, The Hague, 1997; Patricia Viseur Sellers and Kaoru Okuizumi, ‘Intentional Prosecution of Sexual Assaults’, in *Transnational Law and Contemporary Problems*, vol. 7, 1997, p. 45; Judith Gardam, ‘Women and the Law of Armed Conflict: Why the Silence?’, in *International and Comparative Law Quarterly*, vol. 46, 1997, pp. 55–80; Judith Gardam, ‘Women, Human Rights, and International Humanitarian Law’, in *International Review of the Red Cross*, vol. 324, 1998, p. 421; Christine Chinkin, ‘Women: The Forgotten Victims of Armed Conflict?’ in Helen Durham and Tim McCormack (eds), *The Changing Face of Conflict and the Efficacy of International Humanitarian Law*, Martinus Nijhoff Publishers, Dordrecht, 1999; Anne M. Hoefgen, ‘“There will be no justice unless women are part of that justice”: Rape in Bosnia, the ICTY and “gender sensitive” prosecutions’, in *Wisconsin Women’s Law Journal*, vol. 14, 1999, p. 155; Jennifer Green, Rhonda Copelon and Patrick Cotter, ‘Affecting the Rules for the Prosecution of Rape and Other Gender-Based Violence Before the International Criminal Tribunal for the Former Yugoslavia: A Feminist Proposal and Critique’, in *Hastings Women’s Law Journal*, vol. 5, 1994, p. 171; Nicole Eva Erb, ‘Gender-based crimes under the draft statute for the permanent International Criminal Court’, in *Columbia Human Rights Law Review*, vol. 29, 1998, p. 401; Cate Steains, ‘Gender Issues’, in Roy S. Lee (ed), *The International Criminal Court: The Making of the Rome Statute – Issues, Negotiations, Results*, Kluwer Law International, The Hague, 1999, pp. 357–390; Judith Gardam, ‘The Neglected Aspect of Women and Armed Conflict: Progressive Development of the Law’, in *Netherlands International Law Review*, 2005, pp. 197–219.

14 Charlotte Lindsey, ‘The Impact of Armed Conflict on Women’, in Helen Durham and Tracey Gurd (eds), *Listening to the Silences: Women and War*, Koninklijke Brill, Leiden, 2005, p. 33.

15 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, Protocol I, art. 76; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, Protocol II, art. 4(2)(e).

ICC Statute, which neither uses such value-laden terms nor focuses exclusively upon women.¹⁶ Significant advances have been made in the last decade in relation to the long overdue clarification of the illegality of all types of sexual violence in armed conflict. Recent jurisprudence from international criminal tribunals, to be discussed later in this article, leaves no doubt that rape can now be charged and successfully prosecuted as a war crime, a crime against humanity and genocide.¹⁷

In response to some of these critiques, it has been noted that the aim and scope of IHL do not always interact easily with the dynamics of feminist legal theory. Durham has written elsewhere as follows:

‘Feminist legal scholars have expressed frustrations at IHL’s lack of analysis of matters such as systematic gender inequalities. They argue that this contributes to IHL’s inability to move beyond a “male norm” when dealing with the impact of armed conflict upon women. Many of these criticisms highlight the tensions between the pragmatic and limited aims of IHL and the range of expectations placed upon this area of law ... IHL does not attempt to place any regulations upon the basis of social structure before, or after, the conflict ... its limited aim leaves no room ... for deeper social analysis of inherent inequalities required by feminist legal theory.’¹⁸

While the international community has heard and responded to calls for new legal instruments to realign IHL with contemporary understandings of the way armed conflict specifically impacts upon women, in more recent times the debates appear to have shifted. Concerns about the dangers of developing new and specific treaties and ‘reopening the basic principles of the existing texts’ in IHL have been identified. Bennouné writes:

‘There is the chance that in the contemporary environment it could result in a weakening of protections available, a reality of which feminist scholars are clearly aware.’¹⁹

Currently, ‘soft law’ options to increase the protection of women during times of armed conflict – including standards, guidelines and resolutions from the United Nations Security Council and the General Assembly – are being

16 UN General Assembly, Rome Statute of the International Criminal Court (ICC Statute) (last amended January 2002), 17 July 1998, A/CONF. 183/9, entry into force 1 July 2002, arts 8(2)(b)(xxii) and 8(2)(e)(vi), which criminalize the commission of rape, sexual slavery, enforced prostitution, forced pregnancy ... enforced sterilization or any other form of sexual violence also constituting a grave breach of the Geneva Conventions’.

17 Carrie McDougall, ‘The Sexual Violence Jurisprudence of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda: The Silence Has Been Broken But There’s Still a Lot to Shout About’, in Ustinia Dolgopol and Judith Gardam (eds), *The Challenge of Conflict: International Law Responds*, Martinus Nijhoff, The Hague, 2006, pp. 331–446.

18 Helen Durham, ‘International Humanitarian Law and the Protection of Women’ in Durham and Gurd (eds), above note 14, p. 97.

19 Karima Bennouné, ‘Do We Need New International Law to Protect Women in Armed Conflict?’, in *Case Western Reserve Journal of International Law*, vol. 38, no. 2, 2007, p. 388.

reviewed and considered as a method for supplementing the existing legal norms in this area. Indeed rather than the drafting of more treaties or conventions, many of the responses to calls for increased protection for women (and in a number of cases children) in the last few years have involved developments such as resolutions from a range of bodies of the United Nations. For example, Resolutions 1888, 1889 and 1894 of the Security Council, all passed in late 2009, are the most recent links in a chain of resolutions that aim to bolster the protection of women and children against sexual violations during armed conflict, as well as the role of women in post-conflict peace-building as was expressed in Resolution 1325.²⁰ Added to this, there have been numerous United Nations administrative issuances, such as the Secretary-General's Bulletin, 'Special Measures for Protection from Sexual Exploitation and Abuse',²¹ which build upon obligations and responsibilities expressed in documents such as the Secretary-General's Bulletin on 'Observance by United Nations forces of international humanitarian law'.²²

The merit of this approach to strengthening protections and accountability is an interesting question deserving of detailed examination in another article dedicated to the specific topic. Rather than suggesting the need for more law, this article aims to provide readers with the capacity for reflection upon the existing IHL norms within a gender perspective. The following sections will move to examine some thematic issues that raise a range of questions relating to gender analysis of IHL.

Women as combatants

Despite criticism of the Geneva Conventions and their 1977 Additional Protocols for taking an archaic view of the roles and value of women as exclusively 'vulnerable', there are a number of provisions within these treaties dealing with protections afforded to women as combatants. In this sense, the drafters of these treaties in the late 1940s comprehended that women may not always find themselves solely in civilian roles.

In the last decade, the number of women engaged in combat has dramatically increased in both regular and irregular armed groups. While many States, such as Australia, have a policy of excluding women from active participation in combat roles, there are a wide range of activities in which women can be engaged that are often similar or equal to 'war fighting', such as flying with the air force. In the United States, for example, women make up approximately 18% of air force

20 See UN Doc. S/Res/1325 (2000) on *Women and peace and security*, UN Doc. S/Res/1612 (2005) on *Children and armed conflict*, UN Doc. S/Res/1674 (2006) on *Protection of civilians in armed conflict*, UN Doc. S/Res/1820 (2008) on *Women and peace and security*, UN Doc. S/Res/1882 (2009) on *Children and armed conflict*, UN Doc. S/Res/1888 (2009) on *Women and peace and security*, and UN Doc. S/Res/1894 on *Protection of civilians in armed conflict*.

21 ST/SGB/2003/13, 9 October 2003.

22 ST/SGB/1999/13, 6 August 1999.

officers, compared with under 6% of the marine corps.²³ In Canada, the percentage of women in the armed forces has risen steadily to a proportion of approximately 17%, and the absence of restrictions on female participation in combat roles has resulted in women taking up arms as infantry soldiers, fighter pilots, submariners, clearance divers, warship captains and senior commanding officers in recent years.²⁴ Since 1948, Israel has followed the unique policy of conscripting both male and female citizens to the state defence forces, so that women make up approximately one-third of Israeli soldiers, although their roles and periods of compulsory service are restricted.²⁵ In the context of a number of civil rebellions, including in Nepal, Sri Lanka, Ethiopia and Eritrea, women have comprised a significant proportion of fighters in the guerrilla forces.²⁶

Protection of women as combatants and prisoners of war

In this sense, the provisions dealing with the protections afforded to women as combatants and prisoners of war are increasingly important. IHL is located within the concept of formal equality, and one sees reiterated throughout the Conventions and their 1977 Additional Protocols the requirement that protections should be provided 'without any adverse distinction founded on sex ...'.²⁷ In relation to women who find themselves as prisoners of war, article 14 of Geneva Convention III reinforces this concept through the obligation that women should receive treatment 'as favourable as that granted to men'. Article 16 confirms this in the statement: 'Taking into account the provisions of the present Convention relating to rank and sex ... all prisoners of war shall be treated alike by the detaining Power ...'.

Added to these claims of formal equality, IHL provides a range of specific protections to women, in particular for women detained as prisoners of war. For instance, women are required to be provided with separate dormitories and

23 *Statistical Abstract of the United States: 2009*, Table 494: Department of Defence Personnel, available at <http://www.census.gov/compendia/statab/> (last visited 13 November 2009).

24 Canadian Forces National Report to the Committee for Women in NATO Forces, 2006, p. 1, available at http://www.nato.int/ims/2006/win/pdf/canada_national_report_2006.pdf (last visited 15 November 2009); Canadian Forces Recruiting Timeline, 1885–2007, available at http://www.forces.ca/html/womeninthecf_en.aspx (last visited 15 November 2009).

25 Israel Ministry of Foreign Affairs, 'Integration of Women in the IDF', 8 March 2009, available at [http://www.mfa.gov.il/MFA/Israel + beyond + politics/Integration_women_in_IDF-March_2009](http://www.mfa.gov.il/MFA/Israel+%20beyond+politics/Integration_women_in_IDF-March_2009) (last visited 15 November 2009), quoting statistics published by the then IDF Women's Affairs Advisor, Brigadier General Yehudit Grisaro.

26 See for example Mary Zeiss Stange, 'From Domestic Terrorism to Armed Revolution: Women's Right to Self-Defense as an Essential Human Right,' in *Journal of Law, Economics & Policy*, vol. 2, 2006, p. 385, see in particular Pt IV, in which the author discusses the participation of women in liberation armies in Nepal, Kurdistan, Sri Lanka and Colombia. See also Angela Veale, *From Child Soldier to Ex-Fighter: Female Fighters, Demobilisation and Reintegration in Ethiopia*, Institute for Security Studies, Pretoria, 2003; Elise Fredrikke Barth, *Peace as Disappointment: The Reintegration of Female Soldiers in Post-Conflict Societies: A Comparative Study from Africa*, International Peace Research Institute (PRIO), Oslo, August 2002, available at <http://www.peacewomen.org/resources/DDR/AfricaBarth.html> (last visited 15 November 2009).

27 Geneva Convention I, art. 12; Geneva Convention II, art. 12; Geneva Convention III, art. 16; Geneva Convention IV, art. 27; Additional Protocol I, art. 75; Additional Protocol II, art. 4.

conveniences from men, even when undergoing disciplinary or penal punishment.²⁸ Furthermore, in the allocation of labouring tasks due consideration must be given to the sex of the prisoner²⁹ and disciplinary measures and punishments for women are not to be more severe than that accorded to males.³⁰ It must be noted that unlike female civil internees, female prisoners of war have no specific rights to only be searched by a woman.³¹

Sexualization of interrogation

A number of authors have expressed concern at what they see as the increasing 'sexualization' of interrogation methods during detainment, whereby gender perspectives are thrown into confusion. The widely publicised activities of Private Lynndie England and other (male and female) military personnel in the Abu Ghraib prison in 2003–2004 provide a clear example of this phenomenon.³² Eisenstein describes the abuse of prisoners at Abu Ghraib as an episode of gender depravity and chaos,³³ while Whitworth perceives it as a case of gender perspective falling into the wrong hands. Whitworth argues that, more than other international actors, many military actors are readily able to understand gender as a constitution of power relations, and, in the case of the Abu Ghraib interrogators, choose to utilize that understanding in order to violate and humiliate those they hold captive. She writes:

'Those who planned the sexual torture and humiliation techniques used against prisoners understand that assumptions about appropriately masculine behaviour are not fixed across time and place and that we can discover (and in their cases, manipulate) the deeply felt expectations associated with masculinity. The interrogations involved a systematic assault on conceptions of appropriately masculine behaviour: smearing fake menstrual blood on prisoner's faces, forcing them to masturbate or simulate and/or perform oral and anal sex on one another, to disrobe in one another's presence, to touch one another, to touch women, and to be photographed in these and other positions. It is a racist and heterosexist understanding of masculinity, to be sure, but it is one that "gets" gender.'³⁴

28 Geneva Convention III, arts 25, 29, 97 and 108.

29 *Ibid.*, art. 49.

30 *Ibid.*, art. 88.

31 See Geneva Convention IV, art. 97, which states that a woman internee shall not be searched except by a woman.

32 See generally Major General Antonio M. Taguba, *Article 15-6 Investigation of the 800th Military Police Brigade*, 2004; Scott Higham and Joe Stephens, 'New Details of Prison Abuse Emerge: Abu Ghraib Detainees' Statements Describe Sexual Humiliation and Savage Beatings', in *The Washington Post*, May 21, 2004; Linda Burnham, 'Sexual Domination in Uniform: An American Value', in *War Times*, www.war-times.org, 19 May 2004.

33 Zillah Eisenstein, 'Sexual Humiliation, Gender Confusion and the Horrors at Abu Ghraib', in Zillah Eisenstein, *Sexual Decoys: Gender, Race and War in Imperial Democracy*, Zed Books Ltd, New York, 2007, pp. 37, 41.

34 S. Whitworth, above note 6, p. 124 (citations omitted).

With this in mind, a number of the provisions relating to the dignified treatment of female and male prisoners of war could be examined with a gender perspective and in light of the intention of the drafters. The regulation – or lack of regulation – of the searching of detained combatants may be taken as an example. Perhaps the idea of the potential humiliation that could occur to male members of the military (or the civilian population) being searched by female officers was not specifically contemplated in the late 1940s. However, there can be no doubt that the humanitarian principles articulated throughout the legal norms dealing with the treatment of prisoners of war inherently demand respect for their persons and their honour³⁵ – this would clearly preclude gender humiliation.

Practical difficulties

Of course, the above must be balanced with the realities of the process of capture and potential practical difficulties in providing military personnel of the appropriate sex (particularly women) to carry out searches.³⁶ A number of practical problems have also been identified in the implementation of the legal requirements to provide female detainees with adequate quarters separate from those of men, due to the fact that women often make up a minority of the detainee population.³⁷ Carefully balancing the practical realities of armed conflict and the principle of humanity is a task international humanitarian law constantly struggles to achieve. Yet assessing and reflecting more deeply on the aims of the relevant legal provisions and their relationship with the practical realities on the ground is a useful exercise to undertake. The provisions relating to the treatment of prisoners of war could thus benefit from a gender examination.

Women perpetrators of crimes

Another area of relevance in a debate about gender and IHL is the development of a more nuanced understanding of social attitudes towards women and girls who break the gender stereotype and engage in crimes during times of armed conflict.

These themes are further examined in Nicole Hogg's article on women's roles in the commission of the Rwandan genocide in 1994.³⁸ In this piece, the author reflects upon the complex reasons why a range of women (from 'ordinary' women to those in leadership positions) actively participated in the atrocities, and the attitudes and defences that arose when they were prosecuted. She notes that in

35 Geneva Convention III, art. 14.

36 For further discussion see H. Durham, 'International Humanitarian Law and the Protection of Women', in Durham and Gurd (eds), above note 14, p. 101.

37 C. Lindsey, 'The Impact of Armed Conflict on Women,' in Durham and Gurd, *ibid.*, p. 29.

38 Nicole Hogg, 'Women's participation in the Rwandan genocide: mothers or monsters?', in this issue of the Review. For further detailed information on female participation in the genocide, see African Rights, *Not So Innocent: When Women Become Killers*, 1995.

many instances it was deemed impossible for women (good by nature) to commit such acts and thus they were treated 'not like men, not like women, but something else, like monsters'.³⁹

This tendency towards radical type-casting of female perpetrators (and alleged perpetrators) of crimes finds particular traction in the example of Pauline Nyiramasuhuko. The former Rwandan Minister for Family and Women's Development currently stands accused before the International Criminal Tribunal for Rwanda⁴⁰ of criminal responsibility for genocide and rape as a crime against humanity, committed during the Rwandan conflict by Hutu extremists against Tutsis and Hutu moderates.⁴¹ Encircling the persona of Nyiramasuhuko is a tangle of traditionally gendered concepts and contradictions that has confounded many observers. During the conflict, Minister Nyiramasuhuko, dressed in army fatigues, is reported to have suggested 'Why don't you rape them before you kill them?' to armed Hutu Interahamwe as they prepared to massacre groups of Tutsi women.⁴² Possibly a Tutsi herself by birth,⁴³ Nyiramasuhuko has been tried for these acts together with her son, a member of the Hutu Interahamwe who is also accused of genocide and rape.

Sperling observes that during the trial, both the press and Nyiramasuhuko's supporters became fixated upon her gender, and specifically her womanliness and status as a mother.⁴⁴ Miller speculates on the possible implications of this preoccupation for the outcome of the trial:

'The idea of finding a woman ... guilty of such atrocities performed on her own gender may prove to be too controversial for the Tribunal On the other hand, the outrage over discovering that a woman could commit such atrocities may provide Pauline with little defence. She could be found guilty because of her classification as a woman, rather than as a war criminal.'⁴⁵

This statement makes clear that the use of gender stereotypes as a lens through which to view, condemn or justify atrocities is not only an unhelpful means of analysis, but one that ultimately diminishes our humanity. Sperling

39 See N. Hogg, above note 38.

40 International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda between 1 January 1994 and 31 December 1994, created under Chapter VII of the United Nations Charter, UN Doc. S/Res/955 (1994) (ICTR).

41 International Criminal Tribunal for Rwanda (ICTR) *Prosecutor v. Nyiramasuhuko*, Case No. ICTR 97-21-I, Amended Indictment, 3 January 2001, see in particular pt 6. The joint trial of Nyiramasuhuko and five co-accused concluded on 30 April 2009. As at 29 November 2009, judgement has not yet been rendered.

42 Peter Landesman, 'The Minister for Rape', in *The Age*, Good Weekend (Magazine), 30 November 2002, p. 28.

43 *Ibid.*, p. 30.

44 Carrie Sperling, 'Mother of atrocities: Pauline Nyiramasuhuko's role in the Rwandan genocide', in *Fordham Urban Law Journal*, vol. 33, no. 1, 2006, p. 637.

45 Alexandra A. Miller, 'From the International Criminal Tribunal for Rwanda to the International Criminal Court: Expanding the Definition of Genocide to Include Rape', in *Pennsylvania State Law Review*, vol. 108, 2003, p. 372.

concludes that social and cultural constructions of women as innately good, innocent and incapable of committing atrocities are in themselves dehumanizing.⁴⁶ A gender perspective on IHL enforcement attempts to debunk this kind of mythology by traversing more dynamic understandings of the different experiences of gendered actors in differing contexts. Nyiramasuhuko should be recognized not just as a woman acting within a certain power structure, but as a human being. It is this fact, rather than her femininity or lack thereof, which compounds the monstrosity of her alleged actions.

It is important in this context to acknowledge the clear requirement in IHL that those accused of war crimes be tried with 'safeguards of proper trial and defence'.⁴⁷ Similarly, Article 20(1) of the ICTR Statute provides that '[a]ll persons shall be equal before the International Tribunal for Rwanda'. These provisions are aimed at upholding fair and equal standards for all, and ensuring that in such prosecutions, the punishment of a woman is neither more nor less severe than that accorded to a man accused of similar crimes.

Combat role of women

Even when women are not accused of committing atrocities, and rather are a regular part of the military, controversies flare over issues relating to what role women should or can play during war. In the course 'Women, War and Peacebuilding' at Melbourne Law School, the most heated debates regularly centre on matters relating to women as combatants. One of the readings for the course is a piece by a female legal officer in the Australian Army.⁴⁸ She writes about her sadness in leaving her young children back at home during her deployment and then relates a particular experience on patrol in Baghdad when a small child raised and pointed a stick toward her vehicle. She realized that if she had to, she would kill a child. She reflects:

'Was I proud of myself for finding that out? Did I take pleasure in this new-found knowledge? No. But it did give me a sense of confidence in knowing that I would be capable of doing my job if it came to it ...'⁴⁹

This statement is often deemed offensive by some of the students and an important part of the 'equality discourse' by other students. Such uneasy and dispirited views on the role women should be allowed to play during times of armed conflict are often further reflected within the wider community. The Australian

46 C. Sperling, above note 44.

47 Geneva Convention I, art. 49; Geneva Convention II, art. 50; Geneva Convention III, art. 129; Geneva Convention IV, art. 146.

48 Penny Cumming, 'Combat Operations in Iraq: An Australian Soldier's Perspective', in Durham and Gurd (eds), above note 14, p. 17.

49 *Ibid.*

Defence Force (ADF) has long expressed its desire to involve more women in its 50,000 strong workforce than the current 13.4%, and is investigating the reasons behind low female participation in the military. Senior Defence Force personnel argue that women's reluctance to join the ADF is not due to exclusion from 'hand-to-hand' combat.⁵⁰ Most public commentary on the topic appears to focus upon the lack of capacity of women to fight, as well as the social concerns raised by women being killed or injured in combat.⁵¹ However, commentators such as Peach argue that discussions on the involvement of women in combat are based on deeper ideological principles, such as the 'ethic of care', which are rarely exposed in broader discourse on the topic. She writes:

'The ethic of care is tainted by ideological assumptions that women are different than men, more oriented towards peace and non-violence, and should thus not participate in the immoral activities of a largely sexist and patriarchal institution which functions to destroy rather than preserve life.'⁵²

Such statements indicate that societal concerns are not so much about women not being 'good enough' to fight (in a physical/biological sense), but rather that women are 'too good' (morally/ethically) to be exposed to the horrors of war. In other words, the sub-text of the debate is not about the unpalatable notion of women being killed, but instead about the lack of acceptance in many societies of women killing.

Post-conflict re-integration of women fighters

The social pressures placed on female combatants do not fade away when the fighting stops; in many cases, they intensify. A number of commentators have examined instances of returned female soldiers struggling to re-integrate into their communities due to the rift between their own attitudes as ex-fighter women, and the gendered expectations and perceptions of post-war society. Elise Fredrikke Barth's study of female soldiers in Africa reports that many female ex-fighters find themselves 'socialized out' of their former communities for numerous reasons: because they are reluctant to conform to traditional gender roles, because they broke ties with their families to join the fighting, because their marriages with other ex-fighters failed after the war, because they are childless, or because they have returned from conflict with a disability that makes them less desirable as a wife.⁵³ Women from rural communities in developing countries in particular have often joined the forces to escape extreme poverty, and frequently refuse to return to their families after the conflict. While this and similar research

50 Brendan Nicholson, 'Women reluctant to join military', in *The Age*, 20 November 2009.

51 Andrew Bolt, 'Up front on women', in *The Herald Sun*, 4 April 2007.

52 Lucinda Peach, 'Women at War: The Ethics of Women in Combat', in *Hamline Journal of Public Law and Policy*, vol. 15, p. 199.

53 E. F. Barth, above note 26.

papers have found that re-integration is often easier for the victors, female ex-fighters have also been 'sidelined' in the political sphere, and denied equal representation in the post-conflict governments they fought to establish.⁵⁴ Barth explains:

'Female ex-fighters experience a lot of tension in their lives, finding themselves considered somewhere between, on the one hand, heroines, and on the other, unclean women. They have led lives that do not comply with rules for how respectable women ought to live, and they have to negotiate their identity against this background.'⁵⁵

Girl soldiers

The above issues relating to female fighters are even more pronounced with regard to girl soldiers. The limited number of studies on this topic indicate that the role of young girl soldiers during and after armed conflict is extremely complex and often overlooked by the international community.⁵⁶ Furthermore, concerns have been raised that the type of experiences specific to girl soldiers, such as sexual exploitation in the form of forced marriages, forced child-bearing and domestic slavery, are not expressly covered by API's prohibition on using children under 15 to take 'direct part in hostilities',⁵⁷ nor by the Optional Protocol to the Convention on the Rights of the Child.⁵⁸ In 2003 the Coalition to Stop the Use of Child Soldiers and UNICEF created a Guide to the Optional Protocol, which argues for a broad interpretation of article 1 to incorporate the range of roles in which girl soldiers are engaged during times of conflict.⁵⁹ Consideration needs also to be given to the application of other frameworks, both human rights law and domestic protections afforded to children, which could be used in conjunction with IHL to increase protection for young females caught up in conflict. The current case before the International Criminal Court dealing with the alleged use of child soldiers by

54 *Ibid*; see also A. Veale, above note 26.

55 E. F. Barth, above note 26.

56 Myriam Denov, *Girls in Fighting Forces: Moving Beyond Victimhood*, Child Rights Information Network, 2007; Save the Children, *Forgotten Casualties of War: Girls in Armed Conflict*, 2005, available at http://www.harare.unesco.org/women/2698_GAAF%20report.pdf (last visited 28 November 2009); Vivi Stavrou, *Breaking the Silence: Girls Forcibly Involved During Armed Conflict in Angola*, Christian Children's Fund and Canadian International Development Agency, Richmond, Virginia and Ottawa: 2005; Susan McKay and Dyan Mazurana, *Where are the girls? Girls in fighting forces in Northern Uganda, Sierra Leone and Mozambique: Their lives during and after war*, Rights and Democracy, Montreal: 2004.

57 Additional Protocol I, art. 77(2).

58 See Optional Protocol I to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, entry into force 12 February 2002, art. 1: 'States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities'.

59 UNICEF and Coalition to Stop the Use of Child Soldiers, *Guide to the Optional Protocol on the Involvement of Children in Armed Conflict* 2003, available at http://www.unicef.org/publications/index_19025.html (last visited 23 November 2009).

Thomas Lubanga⁶⁰ will create precedent in this area, and in particular will provide opportunities for further reflection on the specific experiences of girl soldiers and the legal norms governing such situations.

This section of the article has focused so far upon women as combatants, the applicable legal framework, and social attitudes to women actively engaged in conflict and post-conflict experiences. It has aimed to unmask a number of gender assumptions in relation to the diverse experiences of women, and expose the dangers of assuming that women are a homogenous group who experience war exclusively as victims. In many instances, the topics raised are clearly beyond the scope of what can be directly addressed by IHL. These should rather be recognized in the context of policy development and re-integration programmes. However, the challenges faced by female combatants and ex-fighters prompt us to recall that IHL does not operate in a vacuum when it comes to gender dichotomies. For the women themselves, the contestation of imposed gender roles is inextricably linked with conflict, but is sometimes harder once the war is over.

Non-discrimination

As a normative legal framework, IHL continually re-iterates the need for protection to be accorded, as noted above, 'without any adverse distinction founded on sex'.⁶¹ Whether during the detention, processing or questioning of prisoners of war, gender humiliation of either men or women is prohibited by the general and specific wording of the Conventions and their Protocols. Article 14 of Geneva Convention III is very clear in stating that 'Prisoners of war are entitled in all circumstances to respect for their person and their honour'. In the same vein, the prosecutions of those accused of war crimes, irrespective of their gender and the social attitudes prevailing in relation to their crimes, are required to be undertaken within the safeguards of a proper trial and defence. Guarding against the greater condemnation that may be attributed to women accused of war crimes, owing to 'gendered' views of what women's behaviour should entail, Article 88 of Geneva Convention III states:

'In no case may a woman prisoner of war be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a male member of the armed forces of the Detaining Power dealt with for a similar offence.'

Thus the basic legal principle of non-discrimination has an important role to play in situations where women 'disrupt' assumed gender norms and engage actively in armed conflict.

60 ICC, *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Decision on the confirmation of charges, 29 January 2007.

61 See above note 27.

A gendered perspective of sexual violence and armed conflict

Sadly, sexual violence has been and continues to be a consistent experience for many women during times of armed conflict throughout the world. After many years of silence on this issue, the last few decades have seen significant amounts of activism, research and writing about horrific and overwhelming examples of rape, sexual slavery, forced prostitution, forced impregnation, forced termination of pregnancy, forced sterilization, sexual mutilation, sexual humiliation and numerous other illegal acts during times of armed conflict.⁶² Such attention and focus upon these heinous crimes has resulted in the clear legal recognition of rape and a range of sexual crimes during armed conflict as constituting war crimes, genocide or crimes against humanity.⁶³

Crimes involving sexual violence under IHL

Currently, discussion has shifted beyond the capacity and the need to prosecute crimes involving sexual violence into procedural and technical analysis. Issues include the actual definition of the crime of rape under international law, and the relevance of consent in situations of armed conflict.⁶⁴ Debates have ensued in relation to the broad conceptual definition of rape as expressed in the *Akayesu* case of the ICTR, versus the more mechanical definition found in the *Kunarac* judgement of the ICTY.⁶⁵ Nevertheless, it remains important to continually

62 See references in footnote 13 and Kelly Dawn Askin, 'Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current status', in *American Journal of International Law*, vol. 93, 1999, p. 97; Karen Engle, 'Feminism and its Discontents: Criminalising Wartime Rape in Bosnia and Herzegovina', in *American Journal of International Law*, vol. 99, 2005, p. 778; Anne-Marie de Brouwer, *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR*, Intersentia, 2005; Mark Ellis, 'Breaking the Silence: Rape as an International Crime', in *Case Western Reserve Journal of International Law*, vol. 38, no. 2, 2006/2007, p. 255.

63 See *ICTR Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Trial Judgement, 2 September 1998, para. 599; *ICTR Prosecutor v. Delalić et al.*, Case No. IT-96-21-T, Trial Judgement, 16 November 1998, paras 478–9; International Criminal Tribunal for the former Yugoslavia (ICTY) *Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, Trial Judgement, 10 December 1998, para. 172; *ICTY Prosecutor v. Kunarac et al.*, Case No. IT-96-23 & 23/1-T, Trial Judgement, 22 February 2001, para. 460, affirmed in *Prosecutor v. Kunarac et al.*, Case No. IT-96-23 & 23/1-A, Appeal Judgement, 12 June 2002, paras 127–8; *ICTY Prosecutor v. Krstić*, Case No. IT-98-33-T, Trial Judgement, 2 August 2001, para. 513; *ICTR Prosecutor v. Semanza*, Case No. ICTR-97-20-T, Judgement and Sentence, 15 May 2003, paras 344–6; *ICTR Prosecutor v. Gacumbitsi*, Case No. ICTR-2001-64-A, Appeal Judgement, 7 July 2006, paras 153–5.

64 For discussion of the relevance of consent to the crime of rape in situations of armed conflict, see Anne-Marie de Brouwer, above note 62, pp. 103–136; Adrienne Kalosieh, 'Consent to genocide?: The ICTY's improper use of the consent paradigm to prosecute genocidal rape in Foča', *Women's Rights Law Reporter*, vol. 24, 2003, p. 121; Wolfgang Schomburg and Ines Peterson, 'Genuine Consent to Sexual Violence Under International Criminal Law', in *American Journal of International Law*, vol. 101, 2007, p. 121.

65 For discussion of the various ways the Tribunals have defined rape, see Kristen Boon, 'Rape and Forced Pregnancy Under the ICC Statute: Human Dignity, Autonomy and Consent', in *Columbia Human Rights Law Review*, vol. 32, 2001, pp. 667–73, 674–5; Anne-Marie de Brouwer, above note 62, pp. 103–136; Catharine A. MacKinnon, 'Defining Rape Internationally: A Comment on *Akayesu*', in Catharine A. MacKinnon, *Are Women Human? And Other International Dialogues*, Harvard University Press,

ensure that victims of sexual violence and rape in armed conflict are able to access justice. Pressure must also still be rigorously applied in order to secure prosecutions.

As noted previously in this article, IHL has also developed in relation to the articulation of sexual crimes. The wording used in Article 27 of Geneva Convention IV of 1949:

‘Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault’

was updated in the 1977 treaties with Additional Protocol II stating that the following acts against persons shall remain prohibited at any time and in any place whatsoever:

‘outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault (Art 4(2)(e)).’

These crimes were further codified in the ICC Statute, which proscribes the following as crimes against humanity and/or war crimes: ‘Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity’.⁶⁶

It is vital that the prevention and redress of sexual crimes committed during armed conflict remains a major priority in the development and implementation of IHL norms at both local and global levels. In exploring a gender perspective on IHL, this article acknowledges the great suffering and great courage of female victims of large-scale sexual violence campaigns in many conflict situations, as well as the need to continue to create policies and laws that address this matter. The authors also contend that the international community and those engaged in humanitarian work need to acknowledge that men too have been the victims of sexual violence during wartime, and as such are entitled to equal recognition and protection.

Sexual violence against men

Just as it took many years to recognize rape as a war crime, a number of authors argue that the issue of sexual violence against men has not yet received the attention it deserves.⁶⁷ Sources indicate that men have frequently faced sexual violations

Cambridge, MA, 2006, p. 237; W. Schomburg and I. Peterson, above note 64, see in particular pp. 132–8; Alison Cole, ‘Prosecutor v. *Gacumbitsi*: The New Definition for Prosecuting Rape under International Law’, in *International Criminal Law Review*, vol. 8, nos 1–2, 2008, pp. 55–85.

66 ICC Statute, arts 7(1)(g), 8(2)(b)(xxii), 8(2)(e)(vi).

67 Dustin A. Lewis, ‘Unrecognized Victims: Sexual violence against men in conflict settings under international law’, in *Wisconsin International Law Journal*, vol. 27, 2009, p. 1; Lara Stemple, ‘Male Rape And Human Rights’, in *Hastings Law Journal*, vol. 60, 2009, p. 605; Sandesh Sivakumaran, ‘Sexual Violence

in many conflict situations over time in different parts of the world.⁶⁸ These have included assaults aimed at causing physical and psychological trauma to the victim and his community, as well as violence intended to inhibit or destroy the victim's reproductive capacity. Like the sexual abuse of inmates at Abu Ghraib mentioned previously in this article, sexual violence is used against men during armed conflict as a deliberate strategy to push the victim to the bottom of a power structure based on gender stereotypes, so as to debase, humiliate and emasculate him. A number of authors perceive that the male victim of sexual assault is 'feminized' by the perpetrator, forced to occupy the position of the stereotypically submissive and subordinated woman.⁶⁹

Reporting of such crimes has been limited, and prosecutions relatively rare. Commentators point to numerous reasons for the silence surrounding sexual assault of men, including lack of detection and misdiagnosis by front-line professionals, lack of vocabulary and understanding combined with shame and fear on the part of victims,⁷⁰ and the inadequacy and intolerance of legal and bureaucratic mechanisms.⁷¹ Carpenter further notes that psycho-social services for male survivors of sexual violence are virtually non-existent in almost all parts of the world.⁷² Male sexual assault may be hidden by victims or ignored by authorities because of the social stigma associated with sexual crimes in general, and male rape, homosexuality and masculinity in particular. In some cases, it may be that male-male sex is criminalized in the victim's home country, so he is deterred from reporting a violation because he is afraid of prosecution, imprisonment, and in a number of

Against Men in Armed Conflict', in *European Journal of International Law*, vol. 18, 2007, p. 253; Augusta Del Zotto and Adam Jones, 'Male-on-male sexual violence in wartime: human rights' last taboo?', Paper presented to the annual convention of the International Studies Association, New Orleans, 23–27 March 2002.

68 See for example Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)*), Application of the Republic of Bosnia and Herzegovina, paras 44D(c), (h), 62; Oral Proceedings of Bosnia and Herzegovina (CR 2006/06), p. 51, detailing allegations of sexual abuse of Bosnian Muslim men by Yugoslav forces during the Bosnian War; S. Sivakumaran, above note 65, pp. 257–60, where the author sets out a brief history of the commission of sexual violence against men in armed conflicts, spanning from Ancient Persia to today's Democratic Republic of the Congo; Eric Stener Carlson, 'The Hidden Prevalence of Male Sexual Assault During War: Observations on Blunt Trauma to the Male Genitals', in *British Journal of Criminology*, vol. 46, 2006, p. 16; Pauline Oosterhoff *et al.*, 'Sexual Torture of Men in Croatia and Other Conflict Situations: An Open Secret', in *Reproductive Health Matters*, vol. 12, 2004, pp. 68–77; Michael Peel, 'Men as perpetrators and victims', in Michael Peel (ed), *Rape as a Method of Torture*, Medical Foundation for the Care of Victims of Torture, London, 2004; Michael Peel, A. Mahatani, G. Hinshelwood and D. Forrest, 'The sexual abuse of men in detention in Sri Lanka', in *The Lancet*, vol. 355, issue 9220, 2000, p. 2069.

69 See for example S. Sivakumaran, above note 67, p. 260; Z. Eisenstein, above note 33.

70 See 'Congo's male rape victims speak out', in *Agence France-Presse*, 30 April 2009, available at http://www.clipsyndicate.com/video/play/928991/congo_s_male_rape_victims_speak_out (last visited 23 November 2009), in which a victim of sexual violence states 'At first I was really ashamed, because I'd never heard of a man being raped'.

71 D. A. Lewis, above note 67, pp. 6–10; S. Sivakumaran, above note 67, pp. 255–257.

72 R. Charli Carpenter, 'Recognizing Gender-Based Violence Against Civilian Men and Boys in Conflict Situations', in *Security Dialogue*, vol. 37, 2006, no. 1, pp. 83–103.

jurisdictions, the death penalty.⁷³ As a result of these factors, sexual violence against men in wartime has been a largely invisible offence, for which perpetrators go unpunished.

Absence of a gender-equal approach to sexual violence

The issue is compounded, as some authors point out, by the fact that recent international human rights instruments dealing with sexual violence do not always promote a gender-neutral or gender-equal approach.⁷⁴ Some of the Security Council resolutions mentioned earlier in this piece, for example, focus chiefly on the victimization of women and girls, disregarding evidence that men and boys constitute an identifiable proportion of sexual violence victims in wartime.⁷⁵ Stemple observes that no international human rights instruments focus exclusively on sexual violence against men and boys.⁷⁶ On the one hand, the acknowledgement of women and girls as victims is a victory for feminist advocates and female victims, on the basis that women and girls have overwhelmingly been the targets of wartime sexual violence, and because these occurrences have also been under-recognized. However, a gender perspective on IHL rejects the use of gender as a justification for discriminating between classes of victims.

In fact, a gender perspective encourages us to realize that protection of men and protection of women in armed conflict is not a contest between mutually exclusive concepts. In rejecting stereotypes and recognizing gender nuances, the cause of one can aid the cause of the other. Stemple argues that an interrogation of gender assumptions is the only way to fully address sexual violence against both women and men:

‘Male rape will only be curtailed when the perception of men broadens beyond one that sees men as a monolithic perpetrator class, and instead recognizes that men and boys can and should also be a group entitled to rights claiming. The failure of human rights instruments to address these claims promotes regressive norms about masculinity rather than challenging the harmful status quo. It would be more helpful to understand the ways in which regressive gender norms harm both men and women. It is possible to take sex and gender

73 D. A. Lewis, above note 67, p. 9, citing Daniel Ottosson, International Lesbian and Gay Association, ‘State-Sponsored Homophobia: A World Survey of Laws Prohibiting Same Sex Activity Between Consenting Adults’, 2008, available at http://www.ilga.org/statehomophobia/ILGA_State_Sponsored_Homophobia_2008.pdf (last visited 23 November 2009), p. 4, reporting that seven countries currently impose capital punishment for male–male sex.

74 L. Stemple, above note 67; Pamela Scully, ‘Vulnerable Women: A critical reflection on human rights discourse and sexual violence’, in *Emory International Law Review*, vol. 23, 2009, p. 113.

75 *Ibid.* For examples of human rights instruments that focus on sexual violence against females, see UN Doc. S/Res/1325 (2000) on *Women and peace and security*, UN Doc. S/Res/1820 (2008) on *Women and peace and security*, UN Doc. S/Res/1888 (2009) on *Women and peace and security*, UN Doc. S/Res/1889 (2009) on *Women and peace and security*, and UN Doc. S/Res/1894 (2009) on *Protection of civilians in armed conflict*.

76 L. Stemple, above note 67, p. 618.

into account without setting up false divisions that pit all men against all women, villains against damsels in distress.⁷⁷

Sivakumaran contends that further and better recognition of men as victims may in fact assist in the proper protection of women:

‘Attention to the issue [of sexual violence against men] may lead to a more nuanced consideration of the roles of men and women in armed conflict. It may dispel the idea of women solely as victims and men only as perpetrators, resulting in the negation of the corresponding notion that male victims of sexual violence are emasculated and feminized as a result of the violence. Addressing the issue may prove an invaluable contribution to the fight against sexual violence against women in conflict.’⁷⁸

Accordingly, there is a need for sexual violence against men to be accorded greater recognition, and also to be condemned, reported and prosecuted more effectively. Efforts to achieve this form part of the broader prevention and redress of sexual violence crimes in general.

To this end, the UN Office for the Co-ordination of Humanitarian Affairs (OCHA) in 2008 published a literature review and analysis of research gaps on the topic of sexual violence against men.⁷⁹ It is hoped that, by creating an agenda of issues to be addressed, OCHA is stimulating further discussion, debate and study in this area. In addition, some subtle developments are evident in international criminal jurisprudence and charging practices in respect of male sexual assault. Of particular interest is the case of *Prosecutor v. Češić*,⁸⁰ decided in 2004, in which Ranko Češić was accused of forcing two brothers to perform fellatio on each other at gunpoint during their detainment at Luka Camp in Bosnia. Češić was charged with rape as a crime against humanity, to which he pleaded guilty and was convicted. While earlier cases of forced fellatio – such as *Prosecutor v. Tadić*⁸¹ and *Prosecutor v. Delalić et al.*⁸² – have been charged as inhuman treatment or inhumane acts, the Češić ruling interprets forced fellatio as falling within the Tribunals’ definition of rape,⁸³ and recognizes the crime as such. This case is some indication of the gradual acceptance and implementation of more expansive, gender-cognisant concepts than those previously applied in international criminal prosecutions, and within IHL more generally. Crucially, and in order to give effect

77 *Ibid.*, p. 634.

78 S. Sivakumaran, above note 67, p. 260.

79 United Nations Office for the Co-ordination of Humanitarian Affairs, Research Meeting, Use of Sexual Violence in Armed Conflict: Identifying Gaps in Research to Inform More Effective Interventions, ‘Discussion Paper 2: The Nature, Scope and Motivation for Sexual Violence Against Men and Boys in Armed Conflict’, 26 June 2008.

80 ICTY Case No. IT-95-10/1, Sentencing Judgement, 11 March 2004, paras 33, 52–53, 103.

81 ICTY Case No. IT-94-1, Amended Indictment, Counts 8–11.

82 ICTY Case No. IT-96-21, Indictment, Counts 44 and 45.

83 See ICTY *Prosecutor v. Kunarac et al.*, Case No. IT-96-23-T&IT-96-23/1, Judgement, 22 February 2001, para. 437: ‘the sexual penetration, however slight ... (b) of the mouth of the victim ... by the penis of the perpetrator ... by coercion or force or threat of force against the victim or a third person’.

to these concepts, more robust and gender-sensitive reporting and detection processes, along with support services, are required at the front-line in conflict situations.

The more recent and broader legal articulations of prohibitions of sexual violence, such as those found in article 4(2)(e) Additional Protocol II and the ICC Statute, are useful in that they do not specifically refer to 'women', and deal instead with questions of personal dignity. This is an example of how perceptions of the application of IHL can be challenged, particularly in the development of policies and 'guidelines' rather than new or specific treaty law. Applying a gender perspective to IHL can contribute to all attempts to strengthen the protections afforded to both women and men who find themselves in situations of vulnerability during times of armed conflict.

Conclusion

There are myriad other issues found within IHL that could benefit from a gender examination. For example, the obligations found in the 1977 Additional Protocols relating to the prohibition of the death penalty for 'mothers having dependent infants'⁸⁴ and 'mothers of young children'⁸⁵ raises a range of questions in relation to situations when fathers are exclusively raising young children. Whether such rights are located exclusively with the mother's biological capacities (such as breastfeeding) or more broadly related to the well-being of young children is a matter that deserves further consideration. Indeed, the Swedish Expert Meeting examined areas such as methods and means of warfare as well as fact-finding missions and concepts such as 'Responsibility to Protect' within a gendered framework, and concluded that more reflection was required on the principles and specific elements of IHL.⁸⁶

Whilst this article has only focused upon two distinct but related issues (women engaged in fighting and men as victims of sexual violence) it aims to encourage a more comprehensive debate about the relationship between IHL and gendered assumptions. As has been demonstrated, there is much within existing legal norms to review and consider in ensuring that IHL remains a highly relevant and practical protection regime. A gender perspective on IHL insists on emphasizing two principles: first, that where women (and men) participate in war, their experiences should be recognized as valid, rather than being excluded from the discourse or reduced to stereotype; and secondly, that IHL norms apply to all participants in war, in both a protective and a regulatory sense, regardless of gender.

84 Additional Protocol I, art. 76(3).

85 Additional Protocol II, art. 6(4).

86 Report Summary, International Expert Meeting, above note 1, p. 11.

The usefulness of the provision of a gender perspective to matters relating to conflict has been acknowledged by the appointment of 'gender advisers' in international criminal tribunals and the International Criminal Court, as well as by the Swedish Armed Forces in creating 'Genderforce'. A development partnership with six organizations including the Swedish Armed Forces and the Swedish Police, 'Genderforce' is a response to Security Council Resolution 1325 and works in the area of international humanitarian relief operations and post-conflict peacekeeping missions. As 'Genderforce' states:

'Ensuring a gender perspective that is well-integrated into day-to-day activities requires knowledge and education for all – men and women. Invisible and structural obstacles, hidden behind old-fashioned views and traditions constitute some of the main problems.'⁸⁷

Increasing the protection of women during times of armed conflict is a pressing need. Furthermore, there is a need to continue to develop jurisprudence and understanding within the law of gendered crimes against any and all people. A gender perspective on IHL provides the capacity to consider different experiences of both women and men in order to break down stereotypes about how men and women 'should' operate, and the complex ways in which conflict impacts upon them. This advances the whole cause of gender justice, because it rejects perceptions of women and men that derive from dangerous and sexist assumptions, and are often at the root of discrimination, sexual violence and torture.

87 Genderforce Sweden, 'From words to action', p. 4, available at http://www.genderforce.se/dokument/From_words_to_action.pdf (last visited 29 November 2009).

Women fighters and the ‘beautiful soul’ narrative

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Abstract

This article explores women’s presence in military forces around the world, looking both at women’s service as soldiers and at the gendered dimensions of their soldiering particularly, and soldiering generally. It uses the ‘beautiful soul’ narrative to describe women’s relationship with war throughout its history, and explores how this image of women’s innocence of and abstention from war has often contrasted with women’s actual experiences as soldiers and fighters.

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One of the great stories in the history of modern warfare is that of Jeanne d’Arc. With the French on the verge of losing the Hundred Years’ War and Henry VI of England claiming rights to the French throne, teenage Jeanne – inspired by the voices of saints – cut her hair, dressed in a man’s uniform, and took up arms for the French cause. After convincing the French leadership of her calling, Jeanne passed the necessary examinations, and was given troops to command and a military rank as captain. Jeanne d’Arc led the French to their first victories over the British in memory. Particularly, her victory at the battle of Orleans in May of 1429 is widely considered miraculous, and credited with allowing the French to crown Charles VII King of France that summer. At the coronation, Jeanne was given a place of honour next to the king, and ennobled for her services. The next year, however, she was captured in battle and turned over to an ecclesiastical court, which tried her for heresy and witchcraft. Much of her fourteen-month trial centred on her choice of men’s clothes over women’s clothes, with her adversaries claiming that it was a crime against God for a woman to wear men’s clothes. Jeanne was convicted, and burned at the stake on 30 May 1431 – shy of her 20th birthday.

In 1456, a posthumous retrial determined that she was innocent of all charges, and she was named to sainthood in 1920 by Pope Benedict XV.

Part of Jeanne d’Arc’s story is the story of a young, courageous, divinely inspired commander who played a crucial role in saving France from British takeover, and fell too early to the politics of religion and social control. Part of her story is the story of the quick shifts in political loyalty in 15th century France, which was devastated by disunity, religious disharmony, the plague, and the Hundred Years’ War. However, Jeanne d’Arc’s story cannot be told or understood without reference to the fact that she was a young, courageous, divinely inspired *woman* commander, and a *woman* victim of the chaos in France at the time. Both her physical womanhood and gender-based expectations of Jeanne d’Arc’s behaviour are prominent features even in a short retelling of the story of her life. Because she was a woman, Jeanne d’Arc had to dress in men’s clothes, and pretend to be something she was not, in order to join the military and command troops, regardless of her prowess at doing so. Because she was a woman, many French people – much like the ones who tried and ultimately killed her – believed that Jeanne was doing something unnatural and even sacrilegious dressing ‘as a man.’ Because she was a woman, Jeanne d’Arc was expected to dress as a woman and act like a woman, which excluded being a soldier; and because she was a woman, Jeanne d’Arc’s refusal to ‘act like a woman’ served as evidence of heresy at her trial.

It is tempting to discard Jeanne d’Arc’s story for a number of reasons. After all, some say, she was an anomaly as a female fighter, and even though it is clear that perceptions about her sex and expectations based on her gender played a large role in Jeanne d’Arc’s life and eventually her death, many people chalk that up to the prejudices of 15th century Europe, pointing to substantial evidence that ‘things like that’ do not happen in the ‘civilized’ world any more. What those people do not see, and what this article is written to show, is that the centrality of gender-based expectations of women who participate in wars has not disappeared with women’s increasing visibility in those conflicts. After all, as we will see later in this contribution, Jeanne d’Arc was far from the only woman who had to dress like a man to be accepted into military service – such stories can be found in many modern European wars, as well as in the American Civil War, the First and Second World Wars, and contemporary conflicts. Women’s gender remains a crucial factor in their participation in militaries around the world.

This article explores women’s presence in military forces around the world, looking both at women’s service as soldiers, and at the gendered dimensions of their soldiering particularly and of soldiering generally. It begins with an overview of the use of the ‘beautiful soul’ narrative to describe women’s relationship with war throughout history, describing women’s innocence of and abstention from war. It then points out that this stereotypical narrative often contrasted with women’s actual experiences as soldiers and fighters throughout the history of warfare. It then discusses women’s contemporary involvement in the making and fighting of wars, relating those experiences to gender-based expectations of women’s behaviour (particularly the ‘beautiful soul’ narrative) and the gendered

nature of warfare. It concludes with some insights, looking forward, for women's participation in military conflict.

Women and wars in historical perspective

Feminist scholars have consistently argued that traditional narratives about the ways that politics works are both implicitly and explicitly gendered: they exclude women and values understood to be stereotypically 'feminine.' Nancy Huston¹ first applied this observation to war and security discourses. She argued that a victorious story that people believe about a war is essential to legitimate that war and inspire people to fight in it, pay for it, and suffer for it. The plot includes the hero fighting the enemy in order to gain something important or meaningful, and winning despite long odds and extreme hardship. As Huston explained, 'it is no accident that whereas there are reams and reams of "heroic" verse, there is no such thing as "enemic" verse: in a war narrative, it is rare that anyone refers to himself as the enemy'.²

Jean Elshtain then identified the victorious story that States tell about wars as one about just warriors and 'beautiful souls'. The protagonist in the narrative is the just warrior, who is a hero because he protects (his) (innocent) women and children from the evils of the enemy. He sacrifices his time, his body, his fear, and even his life for the good of life back home. As Elshtain explained, just warriors go to war not to kill but to die for the cause.³ This story equates women with the cause men die for – the life back home. Women are at once the object of the fighting and the just purpose of the war. They are 'beautiful souls' who are (incorrectly) pacifists because they are naïve about the nature of war. The just warrior fights to protect the 'beautiful soul's' innocence and the quality of her life. War is therefore necessary because the world would be unthinkable without innocent women. Women's consent to those wars is not only irrelevant but actually undesirable; it would corrupt their innocence.

The 'beautiful soul' narrative, then, sets women up as the prizes of most wars – fragile, removed from reality, and in need of the protection provided by men.⁴ The same war stories also emphasize women's mothering, where women's identities are crucially tied to 'bearing and rearing children on the home front'.⁵

1 Nancy Huston, 'Tales of War and Tears of Women', in *Women and Men's Wars*, Judith H. Stiehm (ed.), Pergamon Press, Oxford, 1983.

2 *Ibid.*, p. 273.

3 Jean B. Elshtain, 'Sovereignty, Identity, Sacrifice', in *Millennium: Journal of International Studies*, Vol. 20, No. 3, 1991, pp. 395–406.

4 Georg W.F. Hegel, *The Phenomenology of Spirit*, Oxford University Press, Clarendon Press, translated by A. V. Miller, 1977, p. 299; Jean B. Elshtain, *Women and War*, Basic Books, New York, 1987; Jean B. Elshtain et al., 'Just War as Politics: What the Gulf War Told Us About Contemporary American Life', in *But Was It Just? Reflections on the Morality of the Persian Gulf War*, David E. Decosse (ed.), Doubleday, New York, 1992, pp. 43–60.

5 V. Spike Peterson and Anne S. Runyan, *Global Gender Issues in the New Millenium*, Westview Press, Boulder, CO, 1999, p. 116.

'Beautiful souls' mother soldiers, at home and on the battlefield. They provide love and nurture, and at once serve as a support for the logistical and moral fighting for the war and as a symbol of the good and pure that requires the evil of fighting to save it. In this understanding of women's relationships with war, there is no room for women fighting wars – they are at once fought over in war and protected from it.

Scholars have pointed out that the 'beautiful soul' narrative has played a substantial role in a number of international conflicts throughout history. Chivalric narratives are woven throughout many war histories. The Trojan War was fought in part over the beautiful Helen. In Thucydides' famed account of the Peloponnesian War, the Melians' punishment for weakness is that the men are killed, while the women and children (the spoils of war) are taken as slaves. Machiavelli, in a chapter called 'How a State is Ruined Because of Women' argues that the temptation of women as prizes can cause conflict.⁶ Elshtain recognized the 'beautiful soul' in the United States' post-World War I debates about women's suffrage, where anti-suffragists argued that women's participation in decisions to make war would corrupt the purity of femininity.⁷ She also pointed out that the image of women as belonging to a sphere of peace was even prevalent in World War II, where 'beneath her overalls, Rosie [the Riveter] was still "wearing her apron" in the expectation that demobilization would restore the *status quo ante*'.⁸ Elshtain was, even initially, quite clear that the 'beautiful soul' narrative extended past the two world wars. She explained that:

'It would be unwise to assume that the combined effects of Vietnam, feminism, and the involvement of over 50 per cent of adult American women in the labor force ... undercut received webs of social meaning as these revolve around men, women, and war'.⁹

Indeed, feminist scholars have identified elements of the 'beautiful soul' narrative in other, more recent wars. Cynthia Enloe pointed out that, 'if there is an image that defines television's coverage of the [first] Gulf Crisis, it's a disheveled white woman coming off a Boeing 747, an exhausted baby on her shoulder'.¹⁰ My own work identifies the use of the 'beautiful soul' narrative to describe women in both the First Gulf War and the United Nations Security Council economic sanctions regime against Iraq in the 1990s.¹¹ Spike Peterson and Anne Sisson Runyan¹² identify stereotypical images of passive and protected women as being complicit in genocide and genocidal rape in the former Yugoslavia. Across these

6 Joshua S. Goldstein, *War and Gender: How Gender Shapes the War System and Vice Versa*, Cambridge University Press, Cambridge, 2001, p. 55.

7 J.B. Elshtain, *Women and War*, above note 4, pp. 6, 140.

8 *Ibid.*, p. 7.

9 *Ibid.*, p. 7.

10 Cynthia Enloe, *The Morning After: Sexual Politics at the End of the Cold War*, University of California Press, Berkeley, CA, 1993, p. 166.

11 Laura Sjöberg, *Gender, Justice, and the Wars in Iraq*, Lexington Books, Lanham, MD, 2006, p. 198.

12 V.S. Peterson and A.S. Runyan, above note 5, p. 126.

different times and cultural contexts, there are variations in the specific characteristics of the 'beautiful soul' who is the subject of wars' justificatory stories. Still, from these past empirical studies, it is possible to identify unifying characteristics of the use of the 'beautiful soul' narrative.

The 'beautiful soul' narrative can be recognized, first and foremost, by its emphasis on women's difference from men: specifically, on women's innocence and peacefulness. Related to this differentiation between characteristics traditionally associated with femininity and characteristics traditionally associated with masculinity, the 'beautiful soul' narrative can also be identified by the separation of a private sphere (where women are, and naturally belong) and the sphere of war-making and war-fighting (where something has gone terribly wrong if women are included). Third, the 'beautiful soul' narrative uses women's femininity as a justification for war and/or a reason to fight for peace. These three characteristics together can be used to find and analyse the 'beautiful soul' narrative in accounts of women's roles in wars, from ancient times to present day.

Were women 'beautiful souls'?¹³

Even as the 'beautiful soul' narrative has dominated most accounts of women's relationships with the enterprise of war, women have been (usually under the radar) soldiers, support personnel, and fighters in war throughout history. While there is hardly space for a comprehensive history of women's involvement in warfare, substantial evidence exists that women have been a part of many major conflicts where their roles have usually gone unnoticed.

Women have been involved as soldiers and fighters in most of the world's major conflicts, and, as the Jeanne d'Arc story that starts this article chronicles, this is not a uniquely modern phenomenon. In addition to well-known stories about women's participation in conflict (like the stories of the Amazons in Greek mythology, there is evidence that women participated in and/or led many ancient conquests, including many of the battles of the Shang Dynasty, the Biblical campaign in Qadesh, several battles for the British throne, the defence of Argos, the battle of Scythia, the (alleged) 3rd century BC Japanese invasion of Korea, the siege of Lacedaemon, the Peloponnesian War, the Battle of Raphia, several struggles for control of the Roman Empire, and battles to eject the Chinese from Vietnam in the 1st century AD.

In the Middle Ages, Saint Genevieve is credited with averting Attila from Paris in the 5th century AD. Priestess Hind al-Hunnud led her people in a battle against Muhammed. Muhammed's widow led his troops in the Battle of the Camel. In the 7th century, a woman named Kahina is credited with leading the Berber resistance against the Umayyad conquest of North Africa. Also in that century, Saxon women are credited with battling Charlemagne in large numbers. Many tales

13 Uncited stories in this section come from a number of collected sources over the years.

tell of Viking women’s fierceness in battle. A woman named Akkadevi, an Indian princess, led a siege in the battle at Gokage. Isabel of Conches, a Norman, rode armed as a knight in the 11th century. Female Chinese general Liangyu played a large role in the Song defeat of the Jin in the 12th century. In the 13th century, Indian queen Rani Rudrama Devi led her troops into battle, and was ultimately killed fighting. Queen Margaret of Anjou commanded troops successfully in the War of the Roses.

These stories of women’s participation in warfare only become more common in modern times. There was substantial participation by women fighters in the American Revolution,¹⁴ the American Civil War,¹⁵ the Mexican Revolution,¹⁶ World War I,¹⁷ the Russian Civil War,¹⁸ the Spanish Civil War,¹⁹ World War II,²⁰ the Korean War,²¹ the Vietnam War,²² the Afghan Civil War,²³ the Iran–Iraq War,²⁴ the Rwandan genocide,²⁵ the civil war in Sierra Leone,²⁶ and many others.

Women’s consistent (and increasing) service to militaries, not only in supporting but also in combat capacities, stands in stark contrast to the dominant narrative of women as innocent of and protected from men’s wars. Still, even when women’s fighting is recognized, very often it is recognized as *women’s fighting* instead of as fighting the same wars in the same ways as men. Women’s agency in their soldiering is often doubted, and women’s violence is associated with flaws in their femininity, maternity, physiology, or sexuality.²⁷ Still, even accounts that blame women’s soldiering on flaws in their femininity maintain crucial elements of the traditional, inherited ‘beautiful soul’ narrative, proving that however involved women get in conflicts, they remain, to some degree, understood as the innocent

14 Elizabeth P. Ellett, *The Women of the American Revolution*, Charles Scribner, New York, 1856.

15 DeAnne Blanton and Lauren M. Cook, *They Fought Like Demons: Women Soldiers and the American Civil War*, Louisiana State University Press, Baton Rouge, LA, 2002.

16 Tabea A. Linhard, *Fearless Women in the Mexican Revolution and Spanish Civil War*, University of Missouri Press, Kansas City, 2005.

17 Kimberly Jensen, *Mobilizing Minerva: American Women in the First World War*, University of Illinois Press, Urbana and Chicago, 2008.

18 W. Bruce Lincoln, *Red Victory: A History of the Russian Civil War, 1918–1921*, Da Capo Press, New York, 1999.

19 T.A. Linhard, above note 16.

20 Emily Yellin, *Our Mothers’ War: American Women at Home and at the Front During World War II*, Simon and Schuster, New York, 2004.

21 Lester H. Brune, *The Korean War: Handbook of Literature and Research*, Greenwood Publishing Group, New York, 1996.

22 Judith Stiehm, *Arms and the Enlisted Woman*, Temple University Press, Philadelphia, Pennsylvania, 1989.

23 Elahé Rostami-Povey, *Afghan Women: Identity and Invasion*. Zed Books, London, 2007.

24 Valentine M. Moghadam, *Modernizing Women: Gender and Social Change in the Middle East*, Lynne Rienner, Boulder, CO, 2003.

25 Laura Sjöberg and Caron E. Gentry, *Mothers, Monsters, Whores: Women’s Violence in Global Politics*, Zed Books, London, 2007.

26 Megan MacKenzie, ‘Securitization and Desecuritization: Female Soldiers and the Reconstruction of Women in Post-Conflict Sierra Leone’, in *Security Studies*, Vol. 18, Issue 2, April 2009, pp. 241–261.

27 L. Sjöberg and C.E. Gentry, above note 25; Laura Sjöberg and Caron E. Gentry, ‘Reduced to Bad Sex: Narratives of Violent Women from the Bible to the War on Terror’, in *International Relations*, Vol. 22, No. 1, March 2008, pp. 5–23.

outsiders in the making and fighting of wars. Two examples from contemporary warfare – of women soldiers in the ‘war on terror’ and of women terrorists in the last decade – betray the remnants of the ‘beautiful soul’ narrative in the reception of women warriors.

Women soldiers, the ‘war on terror’ and the ‘beautiful soul’ narrative

Far from being relegated to history as women’s fighting becomes more commonplace, the ‘beautiful soul’ narrative can be found in stories about women soldiers fighting ‘against terror’ in the ‘war on terror’. As Melisa Brittain explains:

‘Images of white female US and UK soldiers deployed in Iraq were used in the first months of the 2003 invasion as icons of female liberation to illustrate the supposed benevolence, moral superiority, and progressiveness of the west. However, at the same time that white female soldiers were held up as models of female emancipation and western benevolence, they were also presented as helpless and vulnerable in the face of the perceived threat of sexual violence on the part of Arab Men’.²⁸

When, in fact, the largest threat of sexual violence to women soldiers in Iraq came from male soldiers in their own units,²⁹ the risk of rape by Iraqi men (though not a single instance has yet been confirmed by a female victim) was emphasized in news media and military reports about the welfare of women soldiers in Iraq.³⁰

The most well-known individual story occurred early in the war, with the capture and subsequent ‘rescue’ of Private Jessica Lynch. Jessica Lynch is widely thought of as the first woman prisoner of war in the United States’ invasion of Iraq.³¹ She was, at the time, a nineteen-year-old white woman from West Virginia, serving in a combat support unit which had been in an automobile accident in the Iraqi desert. Her humvee was attacked by Iraqi troops, and several of the members of her unit were taken prisoner and/or killed.³² Lynch was taken prisoner by the Iraqi troops, and held for eleven days. The initial reports about what was happening to her described her as a potential victim of torture and rape at the hands of hypermasculine Iraqi soldiers.

28 Melisa Brittain, ‘Benevolent Invaders, Heroic Victims, and Depraved Villains: White Femininity in Media Coverage of the Invasion of Iraq’, in *(En)gendering the War on Terror*, Krista Hunt and Kim Rygiel (eds), Ashgate, London, 2006, pp. 73–96.

29 Sheila Jeffreys, ‘Double Jeopardy: Women, the US military, and the war in Iraq’, in *Women’s Studies International Forum*, Vol. 30, Issue 1, 2007, pp. 16–25.

30 Laura Sjoberg, ‘Agency, Militarized Femininity, and Enemy Others’, in *International Feminist Journal of Politics*, Vol. 9, Issue 1, 2007, p. 89.

31 Shoshana Johnson, an African-American woman in Lynch’s unit, was captured at the same time, see above note 30, p. 90.

32 In fact, another woman, a Native American from Arizona, Lori Piastawa, was killed in that encounter.

In military and media reports, Lynch was characterized as brave beyond her femininity but nevertheless limited by it, needing an elaborate, public rescue.³³ Saving Private Lynch was discussed both in public discourse and official military discourse in terms of the fear that her Iraqi captors would sexually violate her. As Brittain notes, 'most reports of Lynch's ordeal note that she is a small-town girl from West Virginia, and that her only opportunity to get a college education was to join the army'.³⁴ Because Lynch was characterized as naïve and innocent, 'the drama of Lynch's capture was dwarfed only by the drama of her rescue' which emphasized the violence that men had to perform in order to save their women.³⁵

The theme of female soldiers' vulnerability reaches beyond stories about Jessica Lynch. A number of news reports imply or explicitly argue that there are unique risks for women soldiers who require unique protection. Hal Bernton, in the *Seattle Times*, laments that it is more difficult to protect women soldiers 'in the unruly realm of central Iraq', but 'in this war, as in those that came before, the army seeks to keep female soldiers away from the front line'.³⁶ Nicholas Kristof reported on 'the most astoundingly modern weapon in the western arsenal' whose 'name was Claire, and she had a machine gun in her arms and a flower in her helmet'.³⁷ The fate of women soldiers (upwards of 40% of whom are married to male soldiers) is often discussed in terms of what happens to their children if a mother dies in combat, implying that the loss of a mother is more serious to children than the loss of a father.³⁸

Jessica Lynch at first sight looks like a woman who is being held equal to (and even above) men. She and other female soldiers, after all, are being allowed to occupy jobs in the United States military previously reserved for men, and are being given protection from combat and from their fellow soldiers as they do so. Still, gender-stereotypical images of these women run through media, military, and academic accounts of their service. Even though they are soldiers, women who fight 'against terror' in the 'war on terror' for the United States are often characterized as innocent, in need of protection, and in need of rescue.

The first element of the 'beautiful soul' narrative – that women are more peaceful than men – is evident in stories of Lynch and other female soldiers in the war on terror. Lynch was constantly characterized as a 'girl', who had joined the army to see the world and to fulfil her goal of becoming a kindergarten teacher.³⁹ In describing Private Lynndie England, General Janis Karpinski⁴⁰ characterized her as

33 L. Sjöberg, above note 30, p. 90.

34 M. Brittain, above note 28, p. 83.

35 L. Sjöberg, above note 11, p. 193.

36 Hal Bernton, 'Soldiers try to suppress anguish as Iraq tours are extended', in *The Seattle Times*, 26 January 2004.

37 Nicholas Kristof, 'A Woman's Place', in *New York Times*, 25 April 2003, available at <http://edition.cnn.com/2003/US/04/25/nyt.kristof/> (last visited 5 February 2010).

38 Nancy Gibbs, 'The Private Jessica Lynch', in *Time*, 17 November 2003, <http://www.time.com/time/magazine/article/0,9171,1006147,00.html> (last visited 5 February 2010).

39 M. Brittain, above note 28, p. 81.

40 Janis Karpinski, Personal Interview with author, Hilton Head, South Carolina. 13 October 2006.

young, weak, and naïve, implying that she was vulnerable rather than violent in her participation in the prisoner abuse in Iraq. As Hal Bernton described above, women are allowed into the United States military,⁴¹ but ‘protected’ from the front lines because of their vulnerability. Other women soldiers are often considered persons in need of protection rather than protectors, ‘beautiful soul[s] who could not escape the mold, even with a gun and a uniform’.⁴²

In the stories about American women soldiers in Iraq, there is also a private sphere that they belong to separate from the sphere of war-making and war-fighting. Reports about Jessica Lynch emphasized her (apolitical, non-violent, and traditionally feminine) reasons for joining the military, including the desire to see the world and the hope to become a kindergarten teacher. Sabrina Harmon, one of the women accused of prisoner abuse at Abu Ghraib, has been described frequently in terms of her attraction to family units in Iraq, and her proclivity to help Iraqi women stock their refrigerators and cook in their kitchens.⁴³ Many stories⁴⁴ about the deployed female fighting force emphasize the home(front) that they left behind, expressing concern about their children’s well-being in their absence, and, much like the stories of World War II that Jean Elshtain described,⁴⁵ implying that when the war was over, they would be able to go back to the *status quo ante* of being mothers first and soldiers second, if at all. Women soldiers’ motivations are kept out of the political or war sphere in these stories, and when women are recognized as being in that sphere, their presence is described as temporary and undesirable.

The third element of the ‘beautiful soul’ narrative is that women are used as a *casus belli* – a reason to fight in the war. Melisa Brittain observes that the Jessica Lynch story was ‘designed to increase support for the invasion of Iraq and validate the continued presence of US and UK forces’.⁴⁶ At the time that Lynch was captured, the Coalition forces had taken over Baghdad, and there was a real question in the media whether the war was over, and a withdrawal was called for.⁴⁷ When Lynch was captured, however, attention turned to questions about and news of her potential rescue – because war is about protecting innocent women, and an innocent woman was a POW.⁴⁸ Jessica Lynch’s rescue ‘involved almost a dozen helicopters and several hundred soldiers’ in order to save her ‘from a horrible death’ in a hospital that contained only Lynch and the medical staff caring for her.⁴⁹ Fighting for Lynch, rather than seeing her as a fighter, was key to stories about

41 Perhaps, as Melisa Brittain hypothesized, as a show of cultural superiority (above note 28).

42 L. Sjöberg, above note 30, p. 86.

43 L. Sjöberg and C.E. Gentry, above note 25, p. 71.

44 E.g. N. Gibbs, above note 38.

45 J.B. Elshtain, note 4, p. 6.

46 M. Brittain, above note 28, p. 81.

47 See e.g. Anthony Shadid, ‘Baghdad Power Out for First Time in War’, in *Pittsburgh Post-Gazette*, 4 April 2003, available at: <http://www.post-gazette.com/World/20030404baghdadwp5.asp> (last visited 5 February 2010).

48 L. Sjöberg, above note 11.

49 Barbara Ferguson, ‘Lynch Rescue was a Perfect Operation,’ in *Aljazeeraah.Info News*, 5 April 2003, available at: <http://www.aljazeeraah.info/News%20archives/2003%20News%20archives/April%202003%20News/>

her – an indicator that, despite fighting in the war and being captured as a prisoner, Lynch remained, in public discourse, a ‘beautiful soul’, along with her fellow female soldiers.

Women terrorists and the ‘beautiful soul’ narrative

Women who call themselves *shakhidki* constitute a majority of the Chechen suicide bombers in the ongoing conflict between Russia and Chechnya.⁵⁰ The women suicide bombers are known more commonly by the name given to them by the Russian government, the ‘Black Widows’.⁵¹ Though these women are not only involved with the conflict, but often leaders in it, they are characterized in political, media, and academic discourses as helpless, weak, and innocent – descriptions that eerily echo the ‘beautiful soul’ narrative.

For example, one account explains that ‘when a Chechen woman’s husband is killed, she can’t marry again ... she has to put on a black mourning dress for the rest of her life. But by dying, she gets closer to her beloved. That’s why the women were so scary. They had no reason to live’.⁵² Another characterization of one of the women who held hostages at the Moscow Theatre in 2002 seems to ignore her participation in violence and focus on her femininity. The woman is described as ‘very normal’, courteous, and as someone who would ‘ask people about their children’ and ‘always say, “everything will be fine. It will finish peacefully”’.⁵³ The maternal element of the women terrorists’ motivations is also emphasized in many accounts, which portray the women as avenging the deaths of their husbands or (especially) their sons.⁵⁴

Another element in discussions of the ‘Black Widows’ is that they often portray the women suicide bombers as incapable of making their own choices to participate in terrorism and war. Groskop describes the ‘Black Widows’ as ‘pawns in a man’s game’, denying that they have any agency in their choice to fight in the war. Most stories describe the *shakhidki* as raped, drugged, or blackmailed into suicide missions.⁵⁵ Other narratives are careful to distinguish real or normal

5%20news/Lynch%20Rescue%20Was%20a%20Perfect%20Operation%20aljazeera.info.htm (last visited 5 February 2010); L. Sjöberg, above note 11.

50 Anne Speckhard and Khapta Akhmedova, ‘Black Widows: The Chechen Female Suicide Terrorists’, in Y. Schweitzer, *Female Suicide Bombers: Dying for Equality?*, Jaffee Center for Strategic Studies, Tel Aviv, 2006, pp. 63–80.

51 N.P. Walsh, ‘Sisters in Arms’, in *The Guardian*, 1 September 2005, p. 6.

52 Mark MacDonald, ‘“Black Widows” remain mysterious one year after Moscow theater siege’, in *Knight Ridder/Tribune News Service*, 22 October 2003.

53 Viv Groskop, ‘Women at the Heart of the Terror Cells’, in *The Guardian*, 5 September 2004, available at: <http://www.guardian.co.uk/chechnya/Story/0,1297692,00.html> (last visited 5 February 2010).

54 A. Speckhard and K. Akhmedova, above note 50, p. 67.

55 In their extensive empirical study of Chechen women suicide bombers, Speckhard and Akhmedova found no evidence of this style of coercion. They explained that ‘we find strong evidence of self-recruitment and strong willingness to martyr oneself on behalf of one’s country’ (above note 50, p. 70). See also Viv Groskop, ‘Chechnya’s Deadly Black Widows’, in *The New Statesman*, 6 September 2004; N.P. Walsh, above note 51, p. 6; S.L. Myers, ‘Young, Female, and Carrying a Bomb’, in *The International*

women⁵⁶ from women who participate in terror, who are 'fanatical',⁵⁷ 'warped', 'mad beasts'.⁵⁸

The Russian government has (effectively) used the purported victimization of Chechen women suicide terrorists to its political advantage in the conflict. During the first war for Chechen independence, 'Russian and Chechen women together vocalized objections to the fighting, vilifying the military and pointing out that the most frequent victims of the conflict were simple soldiers and innocent civilians'.⁵⁹ The Russian government, however, has been able to break up this alliance effectively by portraying the Chechens as monsters for drugging and selling (their) women into suicide terrorism.⁶⁰ Partly as a result of these characterizations, Russian popular support for the second conflict in Chechnya has been substantially higher.

In the Middle East, very different women in very different conflicts find themselves portrayed in very similar ways. Women make up around 7% of Palestinian suicide bombers, and less than 1% of suicide bombers in Iraq.⁶¹ Women in the Palestinian resistance movement are often characterized as being manipulated either by family members or family tragedy into joining the movement.⁶² As Mia Bloom observed, female suicide bombers in Palestine are often 'portrayed as the chaste wives and mothers of the revolution'.⁶³ She explains that Wafa Idris (the first Palestinian woman suicide bomber) was characterized in one newspaper as a 'bride of heaven', while another described her bombing in terms of the Virgin Mary, 'from Mary's womb issued a Child who eliminated oppression, while the body of Wafa became shrapnel that eliminated despair and aroused hope'.⁶⁴

Middle Eastern women's dependence on men has also been a theme of discussions about their motivations for committing suicide terrorism. Divorce,⁶⁵

Herald Tribune, 8 August 2003; Bridget Conley, 'For the Women of Chechnya, Hope Dies Last', in *Journal of Human Rights*, Vol. 3, No. 3, September 2004, p. 340.

56 L. Sjöberg and C.E. Gentry, above note 25, p. 31.

57 Ian Bruce, 'Special Force Has Unenviable Record', in *The Herald*, 3 September 2004.

58 Owen Matthews, 'So Warped by Hate, They Will Kill Anyone To Take Revenge Against Russia', in *The Daily Mail*, 4 September 2004, p. 8.

59 L. Sjöberg and C.E. Gentry, above note 25, p. 115; Galina Eremitcheva and Elena Zdravomyslova, 'Die Bewegung der Soldatenmütter – Eine zivilgesellschaftliche Initiative. Der Fall St Petersburg', in Martina Ritter (ed), *Zivilgesellschaft und Gender-Politik in Russland*, Campus Verlag, Frankfurt am Main, 2001, p. 232.

60 Maya Eichler, 'A Gendered Analysis of the Chechen Wars', in *International Feminist Journal of Politics*, Vol. 8, No. 4, December 2006, pp. 486–511; Peter Baker, 'New Stage' of Fear for Chechen Women', in *Washington Post*, 19 October 2004, p. A12, available at <http://www.washingtonpost.com/ac2/wp-dyn/A43296-2004Oct18?language=printer> (last visited 8 February 2010).

61 L. Sjöberg and C.E. Gentry, above note 25, p. 113.

62 Julie Peteet, *Gender in Crisis: Women and the Palestinian Resistance Movement*, Columbia University Press, New York, 1991, p. 119; Karla J. Cunningham, 'Cross-Regional Trends in Female Terrorism', in *Studies in Conflict and Terrorism*, Vol. 26, No. 3, 2003, p. 184.

63 Mia Bloom, *Dying to Kill: The Allure of Suicide Terror*, Columbia University Press, New York, 2005, p. 56.

64 *Ibid.*, pp. 56–57.

65 Barbara Victor, *An Army of Roses: Inside the World of Palestinian Women Suicide Bombers*, Rodale Press, New York, 2003, p. 41.

loss of family members,⁶⁶ adultery,⁶⁷ and motherhood⁶⁸ have all been popular explanations for women's participation in suicide terrorism in Palestine and Iraq. In fact, 'the language of domesticity and motherhood are particularly strong regarding Palestinian and Al Qaeda female suicide terrorists'.⁶⁹

Stories about women who commit suicide terrorism in the Middle East also deny women's agency in their violent actions and separate violent women from 'real' or 'normal' women. The women have been characterized as 'twisted, horrible women' who let down their families by engaging in actual violence rather than supporting the violence of their men.⁷⁰ They are told of as monstrous, warped, and having lost their connection to normal or real women and femininity.⁷¹

That women engage in self-martyrdom has been a rallying cry in each conflict, especially in the Israeli-Palestinian case. For example, opponents of the Palestinian cause have published statements like: 'what kind of men use women to hide behind...?', and 'almost certainly, the Palestinian terrorist organizations will continue to take advantage of the innocent appearance of women to carry out terrorist attacks', proving there are no limits to the Palestinians' tactics.⁷² On the other hand, from the Palestinian side of the conflict, the fact that innocent women need to participate in suicide terrorism shows just how hopeless and unjust the situation of Palestinians is.⁷³

One would expect that stories of women suicide bombers would be the last place that the 'beautiful soul' narrative could be found. After all, women suicide bombers appear to be the opposite of the peaceful, innocent, and withdrawn women that the 'beautiful soul' narrative centres on – they are the threat from which 'innocent' civilians need protection, rather than the people in need of protection.⁷⁴ Still, despite the participation of these women in a particularly brutal sort of conflict, all three elements of the 'beautiful soul' narrative can be detected in media and academic depictions of their behaviour. First, the stories of women

66 Michael Rubin, 'Who is Responsible for the Taliban', in *Middle East Review of International Affairs*, Vol. 6, No. 1, March 2002.

67 Claudia Brunner, 'Female Suicide Bombers – Male Suicide Bombing? Looking for Gender in Reporting the Suicide Bombings of the Israeli-Palestinian Conflict', in *Global Society*, Vol. 19, No. 1, 2005, p. 34.

68 Tery Toles Patkin, 'Explosive Baggage: Female Palestinian Suicide Bombers and the Rhetoric of Emotion', in *Women and Language*, Vol. 27, No. 2, 2004, pp. 79–88; Stephen Farrell, 'Grandmother Blows Herself Up in Gaza', in *The Times Online*, 24 November 2006, available at: http://www.timesonline.co.uk/tol/news/world/middle_east/article648206.ece (last visited 8 February 2010).

69 L. Sjöberg and C.E. Gentry, above note 25, p. 125.

70 S. Farrell, above note 68.

71 L. Sjöberg and C.E. Gentry, above note 27.

72 Quotes respectively taken from: 'Female Palestinian Homicide Bomber', in *Jihadi du Jour*, 7 November 2006, available at: <http://jihadidujour.blogspot.com/2006/11/female-palestinian-homicide-bomber.html> (last visited 9 February 2010); Israeli Ministry of Foreign Affairs, *The Exploitation of Palestinian Women for Terrorism*, 18 April 2002, available at: http://www.mfa.gov.il/MFA/MFAArchive/2000_2009/2002/4/The%20Exploitation%20of%20Palestinian%20Women%20for%20Terroris (last visited 9 February 2010).

73 Tim McGirk, 'Palestinian Moms Becoming Martyrs', in *Time*, 3 May 2007, available at: <http://www.time.com/time/magazine/article/0,9171,1617542,00.html> (last visited 8 February 2010).

74 L. Sjöberg and C.E. Gentry, above note 25, p. 2.

suicide bombers emphasize women's peacefulness in a number of ways: by distinguishing violent women from normal women, by denying women's agency in their violence, by emphasizing the importance of mothering by female suicide bombers, and by (in the Chechen case) the characterization of even willing female terrorists as more peaceful and humane than men.

Second, we can see the separation of the private sphere (where women belong) and the sphere of war in several facets of these stories. Many stories isolate the private sphere (husbands, children, and/or personal honour) as women's motivation to self-martyr, rather than any actual involvement in the sphere of war and/or the politics of the conflict. These characterizations are often accompanied by the strong implication that there is a clear separation between crazy women (who would martyr themselves) and real or normal women (who remain pure 'beautiful souls'). In addition, stories that support women suicide bombers often mourn that the conflict has become *so bad* that women must leave the private sphere in order to participate in the conflict, implying (as Elshtain pointed out above) that the just result of the conflict would allow women to return to their peaceful, innocent, and naïve lives at home. Finally, many stories that oppose women's self-martyrdom frame the 'use' of a woman as a suicide bomber as being of particular horror, because women's proper role remains in the private sphere.

The third element of the 'beautiful soul' narrative is the appropriation of 'beautiful souls' as a reason to fight in the conflict. As noted above, the Russian government uses the alleged use and abuse of Chechen women suicide bombers as a call to arms. Similarly, those on the Israeli side of the conflict with Palestinians often measure the barbarity of their enemy by what they 'do to' (their) women in terms of allowing (and allegedly forcing) them to participate in suicide terrorism. Despite their (as the empirical evidence suggests, often willing) decision to explode themselves in an effort to kill others, women suicide bombers are often portrayed in a similar light to the 'beautiful souls' that Elshtain and even Hegel identify from tens or even hundreds of years ago – as innocent, naïve, fragile, at home in the private sphere, and worth fighting to defend.

Women soldiers in the 21st century

As women become more integrated into state militaries and non-state fighting forces, significant barriers to their 'equal' participation remain. As I have mentioned before, women do not join military organizations that have suddenly become gender-neutral in response to their presence.⁷⁵ Instead, women join military groups with decades, maybe even hundreds of years, of history as masculinized organizations guided by men and values associated with masculinity. Throughout history, women participating in wars have had to hide their femininity by dressing like men, meet the physical standards of manliness along with the social standards

75 L. Sjöberg, above note 30.

of femininity, and deal with other double standards and stereotypical understandings of women’s capacities and ‘proper place’.

Feminist theorists have repeatedly identified the ‘beautiful soul’ narrative as a fundamental part of discourses justifying the making and fighting of wars.⁷⁶ Though feminist scholars have identified the ‘beautiful soul’ narrative as present in most (if not all) modern conflicts,⁷⁷ it has been suggested that the changing nature of warfare, along with women’s increasing participation in conflicts (as part of state militaries, as well as in non-state revolutionary forces and terrorist groups) would be likely to diminish the prevalence of the ‘beautiful soul’ narrative.⁷⁸ It seems logical, then, that narratives of just citizen-warriors defending passive ‘beautiful souls’ would dissipate in the wake of the disappearance of state-centric wars and the active roles that women are playing in contemporary warfare.

This article, however, has demonstrated that many uses of the ‘beautiful soul’ narrative to describe women who commit military or terrorist violence skew or ignore observable patterns in women’s behaviour. Women who engage in violence, are politically active, and frequent the public sphere are described in terms that frame them as innocent, withdrawn, peaceful, apolitical, and without agency in their choices.

The consistency of this narrative even as women’s roles in war-making and war-fighting resonate with it less has two possible explanations: first, it could be residue from decades, and even centuries, of the perception that women were the pure, innocent victims of war who need protection from it;⁷⁹ second, it could be that there is something that fundamentally links the ‘beautiful soul’ narrative and the justification of modern warfare. While the first explanation probably has some influence, this article suggests that it is fruitful to consider the possibility of the second, in order to understand both the meaning of war and the meaning of gender in global politics.

Earlier in this article, we discussed Nancy Huston’s⁸⁰ argument that a victorious narrative about a war is key to a belligerent’s ability to justify the war and rally the resources and troops needed to fight it. Jean Elshtain then contended that each belligerent’s victorious narrative about war included a story about brave, just (masculine) citizen-warriors rescuing or protecting pure, innocent (feminine) ‘beautiful souls’.⁸¹ If, as Huston argues, a victorious narrative has been key to the practice of all war, and as Elshtain argues, in practice, these victorious narratives

76 J.B. Elshtain, above note 4, p. 43.

77 Laura Sjöberg, ‘The Gendered Realities of the Immunity Principle: Why Gender Analysis Needs Feminism’, in *International Studies Quarterly*, Vol. 50, No. 4, p. 891.

78 L. Sjöberg and C.E. Gentry, above note 25, p. 3.

79 This is not to say that women are not still disproportionately affected by war; quite the contrary, most of war’s humanitarian effects, in the short and long term, still affect women differently (and often more severely) than men. It is only to argue two things: first, there is no trade-off between victimhood and agency; second, women do not now and have not ever fitted into the neat mould that the ‘beautiful soul’ narrative frames for them.

80 N. Huston, above note 1.

81 J.B. Elshtain, above note 4.

have relied on differentiated gender roles to sustain them, then the practice of war itself could be seen to rely on differentiated gender ideal-types. In this understanding, the 'beautiful soul's presence is crucial both to wars and their justificatory narratives. 'Beautiful souls' require protection; the protection of the feminine can then be read as a crucial cause of war. The images of femaleness in the gender-stereotypical 'beautiful soul' narrative, then, simultaneously enable war and subordinate women.

If this reading of the 'beautiful soul' narrative is correct, it will not disappear as the nature of war changes and women's roles in conflict evolve. Instead, violence and protection are not opposites, but complementary concepts that necessitate each other: protection requires violence; violence requires protection. Without the 'beautiful soul' to protect, the just warrior has nothing to excuse (his) fighting, and the justificatory narratives behind the making and fighting of wars are stalled without their victorious conclusion. There is, then, theoretical and empirical leverage to be gained by considering mutual constitution of gender stereotypes and war. If the 'beautiful soul' narrative is central to war, and war is central to the building and maintenance of the 'beautiful soul' narrative, gender is a lynchpin of war-making, and the war system is a lynchpin of gender subordination. If and to the extent that the above three examples of the 'beautiful soul' narrative in the 21st century demonstrate such a relationship, it is clear that neither is going anywhere in the near future.

Given this, it is easy to understand why, while several militaries have developed policies specifically aimed at the integration of women into their ranks,⁸² those policies have not generally reached the level of 'mainstreaming' gender in military organizations.⁸³ In addition to formal restrictions on which military roles women can fill,⁸⁴ and a perceived glass ceiling on women's advancement in militaries,⁸⁵ women enter a military that has transformed its 'gender balance' while paying 'little attention to the discursive and performative elements of gender dichotomies'.⁸⁶ The result has been 'the preservation of the discursive structures of gender-subordination even in gender-integrated militaries'.⁸⁷ Though women increasingly fight in wars, they often get caught in a gender-stereotype catch-22: they

82 Judith Stiehm, *Its Our Military Too! Women and the US Military*, Temple University Press, Philadelphia, Pennsylvania, 1996; Francine D'Amico and Laurie Weinstein, *Gender Camouflage: Women and the US Military*, New York University Press, New York, 1999; Rachel Woodward and Trish Winter, *Sexing the Soldier: The Politics of Gender and the Contemporary British Army*, Routledge, New York and London, 2007.

83 Jacqui True and Michael Mintrom, 'Transnational Networks and Policy Diffusion: The Case of Gender Mainstreaming', in *International Studies Quarterly*, Vol. 45, No. 1, 2001, pp. 27–57; Sylvia Walby, 'Measuring Women's Progress in a Global Era', in *International Social Science Journal*, Vol. 57, No. 184, 2005, pp. 371–387.

84 Shannon L. Holland, 'Representations of Jessica Lynch and the Controversy Regarding Women in Combat', in *Quarterly Journal of Speech*, Vol. 92, No. 1, 2006, pp. 27–50.

85 Barbara Palmer and Dennis Michael Simon, *Breaking the Political Glass Ceiling: Women and Congressional Elections*, Routledge, London and New York, 2008.

86 L. Sjöberg, above note 30.

87 *Ibid.*

take all of the risks that men do, while missing both the reward and the elusive status of equality. All the while, elements of the old civilian ‘beautiful soul’ narrative remain dominant in accounts of women who share both the responsibility and the cost of fighting wars.

‘Gender mainstreaming’, a policy of the consideration of the gender-based impacts of each particular choice made by a government or an organization, has become a popular antidote to gender-subordinating institutional structures in global politics, being adopted by the United Nations Security Council, many other UN bodies, the World Bank, the International Monetary Fund, and several governments around the world. Perhaps it is time to ask what a ‘gender mainstreamed’ experience for female soldiers would look like, rather than what it looks like when women are added to militaries with pre-existing value structures biased towards men, masculine ways of thinking, and traits associated with masculinity. There are those that would argue that a ‘gender mainstreamed’ state or non-state fighting force might be a contradiction in terms, since recognizing the gender-differential impacts of the making and fighting of wars would require turning away from war. Still, others would suggest that the lives and stories of women soldiers would be substantially different if gender considerations were at the forefront of military policy choices.

Perhaps ‘gender-mainstreamed’ militaries would recognize women’s agency in their fighting,⁸⁸ elements of both the personal and political in soldiers’ motives to fight,⁸⁹ military policies which disproportionately affect women while appearing gender neutral (such as haircut rules),⁹⁰ intrusions of the ‘beautiful soul’ narrative into the professional lives of women soldiers,⁹¹ the persistent problem of sexual violence in militaries,⁹² the masculinism inherent in weapons discourses,⁹³ the gendered nature of states’ wartime posturing,⁹⁴ and other places where the gendered nature of war and gender-based expectations of women soldiers’ behaviour combine to continue a trend of gender subordination surrounding women’s soldiering – even as women have always had, and continue to have in increasing numbers, important fighting roles in wars and conflicts.

88 L. Sjöberg and C.E. Gentry, above note 25.

89 E.g. J.B. Elshtain, above note 4.

90 See e.g. Janis Karpinski and Steven Strasser, *One Woman’s Army: The Commanding General of Abu Ghraib Tells Her Story*, Miramax Books, New York, 2005.

91 L. Sjöberg, above note 30.

92 Terri Spahr Nelson, *For Love of Country: Confronting Rape and Sexual Harassment in the US Military*, Routledge, New York and London, 2002.

93 Carol Cohn, ‘Sex and Death in the Rational World of Defense Intellectuals’, in *Signs: Journal of Women in Culture and Society*, Vol. 12, No. 4, 1987.

94 Jennifer Heeg Maruska, ‘When are states hypermasculine?’, in *Gender and International Security: Feminist Perspectives*, by Laura Sjöberg (ed.), Routledge, New York, 2009, pp. 235–255.

Women's participation in the Rwandan genocide: mothers or monsters?

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Abstract

The participation of women in the 1994 Rwandan genocide should be considered in the context of gender relations in pre-genocide Rwandan society. Many 'ordinary' women were involved in the genocide but, overall, committed significantly fewer acts of overt violence than men. Owing to the indirect nature of women's crimes, combined with male 'chivalry', women may be under-represented among those pursued for genocide-related crimes, despite the broad conception of complicity in Rwanda's Gacaca Law. Women in leadership positions played a particularly important role in the genocide, and gendered imagery, including of the 'evil woman' or 'monster', is often at play in their encounters with the law.

.....

'No women were involved in the killings ... They were mad people; no women were involved. All women were in their homes.'

Female genocide suspect, Miyove prison¹

'I believe that women are just as guilty of this genocide as men.'

Female genocide suspect, Kigali Central Prison²

Women's participation in the 1994 Rwandan genocide has been brought to light by several high profile trials of Rwandan women in international jurisdictions, notably before the International Criminal Tribunal for Rwanda. Almost 2000 women remain in Rwandan prisons, convicted of genocide-related offences.³ Ranging from illiterate farmers to former political, religious and military leaders, judges, journalists and teachers, their stories attest to the fact that women were not only victims of atrocities, but also committed them. While representing a relatively low proportion of genocide-related detainees compared with men (less than 6%),⁴ it is impossible to understand women's diverse experiences of the genocide without exploring their participation in the violence.

This article takes a small step in this direction. Based primarily on research conducted in Rwanda in 2001, including interviews with 71 detained female genocide suspects, it considers four central questions. First, what was the extent and nature of women's participation in the genocide? Second, if the forms of women's participation differed from men's, what are the legal consequences of this distinction? Third, what may have motivated 'ordinary' women to participate in the violence? Fourth, what roles did women in leadership positions play during the genocide, and how much actual power did they wield? A fifth question permeates the text: how did gender influence women's participation in the genocide, as well as their subsequent encounters with the law?

This article notes that women participated in the genocide in a variety of ways but were rarely directly engaged in the killings. It contends that where women conformed to gender expectations and participated 'indirectly' in the genocide (in particular, by denouncing Tutsis to the killers), less moral blame is attributed to them, both by the women themselves and by those responsible for bringing them to justice. One possible effect is the differential treatment of women in the Rwandan courts,⁵ despite the formal requirements in Rwandan law. On the other hand, where women challenged gender and cultural stereotypes and played a more

1 Interview, respondent #29, 10 July 2001. As the author's interviews with female genocide suspects were conducted under condition of confidentiality, their names are not cited in this paper (with the exception of Euphrasie Kamatamu, see below note 152). Rather, a number has been given to each interview respondent, from 1 to 71, reflecting the order in which interviews were held.

2 Interview, respondent #13, 3 July 2001.

3 Ligue Rwandaise Pour la Promotion et la Défense des Droits de l'Homme (LIPRODHOR), *Rapport de Monitoring des Prisons au Rwanda. Période: 1er Trimestre 2008*, p. 17 (showing 1738 women convicted of genocide-related offences and a further 395 still awaiting trial). Note that in addition to this number, many more would have been convicted of property offences – subject only to a penalty of civil damages or restitution and not a sentence of imprisonment.

4 As at February 2008, females represented 5.7% of people detained in relation to the genocide (2133 from a total of 37,213). *Ibid.*

5 This article focuses on trials of female genocide suspects through the national courts, and not through the complementary 'traditional' justice system called *gacaca*, whereby suspects are tried in the community before their peers, in thousands of local tribunals across the country. *Gacaca* trials commenced on 15 July 2006, after a 15-month pilot period, and are due to be wound up at the end of 2010. LIPRODHOR, *Rwanda/génocide: La clôture des Juridictions Gacaca imminente*, 27 July 2009, available at <http://www.liprodhor.org.rw/Cloture%20Gacaca.html> (last visited 15 October 2009). Hearings before the *gacaca* tribunals warrant a separate analysis, which is outside the scope of this paper.

‘direct’ role in the violence, they have often been regarded as ‘evil’ or ‘non-women’ and treated with the full force of the law.

This article is divided into three parts. The first part is a brief background chapter, which considers women’s status in pre-genocide Rwanda, within the family and in political life. This part focuses on questions of gender that provide some context to women’s subsequent participation in the genocide. The second and third parts adopt a division frequently used in Rwanda, and represented in Rwandan law, between the wider civilian population and the leaders deemed responsible for planning and inciting the genocide. The second part, drawing primarily on the author’s interviews with female genocide suspects, focuses on the participation of ‘ordinary’ women in the genocide. It suggests that the indirect participation of women in the genocide was more widespread than detention statistics indicate, thanks at least partly to the ‘chivalry’ of men.⁶ The third part discusses the roles of women in leadership positions during the genocide, drawing examples from the political realm, the military and the Catholic Church. It asserts that these ‘powerful women’ were particularly influenced by the genocidal ideology and explores the dichotomy between their depiction by others and how they present themselves before the law.

Women’s status in pre-genocide Rwandan society

‘Only by starting from the outside, with the social construction of gender, or with women’s experiences of their total lives, or with the structure of the domestic space, can we begin to make sense of what is going on.’⁷

Just as the Rwandan genocide cannot be explained in isolation from the political environment in which it took place,⁸ understanding women’s participation in the genocide requires an appreciation of gender relations in pre-genocide Rwandan society. This section briefly explores two aspects of those relations: women’s roles within the family and in political life.

Women’s traditional roles within the family

Popular Rwandan dictums, such as ‘the hen does not crow with the cocks’,⁹ ‘in a home where a woman speaks, there is discord’¹⁰ and ‘a woman’s only wealth is

6 For an explanation of this concept, see below note 75 and accompanying text.

7 Maureen Cain, ‘Towards Transgression: New directions in Feminist Criminology’, in *International Journal of the Sociology of Law* 18, 1990, pp. 1–18, see p. 10.

8 See, for example, Gerard Prunier, *The Rwanda Crisis: History of a Genocide*, Columbia University Press, New York, 1995.

9 Bernardin Muzungu, o.p. ‘L’Héroïsme au Féminin’, in *Cahiers Lumière et Société*, Histoire IV, No. 8, p. 43, December 1997, Butare, Rwanda. NB: Translation from Kinyarwanda (*Inkokokazi ntibika mu masake*) provided by Léo Kalinda, Montreal, 26 November 2001.

10 Avega ‘Agahozo’, ‘Survey on Violence Against Women in Rwanda’, Kigali, 1999, p. 32.

a man'¹¹ vividly describe the patriarchal structure of traditional Rwandan society and women's consequent inequality within the family. Many Rwandan and international organizations have detailed women's subordination to men in this society, in which the Rwandan woman is a symbol of 'fertility and weakness',¹² while the man is a symbol of strength and protection,¹³ who 'makes all major decisions'.¹⁴

In traditional Rwandan society, women's responsibilities included educating the children, welcoming visitors, managing the household, advising their husbands and maintaining traditions.¹⁵ A gender-based division of labour was instilled at an early age. Among other skills, '[b]oys were taught to defend the interests of the family and the nation [and] were initiated in combat techniques ... Girls, on the other hand, were groomed to help their mothers in the household chores. They learned obedience, respect, politeness, submission and resignation ...' Thus to '[b]uild a house or animal pen, go to the battlefield, milk the cows, ensure the family income and defend and protect the family were tasks assigned to men, while doing the housework, educating the children [and] pounding grain were tasks specific to women in rural areas'.¹⁶

Often illiterate,¹⁷ women in pre-genocide Rwanda were poorer than men.¹⁸ They conducted 65–70% of agricultural work across the country, including heavy work such as carrying water and firewood. Yet they did 'not possess and [did] not have the capacity to control natural, economic and social resources. They [we]re working on family farms in the service of household food production'.¹⁹ Physical and sexual violence against women, a topic that received much publicity in the

11 Government of Rwanda, Ministry of Gender and Promotion of the Family, *Projet 'Enquête Socioculturelle sur les Attitudes, les Pratiques, les Croyances en Rapport avec le Genre'*, in *Grandes Tendances Socio-Culturelles: Résultats de la Recherche Documentaire et des Interviews*, Centre Gasabo, November 1999, p. 13.

12 United Nations Food and Agriculture Organisation, *La Place de la Femme Dans Les Projets de Développement Rural: Le Projet d'Intensification agricole de Gikongoro au Rwanda, Etude de Cas*, F.A.O., Rome, 1991, p. 7.

13 *Ibid.*

14 Réseau Des Femmes Ouvrant Pour Le Développement Rural, *Étude sur l'implication des Femmes dans les Instances de Prise de Décision*, Réseau Des Femmes, Kigali, 1999, p. 34.

15 Government of Rwanda, above note 11, p. 12.

16 Ligue des Droits de la personne dans la région des Grands Lacs (LDGL), *Obstacles culturels à la Mise en œuvre de la Convention sur l'Élimination de Toutes les Formes de Discrimination à l'égard des Femmes au Burundi, en RD Congo et au Rwanda*, October 2007, pp. 12–13, <http://www.ldgl.org/spip.php?article1965> (last visited 23 September 2009).

17 Despite educational reforms during the 1980s which encouraged girls' participation in school, as at 1991, 70% of rural Rwandan women were still reported to be illiterate, as against 50% of rural men. United Nations Food and Agriculture Organisation, above note 12, p. 15.

18 'Rapport National du Rwanda aux Nations Unies pour la Quatrième Conférence Mondiale sur les Femmes, September 1995, Beijing (Chine)', Kigali, 1995 (hereinafter 'Report to Beijing'), p. 29.

19 United Nations Development Program (UNDP), *Common Country Assessment – Rwanda: Gender, 1999*, unpublished (on file with author), p. 8.

aftermath of the genocide,²⁰ was also reportedly common prior to it. It has, for example, been reported that in traditional Rwandan society:

‘From a young age, the [Rwandan] girl ... experiences different forms of violence that she does not discuss ... According to tradition, physical violence is perceived as a punishment. In most cases, women accept it as such ... The inferior status of the woman [and] her ignorance encourage her into submission and expose her to rape and sexual services ...

Women also suffer from psychological violence ... The woman is obsessed by the behaviour that is expected of her. She suffers from a total dependence on her husband.²¹

According to these reports, in pre-genocide Rwandan society, male domination within the family was the norm. Yet norms are always subject to exceptions, and the extent to which traditional gender roles had evolved by the time of the genocide is rarely specified.²² African Rights, for example, has noted that contrary to previously held notions of feminine behaviour, women were directly involved in state-sponsored violence that targeted Tutsis in educational establishments and the civil service in 1973.²³ The image of a woman who ‘suffers from the total dependence on her husband’ is also difficult to reconcile with the fact that prior to the genocide, 22% of rural households were headed by women.²⁴ Even the historical depiction of Rwandan women has been challenged to some extent by both the Rwandan government and some Rwandan women’s NGOs, which contend that gender relations within the ‘traditional’ Rwandan family were more equal than is often acknowledged.²⁵ For instance, they emphasize the role that women

20 See, for example, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath*, Human Rights Watch, New York, 1996; *Rwanda: Death, Despair and Defiance*, African Rights, London, 1995, chapter 10, pp. 748–797; and Avega ‘Agahozo’, above note 10. In a groundbreaking decision, on 2 September 1998, the ICTR found rape in the Rwandan conflict to be an act of genocide as well as a crime against humanity. It also found rape to constitute an act of torture, although, pursuant to the indictment, it did not convict on this ground. ICTR, *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-I, Judgement, 2 September 1998, in particular paras 692 (re: crimes of humanity of rape and other inhuman acts), 731 (re: genocide) and 687 (re: torture).

21 Government of Rwanda, above note 11, pp. 19–20.

22 Indeed, a recent (2007) report notes that ‘[i]n modern Rwandan society, significant developments have been observed ... 64.3% of survey respondents, men and women combined, consider that this division [the traditional division of labour] no longer has any merit’, LDGL, above note 16, p. 13.

23 African Rights, *Rwanda – Not So Innocent: When Women Become Killers*, African Rights, London, 1995, pp. 8–9.

24 Ministry of Agriculture (MINAGRI) report, as cited in Réseau des Femmes, *Profil Socio-Economique de la Femme Rwandaise*, Kigali, May 1991, p. 48. This statistic was broadly defined, to include women who were: widows; separated or divorced; in polygamous relationships (and who must effectively manage alone); young unmarried mothers; or women left alone following the absence of their menfolk, especially to the city.

25 Government of Rwanda, *National Gender Policy: A Revised Final Draft Submitted by E.C.A./E.A.-S.R.D.C.*, Kigali, March 2001, p. 10.

have traditionally played as adviser to their husbands, even if this role had to remain discrete and was not publicly acknowledged.²⁶

Gender relations in pre-genocide Rwanda were therefore undoubtedly more complex than often depicted. Nonetheless, as Adler, Loyle and Globerman state, 'the majority of Rwandan women in 1994 adhered to the traditional expectations of homemaking, childrearing, and creating community between households,' while men were responsible, among other things, for 'protecting their families and defending their communities'.²⁷ Given the impact of gender on social behaviour prior to the genocide, it is not surprising it also influenced subsequent events, as discussed later in this paper.

Participation in political life

'The Rwandan woman is absent from political life, where social and political decisions are made. She stays inside the home and therefore cannot participate in public debates ... She ... cannot make any decision for herself.'²⁸

This characterization of Rwandan women, while overly simplistic, does hold some truth. In particular, in the period before the genocide, while women were not completely 'absent from political life', they were certainly under-represented in Rwandan politics. Three female government ministers were appointed in 1992, by which time there were 12 female members of parliament, of a total of 70.²⁹ Yet there remained very few women in local leadership positions. Until and during the genocide in 1994, there were also still no female *prefects* or *bourgmestres* (mayors)³⁰ and as at 1990, women represented only 1% of *conseillers* (leaders at the sector level).³¹

Despite this reality, there have been some powerful women throughout Rwandan history who challenge the notion that the Rwandan woman 'cannot make any decision for herself'. In particular, the Queen Mothers in pre-colonial Rwandan society held substantial influence as adviser to the King, to the point that some early European explorers spoke of Rwanda as a territory ruled by a Queen.³² One notable example is that of Kanjogera, who in the late 19th century, together

26 SERUKA (Association pour la Promotion de la Contribution Active de la Femme Rwandaise au Développement), *Travail de Recherche Sur le Rôle de la Femme Rwandaise Dans les Mécanismes Traditionnels de Résolution des Conflits Initié par le Collectif Pro-Femmes/Twese Hamwe et Réalisé par l'Association Seruka*, Kigali, 1999, p. 14.

27 Reva Adler, Cyanne Loyle and Judith Globerman, 'A Calamity in the Neighborhood: Women's Participation in the Rwandan Genocide', in *Genocide Studies and Prevention*, Vol. 2, No. 3, November 2007, p. 216.

28 Réseau Des Femmes, above note 14, pp. 35–36, citing Rutazana (1997).

29 Report to Beijing, above note 18, p. 14.

30 Réseau Des Femmes, above note 14, p. 38 (citing statistics as at 1992).

31 Report to Beijing, above note 18, p. 15. Rwanda is divided into 12 *préfectures* (now called provinces), each headed by a *préfet* (prefect). Within each *préfecture*, there are *communes* (now called districts), headed by a *bourgmestre* (mayor). Communes are in turn divided into *secteurs*, headed by a *conseiller*. Within each *secteur* are numerous cells, the responsibility for which lies with leaders called *responsables*.

32 Christopher C. Taylor, *Sacrifice as Terror: The Rwandan Genocide of 1994*, New York, Berg, 1999, p. 179, note 8. For a discussion of some famous Queen Mothers in Rwandan history, see G. Prunier, above

with her brother, organized a coup d'état and killed the King and many of his supporters. They then proclaimed Kanjogera's own son as King and pitilessly hunted down their enemies. According to an expert on Rwanda, after installing her son to power, '[a]s Queen Mother, Kanjogera became the most important person in the Kingdom.'³³

A century later (albeit with few women in leadership roles in between),³⁴ Agathe Uwilingiyimana became Prime Minister of Rwanda. Nicknamed 'the rebel',³⁵ Uwilingiyimana was consistently at odds with the President's extremist clique.³⁶ Now regarded as a national hero, Uwilingiyimana is particularly renowned for her promotion of the rights of women and the girl-child and her fight against ethnic and sexual discrimination.³⁷ She became one of the first victims of the genocide, sexually assaulted and killed by the Presidential Guard on 7 April 1994 at the age of 40.³⁸

Three other women held key political positions at the time of the Rwandan genocide, and all three are now accused of instigating and/or participating in the genocide. First Lady between 1973 (the beginning of the Second Republic when General Juvenal Habyarimana seized power) and 1994, Agathe Kanziga was nicknamed Kanjogera after the famous Queen Mother mentioned above and was, by most accounts, a 'very powerful woman'.³⁹ Pauline Nyiramasuhuko, former Minister of Family Affairs and Women's Development and reportedly one of Kanziga's protégés, is on trial before the International Criminal Tribunal for Rwanda,⁴⁰ while Agnes Ntamabyaliro, former Minister of Justice, is detained in Rwanda and has received a life sentence in isolation for her alleged role in the genocide.⁴¹ The allegations against Kanziga and Nyiramasuhuko are discussed in more detail in the section on 'Women in Leadership Positions' below.

note 8, pp. 23–25 and 86; Jean Rumiya, *Le Rwanda Sous le Régime Du Mandat Belge (1916–1931): Racines du Présent*, Harmattan, Paris, 1992, pp. 134 and 172; and SERUKA, above note 26, p. 16.

33 G. Prunier, above note 8, p. 24.

34 Women achieved no leadership positions under colonialism. (The special schools created for chief administrators were exclusively reserved for men, while women were trained in housekeeping.) Following independence, there was only one female government minister under the First Republic, see Avega 'Agahozo', above note 10, p. 33.

35 Agathe Uwilingiyimana was appointed Prime Minister of Rwanda in July 1993. See Forum for African Women Educationalists (FAWE – Rwanda Chapter), *Agathe Uwilingiyimana: The Rebel. A Biography of the Former Rwandese Prime Minister Assassinated on 7/4/1994*, First Draft, February 2000, Kigali.

36 *Ibid.*, p. 28.

37 *Ibid.*, p. 4. As Minister for Education, Uwilingiyimana abolished the ethnic quota system in schools, encouraged girls to pursue science subjects and to continue onto University and increased the representation of women in decision-making positions in her department. *Ibid.*, pp. 25–26 and 21, respectively.

38 *Ibid.*, pp. 36–39. *The Prosecutor Against Pauline Nyiramasuhuko and Shalom Ntahobali*, Case No. ICTR-97-21-I, Amended Indictment, 1 March 2001, para. 6.4 (hereinafter 'Nyiramasuhuko Amended Indictment').

39 Interview with Alice Karekezi, Director of Human Rights, Justice and Governance program, Centre for Conflict Management, National University of Butare, 4 June 2001.

40 Nyiramasuhuko Amended Indictment, above note 38.

41 LIPRODHOR, *Rwanda-Génocide: Réclusion criminelle à perpétuité pour Agnès Ntamabyaliro*, available at <http://www.liprodhor.org.rw/Ntamabyaliro%20reclusion.html> (last visited 22 September 2009).

Acknowledging, however, that their cases are not representative of women's involvement in the genocide more generally, the following section considers the participation of 'ordinary' women in the violence.

'Ordinary women'

Just as many Rwandans, when attributing responsibility for the genocide, distinguish between the 'ordinary' people who carried out the violence and the 'intellectuals' (Rwanda's 'Fourth Ethnic Group')⁴² who are considered to be the masterminds behind it, this article differentiates between 'ordinary women' and women in leadership positions. Although such binary divisions are generally contrary to feminist methodology, the distinction is consistent with both popular notions of responsibility for the genocide and the categorization of genocide suspects within the Rwandan justice system.

People who held leadership positions in Rwanda at the time of the genocide, and are accused of committing genocide or crimes against humanity or encouraging others to do so, are classified as 'Category 1' defendants.⁴³ Penalties for this category of offender are especially harsh, and included the death penalty until 2007, when this penalty was converted to life imprisonment in isolation.⁴⁴ Among these defendants, the 'planners or organisers of the genocide', and those who were 'at a national leadership level' at the relevant time are tried in the national courts, rather than through the local system of justice called *gacaca*.⁴⁵

'Ordinary women' (which in this article encompasses all those who did not hold leadership positions or influential roles within the Rwandan media during the genocide) were rarely among the ringleaders of the genocide and so are much more likely to be accused of Category 2 or 3 offences. These offences relate respectively to those who carried out the genocide (and their accomplices), and

42 Claudine Vidal, *Sociologie des passions: Rwanda, Côte d'Ivoire*, Paris, Éditions Karthala, 1991, pp. 28–44. Vidal identifies three characteristics of this 'ethnic group' (the 'elite') as follows: (1) adoption of a European lifestyle, (2) practice of the Christian religion, and (3) a total acceptance of the written version of history provided by European colonisers. *Ibid.*, p. 29. NB: The little-known third ethnic group in Rwanda is the Twa, Rwanda's original inhabitants, who comprised 1% of the population at the time of the genocide.

43 Article 51 of the *Organic Law No. 16/2004 of 19.06.2004 establishing the organisation, competence and functioning of Gacaca courts charged with prosecuting and trying the perpetrators of the Crime of Genocide and other Crimes against Humanity, committed between October 1, 1990 and December 31, 1994* (hereinafter 'Gacaca law'), available at: <http://www.amategeko.net/> (last visited 11 October 2009).

44 Article 72(1) of the Gacaca law, *ibid.* ('life imprisonment with special provisions'), read in conjunction with Article 4 of the *Organic Law No. 31/2007 of 25.07.2007 relating to the abolition of the death penalty*, available at: <http://www.amategeko.net/> (last visited 11 October 2009). The last executions in Rwanda were on 22 April 1998, when 24 people, including one woman, were executed by firearm in relation to genocide. As at March 2006, 606 detainees in Rwandan prisons had been sentenced to death. LIPRODHOR, *Peine de Mort: Résultats de la recherche sur la peine de mort au Rwanda*, Kigali, December 2006, p. 38, available at <http://www.liprodhor.org.rw/Peine%20de%20mort.pdf> (last visited 12 October 2009).

45 Gacaca law, above note 43, Article 2. NB: References to Article 9 in this Article should be read as Article 51.

those who committed offences against property. Since the Gacaca Law was enacted in 2004, people accused of these offences are tried uniquely through the *gacaca* tribunals and the maximum sentence (for Category 2 offences) is life imprisonment.⁴⁶ The categorization of suspects therefore plays a critical role in defining both the forum for trial and penalty involved.

The participation of 'ordinary women' in the genocide and its legal consequences

'The difference is that men killed, women didn't. I hear that some women called out to the killers, but I didn't see them do it.'

*Female (Tutsi) genocide suspect, Butare Prison*⁴⁷

'My understanding of the justice system is that if someone is guilty they will be punished; if they are innocent they will be released and it doesn't make any difference if they are a man or a woman.'

*Female genocide suspect, Miyove Women's Prison*⁴⁸

A thorough analysis of 'ordinary' women's participation in the genocide requires consideration of both the extent and nature of that participation. Regarding the first question, broad statements are often made about the proportion of the Rwandan population that was involved in the genocide.⁴⁹ Yet such statements are rarely supported by empirical data and often do not differentiate between the roles of women and men. If the degree to which the male civilian population took part in the genocide is a matter of much speculation,⁵⁰ the extent of women's participation is perhaps even more controversial. At one end of the scale is a view commonly expressed in Rwanda, that apart from a few isolated cases, women did not participate in the genocide at all; 'women just stayed home and cried whenever we heard about people killed.'⁵¹ While this was undoubtedly true for part of the female civilian population, such a view is belied by the number of women

46 *Ibid.*, Article 73.

47 Interview, respondent #50, 24 July 2001.

48 Interview, respondent #27, 10 July 2001.

49 For example, Mamdani claims: 'The truth is that everybody participated, at least all men.' Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*, Princeton University Press, Princeton, 2001, p. 5.

50 Estimates of the proportion of male perpetrators of the genocide range from 'tens of thousands' to three million. Scott Strauss has applied a more scientific method of calculating the proportion of male perpetrators (defined as 'someone who materially participated in the murder or attempted murder of a non-combatant'), to conclude that, contrary to popular belief, only 14–17% of the adult male Hutu population (or 7–8% of the entire population) can be considered perpetrators of the genocide. Scott Strauss, *The Order of Genocide: Race, Power, and War in Rwanda*, Cornell University Press, New York, 2006, p. 115, note 28 and accompanying text.

51 Female genocide suspect, Butare prison (interview, respondent #62), 26 July 2001. Also see quote at the outset of this article. Rose Mukantabana, Executive Secretary of Rwandan women's NGO Haguruka, agreed that 'the majority of women were victims of the situation and stayed at home'. Interview with Rose Mukantabana, Kigali, 8 June 2001. According to Ms Mukantabana, the 'exceptions' were 'those in positions of authority or power, some respected leaders including some teachers and nuns, and other isolated individual cases'.

convicted of genocide-related crimes. Other Rwandans estimate that a 'minority' of women participated in the genocide,⁵² while others still hold the opinion that the 'majority' were involved.⁵³ Between these two positions is the view, as stated by one woman convicted of genocide, that 'many women were involved in the genocide. I am a woman and I participated, so I think other women did too.'⁵⁴ In reality, in the absence of a comprehensive survey, we are limited to anecdotal evidence regarding the extent of women's involvement in the genocide, but the author's research suggests that 'many' is a reasonable, albeit vague and slightly unsatisfactory, term to employ. Moreover, this question is inherently linked to the characterization of 'participation', which can be broadly or narrowly defined, as discussed below.

The few studies that have been conducted on this point, including the author's own, reveal that the nature of women's conduct during the genocide was diverse and included directly taking part in the killings.⁵⁵ Indeed, the number of 'ordinary' women who were directly involved in the killings – for example, in clubbing Tutsi neighbours to death – is such that they should not be considered an aberration.⁵⁶ Nevertheless, there is general consensus that women's genocidal activities were primarily at the level of looting of Tutsi property, revealing the hiding spots of Tutsis to the killers, and supporting their menfolk⁵⁷ – activities which, it has been noted, conformed to gender expectations of women.⁵⁸ Thus according to one female detainee, 'it is true that it was mostly men who killed, but women who were out in the fields and saw Tutsis hiding called out their hiding spots. Many men and women also stole from dead Tutsis.'⁵⁹

52 Interview with Alice Ndegeya, Executive Secretary, SERUKA (Association pour la Promotion de la Contribution Active de la Femme Rwandaise au Développement), Kigali, 25 June 2001.

53 One Rwandan lawyer, for example, stated: 'The criminality of women is very low in general in Rwandan society but ... the genocide was different. I believe the majority of women participated in it.' Interview with Bernadette Kanzayire, lawyer, Kigali, 12 June 2001.

54 Woman convicted of genocide, Gitarama prison, (interview, respondent #10), 17 July 2001.

55 See generally, African Rights, above note 23, and Nicole Hogg, 'I never poured blood: Women Accused of Genocide in Rwanda', MA thesis, Faculty of Law, McGill University, Toronto, Canada, November 2001.

56 Indeed, a high proportion of the author's interview subjects in Rwandan detention had been accused of directly participating in the violence. Specifically, the 71 women the author met in detention in Rwanda reported a total of 93 charges between them. Importantly, 43 of those charges (46%) involved 'killing', with her own hands or as a member of a group. This can be compared with 25 charges (27%) for exposing the hiding place of Tutsis or 'handing someone over' to the killers. This discrepancy, it can be concluded, is linked to the prosecutors targeting those who directly participated in the violence, as discussed later in this paper.

57 R. Adler, C. Loyle and J. Globerman, above note 27. Jeanne Mukamusoni, from the women's survivors' organization, Avega 'Agahozo', confirmed this conclusion, stating that: 'Women incited violence against other women, showed the hiding spots of Tutsis and looted in particular'. Interview with Jeanne Mukamusoni, Social Assistance and Medical Assistance Programme Officer, Avega 'Agahozo', Kigali, 11 June 2001.

58 According to Adler, Loyle and Globerman, above note 27, p. 220, 'women were also expected by armed killers to participate in the genocide by denouncing victims, looting and burning local properties, and lending support to the homicidal agenda of extremists.'

59 Woman convicted of genocide, Gitarama prison (interview, respondent #10), 2 July 2001.

This assessment is supported by Bernadette Kanzayire, a Rwandan lawyer, who explained as follows:

‘Some women played an active role. For example, they may have killed people or been members of the CDR [an off-shoot of President Habyarimana’s party, the MRND] ... Others were beside their husbands, for instance, when their husbands gave financial support to the militias. But the majority played a passive role, in refusing to hide their neighbours, and in particular, in showing the hiding places of Tutsis.’⁶⁰

Another female genocide suspect met by the author in detention in Rwanda – herself an educated Hutu woman married to a Tutsi man – provided a nuanced definition of women’s involvement (other than looting of property), as follows:

‘I think the majority of women participated in it, but in ways different to men. Their participation was limited to three aspects:

1. Refusing to hide Tutsis – for the most part, women were not interested in participating in the genocide in a positive sense, but the vast majority did not want to help Tutsis either ...
2. Assisting the killers – women assisted the killers by preparing the meals, fetching drinks and encouraging their men. Women brought provisions to the roadblocks and fed their men at home. No women criticised their men for being killers. This was not because they feared their husbands but because they believed in the need to kill Tutsis. Imagine the influence women could have had if they had tried to advise their husbands! One problem is that Rwandan women ... were taught not to contradict men.
3. Information – women knew a lot. Their eyes were open. In particular, women exposed the hiding places of Tutsis.’⁶¹

In assessing women’s responsibility, it should be noted that women supporting their menfolk in the ways set out in point 2 above has no legal consequences under Rwandan law.⁶² Moreover, with regard to the assertion that women should have tried to advise their husbands, it is clear that this particular woman was very strong (as demonstrated by her account set out under ‘other motivations’ later in this paper). Other women disputed they were able to influence their

60 Interview with Bernadette Kanzayire, lawyer, Kigali, 12 June 2001. One female detainee similarly stated: ‘I did not see any women with the killers, but I know that if they found people hiding they would beat them and steal their cows or call the killers’, female genocide suspect, Gitarama prison (interview, respondent #36), 17 July 2001.

61 Female genocide suspect, Kigali Central Prison (interview, respondent #13), 3 July 2001.

62 Indeed, were it to do so, this could potentially justify the concept of ‘total war’, as was apparently orchestrated against Tutsi civilians, who were all seen to be supporters of the Rwandan Patriotic Front. As the ICRC notes, this is a concern in many conflicts, whereby moral responsibility is seen to trump legal requirements, see Charlotte Lindsey, *Women Facing War*, ICRC, 2001, pp. 26–27.

husbands' behaviour, particularly once the genocide was under way. When the question arose in interviews with the author, these women commonly said their husbands had become like 'beasts' and that it was 'impossible' to stop them. Several said they feared their husbands would have hurt or killed them if they had tried to intervene. (In one case, for example, the woman concerned had clan links to Tutsis and claimed that her husband and son had killed her Tutsi daughter-in-law.)⁶³ One detainee, who accepted some responsibility for her Tutsi neighbour's deaths as she 'had not thought to warn them' about her husband's plans to kill them, said 'when I told him he had done a bad thing, he looked at me with eyes like an animal and told me it was not proper to speak to him like that.'⁶⁴ Another commented that 'women couldn't stop their husbands from going to kill because women didn't have any power. Women could only sometimes convince their husbands to let someone hide in their house; they couldn't stop a whole group.'⁶⁵ This view was supported by another woman, who stated: 'I was hiding a Tutsi woman in our house. He [my husband] was always arguing with me, telling me not to feed her ... Because I was hiding her, I couldn't argue with him about what he was doing during the day.'⁶⁶

Reverting to the question at hand, in light of 'ordinary' women's contributions to the genocide, did they nonetheless 'commit genocide'? According to the 'social definition' of the crime apparently held by many female detainees, they did not, at least relative to men. As one detainee said, 'Women have this feeling that they did not kill because they only called out'.⁶⁷ Consistent with this remark, another specifically concluded that 'women did not carry pangas so they were not as involved as men'.⁶⁸ Overall, very little moral responsibility was attached to these 'women's crimes' by the author's interview respondents, the large majority of whom did not view themselves as 'criminals'.⁶⁹

63 Female genocide suspect, Gitarama Prison (interview, respondent #38), 18 July 2001. It should be noted that this woman was also accused of being implicated in the murder.

64 Female genocide suspect, Nsinda prison (interview, respondent #70), 7 August 2001.

65 Female genocide suspect, Nsinda prison (interview, respondent #65), 6 August 2001.

66 Female genocide suspect, Gitarama prison (interview, respondent #34), 16 July 2001. NB: Some observers are unsympathetic to the argument that women had no power *vis-a-vis* their husbands. Rakiya Omaar of African Rights, for example, maintained that 'the argument that women were helpless to act against the genocide is bullshit. Women were not helpless.' Interview with Rakiya Omaar, Co-Director, African Rights, Kigali, 13 June 2001. Rwandan lawyer Bernadette Kanzayire took an intermediate view, claiming that women should have acted more benevolently within the limits of the power they actually had. She said '[b]efore the genocide, women ... followed the orders of their husbands and their families. But it has been stated that if women had played their "true role" as the centre of the family, the genocide would not have taken place. Women could have advised their husbands and sons or refused to prepare meals for them. Even if women did not have much power in Rwandan society they should have at least tried to do something.' Interview with Bernadette Kanzayire, lawyer, Kigali, 12 June 2001.

67 Woman convicted of genocide, Gitarama prison (interview, respondent #10), 2 July 2001.

68 Female genocide suspect, Gitarama prison (interview, respondent #43), 19 July 2001. NB: A panga is a large knife, similar to a machete.

69 Western feminist criminologist Francis Heidensohn has also observed that 'women reject a criminal identity with especial rigour'. In Heidensohn's view, '[t]he strong denials of their criminality by some women is probably, then, linked to "appropriate" gender-role behaviour,' Francis Heidensohn, *Women and Crime*, New York University Press, New York, 1995, p. 19.

The Rwandan Gacaca Law, however, leaves no doubt that people who called the killers are accomplices to genocide and subject to the same punishment as the actual perpetrators. That law contains a broad definition of accomplice as ‘the person who has, by any means, provided assistance to commit offences ...’⁷⁰ Indeed, the commentaries on the predecessor to this law, which had a stricter definition of accomplice, specifically stated that ‘showing the killers a hiding-place is an indispensable act, inasmuch as pointing it out has enabled the killers to find the victim.’⁷¹

Given the legal definition of complicity, the low proportion of women in Rwandan prisons (less than 6% of the total number of detainees convicted of genocide-related crimes)⁷² is incompatible with anecdotal evidence about the extent of women’s involvement in exposing the hiding places of Tutsis. One reason is highly practical: given the enormity of the task, prosecutors have deliberately targeted people charged with violent crimes that were committed overtly and are therefore easier to prove. As Bernadette Kanzayire explained, ‘the government has predominantly pursued those who killed. It is difficult to find proof and witnesses against people who participated in a less obvious manner.’⁷³ Former Rwandan Attorney General, Gerald Gahima, confirmed this explanation. He said: ‘prosecutors take the easiest cases to court; the most brutal, horrific crimes that occurred in public. A weak case takes longer to prepare and it is counterproductive to prosecute a case where there is a lack of evidence.’⁷⁴

There is also some evidence that in the pursuit of justice following the genocide, women have benefited from the ‘chivalry’ of men. According to the ‘chivalry theory’, which can be traced to criminologist Otto Pollak, male witnesses, investigators, prosecutors and judges are so infected by gender stereotypes that they either cannot perceive of women as criminals or feel protective towards them in spite of their suspected or proven criminality. Men therefore, perhaps unwittingly, exercise their discretion in women’s favour at each level of the criminal justice system – during reports, arrests, prosecution and sentencing.⁷⁵

70 Article 53 of the Gacaca law, above note 43.

71 Daniel De Beer, *The Organic Law of 30 August 1996 on the Organization of the Prosecution of Offences Constituting the Crime of Genocide or Crimes Against Humanity ... Commentary*, Alter Ego Editions, Kigali, 1997, p. 35.

72 See above note 4.

73 Interview with Bernadette Kanzayire, lawyer, Kigali, 12 June 2001. Jeanne Mukamuseoni agreed it was difficult to find witnesses to testify against women. She said: ‘Victims saw and heard women committing these acts, but they were often in hiding, so it is difficult to say with certainty who was responsible.’ Interview with Jeanne Mukamuseoni, Social Assistance and Medical Assistance Programme Officer, Avega ‘Agahozo’, Kigali, 11 June 2001.

74 Interview with Gerald Gahima, former Rwandan Attorney General, Kigali, 3 August 2001.

75 Pollak argued that women commit just as many crimes as men, or at least more than the official figures indicate, but that women’s crimes are of a more covert nature. Specifically, he claimed, ‘the lack of social equality between the sexes has led to a cultural distribution of roles which forces women in many cases into the part of instigator rather than ... performer of an overt act’, Otto Pollak (1950), as cited in Patricia Pearson, *When She Was Bad: Violent Women and the Myth of Innocence*, Viking, New York, 1997, pp. 20–21. Although most feminist criminologists today characterize Pollak as a misogynist with little to give to feminist scholarship, some observers agree with his view that ‘the criminality of

When the author asked Mr Gahima to explain the low representation of women among genocide suspects in detention, he said: 'I think [this] is too low a figure, but I can't explain it. We know that women were involved in the genocide ... I don't think the Parquet [the Prosecutor's Office] is lenient on women, but I think that witnesses are more reluctant to testify against women.'⁷⁶ Mr Gahima himself added, however, that: 'I think that, compared to men, women are innocent. Women were mainly led by men.'⁷⁷

Rakiya Omaar, Director of African Rights, felt that both prosecutors and witnesses were influencing outcomes. She contended that the prosecutors have 'a general aversion to prosecuting women,' and that the population was also 'closing ranks around their women because it is so shameful in Rwandan society to admit that women could be responsible for genocide.'⁷⁸ Regarding shame, the author heard the same opinion from a female detainee, who claimed that:

'It is difficult to accept in Rwanda that women are killers. In our tradition, women are supposed to be humble people, to welcome visitors at home and show a good image. So, women would be ashamed to be found guilty. It is like a taboo, to think that women killed. Some people say it is not good to have women in prison and that is why some women are still outside prison.'⁷⁹

Some Rwandan lawyers also believe that the judges have 'a certain sympathy for women',⁸⁰ which has resulted in a relatively high rate of acquittals. Thus according to one Rwandan lawyer:

'I do not believe the level of acquittals for women really represents their lack of participation in the genocide. That is, I do not believe they are all innocent. I think the high acquittal rate of women is due to the indulgence of the judges, who look for reasons to acquit them. They usually say there was not enough evidence ... It is psychological.'⁸¹

In sum, 'ordinary' women's participation in the genocide was predominantly 'indirect' and included revealing the hiding spots of Tutsis to the

women is largely masked criminality.' Pearson, *ibid.*, p. 20. For a more detailed discussion of Pollak's theory, and criticism of it, see: Shelley Gavigan, 'Women's Crime: New Perspectives and Old Theories', in Ellen Adelberg and Claudia Currie (eds.), *Too Few to Count: Canadian Women in Conflict with the Law*, Press Gang Publishers, Vancouver, 1987, p. 51; Carol Smart, *Women, Crime and Criminology – a Feminist Critique*, Routledge and Kegan Paul, London, 1976, pp. 46–53 and Dorie Klein, 'The Etiology of Female Crime: A Review of the Literature', in Susan Datesman and Frank Scarpitti, *Women, Crime and Justice*, Oxford University Press, New York, 1980, p. 94.

76 Interview with Gerald Gahima, former Rwandan Attorney General, Kigali, 3 August 2001.

77 *Ibid.*

78 Interview with Rakiya Omaar, Co-Director, African Rights, Kigali, 13 June 2001.

79 Woman convicted of genocide, Gitarama prison (interview, respondent #10), 17 July 2001. On shame and women rejecting a criminal identity generally, see F. Heidensohn, above note 69.

80 Interview with Bernadette Kanzayire, lawyer, Kigali, 12 June 2001.

81 Interview with Vincent Karangura, lawyer, Kigali, 13 July 2001. Note, since the author conducted her research in Rwanda in 2001, the majority of genocide suspects have been tried by the *gacaca* tribunals. The author is unable to comment on whether the *gacaca* judges, chosen from the local community, also demonstrated chivalrous attitudes towards women.

killers. The character of that behaviour, which was often less overt and therefore more difficult to prove than that of those who wielded the machetes, combined with the apparent 'chivalry' of men, has translated into relatively low rates of female imprisonment despite the strict rigours of the law. This, in turn, further impedes attempts to determine the true extent of women's participation in the genocide.

Possible motivations

Just as the nature of women's participation in the Rwandan genocide was varied, so were the reasons for their actions.⁸² Each woman's decisions were driven by a confluence of factors that were sometimes experienced in similar ways by other women, but were often unique to an individual's particular circumstances. Nonetheless, during the author's interviews with women who had confessed to at least some of the accusations against them, three common themes emerged. The first two themes, namely fear and the effect of the anti-Tutsi propaganda, are considered below. The third theme was simple greed and opportunism, which related almost exclusively to the commission of property crimes and will not be discussed in this paper. Rather, under a third sub-heading 'other motivations', a range of other justifications are canvassed, which demonstrate that women's motivations cannot always be neatly categorized (as probably, neither can men's) and were sometimes the outcome of highly complex situations.

Fear

'If I wasn't a woman, maybe I would have helped this man. Because I am a woman, I was afraid and I shouted out.'

*Female genocide suspect, Gitarama prison*⁸³

As discussed earlier in this paper, traditional Rwandan culture dictated that women's 'proper place' was in the home. This tradition reportedly persisted during the genocide, such that 'men wanted women to stay at home and not to participate in the killings.'⁸⁴ If this is true, it appears that women were not under the same pressure as men, overall, to participate in the violence.⁸⁵ Fear was nonetheless a recurring theme among female genocide suspects interviewed by the author.⁸⁶

82 Scott Strauss has similarly noted, in relation to male genocide perpetrators, that 'motivation and participation varied during the genocide. There is no one reason why all perpetrators took part in the violence.' (above note 50, pp. 95–96).

83 Interview, respondent #12, 2 July 2001.

84 Female genocide suspect, Nsinda prison (interview, respondent #65), 6 August 2001.

85 Strauss details the 'intra-Hutu coercion' and fear of punishment in the event of refusal, which motivated 64% of his 210 male interview respondents to participate actively in the killings. (above note 50, p. 136). Mark Drumbi, on the other hand, doubts that coercion was a major factor, even among male genocide participants. See Mark A. Drumbi, 'Punishment, Post genocide: From Guilt to Shame to Civis in Rwanda', in *New York University Law Review*, Vol. 75, No. 5, November 2000, pp. 1247–48.

86 African Rights also reports detailed testimonies of people, including women, who participated in the massacres under threat, see African Rights, above note 20, pp. 995–1000.

These women said they had been forced by soldiers or the *Interahamwe* militia⁸⁷ to commit their crimes – most often, to expose the hiding place of Tutsis they had seen or were protecting in their homes.⁸⁸ Of course, sometimes these justifications appeared implausible, and other women interviewed in detention said they were able to continue protecting people in their homes by bribing the *Interahamwe* to turn a blind eye. In other cases, however, the explanations provided were highly credible, especially where women did not have the security of menfolk in their household.⁸⁹ According to one woman's explanation, for example, 'I tried to stop them, by telling them not to take her, to let me keep her, but they threatened to throw a grenade at me. My husband was dead, my son was in France, so I couldn't do anything to stop them.'⁹⁰

Sometimes, women were not subjected to direct threats, but nonetheless held substantial fear of the consequences if they refused to co-operate. Consider the following account:

'I was working in my sorghum plantation. Another woman found the boy hiding there and called out, so everyone knew there was a Tutsi around. The boy came running towards where I was working and hid near me. Then two *Interahamwe* came running after him and asked me where he was hiding. When I didn't respond, they took out their pangas. They scared me, so I told them where he was.

These were very violent men. They were the ringleaders of the *Interahamwe* ... They had been killing people and telling us in the community to kill as well. They had also been saying that if they found anyone hiding a Tutsi they would kill him [*sic*]. So, I thought they would hurt me if I did not co-operate, even though I cannot say if they would have killed me.

I did not believe this child had to die. I was just scared. I was hiding three of his family members in my home and one of those *Interahamwe* knew about it... Two of those three people are still alive and the other one died a natural death. But they are still very hurt about what I did ...⁹¹

This story describes the reality that many women were both complicit in the killings and helped others to escape from death. It also raises questions as to the level of courage expected from women – or indeed men – in such circumstances. As there was no certainty the accused would have been killed (perhaps 'only' hurt) should she have taken a greater risk to protect the boy? Moreover, given traditional

87 The *Interahamwe*, meaning 'those who stand together' in Kinyarwanda, was a militia formed in the period leading up to the genocide and which led many of the killings during the genocide.

88 Many of the author's interview respondents claimed they had tried to protect Tutsis in their homes, even if they had participated in the genocide in other ways.

89 The author acknowledges the subjectiveness of her assessments of the credibility of the stories provided by interview respondents. However, an impression was usually left, taking into account the totality of the interview (including the level of remorse expressed, and whether the respondent believed that genocide had taken place). Sentiments were also discussed and cross-checked with the author's translator.

90 Female genocide suspect, Kigali Central Prison (interview, respondent #19), 5 July 2001.

91 Female genocide suspect, Gitarama prison (interview, respondent #30), 16 July 2001.

gender dynamics as outlined earlier in this paper, which included frequent violence against women, is it relevant that the killers were both 'very violent' and that they were men?⁹²

Another variation on this theme arose where women feared not what might have happened to them personally if they refused to co-operate in the genocide, but what might have happened to others.⁹³ Take the example of a woman who poisoned and killed her own four children. The children were Tutsi on account of their father's ethnicity, and she had sought protection for them among several of her Hutu relatives, which had been consistently refused. She feared the *Interahamwe* would otherwise kill them with a machete, and felt she had 'no choice' but to kill them in a more kindly way herself, even though there was no immediate threat. This woman also took poison herself, but survived. With a clearly broken heart, she stated: 'I have confessed and I have even asked forgiveness from God. I know I am a sinner but I also loved my children. I did not want to kill them ... I cannot sleep at night.'⁹⁴

In another case, a young woman admitted that she took an old Tutsi woman to be killed by the *Interahamwe* after being threatened by one of its members that if she did not do so he would murder two Tutsi girls that she was protecting in her home. This woman made a conscious decision that the life of an 'old woman, who was already sick and might not have survived anyway', should be sacrificed in order to save the others, as she 'wanted to protect the two girls' lives, and, besides, I couldn't protect all the Tutsis around.'⁹⁵ After this event, the young woman became friends with several members of the *Interahamwe*, and in particular, with the man who had threatened the girls but later 'got used to them'. Belying the argument that all women were terrified of the *Interahamwe*,⁹⁶ she said: 'Although I was a bit scared of them, they also feared me because I had a gun. (I got the gun when people threatened to kill my aunt. I told them if they hurt her I would kill them, or have them killed by Habyarimana's cousins, who were friends of mine.)' Later reflecting on her actions, she said 'I regret a lot what happened, what

92 To the author's knowledge, there is no precedent in Rwandan law, for gender to be taken into account when considering the defence of 'irresistible compulsion' (similar to the common law defence of duress) set out in Article 70 of the *Rwandan Penal Code* (Law No. 21/77 of 18 August 1977), Rwandan Ministry of Justice website, www.amategeko.net/ (last visited 13 October 2009). That provision provides 'there is no criminal responsibility when the accused ... was constrained by a force he could not resist'. The *Commentaries on the Penal Code* provide that for the defence to apply, the compulsion 'may be physical or mental [psychological] but it must be powerful. Nonetheless, the strength of the compulsion is ... assessed in taking account of the personality of the person under the compulsion, and of the situation in which he finds himself'. Moreover, the person affected by the compulsion must be 'totally convinced ... that he risks serious and immediate harm, from which he can escape only by committing the criminal act which is demanded of him'. D. De Beer, above note 71, pp. 38–39.

93 Again, such cases could potentially fit within the defence of irresistible compulsion, according to which '[t]he risk of meeting with serious and immediate harm can affect someone other than the person under compulsion. This may be his children, members of his family, even other persons'. D. De Beer, *ibid*.

94 Female genocide suspect, Kigali Central Prison (interview, respondent #23), 6 July 2001.

95 Female genocide suspect, Kigali Central Prison (interview, respondent #27), 6 July 2001.

96 According to Adler, Loyle and Globerman, 'despite the advancing RPF and ubiquitous anti-Tutsi rhetoric, women most feared fellow Hutus involved in genocidal activities', (above note 27, p. 219).

we did to that old woman. Even if she was an old woman, she was still God's creation, and even if I couldn't have saved her, I shouldn't have accompanied [the *Interahamwe* member] to kill her. If he had then killed the two girls, at least it wouldn't have been my responsibility.'

Whatever one now thinks of the moral choices they made, it is clear that these women made extraordinarily difficult decisions in the face of devastating options. Not only do these cases demonstrate the simplicity of the claim considered in Part I that the Rwandan woman 'cannot make a decision for herself,' they also highlight the multifaceted role that some women played during the genocide, both participating in the violence and assisting others to survive.

The effect of anti-Tutsi hate propaganda and the 'trumping' of ethnicity over gender

Fear of men cannot explain all cases where women were involved in the genocide, particularly as in some cases it was not men, but other women, who incited other women to act.⁹⁷ Lisa Sharlach provides one explanation as to how Rwandan women, socialized to be caring and peaceful, became killers:

'In pre-1994 Rwandan society, those living in bodies marked as female were deemed to be particularly peaceful, maternal and empathetic, and females learned to perform this role. However, the socio-political changes in Rwandan society in the early 1990s – and particularly, the threat that the Hutu majority feared from the Tutsi in exile and in Rwanda – led to the society placing a much greater emphasis on the salience of the marker of ethnicity than of sex.'⁹⁸

This statement perhaps overstates the extent to which women shifted from traditional gender roles during the genocide, as the above discussion suggests that overall, gender expectations continued to influence women's behaviour during the bloodshed. Nevertheless, it may explain why many women became enthusiastic participants in the violence. Evidently, women were not immune to the genocidal ideology, and women in leadership roles, such as teachers and radio announcers, played an important part in disseminating the propaganda among the population. Drawing on the 1990 incursion by the Rwandan Patriotic Front (RPF), this propaganda claimed that all Tutsis were accomplices of the RPF, which was planning another invasion that necessitated acts of self-defence.⁹⁹ Several women who held leadership roles at either the national or local level, whom the author met

97 One woman described her co-accused as 'the ringleader of the group. She had so much power, she even used to fight with men. She was very enthusiastic and strong. She didn't have a husband, and didn't even want to take one because she was so strong.' Woman convicted of genocide, Gitarama Prison (interview, respondent #10), 2 July 2001.

98 Lisa Sharlach, 'Gender and Genocide in Rwanda: women as agents and objects of genocide', in *Journal of Genocide Research*, 1999, Vol. 1, p. 397.

99 See Jean-Pierre Chrétien *et al.*, *Rwanda: Les Médias du Génocide*, Éditions Karthala, Paris, 1995; *The Prosecutor v. Jean-Paul Akayesu*, Judgement, ICTR-96-4-T, 2 September 1998, paras 99–100, available at: ICTR, www.ictor.org/default.htm (last visited 13 October 2009).

seven years after the genocide, clearly remained convinced by this propaganda. These women emphasized that the country had been at war (which undoubtedly was the case)¹⁰⁰ and either rejected that genocide had occurred, or claimed there had been a 'double genocide.'¹⁰¹ It is not surprising, therefore, that many 'ordinary women' also believed the propaganda. As one female detainee commented, '[t]he leaders told us that the Tutsis had prepared graves to put the Hutus in and that we had to kill the Tutsis first before they killed us. We believed them because they were educated people ... I believed them, and that is why I killed that woman.'¹⁰²

The propaganda also sowed divisions between women in Rwanda, by claiming that Tutsi women were 'working for the interest of their Tutsi ethnic group' and threatened to steal the jobs and husbands of Hutu women. One female detainee in the Kigali Central Prison thus explained:

'Women believed in the need to kill Tutsis for 3 reasons:

1. Tutsis were perceived to be associated with the RPF. Women, like men, believed the propaganda. Most women had confidence in what they heard.
2. Hutu women hated and were jealous of Tutsi women.
3. Hutu women were jealous of Tutsis' wealth. Women wanted their goods.'

This woman had personally believed the propaganda at first but after the genocide started, changed her mind:

'When I saw so many children, women and old people killed, who could not have been part of the RPF, I began to understand that it was not a war, but a genocide that was planned in advance. I think the genocide was possible because of pre-existing hatred between Tutsis and Hutus, but that the politicians used these sentiments to achieve their goals.'¹⁰³

Even many women who were not necessarily committed to the genocidal ideology apparently accepted the fate of their Tutsi neighbours and former friends. As one young woman who was involved in the massacres said, 'usually people didn't say anything as we went past, but sometimes people would feel sorry for their neighbours and wave or say "bye"'.¹⁰⁴ Providing an important insight into the mentality of the average Rwandan woman during the genocide,

100 The ICTR has confirmed as recently as 14 July 2009 that 'There is no dispute that there was an armed conflict of a non-international character between the Rwandan government and the military forces of the RPF.' *The Prosecutor v. Tharcisse Renzaho*, Judgment, ICTR-97-31-T, 14 July 2009, available at: www.ictor.org/default.htm (last visited 13 October 2009).

101 According to one woman who held this view, 'if 1 million Tutsis were killed; 4 million Hutus were killed'. Female genocide suspect, Butare prison (interview, respondent #62), 2 August 2001.

102 Woman convicted of genocide, Gitarama prison (interview, respondent #10), 17 July 2001.

103 Female genocide suspect, Kigali Central Prison (interview, respondent #13), 3 July 2001.

104 Female genocide suspect, Gitarama prison (interview, respondent #37), 18 July 2001.

Josée Mukandamage, former Vice President of the Rwandan Supreme Court, explained:

‘Women’s participation in the genocide was more subtle than men’s. Women were not usually part of the death squads, but they only went so far for others. Women had been conditioned by then to think it was normal for Tutsis to die. So, even if they tried to help someone, they would not resist if someone came searching for that person, and they would not risk their lives for others.

It is the same thing today. If we see someone being beaten on the street, especially if we think that person is a thief, are we going to intervene to help him? I think not.’¹⁰⁵

This comment goes a long way to explaining women’s participation in the genocide. Many Hutu women, including those accused of genocide, demonstrated courage and compassion in trying to help Tutsis at an individual level. Women’s willingness to hide Tutsi children, for example, probably partly explains the high number of orphans in Rwanda today. Women’s ability to take a stronger stance against the genocide was also undoubtedly limited by gender dynamics and the atmosphere of violence. Nevertheless, it is clear that the anti-Tutsi propaganda had infiltrated many Rwandan households, including into the hearts and minds of many women, such that at worst, Tutsis had to die; at best, it was simply not considered any of their business.

Other motivations

The impact of fear and the anti-Tutsi propaganda, while contributing to an understanding of women’s behaviour during the genocide, fail to adequately encompass the diverse experiences of women who participated in the carnage. Indeed, several women met by the author could not explain why they became involved, or claimed that women ‘just got caught up in things we didn’t understand.’¹⁰⁶ Others admitted to having simply followed the crowd. Taken to its extreme, a minor involved in ‘uncountable’ killings described the times she went along with a group of people to massacre Tutsis as ‘fun, like playing a game.’¹⁰⁷

Sometimes women reportedly made errors of judgement in trusting neighbours or relatives with information about people they were trying to protect in their homes, only for that confidante to denounce them to the militia. Sometimes, women were traumatized by the events taking place, and gender relations also regularly came into play. One woman, the wife of a Tutsi man, who ‘finished off’ her sister-in-law with a hoe handle under pressure from three *Interahamwe* thus claimed, ‘I was only a woman and they were three men so I had

105 Josée Mukandamage, former Vice President of the Rwandan Supreme Court, 23 July 2001.

106 Female genocide suspect, Gitarama prison (interview, respondent #40), 18 July 2001.

107 Female genocide suspect, Gitarama prison (interview, respondent #37), 18 July 2001.

no power over them. And I wasn't myself by then. My whole family had been killed... I wasn't scared. I was just being used.'¹⁰⁸

In one extraordinary story, a woman who had previously held hardline views though married to a Tutsi (they were members of opposing political parties during their marriage) recounted how she came to wear military uniform on two occasions during the genocide. In the first instance, this permitted her to get through the roadblocks to save her Tutsi niece who had been attacked but remained alive in a ditch. When subsequently caught by the *Interahamwe* trying to hide the girl, she offered herself as a sex slave (*femme de viol*) to the local head of the *Interahamwe* in order to protect the girl, and others, from rape. The girl was thus released and survived the genocide. On the second occasion she wore military uniform, she had travelled with her *mari de viol* (rape-husband) to Butare in order to find her husband and children, who were in hiding. This she achieved with the assistance of a young *Interahamwe* member, though she and her husband decided it was safer for him and the children to remain in Butare and for her to remain with her *mari de viol*. According to this woman, she was denounced because people saw her travelling with the *Interahamwe* and wearing military uniform, and she admitted 'I understand how they think I was involved.' It is worth noting that this woman was kept as the militia man's 'hostage' both throughout the genocide and in the refugee camp in Zaire afterwards. During her imprisonment, her husband – who survived the genocide – had visited her and sought her permission to take another wife.¹⁰⁹

It is, of course, impossible to detail the thousands of stories which explain how and why 'ordinary' women participated in the genocide. However, this story, like many others, demonstrates the complex realities of women's lives during the genocide. While the pursuit of those who perpetrated the genocide is indispensable to achieving lasting peace, labelling women as simply 'victims' or 'perpetrators' obscures the nuances of their experiences.

Moving from the participation of 'ordinary women' to that of those in leadership roles, the following section focuses on the imagery surrounding the trials of 'powerful women', and the gendered references that regularly come into play.

Women in leadership positions and questions of power

'I am a woman, I had no power.'

*Female Category 1 suspect, Kigali Central Prison*¹¹⁰

'I am really surprised they put me in the first category. I am a woman.'

*Female Category 1 suspect, Kigali Central Prison*¹¹¹

108 Female genocide suspect, Gitarama prison (interview, respondent #46), 19 July 2001.

109 Female genocide suspect, Kigali Central Prison (interview, respondent #13), 3 July 2001.

110 Interview, respondent #2, 27 June 2001.

111 Interview, respondent #22, 17 July 2001.

Some Rwandan NGOs argue that the genocide might have been avoided had women held more positions of power. They claim that '[w]omen have a different nature to men. They are not violent [I]f there had been more women in power, the genocide would not have taken place.'¹¹² This hypothesis is not only impossible to prove, it also sits uncomfortably with the fact that some women who *did* hold leadership positions during the genocide were allegedly also ardent supporters of it. Forty-seven women are on the list of 2202 'Category 1' genocide suspects in Rwanda,¹¹³ which includes the planners, organizers, instigators and ringleaders of the genocide, as well as those who occupied leadership roles in public administration, political parties, the army and religious denominations, and who committed or encouraged the genocide or crimes against humanity.¹¹⁴

In light of the position of women in pre-genocide Rwanda as described earlier in this paper, it is worth considering the accusations against some alleged 'Category 1' offenders and the level of power that women in leadership positions actually exercised in relation to the genocide. In doing so, this section focuses on the imagery at play in their encounters with the law, which is replete with gender references.

Women with political responsibility

Agathe Kanziga, widow of former Rwandan President Habyarimana and nicknamed 'Kanjogera' after the famous Queen Mother in Rwandan history, fled to France on 9 April, three days into the genocide. In February 2007, she lost her claim for asylum in France on the basis that there were serious grounds to believe she had committed the crime of genocide. At the time of writing, Kanziga is still living in Paris, wanted by the Rwandan authorities for trial.

There is extensive material that Kanziga was instrumental in planning and executing the genocide, even while in exile. She is accused, in particular, of playing a key role in: the creation and support of the extremist radio station RTLM as well as the extremist newspaper 'Kangura'; establishing and ensuring the training of the infamous *Interahamwe* militia, which led the killings during the genocide; and the drawing up of lists of political personalities to be eliminated by the

112 Interview with Judithe Kanakuze, National Co-ordinator, Réseau des Femmes, Kigali, 8 June 2001. Similarly, Venuste Bigirama, of Rwandan NGO ASOFERWA, said: 'I really think that if there had been more women in leadership positions, the genocide would not have occurred. Women are more sentimental.' (Interview with Venuste Bigirama, Technical Advisor, Association for Solidarity between Rwandan Women (ASOFERWA), Kigali, 11 June 2001). This position is consistent with the essentialist school of feminist thought. As explained by Lisa Sharlach, 'Essentialist feminists posit that men are inherently more warlike than are women ... Essentialists believe that the wars we have suffered are the result of male-dominated political and military systems. The world would be more peaceful if it were women making policy or "reweaving the web of life".' L. Sharlach, above note 98, p. 389.

113 Government of Rwanda, Category 1 List, <http://www.gov.rw/government/category1.htm> (last visited 3 September 2009).

114 Gacaca law, above note 43, Article 51.

Presidential Guard following her husband's death, including Prime Minister Agathe Uwilingiyimana. Even prior to the genocide, Kanziga is accused of being the 'centrepiece' of a system of repression, which included death squads, mafia-like economic activities, massacres and the disappearances of political prisoners.¹¹⁵ Using her important family ties, she is reported to have played a pivotal role in the appointments and demise of women in positions of responsibility.¹¹⁶

Kanziga has refuted all allegations against her. Before the French Refugee Commission, she asserted that her activities as First Lady were confined to the classic functions of protocol and representation, as well as the promotion of the status of women, and that she did not have the slightest influence over political events. Highlighting her position as honorary president of an orphanage, she also stressed her role as mother of eight children, claiming to have passed her time preparing meals for her family and taking care of the garden and livestock.¹¹⁷ Moreover, Kanziga argued, she never listened to the radio or read newspapers, and never discussed politics with her husband.¹¹⁸ The image thus presented was of a simple woman, a motherly figure, who was ignorant of political affairs.

These claims were rejected by the Commission, which found them to be 'not credible, devoid of precision and imbued with improbability', an obvious attempt to 'obscure her real activities during the preparation, planning and execution of the genocide'.¹¹⁹ Contrary to Kanziga's claims, the Commission found substantial evidence to suggest she had exercised a 'dominant role' in the elite circle of power named the *Akazu* ('little house'), and was among the 'hardcore' of this group.¹²⁰ This small clique 'held actual power since the 1973 coup d'état',¹²¹ such that the former First Lady 'without holding an official post, exercised real authority over the affairs of state'¹²² ... and was 'at the heart of the genocidal regime responsible for the preparation and execution of the genocide'.¹²³ The Commission further found that Kanziga maintained privileged links with the interim government¹²⁴ after the death of her husband, and in particular with her personal friend Pauline Nyiramasuhuko,¹²⁵ whose case is considered below.

Given the overwhelming number of expert reports and personal testimonies against her, it is clear that Kanziga has at least a case to answer regarding the Rwandan genocide. Yet in the face of serious allegations, her strategy was to try

115 Commission des Recours des Réfugiés (CRR), 15 February 2007, 564776, *Mme Agathe Kanziga veuve Habyarimana*, France: available at: <http://www.unhcr.org/refworld/docid/45d5bcad3c8.html> (last visited 14 October 2009), p. 2, citing the first instance decision of the Office Français de Protection des Réfugiés et Apatrides (OFPRA) against Agathe Kanziga, 4 February 2007.

116 *Ibid.*, p. 1, citing the first instance decision of the OFPRA against Agathe Kanziga, 4 February 2007.

117 *Ibid.*, p. 6.

118 *Ibid.*

119 *Ibid.*, p. 5.

120 *Ibid.*, p. 7.

121 *Ibid.*, p. 5.

122 *Ibid.*, p. 8.

123 *Ibid.*, p. 5.

124 *Ibid.*, p. 8.

125 *Ibid.*

to portray herself as a humble mother-figure, devoid of any political sensibility and thus apparently conforming to notions of a 'good woman' found in traditional Rwandan society. Clearly, the French Refugee Commission was not convinced by her attempts.

Another woman who is as notorious in Rwanda as Agathe Kanziga is Pauline Nyiramasuhuko, former Minister of Family Affairs and Women's Development, whose posting was reportedly facilitated by the former First Lady.¹²⁶ Nyiramasuhuko is one of the principal genocide suspects on Rwanda's 'Category 1' list. She is also the only woman indicted by the International Criminal Tribunal for Rwanda (ICTR) and is therefore considered by the international community to be a 'big fish'. After 726 days of trial, at the time of writing, the case against Nyiramasuhuko and her co-accused is in the judgement drafting phase, with judgement expected in mid-2010.¹²⁷

Nyiramasuhuko has been charged with a long list of crimes, including: conspiracy to commit genocide; genocide or alternatively complicity in genocide; direct and public incitement to commit genocide; murder, extermination, persecution; other inhumane acts; and outrages on personal dignity.¹²⁸ She is also the first woman to be accused of rape (carried out by people under her responsibility) before an international tribunal. According to the Amended Indictment against her, Nyiramasuhuko was 'a prominent political figure in the Butare prefecture'.¹²⁹ She is accused, *inter alia*, of having patrolled a roadblock near her home, together with her son Arsène Shalom Ntahobali, and used it 'to identify, abduct and kill members of the Tutsi population.'¹³⁰ On these occasions, witnesses assert, Nyiramasuhuko 'dressed in military uniform and carried a gun,'¹³¹ supervised killings and violence and told the *Interahamwe* to 'have no mercy'.¹³² Nyiramasuhuko's victims were reportedly often forced to undress completely before being taken to their deaths and numerous individuals claim that the former minister incited, witnessed, and even ordered the rapes of some of these women, including by her son.¹³³

126 *Ibid.*, p. 1, citing the first instance decision of the OFPRA against Agathe Kanziga, 4 February 2007.

127 *Report on the completion strategy of the International Criminal Tribunal for Rwanda (as at 4 May 2009)*, S/2009/247, 14 May 2009, para. 12, available at <http://www.ictor.org/default.htm> (last visited 12 October 2009).

128 Nyiramasuhuko Amended Indictment, above note 38, para. 7 ('Charges').

129 *Ibid.*, para. 4.2.

130 *Ibid.*, para. 6.27.

131 ICTR, Office of the Prosecutor, Butare Cases: Witness Summaries Grid (6 April 2000), Witness No. 54 (QF).

132 *Ibid.*, Witness No. 68 (RJ).

133 Nyiramasuhuko Amended Indictment, above note 38, para. 6.37. One witness claims that the Minister told the killers that they 'needed to rape all Tutsi women because they are arrogant', and that after this statement, some girls were immediately raped and killed. *Ibid.*, Witness No. 44 (QBP). Such claims are supported by Rwandan NGO Avega 'Agahozo', according to which 'the wickedness of Pauline Nyiramasuhuko is notoriously known and the militia she was supervising chose women for gang rapes and girls they sequestered to make them their wives.' (Avega 'Agahozo', above note 10, p. 17). Also see Peter Landesman, 'A Woman's Work', in *NY Times Magazine*, 15 September 2002, available at: <http://www.nytimes.com/2002/09/15/magazine/a-woman-s-work.html> (last visited 6 October 2009).

As to the motivations for her alleged behaviour, Maxwell Nkole, ICTR investigator, provided his belief that:

‘Pauline Nyiramasuhuko was convinced by the propaganda, especially the propaganda that caused divisions between women. The myth of the beautiful, arrogant Tutsi woman led to jealousy by Hutu women and an inferiority complex among Hutu women. This seems to have come through in the way she treated Tutsi women.’¹³⁴

Those working in Nyiramasuhuko’s defence paint a very different picture of her, describing their client as ‘very nice, a mother hen.’¹³⁵ Nyiramasuhuko herself, in an interview with the BBC in mid-August 1994, reportedly said ‘I am ready to talk to the person who says I could have killed. I cannot even kill a chicken. If there is a person who says that a woman, a mother, killed then I’ll confront that person’¹³⁶

Nyiramasuhuko has contended that despite being a Minister, she actually ‘had no power’ in the genocidal government.¹³⁷ She has stressed that she was relatively new to politics, having been appointed only in 1992,¹³⁸ and that she did not hold especially influential portfolios. Refuting the prosecution’s arguments that she was an intellectually weak woman who was appointed ‘to power and ranks in which no other Rwandan woman had during her time’, courtesy of her friendship with the President’s family,¹³⁹ Nyiramasuhuko told the Tribunal she was appointed ‘on merit because I had the necessary education and experience.’¹⁴⁰ She also noted that two other women – the former Prime Minister Agathe Uwilingiyimana and the former Minister of Justice, Agnes Ntamabyaliro – were appointed at the same time.¹⁴¹

Rwandans who knew Pauline Nyiramasuhuko defy any argument that she was powerless. As one figure contended, ‘it is not true that Nyiramasuhuko had no power. She did. She was extreme and she loved her party.’¹⁴² In the face of such

134 Interview with Maxwell Nkole, ICTR Investigator, Kigali, 11 July 2001.

135 Interview with Nicolas Cournoyer, Assistant Trial Attorney, Defence Team for Pauline Nyiramasuhuko, 15 May 2001.

136 Interview with Lindsay Hilsum, BBC, mid-August 1994, as cited in African Rights, above note 23, p. 106.

137 Interview with Nicole Bergevin, Lead Defence Counsel for Pauline Nyiramasuhuko, International Criminal Tribunal for Rwanda, Arusha, 30 May 2001. See also Hirondele News Agency, ‘21.09.05 – ICTR/BUTARE – Nyiramasuhuko Denies She Was a Powerful Woman’, in Hirondele News Agency, Arusha, available at: <http://www.hirondellenews.com/content/view/2904/26/> (last visited 6 October 2009).

138 Interview with Nicole Bergevin, *Ibid.*

139 Hirondele, ‘Nyiramasuhuko denies’, *ibid.*, and Hirondele News Agency, ‘12.09.05. ICTR/BUTARE – Female Genocide Suspect Nyiramasuhuko takes aim at Expert Witness’, in Hirondele News Agency, Arusha, available at: <http://www.hirondellenews.com/content/view/2876/26/> (last visited 6 October 2009).

140 Hirondele, ‘Nyiramasuhuko denies’, above note 137.

141 *Ibid.*

142 Interview with Josée Mukandamage, Former Vice President of the Supreme Court, Kigali, 23 July 2001. Mukandamage described how during the genocide she had heard Nyiramasuhuko on the radio, encouraging massacres of Tutsis. She said ‘I was shocked when I heard that, especially from someone in her position’. Mukandamage also described an event which she and other women were trying to organize

competing images, the ICTR must determine the extent to which the former minister wielded actual power or engaged in the genocide. The Tribunal will also need to decide if her gender (which has been the focus of much of the media attention surrounding the case)¹⁴³ or the specific position held by Nyiramasuhuko to promote the rights of women, are relevant factors in the case.

The degree of power held by lower-level female political administrators is also in question before the Rwandan courts and *gacaca* tribunals. As noted earlier, at the time of the genocide no women held positions as *Prefects* or *Bourgmestres* in Rwanda, ranks that have been attributed with substantial responsibility for the genocide. Of the 1472 *Conseillers* at the sector level, only 17 were women (1.2%),¹⁴⁴ although more women held positions as '*Responsables*', the administrative leaders at the cell level.¹⁴⁵

One of the 17 female *Conseillers* at the time of the genocide was Euphrasie Kamatamu, former *Conseiller* of the Muhima sector in Kigali. Kamatamu was convicted in 1998 as a Category 1 offender and sentenced to death.¹⁴⁶ She lost her appeal¹⁴⁷ but died in prison in September 2001 of natural causes. Witnesses at Kamatamu's trial testified that she had installed and controlled roadblocks in Muhima sector, which she patrolled regularly with her son; ordered the death of at least one man, and wandered through bodies, turning them over with a baton.¹⁴⁸ Kamatamu, on the other hand, proclaimed her innocence and said she had had no capacity to prevent the massacres in her sector. Like Nyiramasuhuko, Kamatamu specifically argued she *had no power* to prevent the genocide.¹⁴⁹ She also said she was unable to resign from her position, as the Prefect would not have allowed it. At least on this point, the Court agreed. It found that:

'The genocide was planned and it could not have taken place in the sector that she directed without her knowledge and participation. Otherwise, she would

in March 1994 at the sports stadium in Kigali, to celebrate National Women's day. Of Nyiramasuhuko, she said, 'even as minister for gender, she could not bypass politics and let women join together without distinction based on ethnic or political group. Instead, she turned it into a political event, inviting all her party members ... We were very disappointed. We did not even go.' (Interview with Mukandamage, *ibid.*) On the other hand, Mukandamage doubts the veracity of the allegation that Nyiramasuhuko incited her son to rape, claiming 'that's going too far. Can a woman really tell her son to rape? That's not her decision.' *Ibid.*

143 For an analysis of the media's fascination with Nyiramasuhuko's gender, see Carrie Sperling, 'Mother of atrocities: Pauline Nyiramasuhuko's role in the Rwandan genocide', in *Fordham Urban Law Journal*, Vol XXXIII, 2006, pp. 637–664.

144 Report to Beijing, above note 18, p. 15.

145 The author was unable to locate exact statistics on the number of female *Responsables* at the time of the genocide but anecdotal evidence, both inside and outside the Rwandan prisons, made frequent references to them. The author met two female former *Responsables* during her interviews with female genocide suspects in detention in 2001.

146 Tribunal of First Instance of Kigali, in the case of Kamatamu Euphrasie, Ndagijimana Innocent, Iiagena Alphonse, Marie and Habyalimana Thomas; Case Nos. RP014/CSK/97 and RP032/CS/KIG, Decision 17.7.98 (hereinafter 'Kamatamu judgement').

147 Kamatamu's appeal was decided on 2 May 2000 in the Kigali Court of Appeal. The appeal was rejected.

148 Kamatamu judgement, above note 146, p. 7 and 9. Also see African Rights, above note 23, pp. 134–142.

149 Kamatamu judgement, *ibid.*, p. 8.

not have continued to exercise her function as *Conseiller*, because any leader at this level who refused to co-operate lost [his or her] job or was killed.¹⁵⁰

The Court concluded that Kamatamu had ‘directed the massacres in the Muhima sector [against] Tutsis and so-called accomplices, victims who were executed as soon as they were discovered, which brought the whole of Muhima to fire and blood.’¹⁵¹ During an interview with the author in Kigali Central Prison on 27 June 2001, Kamatamu admitted her involvement in the distribution of weapons but said:

‘Regarding the guns, I agree, I did that. I gave out guns to the citizens to protect themselves, but not to kill Tutsis. The guns were provided to me by [former President] Habyarimana’s soldiers. At trial, I pleaded guilty to this charge but I asked for forgiveness because I had had no choice. I just did what I was told.’¹⁵²

Kamatamu continued to maintain her innocence in respect to the other allegations. She also insisted upon the fact that she had ‘tried to protect Tutsis’ in her house, and that ‘up until now, they come to visit me in prison.’ She said that if she were released: ‘I would thank God and go to the people who accuse me of killing, to ask for forgiveness and seek reconciliation. I would say sorry and I hope that they would also say sorry. I have already forgiven them.’ When the author asked, however, for what she would seek forgiveness, given that she claimed not to have committed any crime, she said, ‘[i]t would not come from my heart because I did not do anything to them.’¹⁵³

Women in the military

While there are some celebrated female military figures in Rwandan history,¹⁵⁴ women were relatively rare in the Rwandan military in the period prior to the genocide. Reportedly, even ‘those who embraced a military career never attained positions of high command.’¹⁵⁵ Yet among the few women in the Rwandan military, some reportedly held substantial power, as demonstrated by a case that came

150 *Ibid.*, p. 12.

151 *Ibid.*, p. 13.

152 Interview with Euphrasie Kamatamu, Kigali Central Prison, 27 July 2001. Given that Kamatamu died in prison on 7 September 2001 after exhausting all appeal options, in this instance, the author no longer feels obliged to maintain the confidentiality of the interview.

153 *Ibid.*

154 According to legend, at least two Rwandan women are famous for their military skill. The first is Ndabaga, who was the daughter of King Ndabarasa. As the King had no son, Ndabaga learned military exercises and amputated her breasts so that she resembled a man, then joined the army. While Ndabaga is revered for her loyalty, she also stands as a symbol of the gravity of a situation, whereby even women have to bear arms in order to defend the country. Thus the dictum ‘Rwanda has arrived at Ndabaga’s’ meaning ‘in a situation of extreme difficulty.’ See B. Muzungu, above note 9, pp. 46–47. There is also a well-known female army commander in Rwandan history who led an attack against a Belgian expedition. J. Rumiya, above note 32, p. 166.

155 Report to Beijing, above note 18, p. 67.

before the Kigali Military Court in 1999. At the end of her trial, Major Anne-Marie Nyirahakizimana, a 46-year-old mother of three, was convicted as a Category 1 offender and sentenced to death.¹⁵⁶

The Court found Nyirahakizimana guilty of an extensive list of crimes, including incitement to genocide. This charge related to an incident in early April 1994, soon after the death of President Habyarimana. On that day, according to the judgement, Nyirahakizimana found a group of *Interahamwe* grilling beef. She asked the group: 'What have you done since the death of the Father of the Nation? Your greed has no limits. Kill the people first, then their goods will be yours. You are eating their cows while their owners are still alive.'¹⁵⁷ The Court held that these words, which were aimed at dividing the population and inciting Hutus to kill Tutsis, were the cause of the massacres of Tutsis in Gikondo Commune, as 'it was after the discourse pronounced by Major Anne Marie Nyirahakizimana that the persons who had been in that place spread out over rural areas, killing and pillaging'.¹⁵⁸

Nyirahakizimana, in her defence, attempted to represent herself both as powerless and a saviour, and thus defied the negative image of her that was being constructed in the Court. She insisted that the allegations against her were false and that she had never collaborated with the militias,¹⁵⁹ although at one stage a soldier had loaned her a weapon because she suffered from hypertension.¹⁶⁰ She admitted that she was with the *Interahamwe* on the day of the alleged incitement offence, but argued that this was because she was forced to go with them, after she had prevented them from searching her (Tutsi) neighbours' homes and they had accused her of being an accomplice of the RPF.¹⁶¹ She argued that the *Interahamwe* militia members were strong, that they had even killed many soldiers, and that she, as a woman, could not help but be frightened of them.¹⁶²

Nyirahakizimana did not limit her imagery to her alleged powerlessness. She also consistently insisted that her role during the genocide was not as a killer, but as a saviour. In the face of allegations that she directed military attacks and was at the centre of the Rwandan power structure as a member of the *Akazu*, Nyirahakizimana called witnesses to testify that she had saved them by hiding them

156 Military Court of the Kigali Specialised Chamber, Case No. R.P. 0001/C.M.C.S./KGL 799, 3 June 1999, Decision, Major GD Anne Marie Nyirahakizimana and Pastor Athanase Nyirinshuti. Ten years after her trial before the Military Court, Nyirahakizimana was tried again by the *gacaca* tribunal in Muhaga district. On 10 June 2009, that tribunal confirmed her conviction and sentenced her to life imprisonment in isolation, the harshest sentence available to the tribunal. 'Rwanda: prison à perpétuité pour une femme médecin de l'ex-armée', in *Agence France-Presse*, Kigali, 10 June 2009, available at: www.cyberpresse.ca/international/afrique/200906/10/01-87 (last visited 25 October 2009).

157 Military Court decision, *ibid.*, pp. 50–51, para. 11.

158 *Ibid.*, p. 51, para. 12.

159 *Ibid.*, p. 10.

160 *Ibid.*, p. 18.

161 *Ibid.*, p. 10.

162 *Ibid.*, p. 14

in her home,¹⁶³ and stressed that during the genocide she had exercised her profession as a doctor, caring for people in the hospital.¹⁶⁴ She claimed further that she had rushed to prevent her bodyguard, who had an 'aggressive character', from killing a man, but had arrived too late to save the victim.¹⁶⁵ Finally, although Nyirahakizimana admitted that she had sent a Tutsi man and his wife from the Shyogwe Parish to the military camp, where they had later been killed, she claimed to have done so for their own protection.¹⁶⁶ None of these claims was accepted by the Court, which denounced, in particular, Nyirahakizimana's contentions that she had tried to save her neighbours, as being irrelevant to the charges at hand.¹⁶⁷ The Court further concluded that:

'The eulogies in the conclusions of the lawyer for Major Anne Marie Nyirahakizimana regarding the heroic and intelligent character and humanitarian behaviour of his client must be denounced in view of the savage acts of genocide that she committed, which place her in the first category among the authors of the genocide and other crimes against humanity.'¹⁶⁸

The Court ultimately convicted Nyirahakizimana as a Category 1 offender, in light of the position of authority she had held as a Major in the Rwandan army and the role she had played both in committing and in inciting genocide and crimes against humanity.¹⁶⁹ For the purposes of the law, therefore, Nyirahakizimana's good deeds during the genocide were effaced by her crimes.

Women in the Catholic Church

According to many historians and political analysts, the role of the Catholic Church in Rwanda in the period leading up to and during the genocide was just as important as the role of the State.¹⁷⁰ This reality has been recognized in the

163 According to the judgement, Nyirahakizimana's claims that she had saved her Tutsi neighbours were confirmed by her witnesses, but those witnesses, who were in hiding, could still not testify to what Nyirahakizimana had done during the day. See, *ibid.*, p. 58, para. 71(b) and p. 59, para. 72(b). For the claims by Nyirahakizimana, see, *ibid.*, pp. 11 and 15. The Prosecutor argued in relation to this claim that 'even criminals have friends.' *Ibid.*, p. 44.

164 *Ibid.*, pp. 24 and 26. In particular, Nyirahakizimana stressed that she had been caring for her niece who had undergone a Caesarean section. (*Ibid.*, p. 33). In relation to one of the other murder charges, Nyirahakizimana argued that she was not even in the vicinity of the alleged crime at the relevant time, as she was ill and had been hospitalized following an abortion. (*Ibid.*, p. 9).

165 *Ibid.*, p. 39.

166 *Ibid.*, pp. 9 and 26.

167 *Ibid.*, p. 59, para. 78, and p. 61, para. 88.

168 *Ibid.*, p. 60, para. 83.

169 *Ibid.*, p. 55, para. 50.

170 Ian Linden, 'The Church and Genocide: Lessons from the Rwandan Tragedy', in Gregory Baum and Harold Wells (eds.), *The Reconciliation of Peoples: Challenges to the Churches*, Orbis Books, New York, 1997, pp. 43–55; Michael Budde, 'Pledging Allegiance: Reflections on Discipleship and the Church after Rwanda', in Michael Budde and Robert Brimlow (eds.), *The Church as Counterculture*, State University of New York Press, New York, 2000, pp. 213–227; and Hugh McCullum, *The Angels Have Left Us: The Rwanda Tragedy and the Churches*, Risk Book Series, Geneva, 1995, especially Chapter 5, 'The Church: Problems and Promises'.

definition of Category 1 offenders, which, as set out above, includes those who occupied leadership roles in religious denominations. The trial of two Rwandan nuns in Belgium pursuant to universal jurisdiction highlights the active role they played in the genocide.¹⁷¹

Consolata Mukangango (Sister Gertrude), the former Mother Superior of the Convent in the Sovu Monastery in Butare, and her more junior colleague, Julienne Mukabutera (Sister Maria Kizito), were both seeking asylum in Belgium at the time of their arrest. On 8 June 2001, they were convicted by the Belgian Court of Assizes of intentional homicides of identified individuals and 'undetermined numbers of unidentified persons', as well as attempted homicides, in violation of the Belgian law implementing the Second Additional Protocol to the Geneva Conventions (among other instruments).¹⁷² Sister Gertrude was sentenced to a 15-year term of imprisonment and Sister Kizito received a 12-year sentence. The judgement itself does not go further into the facts, as no reasons are required to be given in this jurisdiction, but NGO and media reports surrounding this case shed some light on the case.

The accusations against Sister Gertrude begin with claims that she deliberately refrained from feeding some 3500 refugees who had fled to the Sovu Health Centre when the massacres began in Butare on 17 April 1994. When the Health Centre was under attack two days later, the refugees fled to the Sovu Monastery, where Sister Gertrude allegedly threatened them and called them 'dirt'. Eventually, she brought a communal policeman and six soldiers, who forced the refugees to leave on the basis that the Monastery 'must not be destroyed on account of Tutsis'. These refugees were almost all forced back to the Health Centre where, on 22 April, Sister Kizito, whom survivors nicknamed 'animal', participated in their massacre by handing out jerry cans of petrol to the *Interahamwe*, which were then used to burn people alive. Evidence against Kizito also included that she stole possessions from the corpses to distribute among the *Interahamwe* and cursed dead Tutsis who had torn up their money before dying. Survivors said that on 25 April, Sister Gertrude chased more people out of the Monastery into the hands of the militias.¹⁷³ However, probably the most damning evidence against her is a letter dated 5 May 1994 to the *Bourgmestre* and signed by her, asking him to clear the convent of the

171 *Cour D'Assises de l'Arrondissement Administratif de Bruxelles-Capitale*, Arrêt 8 June 2001 against: Ntezimana Vincent, Higaniro Alphonse, Mukangango Consolata and Mukabutera Julienne, available at: http://www.ulb.ac.be/droit/cdi/Site/Developpements_judiciaires_files/arret%208%20juin%202001.pdf (last visited 15 October 2009).

172 *Law of 16 June 1993 relative to the repression of serious violations of the International Conventions of Geneva of 12 August 1949 and of the Protocols I and II of 8 June 1977*. The nuns and their co-accused were not prosecuted for genocide, which was not a crime under Belgian law at the time of the Rwandan genocide. (Even though Belgium had ratified the Genocide Convention in 1948, it had not incorporated it into domestic law.) The 1993 law was amended on 10 February 1999 to incorporate the crimes of genocide and crimes against humanity, and the title changed to *Law Relative to Serious Violations of International Humanitarian Law*. The law was abrogated in August 2003 and its content inserted into other laws, notably the Belgian Penal Code. ICRC National Implementation Database, available at: www.icrc.org (last visited 15 October 2009).

173 Testimonies against the two nuns are provided generally in African Rights, above note 23, pp. 155–185.

remaining refugees. In this letter, Sister Gertrude requested that 'people who come in a disorderly manner and insist on staying here should be told politely to return to their homes so that the usual work of the Monastery can continue without disruption.'¹⁷⁴ The *Bourgmestre* complied and on 6 May 1994 the remaining Tutsis were removed from the Monastery and killed.

Imagery appears to have played a significant role in this trial. The lawyer for the civil claimants contended that: 'These nuns have never been servants of God. They are monsters.' He likened Sister Gertrude to Eichmann, and described Sister Kizito as a 'vulture',¹⁷⁵ claims that were refuted by the nuns' lawyers, who strongly criticized the 'demonization' of their clients.¹⁷⁶ One of Sister Kizito's lawyers claimed that his client had been 'lynched by the press before the trial had even started.'¹⁷⁷ As in the cases discussed above, the nuns played down their ability to have acted any differently during the genocide. Sister Gertrude spoke of fear and chaos, and argued that she had wanted to save her religious community.¹⁷⁸ Sister Kizito, for her part, claimed: 'I was a novice at Sovu. I did not know how to respond to the attacks on the nuns... I never did anything with the militias to cause any harm. I stayed together with my fellow nuns. I helped them as best as I could, during three months of suffering.'¹⁷⁹ The lawyers for the nuns contended they had acted through fear. They admitted the two women 'showed signs of cowardice, and they did not act as we may have expected them to, but that does not in itself constitute any breach of the law.'¹⁸⁰ These arguments clearly failed to convince the Court.

'Monsters' or 'real women'?

The women described in this part present a particular challenge to those feminist theorists who maintain that, either 'by nature or nurture', women are not violent.¹⁸¹ Most of these women had defied gender stereotypes to attain leadership positions and some had obtained a university education. All claimed to have conducted benevolent acts during the genocide and Kanziga and Nyiramasuhuko were also allegedly interested in women's affairs. How can such positive attributes be reconciled with these women's allegedly abhorrent behaviour during the genocide?

The simplest answer is to remove these 'exceptional' women from the category 'women' altogether, since they apparently betrayed their sex and no longer

174 'Une Peur Diabolique', in *Diplomatie Judiciaire*, 3 June 2001.

175 'Diaboliques icones', in *Diplomatie Judiciaire*, 3 June 2001.

176 *Avocats Sans Frontières, Serge Wahis, un des deux avocats de sœur Kisito, confie ses réflexions sur le procès et la compétence universelle*, 12 June 2001, available at: http://users.skynet.be/wihogora/_asf/asf-assises-04.htm (last visited 9 October 2009).

177 *Ibid.*

178 'La parole aux accusés', in *Diplomatie Judiciaire*, 6 June 2001.

179 *Ibid.*

180 *Avocats Sans Frontières*, above note 176.

181 As Lisa Sharlach says: 'We have yet to examine fully the implications for feminist theory of catastrophes such as Rwanda, in which women are both victims and villains', above note 98, p. 388. Sharlach goes on to explain the principal schools of feminist theory linking women with pacifism, *ibid.*, pp. 389–390.

merit the term. Thus one Rwandan feminist asserted that Pauline Nyiramasuhuko was 'not a woman. She always acted like a man.'¹⁸²

Going a step further, as seen above in the trial of the Belgian nuns, women who commit atrocities can be likened to 'vultures' or 'monsters'.¹⁸³ Such language gives credence to the 'evil woman theory' enunciated by Western feminist criminologists, whereby some women are deemed to have acted so far beyond society's norms they are no longer deserving of the chivalry of men and are either de-gendered and treated as 'non-women', since 'real women' do not commit crimes,¹⁸⁴ or dehumanized and treated as 'monsters', that is, even worse than male offenders.¹⁸⁵ Reportedly, this process is particularly likely to occur in the trials of women who were previously employed in caring professions and are deemed to have rejected their caring role.¹⁸⁶ A comment by Rwandan lawyer, Vincent Karangura, suggests that the depiction of women as 'evil' is also not uncommon in prosecutions of female genocide suspects in Rwanda. He noted that:

There is a presumption that women are good by nature, that is, hospitable, welcoming, mild, and incapable of committing atrocities. So, women who really participated, that is, those who were violent or surpassed the expectations of them, and who cannot be explained away as innocent, are not understood. They are treated, not like men, not like women, but something else, like monsters.¹⁸⁷

An alternative explanation for 'powerful' women's behaviour during the genocide was provided by Venuste Bigirama of the Rwandan Women's NGO, ASOFERWA. He expressed the view that:

'women who held positions of power, who were in the minority, were dominated and influenced by men. If there had been more women in power, the

182 Interview with Judithe Kanakuze, National Co-ordinator, Réseau des Femmes, Kigali, 8 June 2001.

183 See above notes 176 and 177.

184 The 'non-woman' theory can be traced back to the work of early criminologists Cesare Lombroso and Guglielmo Ferrero, who maintained that criminal behaviour in a woman could be attributed to her inability to control her inherent defects (i.e. moral deficiency, revengefulness, jealousy and an inclination 'to vengeance of refined cruelty') and to adapt to her biological, maternal role. According to Lombroso and Ferrero, '[i]n ordinary cases these defects are neutralised by piety, maternity, want of passion, sexual coldness, by neatness and an undeveloped intelligence. But when piety and maternal sentiments are wanting, and in their place are strong passions ... much muscular strength and a superior intelligence for the conception and execution of evil [then] the innocuous semi-criminal present in the normal woman must be transformed into a born criminal more terrible than any man.' Cesare Lombroso and Guglielmo Ferrero, *The Female Offender* 1895, p. 151, as cited in Helen Boritch, *Fallen Women: Female Crime and Criminal Justice in Canada*, ITP Nelson, Toronto, 1997, p. 53. Also see F. Heidensohn, above note 69, p. 97.

185 Jenny Carroll, 'Images of Women and Capital Sentencing Among Female Offenders: Exploring the Outer Limits of the Eighth Amendment and Articulated Theories of Justice', in *Texas Law Review*, Vol. 75, Issue No. 6, 1997, in particular p. 1421; Bronwyn Naylor, 'Women's Crime and Media Coverage: Making Explanations,' in Emerson Dobash, Russell P. Dobash and Lesley Noaks (eds.), *Gender and Crime*, Cardiff, University of Wales Press, 1995, pp. 88–91. See also Bridget Byrne, *Gender, Conflict and Development*, BRIDGE (development–gender) Institute of Development Studies, University of Sussex, Report No. 34, Volume 1, Overview, 1996, p. 17: 'Women who contradict female stereotypes by killing are often regarded as much more deviant or unnatural than men.' Available at: <http://www.bridge.ids.ac.uk/Reports/re34c.pdf> (last visited 6 October 2009).

186 B. Naylor, *ibid.*, p. 90.

187 Interview with Vincent Karangura, lawyer, Kigali, 13 July 2001.

atmosphere would have been different and these women could have prevented the others from participating in the genocide.¹⁸⁸

This explanation also potentially leads to some rather uncomfortable conclusions. It implies that women in leadership positions were incapable of autonomous action or thought, which seems incongruous with the apparently strong women described in this paper. It also gives little credit to these women's qualities, such as intelligence, skill or perseverance, which presumably helped them earn their positions in the first place.¹⁸⁹ Instead, there is a suggestion that women in leadership roles strayed from their 'true nature' under the influence of men, which limits women's identities to the essentialist ideal.¹⁹⁰

A final proposition, and one with which the author agrees, is that women in leadership positions who committed atrocities during the genocide were not 'monsters', nor had they wandered from their quintessentially good selves. Rather, these women comprise individuals who were capable of great good but also of vast wrongdoing, at least partly because they were convinced by the genocidal ideology. In this respect, it is prudent to heed Pearson's warning that:

'We cannot insist on the strength and competence of women in all the traditional masculine arenas yet continue to exonerate ourselves from the consequences of power by arguing that, where the course of it runs more darkly, we are actually powerless. This has become an awkward paradox in feminist argument.'¹⁹¹

In sum, not all women in leadership positions in Rwanda wielded real power, and not all supported the genocide. Even among those who participated in the genocide, some experienced fear and some tried to protect their Tutsi friends and neighbours. Yet some also participated with vigour in the violence, apparently convinced by the genocidal ideology that had affected so many of their compatriots. Both seeking to excuse their behaviour and condemning it for breaching gender norms draws us into stereotyping women and undermines the complex realities of women's experiences of mass violence.

Conclusion

This article has explored the participation of women in the Rwandan genocide in the context of gender relations in pre-genocide Rwandan society. It has revealed that despite the existence of patriarchy in Rwandan culture, gender relations at the time of the genocide were more complex than often depicted. 'Traditional' notions

188 Interview with Venuste Bigirama, Technical Advisor, ASOFERWA, Kigali, 11 June 2001.

189 Recall, however, the suggestion that Pauline Nyiramasuhuko was not appointed on merit, but due to her connections with the former First Lady, Agathe Kanziga.

190 See above note 112.

191 P. Pearson, above note 75, p. 32.

of appropriate gendered behaviour nevertheless limited and shaped women's participation in the bloodshed. They have also influenced responses to that participation, both by the women themselves and by those within the criminal justice system.

This article has posited that many 'ordinary' women were involved in the genocide, though whether this was the minority or the majority of the female civilian population remains a matter of speculation, and will probably never be known. As to the nature of women's involvement, it was at various levels, however, consistent with gender norms, women committed significantly fewer acts of overt violence than men. Owing to the specific nature of women's crimes, which often attract little moral responsibility relative to the crimes of men, combined with male 'chivalry', it has been argued that women may have been under-represented among those pursued by the law.

As discussed, women's motivations for participating in the genocide covered a wide spectrum. Some acted through fear for their own lives or for the lives of others, while others were influenced by propaganda which warned that all Tutsis were party to a planned invasion by the Rwandan Patriotic Front and fuelled hatred against Tutsi women. Other women again made devastating choices particular to their individual circumstances, which cannot be fitted neatly into either of these categories.

Women in leadership positions were apparently often particularly enthusiastic participants in the genocide and used their positions to influence the outcome of events. In the portrayal of these women, a tension clearly exists between commentators who argue that they are not 'real women', and the discourse of the women themselves, who insist on their femininity. This tension suggests that both positions are too simplistic and that a more sophisticated analysis is required. Women who participated in the genocide should not hide behind their sex to claim their innocence. Yet women who do not conform to gender expectations should also not be demonized and treated as aberrations. As this article has demonstrated, women's experiences are multifaceted, and it should not be shocking that women are capable of – and do – sometimes act in highly destructive ways.

This article has left many questions unanswered, leaving much scope for further work. Greater attention to women's participation in genocide will provide both a more complete picture of women's diverse experiences of mass violence and a more complete basis from which to explore women's potential contributions to peace.

From helplessness to agency: examining the plurality of women's experiences in armed conflict

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Abstract

Although women routinely display remarkable resilience and fortitude by adopting new roles and taking on new responsibilities when confronted by the ravages of war, they continue to be depicted by many humanitarian actors as being intrinsically weak and vulnerable – a depiction that results in the perceptible absence of women from decision-making bodies both during and in the wake of conflict. This article argues for the need to consider the plurality of women's experiences in war, including as female heads of households, as victims (and survivors) of sexual violence, as community leaders, and as armed combatants.

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Red Cross postcards from the First World War have become a collectors' item. Used both to inform the general population about the war effort and to boost public opinion, these popular tools were disseminated by Red Cross National Societies throughout Europe and the United States. The International Red Cross and Red Crescent Museum in Geneva, Switzerland has an exhibit of these

* The views expressed in this article reflect the authors' opinions and not necessarily those of the ICRC.

postcards, many of which feature pretty Red Cross nurses in pristine white uniforms tending to wounded soldiers, usually away from the battlefield. Some of the postcards even have explicit romantic overtones, whereby the nurse serves as yet another 'medal' for the brave soldier coming home from the battlefield. Others present the nurses more as mother figures, echoing the popular notion at the time of the nurturing sphere of the feminine.¹ The central message in many of these postcards was that women must not be sullied by the brutality of war – rather, they should tend to the male soldiers far away from the field of battle, be it as lovers or as mothers. The reality, of course, was that many of these nurses were working alongside their male counterparts on the frontlines in work that was 'dirty, dangerous, disgusting [and] enormously hard and stressful'.² In fact, efforts by the US army to keep female volunteer nurses well behind the fighting proved difficult as 'women kept ignoring orders to leave the troops they were looking after and bobbing up again after they had been sent to the rear'.³

Although it took until 1961 for the International Committee of the Red Cross (ICRC) to appoint its first woman delegate, today roughly 40% of all ICRC staff working in the field are women. Women are involved in every aspect of humanitarian assistance including caring for the wounded, visiting prisoners of war, and promoting international humanitarian law among armed groups, and most humanitarian organizations (including the ICRC) strive for greater gender balance among their field staff. However, while the capacity of female aid workers is no longer in question, the women who are the victims of the conflict are still viewed as being intrinsically weak. Time and again the language that is used to describe women living in a war zone is as 'vulnerable' and 'helpless' despite the remarkable capacity of these same women to adapt to and survive the violence, loss, and deprivation that goes hand in hand with war. This perception of women likewise disregards their experience of war as combatants, promoters of peace, or community leaders. While the very real protection and assistance needs of women living in armed conflict should not be overlooked, refusing to recognize their agency means that many of the most fundamental decisions regarding their security and access to material resources are taken by men.

In addition to the general protections afforded to women by international humanitarian law, the Geneva Conventions and their additional protocols also include special provisions that distil women's protection needs to the value attached to their 'honour' and to their role as mothers.⁴ However, the reality is that armed conflicts have a different impact on men, women, girls and boys and in recognition of the specific challenges facing women and the multiple roles assumed

1 Joshua Goldstein, *War and Gender*, Cambridge University Press, New York, 2001, p. 309.

2 Linda Grant De Pauw, *Battle Cries and Lullabies: Women in War from Prehistory to the Present*, University of Oklahoma Press, Norman, 1998, p. 218.

3 Dorothy Schneider and Carl J. Schneider, *Into the Breach: American Women Overseas in World War*, Viking, New York, 1991, p. 135.

4 For more on how women are valued in the Geneva Conventions according to their sexual and reproductive roles, see Judith Gardam and Michelle Jarvis, *Women, Armed Conflict, and International Law*, Kluwer Law International, The Hague, 2001.

by women in situations of armed conflict, the ICRC adopted a pledge at the 27th International Conference of the Red Cross and Red Crescent in 1999 to take action to improve the protection and assistance being afforded to women. The ICRC further pledged 'to put emphasis throughout its activities on the respect which must be accorded to women and girl children (...) actively disseminating the prohibition of all forms of sexual violence to parties to an armed conflict'.⁵ The pledge was a compliment to the ICRC's mandate to protect the lives and dignity of victims of armed conflict, providing them with assistance and acting as a promoter and guardian of international humanitarian law. This initiative further ushered in a complete review of ICRC activities with the aim of identifying the principal and most pressing needs of women in situations of armed conflict and analysing and improving the ICRC's response to these needs. The resulting study, 'Women Facing War', was published in 2001⁶ and provided the framework for the ICRC's Women and War division, presently charged with incorporating the needs, perspectives, and capacities of women and girls into all ICRC activities. Where necessary, this division provides expertise and support to delegations to create separate programmes to respond to specific requirements of women – whether these are social, psychosocial, medical, economic or protection-related.

This article will begin by examining how women have traditionally been portrayed in conflict as vulnerable and helpless victims of war. This section will consider the consequences of this depiction and argue for the need to move away from these essentialist representations to a more pluralistic understanding of the roles and experiences that women have during conflict, including that of combatants. The second section of this article will look more closely at the impact of armed conflict on the lives of women and provide examples of the ICRC's multidisciplinary response to addressing the specific needs, vulnerabilities, and capacities of women affected by armed conflict.

The weaker sex?

The biological differences between men and women are undeniable – one such difference is that generally speaking, women are physically weaker than men. Although this distinction has everything to do with levels of testosterone and muscle mass, and nothing to do with women's intellect, agency, or capacity, it is too often used as a justification for sidelining the contributions and abilities of women, especially in the context of armed conflict where force has traditionally been analogous to power. In fact, the changing nature of conflict has rendered physical strength less and less relevant to military might. As Joshua Goldstein has discussed: 'Modern warfare with its emphasis on the speed and mobility of

5 ICRC Pledge Statement, *To promote the respect of women in armed conflicts*, 3 November 1999. For the full statement, see <http://www.icrc.org/web/eng/siteeng0.nsf/html/57JQ38> (last visited 15 January 2010).

6 *Women facing war*, ICRC, 2001.

mechanized vehicles (tanks, fighter aircraft, etc.), differs from ancient hand-to-hand combat. Success and survival now depend much more on the ability to execute rapid sequences of small motions, and much less on upper-body strength'.⁷ Nevertheless and notwithstanding the fact that they are increasingly active participants in armed combat, women are routinely characterized as being intrinsically weak and helpless despite the plethora of evidence that suggests vulnerability is a relative term and a consequence of social, cultural, and political factors, not biology. Surprisingly, much of this rhetoric is propagated by the very humanitarian actors whose job it is to understand factors of vulnerability in order to provide targeted and relevant assistance to the victims of armed conflict which include men, women, boys and girls.

Deconstructing the myth of the helpless victim of war

Most humanitarian reports and documents depict women as harmless victims in need of protection, irrespective of the different roles that women can play in times of war. The consequence of this depiction is that women are marginalized from the decision-making bodies that deliver humanitarian assistance and may result in some of women's most basic needs being overlooked. As a practical example, it was not until the ICRC asked women living in camps directly about menstruation that it discovered that many women were restricted to their tent while menstruating because of a lack of adequate sanitary material. Today, culturally appropriate sanitary material is a staple item within ICRC hygiene kits. A lack of agency and control over their own life also creates a number of protection problems for women. For example, if women are not consulted about the location of water points or sanitary facilities, these structures may be constructed in an area that is not safe for women and exposes them to additional risks, such as sexual violence.

The current practice of neglecting to include women in humanitarian decision-making can be traced back to how women are routinely depicted in humanitarian reports, guidelines, and assessments. While women are almost always portrayed through the lens of victimhood, men are rarely mentioned as being victims of armed conflict. However, as the 2005 Human Security Report points out, '[w]ith the critically important exception of sexual violence, there is considerable evidence to suggest that men, not women, are more vulnerable to the major impacts of armed conflict'.⁸ In fact, the report goes on to suggest that not only are men more likely to die on the battlefield, but they are also more likely to be victims of 'collateral damage',⁹ presumably because men are more likely than women to occupy public spaces. Thus it is women who must pick up the pieces, support their families, raise their children on their own and keep their communities going despite the emotional, physical, and financial losses caused by the

7 J. Goldstein, above note 1, pp. 166–167.

8 *Human Security Report 2005: Assault on the vulnerable*, University of British Columbia, Canada, Part III, p. 102.

9 *Ibid.*

absence of their menfolk. Therefore, as the report rightly infers, 'women are far more resilient and less vulnerable to the impacts of armed conflict than is suggested in much of the current humanitarian literature',¹⁰ and given the active roles they often adopt, the perspective of women is invaluable not only in the midst of the conflict, but also with regard to conflict resolution and reconstruction in the wake of the hostilities. Despite these realities, however, women continue to be excluded from formal decision-making. Most notably, they are rarely given a seat at peace-negotiation tables, as evidenced by the fact that to date, peace talks have been overwhelmingly male-dominated based on the assumption that the male fighters who started the war are the only ones able to stop it, i.e. the same fighting men, but in peacemaking packaging.¹¹

The predominance of men among victims of mass atrocities is explained by Adam Jones as being linked to the drive of armed groups to destroy the 'battle-age' men of a specific community as a means of guarding against potential future adversaries. In the case of the former Yugoslavia, for example, '[t]he most serious atrocities committed against males primarily on gender grounds are the gender-selective executions aimed at eliminating physical resistance to Serbian occupation and "ethnic cleansing" – up to the point of eliminating future generations of fighters'.¹² The international community for its part has also contributed to this rhetoric, focusing much of its attention on 'harmless' and 'powerless' women and children who need to be 'saved'. For example, one of the ways in which the advocacy group 'Save Darfur' has advocated for humanitarian and/or military intervention in Darfur has been through the prominent display of images and stories of the suffering of women with much less emphasis on male victims.¹³ Indeed, as Charli Carpenter highlights, 'If women can be assumed to be civilians, and are innocent and vulnerable, it is they in particular (along with children, the elderly and the disabled) who must be protected'.¹⁴ Thus conventional thinking seems to imply that the power of men, as the protector of women and children, should not be tarnished by pointing out that they too can be victims of war.

While essentialist paradigms often depict women as helpless and weak in the midst of a conflict, women themselves cope with war by adopting new roles and taking on new responsibilities. This may mean taking direct part in the hostilities as a combatant or leaving the private sphere of the home to find employment to take care of her children. In fact, 'women's wartime experiences, so frequently portrayed

10 *Ibid.*

11 For more on the exclusion of women from official negotiation processes, see *Strategies for Policymakers*, Institute for Inclusive Security, No. 2, October 2009, available at: http://www.huntalternatives.org/download/1825_bringing_women_into_peace_negotiations_final_pdf.pdf (last visited 29 October 2009).

12 Adam Jones, 'Gender and ethnic conflict in ex-Yugoslavia,' in *Gender Inclusive: Essays on violence, men and feminist international relations*, Adam Jones (ed), Routledge, London and New York, 2009, p. 67.

13 For examples from their campaign, see www.savedarfur.org. For more on the humanitarian implications of this campaign, see Medina Haeri, 'Saving Darfur: Does Advocacy Help or Hinder Conflict Resolution?', in *The Fletcher Journal of Human Security: PRAXIS*, Vol. 23, May 2008.

14 Charli Carpenter, *Innocent Women and Children, Gender, Norms and the Protection of Civilians*, Asgate, Burlington, 2006, p. 31.

in terms of victimisation, offer the potential for social transformation',¹⁵ by challenging the traditional sex-based division of labour. Here again, however, the absence of women from decision-making bodies means that their wartime experiences are rarely credited and their social gains rarely endure into the post-conflict phase. Nevertheless, women's war-time activities do make clear that women living in conflict situations are not vulnerable *per se* as a matter of their biology. Rather, it is the pre-existing peacetime social inequalities, which are further reinforced by conflict, that result in many of women's wartime vulnerabilities.

Yet another method of depriving women of a sense of agency is by continually associating them with children – the assumption being that women and children are equally powerless and in need of protection. A search of several humanitarian-related documents shows a pattern in the use of language that persistently equates women with children and the elderly, all of whom are described as being necessarily vulnerable. One example from the 2008 ICRC Annual report posits: 'As the civilian population becomes increasingly caught up in armed conflicts, specific problems may engender or exacerbate vulnerability among women, children, the elderly or minorities'.¹⁶ Likewise, the 2009–2010 plan of the International Federation of the Red Cross and Red Crescent Societies (IFRC), highlights that their 'humanitarian values programmes [will target] war affected children and their caretakers, youth in school clubs, [and] vulnerable women and children'.¹⁷ Another document, this time from UNICEF, explains that, 'Human rights violations are widespread and affect every segment of the population: women and children, ethnic, religious, political and regional groups, as well as educated Afghans'.¹⁸ This is only a sample, but it reveals a thread of victimization that closely associates women with children, who, along with the elderly and the disabled are designated as being *de facto* 'vulnerable'. Yet another example drawn from the Forced Migration Online *Guide to Managing Returns* states: 'The return process can heighten the vulnerability of groups already at risk of exploitation or marginalisation, such as women, children, the elderly and the disabled'.¹⁹ Interestingly enough, this example uses sex as a separate sociological variable, similar to age, ethnicity and disability. Thus whereas children are made up of boys and girls and the elderly and disabled also include both men and women, women are designated as a stand-alone category to emphasize their vulnerability in accordance with the masculine norm of reference.

15 Sheila Meintjes, Anu Pillay and Meredith Turshen, 'There is No Aftermath for Women', in *The Aftermath, Women in Post-Conflict Transformation*, Sheila Meintjes, Anu Pillay and Meredith Turshen (eds), Zed Books, London and New York, 2001, p. 7.

16 *Annual Report 2008*, ICRC, Geneva, 2009, p. 11.

17 International Federation of Red Cross and Red Crescent Societies, *Liberia: Plan 2009–2010*, available at: <http://www.ifrc.org/docs/appeals/annual09/MAALR00109p.pdf> (last visited 28 January 2010).

18 UNICEF, *Afghanistan: UNICEF Humanitarian Appeal for Children and Women, Jan–Dec 2000*, available at: http://www.asylumlaw.org/docs/afghanistan/AFG_1/Sec%20II/UNICEF.pdf (last visited 27 October 2009).

19 Forced Migration Online, *FMO Research Guide – Managing Return*, available at: <http://www.forcedmigration.org/guides/fmo042/fmo042-3.htm> (last visited 27 October 2009).

As can be seen from the examples provided above, language is key to understanding the perpetuation of stereotypes in the way we approach humanitarian assistance today. Charli Carpenter has argued that the continual linguistic association of women with children serves to highlight their reproductive functions to the exclusion of their other non-reproductive related needs: 'Women have traditionally been associated with child-rearing, and the special protections that have accrued to women under international humanitarian law have historically addressed only their specific needs as mothers rather than the vulnerabilities they face as a result of gender hierarchies prevalent in society before and during armed conflict'.²⁰

In this way, essentialist myths that present women as the weaker sex continue to situate women in a subordinate position to men, thus reinforcing the dualism between powerless women and powerful men, i.e. a feminine peace and a masculine war. This conception of women as passive beneficiaries is disempowering as it can result in the exclusion of women from humanitarian efforts. This can mean that women are not consulted about their needs nor included in project planning, which negatively impacts the quality, efficiency, and efficacy of humanitarian assistance. For example, as women are generally responsible for their families' food needs, their input is critical when determining the type and quantity of food to be distributed, as well as determining where to put distribution points so that they are safely and conveniently accessible to women. Not doing so could result in significant gaps in aid delivery, especially among female heads of households who may not have a male family member to speak for them or to collect food rations for their families. In short, the language used to define women determines how they are perceived in the wider context of humanitarian assistance. Thus in order to ensure that women's agency is safeguarded, humanitarian actors need to move away from stale assumptions of vulnerability and recognize the plurality of women's roles during a conflict, including as working mothers, community leaders, peace activists, and combatants.

Taking up arms

One of the most overt ways that women have dispelled the notion that they are intrinsically weak or vulnerable *per se* is through their active participation in hostilities. One of the first countries to contest this notion was the Soviet Union, who mobilized hundreds of thousands of women for combat duty as a result of a manpower shortage in World War II. Although accurate tallies are difficult to come by, official figures state that the Soviet Union recruited about 800,000 women into the Red Army and another 200,000 in the irregular forces. Many of these women (about 250,000) received military training and a reported 500,000 served on the front lines, usually in medical services and anti-aircraft units.²¹

20 C. Carpenter, above note 14, p. 99.

21 J. Goldstein, above note 1, pp. 64–65.

Although the above figures may well have been exaggerated, 'the Soviet case underscores the lesson ... that women can be organized into effective large-scale military units'.²²

Presently, women still make up only a small percentage of military personnel, although their numbers are growing. In the United States, for example, women account for around 15% of those serving in active duty.²³ In Iraq, where more American women have fought and died than in all wars since World War II, one in ten troops is a woman.²⁴ In fact, recent reports have shown that despite the official prohibition against American female soldiers joining military combat branches, the situation on the ground in Iraq and Afghanistan has been that 'women have done nearly as much in battle as their male counterparts: patrolled streets with machine guns, served as gunners on vehicles, disposed of explosives, and driven trucks down bomb-ridden roads'.²⁵ This has led many to re-evaluate the official position of the US military *vis a vis* women, and to wonder whether the US should follow the lead of over a dozen countries who allow women in some or all ground combat occupations.²⁶

Women have been particularly active in non-State armed groups who 'often provide a greater degree of ideological and practical space for women to participate as combatants than do institutionalized state or pro-state nationalisms'.²⁷ In Nepal, for example, women reportedly make up about one-third of the Maoist fighting forces.²⁸ Likewise, it has been widely noted that women have been pivotally involved as combatants in the Tamil armed groups, particularly the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka, where estimates put their numbers from around 15% to one-third of the organization's core combat strength.²⁹ Women were also an important contingent of the Sudan People's Liberation Army (SPLA) during the first and second Sudanese civil wars³⁰ and estimates put women at between 10 and 30% of the fighting forces in the Sierra Leone conflict.³¹ Although it is true that women associated with non-State armed

22 *Ibid.*, p. 70.

23 *Statistics on Women in the Military*, Women in Military Service For America Memorial Foundation, Inc., available at: <http://www.womensmemorial.org/PDFs/StatsonWIM.pdf> (last visited 1 October 2009).

24 Helen Benedict, 'The Plight of Women Soldiers,' in *The Nation*, 5 May 2009, available at: <http://www.thenation.com/doc/20090518/benedict> (last visited 30 September 2009).

25 Lizette Alvarez, 'Women at Arms: G.I. Jane Breaks the Combat Barrier,' in *The New York Times*, 16 August 2009, available at: http://www.nytimes.com/2009/08/16/us/16women.html?_r=1 (last visited 30 September 2009).

26 *Ibid.*

27 Miranda Alison, 'Women as Agents of Political Violence: Gendering Security,' in *Security Dialogue*, Vol. 35, No. 4, December 2004, p. 448.

28 James Fontanella-Khan, 'Women fighters in Nepal,' in *Financial Times*, 26 September 2009, available at: http://www.ft.com/cms/s/2/57c05a1a-a719-11de-bd14-00144feabdc0,dwp_uuid=a712eb94-dc2b-11da-890d-0000779e2340.html (last visited 30 October 2009).

29 M. Alison, above note 27, p. 450.

30 'No standing, few prospects: how peace is failing South Sudanese female combatants and WAAF', in *Small Army Survey Sudan Issue Brief*, No. 13, September 2008, p. 1.

31 Dyan Mazurana and Kristopher Carlson, *From Combat to Community: women and girls of Sierra Leone*, Women Waging Peace Policy Commission, Washington DC, 2004, p. 6.

groups often have non-combat roles such as food producers, porters, and health care providers, they often perform these tasks in addition to front-line combat functions. For example, one study on women associated with armed groups in Sierra Leone reported that almost half (44%) of the women interviewed reported having received basic military and weapons training.³²

A prominent example of women taking an active role in the perpetuation of atrocities is the participation of women in the Rwandan genocide. Far from being passive victims, women from all walks of life including peasants and members of the educated class such as teachers, nurses, journalists, and even nuns played a key role in sustaining the conflict and demonstrated their potential for inflicting extraordinary cruelty.³³ Women participated directly in the killings and some even organized and led attacks in which hundreds of people lost their lives.³⁴ Scores of other women identified the people to be killed, wielding machetes and nail studded clubs as they cheered on the genocide by gathering around churches, hospitals, and other places of refuge – in fact, there is no evidence that women were any more likely to provide refuge to those being hunted than men.³⁵ Of course, it bears mentioning that men (particularly those who were young and poor) were the main targets of systematic government mobilization efforts and as such, they were the main initiators and implementers of the genocide.³⁶ However, the number of women who were active in the killings and who have since been convicted of participating in the atrocities clearly demonstrates that women are neither intrinsically innocent nor helpless and indeed, ‘that when women are provided with positive and negative incentives similar to those of men, their degree of participation in genocide, and the violence and cruelty they exhibit, will run closely parallel to their male counterparts’.³⁷

Even as they dispel notions of female helplessness by taking up arms, female combatants confront their own set of challenges, including the risk of sexual abuse or harassment. Additionally, female combatants may be overlooked in disarmament, demobilization, and reintegration (DDR) processes and may struggle with issues of stigma or rejection from their families or communities when returning from the battlefield. It is likewise important to recognize that women who take part in hostilities no longer enjoy the protection against attacks that international humanitarian law affords to civilians. They must therefore comply with the laws of war by respecting and refraining from attacking those who are not, or are no longer, directly participating in hostilities. Each conflict needs to be

32 *Ibid.*, p. 12.

33 *Rwanda – Not so Innocent: When Women Become Killers*, Africa Rights, London, 1995, pp. 1–3.

34 *Ibid.*, p. 15.

35 *Ibid.*, p. 1.

36 For more on the gendered aspects of the genocide particularly with regard to male and female perpetrators and victims, see Adam Jones, ‘Gender and genocide in Rwanda’, in *Gender Inclusive: essays on violence, men and feminist international relations*, Adam Jones (ed.), Routledge, London and New York, 2009, pp. 196–229.

37 *Ibid.*, p. 221.

examined individually in order to understand the various roles adopted by men and women, as well as the impact of the conflict on fighters and civilians alike.

Coping with the ravages of war

'My whole life changed when my husband was killed during the events of 2004. He was returning home after work, when fighting broke out between armed groups and coalition forces. A stray bullet killed him instantly (...) Suddenly, everything became my responsibility. I felt lost. I had no support, and I did not know how to face the outside world alone.'

*Um Mohammed, 41, Falluja, Iraq*³⁸

Um's story is emblematic of millions of women around the world whose lives have been upended by war and who find themselves alone and with the burden of ensuring the day-to-day survival of their families. Many of these women face considerable challenges and are made vulnerable by the circumstances in which they find themselves, notably their proximity to the fighting. Modern warfare has increasingly moved away from clearly delineated battlefields as more conflicts are now being fought internally between rival ethnic, religious, or political groups over the control of resources, territories or civilian populations.³⁹ Whether the violence is internal or cross-border, more and more civilians are too often placed at the epicentre of conflict, directly targeted or endangered by their proximity to the fighting. Seeing that women and girls comprise a significant proportion of the civilians living in war-torn areas, they are therefore faced with significant risks and threats to their physical, psychological, and social well-being. At the same time, women show remarkable strength in coping with the challenges of living in war and often adopt new roles and responsibilities to care for their families and take part in community life.

Far from home

For millions of people all over the world,⁴⁰ the brutality of war has meant being uprooted from their homes and livelihoods, fleeing the violence in their communities that threatens the well-being of their families. Displacement may occur in response to an actual attack or specific event, but it may also take place in anticipation or fear of an attack or possible abuse. Women may be forced to flee with their children because their husbands are fighting in the conflict, have been wounded or detained, or have gone into hiding to avoid being conscripted by the

38 *Women and War Iraq Newsletter*, ICRC, March 2009, p. 4.

39 For more on the advent of so-called new wars, see Mary Kaldor, *New and Old Wars*, Polity Press, Cambridge, 2006.

40 UNHCR estimates that there were 42 million forcibly displaced people worldwide at the end of 2008. This includes 15.2 million refugees, 827,000 asylum-seekers (pending cases) and 26 million internally displaced persons (IDPs). 2008 *Global Trends: Refugees, Asylum-Seekers, Returnees, Internally Displaced and Stateless Persons*, UNHCR, 16 June 2009.

armed groups. Likewise, the panic and chaos surrounding displacement may result in the separation of families, which also means that women have to manage alone and assume extra responsibilities. In cultures where women are not permitted to travel unless accompanied by a male family member, this separation can restrict women's ability to flee from the hostilities. Alternatively, some women may lack the necessary personal documentation to cross checkpoints or international borders, or even the funds required to pay for transport. In short, the needs and specific vulnerabilities of displaced women are highly dependent on local cultural and social factors, as well as their different patterns of displacement.

Populations forced to uproot themselves often congregate in camps, which can present a new set of risks and burdens for women. The absence of their menfolk may require women to shoulder all the daily responsibilities for ensuring their own and their families' survival. This is particularly onerous for female heads of household, widows, elderly women, and pregnant women. Whereas these women might have relied on familial and kinship networks for food and resource sharing, their separation from their families and communities deprives them of this support. Consequently, displaced women often have to travel long distances in search of necessities such as water, food, and firewood – an activity that frequently leaves them at risk of exposure to hostilities, mines, and sexual violence. In Gereida camp in South Darfur, for example, women comprise a large number of the victims being attacked on the outskirts of town because they are the ones who most often leave the relative safety of the camp to collect firewood and grass, in order to meet the material and economic needs of their families. The risk factors in this area are such that men are more likely to be killed in an attack, whereas women face the risk of sexual violence. In response to these risk factors, the ICRC introduced fuel-efficient stoves as a protection mechanism to minimize the time that women are obliged to spend outside of the camp.

Access to information and the right to meaningfully influence decisions made on their behalf are critical elements in protecting the dignity of those affected by displacement. However, owing to cultural practices, established administrative procedures and other practices which tend to grant such rights somewhat reflexively to males in a society, there are many factors that make it exceptionally difficult for women to claim such entitlements when struggling with the circumstances of displacement. Experience has shown time and again that when women are asked for input directly, the perspective and priorities they give differ from those put forth by the men who purport to speak on their behalf. Indeed, this is the case in Casamance, Senegal, where the role women are accorded in the local culture permits them to attend and speak at community meetings. At these meetings, the ICRC ensures that women have an opportunity to make their voices heard, and has found that their insight serves to strengthen our ability to respond to the needs of the whole population.⁴¹

41 Martin Gauthier, *Women and War: A case study on the integrated approach used in Casamance*, ICRC, July 2009, p. 6.

Displacement can also compromise women's ability to access quality health care. For example, even if women normally have access to good health care services, they may be forced to flee, depriving them of access to contraception and hence leading to a higher incidence of pregnancy and a greater need for reproductive health services. Refugee and IDP camps may also be a source of health problems for women. A lack of privacy may prevent women from making use of available sanitary facilities, which can, as has commonly been the case in Pakistan, result in serious problems such as bladder infections or urinary incontinence. Sanitary facilities with insufficient safety provisions can also increase the risk of sexual violence.

Even where the population is not forced to flee, war can overwhelm health care systems, leading to severe shortages of medical supplies and staff. Health infrastructure may be destroyed and health personnel may flee the violence even as others in the community stay put. Thus safe access to adequate health care may pose a significant hardship for many women living in a conflict zone as it creates a double problem – just as they may have a greater need for health care, they often have to travel greater distances and spend more money to receive an adequate level of care. Pregnant and nursing women are at particular risk during conflict because they often face life-threatening emergencies that require immediate medical assistance. In fact, among the ten countries with the highest risk of maternal death, most are at war today or are in a post-conflict situation, including Afghanistan, Sierra Leone, Chad, Angola, Liberia, Somalia and the Democratic Republic of the Congo.⁴²

Notwithstanding the above challenges, it is important to recognize that women play a vital role in maintaining the health and welfare of their family and community. Their role in preventing and managing sickness and disease becomes paramount when access to health care is limited. For example, women may assist with deliveries in their communities when trained medical personnel are too far away to attend the birth. In fact, traditional birth attendants may represent the only access to reproductive health care for many women and their newborn children. Thus in some contexts such as Liberia and Senegal where skilled health workers and midwives are in short supply, the ICRC has provided training to traditional birth attendants to improve their skills. This training better prepares them to assist with normal deliveries, and importantly, trains them to recognize when to send women with complications to the nearest health centre.

The long wait for news

International humanitarian law recognizes the importance of families being able to know the fate of a missing relative.⁴³ Since the vast majority of those who disappear

42 Cassie Landers, *Maternal and Newborn Health: A Global Challenge*, US Fund for UNICEF Youth Report 2009, p. 9, available at: http://youth.unicefusa.org/assets/pdf/0027-unicef-youthreport09-8_4.pdf (last visited 24 September 2009).

43 See Article 32, Additional Protocol I.

or are killed are men, the burden and pain of ascertaining their fate most often falls to their female relatives. Waiting for news of their loved one day after day can have serious emotional consequences for the wives, mothers, and daughters of the missing. Not knowing if they are alive or dead means that families are in limbo, unable to mourn the death of their loved one and unable to give up the often fruitless search that may take years and deplete entire life savings. Although states have an obligation to take the necessary measures to establish the fate of missing persons and inform their families, all too often the parties to an armed conflict do not do enough, for instance failing to exhume gravesites to identify mortal remains. An example of this long-term anguish is the Iran–Iraq war, where twenty years after the end of the conflict, tens of thousands of Iraqi and Iranian members of the armed forces remain unaccounted for. Thus countless families in both countries continue to search for any information at all about what happened to their relatives – doing the rounds of hospitals, police stations, morgues, institutes of forensic medicine, and humanitarian organizations. With the prevailing insecurity in Iraq, these efforts often entail considerable risks.⁴⁴

In addition to the considerable emotional strain of a missing relative, there are also serious economic and legal consequences for the women left behind, particularly in contexts where women have few educational or professional opportunities owing to their low social status. In Nepal, for example, 90% of the missing are males, 81% of whom are married, and 71% of whom went missing between 18 and 35 years of age. Thus many families have been deprived of their primary breadwinner, and women, who often have young children to support, face numerous social and economic problems.⁴⁵ ‘As women have no opportunities to work and earn money, they are unable to make an economic contribution to the household. As a result, they are perceived as bringing in nothing to the family, but simply being another mouth to feed’.⁴⁶ This perception further adds to the stigma that many women face both within their family and their community. In response to these needs, the ICRC, in partnership with the Nepal Red Crescent Society, started an initiative to provide female-headed households an in-kind grant to serve as start-up capital. These grants could be used to fund livestock, small-scale farming, trade or vocational training.⁴⁷

The legal status of women with missing male relatives (particularly husbands) is often unclear as they are no longer considered wives, but are not yet officially classified as widows. This may affect their ability to inherit, seek custody of their children, access property, or even remarry, especially as some countries

44 *Twenty years after the end of the Iran–Iraq war, tens of thousands of combatants still unaccounted for*, ICRC, 16 October 2008, available at: <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/iran-iraq-missing-161008> (last visited 26 September 2009).

45 Meen Bhawan and Naya Baneshwor, *Families of missing persons in Nepal: a study of their needs*, ICRC, April 2009, p. 12.

46 *Ibid.*, p. 24.

47 Moheindu Chemjong and Govinda Dahal, ‘Deepa, Pushpa, Sita and Maiy’, in *The Nepali Times*, 7 March 2008, available at: <http://www.nepalitimes.com.np/issue/390/Womenday/14553> (last visited 20 October 2009).

allow many years to pass before officially declaring a person dead or absent. Furthermore, not having the official status of a widow may prevent women from accessing government assistance programmes. This is the case in Iraq, where access to social services for assistance in female-headed households is limited to widows whose husband's death was linked to a situation of violence. Other forms of assistance are likewise unattainable for women with missing husbands because of complicated administrative processes. Numerous documents are required which may not be readily available to women who have often lost their homes and their husbands.

Despite these numerous obstacles, however, women have proven incredibly resourceful at exploiting available resources and finding food and shelter for their children and dependents. They have organized themselves in associations and have continued to challenge authorities to provide them with information. One example of this determination is the Mothers of Plaza de Mayo, who spent many years organizing marches to demand answers from the Argentine government as to the fate of their missing children.⁴⁸

A violation unlike any other

'It has probably become more dangerous to be a woman than a soldier in an armed conflict.'

*Major General Patrick Cammaert, former commander of UN peacekeeping forces in the eastern Congo*⁴⁹

Speaking of the high prevalence of sexual violence against women and girls in the Democratic Republic of the Congo (DRC), the above statement is provocative, yet telling of the fact that sexual violence against women and girls is among the most traumatic and most common abuses of war. Statistics are notoriously difficult to amass and rarely reflective of the reality on the ground – given the stigma associated with being a victim of sexual violence, women are generally reluctant to come forward and admit to being a victim of rape. However, time and again, history shows the gruesome correlation between armed conflict and rape, forced prostitution, sexual slavery, and other abuses against women and girls (and to a lesser extent, men and boys).⁵⁰ In fact, sexual violence has long been such a common feature of warfare that it was generally considered an inevitable consequence of war,⁵¹ as women and their bodies were often equated with the spoils of war.

It was not until the atrocities committed during the conflicts in the former Yugoslavia and Rwanda came to light that sexual violence gained international

48 For more information on this movement, see Marguerite Guzman Bouvard, 'Revolutionizing Motherhood: The Mothers of Plaza de Mayo', in *Scholarly Resources*, Oxford, 1994.

49 *Rape: Weapon of War*, OHCHR News Item, June 2008, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/RapeWeaponWar.aspx> (last visited 22 October 2009).

50 For a historical analysis of sexual violence in armed conflict, see Susan Brownmiller, *Against Our Will: Men, Women and Rape*, Fawcett Books, New York, 1975.

51 *Ibid.*, p. 31.

recognition as a war crime and its inevitability was increasingly called into question. This was due in large part to the sheer scale of sexual violence during those two conflicts – further proof of the changing nature of warfare that puts women and girls at increasing risk of bodily and psychological harm. In Bosnia and Herzegovina, for example, estimates of the total number of women subjected to sexual violence are between 20,000 and 50,000.⁵² In Rwanda, the lack of accurate data is even more jarring, where the range is from 15,700 to 500,000,⁵³ with most experts estimating the number to be closer to 250,000.⁵⁴ While the figures are no doubt staggering, it was also the ways in which these atrocities were carried out that catapulted these issues to the forefront of humanitarian debate. For example, Bosnian women and girls were routinely assaulted in the presence of family members or in public, as part of a systematic strategy of ethnic cleansing. Women were forcibly impregnated, i.e. raped until they became pregnant, and held in so-called ‘rape camps’ until the pregnancy was too advanced to be terminated.⁵⁵ The Rwanda genocide in 1994 provided a horrific example of sexual violence forming an integral part of an ethnic cleansing strategy, whereby Tutsi women were primarily targeted because of both their gender and their ethnicity.⁵⁶ Forms of sexual violence included rape, sexual slavery, forced incest, deliberate HIV transmission, forced impregnation, and genital mutilation.⁵⁷ These atrocities were so widespread in fact that René Degni-Ségui, the Special Rapporteur on the situation of human rights in Rwanda, has stated that: ‘[r]ape was systemic and was used as a “weapon” by the perpetrators of the massacres ... [and a]ccording to consistent and reliable testimony, ... rape was the rule and its absence was the exception’.⁵⁸

The evolution of international humanitarian law regarding sexual violence in armed conflict has closely mirrored prevailing social attitudes over the last six decades. In fact, sexual violence is expressly referred to only in a limited manner in the 1949 Geneva Conventions. Article 147 of the Fourth Geneva Convention refers to ‘wilfully causing great suffering or serious injury to body or health’, which would

52 *Women in Transition, The MONEE Project CEE/CIS/Baltics Regional Monitoring Report No 6*, UNICEF International Child Development Centre, Florence, 1999, p. 86.

53 Jeanne Ward, ‘Sexual violence against women and girls in conflict’, in *The Shame of War: sexual violence against women and girls in conflict*, OCHA/Integrated Regional Information Networks (IRIN), 2007, p. 12.

54 Pamela Shipman and Lauren Rumble, ‘Neglected challenges: the humanitarian responsibility to protect’, in *The Shame of War: sexual violence against women and girls in conflict*, OCHA/Integrated Regional Information Networks (IRIN), 2007, p. 115.

55 Megan Bastick, Karin Grimm, Rahel Kunz, *Sexual Violence in Armed Conflict: A Global Overview and Implications for the Security Sector*, Geneva Centre for the Democratic Control of Armed Forces, Geneva, 2007, p. 117.

56 Binaifer Nowrojee, ‘Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath’, in *Human Rights Watch*, New York, 1996, p. 13.

57 ‘Marked for Death’, *Rape Survivors Living with HIV/AIDS in Rwanda*, Amnesty International, 5 April 2004, p. 2, available at: <http://www.amnesty.org/en/library/info/AFR47/007/2004> (last visited 23 October 2009).

58 United Nations, Report on the Situation of Human Rights in Rwanda submitted by René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/1 of 25 May 1994, (E/CN.4/1996/68), 29 January 1996, para. 16.

certainly include acts of rape, even though it is not directly mentioned. Rape is only directly mentioned in Article 27 of the Fourth Geneva Convention which states that 'women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault'. Although it is important that this article emphasizes the obligation of parties to a conflict to prevent sexual violence against women, the reference to an attack upon a woman's 'honour' reinforces the notion of rape as a social stigma rather than an attack against a woman's physical and psychological well-being. This association reflects the point of view of the men who formulated the Geneva Conventions sixty years ago, for whom a woman's virtue was of paramount concern. This perception of women endures in numerous cultures around the world and results in the stigmatization and rejection of many victims of sexual violence.⁵⁹

More recent treaties starting with the 1977 Additional Protocols deliberately drop the connection between sexual violence and honour, i.e. Articles 75 and 76 of the Additional Protocol I prohibit 'outrages against personal dignity, in particular ... any form of indecent assault', and establish that 'women should be the subject of special respect and shall be protected in particular against rape, enforced prostitution and any other form of indecent assault'. Of particular note are the judgements of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), which have confirmed that sexual violence is covered by the rules relating to torture and inhuman and degrading treatment.⁶⁰ The statutes of the ICTY and the ICTR, as well as the Rome Statute of the International Criminal Court (ICC) also consider that rape may constitute a crime against humanity.⁶¹ In 2000, the United Nations Security Council also highlighted the issue of sexual violence in armed conflict as a threat against international peace and security when it passed Resolution 1325 calling for all parties to protect women and girls from sexual violence.⁶² The Council revisited the issue in 2008 with

59 For more on a discussion of honour within International Humanitarian Law, see *ICRC frame of reference on sexual violence in armed conflict and other situations of violence*, ICRC, March 2009, p. 12.

60 In *Prosecutor v. Zejnil Delalic et al.*, the ICTY stated: 'There can be no doubt that rape and other forms of sexual assault are expressly prohibited under international humanitarian law'. It considered 'rape to constitute a physical invasion of a sexual nature, committed on a person under circumstances that are coercive'. It therefore found that whenever rape and other forms of sexual violence meet the criteria for torture, they constitute torture, in the same manner as any other acts that meet these criteria (ICTY, *Prosecutor v. Zejnil Delalic et al.*, Case No. IT-96-21-T, judgement of 16 November 1998, paras 476, 478 and 496). In *Prosecutor v. Furundzija*, the ICTY Appeal Chamber stated: 'With regard to the issue of the reaffirmation by the International Tribunal of rape as a war crime, the Appeals Chamber finds that the international community has long recognized rape as a war crime. In the *Celebici Judgement*, one of the accused was convicted of torture by means of rape, as a violation of the laws or customs of war. This recognition by the international community of rape as a war crime is also reflected in the Rome Statute where it is designated as a war crime' (ICTY, *Prosecutor v. Anto Furundzija* (appeal), Case No. IT-95-17/1-A, judgement of 21 July 2000, para. 210).

61 ICTY Statute, Art. 5.g; ICTR Statute, Art. 3.g; Rome Statute, Art. 7.1.g.

62 Security Council Resolution 1325 was passed unanimously on 31 October 2000 and was the first resolution ever passed by the Security Council that specifically addresses the impact of war on women, and highlights women's contributions to conflict resolution and sustainable peace. With regard to sexual violence, it specifically called 'on all parties to armed conflict to take special measures to protect women

SC1820⁶³ and again in 2009 with SC 1888 and 1889,⁶⁴ which expressly condemn the continuation of sexual violence as a tactic of war and call for its cessation by all parties to a conflict. In short, there exists a robust and comprehensive body of law that makes clear the express and absolute prohibition of sexual violence in armed conflict. The challenge therefore lies in ensuring the implementation of, and respect for, these rules.

Notwithstanding its explicit prohibition in international humanitarian law, sexual violence continues to be an ugly component of many conflicts all over the world. As seen from the previous examples, sexual violence may be used by armed forces to punish, shame, intimidate, or simply to destroy the fabric of a community. Often, the women themselves are not even the main targets of the attack. Rather, arms bearers violate women as a means of demoralizing the men who could not protect 'their' women. This is particularly the case when a family 'honour' is bound up in the 'virtue' of women; thus rape can be used as a deliberate tactic to destabilize whole families and communities. When sexual violence is thus used, it is often referred to as a method of warfare. Preventing sexual violence from taking place is an ongoing challenge and the ICRC takes every opportunity to inform the authorities and armed groups of their obligations under international humanitarian law. When violations are committed, including crimes of sexual violence, the ICRC reports these to the authorities concerned.

Whether they are assaulted as a deliberate military strategy or individually targeted, the consequences for victims of sexual violence are at once severe and long-lasting, sometimes enduring for an entire lifetime. Rape can have painful physical consequences on a woman's health, ranging from vaginal tearing, infertility or incontinence to sexually transmitted infections, including HIV/AIDS.

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.' For more, see *The Women's International League for Peace and Freedom*, <http://www.peacewomen.org/un/sc/1325.html> (last visited 28 January 2010).

63 On 19 June 2008, the Security Council unanimously adopted Resolution 1820, which noted that 'rape and other forms of sexual violence can constitute war crimes, crimes against humanity or a constitutive act with respect to genocide'. The resolution also affirmed the council's intention when establishing and renewing 'state specific' sanction regimes to consider imposing 'targeted and graduated' measures against warring factions who committed rape and other forms of violence against women and girls. For more on this resolution, see *Stop Rape Now: UN Action Against Sexual Violence in Armed Conflict*, <http://www.stoprapenow.org/pdf/Security%20Council%20Resolution%201820.pdf> (last visited 28 January 2010).

64 As a follow-up to Resolution 1820, on 30 September 2009, the Security Council once again unanimously adopted resolution 1888, calling for the appointment of a Special Representative to the Secretary-General to provide coherent and strategic leadership to address sexual violence in armed conflict. To commemorate the anniversary of Resolution 1325, the Security Council adopted Resolution 1889, urging Member States, United Nations bodies, donors and civil society to ensure that women's protection and empowerment was taken into account during post-conflict needs assessment and planning, and factored into subsequent funding and programming. It also called on all those involved in the planning for disarmament, demobilization and integration programmes, in particular, to take into account the needs of women and girls associated with armed groups, as well as the needs of their children. For more on these resolutions, see The United Nations Non-Governmental Liaison Service (UN-NGLS), <http://www.un-ngls.org/spip.php?article1633> (last visited 28 January 2010).

Unwanted pregnancy is yet another common occurrence, whereby the child serves as a constant reminder of the trauma endured by her mother. While women have been known to reject children born of rape, many women look beyond the horror of the conception and accept and love the child as their own. The children too suffer from severe stigmatization – in Bosnia and Rwanda, for example, children born of rape were often labelled as ‘children of hate’.⁶⁵ As agonizing as the physical injuries may be, the psychological trauma of sexual violence can take much longer to heal. Victims are often confronted with feelings of shame, fear, and humiliation. They may find it difficult to return to their previous lives and if the woman in question is the breadwinner of her family, the well-being of the entire family may be jeopardized. Rape is rarely addressed openly by victims who fear being stigmatized or rejected by their husbands, families, and communities. Thus many victims of sexual violence never receive any assistance to help with their recovery – in fact, it is extremely difficult for humanitarian workers to identify or access victims for fear of singling them out and adding to the burdens by labelling them as victims of rape. The stigma of rape is also what makes rape in conflict settings so difficult to quantify.

In the North and South Kivu region of the Democratic Republic of the Congo, alarming numbers of women and girls have been subjected to sexual violence, particularly rape. Successive waves of fighting, the resultant displacement, and the prevailing climate of impunity have resulted in massive human rights violations perpetrated by weapons bearers and civilians alike. As in many other contexts, victims of sexual violence in the DRC are reluctant to come forward for fear of being blamed and ostracized by their families and communities. The ICRC programme of support for victims of sexual violence considers the various levels of the impact and causality of sexual violence and as such, covers medical, psychological, social and economic issues. The most innovative of its responses are the establishment of ICRC-supported counselling centres called ‘Maisons d’Ecoute’ (listening houses). These serve as places where victims of sexual violence or other traumatic situations can meet with a local psychosocial assistant trained by the ICRC. These counselling centres provide victims with an opportunity to talk about their trauma, define their needs, and find possible ways of improving their situation. They also offer referral services for possible medical or legal needs. Importantly, the counsellors may also mediate between the victim and her family to reduce the risk of stigma or rejection. In addition to serving as an important source of support, the counselling centres also highlight women’s resilience and ability to cope with the worst kind of violation. These individual services are supplemented by community-wide sensitization efforts that emphasize the need to support rather than reject victims of sexual violence.

65 For more on the human rights and specific vulnerabilities of children born of wartime rape, see Charli Carpenter (ed.), *Born of War: Protecting Children of Sexual Violence Survivors in Conflict Zones*, Kumarian Press, Bloomfield, 2007.

Conclusion

The central premise of this article has been to move away from stereotypical depictions of women in war towards a better understanding of the plurality of roles, responsibilities and challenges that shape the way women experience armed conflict. For example, as discussed earlier, women in the Rwandan genocide both perpetrated violence on a par with their male counterparts and experienced unimaginable suffering in the form of sexual violence and abuse. Women were not helpless or violent *per se* – rather, their experiences were a product of historical, political and cultural factors. In fact, culture has been one of the most important transversal themes permeating the above discussion, as it directly influences the gender relations, i.e. the socially ascribed roles, responsibilities, opportunities, and limitations for males and females, that exist in any society. Understanding these dynamics often determines the humanitarian approach the ICRC takes, the materials it uses, and the staff it employs. For example, cultural considerations can restrict the presence of beneficiary women in public places, which in turn can make it difficult for the ICRC to consult women on their specific humanitarian needs and concerns. These restrictions often highlight the need for female staff, interpreters and health workers who can have direct access to the female population. This in turn may require some creative thinking, such as providing training to women who may lack the technical expertise but have the language abilities and personal motivation needed for these positions. It may also require accommodating male family members who accompany female staff to the field in order to conform to cultural conventions.

This article began with a discussion of images of women from the First World War – images that discounted the contributions that women were making on the front lines of the conflict and which relegated women to being pretty nursemaids and nurturing mothers whose primary roles were away from the battlefield. The changing nature of conflict has meant that women have been moving closer and closer to the fighting – as humanitarian workers, combatants or civilians. Like the nurses from World War I whose agency was overlooked in favour of tired stereotypes, the language that is used by many humanitarian actors to describe women's wartime experiences continues to paint them as a homogenous group, who along with children and the elderly, constitute the most vulnerable and helpless victims of conflict. The reality, of course, is that women routinely display remarkable courage and resilience in coping with the very serious challenges that upend their lives, and recent images of women affected by war plainly tell this story. Indeed, the ICRC archives are filled with photographs that show women coping with the trauma of war – leading their lives with dignity and courage. These images show women from all over the world taking care of their children and serving as anchors for their families. They show women reaching out to each other and finding strength and resilience together. There are photos of women ploughing

gardens, building houses, and starting their own small businesses. Taken together, these photos represent an updated vision of women and war – one which acknowledges the specific challenges and vulnerabilities that confront women living in armed conflict, but which also highlights their agency and their capacity to confront and surmount the brutalities of war.

Women in detention

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Abstract

Prison systems are rarely gender sensitive, and are even less so in conflict situations. When women are detained, it is crucial that international standards, applied with sensitivity to women's particular needs, are brought to bear. This article gives an overview of the relevant international law, as well as the gender-specific considerations that need to be taken into account when implementing it.

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More than half a million women and girls are held in penal institutions around the world, either as pre-trial detainees or having been convicted and sentenced. They represent between 2% and 9% of the global prison population.¹ The number of women held in relation to armed conflict is lower.²

In the main, women commit petty, non-violent offences such as theft and fraud; they come from impoverished and marginalized parts of society; and they tend to have a background of physical and emotional abuse, mental health problems, and alcohol or drugs dependency.³ Women's imprisonment is closely related to poverty, both as the reason for the offence and because women often cannot afford legal services or payment of fines. Where women are unable to pay for a lawyer, or where legal processes are extremely slow, they may spend longer in pre-trial detention than the penalty for the crime itself. In many countries, the majority of female prisoners have been convicted of drug-related offences, but women are rarely major players in the drugs trade. Often they have been tricked into being drug couriers for small sums of money and sometimes do not understand the risks involved and the implications of the act.⁴ Coercion may also have

been used to involve women in trafficking, and they may find themselves imprisoned for prostitution and breaking immigration rules. In some parts of the world, women may also be detained as a result of discriminatory laws and cultural practices, or tribal laws or traditions, rather than codified law.⁵ Women detained for ‘crimes of honour’ or who are in custody for their own protection may remain in prison for long and indefinite periods. Women may also be held for crimes of which they are the victims, such as rape. Sometimes ‘protective custody’ is a misnomer for the arbitrary detention of victims of particular crimes, or simply when the threat of such a crime is present, or when women are held to ensure that they testify.⁶

The majority of women in custody in conflict areas are detained for ordinary crimes.⁷ Female combatants held as prisoners of war are few in number because they are in the minority in armed forces and groups and are also less likely to be in frontline areas where they could be captured.⁸ The number of women held for security reasons related to armed conflict or internal disturbances is also very small in comparison with that of men, mainly because they are less likely to be perceived as combatants or potential combatants.⁹ Women may also be victims of kidnapping, whether by the state or by non-state forces, or be deprived of their liberty in situations of debt bondage or forced labour. In this article we will look at the situation of women held by the state, though these principles are also valid *mutatis mutandi* in the case of women held by non-state groups.

The prison service in many countries is generally not a priority area of governance and as a result is often ignored and/or underfunded, though, as the Special Rapporteur on the right to education has pointed out, ‘the availability of resources may affect the implementation of policy: they do not dictate that policy’.¹⁰ However, conditions in post-conflict settings may be particularly poor and inhumane, often resulting from overcrowding. There may be little food and

1 Roy Walmsley, *World Female Imprisonment List*, International Centre for Prison Studies, Kings College London, 2006, p. 1.

2 ICRC, *Women and War*, Geneva, 2008, p. 22, available at <http://www.icrc.org/web/eng/siteeng0.nsf/html/p0944> (last visited 11 March 2010).

3 Penal Reform International, *Penal Reform Briefing No. 3: Women in Prison – Incarcerated in a Man’s World*, London, 2008, p. 2.

4 Tomris Atabay, *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, United Nations Office on Drugs and Crime, 2008, p. 90, available at <http://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf> (last visited 1 April 2010).

5 Womankind Worldwide, *Taking Stock Update: Afghan Women and Girls Seven Years On*, London, 2008, p. 35, available at <http://www.womankind.org.uk/takingstockdownloads.html> (last visited 1 April 2010).

6 Office of the United Nations High Commissioner for Human Rights (OHCHR), ‘Dignity and Justice for Detainees Week: information note no. 5’, Geneva, 2008, p. 2, available at http://www.ohchr.org/EN/UDHR/Documents/60UDHR/detention_infonote_5.pdf (last visited 1 April 2010).

7 Charlotte Lindsey, *Women Facing War*, ICRC, Geneva, 2001, p. 163, available at <http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/p0798> (last visited 1 April 2010).

8 *Ibid.*

9 *Ibid.*

10 Report of the Special Rapporteur on the right to education, Vernor Muñoz, *The Right to Education of Persons in Detention*, A/HRC/11/8, 2 April 2009, para. 12, available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.8_en.pdf (last visited 1 April 2010).

unclean water, and preventable disease may prevail.¹¹ Poor facilities and conditions affect both men and women, but women are particularly vulnerable.

While conditions of detention may not be discriminatory as such, not taking into account the special needs of women in a system primarily designed for men results in detention having a discriminatory impact on women.¹² Women in detention, especially mothers, have particular physical, vocational, social, legal, and psychological needs different from those of men.¹³ International standards, applied with gender sensitivity, can ensure that they are treated appropriately and provided with acceptable conditions of imprisonment.

Both international humanitarian law and international human rights law contain treaty provisions and customary rules that are relevant to women in detention. Other branches of international law – such as international refugee law – may also be relevant. Finally, national law is the framework that is most commonly referred to in matters concerning detainees. The following analysis will focus on international humanitarian and human rights law, with which national law should be consistent in terms of states' obligation to implement their treaty commitments and to respect customary international law.

International legal standards

Some international legal provisions in both human rights law and humanitarian law explicitly protect and promote women's rights. Both systems are based on the principle of non-discrimination, so all their provisions should be as applicable and accessible to women as they are to men. However, in practice, their application has focused on the public sphere, dominated by men, and neglected the private sphere where women live – and where the reasons for their detention often arise.

In 1995, the Fourth United Nations Conference on Women stated that women may be vulnerable to violence from public officials (including police, prison officials, and security forces) in both conflict and non-conflict situations, and called for gender-sensitive education and training for those officials.¹⁴ It also called on governments not just to refrain from violating women's rights, but to work actively to promote and protect them.¹⁵

Through the determined efforts of civil society, particularly women's organizations, the vulnerability of women to extensive and appalling sexual abuse

11 OHCHR, *Rule of Law Tools for Post-Conflict States: Mapping the Justice Sector*, United Nations, Geneva, 2006, available at <http://www.ohchr.org/Documents/Publications/RuleoflawMappingen.pdf> (last visited 1 April 2010).

12 OHCHR, above note 6, p. 3.

13 *Ibid.*, p. 2.

14 Beijing Declaration and Platform for Action, adopted by the Fourth World Conference on Women, Beijing, 15 September 1995, paras. 121, 124(g), and 232(i), available at http://www.unesco.org/education/information/nfsunesco/pdf/BEIJIN_E.PDF (last visited 1 April 2010).

15 *Ibid.*, para. 215.

in times of conflict – often occurring in situations where women were detained – began to receive attention. The Statutes of the *ad hoc* International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR respectively), established by the United Nations Security Council in 1993 and 1994 respectively, recognize rape in custodial and non-custodial situations as a crime against humanity under certain circumstances: that is, when rape is part of a widespread and systematic attack.¹⁶ In a landmark decision in September 1998, the ICTR brought convictions for rape as being an act of genocide.¹⁷ In February 2001, the ICTY brought convictions for rape, torture, and enslavement of women.¹⁸ The Rome Statute of the International Criminal Court can bring similar prosecutions¹⁹ and has stronger provisions to ensure the gender-sensitive application of international humanitarian and human rights law.²⁰

These and other developments are much broader than the protection of women detainees. However, they are still relevant as a practical – and legal – demonstration of the gender-specific vulnerabilities of women in detention and the need not just to provide immediate improvements to their conditions of incarceration but also to strengthen advocacy about gender differences that result in women's rights being violated both in and out of detention.

International humanitarian law

The guarantees of international humanitarian law provide women with what is often referred to as a 'two-tiered' system of legal protection. That is, women are afforded both general protection on the same basis as men and special protection for their needs as women. For example, Article 14 of the Third Geneva Convention requires that 'women shall be treated with all the regard due to their sex and shall in all circumstances benefit by treatment as favourable as that granted to men'. The provisions specific to women protect their privacy and modesty, and address medical and physiological needs mainly relating to pregnancy and childbirth. Any form of sexual violence is prohibited.²¹

16 Respectively, ICTY Statute, Art. 5(g), and ICTR Statute, Art. 3(g).

17 ICTR, *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-1, Judgment, 2 September 1998.

18 ICTY, *The Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23-T, Judgment, 22 September 2001. Some of the women in this case were held in houses that served as brothels for soldiers and were subjected to almost constant rape and sexual assaults and other abuses. See also Human Rights Watch, *A Dark and Closed Place: Past and Present Human Rights Abuses in Foca*, 1998, and *Bosnia: Landmark Verdicts for Rape, Torture and Sexual Enslavement*, 2001.

19 See International Criminal Court, Rome Statute, Art. 3(g) and 4(e).

20 For example, *ibid.*, Art. 36(8) requires a 'fair representation of female and male judges' and other personnel who possess 'legal expertise on specific issues, including, but not limited to, violence against women and children'.

21 See GC I, Art. 12; GC II, Art. 12; GC III, Art. 14, 25, 88, 97, and 108; GC IV, Art. 14, 16, 21–27, 38, 50, 76, 85, 89, 91, 97, 124, 127, and 132; AP I, Art. 70 and 75–76; AP II, Art. 5(2) and 6(4).

International human rights law

In international human rights law, treaties that are particularly relevant to the situation of women in detention are the International Covenant on Civil and Political Rights,²² the Convention on the Elimination of All Forms of Discrimination against Women,²³ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²⁴ The first of these allows derogation from many of its provisions in times of emergency, subject to certain conditions. However, the right to life and the prohibitions on torture and cruel, inhuman, or degrading treatment or punishment, slavery, and retroactive criminal laws must be respected at all times and in all circumstances.²⁵ International human rights treaties are legally binding on parties, although in practice they are rarely implemented unless their provisions are included and enforced in domestic law.

International human rights law also has provisions that apply to men and women, as well as provisions specific to women.

General provisions protecting detainees

Anyone deprived of their liberty by the state has the right to be treated with humanity and with respect for their dignity. States have a positive obligation to ensure detainees' enjoyment of their rights subject only to the restrictions that are unavoidable in a closed environment. This is a fundamental and universally applicable rule that, as a minimum, cannot be dependent on the material resources available and must be applied without distinction of any kind.²⁶

Torture

Torture is prohibited under both international humanitarian law and human rights law, as well as in most national legal systems. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture²⁷ but not cruel, inhuman, or degrading treatment or

22 United Nations General Assembly (UNGA) Resolution 2200 A (XXI), 16 December 1966.

23 UNGA Resolution 34/180, UN Doc. A/RES/34/180, 18 December 1979.

24 UNGA Resolution 39/46, UN Doc. A/RES/39/46, 10 December 1984.

25 Many of the provisions of international human rights law are also found in the three regional systems of human rights protection in Africa, the Americas, and Europe. Respectively, these are based on the African Charter on Human and Peoples' Rights (1981), the Inter-American Convention on Human Rights (1969), and the European Convention on Human Rights and Fundamental Freedoms (1950).

26 UN Human Rights Committee, 'General comment no. 21', 1992, para. 3, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3327552b9511fb98c12563ed004cbe59?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3327552b9511fb98c12563ed004cbe59?Opendocument) (last visited 1 April 2010).

27 Article 1 of the Convention defines torture as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is

punishment. There is obviously a continuum between the two, and whether an act of ill-treatment should be regarded as torture or other cruel, inhuman, or degrading treatment depends to a degree on the circumstances and specific status of the victim.

The United Nations Special Rapporteur on torture has suggested that to the treaty definition should be added the criterion of powerlessness: 'A situation of powerlessness arises when one person exercises total power over another, classically in detention situations'.²⁸ He emphasized that it is crucial to interpret the torture protection framework in the light of a wide range of human rights guarantees, particularly those developed to combat violence against women, which can provide valuable insights into the particular challenges posed by such violence. In addition, international criminal jurisprudence has broadened concepts of the acts that can be encompassed by the term 'rape' and has facilitated interpretation and application of gender-sensitive rules of evidence and procedure.²⁹

Non-treaty standards

Non-treaty standards are not legally binding, but their strength is that they offer practical measures to protect the rights of detainees and prisoners. They are equally applicable to all states, not only those that have become party to the treaties, and in some cases reflect standards required by international law.³⁰ There are a large number of these standards,³¹ but the five sets of rules and principles outlined below are particularly relevant to women detainees.

The key non-treaty standard is the Standard Minimum Rules for the Treatment of Prisoners.³² This is widely used by those managing, developing, and reforming prisons and prison systems, as well as by organizations undertaking formal visiting, monitoring, and inspection.³³ While not intended to describe a model system of penal management, and notwithstanding the great variety of legal, social, economic, and geographical conditions in different countries, the Rules serve to stimulate attempts to overcome practical difficulties in their application 'in

suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain and suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity'.

28 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Novak, UN Doc. A/HRC/7/3, 15 January 2008, para. 28, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/101/61/PDF/G0810161.pdf?OpenElement> (last visited 1 April 2010).

29 *Ibid.*, para. 71.

30 See Nigel S. Rodley, *The Treatment of Prisoners under International Law*, Oxford University Press, 1999, pp. 280–281.

31 For a detailed list and texts, see <http://www2.ohchr.org/english/law/> (last visited 11 March 2010).

32 Standard Minimum Rules for the Treatment of Prisoners, approved by the United Nations Economic and Social Council Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 ('Standard Minimum Rules'), available at <http://www2.ohchr.org/english/law/treatmentprisoners.htm> (last visited 1 April 2010).

33 See also Penal Reform International, *Making Standards Work: An International Handbook on Good Prison Practice*, 2nd edn, London, 2001, p. 7.

the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations'.³⁴

The Standard Minimum Rules lay down the minimum standards for many aspects of prison life, including the need to maintain discipline. These are to be applied without discrimination on various grounds, including the sex of the prisoner,³⁵ and there are special provisions for pregnant women and nursing mothers.³⁶ Similarly, the provisions of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment³⁷ are to be applied without distinction of any kind, including sex, but with the stipulation that measures designed solely to protect the rights of women shall not be deemed discriminatory.³⁸

The Standard Minimum Rules for Non-custodial Measures (also known as the Tokyo Rules) provide a set of basic principles to promote the use of non-custodial measures, community involvement in criminal justice, and a sense of responsibility among offenders.³⁹ They are particularly relevant to women deprived of their liberty, since many of their offences are for minor crimes that do not necessitate custodial sentences.

A new standard currently under discussion in the UN Commission on Crime Prevention and Criminal Justice is the Draft UN rules for the treatment of women prisoners and non-custodial measures for women offenders.⁴⁰ This does not seek to replace the Standard Minimum Rules or the Tokyo Rules but to supplement them, clarify their application, and recognize the specific needs of women prisoners.⁴¹

Finally, the United Nations Declaration on the Elimination of Violence against Women describes violence against women as encompassing but not limited to physical, sexual, and psychological violence occurring in the home, in the general community, and perpetrated or condoned by the state.⁴² It sets out a number of steps that states should take, including the training of public officials to sensitize them to women's needs.⁴³

34 Standard Minimum Rules, Art. 2.

35 *Ibid.*, Art. 6(1).

36 *Ibid.*, Art. 23.

37 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ('Body of Principles'), UNGA Resolution 43/173, UN Doc. A/RES/43/173, 9 December 1988, available at <http://www.un.org/documents/ga/res/43/a43r173.htm> (last visited 1 April 2010).

38 *Ibid.*, Principle 5.

39 United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), United Nations General Assembly Resolution 45/110, UN Doc. A/RES/45/110, 14 December 1990, available at <http://www2.ohchr.org/english/law/tokyorules.htm> (last visited 1 April 2010).

40 See Commission on Crime Prevention and Criminal Justice, 'Draft United Nations rules for the treatment of women prisoners and non-custodial measures for women offenders', UN Doc. E/CN.15/2009/CRP.8, 9 April 2009, available at <http://www.unrol.org/doc.aspx?d=2914> (last visited 1 April 2010).

41 An expert group met to consider the draft Rules in February 2009 and will report to the Twelfth UN Congress on Crime Prevention and Criminal Justice, to be held in Brazil in April 2010.

42 Declaration on the Elimination of Violence against Women, UNGA Resolution 48/104, UN Doc. A/RES/48/104, 20 December 1993, available at [http://www.unhcr.ch/huridocda/huridoca.nsf/\(symbol\)/a.res.48.104.en](http://www.unhcr.ch/huridocda/huridoca.nsf/(symbol)/a.res.48.104.en) (last visited 1 April 2010).

43 *Ibid.*, Art. 4.

Gender-specific considerations in detention

Prison classification and placement systems

Prisons in many countries are overcrowded, and this is even more the case in women's prisons. Because of their smaller – but often increasing – numbers, women and girls in custody are more likely than men and boys to be held in unsuitable and often dangerous conditions.⁴⁴ If the specific needs of women and girls are to be met, it is essential that prison authorities develop and implement gender-specific classification and placement policies. These should acknowledge that women must be kept in separate quarters from men, and girls in separate quarters from boys. Juveniles under the age of 18 should not be kept in adult facilities, and untried prisoners should be kept separately from convicted prisoners.⁴⁵ Within a women's prison or section, mothers with children should be provided with separate accommodation for sleeping and dealing with the children to minimize the tensions that can arise because of the presence of children, such as the noise and other pressures (crying, illnesses, etc).⁴⁶

However, in the vast majority of prisons worldwide, the same classification system is used for women as for men. Screening processes tend to take too little account of specific issues affecting a large proportion of female prisoners – such as a history of domestic violence, sexual abuse, parental responsibility – and of the actual security risk that women present, all of which should influence their placement within the prison system. Consequently, women are routinely over-classified in terms of the requisite level of security, and insufficient programmes and services appropriate for their needs are provided. Over-classification can often restrict access to available programmes until late in the sentence, potentially reducing their chances of successful re-entry into society.⁴⁷ Effective classification systems are even less likely to exist in conflict situations but, whenever possible, women detained in connection with an armed conflict or internal disturbance should be separated from those detained for ordinary crimes unrelated to the conflict.⁴⁸

Legal support and paralegals

Every detainee has the right to be presumed innocent until proven guilty⁴⁹ and to be represented by a lawyer of their choice, at public expense if necessary, and to have

44 For more information about girls in conflict with the law, see Human Rights Watch, 'Violence against girls in conflict with the law', 2003, available at <http://www.hrw.org/legacy/english/docs/2007/02/20/global15345.htm> (last visited 15 January 2010).

45 Standard Minimum Rules, Art. 8.

46 C. Lindsey, above note 7, p. 165.

47 Tomris Atabay, *Afghanistan: Female Prisoners and their Social Reintegration*, UN Office on Drugs and Crime, Vienna, March 2007, p. 74, available at http://www.unodc.org/pdf/criminal_justice/Afghan_women_prison_web.pdf (last visited 1 April 2010).

48 C. Lindsey, above note 7, p. 164.

49 Standard Minimum Rules, Art. 84(6).

adequate time, facilities, and privacy to communicate with their lawyer.⁵⁰ Despite this, the reality is that publicly funded legal aid is frequently limited or non-existent. Women detainees often lack the resources to pay for legal representation, or there may not be lawyers available. Research has shown that defendants who have not been detained prior to their trial have significantly better chances of acquittal.⁵¹ However, many women do not have the possibility of bail: they then face trial without legal representation, and without knowledge of the law and courts.

In a number of African countries, this has been addressed by the use of trained paralegals working under the supervision of a lawyer. The Paralegal Advisory Service Institute in Malawi, for example, uses paralegals trained in criminal law and procedure and in interactive learning techniques to empower people in prison to apply the law to their own case. Through Paralegal Aid clinics held in the prisons, detainees learn how to make an application for bail or a plea in mitigation. They are introduced to the principles of sentencing and learn how to appeal against a sentence.⁵²

Records

State detaining authorities are responsible for ensuring that the detention of an individual is lawful, and that treatment is consistent with international human rights standards. The proper keeping of records of each detainee is an essential tool in preventing human rights violations, including denial of due process,⁵³ torture, or enforced disappearance in custody. In the case of women, it is important for ensuring that gender-specific health and other needs are met.⁵⁴

Management

Women prisoners should be under the responsibility of a woman officer who has custody of the keys for that part of the institution⁵⁵ and should be attended only by

50 *Ibid.*, Art. 93; Body of Principles, Principle 18; International Covenant on Civil and Political Rights (ICCPR), Art. 14(3)(b), available at <http://www2.ohchr.org/english/law/ccpr.htm> (last visited 1 April 2010).

51 Report of the Working Group on Arbitrary Detention, UN Doc. E/CN.4/2006/7, 12 December 2005, para. 66, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/166/48/PDF/G0516648.pdf?OpenElement> (last visited 1 April 2010).

52 For further information, see *The PLC Manual: A Manual for Paralegals Conducting Paralegal Advisory Clinics (PLCs) in Prison*, 2nd edn, Nanzikambe, Penal Reform International, and the Paralegal Advisory Service, Lilongwe, 2007, available at <http://www.penalreform.org/publications/plc-manual-manual-paralegals-conducting-paralegal-aid-clinics-prison-0> (last visited 1 April 2010).

53 See for example the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston: Addendum, Mission to Nigeria, UN Doc. E/CN.4/2006/53/Add. 4, 7 January 2006, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/106/40/PDF/G0610640.pdf?OpenElement> (last visited 1 April 2010), para. 68, finding that, in Nigeria in 2005, 3.7% of an estimated prisoner population of 44,000 remained in prison because of lost case files.

54 For further information, see Rachael Stokes, Mel James, and Jeff Christian, *Handbook on Prisoner File Management*, UN Office on Drugs and Crime, Vienna, 2008.

55 Standard Minimum Rules, Art. 53(1).

women officers. Male staff may carry out their professional duties in the premises set aside for women,⁵⁶ but should always be accompanied by a woman officer.⁵⁷ Where this is not feasible, the prison authorities should ensure a minimum of female personnel and develop clear policies and procedures that minimize the probability that female prisoners will be abused or ill-treated in any way. Such prevention policies should be applicable in all prisons.

Family relationships and responsibilities

Prisoners can request to be held ‘reasonably’ near their usual place of residence. This is particularly important for women, given their roles in the community and their responsibilities as primary caregivers for children, sick and elderly relatives, and others. Exceptions may be appropriate where a woman needs to be protected from those who may have abused or exploited her and where this cannot be guaranteed other than by transfer.⁵⁸ Decisions to place women are often based on the concentration of resources in a small number of prisons for women, with the result that they may be located far away from their families and communities. This can be particularly problematic in large countries where huge distances need to be covered for family visits, or in conflict or post-conflict regions where security and safety concerns are ever present. Visiting is further compromised where public transport facilities are poor, expensive, or non-existent, or where women are not permitted to travel alone.

Women in cultures where imprisonment is regarded as particularly shameful generally receive fewer visitors than men. The family may reject the woman or be unaware of where she is being detained. Her male relatives may have been killed or displaced, or may have simply disappeared. Her husband may remarry. Yet visitors are essential for a detainee’s psychological wellbeing and are a way to obtain food, medicine, and other necessities when resources are scarce and adequate supplies are not being provided by the authorities.⁵⁹

In these circumstances, prison management should be encouraged to facilitate as much contact as possible between the woman and her family through leave from prison, extended prison visits (including conjugal visits if allowed), telephone contact, letters, and other appropriate means.⁶⁰ Prison authorities should be flexible about the frequency and length of visits, particularly when visitors have travelled long distances, and should take account of school hours and standard working hours to enable children to visit out of school hours.⁶¹

⁵⁶ *Ibid.*, Art. 53(3).

⁵⁷ *Ibid.*, Art. 53(2).

⁵⁸ T. Atabay, above note 4, p. 61.

⁵⁹ ICRC, above note 2, p. 22.

⁶⁰ OHCHR, above note 6, p. 4.

⁶¹ T. Atabay, above note 4, p. 61.

Health

All prisoners, male or female, are entitled to medical care according to their needs. Because so many women detainees come from impoverished backgrounds, they are likely to suffer from a variety of health conditions when they enter prison. They may have been unable to pay for diagnosis or treatment, or they may have experienced discrimination and barriers in accessing healthcare services because of their gender. Consequently, female prisoners often have greater primary healthcare needs in comparison to men. This makes it vital for them to have proper health screening on entry to prison, and continuing access to medical and healthcare services during their detention.⁶² Medical care in detention should be at least commensurate with that available in the community, and should be provided by female medical and health personnel whenever possible.

Reproductive health

Women have specific health and hygiene needs related to reproductive health, which vary according to a woman's age and situation. These include, for example, sanitary and washing facilities, safe disposal arrangements for blood-stained articles, as well as provision of hygiene items, such as sanitary towels, all of which they should be able to access without embarrassment.⁶³ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment considers that the failure to provide such basic necessities can amount to degrading treatment.⁶⁴ Women may also experience psychological and physical difficulties related to menopause and require specific medical services. Both medical and health workers and prison staff should be given training that sensitizes them to these issues and provides practical advice about how to be supportive of women prisoners concerning these matters.⁶⁵

Ante-natal and post-natal care

Pregnant women detainees have specific health needs and are entitled to adequate ante- and post-natal care. This care should be provided in the prison by appropriately qualified personnel, or at community hospitals or health centres when the prison is unable to provide these services directly. Pregnant and lactating mothers also have additional dietary requirements, a matter often not considered or catered for by prison authorities. As a result, the food provided may be insufficient to cover the nutritional requirements of pregnant and nursing mothers. In low-income

62 *Ibid.*, p. 49.

63 *Ibid.*, above note 4, p. 57.

64 European Committee for the Prevention of Torture, '10th General Report on the CPT's activities covering the period 1 January to 31 December 1999', CPT/Inf (2000) 13, 18 August 2000, para. 31, available at <http://www.cpt.coe.int/en/annual/rep-10.htm> (last visited 1 April 2010).

65 T. Atabay, above note 4, p. 53.

countries, the delivery of babies may be carried out in prisons in unhygienic conditions by staff with inadequate medical expertise, resulting in health complications for mother and baby. In some countries, body restraints such as shackles are used on pregnant women during transfers to hospitals, gynaecological examinations, and birth, even though this practice violates international standards.⁶⁶ Pregnant women who are victims of ill-treatment or held in inhumane conditions face the additional threat of miscarriage or permanent injury to themselves and their unborn child. Often, detaining authorities not only ignore their special needs but take advantage of their vulnerability to inflict severe physical and emotional pain on them.⁶⁷

If possible, pregnant women and women with small children should not be detained at all, as prisons are not designed for them. However, where this does occur, the children are entitled to medical care and education as well as food and water, and they should not be treated as prisoners. The execution of pregnant women or mothers who have dependent children is prohibited.⁶⁸

Mental health care

Research has shown that women have much higher levels of mental healthcare needs than men on entry to prison, often as a result of domestic violence, and physical and sexual abuse. Once in detention, proportionately more female prisoners suffer psychological distress than their male counterparts. As pointed out above, they are more likely to experience rejection by their families and by society in general. Women's mental health is likely to deteriorate in prisons that are overcrowded, where appropriate classification and placement systems are not implemented, and where prisoner programmes are either non-existent or inadequate to address the specific needs of women.⁶⁹ These factors may help explain why the level of self-harm and suicide among women detainees is much higher than for men. Studies of prisoner suicides have indicated that long-term sentences, single-cell use, mental disabilities, substance abuse, and a history of suicidal tendencies are all associated with a higher suicide risk.⁷⁰ Effective assessment of needs is key to the effective management of any prisoner, particularly those at high risk of self-harm. Prison authorities should have self-harm and suicide prevention strategies, one aspect of which is closer supervision of women identified as being at risk. While medication may be appropriate in some cases, it should not be the sole means of assisting women to overcome their distress or depression. Women should be offered psychosocial support to address the underlying reasons that led to their

⁶⁶ *Ibid.*, pp. 19–20.

⁶⁷ C. Lindsey, above note 7, p. 172.

⁶⁸ ICCPR, Art. 6(5); AP I, Art. 76(3); AP II, Art. 6(4).

⁶⁹ T. Atabay, above note 4, p. 10.

⁷⁰ *Ibid.*, p. 55.

mental health problems. These women should not be treated as requiring a higher level of security.⁷¹

Substance abuse

A high proportion of women prisoners are drug or alcohol dependent and are in need of treatment for their addiction. In most countries, women experience social, cultural, and personal barriers to entering treatment in the community. These include the significant stigma and shame associated with substance-related problems among women, and may be compounded by fear of losing custody of their children, lack of partner and other family support, and lack of confidence about treatment. Under these circumstances, prisons may provide a good opportunity to address the addiction needs of these women in a safe environment. Such a programme may consist *inter alia* of the establishment of therapeutic communities in prisons, with a comprehensive package of treatment including medication, counselling, and continuation of care following release.⁷²

There is now increased knowledge and awareness that gender differences in substance use and related problems require different treatment approaches. A gender-sensitive approach to women's health care should therefore also take into account the need to provide specialized treatment programmes for female substance abusers that address the specific causes of female addiction. When drug addiction is untreated in prison, the likelihood of re-offending is high, either on drugs charges or through theft or illegal sex work undertaken to finance the addiction.⁷³

Drugs are one of the main reasons for prison security measures such as internal body searches and restrictions of visits or home leave. These measures can be particularly punitive for women. A balance has to be found between humane treatment and making efforts to ensure that prisons are free from illicit drugs, while providing care and treatment.⁷⁴

HIV/AIDS

In many countries a significant percentage of women prisoners are infected with sexually transmitted diseases, including HIV.⁷⁵ The Quaker UN Office has noted that 'Women in prison are at particular risk of HIV infection, in part due to their

71 *Ibid.*, p. 52.

72 *Ibid.*, p. 54.

73 *Ibid.*, p. 13.

74 World Health Organization Regional Office for Europe, *Women's Health in Prison: Correcting Gender Inequity in Prison Health*, Copenhagen, 2009, para. 44, available at <http://www.euro.who.int/Document/E92347.pdf> (last visited 16 March 2010).

75 Megan Bastick and Laurel Townhead, *Women in Prison: A Commentary on the UN Standard Minimum Rules for the Treatment of Prisoners*, Quaker United Nations Office, Geneva, June 2008, p. 66, available at <http://www.quono.org/geneva/pdf/humanrights/women-in-prison/WiP-CommentarySMRs200806-English.pdf> (last visited 1 April 2010).

vulnerability to sexual exploitation, and to receiving inadequate treatment if infected with HIV or suffering from AIDS'.⁷⁶ HIV/AIDS prevention, treatment, and care programmes should be available. These should be tailored to address the particular risks to women arising from drug use, sex work, and unsafe sexual practices. They should also be responsive to the unique needs of women and address, for example, the prevention of mother-to-child transmission. Health authorities in prison should encourage and support the development of peer-based education initiatives, and educational materials should be designed and promoted by prisoners themselves. Prison authorities should also encourage the development and support of self-help and peer-support groups that raise the issues of HIV/AIDS in prisons themselves. Every effort should be made to involve non-governmental organizations in the development of HIV prevention, treatment, care, and support programmes in prison, as well as to create links between prison programmes and community HIV prevention and treatment services.⁷⁷

Capacity-building programmes on HIV should also be included as part of the regular training curricula of prison staff.

Sexual abuse

In many countries, women are sexually abused and humiliated by law enforcement officials. Such abuse can range from subtle humiliation to rape. The former can include verbal abuse, improper touching during pat-down searches, frequent and unnecessary searching, and spying on prisoners during showers and in living areas. The impact of strip-searches on women is disproportionately greater than on men, as women detainees as a group present a higher incidence of previous sexual assault than the general community and their male counterparts.⁷⁸ For women especially, there are no clear-cut boundaries between physical, psychological, sexual, and social violence. Any violence perpetrated on women, by definition vulnerable in detention, always carries the threat of sexual aggression.⁷⁹ During arrest and/or while in detention, women are all the more exposed to the risk of ill-treatment where there is a lack of transparency in the arrest and detention arrangements, and especially where they are unable to have access to a lawyer (either because they are denied this right or because they are unable to afford legal fees).

Rape of women in detention can be either the deliberate policy of a repressive government or the result of indifference and failure to take sufficient preventive measures.⁸⁰ Rape or transactional sex may take place in the form of

76 Quaker United Nations Office, 'Submission to Committee on the Elimination of Discrimination Against Women: eliminating discrimination against women in prison', Geneva, 4 January 2005, p. 11, available at <http://www.quino.org/geneva/pdf/20050104CEDAW.pdf> (last visited 1 April 2010).

77 T. Atabay, above note 4, p. 54.

78 OHCHR, above note 6, p. 3.

79 C. Lindsey, above note 7, p. 171.

80 Joan Fitzpatrick, 'The use of international human rights norms to combat violence against women', in Rebecca J. Cook (ed.), *Human Rights of Women: National and International Perspectives*, University of Pennsylvania Press, Philadelphia, 1994, p. 544.

sexual services that women prisoners are forced to provide to male prisoners and male staff in return for access to goods and privileges. Sexual abuse of women by male prisoners may take place with the complicity of prison guards. Women who have been charged with or convicted of crimes against morality, as well as lesbian, bisexual, or transgender women, are at particular risk.⁸¹ Rape and transactional sex leave psychological scars and increase the risk of sexual exploitation, unwanted pregnancy, HIV, and other sexually transmissible diseases.

Women subjected to sexual violence either during or before their imprisonment should be offered assessment, professional advice, and counselling by an appropriately qualified medical officer, or health or other worker, such as a psychologist. Survivors of sexual violence may need several individual interviews before they are ready to tell of their experience, and some may never be able to speak about it at all, though silence should not be taken as an indication that nothing has happened.⁸²

Children of women detainees

Dependent children outside prison

Many women in detention are mothers of children under 18 years of age and are more frequently than men the heads of single-parent families.⁸³ The effects of even a short period of custody can be particularly devastating for any woman, particularly those who are sole carers for their children.⁸⁴ There is a high risk of losing accommodation and employment upon prison entry. When mothers are imprisoned and the family breaks up, alternative carers need to be found, often at short notice. Extended families perhaps most commonly fulfil this role, and also state institutions including foster care and institutional placement. This leads to large numbers of children being institutionalized. Research has indicated that the children of imprisoned parents are at greater risk of future incarceration.⁸⁵ A woman whose children have been placed in the care of the state or another person usually cannot reclaim custody unless she has accommodation and the means to support her family. This can result in extended or permanent dislocation of families.⁸⁶ Detaining and sentencing authorities rarely take the rights and needs of dependent children into account.⁸⁷

81 T. Atabay, above note 4, p. 14.

82 C. Lindsey, above note 7, pp. 175–176.

83 Report of the Special Rapporteur on the right to education, above note 10, p. 15.

84 Laurel Townhead, *Pre-trial Detention of Women and its Impact on their Children*, Quaker United Nations Office, Geneva, February 2007, available at <http://www.quano.org/geneva/pdf/humanrights/women-in-prison/WiP-pretrial-detention200702-English.pdf> (last visited 1 April 2010); Oliver Robertson, *Children Imprisoned by Circumstance*, Quaker United Nations Office, Geneva, April 2008, available at <http://www.quano.org/geneva/pdf/humanrights/women-in-prison/200804childrenImprisonedByCircumstance-English.pdf> (last visited 1 April 2010).

85 T. Atabay, above note 4, p. 17.

86 OHCHR, above note 6, p. 2.

87 T. Atabay, above note 4, p. 19.

Dependent children residing in prison

Only limited statistics exist globally about the number of children living in detention with their mothers.⁸⁸ The ‘best interest of the child’ principle is generally regarded as a sound basis for a decision to permit children to live with their mothers in prison. There are no rules in international instruments about whether children can stay with their parents in detention or the age up to which they can do so.⁸⁹ As a result, many countries have developed policies that specify an age; these policies often allow children up to two years old, but children up to twelve years old are permitted in some jurisdictions, such as Mexico. Some children are in detention facilities because they were with their parents when the latter were taken into custody/internment and no other arrangement is feasible.⁹⁰ But children in prison are unlikely to be able to mix with children outside prison or have access to community facilities such as shops, markets, animals, and open spaces. Moreover, health services in prison are usually not geared towards children’s healthcare needs, and education and play materials are generally limited. The restricted and often harsh, punitive environment of prisons can permanently damage the psychological and mental wellbeing of children there.⁹¹ As said above, ideally, pregnant women and women with small children should not be detained but, where this does occur, the children are entitled to medical care and education as well as food and water, and they should not be treated as prisoners.

Education and vocational training

Women in prison are generally young, poor, and unemployed, with little education and few basic skills.⁹² The UN Special Rapporteur on the right to education recently noted that, since women’s educational needs are different from those of men, equal treatment and equal opportunities would not necessarily lead to similar results. It is important that the training and work provided should correspond to market demands and aim to increase women’s real chances of earning a living wage after release.⁹³ However, although education is an important means of helping women gain self-confidence and life skills and of reducing their chances of re-offending, a lack of research and information on their particular educational needs remains. In many states, the quality and range of programmes is poorer than for those provided for men and, where they are offered, they often reflect traditional female roles such as sewing, kitchen duties, beauty care, and handicrafts.⁹⁴ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or

88 Report of the Special Rapporteur on the right to education, above note 10, p. 15.

89 C. Lindsey, above note 7, p. 163.

90 *Ibid.*

91 T. Atabay, above note 4, p. 21.

92 Report of the Special Rapporteur on the right to education, above note 10, p. 16.

93 T. Atabay, above note 4, p. 75.

94 Report of the Special Rapporteur on the right to education, above note 10, p. 17.

Punishment has observed that female detainees are all too often ‘offered activities which have been stereotyped as “appropriate” for them ... whilst male juveniles are offered training of a far more vocational nature’.⁹⁵ Furthermore, male detainees are often offered a wider variety of recreational and educational programmes and income-generating projects than women and have more opportunities to go outside the prison for external work programmes.⁹⁶ This reflects a more general trend whereby, because female prison populations are smaller, there is a lack of programmes designed or adapted specifically for women. The accelerated growth of the female prison population has led to a corresponding decrease in female prisoners’ access to educational and other rehabilitative programmes.⁹⁷

Redress

Complaints mechanisms

Every prisoner has the right to make complaints to the detaining authorities and to external inspectors, which should be responded to without undue delay unless the complaint is ‘evidently frivolous or groundless’.⁹⁸ Perceptions of what constitutes ‘frivolous’ often differ considerably, however, between the authorities and women detainees. All complaints should be taken seriously, and investigated promptly and impartially. Particularly in cases of alleged sexual abuse, it is essential that the investigation is carried out by women.

Women alleging sexual abuse should receive immediate protection and supervision during the investigation and for as long as needed. However, complete isolation may be viewed as punitive and can compound the original abuse.⁹⁹

Documentation of human rights violations

Where women’s rights are abused in or by their detention, it is important that an accurate and factual record is kept. This may be done by the prisoner herself, her legal representative, or an independent civil society or professional organization. Even if there are no or only limited local remedies available through national laws and courts, there may be organizations (such as Amnesty International or Human Rights Watch) that can use the information immediately. In all cases, but especially in situations where the rule of law has broken down, it is important that records

95 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *The CPT standards – ‘Substantive’ sections of the CPT’s General Reports*, CPT/Inf/E (2002) 1 – Rev. 2004, Strasbourg, September 2004, p. 65, available at <http://www.cpt.coe.int/en/documents/eng-standards.pdf> (last visited 1 April 2010).

96 C. Lindsey, above note 7, p. 201.

97 M. Bastick and L. Townhead, above note 75.

98 Standard Minimum Rules, Art. 36(4).

99 T. Atabay, above note 4, p. 38.

have been kept so that prosecutions can be brought and remedies sought, using national, regional, or international systems in the longer term.

There are many civil society organizations in all parts of the world dealing with human rights documentation, and many of them provide training, advice on monitoring, and documentation and software to facilitate these tasks. Their umbrella organization is the Human Rights Information and Documentation Systems, International (HURIDOCs), based in Switzerland.¹⁰⁰

Using international mechanisms for obtaining redress

The main international resources are those afforded by the UN human rights machinery. These take many forms,¹⁰¹ but the most accessible are the thematic mechanisms (or UN Special Procedures), which examine human rights issues and report to the UN Human Rights Council. Some are particularly relevant to women in detention. They include those dealing with violence against women, torture and ill-treatment, enforced or involuntary disappearance, arbitrary detention, human rights defenders, and the rights to the highest attainable standard of health, food, and education respectively.

Anyone can submit reliable and factual information to the Special Procedures experts at any time through the Office of the High Commissioner for Human Rights. The case will then be raised with the authority concerned and made public, with the authority's response, if any, in the mechanism's annual report. The identity of those submitting the information is not made public. Standard questionnaires for several of the mechanisms are available online.¹⁰² The mechanisms also carry out a small number of country visits each year and issue a public report on each visit.¹⁰³

Conclusion

Prison systems are rarely gender sensitive, and are even less so in conflict situations, where resources may be more limited and other concerns may prevail. As the majority of prisoners are usually men, prisons in most countries are designed for the needs of men, and women's prisons are often incorporated into the same

100 See <http://www.huridocs.org> (last visited 16 March 2010).

101 See OHCHR, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*, New York and Geneva, 2008, p. 153, available at <http://www.ohchr.org/EN/AboutUs/CivilSociety/Pages/Handbook.aspx> (last visited 1 April 2010).

102 See <http://www2.ohchr.org/English/bodies/chr/special/themes.htm> (last visited 16 March 2010) for a list and links to the websites of Special Procedures.

103 In addition, all three regional human rights regimes – the Inter-American Commission on Human Rights, the African Commission on Human and Peoples' Rights, and the Council of Europe – have mechanisms that can protect the rights of detainees. Information can be obtained from their respective websites: <http://www.cidh.oas.org>; <http://www.achpr.org>; and http://www.echr.coe.int/echr/Homepage_EN (last visited 16 March 2010).

premises. However, in many countries the rates of female imprisonment are growing significantly, often because of an increased use of imprisonment to punish offences that were previously subject to non-custodial sentences.¹⁰⁴ As a result, pressures on already overstretched prison systems are mounting, leading to overcrowding and resources being even more strained. For most women offenders, community sanctions and non-custodial sentences are a far more appropriate response than incarceration, and some countries are identifying alternative schemes. When women are detained, it is crucial that international standards, applied with sensitivity to their particular needs, are brought to bear. The growing number of women in prison in many countries brings urgency to tackling the serious problems they face: the reasons for their detention, their treatment in custody, and the challenges awaiting them when they are released.

104 OHCHR, above note 6, p. 2.

Women, armed conflict and language – Gender, violence and discourse

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Abstract

Facilitating critical reflection on the words and concepts used to write policy enables practitioners to avoid unconsciously reproducing the different forms of oppression and exclusion that their policies seek to overcome. In this article, the author provides an analysis of Chapter 5.10 of the United Nations Integrated Disarmament, Demobilization and Reintegration Standards, arguing that policy makers, scholars, students and practitioners cannot avoid making and/or changing meaning through their well-meaning interventions, but that this need not lead to political or practical inertia.

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The politics of language

When I was a graduate student, I attended a conference and posed a question to a panel of senior academics, explaining my doctoral research (an analysis of

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United Nations Security Council Resolution 1325 on women, peace and security)³ as a precursor to asking how I might make this research useful to practitioners and, ultimately, to those whose lives were affected by the violence and insecurities of which I wrote. I was told that such engagement was unlikely, that I wasn't doing 'that kind of research'. The response I received was premised on the assumption that theoretically driven work – work that engages with French philosophers rather than statistical analysis software – is of little use to policy makers and stakeholders. This is a widely held and frequently repeated opinion which will be critiqued in this article. Against the suggestion that paying close analytical attention to language necessitates either using overly complex terminology to explain relatively simple ideas or produces research that is of no practical relevance (or both), it is proposed instead that language is the medium of politics, as well as its vehicle, its shield and its disguise. We must know language, theoretically speaking, before we can comment on its effects (and the relevance – or otherwise – of studying it); the formulation of a politics of language is one of the most directly practical efforts I have ever made. Language matters. We know that language matters. The UK government knows that language matters. Article 29B(1) of the 2006 Racial and Religious Hatred Act states that 'A person who *uses threatening words* or behaviour, or *displays any written material* which is threatening, is guilty of an offence'.⁴ Why else would the government legislate against the use of specific types of language other than to illustrate that language affects and effects our being in the world?

In our personal lives, we know that language matters, that words are constitutive of reality. There are words that have been excised from our vocabularies, deemed too damaging to use. There are forbidden words that children whisper with guilty glee. There are words we use daily that would be meaningless to our grandparents. Moreover, the cadence and content of our communications vary by context; words that are suitable for the boardroom may not be appropriate for the bedroom or the bar. In our personal lives, we admit that words have power, and in formal politics we do the same. It is not such a stretch to admit the same in our professional lives. I am not claiming that all analysis must be discourse-theoretical – must take language seriously – to be policy-relevant, for that would clearly be nonsense. I am, however, claiming that poststructural theories of language have much to offer policy makers and practitioners, and arguing that in order to understand how best to implement policy we first need to understand 'how' a policy means, not just what it means. That is, we must understand a policy before we can implement it. This article argues that we need to engage critically with how that understanding is mediated through and facilitated by our ideas about the

1 Laura J. Shepherd (ed), *Gender Matters in Global Politics – A Feminist Introduction to International Relations*, Routledge, London, 2009, 440 p.

2 Laura J. Shepherd, see below note 3.

3 My doctoral thesis was later published as *Gender, Violence and Security: Discourse as Practice*, Zed, London, 2008.

4 Racial and Religious Hatred Act 2006 (United Kingdom), available at http://www.opsi.gov.uk/acts/acts2006/ukpga_20060001_en_1 (last visited 27 March 2009). Emphasis added.

world we live in. If we are to avoid unconsciously reproducing the different forms of oppression and exclusion that different forms of policy seek to overcome, we need to take seriously Jacques Derrida's suggestion that '*il n'y a pas de hors-texte*'.⁵

[T]here is nothing '*beyond* the text.' [...] That's why deconstructive readings and writings are concerned not only with library books, with discourses, with conceptual and semantic contents. They are not simply analyses of discourse [...]. They are also effective or active [...] interventions that transform contexts.⁶

Writing from a discipline (International Relations) that has a very clear idea of what constitutes an 'effective or active' intervention (and writing about language is not it), I have a strong desire to have the politics I espouse recognized as a legitimate and useful form of intervention. It 'is not politics as a means to truth but as the activity of contesting truths'.⁷ Discursive practices maintain, construct and constitute, legitimize, resist and suspend truth as they (re)produce meaning, and it is these practices that we can interrogate. The simple formulation of an essay title is a discursive practice: there is a difference between writing on 'women, armed conflict and language' and 'gender, violence and discourse'. The former fits comfortably within an empiricist framework – we can see, and therefore know, language, women and armed conflict – whereas the latter does not. The latter demands conceptual, rather than experiential, engagement. I include both in the title of this essay not only to draw attention to the ways in which two sets of three words purport to mean the same thing while having very different connotations, but also to suggest that we *should* (that tricky exhortation) include both in our studies and practices of politics and policy.

Policy documents are, among other things, discursive practices, and can be read in this way, with a view to asking what is in some ways the most directly political – and policy-relevant – question: how is it that the reality we take for granted, which includes disparities of power and multiple forms of (sometimes violent) oppression, comes to be accepted as such? This special issue of the *Review* draws attention to many ways in which gendered logics produce (in)equality and order social life; through the analysis of policy governing women and war, the present essay seeks to contribute a discourse-theoretical perspective in keeping with this theme. Crucially, the distinctively poststructural form of policy analysis I outline here highlights the ambiguities and tensions inherent in any policy document and offers usable strategies for negotiating these, mediating the implementation of policy in a productive and potentially transformative way. The essay is divided into three substantive sections. In the first section, I map out a

5 Jacques Derrida, *Of Grammatology*, transl. Gayatri Chakravorty Spivak, Johns Hopkins University Press, London, 1974, p. 158 (emphasis in original).

6 Jacques Derrida cited in Richard J. Bernstein, *The New Constellation: The Ethical–Political Horizons of Modernity/Postmodernity*, MIT Press, Boston, MA, 1991, p. 211 (emphasis in original).

7 Terry Aladjem, 'The philosopher's prism: Foucault, feminism and critique', in *Political Theory*, 1991, Vol. 19, No. 2, p. 280.

poststructural approach to discourse that, I argue, facilitates particular kinds of analysis of policy documents and other relevant political materials. The second section then provides an illustrative account of the theory presented, through the analysis of Chapter 5.10 of the United Nations Integrated Disarmament, Demobilization and Reintegration Standards,⁸ which is entitled ‘Women, gender and DDR’. In the final section I offer some concluding remarks and suggest some potentially fruitful avenues for future research.

‘How does a policy mean?’⁹

Elsewhere, I have argued that ‘understanding the ways in which the conceptual organisation of policy documents pre-/proscribe effective policy practice is a significant, and under-theorised, challenge’.¹⁰ I came to this conclusion specifically through the detailed analysis of United Nations Security Council Resolution 1325, which is a crucially important policy document pertaining to gender issues in the management of conflict and post-conflict reconstruction. However, most of the literature on UNSCR 1325 investigates the challenges of its implementation rather than the politics of its formulation and I sought to explore how the resolution came to be written in the way that it did, suggesting that the challenges of its implementation were in a very real sense produced by its formulation. When I began working on UNSCR 1325, my hunch was that the ideas and ideals about gender, violence and security that were represented in the resolution could be tracked back to ideas and ideals held in the institutions involved in the crafting of the document – what I term the ‘discursive terrain’ of the institutions, constituted through time- and location-specific legal systems, cultural and socio-political traditions, geopolitical positioning and histories and so on. If this was shown to be the case (and ultimately I believe I demonstrated that it was), then the implications for policy-making would be profound: the frequently unreflective and unconscious ideas that people have are being written into policy documents and are ordering and organizing those documents in very specific ways.

This theoretical agenda starts from the premise that no ‘thing’ has a material reality prior to language. There is no universal and unproblematic

8 Disarmament, Demobilization and Reintegration (frequently abbreviated to ‘DDR’) programmes are a complex and multi-levelled set of procedures ‘with political, military, security, humanitarian and socio-economic dimensions. [They aim] to deal with the post-conflict security problem that arises when ex-combatants are left without livelihoods or support networks, other than their former comrades, during the vital transition period from conflict to peace and development’. See United Nations Disarmament, Demobilization and Reintegration Resource Centre, ‘What is DDR?’, 2009, available at: <http://www.unddr.org/whatisddr.php> (last visited 3 December 2009). Disarmament refers to the process of collecting and disposing of small arms and combat munitions; demobilization is the transition from active military or paramilitary service to civilian life; and reintegration covers the procedures needed to ensure that ex-combatants, supporters and care-givers can resume viable and dignified peacetime lives.

9 Dvora Yanow, *How Does a Policy Mean? Interpreting Policy and Organizational Actions*, Georgetown University Press, Washington, DC, 1996.

10 Laura J. Shepherd, above note 3, p. 164.

definitional lexicon to which we as scholars or practitioners can refer. All concepts come to have meaning through the context of their articulation. This may seem counter-intuitive. Surely a woman is a woman is a woman, regardless of her 'context'? This is not in fact the case, for as we can learn through engagement with poststructural gender theory,¹¹ we can never 'fix' the identity of 'woman' independent of context. It may be strategically useful to speak of women, or directly necessary to speak with women. In some cases it might even be politically justifiable to speak for women, but we can never assume that we know who we are including and excluding in the category of 'women'. Further, we cannot assume that those to whom we speak have the same understanding of women as we do, that their boundaries of inclusion and exclusion map on to our own. Finally, even if we were to agree with all concerned that we know what the category of 'women' is – that it includes, for example, post-operative male-to-female transsexuals and self-identified butches and bois¹² but excludes, for example, drag queens, female-to-male transsexuals and self-identified sissies¹³ – we could not, as the examples given demonstrate, say with any certainty that we know what 'woman' means.

These considerations are not merely 'academic', in the pejorative sense of the term, as they have significant implications for policy formulation and implementation. In the remainder of this section, I discuss three ways in which the concepts we use to think/write policy matters and relate these ideas to poststructural theories of discourse. First, there is the issue of common sense. Poststructural theorists frequently endeavour to 'show that things are not as self-evident as one believed, to see what is accepted as self-evident will no longer be accepted as such'.¹⁴ Representations of political activity in media coverage (who is seen as authoritative, who is included at the negotiating table, and whose presence – or absence – is accepted as 'normal?'), representations in policy documents and representations of global politics more broadly, in popular culture and arts, are all constitutive of how we understand global political processes and our place within them. Representations 'are never merely descriptive, but always normative, and, as such, exclusionary',¹⁵ as they prescribe – and proscribe – our acceptance of the way

11 Poststructural gender theory is a body of feminist work that draws on the insights of poststructuralist theorists. Although difficult to summarize, the primary insights of this body of work are twofold: that gender does not derive from biological sex (instead, our ideas about gender are productive of biological sex) and that we cannot assume that any category of analysis (including that of 'woman', as discussed above) has any essential or inherent characteristics.

12 'Butch' tends to be used to describe a woman (or man) of markedly aggressive or masculine behaviour and appearance; the term 'boi' can describe a woman who shows characteristics stereotypically associated with young heterosexual men (including casual sexual encounters with multiple female partners) or a young and/or submissive butch.

13 The term 'drag queen' is usually used to describe males who perform as women for the purpose of entertainment (in public). A 'sissy' is a man who adopts feminine behaviours and appearance in private life.

14 Michel Foucault cited in David Campbell, *Writing Security: United States Foreign Policy and the Politics of Identity*, revised edition, University of Minnesota Press, Minneapolis, MN, 1998, p. 191.

15 Judith Butler, 'Contingent foundations: Feminism and the question of postmodernism', in S. Seidman (ed), *The Postmodern Turn: New Perspectives on Social Theory*, Cambridge University Press, Cambridge, 1994 [orig. 1990, presented at the Greater Philadelphia Philosophy Consortium], p. 166.

things are, thus delimiting the boundaries of common sense, which Stuart Hall called ‘the moment of extreme ideological closure’.¹⁶

Second, we must take seriously the question of inclusion and exclusion alluded to above. In her work on gender theory and development, Susie Jolly reminds us that ‘norms are all-pervasive, and not only determine the sexual aspect of our lives, but also shape our access to economic resources, and our ability to participate in social and political activities’.¹⁷ The marginalization of queer sexualities in security, economic/development and state-building policy, whether by omission or by design, both affects and demonstrates whose participation is considered legitimate, whose interests are represented and, ultimately, whose modes of being in the world are deemed to be of value. Relationships that have conventionally been considered ‘private’ are increasingly being publicly addressed. Even if relationships between individuals are assumed to be heterosexual and are most frequently heterosexual in ‘fact’ (i.e. in the specific case in which the relevant policy is enacted), the beliefs about marriage, monogamy and power that are intrinsic to the model of heterosexuality propagated by influential institutions may still have negative consequences.¹⁸ If intimate relationships are not conceptually bounded within a heteronormative model, practitioners need to ensure that due consideration is given to how sexual behaviours are thought of in the specific social and political context. Ultimately, the approach I espouse seeks to challenge the mostly silent norms that pervade policy-making. This challenge is posed in an effort to ensure that the types of social and political spaces that are produced through development practices and built through state-building processes are inclusive rather than exclusive, and that no mode of being in the world is marginalized or devalued because of particularly powerful notions of ‘common sense’.

Third, and finally, this approach draws attention to the process of implementing policy. It is not the overall aim of this approach to juxtapose different readings of various policies with a view to dismissing one or another of the readings as ‘untrue’, nor to suggest that one set or another of the meanings read in the documents is somehow ‘better’. All words carry meaning and have value; the process of writing value into policy documents is therefore inescapable, but it has profound implications for the interpretation and therefore implementation of that document. Meaning cannot be fixed; the sense we make of a policy document or strategic plan is conditioned by our own discursive context and the productive context of the document or plan in question. The challenges in implementing UNSCR 1325 – or, more recently, United Nations Security Council Resolution 1820 that seeks to eliminate all forms of sexual violence as weapons of war – will

16 Stuart Hall, ‘Signification, representation, ideology: Althusser and the post-structuralist debates’, in *Critical Studies in Mass Communication*, Vol. 2, No. 2, 1985, p. 105.

17 Susie Jolly, “‘Queering’ development: Exploring the links between same-sex sexualities, gender, and development”, in *Gender and Development*, Vol. 8, No. 1, 2000, p. 79.

18 See e.g. Kate Bedford, ‘Loving to straighten out development: sexuality and “ethnodevelopment” in the World Bank’s Ecuadorian lending’, in *Feminist Legal Studies*, Vol. 13, 2005, pp. 295–322.

vary from place to place, and over time. This variation does not inhere in the inaccurate representation of specific cultural and historical contexts; rather, it is a function of language itself, according to poststructural philosophy. Therefore, looking for the origin or root of meaning, the reality to which a representation purports to relate, is an irrelevance. 'Truth is a thing of this world. [...] Each society has its regime of truth [...], the type of discourses which it accepts and makes function as true'.¹⁹ This has profound implications for political research, in that a search for the 'truth' of the matter/'reality' becomes in this mode of investigation a search for the 'systems of power which produce and sustain it [truth], and the effects of power which it induces and which extend it'.²⁰ It is hoped that this article will encourage critical interpretations of and reflections on the policy documents that order the lives of individuals everywhere, employing as they do concepts that, like all concepts, are inherently value-laden. As Dvora Yanow points out, '[i]nterpretations [...] are more powerful than "facts". That makes the policy process, in all its phases, a struggle for the determination of meanings'.²¹

Representations of gender and violence in the International Disarmament, Demobilization and Reintegration Standards

The United Nations International Disarmament, Demobilization and Reintegration Standards (IDDRS) are a pivotal policy platform on which to found efforts at lasting, equitable post-conflict reconstruction. The Standards were published in 2006 and, according to the accompanying website, are:

a comprehensive set of policies, guidelines and procedures covering 24 areas of DDR. The IDDRS consolidate policy guidance on DDR, providing a United Nations integrated approach on the planning, management and implementation of DDR processes. They are also the most complete repository and best practices drawn from the experience of all United Nations departments, agencies, funds and programmes involved in DDR.²²

This document is a testament to the development of an institutional agenda within the United Nations that takes gender seriously, as one entire chapter is devoted to addressing gender issues pertinent to post-conflict reconstruction. However, my analysis of the Standards proceeds from the assumption that even materials that are not overtly or explicitly 'about' gender have something interesting and important to say about gender. That is, the entire document, rather than

19 Michel Foucault, 'Truth and power' (1977), in Colin Gordon (ed), *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977*, by Michel Foucault, Harvester, London, 1980 [transl. Fontana and Pasquino], p. 131.

20 *Ibid.*, p. 133.

21 D. Yanow, above note 9, p. 19.

22 United Nations, 'Integrated DDR Standards', available at: <http://www.unddr.org/iddrs/> (last visited 18 March 2009).

just the chapter devoted to gender issues in disarmament, demobilization and reintegration, is produced through and is productive of gendered identities that are assumed to be both social and sexual.

This is perhaps a slightly contentious claim, but if we consider that post-conflict reconstruction frequently involves the organization of individuals into productive domestic units (for example, the household or community), we can begin to see how sexuality may figure in DDR programmes. Moreover, a post-structural approach does not see gender as the social construction of identity in opposition to sex as a biologically fixed variable. Rather, following Judith Butler,²³ such an approach sees the concept of biological sex as a regulative fiction: our understanding of gender claims, and therefore constitutes, a biological sexed identity but both gender and sex are performative, in that they come to be seen as ‘real’ through the iterated performance of behaviours that are widely understood to characterize gender/sex identities. This approach sees the human body materialize as gendered as a product of our theories of gender, rather than deriving our theories of gender from the materiality of the body. That is, we have a dimorphic theory of gender and label/amend bodies to fit that theory, rather than vice versa, so the bodies are literally constituted by this discourse. Furthermore, discourses of gender require specific performances of sexuality to retain intelligibility, the dominant mode of which Butler refers to as compulsory heterosexuality.²⁴ Therefore, in seeking to determine what kinds of subjects are being produced through the IDDRS, the performances of gender and sexuality that the Standards recognize as intelligible may be interrogated. These have serious implications for the implementation of the policy in post-conflict situations. However, the analysis for current purposes is restricted to Chapter 5.10 of the IDDRS and, specifically, to the representations of gender and violence in that chapter.

Gender

The IDDRS were drafted by an Inter-Agency Working Group on Disarmament, Demobilization and Reintegration, which was formed in March 2005. The Working Group has fifteen member organizations²⁵ and represents an incredibly broad spectrum of issue-priorities and interests within the United Nations system.

23 Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity*, revised edition, Routledge, London, 1999; Judith Butler, *Bodies That Matter: On the Discursive Limits of ‘Sex’*, Routledge, London, 1993.

24 J. Butler, *Gender Trouble*, above note 23, p. 24.

25 Department of Disarmament Affairs, Department of Peacekeeping Operations, Department of Political Affairs, Department of Public Information, International Labour Organization, International Organization for Migration, Joint United Nations Programme on HIV/AIDS, United Nations Children’s Fund, United Nations Development Programme, United Nations Development Fund for Women, United Nations Institute for Disarmament Research, United Nations Population Fund, Office of the United Nations High Commissioner for Refugees, World Food Programme, World Health Organization. See *United Nations Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS)*, 2006, available at: http://www.unddr.org/iddrs/download/full_iddrs.pdf, 1.10, 6 fn.1. (last visited 27 March 2009).

This diversity would inevitably have led to controversy and contestation in the discursive terrain of the Working Group, with institutional variations in the conceptualization of core ideas needing uniform clarification. It is by no means clear, for example, that what 'gender' means to the International Labour Organization is the same as what it means to the Development Fund for Women. "These "commonsense" notions are constituted by particular configurations of discourse that, as a whole, has specific horizons of possibility, including certain modes of operation and excluding others".²⁶

There are therefore inescapable conceptual ambiguities and tensions in the IDDRS, evidenced even by the title of Chapter 5.10: 'Women, gender and DDR'. I would speculate that the inclusion of both 'women' and 'gender' was a result of the negotiating processes within the Working Group, perhaps the same processes that led to the inclusion of 'gender' but not 'women' in Annex A, 'Terms, definitions and abbreviations', which accompanies the chapter. So why include women in the title, when gender is defined in the chapter as the 'social attributes and opportunities associated with being male and female and the relationships between women, men, girls and boys'?²⁷ According to this definition, women are included by virtue of the focus on gender. I suggest that it is likely that certain members of the Working Group fought to retain the framing of Chapter 5.10 as referring specifically to women, such as UNIFEM, for instance.²⁸ This would be in keeping with academic and policy debates over the utility and deployment of gender as a depoliticized alternative to women. While it is refreshing to see a policy document that explicitly does not treat gender as 'loosely synonymous with "sex" and lazily synonymous with "women"',²⁹ the separation of the two terms and inclusion of both (as well as 'gender-aware interventions' alongside 'female-specific actions', which are discussed below) renders the very title of the chapter ambiguous and confusing, which does not bode well for the implementation of the policies contained therein.

According to the IDDRS, it is 'impossible to tackle' various problems women face 'without paying attention to how men's experiences and expectations also shape gender relations'.³⁰ The inclusion of the modifier 'also', however, suggests that the problems women face (manifesting as 'political, social and economic

26 Laura J. Shepherd, 'Power and authority in the production of United Nations Security Council Resolution 1325', in *International Studies Quarterly*, Vol. 52, No. 2, 2008, p. 384.

27 UN IDDRS 5.10, 23.

28 A 2007 report on the accomplishments and challenges of the Working Group notes that 'one of the largest challenges proved to be developing a common approach' (p. 4) and, further, that '[t]he key lesson from experience relates to flexibility and compromise for higher goals. Each entity had a different goal but all contributed to a final, single, clear product' (p. 2). Part of the point I try to make above is that the final product is neither single nor clear in its communication of meaning. DDR Inter-Agency Working Group, 'Profile of accomplishments, challenges and lessons of DDR Inter-Agency Working Group in developing IDDRS (2004 to May 2007)', 2007, available at: http://www.unddr.org/static/media/Challenges_Lessons_Achievements_DDRG-IAWG_May07_Final.pdf (last visited 24 March 2009).

29 Terrell Carver, *Gender is not a Synonym for Women*, Lynne Rienner, London and Boulder, CO, 1996, p. 18.

30 UN IDDRS, 5.10, 1.

marginalization’ and ‘high levels of violence against women’³¹) shape gender relations: to put it another way, the marginalization of, and violence against, women shape – influence, affect, form – gender relations. Thus gender relations are implicitly defined from the outset as reliant on the subordination and abuse of women. However, the IDDRS articulates a non-essentialist understanding of gender (where ‘roles and relations are by definition constructed...’³²) that separates gender from sex (which is defined as ‘[t]he biological differences between men and women, which are universal and determined at birth’³³). While defining sex as universal biological dimorphism is problematic (especially given that studies such as those undertaken by Melanie Blackless *et al.* suggest that 1% of all live births do not fit the ‘standard’ definitions of ‘M’ and ‘F’),³⁴ drawing attention to the social, cultural and political dimensions of gender constructions is potentially a progressive conceptual move. However, despite an overt commitment to the recognition of gender as constructed, there are many instances in the chapter where it is either implicitly or explicitly assumed that one can derive political will from physical form, which points to an underlying essentialism in the document. For example, the assumption that ‘female representatives’ will ensure the inclusion of ‘women’s interests’ during the negotiation phase of DDR³⁵ would seem to imply that biological sex determines political interests, which is in tension with much feminist scholarship on representation.³⁶

Further, the IDDRS follow conventional logic of political participation when they suggest that facilitators and envoys should be ‘made aware of the internationally agreed minimum standard of 30 per cent female participation in any democratic decision-making forum’.³⁷ This is in spite of the increasingly well-evidenced feminist claim that ‘there is neither a single nor a universal relationship between the percentage of women elected to political office and the passage of legislation beneficial to women as a group’.³⁸ Despite explicit efforts to challenge stereotypes that associate women with peace,³⁹ it is assumed that the presence of women in formal decision-making will stabilize post-conflict societies.

31 *Ibid.*

32 *Ibid.*, 2.

33 *Ibid.*, 25.

34 Melanie Blackless, Anthony Charuvastra, Amanda Derryck, Anne Fausto-Sterling, Karl Lauzanne and Ellen Lee, ‘How sexually dimorphic are we? Review and synthesis’, in *American Journal of Human Biology*, Vol. 12, No. 1, 2000, pp. 151–166. In addition to the statistic given above, Blackless *et al.* suggest that, because intersex anatomy does not always manifest at birth, it is near impossible to ‘gender’ infants accurately.

35 UN IDDRS, 5.10, 6.

36 See e.g. Fiona Mackay, ‘Gender and political representation in the UK: The state of the “discipline”’, in *British Journal of Politics and International Relations*, Vol. 6, No. 1, 2004, pp. 99–120; Sarah Childs, ‘Attitudinally feminist? The New Labour women MPs and the substantive representation of women’, in *Politics*, Vol. 21, No. 3, 2001, pp. 178–185; Joni Lovenduski, ‘Women and politics: Minority representation or critical mass?’, in *Parliamentary Affairs*, Vol. 54, No. 4, 2001, pp. 743–758.

37 UN IDDRS 5.10, 7.

38 Sarah Childs and Mona Lena Krook, ‘Should feminists give up on critical mass? A contingent yes’, in *Politics and Gender*, Vol. 2, No. 4, 2006, p. 523.

39 UN IDDRS 5.10, 2.

Interestingly, leadership remains a masculine privilege, according to Chapter 5.10, while women feature as 'female representatives' and in 'women's groups', as 'the main caregivers' and heading 'up to 75 per cent of all households' in post-conflict societies.⁴⁰ The IDDRS seem to expect rather a lot of women, in return for rather a limited amount of formal political power. For example, in order to ensure that gender issues are understood during the DDR negotiation phase, the chapter suggests that 'facilitators of meetings and gender advisers should organize gender workshops *for women participants* before the start of formal negotiation'.⁴¹ Why only for women? And who has access to these workshops? The same questions arise as have been asked in relation to UNSCR 1325: '*which* women are included and are we expecting more from women (super heroines) than we expect of men?'⁴²

The question of what we – or the IDDRS – expect of men is an interesting one. As mentioned above, there is an assumption of masculine privilege with regard to formal political participation. However, masculinity is also represented in the document as pathological, manifesting in behaviour that is maladapted and unhealthy. Men need to 'learn to resolve interpersonal conflicts without using violence',⁴³ they 'use their start-up cash irresponsibly, rather than to the benefit of family and community',⁴⁴ they benefit from the 'subordination' and 'domination' of women.⁴⁵ By far the most egregious discursive violence perpetrated against the masculine subject, however, is the rendering of the subject invisible in the title of the chapter and its recommended actions. There are 'gender-aware interventions' (many of which are about women) and 'female-specific interventions', this despite the acknowledgement of 'gender equality as a core principle of UN-supported DDR programmes'.⁴⁶

I am not seeking, as others have done,⁴⁷ to redress a perceived imbalance by drawing attention to the absence of positive representations of masculinity in the IDDRS. Rather, I suggest that we need to take seriously the implications of the absence. Given the overwhelmingly negative representation of masculine subjects in the IDDRS, it would be almost understandable if male stakeholders, facilitators and DDR experts professed little or no sympathy for the concerns raised in

40 *Ibid.*, 3.

41 *Ibid.*, 6–7 (emphasis added).

42 Emphasis added. 'What is potentially lost with the "use-value" approach is that women should be there because they have a right and a reason as individuals, people, as human, not simply or solely because they are somebody's vision of a peace-maker. I think it is politically unwise not to recognize that the construction of women as peace-makers and as pacifistic has not exactly "liberated" women as equal participants in policy processes'. Carol Cohn, Helen Kinsella and Sheri Gibbings, 'Women, peace and security: Resolution 1325', in *International Feminist Journal of Politics*, Vol. 6, No. 1, 2004, pp. 136–137.

43 UN IDDRS 5.10, 1.

44 *Ibid.*, 13.

45 *Ibid.*, 23.

46 *Ibid.*, 4.

47 See e.g. Adam Jones, 'Gender and genocide in Rwanda', *Journal of Genocide Research*, Vol. 4, No. 1, 2002, pp. 65–94, and Adam Jones, 'Does gender make the world go round? Feminist critiques of international relations', in *Review of International Studies*, Vol. 22, No. 4, 1996, pp. 405–429.

Chapter 5.10. Furthermore, the failure to recognize that ex-combatant men, just like ex-combatant women, may have ‘specific health and psychosocial needs’,⁴⁸ that men – and particularly boys – may have been ‘sexually abused during the war’,⁴⁹ that men and boys may be dependants of ex-combatants,⁵⁰ these failures ultimately perpetuate a conceptualization of gender that does not adequately separate gender relations from biological sex. Men and women are still constrained, almost defined, by their bodies: (male) fitness/aggression/power in opposition to (female) weakness/passivity/lack. Instead of valorizing the male subject, however, the chapter perpetuates a crude reversal of masculine privilege such that the needs (and bodies) of women are prioritized. This need not be the case. A truly gender-sensitive policy agenda would not contribute to the conceptualization of gender as a zero-sum game, where either men or women benefit only at the expense of the other. It would pay attention instead to the differences among men and among women (not reducible to bodily signifiers) rather than exaggerating those between them.

Much poststructural feminist work draws on queer theory to challenge the ideas that we have about bodies, about the status of biology and about the things to do with sex and sexuality that are generally considered to be ‘natural’.

Our experiences have implications for the appearance, condition, and performance of our bodies. For example, women may have hysterectomies, bear children or not, remove or grow body or facial hair. Both men and women may or may not exercise until they are muscular, or suffer from war or sport injuries. [...] Similarities between bodies of one ‘biological’ sex are exaggerated, and [similarities] between bodies of different sexes are played down. [...] Thus, although the categories of sex *appear* natural and absolute, they are ‘cleaned up’ by human intervention.⁵¹

A poststructural approach submits, therefore, that representations of gender, sex and sexuality in policy documents do not simply describe bodily realities, but rather are constitutive: of domestic units, sexual relations, parental care and a host of other social arrangements as well as of the physicality of the gendered body, predicated on a norm of heterosexuality. Gender is therefore profoundly implicated in our figuring of human life, literally defining the parameters of the question: ‘Who counts as human?’ In policy terms, this may be rephrased as: ‘To whom does this policy apply?’ The inclusion and exclusion of groups of people on the basis of their adherence to a culturally determined set of ‘natural’ ideals (sex binaries mapping to physical dimorphism, sexual desire following an oppositional logic) does a violence to those whose lives are already likely to be marked by violence, by virtue of their perceived transgressions of gender norms.

48 UN IDDRS 5.10, 17.

49 *Ibid.*, 16.

50 *Ibid.*, 12.

51 S. Jolly, above note 17, pp. 85–86 (emphasis in original).

Violence

The first mention of violence, in the opening paragraph of Chapter 5.10, is in association with the predicate 'sexualized', represented as a threat to women.⁵² In the paragraph that follows, the chapter highlights the problem of 'violence against women'.⁵³ As has already been noted, this same summary section suggests that men must 'learn to resolve interpersonal conflicts without using violence'.⁵⁴ Violence, then, is something that happens *to* women, something that is perpetrated *by* men. In precluding the notion that men can be victims of gendered violence, this construction is patently false. It also further circumscribes female agency, already limited by the essentialist conceptualization of gender that informs the IDDRS, as violence is a 'potential [cause] of insecurity for [...] women'⁵⁵ and therefore women are in need of protection. 'Gender-based' or 'sexualized' violence is prioritized in the chapter, which serves to suggest that gender relations are somehow violent by necessity, indeed, by nature. 'Female military personnel should [...] play an important role in receiving and transmitting information on gender-based violence and/or sexual exploitation',⁵⁶ presumably because it is assumed that the victims themselves will be female. Men, on the other hand, 'may express their frustration in increased violence'.⁵⁷ The most obvious implication of this representation is the limited discursive and material opportunities available to male victims of gender-based violence to report violence and seek redress. A secondary implication is that, through the association of gendered violence with femininity, those men that do experience such violence may well feel feminized, making them less likely to speak out even where such facilities exist.

There is an explicit temporal aspect to the representation of violence as conflict, as the chapter frequently differentiates between periods of 'conflict' and 'post-conflict'. This is problematic because it assumes a level of order and regulation that may simply not be present.

[W]ar can surely never be said to start and end at a clearly defined moment. Rather, it seems part of a continuum of conflict, expressed now in armed force, now in economic sanctions or political pressure. A time of supposed peace may come later to be called 'the pre-war period'. During the fighting of a war, unseen by the foot soldiers under fire, peace processes are often already at work. A time of post-war reconstruction, later, may be re-designated as an *inter bellum* – a mere pause between wars.⁵⁸

52 UN IDDRS 5.10, 1.

53 *Ibid.*

54 *Ibid.*, see also 5.

55 *Ibid.*, 9.

56 *Ibid.*, 13, see also 19.

57 *Ibid.*, 14.

58 Cynthia Cockburn and Dubravka Zarkov (eds), *The Postwar Moment: Militarities, Masculinities and International Peacekeeping*, Lawrence and Wishart, London, 2002, 'Introduction', p. 10 (emphasis in original).

Although DDR processes are to some extent premised on the labelling of a period of time or a society as ‘post-conflict’, it is still necessary to be attentive to the unlikelihood of an immediate end to hostilities, the immediate alleviation of resource scarcity or the immediate dissolution of strongly held beliefs about who supports or sympathizes with one side or another.

The Standards also implicitly differentiate between conflict that is armed and conflict that is not, although the latter is never discussed. Representing violence as conflict severs the signifying links to pain, physicality and specificity of experience that ‘violence’ can sustain. Not only does the language of conflict act to distance the materiality (and therefore reality) of violence assumed by the IDDRS, ‘there is very little discussion in much of the writing on “conflict analysis” or “conflict resolution” on the impact of certain types of social relations on the specific forms of violence’.⁵⁹ Furthermore, ‘the question hardly arises as to how or why this “conflict” situation is different from what is normal’.⁶⁰ As Kurtz and Turpin eloquently argue, ‘[t]he tendency to see violence as the consequence of aberrant behaviour committed by deviant individuals at the margins of society obscures the central roles violence plays at the very foundations of the social order’.⁶¹ That is, inclusion and exclusion, negotiation and coercion, even parenting and caring can be violent processes, according to a poststructural analysis. Such an approach asks which acts of violence are considered worthy of recognition and when these acts occur. Expanding the concept of violence which underpins feminist analysis, as outlined above, allows us to take seriously what Arthur Kleinman refers to as ‘the violences of everyday life’.⁶² Beyond a narrow focus on war and state-based violence lies a plethora of everyday violences we might wish to include in our analysis of DDR and security.

The language of politics

As Roxanne Doty explains, discourse is more than just language. ‘A discourse delineates the terms of intelligibility whereby *a particular reality can be “known” and acted upon*’.⁶³ Discourses are systems of meaning-production rather than simply statements or language, systems that ‘fix’ meaning, however temporarily, and enable us to make sense of the world. In suggesting that discourses ‘fix’ meaning I do not wish to imply that there is any trans-historical continuity or

59 Donna Pankhurst, ‘The “sex war” and other wars: Towards a feminist approach to peace building’, in Haleh Afshar and Deborah Eade (eds), *Development, Women and War: Feminist Perspectives*, Oxfam GB, Oxford, 2004, p. 10.

60 *Ibid.*

61 Cited in Cathy McIlwhaine, ‘Geography and violent crime as development issues’, in *Progress in Human Geography*, 1999, Vol. 23, No. 3, p. 460.

62 Arthur Kleinman, ‘The violences of everyday life: The multiple forms and dynamics of social violence’, in Veena Das et al. (eds), *Violence and Subjectivity*, University of California Press, London and Berkeley, CA, 2000, pp. 226–241.

63 Roxanne Lynn Doty, *Imperial Encounters*, University of Minnesota Press, London and Minneapolis, MN, 1996, p. 6 (emphasis added).

universality to meaning. This is a politics of iterated practices, these processes are always ongoing and never complete. Rather, the 'terms of intelligibility' are multiple, open and fluid and must be continually re-articulated and re-ordered if what was once 'common sense' is to remain so. It is the partial and limited nature of fixity that allows critical space for engagement. Above, I have outlined the ways in which the realities of gender and violence are 'known' in Chapter 5.10 of the IDDRS, for how these realities are known has direct and material implications for how they are acted upon. In this section, I offer some concluding remarks and suggest some potentially fruitful avenues for future research.

What are the implications of the issues discussed here? The theoretical musings may be interesting (to some, at least) but how can the study of women and war be enriched by the arguments presented, by the type of analysis espoused? The first point of critical engagement must be with the language used to write policy. Every policy document at the international level, no matter how short or seemingly insignificant, already goes through a process of drafting and revising in consultation with various advocates, stakeholders and interested parties. Academic interest is rarely focused on these negotiations (a notable exception being the analysis of the 'holy brackets' deployed during the UN Fourth World Conference on Women in Beijing, 1995),⁶⁴ but I would suggest that more attention should be paid to how these crucial documents come to be written in the ways that they are. This is not because it is somehow possible to write the perfect policy, one that will neither privilege nor marginalize any group or individual, nor because those who are involved in the policy-making process require the expertise of interested academics in order to say what they really mean. Instead, learning more about which groups are organized – both conceptually and strategically – around which ideas, and how tensions are resolved when two or more groups experience conflict, can only give us a better idea about how commonsense notions are being circulated and (re)produced through the writing of policy itself. I have referred to this kind of analysis as an exercise in mapping, where the terrain in question is discursive.⁶⁵ Again, I emphasize that the aim of such an analysis is not to criticize or exclude from the negotiating table any organization on the basis of its discursive terrain. Rather, given that ideas matter, it simply behoves us to know more about the ideas these key actors hold.

The second type of critical engagement encouraged by the approach to research advocated above is with the translation of policy from document to action plan. A policy document must always be translated, possibly literally (UNSCR 1325, for example, is currently available in one hundred different languages) but certainly metaphorically. The recommendations, suggestions and guidelines for best practice contained within the policy must be rendered coherent within the

64 See, for example, Robin Morgan, 'The UN Conference: Out of the "Holy Brackets" and into the Policy Mainstream', *Women's Studies Quarterly*, Vol. 24, No. 1/2, 1996, pp. 77–83; Lois A. West, 'The United Nations Women's Conference and Feminist Politics', in Mary K. Meyer and Elisabeth Prügl (eds), *Gender Politics in Global Governance*, Rowman and Littlefield, Lanham, MD, 1999, pp. 177–196.

65 See above, and also L. Shepherd, above note 24.

immediate context of its implementation. Obviously, the contexts vary, and we need to pay attention to the ways in which those variations have an impact on the implementation of policy in order to inform our interjections in decision-making in the future. Even the most groundbreaking policy is not an end point in itself, and those working in this area of policy analysis seek to offer critical insights into how the language used to write policy affects (and effects) its implementation on the ground with a view to these insights feeding forward to the next iteration of the policy process.⁶⁶ The end-users affected by a given policy will undoubtedly have much to say about the efficacy or otherwise of that policy's implementation; this second type of analysis incorporates the consideration of grassroots or indigenous organizing in relation to policy issues. We know that global governance is not necessarily the preserve of the formal, centralized institution, just as we know that it is likely that informal, decentralized networks will write their engagement differently. In order to complement the discursive mapping suggested above, then, spatial mapping might be undertaken in a similar fashion, to trace the functions and effects of translating policy into action, and the ways in which stakeholders engage with the end results.

Finally, I offer a third strand of analysis in the form of temporal mapping. In conjunction with mapping discursive and spatial horizons of a given policy document, it would also be interesting to build up a base of knowledge about that policy and particularly to trace how secondary writings change over time. There is already a shift, for example, in the representation of UNSCR 1325, with its initially positive reception being tempered with critique, and UNSCR 1820 will no doubt attract the same kind of attention. While it would clearly be unmanageable for any one researcher or research team to engage in all three kinds of analysis outlined here across more than one issue area, archiving knowledge in a temporal map would make it far easier to identify and therefore potentially understand the shifts in meaning and emphasis – both in policies themselves, those which are updated, and in secondary writing on an issue – that inevitably occur.

These three forms of mapping, then, are all premised on the assumption that we need a politics of language in order to better comprehend policy formulation and implementation, but they also recognize that the language of politics is impossible to pin down. We can never simply say what we mean, even when we mean what we say. 'No discursive formation is ever a sutured totality',⁶⁷ and each

66 The United Nations International Research and Training Institute for the Advancement of Women (UN-INSTRAW) is collating information on the implementation of UNSCR 1325 and the production of National Action Plans (NAPs). At the time of writing, fourteen such plans exist. UN-INSTRAW has also published a Background Paper on this subject by Anna Korneeva and Jasmin Blessing, 'Planning for action: Good practices on implementing UNSCR 1325 on a national level', 2008, available at: <http://www.un-instraw.org/images/files/Backgroundpaper1325.pdf> (last visited 10 August 2009). The issue of NAPs has just begun to filter through into academic publications, and I personally know several people currently working in this field. See e.g. Belgin F. Gumru and Jan Marie Fritz, 'Women, peace and security: An analysis of the National Action Plans developed in response to UN Security Council Resolution 1325', in *Societies Without Borders*, Vol. 4, No. 2, 2009, pp. 209–225.

67 Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics*, 2nd edn, Verso, London, 2001, p. 107.

formation is contingent, meaning that critical engagement with dominant discourses (for instance, of gender, violence, security) is always possible, and with that possibility comes the potential for change. We – policy makers, scholars, students, practitioners – cannot avoid making meaning through our well-meaning interventions. This does not need to lead to inertia, however. We should not dismiss policy documents nor throw away the baby of strategic gains made with the bath water of value-laden concepts. Rather, we can offer multiple readings of multiple policies with full awareness of the lacunae in our own knowledge and politics. It is hoped that this article will encourage critical readings of and reflections on the policy documents that order the lives of individuals everywhere, employing as they do concepts that, like all concepts, are inherently value-laden.

Women, economy, war

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Abstract

Political violence amplifies contemporary trends occurring worldwide in the twenty-first century: globalization, an increasing reliance on the informal economy, a shift from twentieth-century manufacturing to resource and labour wildcatting, and the growth of complex international extra-legal trade networks. Women are central to all of these, though their roles both as leaders of development and victims of violence are often overlooked in mainstream analyses. To explain these invisibilities, this article introduces the concept of vanishing points – places where formal analyses and policy effectively cease, such as the dividing lines between formal and informal economies, and the violence associated with controlling extra-legal profits that is effectively invisible to the public at large. The realities of women's work amid political violence and postwar development, and across the spectrum of in/formality are explored. The conclusions serve to challenge established notions of power, profit, and economy, and the role of gender within these.

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What takes place at the intersections where considerations of women, economy, and war meet? This is a question that I have followed in ethnographic fieldwork across three continents and over twenty-five years.¹ The answers I encounter seldom match prevailing 'social wisdom' – Foucauldian epistemic knowledge that societies broadly take as true – on these topics. At the most basic level, for example, women's roles both in the economy and on the frontlines are far greater than many classic accounts recognize.

This disjuncture is in part due to an institutionalized failure to consider the full spectrum of political violence, and of economies, as wholes. Formal actors – that is to say those populating legally recognized institutions (e.g. the

military, government, industry, commerce) – are the focus of most reporting. Non-combatants, children, informal economic work, and extra-legal commerce appear far less in formal accounting, even though these represent the majority of people and the bulk of economic activity in many places.²

I use the term extra-legal to refer to all that falls outside state-based definitions of legal. This encompasses the informal, illicit, illegal, unrecorded, and undefined. The term ‘extra-legal’ (and not ‘informal’) is used exclusively in most of my publications because, as my research consistently demonstrates, no agreed definitions for any of these terms exist and many of those arenas are blurred and overlap. But because this article explores women’s working conditions that are frequently referred to as ‘informal’ in the literature, I turn first to considerations of informality and then extend my examination to the more comprehensive concerns of extra-legality.³

My interest is pragmatic: the informal economy today dwarfs the formal economy in a number of countries. Kabeer explains that:

By the 1990s, it had become clear that the pace and pattern of economic growth was not drawing workers inexorably into formal employment, as had been predicted. Informal working arrangements had not only persisted but were expanding ... The majority of the world’s workforce in developing countries, and an increasing percentage of those in advanced industrialized countries, were to be found in part-time, irregular and unstable forms of work with little or no social protection.⁴

Women, Kabeer goes on to note, are over-represented in the informal sectors worldwide.

Evident as these trends are in peacetime, they are even more pronounced in times of political violence. For example, while I was conducting fieldwork during the final years of the war in Angola in the early 2000s, the United Nations offices there estimated that fully 90% of the national economy operated extra-legally. I found similar figures put forward in Mozambique during the last years of war. After the tsunami hit war-stricken Sri Lanka in 2005, World Bank representatives concerned with rebuilding there told me they estimated that roughly 70% of the economy was informally generated.

1 I have spent roughly half of these two and a half decades conducting ethnography in the field, working predominantly in southern Africa and South Asia, with shorter periods in contexts of political violence ranging from Southeast Asia and through the Balkans to the *favelas* of Brazil, and following the global networks of extra-legal commodity flows linking war zones through developing regions to cosmopolitan centres worldwide.

2 Carolyn Nordstrom, *Shadows of War: Violence, Power, and International Profiteering in the Twenty-first Century*, University of California Press, Berkeley, 2004; Carolyn Nordstrom, *A Different Kind of War Story*, University of Pennsylvania Press, Philadelphia, 1997.

3 Carolyn Nordstrom, *Global Outlaws: Crime, Money, and Power in the Contemporary World*, University of California Press, Berkeley, 2007.

4 Naila Kabeer, *Mainstreaming Gender in Social Protection for the Informal Economy*, Commonwealth Secretariat, London, 2008, p. 16.

My fieldwork revealed that extra-legal economies worldwide are made up of everything from dangerous items such as arms and drugs, through luxury goods such as diamonds and designer clothing, to critical necessities such as energy, food, and medicine – and in ways that are foundational to the world’s business, financial, and governing systems. Taken as a whole, the extra-legal constitutes a significant part of economies worldwide, at war or in peace.⁵

Thus, exploring the intersections of women, economy, and political violence ethnographically often takes us out of the realm of formal institutions and public reporting and into the less-reported and more-invisible realms of the informal and extra-legal, going beyond what I introduce in this article as vanishing points – places where power and abuse thereof profit from general public invisibility. Here, women’s role in solving aggressions and promoting development is substantial. And here, in these ‘shadows’, both opportunities for economic development and oppressive abuses flourish. Given those realities, this article will, in considering the equations of women, war, and economy, focus largely on what predominates in actual practice – the informal and extra-legal.

Vanishing points

Vanishing points, in terms of the concept that I introduce in this analysis, are the points where the normative (what should be) intersects with reality (what actually is). Ideally, research should illuminate both sides of this intersection: the ideals we hold as societies and the unfolding realities as people live them, regardless of how they may contradict our stated laws and values.

In point of fact, research may uphold a division that considers only the normative, as if it were reality. That which contradicts normative ideals is ignored, and becomes invisible to formal analysis. Consider: formal country economic indices (generated by bodies such as the United Nations, World Bank, International Monetary Fund, etc.) are based exclusively on legally regulated economies. GDP figures and formal policies are based on these indices.⁶ Business and financial

5 C. Nordstrom, above note 3; R. T. Naylor, *Wages of Crime: Black Markets, Illegal Finance, and the Underworld Economy*, Cornell University Press, Ithaca, 2005; Moises Naim, *Illicit: How Smugglers, Traffickers, and Copycats are Hijacking the Global Economy*, Anchor Books, New York, 2006; Willem van Schendel and Abraham Itty (eds.), *Illicit Flows and Criminal Things: States, Borders, and the Other Side of Globalization*, Indiana University Press, Bloomington, 2005.

6 N. Kabeer, above note 4, p. 28, notes: ‘The *World Development Report 2000/2001* confines its discussion of the informal economy to a box in which “labour market risks” are included among the serious risks that the poor face’. Brendan Geary, a student of mine at the University of Notre Dame in the early 2000s, conducted research in London to see how many economics books and texts contained any information on extra-legal economies and, if they did, what information was available. Looking at both university and trade bookstores, he found that many major texts on economics included virtually no discussion of extra-legal economics. If they did, the vast majority had a maximum of just a few pages of generalities. None contained methodologies for collecting data, conducting research, and empirically analyzing data with a rigour demanded for formal economic analyses.

institutions publish only legally recognized expenditures and profits, despite the fact that, as a whole, industry's extra-legal activities can reach into the trillions annually and money laundering is conservatively estimated to be 10% of global economic activity.⁷

What is most visible to policy-makers, Kabeer writes, are 'paid activities carried out in formal establishments of a certain size, regulated and protected by the state, with policy preference given to "internationally traded" activities that would save on foreign exchange'. She concludes:

These biases gave rise to an 'iceberg' view of less monetized economies, since the bulk of the activities by which their populations met their basic needs and made plans for the future remained below the surface, hidden from the view of policy makers.⁸

Because women predominate in the 'submerged' activities of the economy, they are relegated to the obscure side of arbitrary vanishing points created by the conventions of politics, research, and power.⁹

To justify putting such blinders on 'science', a general argument is made that the formal sector is, by definition, the paramount defining reality; anything outside this is by definition less significant. Nevertheless,

Informal work currently makes up between half and three quarters of employment in the non-agricultural sector in developing and transition countries and its share is growing (International Labour Organization, 2004). According to the ILO, it accounted in 2000 for around 51% of employment in Latin America, 65% in Asia, 72% in sub-Saharan Africa (or 78% if South Africa is excluded) and 48% in North Africa. ... Informal employment accounts for 83% of non-agricultural employment and 93% of total employment in India; 55% and 63% in Mexico; and 28% and 34% in South Africa.¹⁰

These practices are exacerbated by political instability and violence. Several contemporary trends concerning war are important to this analysis:

- Current wars are centred in less-industrialized regions rich in the resources fuelling industrialized nations. Complex international economies, both legal and extra-legal, define war zones and their relationships with global markets.

7 M. Naím, above note 5.

8 N. Kabeer, above note 4, p. 28.

9 Sylvia Chant and Carolyn Pedwell, *Women, Gender and the Informal Economy: An Assessment of ILO Research and Suggested Ways Forward*, International Labour Office (ILO), Geneva, 2008; Marilyn Carr and Martha Chen, 'Globalization, social exclusions and work with special reference to informal employment and gender', Policy Integration Department Working Paper No. 20, ILO, Geneva, 2004; *Report VI: Decent Work and the Informal Economy*, Report of the Director-General, International Labour Conference, 90th Session, ILO, Geneva, 2002.

10 N. Kabeer, above note 4, p. 33.

- As violence disrupts governmental support systems, infrastructure, and trade routes, the general populace is thrown into increasing reliance on informal and extra-legal means of gaining basic life necessities.
- International trade in raw materials and human labour (from war zones) for commodities (from industrial centres), rather than twentieth-century-style factory work, is now central to the war–economy equation.
- Factories remain a part of twenty-first-century economic power, but in a different guise. Many are multinational, with controlling interests in highly industrialized countries. They produce ‘global commodity, energy, and food flows’ that provide little development for the less-industrialized countries and war zones hosting them.

The informal and the extra-legal constitute vanishing points, as do profiteering and many of the human rights abuses taking place in war zones. To look into the subject of women and the economy in the context of war, then, is to delve into the shadows and explore why these arenas are obscured from formal analysis and public gaze. And it is to ask what our chances of effective peace, development, and rights are when a substantial portion of reality is overlooked in public policies.

Vanishing point no. 1: what, and who, counts? From informal to formal

A curious dichotomy greets a person passing along some of the dusty roads in Sri Lanka. During the years of political violence, women often braved bullets, bombing, and abuse to carry their food and wares to sell at market, or to get to their jobs in factories, many run by large international companies. In all the war zones I have lived in, local markets are the lifeblood of a community – it is here that the essentials for daily life are exchanged, in many countries largely produced by women. Down the road, at a factory, women make export goods, often for brand-name cosmopolitan companies or mass retailers.

The dichotomy lies in the fact that the work done in factories is defined as part of the formal economy. It is counted in GDPs, included in economic indices generated by national governments and international bodies such as the United Nations and World Bank, and assessed in economic analyses. Local markets, on the other hand, are generally defined as part of the ‘informal economy’. As such, formal quantitative data collection and comprehensive economic analyses (such as those done for, say, supermarket chains), which are assessed in formal economic and development policy, are not conducted. There is an irony in the fact that non-essential commodities – such as a designer shirt to sell in a cosmopolitan shop or a \$4.99 wooden bird on a stake you can put in your potted plants – have more ‘economic gravity’ than essential foods.

A further irony exists in the dichotomy between factory and informal work: the profitability of many factories and multinational corporations is rooted in part in a reliance on informal work. As Kabeer notes, ‘Multinational buyers place their order with a formal company but actual production may occur through

a chain of subcontracted firms in the informal economy that use home-based pieceworkers'.¹¹ The reasons, she writes, hold fairly steady across the globalizing economies today:

An increasing number of activities previously carried out in the formal economy have been casualised and subcontracted to informal workers, allowing employers to side-step labour regulations and responsibility for social benefits. Production has come to be increasingly organised through 'global value chains' through which multinational firms have been able to source their goods from all over the world using diffused networks of suppliers often based in developing countries.¹²

This is the world of women, who make up a larger percentage of the informal economy – 60% – than do men throughout the less-industrialized world.¹³ In the garments industry alone, Kabeer notes, the percentage of home-workers among total workers was estimated at 27% in the Philippines, 38% in Thailand, 45% in Venezuela, and 30–60% in Chile.¹⁴

But the dichotomy is more complex. The ILO's definition of informal set the standard: it refers to small-scale, low-income, low-tech, and subsistence-level economic activities.¹⁵ This ILO definition encourages an individual-level view: a market-woman sitting under a tree selling twenty-five tomatoes for coins apiece. This would be akin to assessing *only* the clerk at a Walmart store ringing up the \$4.99 wooden bird made in Sri Lanka, without considering the whole of Walmart and its relationship to the larger national economy.

The last twenty years of development work have demonstrated the often sophisticated systems that surround marketplace women. Women have formed cooperatives, established internal banks, linked with groups in other areas, engaged in regional trade, and expanded into new products. Yet the ILO's definition of informal still colours perceptions of these activities. Few economists are out in the markets counting women's production and earnings and then quantifying these for GDP statistics, governmental national financial policies, or stock market and interest rates indices. If we consider one woman selling a handful of vegetables, a chicken, or cloth, this makes sense. But another quite different view is possible.

Consider an individual woman – an informal economy – in context, thus in terms of the other people with whom she forms associations; the financial systems they set up; the other commodities they develop, produce, and sell; the transport systems arranged; the regional and international links they create and

11 N. Kabeer, above note 4, p. 51.

12 *Ibid.*, p. 34.

13 Kabeer (*ibid.*) cites ILO (2002) statistics to demonstrate her point: in sub-Saharan Africa, 84% of women workers outside of agriculture are informally employed, compared to 63% of men. In Latin America, the figures are 58% and 48% respectively; while in Asia it is 65% for both women and men. See ILO, *Decent Work and the Informal Economy*, above note 9.

14 N. Kabeer, above note 4, p. 43.

15 ILO, *Decent Work and the Informal Economy*, above note 9; ILO, *The Informal Economy*, Report of the Committee on Employment and Social Policy, Governing Body, 298th Session, Geneva, March 2007.

maintain with other groups like themselves; and the trade they develop along these networks. Taken together, this can easily match the size and functions of a 'formal business' – one recognized in national accounting. It can have as great an impact in national terms.

When we think in terms of one woman, one market stall, one basket of vegetables, the relationship with national economies is minuscule. But when we consider the total flow of all vegetables moving through women's market stalls in a country, the relationship becomes far more significant. When we expand this to all the 'informal' goods and services provided by these women, it constitutes a considerable portion of a country's economy. Today, such networks generally function internationally and with considerable sophistication.¹⁶ These realities bear little resemblance to the standard definitions of 'informal' as small-scale industries with low income, technology, and impact.

If development and financial stability depend on accurate economic analyses, why do formal indices such as GDP and the standard of living index leave out critical data? This lack of professional data is not due to any inherent difficulties in collecting or analysing such data. In one summer in 2008, working alone, Rahul Oka followed trucking routes in northern Kenya used to take basic necessities to violence-affected areas. He found that a single company's trade in goods for a single remote and unstable area – the proverbial 'informal' – easily added up to millions of dollars per site a year. And that company traded with a number of such areas, some in neighbouring countries.¹⁷

Curiously, the very lack of data may not be apparent. We might call this invisible invisibilities, constituting another vanishing point. To give an example: in 1999 I was speaking with Emmanuel Dierckx de Casterlé, the UN Development Programme (UNDP) resident representative in Mozambique. When I asked him about non-formal economies and their relationship to development, he immediately became interested, saying: 'Many here believe that the postwar economic successes Mozambique has had are intrinsically tied to the informal economy and its interpenetrations with formal development.' 'Why, then,' I asked, 'don't you study this in greater depth?' He seemed truly perplexed: 'But we are interested in this, as I have been saying.' 'Why then,' I persisted, 'don't you publish this work?' 'But we do!' he exclaimed. 'Our UNDP reports discuss these issues.' I picked up the several-hundred-page UNDP country report on Mozambique that had just been published in Geneva and asked him to show me where they were discussed. He opened the book and leafed through it. Then he picked up some of the other UN reports lining the shelves of his office and studied them. Finally, he looked at me with a grin and said: 'This is really interesting; there really isn't much in our reports, and little in our conferences either.'

16 Janet MacGaffey and Rémy Bazanguissa-Ganga, *Congo-Paris: Transnational Traders on the Margins of the Law*, Indiana University Press, Bloomington, 2000; C. Nordstrom, above note 3.

17 Rahul Oka, 'Stable trade, violent borders: how can refugees and conflict zones have multimillion dollar commerce?', paper presented at the Society for Applied Anthropology Annual Meeting, Santa Fe, New Mexico, 17–21 March 2009.

In point of fact, the massive UNDP country report on Mozambique for that year mentions the non-formal only in passing, in just a handful of paragraphs.

Vanishing point no. 2: coir and rape – from development to violence

I sat on the front porch of one of the women's houses, surrounded by a group of women I did not know. It was during the time of political violence in Sri Lanka. They lived in a village on the coast that traditionally produced coir products from coconuts they harvested.

The women had asked me to come and talk, and I thought they wanted to discuss coir production – a 'women and economy' kind of conversation. But the discussion took a different turn. 'We are organizing ourselves,' they began. 'For generations we women have done all the work – collected and prepared the coir, made the products – and then been given a few rupees by the middlemen who take the products off to sell worldwide for real profits.'

'So we pooled our resources,' they continued, 'set up our own transport, made our own contacts, and cut out the middlemen. But we didn't think enough about what these middlemen would do when their source of money ran dry. They declared war on us. They have beaten and raped some of us.'

Listening, I realized that these women, and all like them, were breaking the unwritten rules of society – they were moving out of the shadows and across the vanishing point into the formal world of business. These borders are often maintained by violence that is largely uncontrolled, because it, too, occurs beyond the vanishing point.

The violence that sustains these systems fits into larger patterns of gendered violence:

Women perform two-thirds of the world's work but earn only one-tenth of all income; women own less than one-tenth of the world's property (Human Rights Watch 2002). People in a position of economic servitude to others who have control over the resources are generally vulnerable to mistreatment, and they have little recourse for justice.¹⁸

The same dichotomy emerges for the coir workers as for the market women and the factory workers. The women harvesting and making coir products are generally seen, in professional economic views, as individual actors working largely in isolation from the formal structures of the economy and from one another. The middlemen who pick up the finished products and transport them are seen as constituting the 'formal' economy and its infrastructures.

As with considerations of vegetables – and of market-stall products in general – coir stands as an example of goods and services that, taken as a national

18 Katherine van Wormer, 'Anti-feminist backlash and violence against women', in *Social Work & Society*, Vol. 6, No. 2, 2008, pp. 332–333.

whole, constitute a meaningful portion of national and international markets and domestic profits. Unlike the market women, however, the coir workers do not control the marketing of their products. The vanishing point here functions for different reasons, rendering the women vulnerable to (very) low profits, lack of protection, and the threat of violence if they attempt to integrate into formal markets. Their work construed as informal, these women often find the resources available to formal actors and businesses out of their reach.¹⁹ As Carolyn Elliott points out:

Transformational empowerment is usually collective. Changes in consciousness and individual agency may be the initial results of empowerment, but these cannot be transformative without larger scale institutional change that requires action on many fronts and at different levels. Processes that move from single actions to collective assertion of power, from private spheres to public arenas, from resistance to rule changes are more likely to be transformative.²⁰

It is precisely at these points that the coir workers face violence.

These larger patterns are interrelated, and extend across war to peace. At the household level, domestic and sexual violence increases during war. In state-based societies, domestic and sexual violence against women and girls tends on average to affect about one-third of society, irrespective of the development status of a country, and almost two-thirds in some countries. The rise in such violence during war can have a devastating impact on society.²¹ At the community level, research has shown that, after political violence and calamity destroy the economic and social foundations, it is the women who generally make the first forays into establishing both domestic and economic order – getting loans, setting up money-making enterprises, obtaining core goods. This often exacerbates tensions between men and women, as men find their traditional ways of providing for their families closed to them and their self-esteem challenged – which can lead to greater violence against women. At the same time, as in the case of the coir workers, women also face attack from outside the domestic arena. Besides those seeking to control their economic activities, women are preyed upon by soldiers, criminals, and political protagonists trying to dominate a community.²²

19 Sara Horrell, Hazel Johnson, and Paul Mosley (eds.), *Work, Female Empowerment and Economic Development*, Routledge, New York, 2009.

20 Carolyn Elliott (ed.), *Global Empowerment of Women: Responses to Globalization and Politicized Religions*, Routledge, New York, 2008, p. 9.

21 Carolyn Nordstrom, 'Toward a (gendered) theory of war', in Karamé Kari and Tryggestad Torunn (eds.), in *Gender Perspectives on Peace and Conflict Studies*, International Peace Research Institute/Norwegian Institute of International Affairs, Oslo, Norway, 2000, pp. 17–40.

22 Carolyn Nordstrom, 'Visible wars and invisible girls: shadow industries and the politics of not-knowing', in *International Feminist Journal of Politics*, Vol. 1, No. 1, 1999, pp. 14–33; Carolyn Nordstrom, 'Girls behind the (front) lines', in Uli Linke and Danielle Taana Smith (eds.), *Cultures of Fear*, Pluto Press, London, 2009, pp. 189–200.

Vanishing point no. 3: no man's lands – from informal to extra-legal

In the latter years of the war in Angola, a division common to a number of war zones could be seen. The government forces tended to control the urban infrastructure, whereas the rebels held the more rural parts of the country. Both sides battled over areas rich in natural resources such as diamond mines and timber reserves. This split resulted in stark needs: government-controlled areas had more access to material goods, the rebel areas had greater access to food. Trade across political borderlines was both critical to survival, and an act of treason.

A dead zone – a depopulated strip five to ten kilometres wide that no-one controlled – developed between the two sides. Trade between them took place across these no man's lands. Rogue troops and armed bandits preyed on the traders, who were frequently women. While some women did this voluntarily to support their families, many were forced with the threat that their children would be killed if they did not.²³

In speaking with some of these women and the more powerful men controlling the lucrative trade, I found that the women who survived earned nothing more than the basic goods they could carry; the trade leaders reaped tremendous profits.

As Mary Douglas discusses in her classic work on purity and danger,²⁴ the borders of in/formality and extra/legality²⁵ are imbued with power, fraught with myth, and guarded by violence. That which takes place beyond vanishing points can yield great profits, provoke abuse, and generate grinding poverty. Fortunes invisible to formal accounting are made here, and such fortunes can be brokered into economic prowess and political power. Such successes are often built on the work of disenfranchised people silenced by their invisibility. Examples of this are extra-legal gem mining (the proverbial blood diamonds) and timber logging, arms trafficking, and the exploitation of child labour.

Those able to control the borders where the extra-legal intersects the legal realm of the state enjoy considerable power. There is a qualitative difference between market women selling vegetables locally for a handful of coins and people who collect vegetables from growers and markets regionally to sell in multi-ton and multi-million dollar shipments to cosmopolitan centres worldwide. These are profoundly gendered processes:

- while the majority of informal work is done by women, the most lucrative positions and products in the extra-legal world are held or controlled by men – for example, blood diamonds, illicit arms, technology, and drugs;

23 See Carolyn Nordstrom, 'Public bad, public good(s) and private realities', in Paul Gready (ed.), *Political Transition: Politics and Cultures*, Pluto Press, London, 2003, pp. 212–224.

24 Mary Douglas, *Purity and Danger: An Analysis of the Concepts of Pollution and Taboo*, Taylor, London, 2002.

25 My use of the slash (in/formal, extra/legality) indicates that both meanings in the term are intended, e.g. informal and/or formal.

- the vanishing points themselves – the borders of the extra/legal and the in/visible (from transport and trade to financing and market management), and the violence that surrounds them – are likewise largely controlled by men;
- the people who create the definitions of what is, and is not, economic analysis and policy (the predominantly male political, business, and research elite) effectively create and maintain vanishing points and their profitability.

At the international level, a profound irony defines this trade: vast global trade networks – exchanging commodities produced in cosmopolitan centres for raw materials from less-industrialized regions – rely in part on women initializing the trade across ‘no man’s lands’ in war zones and poverty, the ground zero of the global exchange circuits. These loci, however, are largely invisible in formal analysis: they are behind the vanishing point.

Vanishing point no. 4: the sovereignty equation – from extra-legal to nation

The newspaper headline read: ‘Children killed for black magic’. It was 1990 in Maputo, Mozambique, during the final bloody years of war, and I had been living in the country for a year. Stories of finding bodies, especially of children, with parts missing were not uncommon. But when I tried to research an actual victim, I never found one. I found only stories – no bodies, no burials, no family.

The story was picked up by the BBC and reported in English: in a densely populated area of the capital city, locals had gone on the rampage, beaten up some people, and burned their cars, apparently in retaliation against men who had been harvesting body parts to make powerful magic. The BBC gave the impression that this was a world both irrational and savage.

In a short time, I found out that this had nothing to do with witchcraft or dead bodies. War zones are common hunting grounds for international predators, traffickers, and child-labour rings.²⁶ The fact was that the local citizens were outraged at international profiteers procuring children (often homeless, impoverished, or war-traumatized) for domestic, industrial, agricultural, and sexual labour in other countries. They were equally outraged at the police who were unwilling, or unable, to stop these crimes. When a group of the traffickers were spotted one day, in expensive cars with South African licence plates, locals gathered to beat them up and set fire to their cars as a warning.

The dangerous intersections of women, economy, and war are summed up in this story: if we were to follow all the criminal rings and children through the countries to which they travel and the work they do, how big, how powerful, how central would we find these activities to be in the world’s economy?²⁷ Studies suggest, for

26 Carolyn Nordstrom, ‘Carita’s war’, in *Development*, Vol. 44, No. 3, September 2001, pp. 30–35.

27 These questions are investigated in C. Nordstrom, *Shadows of War*, above note 2.

example, that more than a million children are trafficked into the sex industry yearly,²⁸ and that some 70% of the estimated 218 million under-age children in the labour force worldwide are working in agriculture.²⁹

But there is an underlying and equally unsettling question: why did both national and international media services report this as a story of African witchcraft – a story that effectively painted Mozambicans as irrational, and concealed pathological trafficking and human rights abuses? In following up such stories across trafficking zones worldwide, I discovered that blind eyes are turned to criminal profiteering for three main reasons: because it brings revenues to countries and their leaders; because it provides access to other, often extra-legal, resources such as arms and critical supplies; and because it is fundamentally international in scope, running profits from impoverished war zones to the world's cosmopolitan centres.³⁰ Witchcraft is a good story; the criminal ring continued unabated – and uninvestigated.

The political implications of vanishing points can be seen in the example of trafficking.³¹ Few countries have sufficient tax bases to cover all their necessities and expenditures during war. Most therefore exploit the extra-legal in some way to gain the revenues, resources, and services needed.³² The weak security controls and poverty characteristic of war zones make exploitation relatively easy. These problems – insufficient infrastructure, weak currencies, arrested development, poor integration into global economies, and poverty – follow countries as they move into peace. They are also common to countries undergoing rapid political transition, such as post-colonial and post-Soviet nations.

Sovereignty requires cash that trades on international markets. Money-makers vary from country to country, depending on the resources each has. Angola (like the Democratic Republic of Congo) has abundant resources – from oil and diamonds to timber and fish – that sell in world markets for hard currencies.

28 UNICEF, *Child Protection from Violence, Exploitation and Abuse: Child Trafficking*, available at http://www.unicef.org/protection/index_exploitation.html (last visited 30 October 2009); UNICEF, *The State of the World's Children 2006: Excluded and Invisible*, available at http://www.childinfo.org/files/The_State_of_the_Worlds_Children_2006.pdf (last visited 30 October 2009); US Department of State, *Trafficking in Persons Report 2008*, available at: <http://www.state.gov/g/tip/rls/tiprpt/2008/> (last visited 2 November 2009).

29 *Global Trends in Child Labour 2000–2004*, ILO, Geneva, 2006; Mark Hecht, 'Private sector accountability in combating the commercial sexual exploitation of children', a contribution to the World Congress against the Exploitation of Children and Adolescents, available at http://www.ecpat.org.uk/downloads/World%20Congress%20III/Thematic%20Paper_Corporate%20Social%20Responsibility.pdf (last visited 5 May 2010).

30 BBC correspondents probably did not wilfully mislead audiences. A subtle but powerful system, promoted by those who in any way profit from the less than legal, moral, or scrupulous, pushes investigators to ask certain questions and not others, to interview certain people and not others, to accept certain explanations and not even think of others.

31 Kevin Bales, *Understanding Global Slavery*, University of California Press, Berkeley, 2005; David Batstone, *Not For Sale: The Return of the Global Slave Trade – And How We Can Fight It*, Harper One, New York, 2007.

32 Peter Andreas, *Blue Helmets and Black Markets*, Cornell University Press, Ithaca, 2008; M. Naim, above note 5; Douglas Farah and Stephen Braun, *Merchant of Death: Money, Guns, Planes, and the Man Who Makes War Possible*, Wiley, Hoboken, NJ, 2008.

Myanmar and Sudan have oil, Colombia and the Golden Triangle of Southeast Asia have drugs, small island nations have offshore money, Sri Lanka and the Philippines have domestic workers. Eastern Europe has girls and women.

Countries may formally decry extra-legal practices, and some may be genuine in their denunciations. But in terms of a nation's sheer monetary bottom line, such activities bring in cash that girds the viability of the state. These activities can yield hundreds of millions of dollars yearly for a single country. Consider the fact that only 53 countries (out of 185 worldwide) have a GDP rate of more than US\$100 billion. Forced labour (including sex exploitation) brings in US\$31 billion a year, according to ILO estimates.³³ There are 106 countries that have GDPs below this figure.³⁴ State entities may not be directly involved; nevertheless, a tacit understanding exists that revenues made extra-legally as well as legally move into the economy, into the financial institutions, and into infrastructural development. The more cash, the more development potential, the greater the leaders' power base, and the more influence they can wield in international affairs.

A significant portion of any given society can be complicit in such ways. A massive industry surrounds trafficking: every person trafficked requires a supporting cast of hundreds. Trafficking avoids detection and prosecution by using cross-border tactics. Procurers and 'employment agencies' find and 'create a product'; people in transport and shipping industries move them; agents at borders and ports process them; managers along the way feed, clothe, and tend them; people rent and sell houses and offices; others provide commodities for the business and medical treatment for the trafficked people; marketers buy, sell, and 'package' women and their services; companies advertise and provide protection and enforcement; bankers and accountants manage and launder profits; lawyers provide legal counsel. And customers buy.

In other words, trafficking requires the average workforce, the average economy. This holds true for the entire extra-legal world. Sovereignty can be built, quite literally, on the (backs of) women and girls who are sexually trafficked.

Vanishing point no. 5: women making it – from subsistence to profit

'How,' I asked, 'do women and societies on the brink of existence make it?'

I was speaking with a local Angolan woman working in a UN programme office for health and education situated quite literally on the frontlines of one of the most war-affected parts of the country, in 2001.

'It is,' she smiled, 'one and the same thing.'

³³ ILO, *Global Trends*, above note 29.

³⁴ International Monetary Fund, World Economic Outlook Database, update 2009, available at <http://www.imf.org/external/pubs/ft/weo/2009/01/weodata/index.aspx> (last visited 1 November 2009).

There are no closed systems. No form of dominion or domination reigns unchallenged.³⁵ Women can also make the inequalities, invisibilities, and resources of the generalized global markets and formal public policies work for them.

As the Angolan UN staffer quoted above went on to explain, women are the invisible centre of gravity of society. Gravity because, while men move more fluidly, women *are* families, in times when men are there and when they are not. As such, they forge the basic links of society: producing food, daily necessities, communal networks, market systems. Where families are centred, infrastructure, health, education, and trade emerge. Invisible because women's role in this process is generally overlooked. If women do not make it, families crumble and communities collapse. Let me give you an example, she said: no one starts out in this place with anything. Women start out below the bottom: they carry water for a penny. You see these poor hungry women in rags and you think: 'There goes a person all of life has forgotten, a person who will live and die carrying that bucket of water.' But it is not so. She struggles down the road with a plan. When she scrapes together a few pennies, she will begin to make and sell charcoal.

The staff worker launched into an explanation:

OK, here's the sequence: you begin with carrying water, or some hard labour. And then move on to making a product to sell on a patch of swept dirt in the local open market. Maybe collecting wood to make charcoal or herbs for medicines. You scrape together a few pennies and join in a women's informal bank. When your turn comes for the whole banking pot, you invest in a bit of farmland. With bananas, for example, you can make some real money. You start selling in local markets, reinvesting everything you can. You check out what they are desperate for in the next country and you begin to plan for that trip.

'Do you worry about visas, permits, taxes?' I asked. At first, the woman seemed surprised by my question. Later I realized it was because to people here the answer is so obvious. This has nothing to do with that kind of economy. This is informal. Daily life. It works because it is not formal. Entire infrastructures work this way. She then continued with her explanation: once in the neighbouring country, you use your profits to buy what people need at home. Then you fly back home, sell, and continue the cycle, growing at each turn. At some point, you begin to see real wealth. You build a decent house, buy a car. You begin to put money into your community, provide jobs, develop the place. Your banking group really carries some weight now. Finally, you purchase a boutique and set up a formal business. But you never give up your informal networks – your key to power.

35 Hannah Arendt, *On Violence*, Harvest Books, New York, 1970; Michel Foucault, *Power/Knowledge*, Pantheon Books, New York, 1972; Slavoj Žižek, *Violence: Big Ideas/Small Books*, Picador, New York, 2008.

Clearly, she added, only the lucky make it all the way down this line. 'But people do. It's how we make the system work. How women make it.' The woman explained that what people call informal equates to a huge economy. This forms the foundations of the country: US\$250 billion of imports comes into this country through the informal economy yearly. Those are UN estimates. What does this say about determining economies? About war and post-war development? About women's impact?

Conclusion

There is a classic stereotype: women on the margins of the economy offering a small harvest of home-grown produce stacked in neatly arranged piles on a mat in a local open-air market. Their earnings are counted up in single-digit figures, their impact left largely uncalculated out of sheer indifference.

Why their stories, their earnings, their networks, and their contributions to development are not added up becomes an interesting question, in view of the fact that extra-legal commodity networks managed largely by men are. For example, it has been widely published that unauthorized diamond earnings in Angola amount to US\$1 million a day, and US\$1 billion a year disappears from oil profits. It is even more curious, considering that such profits at the national level pale in comparison to the UN estimate for Angola of US\$250 billion a year in informal earnings. At the global level, estimated extra-legal profits in arms, narcotics, and human trafficking – each bringing in several hundred billion dollars per annum – circulate widely. The fact that the informal economy of one African country rivals illicit arms sales worldwide, and that both these figures rival the entire gross domestic product of a number of the world's countries, does *not* circulate widely.

Women's ambition to group together, form banking and entrepreneurial systems, and move from local subsistence to inter/national profit-making is part of a larger ethos. It is neither haphazard nor reactionary; it follows carefully crafted plans of development. It is not that the women just want to create a new market for their goods. The market is not the goal, but the means to expanding one's business, one's options, and one's opportunities. It would seem that the women working diligently to earn the money to support their families are, as they say, central to the economy.

Where, then, are the margins? The centres? And where do we place development? Extra-legal diamond and oil revenues are often sent offshore, doing little to help a country. But, in the most basic sense, women's informal work is developing their countries. They move food, clothing, energy supplies, and household and industrial goods. They set up local and international transport routes, and create markets across borders and countries.

It is here that the question of women and the economy becomes most interesting. It would seem that real profits, and real development, are to be found in the places where economic analysts are not looking: below the tip of the

iceberg.³⁶ As Detective Richard Flynn of Scotland Yard said to me, it is in the informal economy at the most basic street level that market dynamism and economic innovations emerge.³⁷

This ‘not-looking’ below the ‘iceberg’s tip’, beyond the legal, is profoundly political. There are many reasons why vanishing points are created. Most have to do with profit and power. It is here, in the distinctions surrounding in/formality, extra/legality, im/morality, gender, and survival – and in what we, as societies see and don’t see – that economic and political power are forged and negotiated on the widest scale. Those able to control both the definitions of labour, profit, legality, and extra-legality and the actual infrastructures underlying these are *de facto* leaders whether they are in formal politics or not.

The solution is relatively straightforward: assess economies realistically, as they actually function, and not according to illogical heuristic divisions more political than factual, and demand that our formal indices and policies do so too. Economies function as a seamless whole. The logic of markets and money flows, their impact on social and political processes – and by extension on development and financial health – are determined by the full spectrum of socio-economic and monetary practices across all determinations of (extra-)legality. Basing formal analyses on partial data is dangerous: we are unable to promote responsible development, protect against abuse, foresee crises, and ward off economic meltdowns such as the international crash of September 2008.³⁸ We need to apply laws governing labour, trade, profit, and protection equally across the board, and not just to what has been designated as the formal domain. And we need to challenge the mindset in research and policy by critically reassessing our most fundamental – and cherished – ideas and ideals about the intersections of power, gender, violence, development, and the morality of economics.

36 As defined in N. Kabeer, above note 4, p. 28.

37 For the full interview see C. Nordstrom, above note 3, ch. 15.

38 Carolyn Nordstrom, ‘Global fractures’, in *Social Analysis*, Vol. 52, No. 2, Summer 2008, pp. 71–86.

‘They came with two guns’: the consequences of sexual violence for the mental health of women in armed conflicts

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Abstract

Sexual violence has serious and multiple consequences for the mental health of women. At the psychological level, it leads to radical changes in the image that the victim has of herself, in her relations with her immediate social circle and beyond, in the community as a whole, and in the way in which the victim sees the past, present, and future. It thus has a lasting negative impact on the victim’s perception of herself, of events, and of others. At the community level, it stigmatizes the victim, depriving her of any social status or intrinsic value as a person (she is seen as unfaithful or promiscuous), and thereby modifies relationships within the community with an overall deleterious effect. This article discusses these consequences of sexual violence for the mental health of women, especially those who are its victims during armed conflicts.

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Psychological and social processes are so closely linked as to be virtually indissociable. Thus conditions that undermine a woman’s ability to adapt to her social environment, such as stigmatization or discrimination, can jeopardize her mental

health.¹ Conversely, any psychological disorder, such as mental trauma or psychosis, can prevent a woman from playing an active and constructive role in her community. Both mental health and social integration are key to understanding and meeting the daily challenges of life, to feeling and expressing a range of emotions, and to maintaining positive relations with others. It is therefore important to examine the consequences of sexual violence for both social integration and mental health.²

Social consequences

Sexuality touches on a myriad of values and taboos governing the behaviour of both individuals and society at large. At individual level, most people are repelled by the idea of engaging in sex outside a given context (e.g. marriage or a loving relationship) – being subjected to forced sex is a distressing and humiliating experience.

Thanks to their sexual and reproductive abilities, women play a major role in building and preserving the clan-based, ethnic, or cultural identity of any society in which they live. Groups form alliances through marriage, and such alliances are strengthened every time a child is born. It is therefore not surprising that sexual practices are dictated by the social contract³ and that access to sex is regulated, codified, and organized by all societies – and is sometimes even the subject of legislation. In most traditional cultures, sexual relations are permitted only within the confines of a marriage agreed to by the families concerned. The betrothed are generally expected to be of the same ethnic group, tribe, caste, or religion; an intimate relationship or marriage within any other framework is out of the question.

1 See Evelyne Josse, ‘Détecter les violences sexuelles faites aux femmes’, 2007, and idem, ‘Accueillir et soutenir les victimes de violences sexuelles: approche orientée vers la solution’, 2007, both available at <http://www.resilience-psy.com/> (last visited 1 March 2010).

2 For interventions by humanitarian organizations see Evelyne Josse and Vincent Dubois, *Interventions humanitaires en santé mentale dans les violences de masse*, De Boeck Université, Brussels, 2009; Inter-Agency Standing Committee (IASC), *Guidelines for Gender-based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies*, IASC Taskforce on Gender in Humanitarian Assistance, Geneva, 2005, available at <http://www.humanitarianinfo.org/iasc/downloadDoc.aspx?docID=4402>; International Committee of the Red Cross (ICRC), *Women Facing War*, ICRC, Geneva, 2001, available at <http://www.icrc.org/Web/eng/siteeng0.nsf/html/p0798>; ICRC, *Women and War*, ICRC, Geneva, 2008, available at <http://www.icrc.org/Web/eng/siteeng0.nsf/html/p0944>; Réseau des Femmes pour un Développement Associatif, Réseau des Femmes pour la Défense des Droits et la Paix, and International Alert, *Le corps des Femmes Comme Champ de Bataille Durant la Guerre en République Démocratique du Congo. Violences sexuelles contre les femmes et les filles au Sud-Kivu (1996-2003)*, Study, 2004, available at <http://www.grandslacs.net/doc/4051.pdf>; United Nations High Commissioner for Refugees, *Sexual and Gender-based Violence against Refugees, Returnees and Internally Displaced Persons*, UNHCR, Geneva, 2003; World Health Organization (WHO), *Mental Health of Refugees*, WHO, Geneva, 1996; ‘Sexual violence’, in E. G. Krug, et al. (eds.), *World Report on Violence and Health*, WHO, Geneva, 2002, available at http://whqlibdoc.who.int/publications/2002/9241545615_eng.pdf (all last visited 19 April 2010).

3 The social contract is an agreement among individuals whereby organized society, with its hierarchical structure, is established. It consists of rules and laws that ensure social order.

Sexual violence breaks every social convention relating to sexuality. It generally exposes the victims to stigmatization, often to discrimination, and it may jeopardize their position in society. In many societies, victims of sexual violence are blamed for their fate. Traditional beliefs and prejudices are used to justify their state of disgrace in the eyes of the community. Rape and other forms of sexual coercion are equated with adultery. The victims are considered to be under an evil spell cast by their own inappropriate behaviour (for instance, towards a family member) or to be suffering divine punishment for alleged sins, including so-called provocative dress or behaviour that supposedly drove the perpetrator to commit the violent act.

Victims of sexual violence are also discriminated against, in that they may be shunned, stripped of their rights (whether legal or traditional), and deprived of access to goods and services. They are frequently prevented from speaking out, rejected by their spouses, prevented from marrying, forbidden to take part in certain activities (such as preparing and serving food, growing and harvesting crops, or nursing children), and excluded from school and work. Wherever they go and whatever they do, victims of sexual violence are made to feel ashamed and are ostracized, whether by their families and communities, schools, employers, places of worship, legal institutions, or medical facilities. In some cases, whether in war or peace, they are 'buried alive' by society.

Impact on marriage

Rejection by husband and strain on marital relations

Sexual violence can result in a variety of difficulties between husband and wife: it often has a dire effect on sexual relations (loss of desire or disgust on the part of the victim and/or her husband, pain during intercourse, etc.) and on emotional bonds (trauma-induced suffering can lead to personality disorders that affect interpersonal relations, bringing about arguments or conflicts).

In traditional societies, a husband will frequently reject (through repudiation or divorce) or abandon his wife after she has been raped, or he may leave home for increasingly long periods of time. In cases where the husband stays, he often neglects his wife (especially by refusing to have sex with her), acts distant, or mistreats her. In some cultures, a raped spouse is banished from the conjugal bed or forbidden to prepare meals for her husband. In countries where polygamy is practised, the husband of a rape victim will often take a second wife. The risk of being repudiated or divorced is greater if the victim is pregnant as a result of rape.

The reasons that drive a husband to reject his wife after she has been raped are multiple: he may be afraid of contracting a sexually transmitted disease (STD) – especially HIV/AIDS – or he may balk at the consequences of an unwanted pregnancy; feeling stigmatized or fearing that he may be so treated in future, the man would rather leave his wife than risk becoming the object of ridicule; or he may feel dishonoured by an act that, in his culture, is assimilated with adultery.

Impact on family relations

Rejection by and strife within the family

Sexual violence can tear a family apart. A young unmarried woman who has been raped may be barred by her family from returning home. If she is allowed to come home, she may be deliberately ignored by her parents or subjected to humiliation and taunts (insults may escalate into arguments or outright conflicts).

Girls who have been forced to have sex with rebel fighters may be viewed as having defected to the enemy, and may therefore be stigmatized as ‘opponents’, opening the way to rejection by family members or by the community at large.

Impaired parenting skills

Rape victims may no longer be able to look after or meet the needs of their children, whether for physical reasons (long convalescence from the injuries sustained, disability caused by the rape, etc.), psychological reasons (trauma, clinical depression, psychotic delirium)⁴ or cultural reasons (in some societies, rape victims are not allowed to nurse or prepare food for their children). Even when they are allowed to fulfil their duties as parents, they often become irritable or aggressive towards their children.

Parental authority is often undermined by rape. Children who have been forced to witness their mother’s rape or to have sexual relations with her often show lack of respect for her or despise her. They refuse to obey her and blame her for not having resisted her attacker.

Children of rape

Children born as results of rape are often abandoned, rejected, or ill-treated (not as well fed, educated, or cared for as other children), and are sometimes murdered. This may occur even when the rape victim, her husband, and their families have agreed to keep the child.

Impact at community level

Rejected by the community

Rape victims often speak of the shame that they experience. They talk of being mocked, ridiculed, denigrated, insulted, humiliated, and disparaged. When they go out in public, they risk being made fun of by villagers who parody songs in a

4 Persons suffering from psychotic delirium lose their sense of reality, sometimes experiencing hallucinations, and are unaware of their condition.

demeaning way, using the victim's name, interrupt their conversation, or change subjects when the victim walks by, and whisper, giggle, or exchange knowing looks in her presence. Villagers may also point at the victim or stare at her with obvious disdain. A rape victim may also find that her behaviour, however ordinary, is seen as morally reprehensible and is unfairly associated with the rape. Thus, if she disagrees with a friend or a family member, she may be told 'You're just acting stupidly [i.e. refusing to see things my way] because you were raped'. Often, the victim is prevented from expressing her opinion (for example, she may be cut off mid-sentence and told 'Not you!'). In addition, old friends may stop talking to her or refuse even to see her.

Exclusion from schools and jobs

Girls who have been raped are often seen as bad examples and therefore expelled from school, especially if they are pregnant. Likewise, those who have jobs are often dismissed.

Unfit for marriage

In traditional cultures, single women who have been raped no longer have any chance of being married and those who were promised find their engagements broken off. In many societies, a family's honour depends on the virginity and chastity of their daughters. Sexual violence is viewed as a source of shame, and the victims are dishonoured and perceived as unfit for marriage. Yet, in such societies, marriage is often the only way for a woman to achieve social or economic status of any kind.

Trauma of forced marriage

In some societies, a girl or single woman who has been raped is forced to marry the perpetrators in order to restore her family's honour.

Violence

Women or girls who have experienced sexual violence run the risk of being ill-treated or even murdered by their families ('honour killings' carried out to restore the family's honour, which is seen as having been trampled on by sexual violence). In some societies, rape victims are punished by their communities or by law⁵

5 This is the case in countries under sharia law (Islamic law). In some of these countries, a charge of rape can only be upheld if the perpetrator admits his crime or if the rape has been confirmed by four adult male eyewitnesses (or, in some cases, by eight female eyewitnesses). Failing this, the rape is equated with adultery and accusations made by the victim against the perpetrator are deemed slander.

(they may be convicted of a crime and sentenced to prison, flogged,⁶ stoned to death,⁷ etc.) for having had illicit sexual relations.⁸

Relatives of the victim may attack (or kill) the perpetrator or members of his community in order to take revenge or defend the family’s honour.

Repeated assault

In some societies, victims of sexual violence are at higher risk of repeated assault because other members of their community, who now despise and disparage them, are no longer willing to protect them.

Impact at individual level

Isolation

Despised and rejected, victims of sexual violence often withdraw from society of their own accord in order to avoid feeling threatened or humiliated. They may cease to go places (such as churches or choir practice) where they are likely to run into old friends who turn away from them, or they may move far away from their villages. In some cultures, isolation is forced upon the victims by their families or spouses who keep them locked up at home, hidden from prying eyes, to save the family from public disgrace.

Inability to function in society

Fearing repeated violence or feeling physically or psychologically vulnerable, rape victims often cease their professional activities and stop performing their daily chores (for example, they no longer dare go to work in the fields, fetch wood, draw water, and so forth). Girls often drop out of school, either temporarily or for good; this reaction is sometimes dictated by the social norms of their communities. In some societies, victims of sexual violence are expected to drop many of their activities, including preparing and serving meals, growing and harvesting crops, and nursing their children.

6 In December 2007, King Abdullah of Saudi Arabia pardoned Touria Tiouli, a victim of gang rape. This 39-year-old woman, a French national of Moroccan origin who was working in Dubai, had been sentenced to six months in prison and 200 lashes for ‘adultery’.

7 The case of Aisha Ibrahim Duhulow, a 13-year-old girl who was raped by three men, was particularly dramatic. The al-Shabab militia, one of the armed groups that controls Somalia, convicted her of adultery in violation of sharia. As a result, she was stoned to death on 27 October 2008.

8 In the Qur’an, for instance, illicit sexual relations are defined as a criminal offence (*hudud*). They include sexual relations (whether consensual or not) engaged in by an unmarried person (man or woman) and those engaged in by a married person (man or woman) outside of marriage. Since rape involves sexual relations outside of marriage, it is often considered as a criminal offence and punished accordingly. This interpretation of rape is not exclusive to Islam. In sub-Saharan Africa, rape is also frequently associated with adultery, owing to the widespread belief that a man cannot force a woman to engage in sex against her will.

Indirect social consequences

Victims of sexual violence may descend into increasing poverty as a result of unemployment⁹ or high medical bills.

Stigmatization of family members

In addition to the consequences suffered by the victim herself, sexual violence has a direct impact on the wellbeing of her family. Feelings of humiliation and shame extend to her relatives, who may also be mocked, singled out, or even prevented from expressing an opinion. Socially stigmatized, the victim and her family encounter difficulties within the community at large.

Psychological consequences

Sexual violence can seriously affect the victim's mental health, with dire consequences in the short, medium, or long term. In the hours and days following the event, the victim may present a wide range of physical, emotional, cognitive and behavioural symptoms. Although they may be unsettling or appear strange, most of these symptoms are considered to be normal or at least expected responses to an extreme and terrifying event. They may nonetheless be difficult for the victim and her family or friends to cope with.

In the month following the event, the stress level will remain high but should gradually decrease. As the victim begins to adjust to what has happened, her symptoms should ease and eventually disappear altogether. In some cases, owing to the nature of the event (intensity, severity, duration) or to individual variations in vulnerability (highly emotional personality, mental disorder, prior trauma) or environment (lack of family and social support, presence of stigmatization or discrimination, etc.), the symptoms may persist and become chronic.

Three months after the event, the persistence of symptoms, their growing intensity, or the appearance of new symptoms all point to deep-seated suffering and lasting psychological trauma. A number of these symptoms, it should be said, are not specific to sexual or other forms of violence but may appear in other circumstances as well. Those that are specific to post-traumatic stress disorder (PTSD) are: the impression of reliving the event, dissociation, avoidance symptoms,¹⁰ and neurovegetative symptoms.¹¹

After experiencing sexual violence, some women act rationally, whereas others display behaviour that is inadequate or inappropriate (e.g. stuporous inhibition, uncontrolled agitation, individual panic flight, incessant and incoherent

9 See 'Exclusion from schools and jobs' above.

10 I.e. avoiding thoughts, feelings, or conversations about the traumatic event.

11 I.e. symptoms leading to dissociation from society, including physical, emotional, and cognitive symptoms.

talking, etc.) and predisposed individuals may show psychopathological behaviour (e.g. brief reactive psychosis). These initial responses do not predetermine the outcome. Within days or weeks of the event, some victims whose initial responses were inappropriate see their symptoms lessen and disappear spontaneously, while others whose responses were adequate begin to display psychotraumatic symptoms (for instance, impressions of reliving the event) and develop PTSD, which may be short-lived or become chronic. Only time can tell which victims will adjust and which will experience long-lasting trauma. Those who show peritraumatic signs of dissociation¹² are more likely to develop long-term psychological problems. However, many end up overcoming the psychological trauma spontaneously.

Emotional responses

Among the most common emotional responses displayed by victims of sexual violence are: fear, anxiety, anguish, depression, shame, guilt, anger, euphoria, and apathy. From a psychological point of view, fear, anxiety, and anguish are all distinct emotions. They are nevertheless closely interrelated and all three point to the stimulation of the ortho-sympathetic nervous system.¹³

Fear

Fear is a feeling of dread relating to an existing or impending situation that is perceived as dangerous. After experiencing sexual violence, the majority of victims suffer fears that they did not have before. Among the most common are fear of repeated assault, fear of situations reminiscent of the assault, and fear of the social and medical consequences of the assault.

Fear of repeated assault may include fear of being raped, kidnapped, beaten, or tortured again. Victims often fear that the traumatic event that they experienced may recur. This feeling can be heightened by any situation that is reminiscent of the assault (such as an unexpected noise in the bushes, the news that others in the community have been assaulted, etc.). Such fears are characteristic of PTSD. In war zones, of course, they may be entirely justified. Thus, it is not uncommon for armed groups to raid villages and capture sexual slaves whom they had previously freed or for them to rape the same women during repeated incursions into a village.

Fear of situations reminiscent of the assault is characteristic of post-traumatic syndromes. Depending on the circumstances of the assault, victims may fear, among other things, going to work in the fields, being alone or in an isolated area, being in the dark, night-time, strangers, armed men or men in uniform, and sexual intercourse. Even when these situations do not present any obvious

12 I.e. dissociation during or immediately after a traumatic event.

13 The purpose of the ortho-sympathetic nervous system is to raise the alarm and prepare the body for action.

danger,¹⁴ victims may experience intense and uncontrollable fear when faced with them, hence the avoidance behaviour.¹⁵ However, such fears may also be perfectly justified. In some places, the risk of rape, assault, or kidnapping by bandits or militia roaming the fields in search of food is very real.

Fear of social consequences includes fear that others will find out about the assault, fear of their reactions, fear of being rejected by one's spouse or being denied the opportunity to marry, fear of being ostracized by the community, and fear of being thrown out of school. As we have seen, these fears are entirely justified in traditional societies where victims of sexual violence are often made to feel ashamed and unwanted by their spouses, families, and communities.

Fear of medical consequences may include fear of having contracted a sexually transmitted disease (especially HIV/AIDS), of being pregnant as a result of rape, or of having suffered irreversible physical harm (incontinence,¹⁶ sterility,¹⁷ or disability¹⁸). These fears as well are fully justified by the existence of a genuine risk.

Anxiety

Anxiety may be defined as a feeling of insecurity or of being threatened. In contrast to fear, it can occur in the absence of any obvious danger or specific source of apprehension (context, place, person). A majority of victims of sexual violence become anxious, though most of these women were not beforehand. In severe cases, anxiety can take the form of a diffuse state characterized by permanent underlying apprehension. Victims are constantly worried and experience excessive and recurrent fears relating, for instance, to their health or that of their families, or to their future or that of their children. They generally have feelings of impending doom. They often have a morbid awareness of their problem (they know that their apprehension is exaggerated or unfounded) but they nonetheless find it difficult if not impossible to overcome. The overall state of anxiety is accompanied by symptoms such as agitation, fatigue, inability to concentrate, irritability, muscular tension, and sleep disorders. The persistence of these symptoms over time leads to personality changes, with the person becoming fearful, hopeless, and dependent.

14 Such fears are sometimes mistakenly called phobias. In relation to psychotraumatic syndromes, it is more accurate to refer to 'pseudo phobias' as they are the result of conditioning that has arisen from a real situation. This is not the case with 'true' phobias.

15 Avoidance behaviour is an instinctive response. It may be defined as a defence mechanism designed to increase the chances of survival in a dangerous situation.

16 Vesicovaginal or rectovaginal traumatic fistula (perforation of the membrane between the vagina and the urinary or the digestive tract), a potential physical consequence of sexual violence, causes leakage of urine and stools.

17 Resulting from trauma or from a poorly treated infection.

18 Resulting from sexual violence or from torture or beatings (deafness, blindness, partial or total paralysis, amputation, etc.).

Anguish

Anguish manifests itself as acute episodes known as panic attacks or anxiety attacks. These attacks occur when the victim is exposed to anything that reminds her of the traumatic event (whether flashbacks or new situations), but also – without any particular reason – in situations that present no threat at all. They usually last from a few seconds to a few minutes. These attacks, which are characterized by a paroxysmal feeling of imminent danger, are accompanied by profound distress and unpleasant physical symptoms¹⁹ such as palpitations (the sensation of an irregular heartbeat), tachycardia (acceleration of the heartbeat), a feeling of suffocation (shortness of breath, the sensation of weight pressing down on the chest), chest pains, perspiration, chills, and hot flashes.²⁰

Anxiety and anguish are exacerbated by any difficulties that the victim may face, such as material losses owing to looting, financial difficulties following expulsion from her home or rejection by her husband, social ostracism and discrimination, or poor living conditions in camps for refugees or displaced persons.

Symptoms of depression

Although most victims do not develop clinical depression,²¹ almost all feel, at some point, sad and hopeless. Symptoms of depression include sadness, loss of interest in life, suicidal impulses, feelings of powerlessness (e.g. feeling unable – especially as a woman – to defend oneself, improve one’s lot in life, etc.), discouragement, pessimism, hopelessness, and the feeling that the future holds nothing good. These symptoms may be accompanied by crying spells, constant weeping, feelings of dejection, suicidal thoughts, suicide attempts, or suicide itself.

Feelings of shame

Most victims of sexual violence feel humiliated and disgraced. They are ashamed to be with other people and regard themselves with disgust and hatred. They feel soiled or sullied, have lost all self-esteem (sometimes wondering if they are still human beings), and feel that they have lost their intrinsic value (for instance, as a woman or a wife).

Feelings of guilt

Victims of sexual violence may feel guilty about their own behaviour (self-reproach): for instance, for not having defended themselves, for having preferred rape to death, for having failed to flee when warned of an impending incursion, or

19 These physiological changes distinguish anguish from anxiety.

20 These symptoms point to the neurovegetative stimulation of the ortho-sympathetic nervous system.

21 According to the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), a diagnosis of clinical depression depends on a number of specific symptoms being present for at least two weeks.

for having gone to the place where they were assaulted. These feelings of guilt are for the most part linked to preconceived notions and/or an exaggerated sense of their own responsibility. 'I should have known what was going to happen', they tell themselves, even if the event was, objectively speaking, totally unforeseeable. They may also have feelings of guilt towards others – for instance, for having brought dishonour on their husbands, children, or families.

Anger

Victims may feel anger against the perpetrators, against all men, against an armed group, against war, or against their husbands and communities for having rejected them.

Euphoria

In the first few days following the assault, victims may experience euphoria stemming from their relief at having escaped death.

Apathy

Apathy is the absence or suppression of emotions or desire, leading to indifference. Apathetic people are indifferent to the outside world, have lost their motivation, and have no interest in their usual occupations (daily tasks, work, school, and leisure). As a result, they do less and less.

To conclude, there are significant differences between people in the way that they express their feelings and cope with suffering. Some externalize their emotions in obvious ways – by weeping, screaming, becoming agitated, and so forth – while others repress or hide their emotions and remain calm on the surface. The way in which people express their suffering does not necessarily reflect their underlying feelings. The absence of outward signs of emotional distress does not mean that a person is not suffering, will not develop disorders later on, or does not need help.

Somatic reactions

Psychological suffering may lead to physiological symptoms or trigger a physical illness.

Physiological symptoms

Somatoform disorders are characterized by physical complaints that suggest a somatic origin but cannot be demonstrably linked to any organic pathology. In other words, the patient is suffering from physical symptoms in the absence of any diseased organs. Even though these disorders take a somatic form, they qualify as mental disorders because they are caused by psychological factors.

Physical asthenia: This can be defined as chronic fatigue that is unrelieved by rest, the rapid onset of exhaustion following the slightest physical effort, and a persistent feeling of weakness and/or of general weariness. Most victims of psychological trauma experience this syndrome.

Pain: Victims often suffer from abdominal, chest, or muscular pain (back and neck pain), headaches, and generalized pain.

Neurovegetative symptoms: The neurovegetative system²² controls the internal organs (brain, heart, intestines, lungs, etc.) and maintains basic vital functions (breathing, blood circulation, digestion, and the excretion of urine and faecal matter). Its stimulation, characteristic of PTSD, can trigger any number of symptoms, including dizziness, lipothymia (brief fainting spells), trembling, sweating, hot flashes, heart palpitations, tachycardia, pain and oppression in the chest (sometimes mimicking angina), gastro-intestinal disorders (nausea, vomiting, diarrhoea, or constipation), a sensation of constriction in the larynx (‘lump in the throat’), difficulty breathing and a pseudo-asthmatic sensation of suffocation, and pins and needles in the extremities (e.g. at the fingertips or around the mouth).

Sexual dysfunctions: These are frequent among victims of sexual violence and include decrease or loss of sexual desire, aversion to sex (disgust and avoidance of sex), anorgasm (failure to experience orgasm), dyspareunia (painful coitus), vaginismus (involuntary spasm of the vaginal musculature severe enough to inhibit or prevent intercourse). In rare cases, there is an increase in sexual desire and activity, especially among women who have been used by armed groups as sexual slaves.²³

Menstrual disorders: Amenorrhoea (absence of periods), menorrhoea (profuse periods), dysmenorrhoea (painful periods), and irregular periods can stem from psychological trauma, in this case caused by sexual violence.

Conversion disorders: Rare but very striking, these disorders cause symptoms and deficits in voluntary motor function and in sensory and sensorial functions. They include motor disorders (e.g. gait disturbance, paralysis of an arm), loss of sensation (e.g. in a limb), blindness, deafness, aphonia (loss of speech), and other symptoms devoid of organic causes suggesting a neurological or other physical disorder.

Such somatic complaints may well stem from an emotional disorder, but prudence is in order: while they may reflect sadness, anguish, or trauma, they may

22 The neurovegetative system, also known as the autonomic nervous system, comprises the ortho-sympathetic and para-sympathetic systems.

23 Cases have been reported in the Democratic Republic of the Congo, in the provinces of Ituri and North and South Kivu.

also point to the presence of an organic illness or be the consequence of physical violence.

Somatic illnesses

Stress and traumatic suffering may also lead to or aggravate an identifiable somatic illness affecting, for instance, the following systems:

- cardio-vascular: hypertension, angor (angina), and myocardial infarction (coronary thrombosis);
- respiratory: asthma;
- digestive: gastroduodenal ulcer, irritable bowel syndrome (spastic colon), and colics;
- skin: eczema, psoriasis, and alopecia;
- endocrinal: diabetes and hyperthyroidism.

Cognitive symptoms

The most common cognitive²⁴ symptoms displayed by victims of sexual violence are: repetition syndrome, memory disorders, dissociative symptoms, confusion, and impaired concentration.

Repetition syndrome and impression of reliving the event

These are indicative expressions of PTSD, characterized by the fact that the victim replays the traumatic event (rape, kidnapping, torture) in her head over and over again or believes that she is actually reliving it. They include flashbacks, repetitive memories, nightmares, and fear of the event recurring, along with the psychological distress it caused and the physiological effects it had.

Flashbacks: These are memories of all or part of the traumatic event that suddenly intrude on the victim's thoughts and seem real. Flashbacks are usually visual (the victim may have the impression of 'seeing' the rapist) but they can also involve other senses, such as hearing, smell, or touch (for instance, the victim may have the impression that she can hear the rapist's breath, smell his odour, or feel him breathing down her neck). These memories seem absolutely real for a brief moment, at most a few seconds. Thus, for a split second, a woman may 'see' her rapist instead of her husband during sexual relations, or a girl working in the fields may briefly think that a branch blowing in the wind is her rapist emerging from the bushes.

24 Cognitive science is the study of mental processes, i.e. knowledge, learning, thought reasoning, consciousness, imagination, memory, language, etc.

Repetitive and intrusive memories: These memories spring to the victim’s mind involuntarily. The victim does not wish to recollect the traumatic event but cannot help thinking about it all the time. Such memories differ from flashbacks in that the victim is aware that they are occurring in her mind and does not confuse them with reality.

Mental ruminations: The victim repeatedly asks herself questions about the traumatic event, dwelling on it and wondering about its significance and consequences (such as her husband having abandoned her, the material difficulties that rejection has brought about, etc.). These incessant ruminations reflect the victim’s worries and anguish.

Nightmares about the traumatic event: The victim has nightmares in which she relives the sexual violence and from which she usually awakes with a start. She may dream, for instance, that soldiers are chasing her and she may wake up just as they are about to grab her.

Fear that the traumatic event will recur: The victim may have the impression that the event is about to happen again, especially if anything occurs to remind her of it (e.g. an unexpected noise, hearing the story of another rape victim).

Distress and physiological symptoms: Victims of sexual violence experience distress (fear, anguish, feelings of helplessness, sudden fatigue, etc.) and display physical symptoms (palpitations, tachycardia, sweating, etc.) when they are exposed to anything that reminds them of the event.

Memory disorders

These are central to post-traumatic symptomatology. Victims may suffer from any of the following disorders: traumatic amnesia (partial or total), traumatic hypermnesia,²⁵ difficulty memorizing new information or repetitive and intrusive memories of the event.

Dissociation symptoms

These are among the diagnostic criteria for PTSD. People are considered to suffer from ‘dissociation’ when they are disconnected from part of reality. They give the impression of ‘not being there’ or of ‘being elsewhere’. They do not appear to hear what is said to them. They are physically present but their bodies are often unresponsive and their minds are elsewhere. Some tell the same story over and over

25 ‘Traumatic amnesia’ is the inability to remember certain aspects of a traumatic event, while ‘traumatic hypermnesia’ is unusual clarity of memory regarding a particular aspect of a traumatic event, generally a sensorial one.

again, without seeming to notice the person whom they are addressing and with their eyes riveted to the traumatizing scenario that is unfolding within.

Depersonalization: This disorder can be described as an alteration in the perception of the self. Some victims are cut off from their own identities; they feel that they are no longer themselves. They experience splitting (e.g. they see themselves from the outside), feel that they are spectators of their own lives, act mechanically like robots, or feel completely estranged from their bodies.

Derealization: This is a loss of the sensation of the reality of one's surroundings. Victims feel detached from their surroundings, they have a feeling that people and things around them are strange or unreal, that they are living a waking dream or nightmare, that they are strangers in a once familiar world.

Traumatic amnesia: This is the effect of dissociation on memory.

Peritraumatic dissociation is considered to be the clearest predictive sign of chronic PTSD. Dissociative behaviour is in fact an adaptation strategy.²⁶ However, if it is pervasive (e.g. total amnesia or partial amnesia affecting important areas of experience), it increases the risk of psychotraumatic syndrome because the event in question cannot be integrated by the victim. It should be said, however, that many victims who display dissociative symptoms eventually recover their mental stability spontaneously and that some even say that they are relieved that they cannot remember the horrendous details of the traumatic event.

Confusion

This shows itself as disordered consciousness accompanied by the slowing of thought processes, disturbed orientation (in time or space), and impaired ability to reason, understand, take decisions, and make choices. Some people are plunged into a state of confusion such that they can no longer say their names or respond to simple questions.

Impaired concentration

The main symptoms are distraction and attention deficit disorder.

Behavioural symptoms

Victims often display abnormal behavioural symptoms that can become habitual, causing health problems and affecting their family and social lives. These

26 An adaptation strategy consists of a cognitive change (change in thought pattern) or a behavioural adjustment (action) made by a person in order to cope with an 'imbalance between demands and resources', whether internal or external. See Richard S. Lazarus and Susan Folkman, *Stress, Appraisal, and Coping*, Springer, New York, 1984.

symptoms include: avoidance behaviour, hypervigilance, jumpiness, sleep and eating disorders, dependence, altered hygiene habits, relational problems, unusual attitudes, and strange behaviour.

Avoidance behaviour

This type of behaviour is characteristic of psychotraumatic syndromes. Victims avoid anything that reminds them of the traumatic event. They avoid thoughts (they do not wish to think about the event), feelings (they flee situations that elicit the same feelings as the event), conversations (they refuse to talk about the violence that they endured), activities (they cease or are reticent to engage in activities that they associate with the event, such as cultivating the fields, going to market, etc.), places (they stay away from the place where the traumatic event took place – for instance, a particular field), and people (such as armed men or men in uniform) who remind them of the event.

Hypervigilance

Victims often show symptoms of hypervigilance. They look for signs of danger obsessively, remain in a state of permanent alertness in the hope of avoiding another assault, cannot seem to rest or relax, and so forth.

Jumpiness

Traumatized people jump at the slightest sound (especially sudden or loud sounds) or when they hear noises that remind them of the traumatic event (e.g. footsteps or rustling in the leaves that could signal the presence of an attacker, cracking sounds like that of gunfire, etc.).

Sleep disorders

Victims frequently complain of insomnia, of having trouble falling asleep, of waking up in the middle of the night or very early in the morning, and of nightmares.

Eating disorders

Sexual violence may upset eating patterns. It is not unusual for a victim to experience anorexia or bulimia.

Dependence

Psychological suffering often leads to the abuse of alcohol, psychotropic drugs (tranquillizers, antidepressants, anti-anxiety medication, sleeping pills, painkillers, etc.), or hard drugs. Recourse to psychoactive substances is an attempt

to self-medicate as a means of overcoming trauma symptoms (nightmares, repetitive memories, flashbacks), related disorders (depression, anxiety), or stress responses (neurovegetative hyperstimulation), or as a means to escape from reality.

Altered hygiene habits

Hygiene habits are frequently upset by sexual assault. Victims may display either an increased preoccupation with cleanliness (e.g. compulsive washing) or, on the contrary, sink into total negligence (refusal to wash).

Interpersonal disorders

These disorders are characterized by an attitude of dependence and an increase in emotional demands placed on family and friends (insatiable need for affection and support, constant need to talk and be listened to, etc.) or, on the contrary, by a turning inwards (refusal to talk to anyone, deliberate isolation, avoidance of contacts with family and friends or colleagues), and by irritability and aggressive behaviour towards others (fits of anger, verbal, or physical abuse), distrust, and suspicion (towards men, strangers, etc., but also towards friends, family, or colleagues) and so forth. These disorders are partly determined by the circumstances surrounding the traumatic event. If the victim was assaulted while she was alone, for instance, she may want to be constantly accompanied; if she was gang raped, she may withdraw and want to be left alone.

Uncharacteristic behaviour

Victims may display behaviour that is uncharacteristic: for instance, they may be irritable, burst into tears at the slightest provocation, show suspicion without cause, be negative or pessimistic, or be hyperactive or agitated. Or they may seem unusually calm or even sluggish, talk incessantly (logorrhea), be aggressive towards themselves (self-mutilation, suicidal thoughts, self-destructive habits such as alcoholism), and so on.

Strange behaviour

This type of behaviour is rare and appears only among persons who are particularly fragile or already have a psychiatric history. It includes running away from home (without an obvious reason or a specific aim), wandering aimlessly, displaying an attitude or expression that is inappropriate to the emotional context (for instance, laughing while telling a tragic story), compulsive rituals aimed at exorcising evil (such as lengthy prayer sessions), loss of contact with reality (brief reactive psychosis, or auditory or visual hallucinations), and so forth. Victims who become delirious subsequent to sexual assault generally present symptoms that are directly related to the traumatic experience. For instance, a woman who has witnessed the

execution of her husband may ‘hear’ gunshots and ‘see’ blood everywhere even after she is safe.

Mutually reinforcing consequences of sexual violence

As mentioned at the outset, psychological and social processes are closely inter-dependent. Thus, the social consequences of sexual violence produce psychological suffering and, conversely, psychological suffering has an impact on the victim’s relationship with her family and community. The following are just some examples that illustrate this mutually reinforcing effect.

Social consequences leading to psychological suffering

Being rejected by or deprived of support from one’s spouse or family, or being forced to remain single or to marry one’s rapist are consequences that inevitably produce deep psychological suffering.

The disgrace and ostracism to which victims are subjected have a major impact on their self-esteem. They tend to blame themselves and internalize the negative perceptions that others have of them. This leads to a loss of confidence and self-respect. They may also have feelings of guilt if they are held responsible for their misfortune. All of this may plunge them into a state of depression and despair from which they are convinced they will never escape.

Psychological impact leading to social consequences

A person suffering the effects of trauma has a reduced ability to act, communicate, and interact, and consequently has diminished social skills. Emotional withdrawal or, in contrast, excessive dependence on family and friends, irritability and aggressive behaviour towards others, and lack of interest in and loss of enthusiasm for ordinary activities all tend to disturb family and community dynamics.

Fear and psychological dysfunction (delirium, apathy, constant feeling of dejection, general loss of interest, panic attacks, difficulty concentrating) interfere with or may even prevent a person from accomplishing ordinary tasks such as working in the fields. This can deprive the victim of her means of subsistence and reduce her to poverty. In many societies, women are responsible for the education of their children. Thus, when psychological problems interfere with parental duties, children grow up deprived of the basic conditions for healthy development. Fear, shame, disgust, and sexual dysfunction (dyspareunia, vaginismus) prevent some women from having normal sexual relations, and their husbands may leave them as a result.

There are many facets to a person’s life, with the psychological and social aspects forming only part of the picture. Physical health, for instance, has a direct effect on mental stability and social integration – and vice versa. Thus, the physical trauma caused by sexual violence induces psychological suffering that

heightens the trauma. Conversely, psychological suffering has an impact on physical health.

Psychological effects of physical trauma

Becoming pregnant, sterile, or severely disabled as a result of rape can be the source of major distress. Likewise, symptoms of sexually transmitted diseases (STD) contracted as a result of rape (foul-smelling vaginal discharge, urinary incontinence, sick spells, etc.) induce feelings of embarrassment, shame, and anxiety. Miscarriage brought on by physical violence committed against a pregnant woman leads to painful feelings of loss.

Physical effects of psychological trauma

Abuse of alcohol, which often occurs after a trauma, can have dire health consequences (such as liver disease, stomach ulcers, hypertension, or diabetes) and lead to high-risk behaviour (unprotected sexual relations, disregard for safety rules, provocative attitudes, and other types of dangerous behaviour). Meanwhile, psychological suffering may result in physical symptoms (pain, asthenia, menstrual disorders, etc.) or cause a physical illness (such as an ulcer, asthma, or diabetes).

The Security Council on women in war: between peacebuilding and humanitarian protection

Alain-Guy Tachou-Sipowo

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Abstract

Having established that massive human rights violations in armed conflict constitute a threat to peace and that women are the most severely affected by the scourge of war, the Security Council has since 1999 adopted a number of resolutions intended specifically for this group. These instruments contribute to the development of humanitarian law applicable to women and acknowledge the value of active participation by women in peace efforts. The following article first analyses the foundations on which the Council has been able to assume responsibility for protecting women in situations of armed conflict, and then considers the actual protection it provides. It concludes that the Council has had varying success in this role, pointing out that the thematic and declaratory resolutions on which it is largely based are not binding and therefore, they are relatively effective only as regards their provisions committing United Nations bodies. The author proposes that the Council's role could be better accomplished through situational resolutions than through resolutions declaratory of international law.

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When created in 1945, the Security Council was not intended as a forum to debate and devise solutions to human rights issues. Nonetheless, it is a body that is rooted in a social and legal structure sensitive to the human condition. Having experienced two world wars which ‘brought untold sorrow to mankind’,¹ the founders of the United Nations proclaimed their ‘faith in fundamental human rights’.² The contribution of women to the war effort had certainly not gone unnoticed.³ The new order established in the aftermath of the war reflected the consequent change in attitude by breaking away from the inequality that had previously characterized male–female relations. In direct line with this profound transformation, the authors of the UN Charter reaffirm in the preamble their faith ‘in the equal rights of men and women’.

However, international human rights law at this early stage was slow to address the particular suffering of women. The 1948 Universal Declaration of Human Rights, in its great concision, refers only to equal rights for men and women with regard to marriage⁴ and to the entitlement of everyone to the rights set forth therein, without distinction on the basis of sex, or other factors.⁵ A similar provision is found in Article 2(2) of the International Covenant on Economic, Social and Cultural Rights. Article 3 thereof confirms the equal right of men and women to enjoy all the rights set forth in the Covenant, while Article 7 insists on equal pay for equal work. The International Covenant on Civil and Political Rights likewise stipulates gender equality in the enjoyment of all the rights it contains.⁶ It also protects pregnant women from sentence of death,⁷ reaffirms the equal right to marry,⁸ and bans all gender-based discrimination.⁹

In the international system, the majority of provisions relating to the protection of women are designed to reduce and prohibit the many forms of gender-based discrimination against them. The efforts of the UN and its specialized agencies in this regard – including declarations, recommendations and resolutions – led to the adoption in 1979 of the Convention on the Elimination of All Forms of Discrimination against Women.¹⁰ A committee to monitor its implementation (CEDAW) has been in place since 1982. Using an international investigation and individual complaint procedure, it works to ensure respect for women’s rights.¹¹

1 Preamble to the Charter of the United Nations, signed on 26 June 1945 in San Francisco.

2 *Ibid.*

3 During World War II, women accounted for some 8% of all Soviet armed forces. See Françoise Krill, ‘The protection of women in international humanitarian law’, in *International Review of the Red Cross*, No. 249, 1985, p. 350.

4 Article 16.

5 Article 2.

6 Article 3.

7 Article 6(5).

8 Article 23(2).

9 Articles 2, 4(1), 24(1) and 26.

10 Adopted and opened for signature, ratification and accession by General Assembly Resolution 34/180, 18 December 1979. Entry into force: 3 September 1981, in accordance with Article 27.1.

11 Granted more authority by Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, adopted by General Assembly Resolution 54/4, 6 October 1999. See also Sabine Bouet-Devrière, ‘La protection universelle des droits de la femme: vers une efficacité accrue du

Apart from the fight for equal rights, instruments relating to the vulnerability of women have had little success. The UN General Assembly's Declaration on the Elimination of Violence against Women is a case in point. It targets many forms of physical and psychological violence, which are in reality the consequence of persisting gender inequality.¹² The declaration, applicable primarily in peacetime, refers to physical, sexual and psychological violence occurring in the family,¹³ violence occurring within the general community,¹⁴ and violence perpetrated or condoned by the state.¹⁵

This declaration is generally associated with the Convention¹⁶ and Recommendation¹⁷ on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, as well as the earlier UN convention against the exploitation of the prostitution of others.¹⁸ The latter serves to unify treaties drawn up before the UN was created.¹⁹ Since 2000, trafficking in women and children²⁰ has

droit positif international? (Analyse prospective des dispositions du Protocole facultatif à la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes)', in *Revue trimestrielle des droits de l'Homme*, No. 7, 2000, pp. 453–477.

- 12 'Gender equality is yet to be achieved in most states, where it is deemed contrary to the expression of national sovereignty. In such cases, "traditional" mechanisms for the universal protection of human rights reveal the limits of international law in that domain' (ICRC translation of 'la réalisation de l'égalité entre les sexes demeure inachevée dans une majorité d'États où elle se heurte aux manifestations de la souveraineté nationale, face auxquelles les mécanismes "traditionnels" de protection universelle des droits de la personne humaine révèlent les limites du droit international dans ce domaine'). See S. Bouet-Devrière, above note 11, p. 454.
- 13 Such as battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.
- 14 Such as rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.
- 15 Declaration on the Elimination of Violence against Women, General Assembly of the United Nations, 85th plenary meeting, A/RES/48/104, 20 December 1993, Article 2. For an example of violence perpetrated or condoned by the state, see Inter-American Commission on Human Rights, 'The situation of the rights of women in Ciudad Juárez, Mexico: The right to be free from violence and discrimination', OEA/Ser.L/V/II.117, doc. 44 (7 March 2003); see also William Paul Simmons, 'Remedies for the women of Ciudad Juárez through the Inter-American Court of Human Rights', in *Northwestern University Journal of International Human Rights*, Vol. 4, Issue 3, Spring 2006, pp. 492–517.
- 16 Opened for signature and ratification by General Assembly Resolution 1763 A (XVII), 7 November 1962. Entry into force: 9 December 1964, in accordance with Article 6.
- 17 Adopted by General Assembly Resolution 18 (XX), 1 November 1965.
- 18 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, approved by General Assembly Resolution 317 (IV), 2 December 1949. Entry into force: 25 July 1951, in accordance with Article 24.
- 19 International Agreement of 18 May 1904 for the Suppression of the White Slave Traffic, as amended by the Protocol approved by the General Assembly of the United Nations on 3 December 1948; International Convention of 4 May 1910 for the Suppression of the White Slave Traffic, as amended by the above-mentioned Protocol; International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children, as amended by the Protocol approved by the General Assembly of the United Nations on 20 October 1947; and International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age, as amended by the above-mentioned Protocol.
- 20 A US report from 2005 states that of the 600,000 to 800,000 persons trafficked across international borders each year, the majority are women and children. See US Department of State, *Trafficking in Persons Report*, June 2005, available at <http://www.state.gov/documents/organization/47255.pdf> (last visited 2 February 2010); see also Brian Parsons, 'Significant steps or empty rhetoric? Current efforts by the United States to combat sexual trafficking near military bases', in *Northwestern University Journal of*

been combated by the Protocol Additional to the UN Convention against Transnational Organized Crime.²¹

Whereas international law on the protection of women in peacetime has developed considerably, no specific convention has been adopted in this regard within the law of war. The only instrument to date is a six-point declaration made by the UN General Assembly,²² which expresses the need to provide special protection for civilian women and children, who are the most vulnerable members of the population.²³ The declaration is somewhat limited in scope, as it essentially applies to those ‘finding themselves in circumstances of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence, or who live in occupied territories’.²⁴ For the protection of women in other types of conflict, therefore, we must turn to more general conventions of humanitarian law.

The first set of rules designed to protect women in war appears in the Lieber Code.²⁵ Article 47 provides for the punishment of those responsible for the rape of inhabitants of a hostile country. Despite all the atrocities of World War II, however, not one person was charged with this crime. The Charter of the International Military Tribunal for the Far East’s criminalization of ‘violations of laws and customs of war’²⁶ as war crimes and ‘murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population’²⁷ as crimes against humanity could have made way for the prosecution of rape. Yet the Tribunal failed to try Japanese soldiers for their violence against the ‘comfort women’.²⁸

To redeem the memory of the victims and survivors of those crimes, a 1998 UN Report on Contemporary Forms of Slavery seized the opportunity, for the first time, to establish the liability of the Japanese government for ‘Comfort Women Stations’ created during the war.²⁹ A symbolic judgement passed by the

International Human Rights, Vol. 4, issue 3, Spring 2006, pp. 567–589. According to the International Organization for Migration, over 500,000 women are victims of trafficking in Europe. See Corene Rathgeber, ‘The victimization of women through human trafficking: An aftermath of war?’, in *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 10, Nos 2–3, 2002, p. 152.

21 Protocol Additional to the UN Convention against Transnational Organized Crime and Aimed at Preventing, Suppressing and Punishing Trafficking in Persons, Especially Women and Children, 2000. There is a close link between the phenomenon of trafficking in persons becoming more complex (particularly in women and children) and armed conflict. See C. Rathgeber, above note 20.

22 Declaration on the Protection of Women and Children in Emergency and Armed Conflict, proclaimed by General Assembly Resolution 3318 (XXIX), 14 December 1974.

23 *Ibid.*, point 1.

24 *Ibid.*, point 6.

25 Judith Gardam, ‘Women, human rights and international humanitarian law’, in *International Review of the Red Cross*, No. 324, 1998, at p. 423.

26 International Military Tribunal for the Far East (IMTFE) Charter, Article 5(b).

27 *Ibid.*, Article 5(c).

28 Kelly Askin, ‘Comfort women: Shifting shame and stigma from victims to victimizers’, in *International Criminal Law Review*, Vol. 1, Nos 1–2, 2001, pp. 5–32.

29 Commission on Human Rights, *Contemporary Forms of Slavery: systematic rape, sexual slavery and slavery-like practices during armed conflict*, Final report submitted by Ms Gay J. McDougall, Special Rapporteur, Appendix: An analysis of the legal liability of the Government of Japan for ‘comfort women

Women's International War Crimes Tribunal on Japan's Military Sexual Slavery (a people's tribunal organized by women's rights organizations) held the same view.³⁰ The 2001 final judgement found the Japanese Emperor Hirohito, along with other leaders, responsible as superiors and recommended measures of compensation to survivors.³¹

In the judgements rendered at the Nuremberg trials, the terrible atrocities endured by women were ignored. Although rape was classified as a war crime in the charters of the national courts set up to try Nazi offences, they never carried out any prosecutions on that basis.³² The rape of Berlin, for which the Soviet liberating forces are held responsible, likewise went unpunished.³³

International humanitarian law as developed in the Geneva Conventions is much more far-reaching in its protection of women. This protection was still in its early stages in the 1929 Convention relative to the Treatment of Prisoners of War, where the only objective in that regard was to ensure different treatment adapted to the needs of female prisoners of war.³⁴ In the 1949 Geneva Conventions it was extended to about 19 provisions that are specifically relevant to women;³⁵ together with the 1977 Additional Protocols, there are now some 30 such provisions in all. However, these are subject to two major criticisms. Firstly, they fail to emphasize the gender specificity of the suffering endured by women.³⁶ Secondly, as a result, the gravity of offences against women is not sufficiently recognized.

Indeed, by stipulating the need to protect mothers (more specifically, expectant and nursing mothers), most of the provisions in the Geneva Conventions that relate to women are designed to protect children.³⁷ The other provisions refer to women's vulnerability to sexual violence. It can be argued, however, that the difficulties experienced by women in wartime are not confined to their roles as

stations' established during the Second World War, UN Doc E/CN.4/Sub.2/1998/13, 22 June 1998, available at <http://www.unhcr.ch/huridocda/huridoca.nsf/0/3d25270b5fa3ea998025665f0032f220?OpenDocument> (last visited 2 February 2009).

30 Christine Chinkin, 'Women's International Tribunal on Japanese Military Sexual Slavery', Editorial, in *American Journal of International Law*, Vol. 95, No. 2, 2001, p. 337.

31 *Ibid.*, p. 338.

32 J. Gardam, above note 25.

33 Fiona de Londras, 'Prosecuting sexual violence in the *ad hoc* International Criminal Tribunals for Rwanda and the former Yugoslavia', in *University College Dublin Working Papers in Law, Criminology and Socio-Legal Studies Research Paper*, No. 06, 2009, p. 2.

34 Article 3 states that 'Women shall be treated with all consideration due to their sex.' Article 4 states that 'Differences of treatment between prisoners are permissible only if such differences are based on the military rank, the state of physical or mental health, the professional abilities, or the sex of those who benefit from them.' See also F. Krill, above note 3.

35 J. Gardam, above note 25.

36 There are, however, some provisions that state that women shall be treated without any adverse distinction, in particular for reasons of sex, and that they shall in all cases benefit from treatment as favourable as that granted to men. See Article 12 of the First and Second Conventions; Article 16 of the Third Convention; Article 27 of the Fourth Convention; Article 75 of Additional Protocol I; Article 4 of Additional Protocol II; and Article 14 of the Third Convention. It can therefore be concluded that women are entitled to all the rights of the conventions. For more on this issue, see F. Krill, above note 3.

37 Jean de Preux, 'Special protection of women and children', in *International Review of the Red Cross*, No. 248, 1985, pp. 292–302.

mothers and victims of sexual violence.³⁸ Besides being thus limited in scope, the protection offered also does not go far enough. Article 27(2) of the Fourth Convention half-heartedly states that, 'Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault'. Outrages upon women's personal dignity are not expressly included among the offences defined as grave breaches of international humanitarian law to which criminal liability is attached – the gravity of such crimes is consequently ignored.³⁹

Violations of humanitarian law have different legal consequences depending on their gravity. Grave breaches must be incorporated in national legislation as criminal offences and prosecuted through mechanisms of universal jurisdiction. All States Parties have the duty to search for and prosecute suspected perpetrators of a grave breach, regardless of their nationality or that of the victim, or alternatively to extradite suspects to states willing to prosecute them. For other violations, the Conventions simply stipulate that '[e]ach High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article'.⁴⁰ Additional Protocols I⁴¹ and II⁴² did not progress much further in protecting women in situations of armed conflict. Article 76 of Protocol I largely reiterates Article 27 of the Fourth Convention, prohibiting any attack on the honour of women. Protocol II, in Article 4 laying down fundamental guarantees in times of civil war, does prohibit 'outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault', but there is no explicit acknowledgement of the gravity of these acts which would qualify them as international crimes. The Protocols are limited in their recognition of other specific rights for women, simply reaffirming those requiring their accommodation, when interned or detained, in quarters separate from those of men.

38 J. Gardam, above note 25, p. 424; see also Vesna Nikolić-Ristanović, 'War and post-war victimization of women', in *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 10, Nos 2–3, 2002, p. 141; and Charlotte Lindsey, 'Women and war: An overview', in *International Review of the Red Cross*, No. 839, 2000, pp. 561–579.

39 The following offences are listed as grave breaches: 'wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly'.

40 GC I, Art. 49; GC II Art. 50; GC III, Art. 129; GC IV, Art. 146.

41 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), adopted 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts. Entry into force: 7 December 1978, in accordance with Article 95.

42 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), adopted 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts. Entry into force: 7 December 1978, in accordance with Article 23.

Humanitarian law has been repeatedly criticized by civil society organizations for its inadequate protection of women. Calls have even been made for some reformulation of the Geneva Conventions. It is within international human rights law, however, that their demands have been met. Though not fully satisfactory, the provisions within that body of law do at least help prevent the worst atrocities against women within the context of war. The World Conference on Human Rights, held in Vienna in June 1993, confirmed for example that '[v]iolations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law'. The follow-up to this conference on women in war is worthy of consideration here.

In December that same year, the UN General Assembly proclaimed the Declaration on the Elimination of Violence against Women. The following year, the UN Commission on Human Rights established a mandate on the issue of violence against women, appointing Ms Radhika Coomaraswamy as the Special Rapporteur. Her report emphasized the need to revise existing international humanitarian conventions in order 'to incorporate developing norms on violence against women during armed conflict'.⁴³ The sexual and physical integrity of women has, however, always had an important place in discussions on women's rights within the United Nations. In 1995, with this recommendation in mind, the former Sub-Commission on Prevention of Discrimination and Protection of Minorities initiated a more in-depth study of the issue, entrusting Ms Linda Chavez with a mandate on 'systematic rape, sexual slavery and slavery-like practices during periods of armed conflict'.⁴⁴

Despite these efforts, and notwithstanding encouragement from the 1995 Conference in Beijing to pursue them (women and war featured as one of the 12 points on its Platform for Action), the international community has never adopted any significant instrument in this area. Indeed, humanitarian law efforts have consistently disregarded the far-reaching nature of the problems faced in situations of war by girls⁴⁵ and women. For example, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict raises the minimum age of recruitment from 15 to 18 years, yet remains silent about the plight of girl soldiers; and although the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography addresses sexual violence, it fails to tie the sexual abuse of girls to their roles in armed combat.⁴⁶ These issues are in fact governed by soft law, but it has distinct limitations, for reports, declarations and action plans are not legally binding normative

43 Report of the Special Rapporteur on violence against women, its causes and consequences, Ms Radhika Coomaraswamy, UN document E/CN.4/1998/54, 26 January 1998.

44 Preliminary report of the Special Rapporteur on the situation of systematic rape, sexual slavery and slavery-like practices during periods of armed conflict, Ms Linda Chavez, UN Doc. E/CN.4/Sub.2/1996/26, 16 July 1996.

45 Abigail Leibig, 'Girl child soldiers in Northern Uganda: Do current legal frameworks offer sufficient protection?', in *Northwestern University Journal of International Human Rights*, Vol. 3, April 2005, para. 4.

46 *Ibid.*, para. 7.

instruments. They merely draw international attention to the special treatment required by women in war.

In reality, demanding more rights does not increase the likelihood that they will be respected. The international community's focus on sexual violence is understandable, however, given the systematic use of rape as a weapon of war. It is precisely because of the implications for international security of that systematic use that the Security Council has taken up the issue of women as victims of armed conflict.

The factual and legal foundations of the role of the Security Council

The growing international awareness of the atrocities suffered by women in war has coincided with the worldwide establishment of a responsibility to protect, through the intermediary of the Security Council.

Factual foundation: the inhumanity of armed conflict for women

The purpose of international human rights law is to protect women in peacetime. This does not mean that some of its principles cease to apply in times of war. On the contrary, they may well complement international humanitarian law. The Geneva branch of humanitarian law affords protection to civilians and to armed forces personnel no longer participating in the hostilities. Rather than attributing the shortcomings of international humanitarian law to a change in the nature of conflicts, there would be more reason to think that it was developed without taking the complexity of war into full account. The suffering women endure today is nothing new. The phenomenon of 'comfort women' predates the adoption of the 1949 Conventions. The weakness of humanitarian law in addressing women's difficulties is the result of deliberate oversight, or perhaps of purely fortuitous ignorance.

The reform efforts of 1977 were not, however, wholly satisfactory. They were praiseworthy in that they clearly defined the obligations of parties to an international conflict (Protocol I) and fleshed out Article 3 common to all four Geneva Conventions (Protocol II), but they once again stopped short at the problems of women in war. Yet it is well known that the intensification of violence against civilians, as a typical method of warfare, is more marked among women and girls owing to their vulnerability.⁴⁷ While men and boys are often forced into combat or killed in ethnic cleansing campaigns, the suffering of women is compounded by manifold abuses, facilitated by their gender and ranging from forced recruitment or conscription to rape or slavery in military camps and even murder.

47 Amnesty International, *Lives blown apart – crimes against women in times of conflict: Stop violence against women*, Public Report, 8 December 2004, AI Index No. ACT 77/075/2004.

Sexual violence has been by far the most frequently deplored abuse occurring during armed conflict.⁴⁸ It is generally perpetrated by all warring factions, as is the case in Colombia,⁴⁹ for it is a crime that achieves a number of objectives. The harm to the honour and dignity of the victim, though considered the main consequence of sexual violence, is certainly not the only one. Often systematic rape leads to or is accompanied by forced marriage and pregnancy, with the intent of changing the ethnic make-up of the population. It is in this context that sexual violence against women is now considered a 'weapon of war'.⁵⁰ It becomes a method of warfare '[w]hen used systematically to torture, injure, extract information, degrade, threaten, intimidate or punish in relation to an armed conflict'.⁵¹

In other circumstances, for instance in the event known as the 'Rape of Nanking' and the case of the 'comfort women' during World War II, the systematic violations of women's rights were not directly linked to the war objectives. Those women were used solely to gratify Japanese soldiers and kept in secret camps unknown to the enemy and to the public. They nonetheless served military aims, for they were used to motivate and reward combatants. In that sense, they involuntarily played a significant part in the war effort.

A brief review of armed conflicts reveals that such systematic violence against women cannot be traced back only to the wars of the early 1990s. Almost 200,000 women and girls were abducted and forced into sexual slavery by the Imperial Japanese Army during World War II.⁵² More recent conflicts have seen a steady increase in violence against women. It is estimated that at least 5000 Kuwaiti women were raped by Iraqi soldiers during the 1990 invasion of Kuwait,⁵³ while a special UN report published shortly after the Rwandan genocide showed that during the fighting, sexual violence against women from the age of 13 to 65 was the rule and its absence the exception.⁵⁴ The Rwandan government reported 15,700 rapes, and 2000 to 5000 resultant pregnancies, whereas the Special Rapporteur – taking into account a margin of error and the possible unreliability of statistics, as well as unreported cases – put the figure closer to between 250,000 and 500,000 rapes.⁵⁵ This is an astounding figure in comparison with the genocide's total estimated death toll of 800,000. In the war that raged in the Democratic Republic of the Congo, which is still not definitively resolved, around 100,000

48 A. Leibig, above note 45, para. 2.

49 Amnesty International, above note 47.

50 F. De Londras, above note 33, p. 3.

51 International Committee of the Red Cross (ICRC), *Addressing the needs of women affected by armed conflict: An ICRC guidance document*, ICRC, Geneva, 2004, p. 25; see also K. Askin, above note 28, p. 7.

52 K. Askin, above note 28, p. 13.

53 Christine Chinkin, 'Rape and sexual abuse of women in international law', in *European Journal of International Law*, Vol. 5, No. 1, 1994, p. 327.

54 United Nations Economic and Social Council, 'Report on the situation of human rights in Rwanda', submitted by Mr René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of Resolution S-3/1, 25 May 1994, E/CN.4/1996/68, paras 16 to 20.

55 See Françoise Nduwimana, *The Right to Survive: Sexual Violence, Women and HIV/AIDS*, International Centre for Human Rights and Democratic Development, 2004, available at http://www.dd-rd.ca/site/_PDF/publications/women/hivAIDS.pdf (last visited 21 October 2009).

women were victims of sexual violence between 1998 and 2003.⁵⁶ There are reports of suffering on a similar scale in the conflicts in Liberia, Timor-Leste, Indonesia, the former Yugoslavia, Sudan and Afghanistan.⁵⁷ In the conflict in northern Uganda, 20 to 30% of the child soldiers recruited and abducted are girls.⁵⁸ According to Human Rights Watch, 100% of those who eventually escape the grip of the Lord's Resistance Army have a sexually transmitted disease.⁵⁹

Debates on the effectiveness of humanitarian law have resulted in new approaches towards the treatment of women, and the ICRC has conducted a number of studies to stress that women feel the impact of war in many different ways.⁶⁰ By intervening in the human rights field, however, the Security Council can offer more comprehensive protection for women in war, since it can repress violations affecting them and promote their rights during peacekeeping operations. Let us now look at the foundations of the Council's competence in this regard in international law.

Legal foundation: establishing a responsibility to protect

While the Council's role in implementing international law is unquestioned given the weight of the authority conferred on it by the UN Charter, its human rights role is a major innovation. Since the end of the Cold War and the fall of the Berlin Wall, the focus in international security has shifted towards the resolution of internal and transnational conflicts, in which violence against civilians predominates. The Gulf War, as an example of an inter-state conflict, did give rise to the United Nations Compensation Fund, but the fact that claims must be submitted through governments diminished its potential utility for victims of armed conflicts. Since the Security Council has been freed from the 'veto straitjacket'⁶¹ (in that permanent members have less recourse to it), and above all has been marked by the failures in the former Yugoslavia and Rwanda, it has included human suffering on its agenda. The continuous expansion of its powers clearly poses a problem in terms of a democratic deficit,⁶² but this is now rectified by the near complete consensus on

56 Naomi Cahn, 'Beyond retribution and impunity: Responding to the war crimes of sexual violence', in *Stanford Journal of Civil Rights and Civil Liberties*, Vol. 1, Issue 1, 2005, p. 217.

57 Meghan Clarke, 'Sexual violence against women during armed conflict: An analysis of international law', in *University of British Columbia International Law Journal*, Vol. 1, No. 1, 2008, p. 2.

58 Women's Commission for Refugee Women and Children, *Against All Odds: Surviving the War on Adolescents*, Research Study, May–July 2001, p. 17. See also A. Lebig, above note 45, para. 18.

59 Uganda Human Rights Commission, Annual Report, January 2001–September 2002, p. 55.

60 *Women and War*, ICRC, Geneva, 2008; Charlotte Lindsey, *Women Facing War: ICRC Study on the Impact of Armed Conflict on Women*, ICRC, Geneva, 2001; see also *Addressing the Needs of Women Affected by Armed Conflict: An ICRC Guidance Document*, ICRC, Geneva, 2004.

61 The 'camisole du veto', as Josiane Tercinet terms it in 'Le pouvoir normatif du Conseil de sécurité: Le Conseil de sécurité peut-il légiférer?', in *Revue belge de droit international*, No. 2, 2004, p. 528.

62 *Ibid.* For more on the question of the legislative functions of international organizations, see Joe Verhoeven, 'Les activités normatives et quasi normatives des organisations internationales', in René-Jean Dupuy (ed.), *Manuel sur les organisations internationales*, Martinus Nijhoff, Dordrecht, 1998, pp. 414–415. Only available in French.

its responsibility to protect. After much prevarication about the controversial principle of humanitarian intervention and the relationship between peace-keeping and strengthening democracy, the rule of law and fundamental freedoms,⁶³ a consensus was eventually reached during the 2005 World Summit. In a final declaration, seemingly admitting failure of the project to reform the UN system, Member State governments adopted a historic position, appointing the Security Council as the last resort for victims of armed conflict. They announced that they were:

‘prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in co-operation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity’.⁶⁴

Hence when all diplomatic means have been exhausted and the traditional system for protecting the individual – based on state responsibility and international co-operation – has failed, the responsibility to protect rests with the Security Council. This implies that in many cases the only possible means of ending the atrocities will be to resort to force. However, as we have seen in practice, the Council has complete freedom to choose its means of action. Chapter VII has indeed been used to justify intervention in conflicts where international crimes were being committed,⁶⁵ but the Council also likes to see itself as a legislator and advocate of human rights in war. In this sense, it has always been mindful of the suffering of women.

The twofold objective of intervention by the Security Council

The Council’s intervention with regard to women’s rights during armed conflict helps to strengthen international humanitarian law and to promote women as stakeholders in the peace process.

63 For more on this subject, see the Report of the Panel on United Nations Peace Operations, A/55/305-S/2000/809; *Official Records of the Security Council, Fifty-fifth Year, Supplement for July, August and September 2000*, document S/2000/809; *The Responsibility to Protect*, Report of the International Commission on Intervention and State Sovereignty, available at <http://www.iciss.ca/pdf/Commission-Report.pdf> (last visited 2 February 2010). See also *A More Secure World: Our Shared Responsibility*, Report of the Secretary-General’s High-Level Panel on Threats, Challenges and Change, UN Doc. A/59/565, 2 December 2004, available at <http://www.un.org/secureworld> (last visited 2 February 2010). At its 63rd session, the UN General Assembly welcomed the Secretary General’s Report on the Responsibility to Protect (A/63/677) and decided to examine the issue further (General Assembly Resolution A/RES/63/308, 7 October 2009).

64 2005 World Summit Outcome, Resolution A/RES/60/1, p. 30, para. 139, available at <http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN021752.pdf> (last visited 2 February 2010).

65 Such was the case in Sierra Leone, Liberia, the Democratic Republic of the Congo, and Haiti.

Reinforcing humanitarian law

The inadequacy of provisions to suppress violence against women has long been the main weakness of international law for their protection. The Committee on the Elimination of Discrimination against Women (CEDAW) has nevertheless helped to move the debate forward within its mandate to promote implementation of the 1979 Convention. As the convention had failed to address violence against women,⁶⁶ the Committee adopted a general recommendation on that subject in 1992,⁶⁷ which inspired the Declaration on the Elimination of Violence against Women made by the UN General Assembly in the following year. According to the Committee's recommendation, gender-based violence constitutes a form of discrimination when directed against a person specifically because of his or her gender.⁶⁸ By turning its attention to the situation of women in war, the Committee is helping to reinforce humanitarian law. The steadily growing violence against women in this context calls for specific protective and punitive measures.⁶⁹ These would comprise access to health care, rehabilitation and counselling services for all victims, and appropriate legal measures, including civil remedies and penal sanctions, against violators of women's rights.⁷⁰

The recommendation does not fully compensate for the gaps in the Geneva Conventions, but it does acknowledge that sexual crimes against women are sufficiently serious to warrant penal sanctions. The 1999 Optional Protocol to the 1979 Convention also reflects this standpoint.⁷¹ It officially entered into force in 2001, introducing two major changes. The first enables female victims of discrimination to make a formal complaint to the Committee. The second, more importantly, gives the Committee the competence to conduct investigations in the territory of State Parties in the event of grave and systematic violations of women's rights.

Action by the Committee on the Elimination of Discrimination against Women is nonetheless limited, for although its mandate has been considerably extended, the authority of its decisions is undermined by the inherent weakness of international law, in particular the lack of enforceability. Similarly, as responsibility for compliance with human rights obligations is assigned to each individual state, penal sanctions are bound to fail in the absence of judicial mechanisms powerful enough to impose them. Moreover, state structures very often break down during

66 Besides context-specific provisions (applicable either in peacetime or in war), the only provisions of the convention that seem to allude to a prohibition of violence against women are Article 2, abolishing all customs which constitute discrimination against women, and Article 6, suppressing trafficking and exploitation of prostitution, considered as sexual violence in wartime. See M. Clarke, above note 57, pp. 4–5.

67 Committee on the Elimination of Discrimination against Women, 'Violence against women', General Recommendation No. 19, 29 January 1992, available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> (last visited 3 December 2009).

68 *Ibid.*, para. 6.

69 *Ibid.*, para. 16.

70 *Ibid.*, para. 24.

71 See Optional Protocol, above note 11.

armed conflict. *Ad hoc* interventions on the part of the Security Council became an option when it established international criminal tribunals.

In the terms of their founding resolutions, the International Criminal Tribunals for Rwanda (ICTR) and the former Yugoslavia (ICTY) are subsidiary bodies of the Council. Their creation confirmed its ability to exercise executive and legislative as well as judicial functions. The importance of its role in the advancement and protection of women's rights can no longer be ignored, for the two *ad hoc* Tribunals have established a jurisprudence that reinforces humanitarian law and also shows that the suffering inflicted on women is primarily of a sexual nature. They thus achieve two goals in that respect: sexual violence against women now constitutes a crime, and that crime is defined in international law.

By criminalizing such conduct, the jurisprudence of the *ad hoc* Tribunals has given a broader meaning in international law to the concept of violence against women in armed conflict.⁷² The qualification of sexual violence as a grave breach of international humanitarian law amounts to a revision of the Geneva Conventions. The Tribunals have the power to prosecute persons committing grave breaches of the Geneva Conventions,⁷³ but also violations of the laws or customs of war,⁷⁴ genocide⁷⁵ and crimes against humanity.⁷⁶ As the seriousness of violence against women is not acknowledged by the 1949 Geneva Conventions, which do not include it in their list of grave breaches, such acts are mostly prosecuted as war crimes, acts of genocide or crimes against humanity.⁷⁷ However, the notion of 'laws and customs of war' is generally considered to be 'a catch-all provision'⁷⁸ whose vague terms⁷⁹ allow for the inclusion of a number of humanitarian commitments.⁸⁰ The ICTY has thus interpreted it as banning sexual violence, including rape, against civilian populations.⁸¹ It is consequently established that

72 F. De Londras, above note 33, p. 4.

73 Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY Statute), Art. 2.

74 *Ibid.*, Art. 3.

75 *Ibid.*, Art. 4.

76 *Ibid.*, Art. 5.

77 M. Clarke, above note 57, p. 8.

78 *Ibid.*

79 Kelly Askin, 'Prosecuting wartime rape and other gender-related crimes under international law: Extraordinary advances, enduring obstacles', in *Berkeley Journal of International Law*, Vol. 21, 2003, p. 309.

80 In the *Duško Tadić* case, the Appeals Chamber declared that 'it can be held that Article 3 is a general clause covering all violations of humanitarian law not falling under Article 2 or covered by Articles 4 or 5, more specifically: (i) violations of the Hague law on international conflicts; (ii) infringements of provisions of the Geneva Conventions other than those classified as "grave breaches" by those Conventions; (iii) violations of common Article 3 and other customary rules on internal conflicts; (iv) violations of agreements binding upon the parties to the conflict, considered qua treaty law, i.e., agreements which have not turned into customary international law'. The Appeals Chamber concluded that Article 3 'functions as a residual clause designed to ensure that no serious violation of international humanitarian law is taken away from the jurisdiction of the International Tribunal'. See International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Duško Tadić*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (Decision on the Defence Motion), 2 October 1995, paras 89 and 91, confirmed in ICTY, *Prosecutor v. Delalić et al.*, Case No. IT-96-21-A, Judgement (Appeals Chamber), 20 February 2001, paras 125 and 136.

81 ICTY, *Prosecutor v. Kunarac, Kovač and Vuković*, Case Nos. IT-96-23-T and IT-96-23/1-T, Judgement (Trial Chamber II), 22 February 2001, para. 406. The Trial Chamber states in para. 408 that: 'rape,

violence against women is likewise prohibited by the law of armed conflict as a grave breach warranting prosecution by an international tribunal. It is questionable whether states can in such cases actually exercise universal jurisdiction without a relevant treaty-based provision. Sexual violence can, however, be prosecuted under universal jurisdiction as a crime of genocide when it is deemed to ‘caus[e] serious bodily or mental harm to members of the group’ with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.⁸² The definition of crimes against humanity already contained a provision explicitly prohibiting rape directed against a civilian population,⁸³ but the problem of applying it remained. This task was to be assumed, for the first time, by a body with international jurisdiction.

The concept of violence against women in the jurisdiction of the *ad hoc* Tribunals is at times restrictive (penalizing only rape) and at other times broad (penalizing sexual violence in general). It is not easy to broaden the concept, for sexual violence comes in many forms that tend to overlap and it is difficult to make a clear legal distinction between them.⁸⁴ For example, rape and sexual slavery can be perpetrated separately, concurrently or consecutively.⁸⁵

In *Kunarac et al.*, the ICTY punished rape as a crime against humanity, in accordance with its Statute. As a war crime, the act has been sanctioned on the charge of torture, inhuman treatment, and wilfully causing great suffering or serious injury to body or health.⁸⁶ The ICTY understands torture and outrages upon personal dignity as being violations of the laws or customs of war, including crimes of sexual violence committed against detainees.⁸⁷ The Trial Chambers have therefore concluded on several occasions that rape and other forms of sexual violence, including forced public nudity, cause severe physical or mental pain and amount to outrages upon personal dignity,⁸⁸ and also that rape or sexual violence can be equivalent to torture for others besides the victim, particularly if the acts are committed in their presence.⁸⁹

torture and outrages upon personal dignity, no doubt constituting serious violations of common Article 3, entail criminal responsibility under customary international law’; See also ICTY, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-AR72, Decision on the Defence Motion, *ibid.*, para. 134; confirmed in ICTY, *Prosecutor v. Delalić et al.*, Case No. IT-96-21-A, Judgement (Appeals Chamber), 20 February 2001, para. 174; and also ICTY, *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Judgement (Trial Chamber), 3 March 2000, para. 134; ICTY, *Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, Judgement (Trial Chamber), 10 December 1998, para. 173.

82 ICTY Statute, Art. 4.2(b).

83 *Ibid.*, Art. 5(g).

84 K. Askin, above note 28, p. 10.

85 *Ibid.*

86 ICTY, *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-T, Judgement (Trial Chamber I), 2001; ICTY, *Prosecutor v. Rajić*, Case No. IT-95-12-S, Judgement (Trial Chamber I), 2006; see also International Criminal Tribunal for Rwanda (ICTR), *Prosecutor v. Kayishema*, Case No. ICTR-95-1-T, Judgement (Trial Chamber II), 21 May 1999.

87 ICTY, *Kvočka et al.*, above note 86, para. 121.

88 *Ibid.*, para. 170; ICTY, *Furundžija*, above note 81, para. 272; ICTY, *Kunarac*, above note 81, paras 766 to 774.

89 ICTY, *Kvočka et al.*, above note 86, para. 149.

This definition of rape nonetheless provoked controversy, which the *Kunarac* case seems now to have settled. The first definition appeared in the *Akayesu* case, in which the ICTR classified rape as ‘physical invasion of a sexual nature, committed on a person under circumstances which are coercive’.⁹⁰ In the *Furundžija* case the ICTY confirmed this definition, dividing it into two parts:

1. the sexual penetration, however slight:
 - a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or
 - b) of the mouth of the victim by the penis of the perpetrator;
2. by coercion or force or threat of force against the victim or a third person.⁹¹

Criticized for insisting that the proof of rape lies in the use of force, the formulation in the *Akayesu* and *Furundžija* cases was amended by *Kunarac*, defining rape as a violation of the sexual autonomy of the victim and qualifying any sexual act as rape if:

1. the sexual activity is accompanied by force or threat of force to the victim or a third party;
2. the sexual activity is accompanied by force *or* a variety of other specified circumstances which made the victim particularly vulnerable or negated her ability to make an informed refusal; or
3. the sexual activity occurs without the consent of the victim.⁹²

Subsequent debates were centred on the notion of consent. In the *Gacumbitsi* case,⁹³ the ICTR Appeals Chamber was called upon to determine whether the burden of proof falls on the Prosecution, namely to prove absence of consent, or on the Defence to prove the contrary. In spite of the provisions designed to protect rape victims concerning evidence of the crime,⁹⁴ the Chamber accepted that the absence of consent remained an element of crime that must be proved by the Prosecution.⁹⁵ However, this requirement is significantly eased by the Chamber’s acknowledgement that absence of consent can be inferred from the

90 ICTR, *Prosecutor v Akayesu*, Case No ICTR-96-4-T, Judgement (Trial Chamber), 2 September 1998, para. 688.

91 ICTY, *Furundžija*, above note 81, para. 185.

92 ICTY, *Kunarac*, above note 81, para. 442, repeated in ICTY, *Kvočka et al.*, above note 86, para. 177.

93 ICTR, *Sylvestre Gacumbitsi v. The Prosecutor*, Case No. ICTR-2001-64-A, Judgement (Appeals Chamber), 7 July 2006.

94 Rule 96 of the Rules of Procedure and Evidence provides that when submitting evidence in cases of sexual assault: ‘(i) ... no corroboration of the victim’s testimony shall be required; (ii) consent shall not be allowed as a defence if the victim: (a) Has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression; or (b) Reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear. (iii) Before evidence of the victim’s consent is admitted, the accused shall satisfy the Trial Chamber in camera that the evidence is relevant and credible; (iv) prior sexual conduct of the victim shall not be admitted in evidence or as defence’.

95 Maxime Didat, Joanna Spanoudis, ‘Chronique de jurisprudence du Tribunal pénal international pour le Rwanda (2006)’, in *Revue belge de droit international*, No. 1, 2007, p. 238. Only available in French.

circumstances surrounding the crime, i.e. the context of genocide or the victim's captivity.⁹⁶ The same applies if the Prosecution can establish that the accused was aware that the coercive circumstances in which the rape took place undermined the possibility of genuine consent on the part of the victim.⁹⁷

Unlike rape, which is a crime under Article 5 of the ICTY Statute, other acts of sexual violence have become criminal offences through the jurisprudence of the Tribunal and are not laid down as such in its Statute. The Tribunal will, however, shortly establish its competence vis-à-vis such offences by including sexual violence in Article 3 as a violation of the laws or customs of war. The ICTR Statute, on the other hand, provides for the prosecution of both rape and sexual violence as a violation of Article 3 common to all four Geneva Conventions and of Protocol II on the protection of civilians in non-international conflict.⁹⁸ It is therefore only natural that the ICTR was the first to formulate a definition of sexual violence, stating that it was 'any act of a sexual nature which is committed on a person under circumstances which are coercive'.⁹⁹ In light of the Statute of the International Criminal Court, the ICTY regards sexual violence as a concept that extends beyond rape to encompass sexual slavery and any other assault of a sexual nature.¹⁰⁰

Promotion of women's rights

The questioning of the Security Council's capacity to assume a normative function is reflected in the promotion of women's rights. Serges Sur states '[t]he Council ... has always preferred acting and making decisions on a case-by-case basis, rather than formulating declaratory norms'.¹⁰¹ The Council has now begun issuing international regulations in support of this preference – which either reinforce existing regulations or place new obligations on states – and in so doing is clearly going beyond the bounds of the specific situation defined in Article 39 of the Charter. This approach, meanwhile consolidated by persuasive practice, runs counter to the exceptional nature of the authority granted to it by Chapter VII.¹⁰²

96 *Ibid.*

97 ICTR, *Gacumbitsi*, above note 93, para. 157.

98 Statute of the International Criminal Tribunal for Rwanda (ICTR Statute), Art. 4.

99 ICTR, *Akayesu*, above note 90, para. 688.

100 ICTY, *Kvočka et al.*, above note 86, para. 180. Footnote 343 states that: 'Sexual violence would also include such crimes as sexual mutilation, forced marriage, and forced abortion as well as the gender related crimes explicitly listed in the ICC Statute as war crimes and crimes against humanity, namely "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization" and other similar forms of violence'. Rome Statute of the International Criminal Court, UN Doc A/CONF.183/9, 17 July 1998, at Art. 7(1)(g), Art. 8(2)(b)(xxii), and Art. 8(2)(e)(vi).

101 ICRC translation of 'Le Conseil [...] a toujours préféré les actions et les décisions ponctuelles à la formulation de normes déclaratoires', Serges Sur, 'Conclusions', in *Le Chapitre VII de la Charte des Nations Unies: Colloque de Rennes*, Société française pour le droit international (ed.), Pedone, Paris, 1995, p. 314. Only available in French.

102 For more on this debate, see Jared Schott, 'Chapter VII as exception: Security Council action and the regulative ideal of emergency', in *Northwestern University Journal of International Human Rights*, Vol. 6, 2007, p. 24.

In this way, the Council has over the past decade been adopting so-called thematic or declaratory resolutions which, being non-restrictive and non-binding, are no more than pale imitations of international conventions,¹⁰³ and often the most disregarded ones at that. The human implications of armed conflict have been by far the Council's foremost concern. To date, the following issues have been examined: children in situations of conflict; the protection of civilians during hostilities; HIV/AIDS and international peacekeeping operations; and the protection of UN staff, associates and humanitarian workers, journalists, war correspondents and the media in wartime. The Council has also issued two thematic resolutions on women, peace and security.¹⁰⁴

Before the first resolution on women, peace and war, of 31 October 2000, the Council adopted a resolution on 17 September 1999 more generally addressing the protection of civilians in war.¹⁰⁵ In this resolution, the Council was already evidencing a grave preoccupation with the status of women in war and formulating various recommendations; it expressed its concern at the fact that the vast majority of victims in conflicts are civilians, particularly women, children and other vulnerable groups, and acknowledged the direct impact of conflict on women. The solutions proposed are no less than declarations of international law.

The Council, for instance, points out the importance of widely disseminating international law on the protection of civilians, and of relevant training for civilian police, armed forces, and members of the judicial and legal professions, civil society and personnel of international and regional organizations.¹⁰⁶ It consequently encourages an acknowledgement of the need for gender-specific humanitarian aid and recognition of the violence women suffer. The Council also favours incorporating special protection provisions for vulnerable groups, including women and children, into peacekeeping mandates.¹⁰⁷ United Nations personnel involved in peacemaking, peacekeeping and peacebuilding activities should therefore have appropriate training.¹⁰⁸ The Council calls upon States to ratify instruments of international humanitarian, human rights and refugee law.¹⁰⁹ Additionally, all parties to conflict are bound to comply with their obligations under those bodies of law¹¹⁰ and states are bound to prosecute in the case of non-compliance.¹¹¹ In Resolution 1265 (1999) the Council provides, for the first time, for the possibility of intervening in situations of armed conflict where civilians are

103 Josiane Tercinet, 'Le Conseil de sécurité et la sécurité humaine', in J.F. Rioux (ed), *La sécurité humaine: une nouvelle conception des relations internationales*, L'Harmattan, Paris, 2001, p. 159. Only available in French.

104 Security Council, S/RES/1325 (2000), 31 October 2000; S/RES/1820 (2008), 19 June 2008.

105 Security Council Resolution 1265 (1999), 17 September 1999. Over the past ten years, the general theme of the protection of civilians in armed conflict has been dealt with in the following Security Council Resolutions: 1296 (2000); 1674 (2006); 1738 (2006) and 1894 (2009).

106 Security Council Resolution 1265 (1999), preamble.

107 *Ibid.*, para. 13.

108 *Ibid.*, para. 14.

109 *Ibid.*, para. 5.

110 *Ibid.*, para. 4.

111 *Ibid.*, para. 9.

being targeted or humanitarian assistance to civilians is being deliberately obstructed.¹¹²

In Resolution 1325 (2000), the Security Council highlights that the threat to women in war is distinct from that facing the civilian population as a whole, as it had previously done in the case of children.¹¹³ This resolution expands on the provisions relating to women contained within Resolution 1265 (1999). It points out that women are being increasingly targeted during armed conflict and stresses the importance of full respect for international law relative to protecting women from gender-based violence – particularly rape and other forms of sexual abuse – and all other forms of violence in situations of armed conflict, and calls upon states to take special measures to protect women.¹¹⁴ The resolution stipulates that those crimes cannot be included in any amnesty provision,¹¹⁵ and that states have a responsibility to prosecute any perpetrators of such acts. In the same resolution, the Council also urges that the gender-specificity of needs be taken into account in mine clearance and mine awareness programmes,¹¹⁶ disarmament, demobilization and reintegration;¹¹⁷ it calls for men and women to be equally represented among peacekeeping operations personnel, and for all to receive training on gender issues. Similarly, it states that a gender perspective should be adopted when negotiating peace agreements.¹¹⁸ The resolution breaks new ground not only in the area of protection, but also in promoting women both as the solution to their own suffering and as active and valuable participants in the restoration of peace and security. The measures set forth by the Council to this end are the following:

1. increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict;
2. increased participation of women at decision-making levels in conflict resolution and peace processes;
3. the appointment of more women as special representatives and envoys to pursue good offices on behalf of the UN Secretary-General, and the creation of a roster of female candidates for this role;
4. expansion of the role and contribution of women in United Nations field-based operations, and especially among military observers, civilian police, human rights and humanitarian personnel;
5. incorporation of a gender perspective and gender component into peacekeeping operations;

112 *Ibid.*, para. 10.

113 UN Security Council Resolutions on Children and armed conflicts: 1261 (1999); 1314 (2000); 1379 (2001); 1460 (2003); 1539 (2004); 1612 (2005); 1882 (2009).

114 Resolution 1325 (2000), preamble and paras 9–10.

115 *Ibid.*, para. 11.

116 *Ibid.*, preamble.

117 *Ibid.*, para. 13.

118 *Ibid.*, para. 8.

6. training by and guidelines for Member States on the rights and particular needs of women, as well as on the importance of involving women in all peacekeeping and peacebuilding measures.¹¹⁹

The implementation of these recommendations relating to the promotion of women as agents of peace has been the subject of a comprehensive assessment by the Security Council. Resolution 1889 (2009) reports a mixed result. It welcomes some achievements such as the efforts of States to implement Resolution 1325 (2000) at the national level through action plans,¹²⁰ the efforts of the Secretary-General to boost more women to senior United Nations positions, and the establishment of a United Nations Steering Committee on Resolution 1325 (2000).¹²¹ However, the Council remained concerned about the under-representation of women at all stages of peace processes, and the persistence of obstacles to their participation, such as violence and intimidation, insecurity and lack of rule of law, cultural discrimination and stigmatization, lack of access to education, marginalization and lack of funds for efforts to rehabilitate women.¹²²

Resolution 1820 (2008) on women, peace and security – although expressing concern about the general situation of women in war and the obstacles to their participation in the promotion of peace – puts the main emphasis on rape and other acts of sexual violence against them during conflict. The resolution thus acknowledges that since 2000 violence against women has intensified in the majority of conflicts worldwide. This phenomenon is especially prevalent in Africa, in the bloody conflicts of the DRC, Uganda, the Central African Republic, Sierra Leone, Liberia and Sudan/Darfur. The Council recognizes that women and girls are particularly targeted by sexual violence ‘including as a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group’.¹²³ It furthermore stresses that sexual violence against women can exacerbate armed conflicts and may impede the restoration of peace, and reaffirms its readiness to adopt appropriate measures to address widespread or systematic sexual violence on a case-by-case basis.¹²⁴ Resolution 1820 (2008) recommends both short- and long-term action to be taken.

In the short term, the Council can condemn all forms of sexual violence committed in armed conflict,¹²⁵ demand their immediate cessation,¹²⁶ and take targeted measures against parties to conflicts who commit these crimes.¹²⁷ Longer-term measures include promoting activities to prevent and address rape and sexual

119 *Ibid.*, paras 1–6.

120 Resolution 1889 (2009), 5 October 2009, p. 1.

121 *Ibid.*, p. 2–3.

122 *Ibid.*, p. 2.

123 Resolution 1820 (2008), 19 June 2008, preamble.

124 *Ibid.*, para. 1.

125 *Ibid.*, preamble.

126 *Ibid.*, para. 2.

127 *Ibid.*, para. 5.

violence, protective action by states in accordance with their obligations, and punishment of the perpetrators of sexual crimes.

The responsibility for promoting a response to rape and sexual violence rests largely with the UN Secretariat and those agencies intervening in conflict zones, whose personnel must be trained in preventing, recognizing and responding to sexual violence. This applies particularly to peacekeeping operations personnel,¹²⁸ given the zero-tolerance policy established by the UN Secretariat vis-à-vis the sexual exploitation and abuse of civilians during such operations.¹²⁹ With regard to promotion, the Secretary-General is requested to develop guidelines and strategies to enhance the ability of peacekeeping operations to protect women and girls from all forms of sexual violence.¹³⁰

The protective measures formulated by the Council are intended to be more concrete. It places a number of specific obligations on parties to conflict, such as enforcing appropriate military disciplinary measures and upholding the principle of command responsibility, training troops on the prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, vetting military personnel during recruitment to take into account past actions of rape and other forms of sexual violence, evacuating women and children under imminent threat of sexual violence to safety,¹³¹ and protecting women and girls in and around refugee camps.¹³² The Council also urges Member States to provide medical care and follow-up to victims of outrages upon their personal dignity.¹³³

Regarding the suppression of sexual violence against women, the Council's proposals reaffirm the exclusion of such acts from amnesty provisions, in recognition of the gravity of such acts and their inclusion as crimes in the statutes of the *ad hoc* Tribunals and the International Criminal Court. Member States must ensure that all victims of sexual violence have equal protection under the law and equal access to a justice system that takes account of their suffering.¹³⁴ According to the Council, it is important to react to these crimes not only for the sake of justice, but also for sustainable peace, truth and national reconciliation.¹³⁵

The limited impact of Security Council intervention

It is necessary to analyse the impact of the Security Council's sudden entry into women's rights matters, taking account of the fact that its resolutions are addressed to parties to armed conflict or to UN bodies.

128 *Ibid.*, para. 6.

129 *Ibid.*, para. 7.

130 *Ibid.*, para. 9.

131 *Ibid.*, para. 3.

132 *Ibid.*, para. 10.

133 *Ibid.*, para. 13.

134 *Ibid.*, para. 4.

135 *Ibid.*

Resolutions addressed to parties to armed conflict

An intervention can be *ad hoc* and confined to a particular context, as is generally the case when the Council responds to a threat to the peace, breach of the peace or act of aggression. In the cases of the former Yugoslavia and Rwanda – where massive human rights violations, including systematic and widespread rape and sexual violence, were deemed to be affecting international peace and security – the Council set up prosecution mechanisms, the ICTY and ICTR. Since it acted under Chapter VII of the UN Charter, its decisions were binding and enforceable; this established the authority of the judgements handed down by its subsidiary bodies. For the first time ever, those bodies imposed international sanctions on perpetrators of sexual crimes against women during conflict. These judgements have left a remarkable legacy, for the ICC, along with the international criminal courts created after the ICTR and the ICTY, reflect the advances accomplished: rape and other forms of sexual violence are now punished as international crimes, and are excluded from all amnesty agreements. In this sense, the Council could quite rightly be considered as having aroused the law of armed conflict from the latent state it had been in since its codification. The Council has done much to render its implementation more viable and the law itself better adapted to the atrocities of war, in which the use of rape and other forms of sexual violence as a method of warfare had hitherto been trivialized.

On the other hand, when the Council goes beyond the bounds of Chapter VII and adopts resolutions declaratory of international law, the impact of its intervention is somewhat limited, for thematic resolutions do not impose the same binding obligations as those of decisions made in response to a threat to the peace or international security. Yet their value should not be underestimated. The very position of the Security Council in the world order is in itself an inducement to give renewed meaning to the international obligations imposed by treaties and conventions on belligerents with regard to women's rights. Nevertheless, it should be recognized that the Council's authority has not changed the behaviour of the parties to conflicts regarding crimes of sexual violence. The recent review of Resolution 1820 (2008) by the Council in its Resolution 1888 (2009) is far from promising. The Council found absence of progress regarding situations of sexual violence in armed conflict, and recognized the ineffectiveness of its resolutions to curb the violence.¹³⁶

Resolutions addressed to UN bodies

The effectiveness within the UN system of the 2000 and 2008 resolutions on women, peace and security is indisputable. United Nations peacekeeping operations and subsidiary bodies are now gender-mainstreamed, which means there is increased participation of women in peacemaking and peacebuilding

¹³⁶ Resolution 1888 (2009), 30 September 2009, p. 1.

processes. There is also a greater capacity for understanding the psychological effects suffered by victims of sexual violence during conflict, which is the function of the 'gender' sections of peacekeeping operations. The UN Mission in the Democratic Republic of the Congo (MONUC) was required to take exceptional measures in light of the sheer scale of the use of sexual violence. In the context of DRC peace initiatives a separate UN task force was set up to address violence against women. Co-ordinated by the UN Development Fund for Women and composed of UN agencies, the Congolese Ministry of Gender, Family and Children and 16 civil society organizations, the mandate of this task force is to combat sexual violence and impunity.¹³⁷ The main stumbling blocks to full compliance with the said resolutions on women are those provisions addressed to parties to conflict and states. That is why a follow-up mechanism is necessary.

The Council remains focused on this need in relation to the issue of women, peace and international security. The 2000 resolution did not formally provide for follow-up, asking only for a review of the situation of women to be included in the Secretary-General's report to the Council. It also invited the Secretary-General to conduct a study on the impact of armed conflict on women and children. The 2008 resolution, on the other hand, requested him to submit a report by 30 June 2009 on the implementation of the recommendations made by the Council. It was to include, *inter alia*, information on situations of armed conflict in which sexual violence had been widely or systematically employed against civilians; analysis of the prevalence and trends of sexual violence in situations of armed conflict; and proposals for strategies to minimize the susceptibility of women and girls to such violence.¹³⁸

The Secretary-General met this request on 15 July 2009 and submitted a 24-page report to the Security Council. His study was confined to conflicts during the past 20 years in which sexual violence had been widely or systematically employed against civilians, with implications for international peace and security.¹³⁹ The main recommendations made by the Secretary-General urge the Security Council to pay greater attention to ongoing conflicts where sexual violence is being widely employed against civilians.¹⁴⁰

The Council's resolutions under Chapter VII of the Charter could consequently also indicate appropriate measures of prevention and protection. Similarly, the Council is invited to mandate its sanctions committees to pay particular attention to individuals and parties who perpetrate sexual crimes during conflict. The report furthermore recommends that a commission of inquiry, supported by the Office of the United Nations High Commissioner for Human Rights, be established to investigate and report on human rights violations, with a dedicated

137 United Nations Office for the Coordination of Humanitarian Affairs, *Rapport hebdomadaire RDC-Centre/Ouest*, 26 October to 1 November 2007. Only available in French.

138 Resolution 1820 (2008), 19 June 2008, para. 15.

139 Report of the Secretary-General pursuant to Security Council Resolution 1820, S/2009/362, 20 August 2009.

140 *Ibid.*, para. 56.

focus on sexual violence in ongoing conflict situations in the DRC, Sudan and Chad. Lastly, the Secretary-General proposes that a mechanism be established at institutional level to act upon sexual violence allegations, that a multi-agency approach be adopted in the UN Action against Sexual Violence in Conflict, and that the remit of the Council's working groups on this issue be broadened.

Resolutions 1888 (2009) and 1889 (2009) have addressed some of these recommendations, and Resolutions 1325 (2000) and 1820 (2008) now have well-developed monitoring mechanisms. The Council has specifically encouraged the Peacebuilding Commission and Peacebuilding Support Office to continue to promote gender equality and women's empowerment¹⁴¹ and requested a report of the Secretary-General on the participation of women in peacebuilding.¹⁴² It also welcomed the establishment of a post of special advisor to the Secretary-General on the implementation of Resolution 1325 (2000)¹⁴³ and requested the appointment of a Special Representative of the Secretary-General on sexual violence in armed conflict.¹⁴⁴ The Secretary-General was called upon to deploy a team of experts to assist States in strengthening the rule of law in situations where sexual violence is a particular concern.¹⁴⁵ The Council also requested that the Secretary-General develop proposals on ensuring monitoring and reporting,¹⁴⁶ and report on the implementation of Resolutions 1820 and 1888 on an annual basis.¹⁴⁷

Conclusion

The intervention of the Security Council in matters of human security reflects the shift in international security concerns from the state to the individual. Essentially the only body granted legitimate authority to resort to force in international relations, the Council is no longer acting solely in the field of *jus ad bellum*, but is intervening more and more in that of *jus in bello*, and thus in the protection of civilians. The increasingly widespread use of violence against women in recent conflicts has impelled the Council to adopt so-called declaratory resolutions that reinforce existing international mechanisms and institutionalize new practices, in particular gender mainstreaming and a zero-tolerance policy towards sexual exploitation or abuse of civilians during peacekeeping operations. In view of the magnitude of the suffering endured by women and its implications for peacebuilding, a Security Council special committee modelled on the Council's Working Group on Children and Armed Conflict (which highlights the scale of the child soldier phenomenon) would clearly be welcome.

141 Resolution 1889 (2009), para. 14.

142 *Ibid.*, para. 19.

143 Resolution 1888 (2009), p. 3.

144 *Ibid.*, para. 4.

145 *Ibid.*, para. 8.

146 *Ibid.*, para. 26.

147 *Ibid.*, para. 27.

UN Security Council Resolutions 1325 and 1820: constructing gender in armed conflict and international humanitarian law

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Abstract

While the Geneva Conventions contain gender-specific provisions, the reality of women's and men's experiences of armed conflict have highlighted gender limitations and conceptual constraints within international humanitarian law. Judgements at the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) ad hoc tribunals have gone some way towards expanding the scope of definitions of sexual violence and rape in conflict. More recent developments in public international law, including the adoption of Security Council Resolutions 1325 and 1820 focused on women, peace and security, have sought to increase the visibility of gender in situations of armed conflict. This paper highlights important developing norms on women, peace and security. Although these norms are significant, they may not be radical enough to expand constructions of gender within international humanitarian law. This leaves existing provisions open to continued scrutiny.

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Within a peace and security context, essentialized gender roles have often been sustained by international law and policy.¹ While the differing impact of armed conflict on men and women is increasingly acknowledged,² constructions of ‘gender’ and gender-specific provisions within international humanitarian law have proved problematic.³ Advances in women’s human rights and other international instruments, principally Section E of the Beijing Platform for Action, which centres on women and armed conflict,⁴ have gone some way towards developing the scope of existing provisions. Despite increased awareness of gender-based violence, however, significant challenges remain.

First, analyses of the gendered dynamics of conflict have largely focused on sexual violence and rape.⁵ While women are often the primary target of sexual violence,⁶ the wider social impact is intrinsically linked to both genders.⁷ Significantly, in non-international armed conflicts, rape has often been committed in orchestrated campaigns of ethnic cleansing that seek to undermine familial structures.⁸ For example, in Rwanda, the deliberate impregnation of Tutsi women by Hutus sought to undermine the social fabric of communities.⁹ On the one hand, this open acknowledgement of gender-based violence suggests that gender is expressly recognized at a normative level. However, this normative recognition aligns gender directly with women and victimhood, which undermines women’s agency as active participants and distorts discourses by failing to consider women’s broader experience of armed conflict.¹⁰ Indirectly, these narratives censor the diverse ways in which women participate in armed conflict as actors, combatants

- 1 Judith Gardam, ‘A feminist analysis of certain aspects of international humanitarian law’, in *Australian Yearbook of International Law*, Vol. 12, 1992, p. 265.
- 2 Rape is committed by all sides in conflict and there have also been reported cases of sexual violence by UN peacekeepers. See e.g. Christine Chinkin, ‘Rape and sexual abuse of women in conflict’, in *European Journal of International Law*, Vol. 5, 1994, p. 326.
- 3 Judith Gardam, ‘Women and the law of armed conflict: Why the silence?’, in *International and Comparative Law Quarterly*, Vol. 46, 1997, p. 55.
- 4 Fourth World Conference on Women, Declaration and Platform for Action, A/CONF.177/20, 15 September 2005.
- 5 See e.g. *The War within the War: Sexual Violence against Women and Girls in Eastern Congo*, Human Rights Watch, New York, 2002; Megan Bastick, Karin Grim and Rahel Kunz, *Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector*, DCAF, Geneva, 2007; *Climate of Fear: Sexual Violence and Abduction of Women and Girls in Baghdad*, Human Rights Watch, New York, 2003.
- 6 See e.g. Marie Claire Faray-Kele, ‘Africa: Women – Violence in war and in peace’, 20 March 2008, available at <http://allafrica.com/stories/200803200580.html> (last visited 8 February 2010); Patricia H. Hynes ‘On the battlefield of women’s bodies: An overview of the harm of war to women’, in *Women’s Studies International Forum*, Vol. 27, 2004, pp. 431–445.
- 7 Charlotte Lindsey, *Women Facing War: ICRC Study on the Impact of Armed Conflict on Women*, ICRC, Geneva, 2001, p. 37.
- 8 *Women, Peace and Security*, Canadian Research Institute for the Advancement of Women, Fact Sheet No. 6, 2004.
- 9 Human Rights Watch has documented the widespread use of sexual violence in Rwanda and the impact that the violence continues to have on social relationships. See *Sexual Violence during the Rwandan Genocide and its Aftermath*, Human Rights Watch, New York, 1996.
- 10 Judith Gardam and Hilary Charlesworth, ‘Protection of women in armed conflict’, in *Human Rights Quarterly*, Vol. 22, No. 1, 2000, p. 148.

or peace-builders.¹¹ Furthermore, both sexual violence discourses and international legal provisions largely fail to consider men's experience of sexual violence in conflict, which sustains a 'male-perpetrator and female-victim paradigm'¹² that is ultimately detrimental to both men and women.

Second, the prevalence of non-international armed conflict challenges the foundations of international humanitarian law.¹³ Although this is a general dilemma, when considered in the light of gendered understandings of armed conflict, the challenges appear even more acute. Provisions are not sophisticated enough to respond to the complex intersection of gender, ethnicity and other aspects of identity, which may be all the more pertinent in non-international armed conflicts as nationality is not the dominant differentiation between parties. More recent developments in public international law, specifically UN Security Council Resolution 1325 on women, peace and security¹⁴ and UN Security Council Resolution (SC Res.) 1820 focusing on sexual violence in conflict,¹⁵ contain empowerment as well as protection clauses, which may help to broaden recognition of women's multiple roles in conflict. The aim of this paper is to critically evaluate whether the process of gender mainstreaming using SC Res. 1325 and SC Res. 1820¹⁶ helps to strengthen constructions of gender within international humanitarian law, giving due consideration to the exploitation of gender stereotypes in armed conflict.

Gender, armed conflict and international humanitarian law

Legal protections afforded to women in conflict situations have long been criticized as being divorced from the reality of women's experiences.¹⁷ However, the aims of legal provisions echo more general tensions within equality discourses, which stem from the sameness *versus* difference debate. Liberal feminists have striven for equality on the basis of sameness, but this has not always proved radical enough to challenge gender inequality and denies acknowledgement of different social functions, including pregnancy and motherhood.¹⁸ International humanitarian law attempts to balance both general (sameness-based) and special (difference-based) protection measures: women must be 'treated humanely [...] without any adverse

11 Donna Pankhurst, 'The "sex war" and other wars: Towards a feminist approach to peacebuilding', in Haleh Afshar and Deborah Eade (eds), *Development, Women, and War: Feminist Perspectives*, Oxfam GB, Oxford, 2004.

12 Natalia Linos, 'Rethinking gender-based violence during war: Is violence against civilian men a problem worth addressing?', in *Social Science and Medicine*, Vol. 68, 2009, p. 1549.

13 Michael Schmitt, '21st century conflict: Can the law survive?', *Melbourne Journal of International Law*, Vol. 8, No. 2, 2007, pp. 443–476.

14 SC Res. 1325, 31 October 2000.

15 SC Res. 1820, 19 June 2008.

16 In addition to SC Res. 1325 and SC Res. 1820, two additional resolutions on women, peace and security have recently been adopted by the Security Council, namely SC Res. 1888, 30 September 2009, and SC Res. 1889, 5 October 2009.

17 Catherine N. Niarchos, 'Women, war, and rape: Challenges facing the International Tribunal for the former Yugoslavia', in *Human Rights Quarterly*, Vol. 17, No. 4, 1995, p. 654.

18 Rosemarie Putnam Tong, *Feminist Thought: A More Comprehensive Introduction*, Westview Press, Boulder, Colorado, 1998, pp. 2 and 6.

distinction founded on sex',¹⁹ at the same time as being '... treated with all the regard due to their sex'.²⁰

Inevitably, in attempting to acknowledge women's difference, many of the protective measures that address the status of women as civilians are based on biological factors. For example, under Article 8(a) of Additional Protocol I, maternity cases are prioritized in medical assistance to the wounded and sick, irrespective of whether military personnel or civilian.²¹ Additionally, Article 14 of the Fourth Geneva Convention recognizes expectant mothers and mothers of children under seven as a specific category that may require special protection along with the wounded, sick, children under fifteen and the aged.²² Indirectly these provisions essentialize women as mothers and care-givers, failing to broach broader issues of how gender-based social constructions often exacerbate social, economic and structural inequalities that heavily influence physical violence and conflict.²³

Responses to sexual violence also indicate how gender stereotypes have been sustained, particularly the perception of women as victims. A number of key provisions centre on the protection of women rather than prohibition of gender-based atrocities.²⁴ For example, within the ambit of the Fourth Geneva Convention, female civilians in an occupied territory, internees and refugees must be protected against any attack on their honour, including rape, enforced prostitution, or any form of indecent assault.²⁵

Based on moral integrity rather than physical harm or trauma, this provision perpetuates rape as being taboo. In societies where a culture of honour is ingrained, this perception is detrimental to many women. It is suggested that the prevalence of rape is particularly high where the social stigma is strongest,²⁶ and in an examination of acts of aggression in Croatia, Bosnia and Herzegovina a direct link is drawn between rape during peacetime and rape during conflict:

'War rapes in the former Yugoslavia would not be such an effective weapon of torture and terror if it were not for concepts of honor, shame and sexuality that are attached to women's bodies in peacetime.'²⁷

19 Article 12, Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, and Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.

20 Article 14, Geneva Convention (III) Relative to the Treatment of Prisoners of War.

21 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3.

22 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287.

23 Michael Emin Salla, 'Integral peace & power: A Foucauldian perspective', in *Peace and Change*, Vol. 23, No. 3, 1998, p. 315.

24 J. Gardam, above note 3, p. 57.

25 Fourth Geneva Convention, Article 27.

26 Heather Milner and Brita Schmidt, 'Rape as a weapon of war', in *British Council Newsletter*, October 1999, pp. 10–11, available at <http://www.britishcouncil.org/gendernetwork19.pdf> (last visited 8 February 2010).

27 Maria B. Olujic, 'Embodiment of terror: Gendered violence in peacetime and wartime in Croatia and Bosnia-Herzegovina', in *Medical Anthropology Quarterly*, Vol. 1, No. 12, March 1998, p. 32.

Furthermore, while Article 76 of Additional Protocol I does not reiterate the same concept of honour, women are deemed an 'object of special respect'.²⁸ As Gardam suggests, the nature of these provisions has little to do with women's experience of sexual violence, instead pertaining to a concept of honour that is socially constructed and sustained by dominant masculinities.²⁹ In the former Yugoslavia many rapes involved gang rape or sexual torture, and in some instances sexual assaults between family members were forced upon them.³⁰ Underlying these acts, targeted at women, is the exploitation of a misogynist masculinity stereotype.³¹ It would be a misnomer to suggest that this exploitation does not have negative repercussions for men as well as women. For example, male on male rape is used to humiliate and emasculate enemy soldiers.³²

While the World Health Organization (WHO) recognizes that women are particularly susceptible to sexual violence, male rape may also be under-reported because of the stigma attached to sexual violence against men.³³ International humanitarian law does not address male rape directly; it focuses primarily on rape as an act against a woman's honour, and therefore as an act that can only be carried out by men against women. The concept of rape in international humanitarian law is based not on aggression, but instead underpinned by a conception of women as property and a spoil of war.³⁴

In non-international armed conflicts the intersection between sexual violence and gender with other aspects of identity is inherently complex. As recognized by the International Committee of the Red Cross (ICRC), the application of international humanitarian law to intra-state conflict is particularly challenging.³⁵ Gardam suggests that Article 1(4) of Additional Protocol I effectively elevates self-determination wars to international status.³⁶ Although applying the *jus in bello* of international armed conflict to liberation wars is not the same as legitimizing them under *jus ad bellum*, Gardam cautions that within Article 44(3) of Additional Protocol I combatants are not required to carry arms openly at all times, thus placing women and children civilians at increased risk of being used as shields until the very point of attack.³⁷

At the same time, a shift away from a more stringent principle of distinction in self-determination and liberation conflicts could paradoxically serve to benefit unarmed women combatants during the post-conflict period. Although it

28 Protocol I, Art. 76(1).

29 J. Gardam, above note 3, p. 57.

30 C.N. Niarchos, above note 17, p. 657.

31 *Ibid.*, p. 658.

32 N. Linos, above note 12, p. 1549.

33 *Ibid.*, p. 1549.

34 C.N. Niarchos, above note 17, p. 660.

35 C. Lindsey, above note 7, p. 26.

36 J. Gardam, above note 1, p. 271.

37 *Ibid.*, pp. 274 and 276. Article 44(3) of Protocol I states '... he shall retain his status as a combatant, provided that in such situations, he carries his arms openly: (a) during each military engagement, and (b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate'.

is, strictly speaking, applicable only to international armed conflicts, the principle of distinction between combatant and non-combatant also has repercussions for non-international armed conflicts. At present, Disarmament, Demobilization and Reintegration (DDR) processes in the post-conflict period following non-international armed conflicts tend to overlook women members of armed groups, as they are less likely to carry arms. A typical DDR process may include HIV/AIDS testing, skills training and some monetary compensation in exchange for a weapon,³⁸ and recognition of women combatants, irrespective of whether they carry arms openly or not, may allow for their greater inclusion in DDR processes. While consideration of the post-conflict period may be beyond the scope of *jus in bello* and seemingly irrelevant, the transition lines between conflict and peace are even more tenuous in non-international armed conflicts and struggles for self-determination. More recent developments in public international law suggest that armed conflict and its significant impact on women, during and after armed conflicts, is increasingly recognized.

Progressive judgements at the International Criminal Tribunal for Rwanda (ICTR)³⁹ and the International Criminal Tribunal for the former Yugoslavia (ICTY)⁴⁰ have impacted on the long-standing Geneva Conventions by enhancing provisions on gender-based violence. For example, the landmark *Akayesu* judgement⁴¹ of the ICTR deemed rape to be a crime against humanity,⁴² as well as recognizing it as a ‘form of aggression’.⁴³ The judgement also affirmed that rape could potentially be classified as an act of genocide,⁴⁴ where it constitutes an ‘act committed with intent to destroy in whole or part a national, ethnical, racial or religious group’.⁴⁵ Under Article 2(2)(d) of the ICTR’s Statute, which refers to the deliberate ‘[imposition of] measures intended to prevent births within the group’,⁴⁶ rape is considered to be a weapon of war. Within the judgement, reference is made to the way in which rape is employed to undermine the social fabric of ethnic and racial groups:

In patriarchal societies, where membership of a group is determined by the identity of a father, an example of a measure intended to prevent births

38 Working group session on DDR, Promoting Women’s Participation in Peace and Security Processes: Operationalizing UN Security Council Resolution 1325, conference held at Joan B. Kroc Institute for Peace & Justice, University of San Diego, 18–20 November 2004.

39 Statute of the International Criminal Tribunal for Rwanda, in *International Legal Materials*, Vol. 33, 1995, p. 1598.

40 Statute of the International Criminal Tribunal for the former Yugoslavia, *International Legal Materials*, Vol. 32, 1993, p. 1525.

41 *Prosecutor v. Jean Paul Akayesu*, International Criminal Tribunal for Rwanda, Case No. ICTR-96-4-T 2 September 1998.

42 *Ibid.*, para. 585. As noted by the judgement, rape is classified as a crime against humanity under Article 3(g) of the Statute of the International Criminal Tribunal for Rwanda.

43 *Ibid.*, para. 687.

44 *Ibid.*, para. 731.

45 *Ibid.*, para. 494.

46 *Ibid.* In paragraph 494 the requirements for genocide are outlined. Under Article 2(3)(a) of the ICTR Statute (above note 39), Articles 2 and 3 of the Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, 78 UNTS 277 are adopted *verbatim*.

within a group is the case where, during rape, a woman of the said group is deliberately impregnated by a man of another group with the intent to have her give birth to a child who will consequently not belong to its mother's group.⁴⁷

Significantly, the *Akayesu* judgement situates rape as a crime causing serious bodily and mental harm, reorienting previous conceptions of rape as a moral crime against a woman's honour. Despite this important shift, the ICTR's approach to rape as a 'weapon of war' has been called into question by critics such as Buss, who note that recognition of rape as an act of genocide may create a high threshold or bar, against which all levels of sexual violence will be measured.⁴⁸ Certainly the prosecution of individual acts of rape has been lacking, and cases of male rape have also received limited scrutiny.⁴⁹ This could accordingly result in a lack of legal redress for individual acts of rape and sexual violence which are not part of a wider or systemic attack, leading Buss to suggest that there is both a 'hyper-visibility and un-visibility of sexual violence'.⁵⁰

It is clear that legal provisions alone will not enforce the prosecution of sexual violence, but the language of law plays an important role in constructing understandings of gender-based violence in conflict. While the language of the Geneva Conventions appears outdated, the remit of their provisions on rape may have greater applicability to individual acts of rape. Equally, the legal definitions and decisions coming out of the ICTR may not be sophisticated enough to respond to all elements of sexual violence in conflict. However, the perception of rape as a weapon of war is nevertheless important, as it helps to establish rape as a crime of harm rather than of honour, an aspect that seems to be overlooked in Buss' analysis. Particularly in non-international armed conflicts, however, if rape is targeted at a specific group of women on the basis of ethnicity or another aspect of identity, the current focus on harm to the group may still result in rape having connotations of a crime against the honour of the group.

The full impact of this judgement at the international level may take some time to materialize, but provisions contained within the Rome Statute of the International Criminal Court (ICC) suggest that a precedent has been set. For example, under Article 7(1)(g) of the Rome Statute, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity is recognized as a crime against humanity.⁵¹ Additionally, sexual mutilation,⁵² which often accompanied rape in Rwanda, could

47 *Ibid.*, para. 507.

48 Doris E. Buss, 'Rethinking rape as a weapon of war', in *Feminist Legal Studies*, Vol. 17, No. 2, August 2009, p. 149.

49 *Ibid.*, p. 151.

50 *Ibid.*, p. 153.

51 Rome Statute of the International Criminal Court, UN Doc. A/CONF. 183/9, 17 July 1998, Article 7(1)(g).

52 Human Rights Watch, above note 9.

be construed as falling within the remit of Article 6, given the resulting long-term health implications that could impede the ability to reproduce.⁵³

Judgements at the ICTY have adopted a similar stance towards the prosecution of rape. In *Kunarac*, sexual enslavement was classified as a crime against humanity or a war crime under Article 27 of the Fourth Geneva Convention,⁵⁴ with the further specification that rape occurs in all situations where consent is not given ‘freely’ or ‘voluntarily’, thus expanding the definition of rape given in *Akayesu*.⁵⁵ Despite these positive developments, there is no indication that existing provisions on rape in armed conflict will be improved. In the mid-nineties the ICRC declared that rape constituted a grave breach under the Fourth Convention’s Article 147, though at the time Niarchos raised concern that this broader interpretation lacked weight without any explicit amendment to include rape as a grave breach.⁵⁶ Although there is now widespread recognition of sexual violence in conflict, existing gender-specific provisions remain inadequate.

Mainstreaming gender in international humanitarian law

Equality policy initiatives, particularly gender mainstreaming, offer scope for the integration of gender into international humanitarian law and policy. The principal aim of gender mainstreaming is to achieve gender equality by implementing gender as a central component at all levels within the UN system and beyond.⁵⁷ The process also evaluates the impact, on men and women, of all policies at all stages of design, implementation and monitoring. In contrast to other equality initiatives, premised on equal treatment and non-discrimination, gender mainstreaming is primarily designed to target equality of outcome rather than equality of opportunity. It is not immediately obvious why mainstreaming has been employed so readily in a peace and security context; however, the UN Decade for Women affirmed the relationship between equality, peace and development.⁵⁸

In addition, the Beijing Platform for Action consolidated the concept of gender mainstreaming and highlighted women’s experience of armed conflict as a critical area of concern.⁵⁹ Both SC Res. 1325 and SC Res. 1820, relating to women,

53 Under Article 6 of the ICC Statute, there is scope for rape or crimes of sexual violence to be included under a number of provisions defining what is deemed to be an act of genocide: ‘(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group’.

54 Kelly D. Askin, ‘Sexual violence in decisions and indictments of the Yugoslav and Rwandan Tribunals: Current status’, in *American Journal of International Law*, Vol. 93, No. 1, 1999, p. 120.

55 Rosalind Dixon, ‘Rape as a crime in international humanitarian law: Where to from here?’, in *European Journal of International Law*, Vol. 13, No. 3, 2002, p. 700.

56 C.N. Niarchos, above note 17, p. 675.

57 ‘Report of the Economic and Social Council for the year 1997’, A/52/3/Rev.1, 18 September 1997, p. 24.

58 Gender-specific women’s concerns were increasingly acknowledged following the UN First World Conference on Women, held in Mexico in 1975, which produced the Declaration of Mexico on the Equality of Women and Their Contribution to Development and Peace, 1975, E/CONF66/34.

59 Beijing Platform for Action, above note 4, para. 131.

peace and security, have increasingly been used as gender mainstreaming tools and may help to develop key norms on women and armed conflict, thus enhancing understandings of gender in international humanitarian law.

Adopted in October 2000, SC Res. 1325 is the first Security Council resolution to focus specifically on women's experience of armed conflict. SC Res. 1325 aims to empower women at all levels of decision-making in conflict prevention, conflict resolution and peace-building, in addition to reducing gender-based violence. Rather than marginalizing women's experiences, it appears to bring gender-specific concerns within mainstream peace and security policy considerations. Substantively, the framework of SC Res. 1325 includes a preamble and eighteen clauses. First, the preamble recalls a number of Security Council resolutions that have addressed both the position of children and armed conflict⁶⁰ and the protection of civilians in armed conflict.⁶¹ Significantly, the role of women in conflict prevention, resolution and peace-building is reaffirmed.⁶² Gender mainstreaming is only specifically identified in relation to peacekeeping missions.⁶³

When referred to in practice SC Res. 1325 often appears to be considered as an independent framework, without clear recognition of how the resolution is interlinked with existing conventions. Although not creating any substantive rights as such, SC Res. 1325 does make reference to existing obligations under the Geneva Conventions of 1949⁶⁴ and the Additional Protocols of 1977;⁶⁵ the Refugee Convention of 1951⁶⁶ and the Protocol thereto of 1967;⁶⁷ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁶⁸ and the Optional Protocol thereto of 1999;⁶⁹ the Convention on the Rights of the Child 1989⁷⁰ and the two Optional Protocols thereto of 2000;⁷¹ and relevant provisions of the ICC Statute.⁷² An illustration of the relevance of substantive legal provisions can be seen in the protection of women and children as civilians, which is a key component of international humanitarian

60 See SC Res. 1261, 25 August 1999, on children and armed conflict, and SC Res. 1314, 11 August 2000, also on children and armed conflict.

61 See SC Res. 1265, 17 September 1999, and SC Res. 1296, 19 April 2000, which both consider the protection of civilians in armed conflict.

62 SC Res. 1325, preambular para. 5.

63 *Ibid.* See e.g. Clause 5 regarding the incorporation of a gender perspective into peacekeeping operations.

64 E.g. Fourth Geneva Convention, above note 22.

65 E.g. Protocol I, above note 21, and Protocol Additional to the Geneva Conventions of 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609.

66 Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS 150.

67 Protocol Relating to the Status of Refugees, 31 January 1967, 606 UNTS 267.

68 Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 UNTS 13.

69 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, GA. Res. 54/4, 15 October 1999.

70 Convention on the Rights of the Child, 20 November 1989, GA. Res. 44/25.

71 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, A/RES/54/263 of 25 May 2000, and Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, A/RES/54/263 of 25 May 2000.

72 SC Res. 1325, above note 14, Clause 9.

law.⁷³ In the resolution's Clause 10, relating to gender-specific protective measures, the Security Council:

calls 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.⁷⁴

This provision suggests that recognition of gender-specific harms forms an integral component of the gender mainstreaming process by enabling appropriate policy responses to be developed. For instance, levels of gender-based violence that occur before, during and after conflict could provide a gender-specific indicator, allowing an assessment of the success of the gender mainstreaming process in reducing these harms in practice. However, the framework of SC Res. 1325 does not provide any clear indication of how a gender mainstreaming process using, for example, gender-based violence indicators, should operate in a peace and security context. Given that the link between gender-based harms and the gender mainstreaming process is not made explicit, but is dependent on different actors' interpretations, gender-specific issues may be seen as inimical rather than central to the gender mainstreaming process.

Clause 10 of SC Res. 1325 recognizes the proliferation of gender-based atrocities in situations of conflict. As other human rights conventions, including CEDAW, do not directly address armed conflict, the resolution's remit enhances rights-based treaty provisions. Additionally, Clause 11 reinforces recognition of sexual violence and rape as crimes against humanity and war crimes, thereby further supporting protection measures under the Geneva Conventions, and it is clear that these connections need to be strengthened:

Emphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual violence against women and girls, and in this regard *stresses* the need to exclude these crimes, where feasible from amnesty provisions.⁷⁵

While there is scope to advocate the increased protection of women and girls under Clause 8(a), which calls for all actors involved in peace negotiations and agreements to consider the 'special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction',⁷⁶ the conceptualization of conflict that triggers SC Res. 1325 fails to provide a means of addressing interpersonal violence. Although SC Res. 1325

73 United Nations 'Women, peace and security' study submitted pursuant to Security Council Resolution 1325 (2000), New York: United Nations, 2002, para. 116. This is also evidenced in an annotated guide to SC Res. 1325 which fleshes out the provisions of the framework, 'UNIFEM Security Council Resolution 1325: Annotated and explained', UNIFEM, 22 September 2006, available at <http://www.un.org/np/reports/UNIFEM/2006/2006-9-22-UNIFEM-sec-council-report-eng.pdf> (last visited 8 February 2010).

74 SC Res. 1325, above note 14.

75 *Ibid.*, Clause 11.

76 *Ibid.*, Clause 8(a).

can go some way to address violations, it is questionable whether it is able to permeate the private dichotomy.⁷⁷ While this may not be its intended function, the resolution is not sophisticated enough to respond to structural and less overt forms of violence. As a result, a narrow construction of peace and security based on the negative peace paradigm, which centres on the cessation of direct violence, is maintained. Reinforcing the public sphere bias of international legal instruments, SC Res. 1325 does not engage with the way in which structural forms of violence often exacerbate gender inequalities.

First, the very nature of SC Res. 1325's reference in Clause 10 to 'situations of armed conflict' is ambiguous. Given that asymmetrical warfare is increasingly prevalent, state actors may be displaced by non-state actors as the chief protagonists of war. Reference to the Geneva Conventions and their Additional Protocols in Clause 9⁷⁸ suggests that the resolution is applicable to both international and non-international armed conflict. However, without further guidance as to exactly how non-state actors are defined, there is no guarantee that non-state actors will include private individuals other than those involved in armed militias and irregular armies. While the punishment of individuals for rape in armed conflict is not dependent on their membership of an armed group, as Buss highlights in her analysis of responses to rape at the ICTR, the prosecution of individuals for acts of rape or sexual violence already appears limited.⁷⁹ Moreover, instances of intra-personal violence often increase both during and after conflict,⁸⁰ which suggests a correlation between violence in conflict and peace, but SC Res. 1325 does not broach this dilemma.

Although SC Res. 1325 appears to strengthen norms on women, peace and security, the framework has regularly been criticized for failing to include benchmarks and targets.⁸¹ Experiences to date suggest that, if used at all, SC Res. 1325 is employed by policy makers in relation to peacekeeping operations and DDR processes. This narrow application risks shortfalls in implementation by overlooking the resolution's provisions on access to decision-making and violence against women, which are equally important to the overall structure of SC Res. 1325.

Significantly, some civil society actors have cautioned that any further follow-up resolutions could detract from the framework of SC Res. 1325.⁸² Despite these concerns, in June 2008 the Security Council debated and passed a new US-sponsored resolution on women, peace and security, SC Res. 1820, focused

77 Merav Datan, *Women, peace and security: A feminist analysis of Security Council Resolution 1325*, LLM Research Paper Laws 582, Law Faculty, Victoria University of Wellington, 2004.

78 SC Res. 1325, above note 14, Clause 9.

79 D.E. Buss, above note 48, p. 151.

80 Louise du Toit, paper presented at the Law, Time and Reconciliation workshop, University of Glasgow, 17–18 May 2004, and her article 'Feminism and the ethics of reconciliation', in *Eurozine*, March 2007, available at <http://www.eurozine.com/articles/2007-03-16-dutoit-en.html> (last visited 8 February 2010). Du Toit points to the increased levels of rape and sexual violence in the post-Truth and Reconciliation Commission period in South Africa.

81 Amy Barrow, ' "[It's] like a rubber band": Assessing SC Res. 1325 as a gender mainstreaming process', in *International Journal of Law in Context*, Cambridge University Press, Vol. 5, No. 1, March 2009, p. 57.

82 Personal communication, received 19 May 2007.

principally on sexual violence in armed conflict. In its preamble, it reaffirms the importance of ending impunity for all forms of violence against women and girl civilians both during and after armed conflicts, especially sexual violence, and in so doing aims to bridge the gap between international humanitarian law and international human rights law. This link is reinforced by recognition that the use of rape as a weapon of war and other sexual violence may continue beyond the cessation of armed conflict.

The framework of SC Res. 1820 strengthens understandings of sexual violence in armed conflict beyond the limited remit of existing gender-based provisions under the Geneva Conventions. For example, Clause 1 not only recognizes systematic use of sexual violence against civilian populations, but also pinpoints how it can ‘significantly exacerbate situations of armed conflict’ and stresses the importance of prevention.⁸³ In this respect, Clause 3 sets out a range of measures to enhance the protection of civilians, with particular reference to women and girls. These measures include military training on the prohibition of all forms of sexual violence, and disciplinary action against those security forces who commit acts of rape or sexual violence. The evacuation of women and children under imminent threat of sexual violence to safety is also stipulated, which demonstrates a shift towards preventative rather than reactionary measures, thus helping to expand norms on conflict prevention.

Prior to the adoption of SC Res. 1820, advocates of SC Res. 1325 criticized the substantive aims of the resolution for doing more harm than good:

[SC Res. 1820] provides watered down versions of the issues, and undermines what we have. For example: [Clause] 4 states that ‘sexual violence “can” constitute a war crime; a crime against humanity, or a constitutive act with respect to genocide.’ But sexual violence is already recognised as such in international law. The word ‘can’ undermines this.⁸⁴

Alternatively, by diversifying conceptions of sexual violence to include both individual and systemic attacks and thus overcoming limitations in both the Geneva Conventions and the ICTR judgements, the inclusion of the word ‘can’ may help to alleviate concerns that the threshold for the prosecution of sexual violence in conflict is set too high. While this semantic shift may appear minor, the introduction of a series of Security Council resolutions focused on sexual violence, including SC Res. 1820, may weaken rather than strengthen SC Res. 1325 by diluting the crystallization of important norms on women, peace and security, which are aimed at both empowering and protecting women.

SC Res. 1325 is often perceived as a landmark precisely because it aims to support the transition of women from victims to actors. For example, its Clause 1, focused on the subject of decision-making, ‘*Urges* Member States to ensure increased representation of women at all decision-making levels in national, regional

83 SC Res. 1820, above note 15, para. 1.

84 Personal communication, received 13 June 2008.

and international institutions and mechanisms for the prevention, management, and resolution of conflict'.⁸⁵ On the surface, these provisions may appear 'tokenistic', but given the initial resistance to SC Res. 1325 by States Parties, the inclusion of empowerment clauses is significant. To a certain extent, the language of SC Res. 1325 attempts to displace the exploitation of gender stereotypes and helps to develop norms on women's participation in conflict prevention, conflict resolution and peace-building processes.

There is growing recognition that women play a number of roles in conflict, particularly within irregular armies and militia groups during non-international armed conflicts. For example, Coulter considers the role of armed women fighters as members of the armed forces in Sierra Leone, who are often perceived as abnormal transgressors stepping beyond the acceptable boundaries of feminine behaviour.⁸⁶ Even within irregular armies women are frequently exposed to more egalitarian political roles. A good illustration here is the experience of women guerrillas in El Salvador who were provided with means of contraception, thus gaining autonomy over their own reproductive capacity and sexuality.⁸⁷ Other commentators observe the way in which spaces open up for women's organizing and activism during the post-conflict period.⁸⁸ While women's participation in informal peace processes is often encouraged,⁸⁹ it is particularly difficult for women to gain access to formal decision-making processes. For example, in Iraq many women's organizations have been forced underground by threats of violence and intimidation.⁹⁰ These examples illustrate the importance of women's agency and represent an important departure from the 'women as victims' paradigm. This is not to suggest that the prevention of sexual violence in conflict should not be a major priority, but the adoption of further Security Council resolutions that sustain focus on sexual violence may invariably stall the development of laws and policies which recognize women's multiple roles in conflict.

Conclusion

Underpinning the Geneva Conventions is a 'male as perpetrator, female as victim paradigm' that serves to exploit gender stereotypes in conflict. Although gender-specific provisions are contained within international humanitarian law, the

85 SC Res. 1325, above note 14, Clause 1.

86 Chris Coulter, 'Female fighters in the Sierra Leone war: Challenging the assumptions?', in *Feminist Review*, Vol. 88, No. 1, April 2008, pp. 62 and 63.

87 Ana Cristina Ibáñez, 'El Salvador: War and Untold Stories – Women guerrillas', in Caroline O.N. Moser and Fiona C. Clark (eds), *Victims, Perpetrators or Actors? Gender, Armed Conflict and Political Violence*, Zed Books, London and New York, 2001, pp. 117–130.

88 See e.g. Nadjé Al-Ali and Nicola Pratt, 'Women's organising and the conflict in Iraq since 2003', in *Feminist Review*, Vol. 88, No. 1, April 2008, pp. 74–85.

89 See e.g. analysis of the Sudanese Women's Voice for Peace organization in Dorothea Hilhorst and Mathijs van Leeuwen, 'Grounding local peace organisations: A case study of Southern Sudan', in *Journal of Modern African Studies*, Vol. 43, No. 4, 2005, pp. 537–563.

90 N. Al-Ali and N. Pratt, above note 88, p. 81.

exploitation of women as victims has been sustained, if not reinforced in practice. ‘Vaguely termed’ language, which focuses on concepts such as honour and dignity, means that the ‘sexual nature of the crime [of rape] is indeterminable’.⁹¹ Judgements at the ICTR and ICTY have gone some way to reorient conceptions of rape as a crime against a woman’s honour to rape as a crime causing serious bodily and mental harm. Nevertheless, perceptions of gender in armed conflict continue to be aligned with women and victimhood, and concerns have been raised that individual acts of rape against men and women will be overlooked in situations where rape is utilized as a ‘weapon of war’.

Recent resolutions stemming from the Security Council, such as SC Res. 1325, have attempted to empower as well as protect women. While SC Res. 1325 has increasingly been used to mainstream gender in security sector reform, current approaches to gender mainstreaming appear to echo liberal feminist approaches to gender equality. Integrationist gender mainstreaming policies are to be credited for considering women’s experiences, but ultimately an approach that ‘adds women and stirs’ fails to challenge how existing legal provisions, combined with gender-blind international institutions, have disempowered women and exacerbated the exploitation of gender stereotypes. In the case of SC Res. 1325, stronger links need to be established with substantive legal provisions, including the Geneva Conventions and respective Protocols, the CEDAW and the Rome Statute of the International Criminal Court.

Additional Security Council resolutions on women, peace and security, among them SC Res. 1820, do help to expand norms on conflict prevention – including the evacuation of women and girls susceptible to sexual violence – an element that may appear beyond the scope of international humanitarian law. Nevertheless, the complexity of non-international armed conflicts, which engage multiple non-state actors and militia groups, means that the scope of international humanitarian law needs to evolve or risk faltering. However, provisions contained in SC Res. 1820 also fail to move away from the ‘woman as victims’ paradigm and thus reinforce many of those same conceptual constraints present in international humanitarian law. Furthermore, SC Res. 1820 risks diluting SC Res. 1325’s attempts to empower women in conflict prevention, resolution and peace-building processes.

It is clear that the relationship between gender and international humanitarian law is problematic. Without any amendment to the Geneva Conventions, the adoption of alternative legal instruments that broach gender in a more sophisticated way and support existing international humanitarian law provisions becomes increasingly important. As evidenced by the shortcomings of SC Res. 1325 and SC Res. 1820, the language of Security Council resolutions, though well-intentioned, is limited in how it can aid constructions of gender in armed conflict. Constructions of gender within international humanitarian law are thus constrained without any radical form of redress.

91 K.D. Askin, above note 54, p. 700.

Between rhetoric and reality: exploring the impact of military humanitarian intervention upon sexual violence – post-conflict sex trafficking in Kosovo

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Abstract

Adopting a feminist perspective, this paper analyses the doctrine of humanitarian intervention and its impact on women in recipient states, particularly with regard to sexual violence. By analysing the phenomenon of post-conflict trafficking in Kosovo following the NATO intervention, the author presents a challenge to the ‘feminist hawks’ who have called for military intervention in situations of systematic sexual violence. It is the author’s contention that such intervention would be counterproductive for women’s rights and thus constitute a disproportionate response to sexual violence in terms of the international law governing the use of force.

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Following the military interventions in Kosovo and East Timor in 1999, there has been a growth in support for the idea that military force may constitute a legitimate response to genocide, ethnic cleansing, and systematic human rights abuses. This doctrinal shift towards ‘new interventionism’ has been partly attributed to the end of the cold war, during which the Security Council (‘the Council’ or SC) had been unable to exercise its powers under Chapter VII of the UN Charter because of the threat or use of the veto by the five permanent members.¹ Scholars have also highlighted that, since the Gulf War in 1990, the Council has adopted a broad interpretation of ‘threats to the peace’, which fall under the Council’s jurisdiction by virtue of Article 39, Chapter VII of the Charter.² The numerous Council resolutions passed with regard to Yugoslavia, Somalia, Rwanda, Haiti, and East Timor have been interpreted as demonstrating the Council’s increasing willingness to treat humanitarian crises as a threat to international peace and security.³

Amid the surge of support for humanitarian intervention, this article attempts to diverge from mainstream debate and analyse the impact of this doctrine upon women in the recipient states from a feminist perspective. Some feminists have embraced the new doctrine of humanitarian intervention as *lex ferenda*⁴ (contributing in part to its rising acceptance), and have argued for military interventions in response to systematic sexual violence. Such arguments have been made with regard to the situations in Bosnia (1993), Afghanistan (2001), and Iraq (2003), as well as more recently in Sudan and Somalia.⁵ In contrast to these feminist ‘calls for troops’,⁶ this article asserts that such a response would be counter-productive for women’s rights, and disproportionate in terms of the international law governing the use of force.

Following the approach of feminist scholarship, which looks for silences in dominant discourse and seeks to interject alternative voices, this article departs from the mainstream legal and normative discourse surrounding humanitarian intervention to ask some marginalized questions: first, how does military humanitarian intervention directly and indirectly impact upon women’s rights? Furthermore, is military humanitarian intervention a proportionate response to humanitarian crises, including situations of systematic sexual violence? In seeking to answer these questions, this article will consider the recent convergence between (some) feminists and interventionists, and offer a critique of the appropriation of women’s rights to justify military action. It will then offer a contextual basis for its

1 Between 1945 and 31 May 1990, the veto was exercised 279 times. See Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law*, Cambridge University Press, Cambridge, 2003, p. 3.

2 Christine Gray, *International Law and the Use of Force*, 3rd edn, Oxford University Press, Oxford, 2008. *Ibid.*, pp. 1–3.

3 Not written law, but an emerging legal norm.

5 Catherine MacKinnon, ‘Women’s September 11th: rethinking the international law of conflict’, in *Harvard International Law Journal*, Vol. 47, No. 1, 2006; Karen Engle, ‘“Calling in the troops”: the uneasy relationship among women’s rights, human rights, and humanitarian intervention’, in *Harvard Human Rights Journal*, Vol. 20, 2007, p. 190.

6 This is a term used in Engle, above note 5.

critique by analysing the direct and indirect impacts of military intervention in relation to sex trafficking and forced prostitution in Kosovo. It is the author's contention that the dangers of military interventionism may be demonstrated by adopting a feminist perspective. The article will conclude by evaluating responses to sexual violence at the international level, reflecting upon the wider implications both for the laws on the use of force and for women's rights.

The author is mindful of the potential criticism that it is pessimistic to focus on the 'dark sides'⁷ of one of the few humanitarian practices that exist within international relations, and, furthermore, that it is regressive to criticize feminist calls for humanitarian intervention, which has been hailed by many as a success for women's rights. However, Kennedy encourages us, as scholars of international law, to evaluate that which is seen as virtuous, and to search for the dark sides, blind-spots, and biases of humanitarian practice.⁸ Such an approach also lies at the core of feminist theory, the purpose of which is to look to the margins of mainstream discourse and to expose the blind-spots and biases within dominant narratives.

By analysing the converging relationship between feminists and interventionists, it is evident that the relationship between the two schools has been counterproductive. In exposing the disjuncture between rhetoric and reality in intervention narratives, this article illustrates that the political potency of women's rights is vulnerable to appropriation by 'heroic' governments seeking to liberate female 'victims'. In reality, women's experiences of military intervention have been far from liberating. By simply shifting the focus of the lens, important alternative narratives are revealed. It is imperative that these narratives be included and understood within future debates surrounding intervention.

The emergence of feminist hawks

There are numerous developments within state practice and *opinio juris* to indicate an emerging norm of humanitarian intervention within customary international law. Evidence can be found in the statements issued by the UN Secretary-General in relation to Rwanda and Kosovo, General Assembly resolutions regarding interventions throughout the 1990s, and the general support of the international community with regard to the interventions in Kosovo and East Timor. In the context of Kosovo, for example, widespread consensus asserts that, although NATO's action was illegal under positive law owing to the lack of Security Council authorization,⁹ it could nevertheless be exceptionally condoned on the grounds of

7 David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism*, Princeton University Press, Princeton, 2004, p. xiii.

8 *Ibid.*, p. xix.

9 The only exceptions to the prohibition on the use of force are provided for in Article 51 of the UN Charter, which allows states to exercise self-defence in the event of an 'armed attack', and in Article 42 thereof, which permits the Security Council to authorize the use of force.

humanitarian principles.¹⁰ In response to criticism by legal scholars regarding the dubious legal justifications for NATO's intervention, Secretary-General Kofi Annan stated:

'[T]he genocide in Rwanda will define for our generation the consequences of inaction in the face of mass murder ... If ... a coalition of States had been prepared to act in defence of the Tutsi population, but did not receive prompt Council authorization, should such a coalition have stood aside and allowed the horror to unfold?'¹¹

More recently, the World Summit Outcome Document, 2005, demonstrated a strong commitment from the General Assembly to the 'Responsibility to Protect' (R2P) doctrine, stating that 'we are prepared to take collective action ... through the Security Council ... should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity'.¹²

Feminist scholars have also seized on the R2P doctrine as an opportunity to draw attention to the systematic abuses of women and to demand a military response. The convergence of feminism with interventionism was notably demonstrated in the case of Bosnia. Engle explains that feminist 'success' in equating Serbian rape policy with acts of genocide provided a huge moral imperative to the international community.¹³ Nesiah describes the partnership between certain feminists and 'military hawks' as forming a 'marriage' of convenience between the two entities that has, since Bosnia, been further demonstrated in justifications for interventions in Afghanistan and Iraq.¹⁴ Drawing on the work of Engle and Nesiah, this article therefore uses the term 'feminist hawks' to refer to this convergence between the two constituents.¹⁵

10 For arguments that the NATO intervention in Kosovo was legitimate on humanitarian grounds, see discussions in Bruno Simma, 'NATO, the UN and the use of force: legal aspects', in *European Journal of International Law*, Vol. 10, No. 1, 1999, p. 22; Antonio Cassese, 'A follow up: forcible humanitarian countermeasures and *opinio necessitatis*', in *European Journal of International Law*, Vol. 10, No. 4, 1999, pp. 791–799; Ruth Wedgwood, 'NATO's campaign in Yugoslavia', in *American Journal of International Law*, Vol. 93, 1999, pp. 826–827; Michael Glennon, 'The new interventionism: the search for a just international law', in *Foreign Affairs*, Vol. 78, No. 3, 1999, pp. 2–7 (arguing that justice can be attained extra-legally).

11 'UN Secretary-General presents his Annual Report to the GA', UN Press release SG/SM/7136 GA/9596, 20 September 1999, available at <http://www.un.org/News/Press/docs/1999/19990920.sgsm7136.html> (last visited January 2009).

12 UN General Assembly, *World Summit Outcome Document*, UN Doc. A/RES/60/1, 16 September 2005, p. 31, para. 139, available at <http://www.un.org/summit2005/documents.html> (last visited 24 November 2009).

13 K. Engle, above note 5, p. 2.

14 Vasuki Nesiah, 'From Berlin to Bonn to Baghdad: a space for infinite justice', in *Harvard Human Rights Journal*, Vol. 17, 2004, cited in Engle, above note 5, p. 197.

15 Other terms have been used to refer to feminists who have adopted an agenda of military intervention. Nadia Al Ali and Nicola Pratt, for example, use the term 'imperial feminists' in *What Kind of Liberation? Women and the Occupation of Iraq*, University of California Press, London, 2009.

‘Saving women’ narratives

‘Will the Marines never land for [women]?’¹⁶

The rhetoric employed by advocates of intervention in Bosnia-Herzegovina (1995), and more recently in Afghanistan (2001) and Iraq (2003), demonstrates the increasing incorporation of women’s rights as a justification for military intervention. In Afghanistan, perhaps more prominently than elsewhere, Afghan women, supported by numerous feminists, lent their rhetorical potency to the US Department of State and became the symbolic face of Operation Enduring Freedom: ‘as we drive out the Taleban and the terrorists, we are determined to lift up ... the women and children of Afghanistan, [they] have suffered enough’.¹⁷ The US First Lady, Laura Bush, delivered radio broadcasts drawing attention to the plight of women in Afghanistan: ‘I’m delivering this week’s radio address to kick off a world-wide effort to focus on the brutality against women and children by the al-Qaida terrorist network and the regime it supports in Afghanistan, the Taleban’.¹⁸ At present, support for military intervention in Darfur and the Democratic Republic of Congo continues to increase as media attention focuses on the documentation of systematic rape within these conflicts.¹⁹ From the perspective of radical feminism, this represents a significant victory for women’s rights campaigns that posit women’s sexual vulnerability as the factor to be addressed by feminist politics.

Furthermore, in June 2008, the UN Security Council Resolution (SC Res) 1820, which supplements the Council’s earlier resolution SC Res 1325 on women, peace, and security,²⁰ established a new binding instrument specifically focused on sexual violence in conflict and post-conflict situations.²¹ The passing of this significant resolution indicates that the ‘marriage of convenience’ between women’s rights and military interventionists is now influencing international law.²² Most notably for the present discussion, operative paragraph 1 (OP 1) of SC Res 1820, states that the Council ‘expresses its readiness, when considering situations on the

16 C. MacKinnon, above note 5, p. 22.

17 Voice of America, ‘Bush pledges post-war help to Afghanistan’, 12 December 2001, <http://www1.voanews.com/english/news/a-13-a-2001-12-12-37-Bush-67243592.html?moddate=2001-12-12> (last visited 30 January 2009).

18 Laura Bush, transcript of radio broadcast, 17 November 2001, available at <http://www.presidency.ucsb.edu/ws/index.php?pid=24992> (last visited 23 March 2010).

19 For example, see the Oxfam campaigns in UK national newspapers such as the *Independent* concerning rape in Darfur, and the television commercial *How Will History Judge Us?*, CNN Television, broadcast in October 2006, available at http://www.savedarfur.org/pages/advertising_campaign (last visited 18 December 2009), arguing that history will judge us if we allow rape to continue without our intervention.

20 SC Res 1325 on Women, Peace and Security, S/RES/1325, 31 October 2000.

21 SC Res 1820 on Women, Peace and Security, S/RES/1820, 19 June 2008.

22 Although the Council is not endowed with legislative powers, its resolutions are binding on member states and its statements are interpreted as authoritative. For a discussion on the quasi-legislative nature of the Council, see Michael C. Wood, ‘The interpretation of Security Council resolutions’, in *Max Planck Yearbook of United Nations Law*, Vol. 2, 1998, p. 73.

agenda of the Council, to, where necessary, adopt appropriate steps to address widespread or systematic sexual violence'.²³

What exactly such 'appropriate steps' may entail is not elaborated on in this resolution, but it is certainly inferred by the text of OP 1 that widespread or systematic sexual violence may incite the authorization of force under Article 42. Heathcote points out that most of SC Res 1820 deals with sexual violence as a violation of international humanitarian law (*jus in bello*), whereas OP 1 implies that sexual violence may also fall within the definition of a 'threat to international peace and security', placing sexual violence within the framework of the laws on the use of force (*jus ad bellum*).²⁴ While the political will to invoke such an authorization is substantially lacking, the language of OP 1 indicates that sexual violence may have made its way onto the agenda of the Council as a threat to international peace and security, further broadening the potential scope of Chapter VII authorization for humanitarian intervention.

In addition to the resolution itself, public statements reflect the growing consensus that the R2P doctrine may extend to the realm of women's rights. Condoleezza Rice, in the Council's Debate on Women, Peace and Security that preceded the drafting of SC Res 1820, stated that 'When women and girls are preyed upon, and raped, the international community cannot be silent or inactive. It is our responsibility to be their advocates and their defenders'.²⁵ Secretary-General Ban Ki-Moon in his opening remarks at the debate, urged the Council to adopt resolutions with stronger language on sexual violence, in order that 'the UN can respond more forcefully', which may implicitly denote endorsement of the use of force.²⁶

At a discursive level, key feminist scholars have contributed to fostering a recognition of sexual violence as a security threat worthy of military response. For example, MacKinnon, in her analysis of the paradigmatic shift in approaches to security following the 11 September 2001 terrorist attack on the United States, embraces the emerging R2P doctrine, yet questions why it is not applicable to violence against women, or the 'war on women'.²⁷ MacKinnon recognizes that violence against women does not constitute a conventional 'armed attack'²⁸ and has therefore not been relevant to *jus ad bellum*.²⁹ However, since 9/11 there has, she

23 SC Res 1820, above note 21, operative para. 1, available at http://www.un.org/Docs/sc/unsc_resolutions08.htm (last visited December 2008).

24 Gina Heathcote, 'From Security Council Resolution 1325 to 1820', unpublished manuscript on file with author, 2008, p. 4.

25 Condoleezza Rice, address to the United Nations Security Council thematic debate on women, peace, and security, 19 June 2008, available at http://www.peacewomen.org/un/sc/Open_Debates/Sexual_Violence08/Protection.htm (last visited 23 March 2010).

26 Ban Ki-Moon, 'Remarks to the Security Council meeting on Women, Peace and Security', 19 June 2008, available at http://www.un.org/apps/news/infocus/speeches/search_full.asp?statID=268 (last visited 23 March 2010).

27 C. MacKinnon, above note 5, understands violence against women as inclusive of physical, sexual, and psychological violence.

28 UN Charter, Art. 51.

29 C. MacKinnon, above note 5, p. 5.

argues, been a radical re-conceptualization of the nature of 'armed attacks' within international law, which must now be extended beyond terrorism to systematic acts of violence against women; both, she claims, constitute crimes against humanity.³⁰ Feminist hawks such as MacKinnon demand to know why the severe abuses of Afghan women under the Taliban regime were not, in themselves, valid justifications for military intervention: 'Why ... was their treatment alone, not an act of war or a reason to intervene (including militarily) on any day up to September 10, 2001?'³¹

While MacKinnon is justified in questioning the prioritization of terrorism as a greater security threat, her recommendations that force must be deployed in response to violence against women fail to recognize the impacts of intervention and post-conflict militarization of society upon women. The fundamental assumption underlying her question is that military intervention will 'save' these women.³² The following section offers a critique of 'saving women' narratives, which presuppose that military intervention will lead to liberation.

Deconstructing 'saving women' narratives

It is the author's contention that 'saving women' narratives, as discussed above, are regressive for women's rights. First, they are based upon the articulation of women as 'victims' and dispossess women of their self-determination. This can be seen in the transition from the first Security Council resolution adopted on women, peace, and security, SC Res 1325 of 2000, which focused predominantly on women's participation, to SC Res 1820 with its narrow focus on women's sexual vulnerability.³³ Kapur argues that the reliance upon the status of victimhood in an effort to claim rights for women is based upon gender essentialism.³⁴ In this sense, the oversimplified perspective of SC Res 1820 ignores the intersectionality that bears upon women's experiences, where not only gender but also race, class, ethnicity, and nationality all contribute to experiences of oppression.³⁵ To narrow the focus of women's experiences down to their shared commonality as women is

30 *Ibid.*, pp. 12–13.

31 *Ibid.*, p. 20.

32 It is these narratives, as presented by MacKinnon, Rice, and Bush, and implied by SC Res 1820, that the author has termed 'saving women' narratives, as they all perceive women as victims of oppression in need of a heroic military intervention to liberate them from their oppressors.

33 G. Heathcote, above note 24. For further analysis see Sam Cook, 'Security Council Resolution 1820: a move to end sexual violence in conflict', 2008, available at http://www.peacewomen.org/un/sc/Open_Debates/Sexual_Violence08/PeaceWomenAnalysis.pdf (last visited 18 December 2009).

34 Gender essentialism is the attributing of fixed, essential characteristics to women that are shared universally on the basis of sex. See Ratna Kapur, 'The tragedy of victimization rhetoric: resurrecting the native subject in international/postcolonial feminist legal politics', in *Harvard Human Rights Law Journal*, Vol. 15, 2002, p. 5.

35 See Marlee Kline, 'Race, racism, and feminist legal theory', in *Harvard Women's Law Journal*, Vol. 12, 1989, p. 115, for a critique of MacKinnon's 'dominance feminism'.

to ignore the complexity of the wider context and falsely reduce women's experiences.

The victim/agency dichotomy creates an inaccurate lens through which to understand women's experiences and provokes an endless debate. Women are not simply one or the other. Agents, whether of change or of warfare, may also be victims of sexual violence or affected by it in some way. In fact, experiences of victimization may invoke agency. Victimhood and agency, violence and participation, are inextricably linked. SC Res 1325 and 1820 therefore need to be applied holistically, not dealt with as two distinct resolutions.

Secondly, 'saving women' narratives are premised upon a notion of cultural essentialism, portraying non-Western women as victims of their culture. As interventionists observe the victimized 'Other' through the neo-colonial lens, they adopt the stance of an 'arrogant perceiver'.³⁶ This 'arrogant perception' 'reinforces stereotypes and racist representations of that culture and privileges the culture of the West', while wholly ignoring the influence of colonialism, dominant racial regimes or religions, and cultural hegemonies.³⁷ Kapur warns scholars to show caution with regard to narratives reminiscent of imperialist intervention that incite protectionist responses from states. Furthermore, these protectionist responses, invoked by the violence against women discourse, are counter-productive to the promotion of women's rights.³⁸ This will be demonstrated below in the analysis of the case of Kosovo.

It is the popular acceptance of 'saving women' narratives that forms the preface of the 'heroic' intervention story. Drawing upon feminist and post-colonial theories, Orford suggests that interventionist narratives 'create a powerful sense of self for those who identify with the hero of the story'.³⁹ Orford argues that these interventionist narratives produce subjects that are dependent upon sexual and racial differentiation, depicting the Western white male as the hero and defender of the non-Western, non-white female.⁴⁰ The 'heroic' narrative is therefore wholly reliant upon the construction of female victimhood and the illusion that women need 'saving'. Fanon's theory of racial differentiation can be transcribed onto sexual differentiation in the sense that 'not only must the [hero] be a [hero]; he must be a [hero] in relation to the [female victim]'; the 'hero' must also be positioned in the narrative as the antithesis of the 'rogue' state or oppressor.⁴¹ The interdependency of these narratives serves to reinforce racist and sexist perceptions of the subjects, simultaneously denying women's agency and promoting the 'heroes' of the story as the agents of change.

36 Term coined by Marilyn Frye, cited in Stanlie M. James, 'Listening to other(ed) voices: reflections around female genital cutting', in Stanlie M. James and Clare C. Robertson (eds.), *Genital Cutting and Transnational Sisterhood: Disputing US Polemics*, University of Illinois Press, Urbana, 2002, pp. 87–113.

37 R. Kapur, above note 34, p. 6.

38 *Ibid.*, p. 6.

39 Anne Orford, 'Muscular humanitarianism: reading the narratives of the new interventionism', in *European Journal of International Law*, Vol. 10, No. 4, 1999, p. 679.

40 *Ibid.*, p. 672.

41 Franz Fanon, cited in Orford, above note 39, p. 5.

Finally, 'saving women' narratives remain unsubstantiated beyond the rhetoric. When one considers how intervention has impacted on women in recipient states, it is beyond dispute that such a strategy is counterproductive. By shifting the focus away from 'heroic' rhetoric, and by focusing instead upon the effects of military intervention upon women in Kosovo, the following analysis presents a significant challenge to the interventionist standpoint.⁴²

The NATO intervention in Kosovo

Background

The conflict in Kosovo dates back centuries, mainly to the Battles of Kosovo in the fourteenth century, which continue, to this day, to arouse nationalist tensions between the Serbian and Albanian populations. In 1946, Kosovo was absorbed into Serbia, although it was given autonomous status as a concession to the demands of the Albanian majority. In 1963, Kosovo became an autonomous province and, the following year, under Tito's constitution, was granted virtual self-government.⁴³ However, after Tito's death the 1980s were characterized by a climate of fear and systematic discrimination as violence between the two ethnic groups escalated.⁴⁴ In 1989, Slobodan Milosevic, President of the Socialist Federal Republic of Yugoslavia, asserted that the Serb minority in Kosovo was at significant risk and revoked Kosovo's autonomy. This enabled the government of Serbia to exert direct control over the previously self-governed areas and to impose ethnically based, centralized rule. In response, a resistance movement, the Kosovo Liberation Army, was formed and engaged in hit-and-run attacks on Serb forces. In turn, the Serbian army carried out large-scale frequent military attacks, and by 1998 some 200,000 Kosovar Albanians had been displaced.⁴⁵

The treatment of the Kosovar Albanians was denounced by the international community as ethnic cleansing. The Council passed Resolution 1199 (1998) requiring Belgrade to allow international monitors to observe the situation

42 What is interesting about the case of Kosovo is that, unlike those of Bosnia, Afghanistan, and Iraq, there was no strong 'saving women' narrative put forward by the international community; the emphasis was on the ethnic cleansing of the Albanian population as a whole, despite the systematic use of rape by the Serb forces as a feature of ethnic cleansing. One possible explanation for the lack of women's rights rhetoric may be as follows: given the strength of ethnic solidarity among the Albanian population in Kosovo, to admit sexual abuse by the enemy is to undermine the solidarity of the national group, to risk rejection, and to foreground gender identity over national identity. See Jayne Rodgers, 'Bosnia and Kosovo: interpreting the gender dimensions of international intervention', in Colin McInnes and Nicholas J. Wheeler (eds.), *Dimensions of Western Military Intervention*, Frank Cass Publishers, 2002, p. 189.

43 R. Wedgwood, above note 10, p. 828.

44 *Ibid.*

45 *Ibid.*, p. 829.

in Kosovo, and to withdraw security forces used for civilian repression.⁴⁶ In January 1999, negotiations between the Kosovar Albanians and Serbs were held by the ‘Contact Group’⁴⁷ in Rambouillet, France. The purpose of these negotiations was to establish a political framework for Kosovo’s autonomy, following a three-year interim period.⁴⁸ In order to guarantee compliance, the Contact Group demanded that NATO be allowed to operate in the Federal Republic of Yugoslavia (FRY). The Kosovar Albanians consented to the conditions set out by the Contact Group; the FRY remained intransigent.

The NATO intervention in Kosovo

On 24 March 1999, after diplomatic efforts failed to halt the ethnic cleansing of Kosovar Albanians by Serbian forces, NATO began a seventy-eight-day bombing campaign against Serbia. NATO did not receive the authorization required from the Council under Chapter VII of the UN Charter,⁴⁹ nor did its actions constitute self-defence as provided for under Article 51 thereof, which refers explicitly to the occurrence of an ‘armed attack’ against a sovereign entity.⁵⁰ Despite this, NATO Secretary General Solana declared ‘that NATO saw sufficient factual and legal grounds to threaten the use of force, and if necessary, to use force’.⁵¹

While the majority of international lawyers and scholars concede that the intervention was illegal,⁵² there are a number of liberal scholars who argue that on the contrary it was legal,⁵³ as well as others who hold that it could at least be condoned on humanitarian grounds.⁵⁴ Those who provide a critique of the intervention do so either on positivist legal grounds or by setting out the underlying

46 SC Res 1199, para. 4(a) and (b).

47 The Contact Group consisted of the United States, the United Kingdom, France, Germany, Italy, and Russia.

48 R. Wedgwood, above note 10, p. 829.

49 Although the Security Council passed three resolutions on the situation in Kosovo prior to the NATO intervention – SC Res 1160, 1199, and 1203 – not one of these resolutions authorized the use of force.

50 For a discussion of this, see Peter Hilpold, ‘Humanitarian intervention: is there need for a legal re-appraisal?’, in *European Journal of International Law*, Vol. 12, No. 3, 2001, p. 450.

51 Javier Solana, cited in *ibid.*, p. 440.

52 E.g. Jonathan Charney, ‘Anticipatory humanitarian intervention in Kosovo’, in *Vanderbilt Journal of Transnational Law*, Vol. 32, No. 5, 1999; Christine Chinkin, ‘Kosovo: a “good” or “bad” war?’, in *American Journal of International Law*, Vol. 93, No. 4, 1999, pp. 841–847; Louis Henkin, ‘Kosovo and the law of “humanitarian intervention”’, in *American Journal of International Law*, Vol. 93, No. 4, 1999, pp. 824–828; P. Hilpold, above note 50; B. Simma, above note 10; R. Wedgwood, above note 10.

53 This case has been made by referring to the possible loopholes in Art. 2(4) of the UN Charter, wider interpretations of the concept of self-defence, and/or the development of customary international law regarding humanitarian intervention. See Anthony D’Amato’s defence of NATO in Jianming Shen, ‘The non-intervention principle and humanitarian interventions under international law’, in *International Legal Theory*, Vol. 7, No. 1, 2001, p. 15; and M. Glennon, above note 10.

54 See B. Simma, above note 10; M. Glennon, above note 10; A. Cassese, above note 10; J. Shen, above note 53; and Fernando R. Tesón, ‘The liberal case for humanitarian intervention’, FSU College of Law, Public Law and Legal Theory Working Paper, No. 39, 2001.

non-humanitarian motivations.⁵⁵ Proportionality considerations are generally sidelined, except by Chinkin, who contends that the intervention was disproportionate (in terms of *jus ad bellum*) because it ultimately failed to end the human rights abuses.⁵⁶ However, not one of these mainstream critiques considers the impact on women. Drawing upon evidence collated by non-governmental organizations (NGOs), UN agencies, and journalists, the following section considers the effects of the intervention upon women, in particular the increase in sex trafficking and forced prostitution, before discussing the legal implications for international law on the use of force.

Sex trafficking and prostitution in Kosovo⁵⁷

Since the deployment of the UN Kosovo Force (KFOR), in July 1999, alongside the establishment of the UN Mission in Kosovo (UNMIK), Kosovo has become a major destination country for the trafficking of women and girls into the sex industry.⁵⁸ The majority of women are trafficked from the neighbouring countries of Moldova, Bulgaria, and Ukraine, mainly via routes through Serbia. More recently, however, there has been a surge in internal trafficking of local women and girls and trafficking both into and out of Kosovo, facilitated by porous borders and weak visa regimes.⁵⁹ While Kosovo appears to have had a non-existent sex industry prior to 1999, reports show that, by July 2003, over 200 locations exploiting trafficked women were identified by UNMIK and the Organization for Security and Co-operation in Europe.⁶⁰

This phenomenon is a result of a number of interrelated consequences of intervention that will be analysed below. First, the sudden presence of military

55 For positivist legal arguments, see P. Hilpold, above note 50; for an analysis of the non-humanitarian motivations behind the intervention, see Daniel Zolo, *Invoking Humanity: War, Law and Global Order*, Continuum, London, 2002.

56 C. Chinkin, above note 52, p. 845.

57 Although I choose to focus on sex trafficking and forced prostitution, there were many other prolific forms of sexual violence that took place in Kosovo directly after the NATO intervention. Human Rights Watch, for example, reports on the escalation of rape during the bombing campaign, which most commonly took place as women fled in refugee convoys, in women's homes, in abandoned buildings. See J. Rodgers, above note 42, p. 189.

58 Trafficking is defined under Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children: "‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'. All further references to trafficking relate specifically to trafficking in women and children for forced prostitution and sexual exploitation.

59 'Kosovo (Serbia and Montenegro): "So does it mean that we have the rights?" Protecting the human rights of women and girls trafficked for forced prostitution in Kosovo', in *Amnesty International Report*, 2004, p. 1.

60 *Ibid.*

personnel created an immediate increase in demand for sexual services in a region with previously negligible demands. Secondly, the post-intervention militarization of Kosovo sustained this demand and fostered an environment where organized criminal networks could reap substantial profits. Thirdly, the disruption of society and the economy resulted in increased numbers of vulnerable women and girls in need of remuneration, thereby creating the supply for a burgeoning sex industry. Finally, the failure of UNMIK to adequately address the problem of trafficking allowed for a culture of impunity to prevail.

Enter the heroes

During the latter half of 1999, around 40,000 KFOR troops were deployed to Kosovo, along with hundreds of UNMIK personnel and more than 250 international non-governmental organizations.⁶¹ Within months of their arrival, brothels had been established around the military bases and Kosovo had become a major destination country for trafficked women; a small local trade in prostitution became a flourishing industry based on trafficking by organized criminal networks.

A study conducted by the UN Development Fund For Women (UNIFEM) in 1999 identified eighteen main locations for prostitution. These included brothels in the Gnjilane area, predominantly servicing US military personnel; Prizren, where clients were mainly German KFOR soldiers; Pejë, servicing Italian KFOR soldiers; and Mitrovicë, where clients were largely French KFOR soldiers.⁶² By January 2001, the number of brothels had grown to approximately 75, and by January 2004 over 200 locations harbouring trafficked victims had been identified.⁶³

In February 2000, the International Organization for Migration (IOM) publicly recognized KFOR and UNMIK staff as a significant factor in the increase of trafficking and prostitution.⁶⁴ The IOM also acknowledged that the trafficking industry was fuelled by Kosovo's proximity to source countries with established routes to European Union countries via Albania, as well as by co-operation among Serbian, Albanian, and Macedonian criminal networks.⁶⁵ Furthermore, the sudden international presence stimulated economic growth through the resultant increase of foreign money in the region. This meant that certain sections of the Kosovar population experienced a rise in prosperity and hence that the local population was given the possibility, which they may not have had before the intervention, of purchasing sexual services.

61 *Ibid.*, p. 6.

62 UNIFEM, 'No safe place: an assessment of violence against women in Kosovo', 2000, pp. 94–95, available at <http://www.iknowpolitics.org/en/node/50> (last visited 23 March 2010).

63 These premises were documented by UNMIK and published in an off-limits list, which was issued to all UNMIK staff. For more information see UNMIK Trafficking and Prostitution Investigation Unit end of year report, 2003, cited in 'Kosovo', above note 59, p. 8.

64 *Ibid.*

65 *Ibid.*

A hero's welcome

'The problem is that nobody considers the need for brothels in the German contingent. The Americans and the French ... have their army brothels. I'm not trying to say that the prostitutes have to come over from America or France, but ...'⁶⁶

While the traffickers proved more prescient than the international community in anticipating the market for trafficked women and girls, they also recognized that years of conflict, displacement, and trauma had left many women across the Balkans particularly vulnerable, such as those living in refugee camps in Macedonia and Albania.⁶⁷ The disruptions in the economy caused by the NATO intervention also led to greater numbers of unemployed women in need of some form of remuneration; these women and girls were to become the supply for the new market opportunities.⁶⁸

According to the UNMIK Trafficking and Prostitution Investigation Unit (TPIU) set up to combat trafficking in Kosovo, around 90% of women working in prostitution there have been trafficked.⁶⁹ While women trafficked from abroad are often led to believe that they are migrating for legitimate employment, NGOs report that increasing numbers of Kosovar women are being abducted by force and trafficked internally – the majority of them are girls from families displaced by conflict.⁷⁰ Kosovar women and girls also face increased risk of being trafficked out of Kosovo, most commonly to Italy or to ethnic Albanian areas of Macedonia.⁷¹

Trafficked women and girls interviewed by NGOs and journalists in Kosovo have provided firsthand evidence that the demand is predominantly fuelled by international peacekeepers. In an interview with the BBC, 'Monica'⁷² discusses her client profiles: 'most of them were Americans and Germans Of course, I appealed to them for help ... but all of them said that they would get into trouble if they helped'.⁷³ A Bulgarian woman interviewed by Amnesty explains that 'Germans came ... even after their commander did forbid that. They said they would get in a lot of trouble. They told the pimp that if someone would be coming he should alarm them ... the pimp employed a guardian'.⁷⁴

66 Interview with German KFOR soldier, Inge Bell Archive, cited in 'Kosovo', above note 59, p. 51.

67 UNIFEM report, above note 62, p. 24.

68 *Ibid.*, p. 16.

69 Its data indicate that 48% of trafficked women originate from Moldova, 21% from Romania, 14% from Ukraine, 6% from Bulgaria, and 3% from Albania.

70 According to a local NGO, the Centre for the Protection of Women and Children, 81% of the internally trafficked victims whom they assisted between 2000 and 2002 were under the age of 18, and 32% were between 11 and 14 years old. See 'Kosovo', above note 59, p. 19.

71 *Ibid.*

72 Woman trafficked from Romania to Kosovo after being sold by her boyfriend.

73 'Boys will be boys', 14 June 2002, available at <http://news.bbc.co.uk/1/hi/programmes/correspondent/2043794.stm> (last visited 23 March 2010). For a critique of personal narratives of trafficked women, see Jo Doezeema, 'Loose women or lost women? The re-emergence of the myth of "white slavery" in contemporary discourses of "trafficking in women"', in *Gender Issues*, Vol. 18, No. 1, 2000, pp. 23–50.

74 Bulgarian woman trafficked to Macedonia, interviewed in 2001, Inge Bell Archive, in 'Kosovo', above note 59, p. 50.

The armour of impunity

‘It is absolutely essential that all U.N. forces are held to the same standards of international human rights law as nation states ... to do otherwise, creates a climate of impunity in which offences proliferate.’⁷⁵

The militarization of a society has been linked to increased impunity for gender-based violence – the greater the military presence, the greater the possibility that men may violate women without consequences.⁷⁶ This theory is substantiated by evidence found in Kosovo. Despite the eventual recognition by UN agencies that peacekeeping personnel were both complicit in facilitating trafficking and in using the services of trafficked victims, little action has been taken to address these crimes.

As the interim administration in Kosovo, UNMIK was legally responsible for taking effective action against those suspected of involvement in trafficking. Under Article 6 of the Convention on the Elimination of Discrimination against Women (CEDAW), as well as General Recommendation 19 on violence against women by the Committee for the Elimination of Discrimination against Women,⁷⁷ UNMIK is required to exercise ‘due diligence to prevent, investigate and ... punish acts of violence against women, whether those acts are perpetrated by the state or by private persons’.⁷⁸

To date, however, UNMIK’s record of dealing with trafficking cases has been far from diligent. It did not take any decisive action on trafficking until November 2000, when it established the TPIU as a division of UNMIK police.⁷⁹ Until January 2001, trafficking was subsumed under the FRY and Serbian Criminal Codes, particularly Article 251 – dealing with ‘intermediation in the exercise of prostitution’ – and Article 18(8) of Kosovar law, which established the minor offence of intermediating in prostitution or forcing another into prostitution.⁸⁰ The absence of a codified law on trafficking meant that trafficked women involved in

75 Special Rapporteur on Violence against Women, April 2001, address to UN Human Rights Council, cited in *ibid.*, p. 39.

76 Madeleine Rees, ‘International intervention in Bosnia-Herzegovina: the cost of ignoring gender’, in Cynthia Cockburn and Dubravka Zarkov (eds.), *The Post-War Moment: Militaries, Masculinities and International Peacekeeping*, Lawrence and Wishart, London, 2002, p. 66.

77 CEDAW, Art. 6, 1979, and General Recommendation 19 on Violence against Women (11th session, 1992), UN Doc. A/47/38.

78 ‘Kosovo’, above note 59, p. 6. Although UNMIK is not a state party to CEDAW, as the interim authority in Kosovo at that time it was bound by international legal standards. UNMIK Regulation 1999/24 on the Law Applicable in Kosovo, 12 December 1999, states that some, but not all, international human rights standards and laws apply in Kosovo. Section 1.3 of the regulation states that: ‘In exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards, as reflected in particular in: (f) The Convention on Elimination of All Forms of Discrimination against Women of 17 December 1979’.

79 ‘Kosovo’, above note 59, p. 23.

80 *Ibid.*, p. 6.

prostitution were being dealt with as criminals, whereas trafficking crimes were not being punished. By February 2001, only four persons had been convicted under Article 251 for 'intermediation into prostitution'.⁸¹

In January 2001, the Special Representative of the UN Secretary-General introduced UNMIK Regulation 2001/4,⁸² which criminalizes the acts of engaging in trafficking,⁸³ organizing and facilitating trafficking,⁸⁴ and withholding identity documents of trafficked women.⁸⁵ Significantly for the purpose of this analysis, Regulation 2001/4 also addresses the demand side by making it a crime to knowingly use the services of a trafficked person.⁸⁶ A further vital development incorporated in it is the recognition that trafficked persons must not be treated as criminals for their involvement in prostitution or other illegal activities.⁸⁷

Although the promulgation of this regulation marked a positive development in addressing impunity of the domestic population, it did not address impunity among the international personnel. UNMIK and KFOR personnel⁸⁸ are protected from prosecution in Kosovo by immunity granted under UNMIK Regulation 2000/47.⁸⁹ UNMIK personnel may only be prosecuted if a waiver is granted by the UN Secretary-General, while KFOR personnel's immunity may only be waived by the head of the national regiment.⁹⁰ The Ombudsperson Institution in Kosovo has criticized the regulation as being 'not in accordance with the law', particularly with regard to its failure to protect individuals in Kosovo against arbitrary conduct by KFOR or UNMIK personnel.⁹¹

Despite the establishment of the TPIU and the promulgation of Regulation 2000/47, law enforcement has been weak and criminal justice proceedings scarce. Amnesty International suggests that lack of training and consultation with local judiciary has led to problems with interpretation and implementation of this law, including the failure to correctly identify trafficked women and to provide adequate support, and the continuation of arrests, prosecutions, and deportations of trafficked women for border violations or on prostitution charges.⁹² While scores

81 *Ibid.*, p. 23.

82 UNMIK Regulation 2001/4 on the Prohibition of Trafficking in Persons in Kosovo.

83 *Ibid.*, Section 2.1. Penalties of two to twelve years' imprisonment, and up to fifteen years' imprisonment for trafficking of a minor (Section 2.2).

84 *Ibid.*, Sections 2.3 and 2.4. Penalties of five to twenty years' imprisonment.

85 *Ibid.*, Section 3, cited in 'Kosovo', above note 59, p. 24.

86 UNMIK Regulation 2001/4, above note 82, Section 4.1. Sentences range from six months' to five years' imprisonment. Cited in 'Kosovo', above note 59, p. 24.

87 UNMIK Regulation 2001/4, above note 82, Section 8.

88 This includes all contractors working for both these establishments.

89 'On the status, privileges and immunities of KFOR and UNMIK and their personnel in Kosovo', 18 August 2000.

90 KFOR personnel are not accountable either to UNMIK or to the Provisional Institutions of Self-Government: see 'Kosovo', above note 59, p. 9.

91 It was also criticized in relation to the European Convention on Human Rights, with regard to its inaccessibility to the public and its unclear provisions. See Ombudsperson's Special Report No. 1, available at http://www.stopvaw.org/UN_Peacekeeping_Missions.html (last visited January 2009).

92 In 2002 for example, around 100 foreign women were arrested by the TPIU, 22 of them on charges of prostitution, 25 for the possession of false documents, 22 for illegal border crossing, and 10 for soliciting or procurement. See 'Kosovo', above note 59, p. 25.

of women have continued to face charges of prostitution and related offences, there have been very few charges laid against men who knowingly used the services of trafficked women.⁹³ Despite the growing demand for trafficked women, demonstrated by the staggering increase in illicit premises from 1999 to 2003, alongside the TPIU finding that 90% of sex workers in Kosovo have been trafficked, not a single prosecution has been brought under Section 4 of the Trafficking Regulation.

Weak law enforcement and lack of political will are further consolidated by some affected women's acceptance of the 'heroic' narrative. This has resulted in trafficked women and girls being reluctant to give evidence against the peacekeepers. When the Rural Women's Network approached women's organizations to hold a round table on prostitution and sexual harassment, many were reticent, stating that they 'do not agree to discuss topics which will offend the internationals'.⁹⁴

Responses at the international level

'... if the rule of law means anything at all, it means that no one, including peacekeepers, is above the law'⁹⁵

Response at the international level has been just as weak as activity on the ground. In 2002, the UN Secretary-General submitted a report to the Council pursuant to SC Res 1325, in which he tentatively acknowledged that 'there is *some* evidence that prostitution increases with international intervention. In some instances, peacekeeping personnel *may* have condoned the establishment of brothels and been complicit in the trafficking in women and girls'.⁹⁶ The Secretary-General emphasized the responsibility of member states to prosecute their nationals, as status-of-forces agreements⁹⁷ accord exclusive jurisdiction to the contributing member state in the event that one of its nationals commits a crime during a peacekeeping operation.⁹⁸ The report also reaffirms Article 101(3) of the Charter, which requires

93 This is criminalized under Section 4 of the Trafficking Regulation. It is also important to note that private military contractors such as those contracted by the US agency Dyncorp are even less likely to face charges, because they are not accountable to the US government but to the private company. One private contractor working for KFOR was arrested in October 2003, but was dismissed and repatriated; no criminal proceedings were brought against him. *Ibid.*, p. 26.

94 UNIFEM report, above note 62, p. 24.

95 Report of the UN Secretary-General to the Security Council on the rule of law and transitional justice in conflict and post-conflict societies, S/2004/616, para. 33.

96 'Women, peace and security', study submitted by the Secretary-General pursuant to Security Council Resolution 1325, 2000, UN publication, 2002, para. 268 (emphasis added).

97 These agreements are signed by the UN, the host state, and the contributing state.

98 'Women, peace and security', above note 96, p. 85, para. 271. With reference to the Secretary-General's emphasis on member states' responsibility, consideration of the low level of conviction rates for sexual offences in the UK (only 5.7% of reported rape cases result in a conviction) shows that member states may not be effective with regard to the prosecution of sexual offences perpetrated by peacekeeping personnel and suggests that such personnel may be best investigated and prosecuted in a forum with greater international accountability.

all UN staff to uphold the highest standards of integrity, and the UN peacekeepers' Code of Conduct, which states that peacekeepers must not 'indulge in immoral acts of sexual, physical or psychological abuse or exploitation of the local population or United Nations staff, especially women and children'.⁹⁹ The Code of Conduct has, however, been criticized by many experts as largely ineffective,¹⁰⁰ and the Assistant Secretary-General for Peacebuilding Support, Jane Holl Lute, has acknowledged the difficulties in unifying 103 troop-contributing countries under one code.¹⁰¹

Some small progress has been made in dealing with impunity relating to sexual exploitation. In March 2002, the UN established the IASC Task Force,¹⁰² whose mandate was to develop definitions of sexual exploitation and abuse and produce codes of conduct.¹⁰³ In October 2003, the Secretary-General issued a bulletin that emphasized that misconduct in the form of sexual exploitation would be subject to disciplinary measures and dismissal.¹⁰⁴ In 2004, he appointed an Adviser on Sexual Exploitation and Abuse by UN Peacekeeping Personnel, who subsequently issued a report detailing strategies for eliminating sexual exploitation within UN peacekeeping missions.¹⁰⁵ In response to large-scale exploitation in the Democratic Republic of Congo in 2004, the Secretary-General reinforced a zero-tolerance policy: 'We cannot tolerate even one instance of a United Nations peacekeeper victimizing the most vulnerable among us. ... The basic policy is clear: zero tolerance of sexual exploitation and abuse of any kind'.¹⁰⁶

99 UN, 'Ten rules code of personal conduct for blue helmets', available at <http://ocha.unog.ch/ProCapOnline/docs/library/UN%20Blue%20Helmets%20Codes%20of%20Conduct.pdf> (last visited 16 March 2010).

100 For example, when new brothels are established that have not yet been included in the 'off limits' list, then a peacekeeper visiting this establishment will not be held accountable. See John T. Picarelli, *Trafficking, Slavery and Peacekeeping: The Need for a Comprehensive Training Program*, report of conference held by the Transnational Crime and Corruption Center and the UN Interregional Crime and Justice Research Institute, Turin, Italy, 9–10 May 2002, p. 16, available at http://policy-traccg.gmu.edu/publications/TIP&PKO_EWG_Report_Final.pdf (last visited 18 December 2009).

101 Ms Lute explained that there are 103 troop-contributing countries, each with different laws, social values, and varying criminal justice systems, which makes it very difficult to reach a consensus on a unified Code of Conduct. See Michael Fleshman, 'UN takes tough line against peacekeeper abuses', in *Africa Renewal*, Vol. 19, No. 1, 2005, p. 16.

102 Inter-Agency Standing Committee Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises.

103 See the website of the UN Office for the Coordination of Humanitarian Affairs (OCHA) at <http://ochaonline.un.org/> (last visited 18 December 2009). The IASC task force was later replaced by the Task Force on Protection from Sexual Exploitation and Abuse, of the Executive Committees on Humanitarian Affairs and on Peace and Security (ECHA/ECPS) in 2005.

104 Secretary-General's Bulletin, 'Special measures for protection from sexual exploitation and sexual abuse', ST/SGB/2003/13, 9 October 2003, available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=451bb6764&page=search> (last visited 23 March 2010).

105 Zeid Report, 'A comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations', A/59/710, 2005, available at http://www.stimson.org/fopo/pdf/Prince_ZeidRpt.pdf (last visited 18 December 2009).

106 Letter from the Secretary-General to the President of the Security Council, S/2005/79, 9 February 2005, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/233/27/PDF/N0523327.pdf?OpenElement> (last visited 18 December 2008).

This has been supplemented by a strong discouragement of *all* forms of sexual behaviour, including consensual relations,¹⁰⁷ and a more recent focus on victim protection.¹⁰⁸

Despite this progress, allegations of sexual exploitation and abuse continue to be brought against international peacekeepers.¹⁰⁹ The prevailing problem is the lack of accountability of military personnel. In the 2007 Secretariat Report, which addresses criminal accountability of UN officials and experts on mission, the Secretariat expressed concern that if contributing states 'have not extended the operation of their criminal laws to apply to crimes committed in the host State – then there is a jurisdictional gap and the alleged offender is likely to escape prosecution'.¹¹⁰ The report therefore recommends the promulgation of a convention that would extend the jurisdiction of member states to cover crimes committed by all UN personnel. However, the Secretariat upholds the exclusion of military personnel, reaffirming the exclusive jurisdiction of the contributing state with regard to its military and thus preserving the jurisdictional gap and perpetuating impunity.¹¹¹

107 'Sexual relations between UN personnel and their beneficiaries of assistance are strongly discouraged because they are based on inherently unequal power dynamics': Secretary-General's Bulletin, 'Special measures', above note 104, Section 3.2(d). For a critique of the UN's zero-tolerance policy, see Dianne Otto, 'Making sense of zero tolerance policies in peacekeeping sexual economies', draft chapter for Vanessa Munro and Carl F. Stychin (eds.), *Sexuality and the Law: Feminist Engagements*, Glass House Press, London, 2007, p. 3, available at http://cigi.anu.edu.au/cigi/link_documents/Survival_Sex.pdf (last visited 23 March 2010); 'Zero tolerance is the wrong response to the complex set of circumstances that give rise to survival sex economies because it is driven by "sexual negativity" (Rubin, 1984: 278) rather than by the desire to address the underlying human rights and social justice issues'.

108 For example, in September 2007 the Special Committee on Peacekeeping Operations called for the protection of and assistance to all victims of sexual exploitation by UN personnel: Report of the Special Committee on Peacekeeping Operations and its Working Group on the 2007 Substantive Session, New York, 28 February–16 March and 23 May 2007, Doc. A/61/19, Part II, para. 71. Subsequently, in March 2008, the UN General Assembly passed Resolution 62/214, outlining a 'Comprehensive strategy on assistance and support to victims of sexual exploitation and abuse by United Nations staff and related personnel' (A/RES/62/214). In addition, a number of toolkits and other materials have been produced by the UN Department of Peacekeeping Operations, OCHA, and UNICEF for the training of UN peacekeepers. See e.g. the training film *To Serve with Pride*, available at http://www.un.org/en/pseataaskforce/video_english.shtml (last visited 23 March 2010).

109 OCHA statement at <http://www.ochaonline.un.org>.

110 Note by the Secretariat on Criminal accountability of United Nations Officials and Experts on Mission, 2007, A/62/329, Section II (B) para. 17, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/502/05/PDF/N0750205.pdf?OpenElement> (last visited 18 December 2009).

111 *Ibid.*, p. 2. Interestingly, operative para. 4 of SC Res 1820 'stresses the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes'. Even the Trafficking in Persons (TIP) report overlooks the problem of impunity. The TIP Report, produced by the US State Department (self-appointed 'trafficking watchdog'), lists Kosovo as a 'special case' rather than ranking it under the tier system. The report praises the work of the Kosovo Police Service in carrying out brothel closures and ensuring good conviction rates of domestic traffickers, while dismissing the involvement of international personnel in trafficking offences, owing to the lack of prosecutions: 'While there were reports of some officials' involvement in trafficking, particularly in the area of employment contract registration, there were no reported prosecutions or convictions of any such officials' (TIP Report, US Department of State, 2008, p. 273, 'Special cases', Kosovo).

Undermining the heroic narrative

Such a phenomenon cannot be dismissed from assessments regarding the proportionality of military intervention; the scale of trafficking in women and girls constitutes one of the most severe forms of human rights violations, defined by some as a crime against humanity, and included in the Rome Statute of the International Criminal Court (ICC) as one of the most serious crimes.¹¹² It has also been argued, based on the jurisprudence of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, that sexual violence constitutes a violation of *jus cogens*.¹¹³ Moreover, states are under an obligation to suppress trafficking and exploitation of prostitution.¹¹⁴ Trafficking also violates the right to liberty and security of the person (International Covenant on Civil and Political Rights (ICCPR), Article 9; European Convention on Human Rights (ECHR), Article 5); rights to freedom of movement (ICCPR, Article 12), rights to privacy and family life (ECHR, Article 8; ICCPR, Article 17); and the right to be free from inhuman or degrading treatment (ICCPR, Article 7; ECHR, Article 3; UN Convention on the Rights of the Child, Article 37).¹¹⁵ In addition, trafficking violates the right to freedom from slavery, enshrined in the Trafficking Protocol,¹¹⁶ ICCPR, Article 8(1); ECHR, Article 4; the African [Banjul] Charter on Human and Peoples' Rights (ACHPR), Article 5; the American Convention on Human Rights (ACHR), Article 6; the International Labour Organization Convention (105) on the Abolition of Forced Labour; and Article 1(a) of the Convention supplementary to the Slavery Convention.¹¹⁷ Furthermore, the authorities' failure to identify victims of trafficking and subsequent repatriation of them to their country of origin, where they are vulnerable to re-trafficking, may violate the principle of *non-refoulement*¹¹⁸ and by extension make that state responsible for a violation of the right to be free from torture.¹¹⁹ By creating and sustaining demand for an industry that violates the prolific number of rights listed

112 'Kosovo', above note 59, p. 2.

113 Kelly D. Askin, 'Holding leaders accountable in the International Criminal Court (ICC) gender crimes committed in Darfur', in *Genocide Studies and Prevention*, Vol. 1, No. 1, 2006, p. 349.

114 CEDAW and UN Convention on the Rights of the Child (CRC): 'States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women', CEDAW, Art. 6; 'States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: a) The inducement or coercion of a child to engage in any unlawful sexual activity; b) The exploitative use of children in prostitution or other unlawful sexual practices; c) The exploitative use of children in pornographic performances and materials', CRC, Art. 34; 'States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form', CRC, Art. 35.

115 'Kosovo', above note 59, pp. 4–5.

116 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime, 2000.

117 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, Art. 1(a); 'Kosovo', above note 59, p. 18.

118 Convention against Torture and Other, Cruel, Inhuman or Degrading Treatment or Punishment, Art. 3.

119 ECHR, Art. 3; ACHR, Art. 5(2); ACHPR, Art. 5. See 'Kosovo', above note 59, p. 5.

above, and on some occasions by directly facilitating trafficking, international peacekeepers have dispelled one system of abuse under Milošević only to replace it with another system of abuse under their own ‘protection’. The ‘heroes’ of the story have failed to fulfil the rhetorical promises to ‘save women’ and have instead undermined the very purpose for which military action was taken.

By creating and sustaining a market for sex trafficking, military intervention justified in the guise of humanitarian action thus subverts the ‘heroic’ narratives asserted by feminist hawks and interventionists. In the case of Kosovo, intervention merely replaced a system of ethnic cleansing with an environment where trafficking and forced prostitution are rife. Traffickers simply adopted the tactics used in the rape camps and deployed them in the post-conflict situation for the trafficking of women:

‘Methods used to confine women in the Kosovo brothels do not differ much from those used in the camps in the Bosnian war ... the criminal organisations behind the ‘business’ made use of the experience gained during the IFOR and SFOR missions in Bosnia-Herzegovina.’¹²⁰

Implications for the laws on the use of force

Any legal consideration of the right to use force, in accordance with *jus ad bellum*, must determine whether the proposed use of force is proportionate to the initial breach or grievance. The key criterion is whether the benefits of the use of force will outweigh the costs.¹²¹ The resort to force is limited by this principle of customary law, the classic formulation of which can be found in the case of the Caroline Incident of 1838, which establishes that the use of force must be proved to be necessary (that is, ‘instant, overwhelming, leaving no choice of means and no moment of deliberation’) and proportionate (that is, ‘nothing unreasonable or excessive’).¹²² The proportionality requirement has since been confirmed, in relation to self-defence, by the International Court of Justice in the *Nicaragua* case¹²³ and more recently in the *Nuclear Weapons* case.¹²⁴

120 Nadine Puechguirbal, ‘Sexual exploitation of women and girls by peacekeepers: how to curb the dark side of peacekeeping’, in Marie Vlachová and Lea Biason (eds.), *Women in an Insecure World: Violence against Women – Facts, Figures and Analysis*, Centre for the Democratic Control of Armed Forces, Geneva, 2005, p. 125; also confirmed by experts in Picarelli, above note 100, p. 12.

121 Judith Gardam, ‘Proportionality and force in international law’, in *American Journal of International Law*, Vol. 7, 1993, p. 391.

122 *Parliamentary Papers*, 1843, Vol. LXI, *British Foreign and State Papers*, Vol. 30, p. 193, cited in R. Y. Jennings, ‘The Caroline and McLeod Cases’, in *American Journal of International Law*, 1938, Vol. 32, No. 1, p. 89.

123 International Court of Justice (ICJ), *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*), Merits, Judgment, ICJ Reports 1986, cited in Gardam, above note 121, p. 391.

124 ICJ, *On the Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, cited in Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law*, Manchester University Press, Manchester, 2000, p. 260.

In the case of humanitarian intervention, the application of this principle becomes uncertain, as it is not based on the conventional Charter rights to use force but on a *lex ferenda*. However, Gardam points out that the proportionality principle is also relevant to any action taken under Chapter VII. This is confirmed by a statement of the former UN Secretary-General Perez de Cuellar, who declared that the Council must 'satisfy itself that the rule of proportionality in the employment of armed force is observed', extending the principle to cover situations envisaged by Article 42 (i.e. the authorized use of force).¹²⁵ It may therefore be inferred that an emerging norm must also be subject to the same customary principles.

In light of the proportionality requirement, the following question arises: to what extent can military intervention achieve its aim of protecting persons from genocide, war crimes, ethnic cleansing, and crimes against humanity, while ensuring that the intervention itself respects human rights and prevents further violations? If the Security Council or NATO cannot satisfy this legal requirement, which they failed to do in Kosovo, military intervention can be deemed disproportionate and counterproductive. Considering once again SC Res 1820's operative paragraph 1, which ambiguously infers that the Council may exercise its Chapter VII powers to counter systematic sexual violence, how can the Council ensure that the use of force will not merely be a catalyst for new forms of sexual violence as seen in Kosovo?

Proportionality assessments of intervention currently do not incorporate any understanding of the impact upon women. Conventional measurements look at the degree of aggression employed by the hostile states, and even the impact upon cultural property and the environment,¹²⁶ yet fail to take into account the extent of sexual violence that women suffer as a direct and indirect result of military intervention. The above analysis of post-intervention trafficking in Kosovo indicates a need for the international community to incorporate an understanding of women's experiences into their legal assessments. This would require an awareness at the international level of the impact of the use of force on women's lives and women's rights, such as their right to be free from sexual exploitation and abuse, and their right to be free from inhuman and degrading treatment and slavery and slave-like practices. Proportionality assessments must not only consider the immediate effects of intervention but must also take into account the long-term impact of military presence on women's experiences: the disruption in socioeconomic stability leading to high numbers of unemployed women, the creation

125 UN Department of Public Information, 'Report of the Secretary-General on the work of the Organization', UN Doc. DPI/1168-40 923 (1991), cited in J. Gardam, above note 121, p. 391. UN Charter, Art. 42: 'Should the Security Council consider that measures provided for in Article 41 [non-forceful measures, e.g. economic blockades] would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations'.

126 Christine Chinkin, 'The Legality of NATO's action in Yugoslavia', in *International and Comparative Law Quarterly*, Vol. 49, 2000, pp. 923-4.

and sustenance of illicit markets, the consolidation of power of male-dominated organized criminal networks, the trafficking of women and girls for forced prostitution, the sexual health of women and the wider community,¹²⁷ and the attitudinal and behavioural transformation of the domestic male population in relation to women and women's bodies in society.

Kosovo does not stand alone with regard to women's devastating experiences of intervention. One can see a pattern emerging in the cases of Kuwait,¹²⁸ Afghanistan¹²⁹ and Iraq,¹³⁰ where 'saving women' rhetoric is disjunctive from the reality of women's lives. Terms such as 'empowerment' and 'liberation' for women have been declared from the platform of the Bush administration and from some sectors of the feminist movement. On pausing to evaluate the reality of women's post-intervention experiences, very few would agree that women have been 'saved'. Some may hold that intervention is the lesser of two evils for women, echoing the thoughts of NATO's Secretary General: 'We know the risks of action but we have all agreed that inaction brings even greater dangers'.¹³¹ Others may argue that the process of liberation is gradual. Nevertheless, the current situation is dire. Women should not be forced to choose between 'two evils', nor must they endure years of military presence before a 'free' society can emerge.

Conclusion

The outcome of the present analysis puts us in an uncomfortable position. Does exposing the 'dark side' of 'saving women' and 'heroic' narratives mean we must remain inactive in the face of systematic sexual violence? Should we adopt the stance of John Stuart Mill, and recognize that intervention is not the best method of ensuring freedom and liberty; rather, 'it is during an arduous struggle to become free by their own efforts that these virtues have the best chance of springing up'?¹³²

127 The increase in trafficking of women and girls for sexual exploitation is having wider repercussions in terms of health: for example, doctors are reporting increased transmission of AIDS from mother to child. A further social consequence of the increase in trafficking into the region has been an increase in divorce, as men have left their wives to marry women in brothels. See J. T. Picarelli, above note 100, p. 12.

128 For a discussion on Kuwait, see Human Rights Watch, *A Victory Turned Sour: Human Rights in Kuwait since Liberation*, NY, 1991; and *Punishing Victims: Rape and Mistreatment of Asian Maids in Kuwait*, NY, 1992.

129 Post-conflict research conducted in Afghanistan shows a steady rise in human trafficking. Agricultural workers in debt-bondage to local militia and drug traffickers are increasingly selling their daughters to traffickers. Ranking second in value after land, women are the most profitable asset used to settle debts in the Badakhshan province, where the market price for daughters and sisters ranges between US\$1000 and US\$4000. The IOM has confirmed the growing problem of human trafficking in Afghanistan, particularly among young rural women and children who are destitute and displaced. See Deniz Kandiyoti, 'Between the hammer and the anvil: post-conflict reconstruction, Islam and women's rights', in *Third World Quarterly*, Vol. 28, No. 3, 2007, p. 513.

130 N. Al Ali and N. Pratt, above note 15.

131 Dr Javier Solano, Press Statement (1999)040, 23 March 1999, available at <http://www.nato.int/docu/pr/1999/p99-040e.htm> (last visited 15 March 2010).

132 John Stuart Mill, 'A few words on non-intervention', 1859, in Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, Allen Lane, London, 1977, p. 87.

Should women, in contexts of systematic sexual violence, therefore be left to struggle for their own self-determination? The question of whether to intervene or not to intervene in response to sexual violence seems to leave us in a dilemma. But this is not the only way to frame it, between these two alternatives. Orford points out that one must step back from the question of whether to intervene or not and consider instead how international law might be best employed, not at the moment of crisis but as a preventative or deterrent mechanism so that such a crisis point may be avoided.¹³³

Some feminists have argued that the answer lies in reform of military culture itself. Connell argues that the military is composed of a diversity of masculinities that are socially constructed, not biologically fixed, and therefore capable of transformation.¹³⁴ Taking a similar viewpoint, Spurling argues that the 'warrior ethic', or the hegemonic masculinity within the military, must change before SC Res 1325 and 1880 can take any effect. She argues that militaries are trained to use brute force, and not to keep peace among peoples; any change in the violent culture of the military would be seen as a weakening and emasculation of the army.¹³⁵ Similarly, Featherston points out, 'if we only train people for war it is far more likely that that is what we will get'.¹³⁶ Adopting this standpoint, one answer may be to improve educational programmes for militaries and peacekeepers, incorporating gender awareness within training strategies. A report produced by the Transnational Crime and Corruption Center and the United Nations Interregional Crime and Justice Research Institute has supported this notion, and suggests the need for a comprehensive training programme for both peacekeepers *and* local institutions¹³⁷ that would both raise awareness of the issues of sexual exploitation within peacekeeping regions and improve anti-trafficking capacities.¹³⁸ Mazurana argues that training must include human rights law, especially women's rights.¹³⁹

Another solution may be to refocus attention on SC Res 1325 concerning the advancement of women's participation in decision-making processes and

133 A. Orford, above note 1, p. 18.

134 Robert Connell, 'Masculinities, the reduction of violence and the pursuit of peace', in Cockburn and Zarkov, above note 76, p. 34.

135 Karen Spurling, 'Peacekeepers, Timor and the urgent need to address the warrior ethic', unpublished paper given at the Dutch Defence College Conference, June 2007. Evidence of this attitude can be seen, for instance, in the numerous reservations to CEDAW regarding equality in public life, on the basis that the principle of equality cannot be extended to combat and combat-related duties. Reservations of this kind have been made by Australia, Austria, Germany, New Zealand, and Thailand. See H. Charlesworth and C. Chinkin, above note 124, p. 258.

136 Liza Featherston, cited in Dyan Mazurana, 'Gendered institutions, gendered interventions', in Cockburn and Zarkov, above note 76, p. 40.

137 Andrea McKay headed a field test programme using gender materials in East Timor, Eritrea/Ethiopia, the Democratic Republic of Congo, and Sierra Leone. She found the most successful training sessions to be those that included the local people as well as the military peacekeepers, as this allowed local men and women to share their experiences and stories with members of the armed forces. See D. Mazurana, above note 136, p. 48.

138 J. T. Picarelli, above note 100, p. 34.

139 D. Mazurana, above note 136, p. 43.

senior-level positions within peacekeeping and military institutions. Mazurana points out that the most successful peacekeeping operations are those that have had more women personnel, strong human rights monitoring mandates, and more civilian and fewer military personnel.¹⁴⁰ ‘Success’ has been measured, *inter alia*, on the basis of reports of the local population providing positive interactions with peacekeepers.¹⁴¹ Charlesworth and Chinkin, however, have reservations about increasing women’s participation in the military, as it implies that the ability to use force is an important part of society and a necessary element of citizenship, which deflects attention away from exploring methods for reducing the use of force, and instead transforms the gender balance of the actors using force.¹⁴² In the light of interviews with women’s organizations across Bosnia-Herzegovina regarding male dominance in the military, Cockburn and Hubic concluded that the women were implicitly asking for a re-gendering of the notion of the soldier and of the military culture, in which the strength of military force in dealing with war criminals and providing security could be accompanied by sensitivity and responsiveness to women’s needs and their humanity.¹⁴³

What is required now is a divorce of women’s rights from interventionist agendas, so that women’s rights are not subsumed into counterproductive narratives and appropriated for their political potency. A genuine understanding of women’s experiences would see beyond the crisis point which ‘calls for troops’, and instead would look to the aftermath of their arrival. The convergence of interventionist doctrine with the feminist concern about systematic sexual violence, underscored by ‘saving women’ and ‘heroic’ narratives, has proved to be a relationship of inequality. While women’s rights have been conveniently appropriated by governments, the military, and the media to serve their own interests, women’s experiences demonstrate that the ‘marriage’ has not turned out to be quite so convenient after all.

Many scholars have pointed to the ‘dark sides’ of humanitarian intervention: state self-interest, neo-imperialism, collateral damage. What the above analysis shows is that there is another ‘dark side’ to this doctrine that often goes unnoticed, that manifests itself in the illicit world of trafficking and forced prostitution; and that, perhaps, the darkest shadow of all is cast upon women.

140 Examples of this include the UN operations in Haiti, Guatemala, and South Africa. See *ibid.*

141 *Ibid.* Success was also measured in terms of the operation’s ability to fulfil its mandate, contribute to the peaceful resolution of disputes, promote rights education, assist the development of civil society, and empower the local community to reconstruct society.

142 H. Charlesworth and C. Chinkin, above note 124, p. 259.

143 Cynthia Cockburn and Meliha Hubic, ‘Gender and the peacekeeping military: a view from Bosnian women’s organizations’, in Cockburn and Zarkov (eds.), above note 76, p. 116.

Lost in translation: UN responses to sexual violence against men and boys in situations of armed conflict

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Abstract

This article considers the UN responses to sexual violence against men and boys in armed conflict – in particular, steps taken towards understanding this problem, measures of prevention and protection, and consequences for accused perpetrators. In so doing, the article assesses the state of knowledge and work in the field of male sexual violence and notes that although there have been many positive developments, the issue is not always moving in the right direction.

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In recent years, the attention paid to sexual violence in armed conflict has reached unprecedented levels. Barely a week goes by without a story in the news media or a report of a non-governmental organization documenting the problem. The subject has also pervaded all areas of the UN, from the work of the Security Council to the Special Representatives of the Secretary-General and from the World Health Organization to the *ad hoc* international criminal tribunals. Such is the impact of the problem on the mandates of various UN entities that an inter-agency initiative,

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‘Stop Rape Now: UN Action Against Sexual Violence in Conflict’, has been established to, *inter alia*, co-ordinate UN responses to the problem.¹

The most high-profile of recent UN advances in the area was the passage of Security Council Resolution 1820 (SC Res 1820).² In that resolution the Security Council ‘demand[ed] the immediate and complete cessation by all parties to armed conflict of all acts of sexual violence against civilians with immediate effect’ and ‘request[ed] the Secretary-General to submit a report to the Council ... on the implementation of this resolution in the context of situations which are on the agenda of the Council’.³ It also gave the imprimatur of the Security Council to tackling the problem.

That men and boys may be victims of sexual violence in times of armed conflict (as well as in times of peace) is increasingly recognized.⁴ A front-page New York Times article on male rape in the armed conflict in the Democratic Republic of the Congo was widely read;⁵ the infamous Abu Ghraib photos have entered popular culture. UN reports on sexual violence in armed conflict are now attuned to the problem and sometimes carry a sentence along the lines that ‘men and boys are also subject to sexual violence’.⁶ However, such a sentence, if indeed present, is usually the sole reference to men and boys in any report. Accordingly, this brief recognition has not translated into concrete efforts on behalf of male victims, be they mechanisms for raising awareness of the problem, focused research agendas on the issue, or strategies for prevention.

In its concept paper circulated in preparation for the Security Council debate that gave rise to SC Res 1820, the United States set out three principal themes for discussion: first, understanding the problem of sexual violence in situations of armed conflict; second, measures of prevention and protection; and third, consequences for accused perpetrators.⁷ This article considers these themes in the particular context of sexual violence against men and boys in armed conflicts. In so doing, the article assesses the state of knowledge and work in the field of

1 The initiative comprises twelve UN entities: DPA, DPKO, OCHA, OHCHR, UNAIDS, UNDP, UNFPA, UNHCR, UNICEF, UNIFEM, WFP and WHO, see www.stoprapenow.org (last consultation 15 January 2010).

2 The UN Secretary-General has described the Resolution as setting an ‘important precedent by recognizing the links between sexual violence and sustainable peace and security’, S/PV.6195, 30 September 2009, p. 5, see <http://www.undemocracy.com/S-PV-6195.pdf> (last consultation 15 January 2010). The Permanent Representative of the UK to the UN has described it as ‘a landmark step forward’: S/PV.6195, p. 9.

3 S/RES/1820, 2008, paras 2 and 15, see <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/391/44/PDF/N0839144.pdf?OpenElement> (last consultation 15 January 2010).

4 That children may be subjected to sexual violence is well-known. On the children/boys distinction, see paragraph ‘What of boys?’, below.

5 Jeffrey Gettleman, ‘Symbol of Unhealed Congo: Male Rape Victims’, in *New York Times*, 5 August 2009.

6 See e.g. *Women, Peace and Security: Study submitted by the Secretary-General pursuant to Security Council Resolution 1325 (2000)*, United Nations, 2002, p. 16, para. 59, see <http://www.un.org/womenwatch/daw/public/eWPS.pdf> (last consultation 15 January 2010).

7 Annex to the letter dated 4 June 2008 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General, S/2008/364, 4 June 2008, pp. 3–4.

male sexual violence and notes that although there have been many positive developments, the issue is not always moving in the right direction.

Understanding

Understanding that there is a problem

For so long, sexual violence against men and boys in times of armed conflict has been a neglected area. Only in the last decade or so has any considered scholarly attention been paid to the subject.⁸ Although the conflict in the former Yugoslavia, which gave rise to renewed attention to female sexual violence, was also the scene of so much sexual violence against men and boys, the attention paid to male sexual violence still languishes behind.

In a conference paper of 2002, Augusta DelZotto and Adam Jones noted that of 4076 non-governmental organizations that worked in the area of 'war rape and other forms of political sexual violence', a mere 3% mentioned sexual violence against men and boys 'in their programs and informational literature'.⁹ Writing one year earlier, Dubravka Zarkov noted of the conflict in the former Yugoslavia that:

The international media, so fervent in reporting rapes of women, shied away from the topic of sexually assaulted men. Pictures of the starved bodies of Muslim men from the camps run by Bosnian Serb forces were on the front pages of international magazines, as were photos of tearful, raped women. But nobody published a photo of a raped man. The national press within former Yugoslavia offered a similar picture. Rapes of women were newsworthy; rapes of men were not.¹⁰

8 Sporadic references may be found in earlier work; however, detailed, focused, analyses only began to emerge in the 2000s. See Dubravka Zarkov, 'The Body of the Other Man: Sexual Violence and the Construction of Masculinity, Sexuality and Ethnicity in Croatian Media', in Moser and Clark (eds), *Victims, Perpetrators or Actors? Gender, Armed Conflict and Political Violence*, 2001, p. 72; Augusta DelZotto and Adam Jones, 'Male-on-Male Sexual Violence in Wartime: Human Rights' Last Taboo?', Paper presented to the Annual Convention of the International Studies Association, 23–27 March 2002, available at <http://adamjones.freesevers.com/malerape.htm> (last consultation 15 January 2010); Sandesh Sivakumaran, 'Male/Male Rape and the "Taint" of Homosexuality', in *Human Rights Quarterly* 1274, 2005, vol. 27; R. Charli Carpenter, 'Recognizing Gender-Based Violence Against Civilian Men and Boys in Conflict Situations', in *Security Dialogue*, 2006, Vol. 37, No. 1, pp. 83–103; S. Sivakumaran, 'Sexual Violence against Men in Armed Conflict', 2007, Vol. 18, No. 2, in *European Journal of International Law*, pp. 253–276; Wynne Russell, 'Sexual violence against men and boys', in *Forced Migration Review*, 2007, No. 27, pp. 22–23; Dustin A. Lewis, 'Unrecognized Victims: Sexual Violence against Men in Conflict Settings under International Law', in *Wisconsin Journal of International Law*, 2009, Vol. 27, No. 1, pp. 1–49. For an early account, see Adam Jones, 'Gender and Ethnic Conflict in ex-Yugoslavia', in *Ethnic and Racial Studies*, 1994, Vol. 17, No. 1, pp. 115–134.

9 A. DelZotto and A. Jones, *ibid.*

10 D. Zarkov, above note 8.

It is of even more recent vintage that the problem of male sexual violence has been taken up in various UN fora. However, today, its existence has been recognized at the highest of levels, with discussion of male sexual violence entering the corridors, meeting rooms, and chambers of the UN. To take some examples:

- 1 In the Security Council debate giving rise to SC Res 1820, the Permanent Representative of Slovenia to the United Nations, speaking on behalf of the European Union, stated that '[s]exual and gender-based violence is an area of particular concern to women and girls in armed conflict situations, although we know now that also boys and men may be subjected to such violence and to sexual torture.'¹¹
- 2 One year later, during the debate at which the Report of the Secretary-General pursuant to SC Res 1820 was being considered, the delegate of Mexico spoke of 'even seeing a trend towards the use of sexual violence against men.'¹²
- 3 In a General Assembly debate on humanitarian assistance, the delegate of Norway expressed her country's concern 'about the sexual and gender-based violence that each year destroys the lives of thousands of women and girls, as well as men and boys.'¹³
- 4 At a similar debate before the Economic and Social Council, the Assistant High Commissioner of UNHCR commented upon the reports of sexual violence against men and boys but noted that these 'were rarer [than those of women and girls] because of shame or fear of stigmatization.'¹⁴
- 5 The inter-agency initiative 'Stop Rape Now' has noted that '[t]hough women and girls are the primary targets of rape, men and boys may also be targeted'.¹⁵
- 6 For its part, the World Health Organisation has noted that insufficient attention is paid to male on male violence.¹⁶
- 7 In 2008, the UN Office for the Co-ordination of Humanitarian Affairs (OCHA) convened an expert group meeting on assessing the nature, scope, and motivation for sexual violence against men and boys in armed conflict. This was considered one of 'two priority topics for research regarding gender-based violence in conflict settings'.¹⁷

There is, then, some understanding at the level of the UN that sexual violence against men and boys in times of armed conflict is a problem. What of the understanding of the problem itself?

11 Security Council, 5916th Meeting, 19 June 2008, S/PV.5916, p. 33 (Ms Stiglic, Slovenia).

12 Security Council, 6180th Meeting, 7 August 2009, S/PV.6180, p. 14 (Mr Heller, Mexico).

13 General Assembly, Official Records, 19 November 2007, A/62/PV.53, p. 24 (Mrs Juul, Norway).

14 Economic and Social Council, Substantive Session of 2006, Humanitarian Affairs Segment, 17 July 2006, E/2006/SR.28, p. 3 (Ms Feller).

15 Stop Rape Now: UN Action Against Sexual Violence in Conflict.

16 WHO, *Preventing violence and reducing its impact: How development agencies can help*, WHO, Geneva, 2008, p. 21.

17 Report of the Secretary-General, 'Intensification of efforts to eliminate all forms of violence against women', A/64/151, 17 July 2009, para. 38.

Understanding of the problem

As with sexual violence in armed conflict more broadly, much about male sexual violence remains unknown. As Elisabeth Wood has observed in the context of sexual violence generally, '[s]ome simple hypotheses do not explain the puzzling variation in the extent and form of sexual violence in war: sexual violence varies in prevalence and form across civil wars as well as inter-state wars, across ethnic wars as well as non-ethnic, and across secessionist conflicts. The variation has not been adequately explained in the literature'.¹⁸ This is no less true of male sexual violence.

Data

Numbers are always problematic. Often sought – for example SC Res 1820 calls on the Secretary-General to provide an 'analysis of the prevalence and trends of sexual violence in situations of armed conflict'¹⁹ – they are extremely difficult to gauge, not least due to underreporting. Given the disruption caused by armed conflict, it may be particularly difficult to ascertain precise figures.²⁰ Accordingly, much of the available data tends to be anecdotal in nature. For example, recent reports from the Democratic Republic of the Congo suggest that men and boys comprise some 4–10% of the total number of victims of sexual violence who seek medical treatment.²¹ In the Central African Republic, the non-governmental organization 'L'Organisation pour la Compassion et le Développement des Familles en Détresse' documented 800 cases of female rape and 140 cases of male rape.²²

Prevalence studies are occasionally conducted. In the armed conflict in the former Yugoslavia, it has been reported that, '[o]f 6000 concentration camp victims in the Sarajevo Canton, 5000 were men and 80% of them had reportedly been raped'.²³ In Liberia, a survey of 1666 adults found that 32.6% of male combatants (118 of 367) experienced sexual violence while 16.5% (57 of 360) were forced to be sexual servants.²⁴

Even when we are in possession of figures, caution should be taken. Methodologies may be unknown, or may vary between studies, thus decreasing

18 Elisabeth Jean Wood, 'Variation in Sexual Violence during War', in *Politics and Society*, 2006, Vol. 34, No. 3, pp. 307–341.

19 SC Res 1820, operative para. 15, above note 3.

20 E. J. Wood, above note 18, pp. 318–320.

21 Chris McGreal, 'Hundreds of thousands of women raped for being on the wrong side', in *The Guardian*, 12 November 2007 (4%); Médecins Sans Frontières, *Shattered Lives: Immediate medical care vital for sexual violence victims*, March 2009, p. 11 (6%); J. Gettleman, above note 5 (10%).

22 IRIN News, 'Central African Republic: Unending Misery of Rape Victims', Bangui, 19 August 2005.

23 Željka Mudrovčić, 'Sexual and Gender-Based Violence in Post-Conflict Regions: The Bosnia and Herzegovina Case' in *The Impact of Armed Conflict on Women and Girls: A Consultative Meeting on Mainstreaming Gender in Areas of Conflict and Reconstruction*, UNFPA, 2001, pp. 60–76 (see p. 64).

24 Kirsten Johnson *et al.*, 'Association of Combatant Status and Sexual Violence with Health and Mental Health Outcomes in Postconflict Liberia', in *Journal of the American Medical Association*, 2008, Vol. 300, No. 6, pp. 676–690.

the potential for comparison. Studies may be selective, whether consciously or unconsciously. They may have been carried out at a period in time too close to the armed conflict such that victims may be reluctant to come forward, or too far removed such that affected persons are no longer around to tell their story. Bearing in mind all the caveats that have to be entered in relation to figures, numbers nevertheless give a sense of the scale of the issue.

A recent issue?

The passages from the delegates' speeches quoted above may be read as suggesting that the practice of male sexual violence is something new. Thus the representative of Slovenia spoke of knowing *now* of male sexual violence, while the representative of Mexico talked of witnessing a trend.²⁵ If the passages are read in this manner, the suggestion is that the speakers understood the subject to be new and unusual. Yet this could not be further from the truth.

The practice has been documented as dating back from almost time immemorial. Male sexual violence, in the form of castration, was carried out by 'Chinese, Persian, Amalekite, Egyptian, and Norse armies'.²⁶ Sexual violence was committed during the Spanish civil war and during the 'rape of Nanking'.²⁷ A background report of OCHA lists some 25 conflicts in the last decade alone, in which male sexual violence has been documented as taking place.²⁸

What is true is that, today, greater attention is being paid to the subject. For example, stories of male sexual violence increasingly appear in the news media. To take the period 2007–9 alone, there have been reports of male sexual violence, primarily rape and sexual mutilation, in the armed conflicts in the Central African Republic,²⁹ Chechnya,³⁰ Democratic Republic of the Congo,³¹ Iraq³² and Sri Lanka³³;

25 See above notes 11 and 12.

26 Joshua S. Goldstein, *War and Gender: How Gender Shapes the War System and Vice Versa*, Cambridge University Press, 2001, 357 pp.

27 Thomas and Thomas in Richard A. Falk (eds), *The International Law of Civil War*, 1971, p. 124; Iris Chang, *The Rape of Nanking*, Basic Books, 1997, pp. 88–89, 95.

28 'The Nature, Scope and Motivation for Sexual Violence Against Men and Boys in Armed Conflict', Use of Sexual Violence in Armed Conflict: Identifying Gaps in Research to Inform More Effective Interventions, UN OCHA Research Meeting, 26 June 2008, p. 1.

29 International Criminal Court, Office of the Prosecutor, *Background: Situation in the Central African Republic*, 22 May 2007, ICC-OTP-BN-20070522-220-A_EN. See also IRIN News, 'Central African Republic: Unending Misery of Rape Victims', Bangui, 19 August 2005.

30 Mark Franchetti, 'Russian Death Squads "Pulverise" Chechens', in *The Sunday Times*, 26 April 2009.

31 Chris McGreal, 'Hundreds of thousands of women raped for being on the wrong side', in *The Guardian*, 12 November 2007; J. Gettleman, above note 5.

32 Richard Norton-Taylor and Audrey Gillan, 'MoD faces legal action after teenage Iraqi claims sexual humiliation by soldiers', in *The Guardian*, 14 July 2008; R. Norton-Taylor, 'Lawyers take MoD to court over Iraqi mutilation claims', in *The Guardian*, 18 October 2007.

33 Somini Sengupta, 'Sri Lanka's Scars Trace Lines of War Without End', in *New York Times*, 15 June 2007.

in events relating to the 'war on terror'³⁴; and in post-election violence in Iran³⁵ and Kenya.³⁶

The OCHA meeting referred to above concluded *inter alia* that 'shining a light on the issues of sexual violence against men and boys was crucial and timely' and that 'the research gaps on the issue are extensive'.³⁷ It proposed a number of research questions and drew together key research priorities.³⁸

Prevention and protection

Despite the widespread recognition that male sexual violence is a problem and despite the acknowledgement that little is being done, these sentiments have not translated into any practical initiatives. Rather, the principal recent initiative – SC Res 1820 and its follow-up procedure – has had the impact of contributing to the relative silence through the exclusion of male victims from its framework.

Exclusive focus on women and girls

Whither the men?

It would seem that there is some scepticism in certain quarters that tackling the problem of male sexual violence will take attention and valuable resources away from addressing female sexual violence. For example, an important meeting at Wilton Park brought together high-level UN officials, governmental representatives, and force commanders of peacekeeping missions, amongst others, to discuss responses of military peacekeepers to sexual violence against women and girls in times of armed conflict. The conference acknowledged that 'women are not the only civilians to be targeted for sexual violence' and that 'children and also men, particularly captive male combatants, are also subjected to sexual torture and terror'.³⁹ However, the focus of the meeting was squarely on women and girls, primarily because it was felt that women and girls comprised the 'majority of civilians targeted for this particular form of atrocity ... their reproductive capacities are ruined by gang-rape and brutality' and because '[v]iolent sexual attacks on women and girls in fact pose special challenges for peacekeepers – challenges that differ even from cases when men are the targets of sexual

34 'Egypt torture centre, report says', in *BBC News online*, 11 April 2007.

35 Alan Cowell, 'Rapes are Alleged in Iranian Prison', in *New York Times*, 11 August 2009.

36 Commission of Inquiry into Post-Election Violence, final Report, chapter 6, see http://www.communication.go.ke/Documents/CIPEV_FINAL_REPORT.pdf (last consultation 15 January 2010).

37 Meeting Report, OCHA – Policy Development and Studies Branch, 'Use of Sexual Violence in Conflict: Identifying Research Priorities to Inform More Effective Interventions', 26 June 2008, p. 5. The author was one of the experts.

38 *Ibid.*, p. 6.

39 Anne-Marie Goetz, 'Introduction', in *Women Targeted or Affected by Armed Conflict: What Role for Military Peacekeepers?* Wilton Park, 27–29 May 2008, p. 3.

attack.⁴⁰ These challenges were considered to include the lack of reporting on the part of female victims and the social stigma associated with the sexual violence.⁴¹

Yet many, if not all of these points, actually apply to male sexual violence as well. Just as with women and girls, men and boys may lose their reproductive capability either as a result of the physical abuse inflicted upon them – through castration, genital mutilation, and the like – or as a psychological consequence of the violence. Indeed, only now are the mental health consequences starting to be understood. Anecdotal evidence from the DRC, for example, suggests that male rape victims are more likely to commit suicide, with the rates even higher if castration or mutilation is involved.⁴² Again, similar to women and girls, there is vast underreporting in the case of male victims of sexual violence for similar stigma exists;⁴³ and male victims, too, may be rejected by their families and their communities.⁴⁴ For example, a male victim of sexual violence in the DRC has said: ‘I’m laughed at ... The people in my village say: “You’re no longer a man. Those men in the bush made you their wife.”’⁴⁵

Despite these criticisms, at least the Wilton Park meeting acknowledged that sexual violence is committed against women and men, girls and boys, as the debate is sometimes framed as an issue solely involving women and girls. Take SC Res 1820 as an example. In many places, the Security Council does address the issue of sexual violence in situations of armed conflict at a general level. The first two operative paragraphs are demonstrative of this general concern:

Stresses that sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security, *affirms* in this regard that effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security, and *expresses its readiness*, when considering situations on the agenda of the Council, to, where necessary, adopt appropriate steps to address widespread or systematic sexual violence;

Demands the immediate and complete cessation by all parties to armed conflict of all acts of sexual violence against civilians with immediate effect;⁴⁶

In other parts of the Resolution, the focus is on sexual violence, against, ‘in particular women and girls’, or the protection of civilians ‘including women and girls’. For example, the Security Council ‘[d]emands that all parties to armed

40 *Ibid.*, p. 4 (emphases removed).

41 *Ibid.*

42 I am grateful to Jocelyn Kelly for this information.

43 S. Sivakumaran, Sexual Violence, above note 8, pp. 255–256.

44 *Ibid.*, p. 271; ‘Kivu Sexual Violence: Against Women and Men’, in *PeaceWomen*, available at <http://www.peacewomen.org/news/DRC/July04/kivu.html> (last consultation 18 January 2010).

45 J. Gittleman, above note 5.

46 See also operative paras 6, 7, 13.

conflict immediately take appropriate measures to protect civilians, including women and girls, from all forms of sexual violence',⁴⁷ and '*calls upon* Member States ... to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice'.⁴⁸

These approaches are useful.⁴⁹ They understand that sexual violence may be committed against anyone but that, in practice, women and girls have been, and remain, particularly susceptible. The Parliamentary Assembly of the Council of Europe, on the other hand, in its resolution on point, notes that '[s]exual violence against women in armed conflict is a crime against humanity, a war crime, and an absolutely unacceptable weapon of war', but says nothing about sexual violence against men and boys, and very little about girls.⁵⁰

However, in the course of SC Res 1820, there is a transformation in the approach from one of 'sexual violence in particular against women and girls', to one of 'sexual violence against women and girls'. For example, the Security Council:

Affirms its intention, when establishing and renewing state-specific sanctions regimes, to take into consideration the appropriateness of targeted and graduated measures against parties to situations of armed conflict who commit rape and other forms of sexual violence against women and girls in situations of armed conflict;⁵¹

Of particular interest are the precise places in which the language of the Resolution is inclusive and when it becomes exclusory. An analysis of the Resolution indicates that when it seeks to describe the problem of sexual violence and on the occasions in which it adopts general measures, the language is inclusive. However, when the Resolution comes to specifying concrete, detailed measures of implementation or enforcement, the language becomes exclusory. This is best demonstrated through consideration of passages in which both the descriptive and the implementation measures are considered together, or when both the general measures and the specific measures are dealt with together. The Security Council:

Encourages troop and police contributing countries, in consultation with the Secretary-General, to consider steps they could take to heighten awareness and the responsiveness of their personnel participating in UN peacekeeping operations to protect civilians, including women and children, and prevent sexual violence against women and girls in conflict and post-conflict situations ...;⁵²

47 *Ibid.*, para. 3.

48 *Ibid.*, para. 4.

49 Leaving aside, for the moment, issues such as 'helpless and sexualised representations of women', on which see Diane Otto, 'The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade' (2009), in *Melbourne Journal of International Law*, Vol. 11, No. 1, p. 25.

50 'Sexual violence against women in armed conflict', Resolution 1670 and Recommendation 1873, texts adopted by the Standing Committee, acting on behalf of the Assembly, on 29 May 2009.

51 Operative para. 5.

52 *Ibid.*, para. 8.

When it is at the level of heightening awareness and responsiveness, the language is inclusive – all civilians, including women and children. However, as the provision goes on, and when the matter shifts to the more onerous prevention of sexual violence, the objects of protection are exclusively women and girls.

This is not a one-off, a mere slip of the drafting pen. To take another example, the Security Council:

Requests the Secretary-General to develop effective guidelines and strategies to enhance the ability of relevant UN peacekeeping operations, consistent with their mandates, to protect civilians, including women and girls, from all forms of sexual violence and to systematically include in his written reports to the Council on conflict situations his observations concerning the protection of women and girls and recommendations in this regard;⁵³

Again, when the question is the rather broader one of development of guidelines and strategies, the subject of protection is ‘civilians, including women and girls’. However, the moment a more concrete measure is contemplated, in this case the systematic inclusion of observations and recommendations in the reports of the Secretary-General to the Security Council, the measure is framed in respect of ‘women and girls’ alone.

In one of the more curious passages of the Resolution, the Security Council:

Demands that all parties to armed conflict immediately take appropriate measures to protect civilians, including women and girls, from all forms of sexual violence, which could include, inter alia, enforcing appropriate military disciplinary measure and upholding the principle of command responsibility, training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, vetting armed and security forces to take into account past actions of rape and other forms of sexual violence, and evacuation of women and children under imminent threat of sexual violence to safety ...⁵⁴

Again, in so far as training, vetting, and enforcement of discipline are concerned, the subject at issue is the civilian. However, when it comes to evacuation of individuals under imminent threat of sexual violence, the concern is towards ‘women and children’ alone. This is odd but it is not the strangest part of the provision. As Dianne Otto has asked, ‘what about the woman facing imminent death from a non-sexual armed attack, or the man who is at risk of sexual violence, or the child who cannot be given the emergency medical treatment they need because the hospital has been destroyed? Where should they be placed in the evacuation queue?’⁵⁵

53 *Ibid.*, para. 9.

54 *Ibid.*, para. 3.

55 D. Otto, above note 49. To this could be added, what of the specific international humanitarian law provisions on evacuation?

What of boys?

In addition to the elision from civilians to women is the related slide from 'children' to 'girls'. By and large, the language of the preamble is one of 'women and children'.⁵⁶ However, the body of the Resolution, with one exception, uses the phrase 'women and girls'.⁵⁷ This is true not just of SC Res 1820 but related Security Council resolutions as well.⁵⁸ The question then becomes where boys fit in all of this.

At present, sexual violence against boys in situations of armed conflict is an overlooked category. This has recently been acknowledged, as has the existence of the problem.⁵⁹ The Secretary-General, for example, has noted in his report on children and armed conflict in Afghanistan that, '[t]here are a number of substantive reports of children, especially boys, being sexually abused and exploited by members of the armed forces and armed groups.'⁶⁰ The language of 'especially boys' is interesting, for it is a reversal of the usual formulation of 'in particular women and children'. The Secretary-General goes on to document the practice of '*bacha baazi* (boy-play)' which 'consists of boys kept cloistered and used for sexual and harmful social entertainment by warlords and other armed group leaders.'⁶¹ Accordingly, the Secretary-General recommends that the Government of Afghanistan 'implement more fully laws and programmes to prevent and punish sexual violence and to support victims, monitor grave sexual violations against boys as well as girls'.⁶² Again the ordering of boys and girls is instructive.

One reason that goes some way towards explaining the lack of consideration of the practice is the difficulty of fitting sexual violence against boys into any of the existing categories. By their very language, the rubric of 'sexual violence against women', or 'sexual violence against women and girls', rules out consideration of boy victims. Even the category of 'sexual violence against women and children' is not a natural fit, as the interchange between 'women and children' and 'women and girls' has often led to children being taken as shorthand for girls. In any event, it is not clear that 'women and children', read as including boys, *should* be the appropriate categorization. The category of 'womenandchildren'⁶³ emerges, infantilizing women, placing them alongside children as vulnerable and in need of protection; and if boys are sometimes subjected to sexual violence in situations of armed conflict because they are men-in-waiting,⁶⁴ that would suggest that they

56 Preambular paras 7 and 8.

57 The exception is contained in operative para. 3.

58 See D. A. Lewis, above note 8, p. 19, fn 94.

59 See e.g. OCHA Meeting Report, above note 37, p. 5; Report of the Special Representative of the Secretary-General for Children and Armed Conflict, A/64/254, 6 August 2009, para. 17.

60 Report of the Secretary-General on children and armed conflict in Afghanistan, S/2008/695, 10 November 2008, para. 48.

61 *Ibid.*, para. 50.

62 *Ibid.*, para. 74.

63 D. Otto, above note 49.

64 The point was made by Wynne Russell at the OCHA meeting.

should be grouped with sexual violence against men, or treated as a separate category in their own right.

It is likely that with the increased attention to be paid to sexual violence against children by the Security Council, and with the work of the Special Representative of the Secretary-General for Children and Armed Conflict on sexual violence, the problem will start to be addressed.⁶⁵

Exclusive focus on civilians

Even if the focus of UN measures were on all civilians – women and girls, men and boys – it would still be to neglect a sizeable proportion of sexual violence committed against, in particular, men and boys in times of armed conflict.

In times of armed conflict, men and boys are at their most vulnerable in situations of detention. Much of the male sexual violence is committed against people held captive or in detention; numerous reports attest to the practice.⁶⁶ Such people may well be civilian internees, but they may also be prisoners of war or members of the armed forces or armed group who for whatever reason do not benefit from prisoner of war status.

Boys are also particularly vulnerable to sexual violence when they are conscripted or abducted into armed forces.⁶⁷ The abuse that they face may well be from people on their ‘own side’. Yet the presumption is that it is girls who are abducted or conscripted who will end up as sex slaves. Even definitions that are intended to be inclusive fall into this trap. For example, the Cape Town Principles and Best Practices (1997) adopted a broad definition of a ‘child soldier’, expressly not limiting the definition to ‘a child who is carrying or has carried arms’. Rather, it included but was not limited to ‘cooks, porters, [and] messengers’ and ‘include[d] girls recruited for sexual purposes and forced marriage.’⁶⁸ Inclusive on the one hand, the definition was exclusive on the other, limiting itself to sexual violence against girls alone. This was corrected in the Paris Principles (2007) to include ‘children, boys, and girls used as fighters, cooks, porters, messengers, spies or for sexual purposes’.⁶⁹ However, the need to include child victims of sexual violence, both boys and girls, in the definition of a child soldier reveals that combatants and

65 See S/Res/1882, adopted by the Security Council at its 6176th meeting, 4 August 2009; Report of the Special Representative of the Secretary-General for Children and Armed Conflict, above note 59, para. 17.

66 See e.g. M. Peel *et al.*, ‘The Sexual Abuse of Men in Detention in Sri Lanka’, in *The Lancet*, 2000, vol. 355, issue 9220, p. 2069; *Prosecutor v. Blagoje Simić, Miroslav Tadić and Siom Zarić*, 2003, Trial Judgement, IT-95-9-T, para. 728; the ‘Taguba Report’ on Treatment of Abu Ghraib Prisoners in Iraq, available at: <http://news.findlaw.com/hdocs/docs/iraq/tagubarpt.html> (last consultation 18 January 2010).

67 W. Russell, above note 8, p. 22; Report of the Special Representative of the Secretary-General for Children and Armed Conflict, above note 59, para. 17.

68 *Cape Town Principles and Best Practices*, adopted at the UNICEF Symposium on the Prevention of Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa, Cape Town, South Africa, 27–30 April 1997 (emphasis added).

69 The Paris Principles: The Principles and Guidelines on Children Associated With Armed Forces of Armed Groups, 2007, para. 2.1 (emphasis added).

people taking an active part in hostilities are in need of protection from sexual violence just as much as civilians.

Thus although the instinctive link may be between sexual violence and civilians, these assumptions need to be re-thought. This is evidenced from a recent study on sexual violence in the Liberian conflict, which revealed that 32.6% of a sample of male combatants experienced sexual violence.⁷⁰ Even with due regard to the unreliability of statistics, this is revealing. Sexual violence is committed against civilians but not against civilians alone. Much of the sexual violence that takes place against men and boys is carried out in situations of detention, against prisoners of war and members of the armed forces or armed group. It is also carried out against 'child soldiers', both boys and girls. Yet none of these forms of sexual violence is covered by SC Res 1820 with its exclusive focus on civilians. With the increasing numbers of female combatants and females taking a direct part in hostilities, the Resolution's focus on civilians alone also limits the scope of protection for women.

Follow-up to SC Res 1820

SC Res 1820 was adopted during a debate on 'women and peace and security: sexual violence in situations of armed conflict', a debate which was itself a follow-up to SC Res 1325 on women and peace and security. As such, it may not be entirely fair to criticize the Resolution for focusing on civilians and failing to take into account the position of men and boys. However, despite its origins, SC Res 1820 has become the centre-piece of UN efforts on sexual violence. As such, its limits become troubling, in particular its transformation of a subset of violations, albeit a primary one, into the sole one of concern.

Fortunately, the follow-up to the Resolution has been more satisfactory in so far as men and boys are concerned. In the Report of the Secretary-General pursuant to SC Res 1820, it is noted that 'sexual violence has been used against civilians, particularly women and girls, in many conflicts throughout history' and that '[w]hile women and girls are particular targets and are the majority of the victims of sexual violence, the case-law of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the Special Court for Sierra Leone (SCSL) also bears testimony to the use of sexual violence against men.'⁷¹ Also, the report itself is written in largely gender neutral terms.

Even more sensitive is SC Res 1888. That resolution, which builds on resolutions 1325 and 1820, is far more careful in its terminology. The vast majority of its paragraphs are carefully phrased so as to be inclusive of all victims of sexual violence (though still limited to civilians). This includes, crucially, the paragraphs that envisage the creation of a post of Special Representative to address the issue of sexual violence in armed conflict, the deployment of teams of experts to situations

70 K. Johnson *et al.*, above note 24, p. 676.

71 Report of the Secretary-General pursuant to Security Council resolution 1820 (2008), S/2009/362, paras 3 and 6.

of concern, and the adoption of sanctions.⁷² Only the odd paragraph is worded in a manner specific to women and children.⁷³ After the disappointment of SC Res 1820, its follow-up has been less disconcerting.

However, not everything is promising. Aspects of the follow-up are specific to women and girls. For example, the report of the Secretary-General on children and armed conflict in Afghanistan details development of a national database of cases of violence against women which, in the words of the Secretary-General, ‘unfortunately does not include abuses against boys’.⁷⁴

Consequences for accused perpetrators

Peacetime sexual violence is notorious for its lack of prosecution and low conviction rates. The situation is even more severe in times of armed conflict. As is by now well known, it was only with the advent of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda that sexual violence in times of armed conflict began to be prosecuted as a matter of course. However, the records of those two Tribunals as well as that of the Special Court for Sierra Leone in their prosecutions and convictions for sexual violence have been the brunt of considerable criticism due to the *ad hoc*, and lack of systematic, prosecution and the way in which victims of sexual violence are treated while giving evidence.⁷⁵

In so far as sexual violence against men and boys is concerned, matters are even less advanced. Various forms of sexual violence were committed against men and boys in the conflicts in the former Yugoslavia, Rwanda, and Sierra Leone; the atrocities have been documented extensively.⁷⁶ Yet their appearance in the jurisprudence of the Tribunals is limited; much of the time, male sexual violence is simply not prosecuted before the international criminal tribunals. Although this is, to some extent, also the case with sexual violence against women and girls, when male sexual violence is prosecuted, it is often not prosecuted *as* sexual violence. An analysis of the instances in which accounts of male sexual violence do appear in the jurisprudence of the UN international criminal tribunals proves instructive. The documentation of male sexual violence may be grouped into three

72 S/Res/1888, adopted by the Security Council at its 6195th meeting, 2009, operative paras 4, 8 and 10, respectively.

73 *Ibid.*, operative paras 12 and 26.

74 Report of the Secretary-General on children and armed conflict in Afghanistan, above note 60, para. 63.

75 See e.g. Binaifeer Nowrojee, ‘Your Justice is Too Slow’: Will the ICTR Fail Rwanda’s Rape Victims? UNRISD, 2005; Michelle S. Kelsall and Shanee Stepakoff, ‘“When We Wanted to Talk about Rape”: Silencing Sexual Violence at the Special Court for Sierra Leone’, in *International Journal of Transitional Justice*, 2007, Vol. 1, pp. 355–374.

76 See e.g. Final Report of the United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), S/1994/674/Add.2, Annex IX (former Yugoslavia); Anne-Marie de Brouwer and Sandra Ka Hon Chu (eds), *The Men Who Killed Me – Rwanda Survivors of Sexual Violence*, 2009, p. 91; ‘“We’ll Kill You if You Cry”: Sexual Violence in the Sierra Leone Conflict’, in *Human Rights Watch*, 2003, Vol. 15, No. 1, p. 42.

categories: mentioned but not characterized as sexual violence; mentioned and characterized appropriately but without any consequences attaching; or characterized as sexual violence with consequences arising therefrom.

Mentioned but not characterized as sexual violence

Often, sexual violence against men and boys in armed conflict is not characterized as such, but is considered under the rubric of torture, beatings, and the like.⁷⁷ Particularly true in the case of UN reports, it is no less true of international criminal jurisprudence. So, for example, in the *Blagoje Simić et al.* case, an ICTY trial chamber noted that '[s]everal Prosecution witnesses gave evidence that detainees were subjected to sexual assaults. One incident involved ramming a police truncheon in the anus of a detainee. Other incidents involved forcing male prisoners to perform oral sex on each other and on Stevan Todorović, sometimes in front of other prisoners.'⁷⁸ Yet the finding appeared in a section entitled '[e]vidence relevant to other acts' and although described by the Trial Chamber as sexual assaults, it was characterized in its findings as torture and no more.⁷⁹

Although these acts are indeed torture, care has to be taken such that when men are subjected to sexual violence, the abuse is seen as sexual and recorded under appropriate, sometimes multiple, headings. The failure to do so can have far-reaching consequences. The Peruvian Truth and Reconciliation Commission, for example, found that 2% of victims of sexual violence were male. However, a recent study suggests that the figure was, in fact, closer to 22% and puts the discrepancy down to a focus of the Commission on rape to the exclusion of other forms of sexual violence and the recording of these other abuses as torture.⁸⁰ The danger of characterizing sexual violence against men and boys only under the rubric of torture is that men and boys will continue to be seen as unsusceptible to sexual violence, reinforcing the view that sexual violence is a problem for women and girls alone.

Mentioned but without any consequences

On other occasions, male sexual violence is depicted as having taken place but, for various reasons, no consequences result for the accused from the depiction. In some cases, this is because instances of male sexual violence were laid out only to set the scene. For example, in the *Bagosora* trial judgement, the Trial Chamber recalled the testimony of several witnesses:

The bodies of the dead were frequently piled near the roadblocks and at times were collected by local officials. Female victims were left lying on their back[s]

77 S. Sivakumaran, 'Sexual Violence against Men in Armed Conflict', above note 8, p. 256.

78 *Simić* Trial Judgement, above note 66, para. 728.

79 *Ibid.*, subheading on page 205 and para. 772.

80 Michele Leiby, 'Digging in the Archives: The Promise and Perils of Primary Documents', in *Politics and Society*, Vol. 37, 2009, pp. 82–83.

with their legs spread and stained with semen. Dallaire saw objects crushed or implanted in vaginas, breasts cut off, stomachs opened and the mutilated genitals of men.⁸¹

This account merely formed part of the background of the case and accordingly no consequences arose from the descriptions of male sexual violence.

Another approach has been to note that sexual violence against men and boys was carried out but that it had not been charged by the Prosecution in the particular case at hand. In the *RUF* trial judgement, for example, a Trial Chamber of the Special Court for Sierra Leone documented practice of male sexual violence. The Trial Chamber found the record to demonstrate instances of enforced rape and sexual mutilations of male and female victims.⁸² The Trial Chamber also noted that the definition of rape ‘is broad enough to be gender neutral’ and noted further that ‘both men and women can be victims of rape’.⁸³ However, the Trial Chamber observed that the Prosecution ‘restricted its pleadings on sexual violence in the Indictment to crimes committed against “women and girls,” thereby excluding male victims of sexual violence.’⁸⁴ Accordingly, no convictions could be entered in respect of the male sexual violence that was found to have taken place.

A third approach of the international criminal tribunals has been to acknowledge, occasionally in some detail, the practice of male sexual violence but then to ignore them when moving on to the legal consequences that attach to these findings. Thus in *Muhimana*, a Trial Chamber of the ICTR recalled that several witnesses had seen that a certain Kabanda’s ‘private parts had been severed’ and that his genitals had been hung on a spike.⁸⁵ However, in its findings, the Trial Chamber simply referred to the killing of Kabanda and no more.⁸⁶ Similarly, in *Bagosora*, the Trial Chamber found Bagosora guilty of other inhumane acts in respect of *inter alia* ‘the stripping of female refugees at the Saint Josephite Centre’.⁸⁷ Yet the summary of the relevant witness’ anticipated testimony annexed to the Prosecution’s Pre-Trial Brief, and reproduced in the Trial Judgement, specifically states that ‘[s]ome of the victims were naked, men and women.’⁸⁸

Accordingly, the observation that male victims of sexual violence ‘are hard to see as victims of the genocide’ in Rwanda,⁸⁹ could be extended to most armed conflicts past and present.

81 *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, 18 December 2008, Judgement, para. 1908.

82 *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-T, Judgement, 2 March 2009, paras 1205, 1207–8.

83 *Ibid.*, para. 146.

84 *Ibid.*, paras 1303 and 1308.

85 *Prosecutor v. Muhimana*, Case No. ICTR-95-1-T, Judgement, 28 April 2005, paras 441–4.

86 *Ibid.*, paras 448–50.

87 *Bagosora* Trial Judgement, above note 81, para. 2224.

88 *Ibid.*, para. 2220, fn 2374.

89 Doris E. Buss, ‘Rethinking “Rape as a Weapon of War”’, in *Feminist Legal Studies*, Vol. 17, No. 2, 2009, pp. 145 and 159.

Mentioned and characterized as sexual violence

Fortunately, other cases have been more inclusive in their approach. Ironically, in respect of the very same incident involving Kabanda, the *Niyitegeka* Trial Chamber found the accused guilty of an inhumane act. The *Niyitegeka* Trial Chamber considered the inhumane act to be in respect of the accused's 'act of encouragement during the killing, decapitation and castration of Kabanda, and the piercing of his skull, and his association with the attackers who carried out these acts'.⁹⁰

In the *Todorovic* Sentencing Judgement, the events in question were characterized as sexual assaults;⁹¹ in the *Stakić* Trial Judgement, the events at issue were viewed as both sexual assaults and as torture.⁹² In the *Češić* Sentencing Judgement, in respect of Češić's admission that 'he intentionally forced, at gun-point, two Muslim brothers detained at Luka Camp to perform fellatio on each other in the presence of others',⁹³ the Trial Chamber characterized the acts as sexual assault.⁹⁴

A more inclusive approach?

The jurisprudence of the ICTY, ICTR and SCSL suggests that no single judicial philosophy exists. Rather, individual judges and chambers will adopt their own approach to the subject. It is to be hoped that the International Criminal Court (ICC) will take an altogether more inclusive approach to the question of sexual violence, with the Office of the Prosecutor (OTP) bringing charges against individuals and Chambers adjudicating the matters using appropriate language.

There are hopeful signs in this respect. In its background note on the Situation in the Central African Republic, the OTP observed that, '[c]redible reports indicate that rape has been committed against civilians, including instances of rape of elderly women, young girls and men'.⁹⁵ In its charges against Jean-Pierre Bemba, the OTP allege that the accused committed crimes against humanity and war crimes 'through acts of rape upon civilian men, women and children' and 'by inflicting severe physical or mental pain or suffering through acts of rape or other forms of sexual violence, upon civilian men, women and children'.⁹⁶ The statement of facts in support of the charges allege that '[m]en, women and children were raped by multiple MLC perpetrators in their homes, raped in front of family

90 *Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-T, 16 May 2003, paras 462–466, 467.

91 *Prosecutor v. Todorovic*, Case No. IT-95-9/1-S, Sentencing Judgement, 31 July 2001, subheading at page 13.

92 *Prosecutor v. Stakić*, Case No. IT-97-24-T, Judgement, 31 July 2003, paras 241, 780, 806.

93 *Prosecutor v. Češić*, Case No. IT-95-10/1-S, Sentencing Judgement, 11 March 2004, para. 13.

94 *Ibid.*, subheading on page 4; see also paras 33, 35, 52.

95 Office of the Prosecutor, Background: Situation in the Central African Republic, ICC-OTP-BN-20070522-220-A_EN, 22 May 2007.

96 Situation in the Central African Republic: In the Case of the Prosecutor v. Jean-Pierre Bemba Gombo, Public Redacted Version of the Amended Document containing the charges filed on 30 March 2009, ICC-01/05-01/08, Counts 1 and 2, and 3 and 4, respectively.

members, forced to watch rapes of family members, and raped in public locations including streets, fields and farms’;⁹⁷ and that ‘[m]en were also raped as a deliberate tactic to humiliate civilian men, and demonstrate their powerlessness to protect their families.’⁹⁸

For its part, the Trust Fund for Victims, in its Donor Appeal to assist victims of sexual violence, has gone out of its way to draw attention to sexual violence against men and boys, observing that although ‘it is well known that armed conflict and sexual violence against women and girls often go hand in hand’, ‘[w]hat is less widely recognised is that armed conflict and its aftermath also bring sexual danger for men and boys.’⁹⁹ The Trust Fund also highlights the dangers faced by men and boys in times of armed conflict and some of the motivations behind the sexual abuse to which they may be subjected.¹⁰⁰

Conclusion: where to from here?

There are clearly avenues for further analysis and discussion.¹⁰¹ Empirics are in need of further research; more can be done in terms of raising awareness of the issue; the relationship between male sexual violence and female sexual violence has not been considered; sexual violence against boys is far from being understood; the situation of the male victim and the female perpetrator – despite the events at Abu Ghraib – is often overlooked.

There is also the difficult question of, and at times tension between, addressing sexual violence against men and boys and combating sexual violence against women and girls. There may be real reason to focus on one particular aspect of the problem. At a practical level, resources may be limited and to consider one may be to take away from the other. At a political level, proposals to widen the focus away from women and girls may be seen as a bad faith attempt to hijack the debate. At a theoretical level, as a former Special Rapporteur on violence against women has put it, if it ‘is not used with precision, the term GBV [gender-based violence] may obscure rather than reveal the distinguishing features of diverse experiences of gendered violence.’¹⁰²

These are legitimate debates to be held; but they must be held. The current disconnect between the grand pronouncements on the problem of male sexual violence in armed conflict and the lack of measures taken to address it cannot continue. A 2005 report of the World Bank on ‘Gender, Conflict, and

97 *Ibid.*, Charges, para. 39.

98 *Ibid.*, para. 41.

99 The Trust Fund for Victims Board of Directors Donor Appeal, ‘Rehabilitating and Supporting Survivors of Sexual Violence’, 10 September 2008.

100 *Ibid.*

101 See also the research agenda in OCHA Meeting Report, above note 37.

102 Statement by Yakin Ertürk at the SIDA Conference on Gender-Based Violence, 12 September 2008, Stockholm.

Development' observed that '[w]hile it is increasingly recognized that men are also GBV [gender-based violence] survivors in conflict-affected areas, this acknowledgement has not been translated into policies to address male victims.'¹⁰³ Despite the increased attention of all areas of the UN, this remains true today. Somewhere down the line, something has been lost in translation.

103 T. Bouta, G. Frerks and I. Bannon, *Gender, Conflict, and Development* (World Bank, Washington DC, 2005), p. 47.

REPORTS AND DOCUMENTS

National implementation of international humanitarian law

Biannual update on national legislation and case law July–December 2009

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A. Legislation

Austria

Federal Law on the Prohibition of Cluster Munitions, 2009

The Federal Law on the Prohibition of Cluster Munitions implementing the international Convention on Cluster Munitions 2008 was adopted on 7 May 2009. It incorporates the definitions found in Article 2(2) of the Convention on Cluster Munitions. The law also prohibits the development, production, acquisition, use, possession, licensing, procurement, import, export and transit of cluster munitions (Article 2). Article 3, however, permits exceptions such as the use of munitions for purposes of training the army and with regard to the destruction of cluster munitions. According to Article 4, cluster munitions should be destroyed in the three years after the entry into force of the present law. With regard to cluster munitions dating from before 1955, Article 4 stipulates an obligation to register such munitions with the Ministry of the Interior, which is responsible for securing and destroying these munitions. Article 5 provides that a person guilty of offences may be punished by way of a fine or imprisonment for a maximum of 2 years.

Bosnia and Herzegovina

Amendments to the Criminal Procedure Code of Bosnia and Herzegovina, 2009

The Law on Amendment to the Criminal Procedure Code was adopted on 20 February 2009 and entered into force on 9 April 2009. The amendments provide for the compulsory detention of persons sentenced at first instance to five years' imprisonment or more, removing the ability, available under the previous Code, for trial chambers to order the temporary release of an accused following the pronouncement of a first-instance verdict.

The change is intended to enable a more efficient court procedure and prevent persons convicted of serious crimes from committing new crimes or leaving Bosnia and Herzegovina in between the first sentence and the appeal process. The new measure may not be applied retroactively.

Fiji

Geneva Conventions (Amendment) Promulgation 2009

The Promulgation was promulgated and entered into force on 9 February 2009. It amends the 2007 Geneva Conventions Promulgation to allow for the protection of the distinctive emblem of the red crystal in accordance with Additional Protocol III to the Geneva Conventions. Fiji acceded to the Additional Protocol III on 30 July 2008.

Crimes Decree (Decree No. 44 of 2009)

The Crimes Decree (Decree No. 44 of 2009) was gazetted on 5 November 2009, the date of its entry into force. This updates, amends and replaces the former Penal Code of 1945. Part 12 – “Offences Against the International Order” – purports to implement the Rome Statute of the International Criminal Court, to which Fiji became a party on 29 November 1999. It incorporates the crimes of genocide and crimes against humanity into Fijian law. It empowers the Fijian Supreme Court to try any person in Fiji who is accused of such crimes, whether or not such crimes were committed in Fiji or had any effect in Fiji. The Decree does not include war crimes, which are covered to a certain degree in the Geneva Conventions Promulgation of 2007.

Japan

Act on the Prohibition of the Production of Cluster Munitions and the Regulation of the Possession of Cluster Munitions, 2009

The Act on the Prohibition of the Production of Cluster Munitions and the Regulation of the Possession of Cluster Munitions was adopted on 10 March 2009, with the stated purpose of ensuring the adequate implementation of the

Convention on Cluster Munitions by prohibiting the production of cluster munitions and taking measures to regulate their possession. In this regard, the Act prohibits in absolute terms the manufacture of cluster munitions (Article 3). However, there are important exceptions for possession and import by “permitted possessors” (Article 4 and following). Such exceptions would require fulfilling the standards for permission for possession described in Article 7, as well as not falling under the grounds for disqualification set in Article 6. The import of cluster munitions must be subject to certification in accordance with domestic law. Possession of cluster munitions by Self-Defence Forces requires a special permit granted by the Ministry of Economy, Trade and Industry (Article 18).

Luxembourg

Law Implementing the Convention on Cluster Munitions, 2009

The Law implementing the Convention on Cluster Munitions was adopted on 4 June 2009 and published in the Official Gazette A – No. 147 of 22 June 2009. The law prohibits the development or manufacture of cluster munitions or explosive sub-ammunitions, as well as the assembly of prefabricated pieces into a complete weapon. The transformation, repair, acquisition, sale, use, detention, transport, transfer, stockpiling or retention of such weapons is also prohibited (Article 2). Article 3 additionally prohibits financing the production of cluster munitions or explosive sub-ammunitions.

Article 4 provides that a person violating any of the above provisions may be punished by way of a fine ranging from 25,000 to 1,000,000 euros, and/or imprisonment of 5–10 years. Finally, any cluster munitions seized will be confiscated and destroyed at the expense of the condemned person.

Netherlands

Implementation of the 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act, 2009

The Implementation of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act was adopted on 12 June 2009. The Act prohibits, *inter alia*, importing into the Netherlands cultural property removed from the territory of a State Party in breach of the Convention, or unlawfully appropriated in the territory of a State Party. This includes the export of cultural property arising from occupation, as covered by the Convention. The 2009 Act amends the Code of Civil Procedure and the Civil Code, establishing that legal proceedings for the return of movable property may be instituted against a possessor of cultural property in breach of this Act. Finally, the Act designates authorities responsible for supervising compliance with its provisions. It also provides that

where there is reasonable suspicion that the Act has been contravened, the authorities shall take custody of the cultural property concerned in order to enable the State Party from which the cultural property originates to arrange for its return.

New Zealand

Cluster Munitions Prohibition Act, 2009

The Cluster Munitions Prohibition Act 2009 has the stated purpose of implementing New Zealand's obligations under the Convention on Cluster Munitions. In this regard, the Act prohibits the use, development, or production of cluster munitions, as well as otherwise acquiring, possessing, retaining, stockpiling or transferring such weapons. Additionally, it is prohibited to assist, encourage or induce another person to engage in any of the above activities. The Act also prohibits any person to provide or invest funds "with the intention that the funds be used, or knowing that they are to be used, in the development or production of cluster munitions" (Section 10(2)).

Further, the Act prohibits members of the Armed Forces from expressly requesting the use of cluster munitions when (i) such member is engaged in operations, exercises, or other military activities with the armed forces of a State that is not a party to the Convention; and (ii) the choice of munitions used is within the exclusive control of the Armed Forces (Section 10(3)). However, a member of the Armed Forces does not commit a prohibited act merely by engaging, in the course of his or her duties, in operations, exercises, or other military activities with the armed forces of a State that is not a party to the Convention and that has the capability to engage in conduct prohibited by Section 10(1).

Any person committing an offence against Section 10(1), (2), or (3) is liable on conviction to imprisonment for a term not exceeding 7 years, or a fine not exceeding 500,000 NZD (256,000 euros), or both.

The offence must have been committed in the territory of New Zealand, or if abroad, by a New Zealand national, a person who is ordinarily resident in New Zealand but not the citizen of any State, a member of the New Zealand Armed Forces, or a body corporate or corporation sole incorporated in New Zealand (Section 9).

Philippines

Republic Act No. 9851, Philippine Act 2009 on Crimes against International Humanitarian Law, Genocide and Other Crimes against Humanity

The Philippine Act 2009 on Crimes against International Humanitarian Law, Genocide and Other Crimes against Humanity was enacted into law on 11 December 2009, but at time of printing had not entered into force. The Act incorporates into national legislation the international crimes of genocide, crimes

against humanity and war crimes as defined by the Rome Statute of the International Criminal Court. Additionally, it includes as war crimes the unjustifiable delay in repatriation of prisoners of war or other protected persons, as well as the launching of an attack against works or installations containing dangerous forces, both of which are not included as such in the international text. Notably, serious violations under the act include intentionally directing attacks against buildings, material, medical units and transport, and personnel using the red crystal on white background (the third distinctive emblem found in Additional Protocol III to the Geneva Conventions of 1949).

As for the category “Other serious violations of the laws and customs applicable in armed conflict”, the law includes acts that would be considered an offence in both international and non-international armed conflicts. Thus starvation as a method of war and attacks against works or installations containing dangerous forces are also criminalized when committed in non-international armed conflicts.

The Act provides for the criminal liability of superiors where they permit the commission of an offence or negligently fail to prevent it. In addition, superior orders shall not relieve the subordinate of his or her own criminal responsibility. Similarly, a Head of State, a member of parliament or any government official may not avail him or herself of immunities against prosecutorial action under the Act.

The Act provides for extra-territorial jurisdiction, provided that the suspect is present in the Philippines.

Spain

Amended Organic Law 6/1985 of the Judicial Power, 2009

On 15 October 2009, the Senate adopted an amendment to Article 23.4 of the Organic Law 6/1985 on the Judiciary, which conferred on Spanish courts the ability to exercise their jurisdiction over international crimes (notably violations of the Geneva Conventions and their First Additional Protocol) which are committed without any significant link to Spain or Spanish nationals. The amendment, which entered into force on 4 November 2009, restricts the Courts’ jurisdiction to cases in which the victims are of Spanish nationality, in which Spain has a “relevant connecting link”, or where the alleged perpetrator is present in Spain, and as long as “proceedings implying an effective investigation and prosecution have not begun in another competent country or in an International Court”. A definition of “effective” is not included in the law.

Ukraine

Law Amending Various Legislative Acts of the Ukraine (Law N 1675-VI), 2009

The Law Amending Various Legislative Acts of the Ukraine (Law N 1675-VI) entered into force on 22 October 2009. This law introduces changes to Ukraine’s

Criminal Code and the Law on the Red Cross and Red Crescent Emblems in Ukraine (Register of the Parliament of Ukraine, 1999, N 36, Art. 316). The aim of this law is to implement Additional Protocol III to the Geneva Conventions concerning the acceptance of an additional distinctive emblem, which was signed by Ukraine in June 2006. This law extends existing protections in Ukrainian law for the red cross and red crescent emblems to the new emblem, the red crystal.

United Kingdom of Great Britain

Geneva Conventions and United Nations Personnel (Protocols) Act 2009

The United Kingdom Geneva Conventions and United Nations Personnel (Protocols) Act 2009 received the Royal Assent on 2 July 2009, and provides the implementing legislation for Additional Protocol III to the 1949 Geneva Conventions. The law adds the red crystal or “third Protocol emblem” to the list of emblems, signs and signals protected under the Geneva Conventions Act 1957, and extends the grave breach of perfidy to include that emblem. The Act also amends the UN Personnel Act of 1997 to enable the UK to become a party to the 2005 Optional Protocol to the 1994 Convention on the Safety of United Nations and Associated Personnel.

B. National Committees on International Humanitarian Law

Mexico

In August 2009, the International Humanitarian Law Inter-ministerial Commission was created by presidential decree. The members of the Commission are representatives of the ministries of Foreign Affairs, Defence, Interior and the Navy. The Commission is chaired by a rotating Presidency among its members and the secretariat functions are attributed to the Ministry of Foreign Affairs. The Committee is the consultative and technical body to the Government on IHL matters and is in charge of dissemination and promotion of IHL. The Committee is also in charge of evaluating national law and preparing recommendations to national authorities regarding IHL implementation and dissemination.

Switzerland

On 16 December 2009, the national IHL Interdepartmental Committee was created in Switzerland. The members of the Committee are representatives of the Ministries of Foreign Affairs, Defence, Interior, Justice and Economy. The Ministry of Foreign Affairs is the chair of the Committee and acts as the Committee’s Secretariat.

The purpose of this Committee is the exchange of information and the co-ordination of activities related to IHL at national level, with the aim of ensuring

coherence in IHL implementation and dissemination. The Committee is competent to evaluate existing national law in light of the country's obligations under IHL, and to submit recommendations to ensure and promote IHL implementation and to encourage IHL dissemination. The Committee does not have any decision-making power.

C. Case law

Bosnia and Herzegovina

Prosecutor v. Zoran Maric, Court of Bosnia and Herzegovina, Section I for War Crimes, Case X-KR-05/96-3, 29 October 2009

On 29 October 2009, following the deliberation and acceptance of a Guilty Plea Agreement concluded between the accused and the State Prosecutor's Office, the Court of Bosnia and Herzegovina (Section I for War Crimes) delivered a first instance verdict finding Zoran Maric guilty of war crimes against civilians. He was sentenced to fifteen years' imprisonment.

Zoran Maric was accused of being a member of an organized armed group, the Army of Republika Srpska, which rounded up Bosnian civilians and killed them during the armed conflict in the territory of Jajce municipality between the Army of Republika Srpska and the Army of Bosnia and Herzegovina and HVO (Croat Defence Council).

As established by the Court, on 10 September 1992 the accused acted in violation of Article 3(1)(a) and (c), common to the four Geneva Conventions of 1949, and Article 147 (on grave breaches) of the Fourth Geneva Convention related to the protection of civilian persons. In terms of Bosnian penal law, Mr Maric's offences were found to fall under the criminal offence of War Crimes against Civilians as defined in Article 173(1)(c) of the Criminal Code – "killings, intentional infliction of severe physical or mental pain or suffering upon a person (torture, inhuman treatment)" – in conjunction with Articles 29¹ and 180 (1).²

1 Criminal Code of Bosnia and Herzegovina, Article 29 – Accomplices: "If several persons who, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offence, shall each be punished as prescribed for the criminal offence".

2 Criminal Code of Bosnia and Herzegovina, Article 180 – Individual Criminal Responsibility: "(1) A person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of a criminal offence referred to in Article 171 (Genocide), 172 (Crimes against Humanity), 173 (War Crimes against Civilians), 174 (War Crimes against the Wounded and Sick), 175 (War Crimes against Prisoners of War), 177 (Unlawful Killing or Wounding of the Enemy), 178 (Marauding the Killed and Wounded at the Battlefield) and 179 (Violating the Laws and Practices of Warfare) of this Code, shall be personally responsible for the criminal offence. The official position of

Although the 2003 Criminal Code was adopted after the commission of the crimes, the Court found that the applicability of the Code and its system of penalties to the case did not violate the principle of legality, because the crime of which the accused was found guilty constitutes a criminal offence under the “general principles of international law”. Resorting to this source of law is possible under Article 4(a) of the Law on Amendments to the Criminal Code of Bosnia and Herzegovina (and pursuant to Articles 3 and 4 of the Code), as well as under Article 7 of the European Convention on Human Rights. This position has been confirmed by the practice of the Court of Bosnia and Herzegovina so far,³ as well as the decision of the Bosnia and Herzegovina Constitutional Court in the case against Abduladhim Maktouf.⁴

Colombia

Gian Carlo Gutiérrez Suárez, Supreme Court, Segunda instancia de Justicia y Paz, Radicado No. 32.022, 21 September 2009

The Colombian Supreme Court’s Appeals Chamber overturned a decision of the Peace and Justice Chamber of Bogotá’s Superior Tribunal (*Sala de Justicia y Paz del Tribunal Superior de Bogotá*) on the confirmation of charges against Gian Carlo Gutiérrez Suárez. The Peace and Justice Chamber conducted a hearing on the crimes allegedly committed by Mr Gutiérrez Suárez, a former paramilitary, according to the proceedings established under the Justice and Peace Law (Law 975 of 2005). According to this law, former members of armed groups can benefit from reduced penalties for the crimes they have committed if they confess them to the Tribunal and collaborate with the justice system. The Court based its decision to reject the Chamber’s decision on charges, *inter alia* on the grounds that neither the Prosecutor nor the Chamber had taken the victim’s point of view into account to the proper extent.

The Court also questioned the Chamber’s decision to qualify the acts imputed to the accused only as war crimes and not also as crimes against humanity, which are provided for in Colombia’s legal framework. This issue allowed the Court to discuss requirements for war crimes in international law, as well as Colombian legislation and jurisprudence. Among other issues, the Court analysed: the existence of an armed conflict; the applicability of Article 3 common to the Geneva Conventions of 1949 as well as Additional Protocol II; and the requirement of the belligerent nexus to constitute a war crime. Finally, the Court also discussed the pertinence of truth commissions in dealing with large-scale violence.

any accused person, whether as Head of State or Government or as a responsible Government official person, shall not relieve such person of criminal responsibility nor mitigate punishment”.

3 First and Second instance verdict in the case of Dragoje Paunovic, No. X-KR-05/16, 26 May 2006.

4 Bosnia and Herzegovina Constitutional Court, *Prosecutor v. Abduladhim Maktouf*, Decision on admissibility and merits, Case No. AP 1785/06, 30 March 2007.

Kosovo

Prosecutor v. Gani Gashi, District Court of Pristina, Case P. No. P.23/08, 3 March 2009

This case was the first trial to be held under the auspices of the European Union Rule of Law Mission in Kosovo (EULEX). The District Court of Pristina is composed of a panel of three judges – two from the EULEX mission and one from Kosovo.

Mr Gani Gashi, a Kosovo Albanian national, was sentenced to 17 years of imprisonment by the District Court of Pristina after being found guilty of war crimes against the civilian population (in violation of the Socialist Federal Republic of Yugoslavia Criminal Code, Article 142,⁵ as read in conjunction with the Geneva Conventions of 1949 and Article 4 of Additional Protocol II).

According to the Court, Mr Gashi, in his capacity as soldier of the Kosovo Liberation Army (KLA), on 12 July 1998 wilfully murdered a civilian, attempted to murder another, and violated the bodily integrity and health of two others. The victims were all members of a single family. At the time of the event, Mr Gashi was in charge of guarding a checkpoint near Komoran/Komorane in central Kosovo, in order to stop the progression of the Serbian forces and to protect the civilian population.

The court confirmed the requirement under Article 146 of the Geneva Conventions to implement the Conventions into domestic law. As for the classification of certain acts as war crimes, the Court assumed as established and uncontested the existence of a non-international armed conflict in Kosovo between Serbian Forces and the KLA during the period material to the case. This was based particularly in findings made to this effect by the International Criminal Tribunal for the former Yugoslavia (ICTY) in *Prosecutor v. Limaj et al.* (November 2005) and *Haradinaj et al.* (April 2008), as well as by the Supreme Court of Kosovo in *Selim Krasniqi et al.* (April 2009).

5 Article 142 on war crimes against the civilian population reads: "Whoever in violation of rules of international law effective at the time of war, armed conflict or occupation, orders that civilian population be subject to killings, torture, inhuman treatment, biological experiments, immense suffering or violation of bodily integrity or health; dislocation or displacement or forcible conversion to another nationality or religion; forcible prostitution or rape; application of measures of intimidation and terror, taking hostages, imposing collective punishment, unlawful bringing in concentration camps and other illegal arrests and detention, deprivation of rights to fair and impartial trial; forcible service in the armed forces of enemy's army or in its intelligence service or administration; forcible labour, starvation of the population, property confiscation, pillaging, illegal and self-willed destruction and stealing on large scale of a property that is not justified by military needs, taking an illegal and disproportionate contribution or requisition, devaluation of domestic currency or the unlawful issuance of currency, or who commits one of the foregoing acts, shall be punished by imprisonment for not less than five years or by the death penalty".

United States of America

United States of America v. Steven Dale Green, *United States District Court, Western District of Kentucky, Paducah Division, Case 5:06-cr-00019-TBR, 4 September 2009*

On 4 September 2009, the United States District Court of Kentucky found a former member of the United States armed forces guilty of conspiracy to commit aggravated sexual abuse, premeditated murder, felony murder, aggravated sexual abuse, use of a firearm during a crime of violence and obstruction of justice. On 12 March 2006, in Mahmudiyah, Iraq, Mr Green and four other United States Army soldiers raped and killed a 14-year-old girl living close to a checkpoint under their guard, and killed her mother, father and younger sister. The soldiers then set fire to the house and the bodies in order to conceal the evidence.

The US District Court in Paducah, Kentucky, condemned Mr Green to five consecutive life sentences, without any possibility of release on parole.

BOOKS AND ARTICLES

Recent acquisitions of the Library and Research Service, ICRC

Arms – books

Borrie, John. *Unacceptable harm: a history of how the treaty to ban cluster munitions was won*. United Nations Institute for Disarmament Research, New York; Geneva: United Nations, 2009, 488 pp.

Clunan, Anne L., Lavoy, Peter R. and Martin Susan B. (eds). *Terrorism, war, or disease? Unraveling the use of biological weapons*. Stanford: Stanford Security Studies, 2008, 350 pp.

Davison, Neil. *Non-lethal weapons*. Basingstoke: Palgrave Macmillan, 2009, 304 pp. Geneva International Centre for Humanitarian Demining (GICHD). *A guide to cluster munitions*, 2nd edn, Geneva, June 2009, 140 pp.

GICHD. *Mine action and the implementation of CCW Protocol V on explosive remnants of war*. Geneva, July 2008, 96 pp.

Graduate Institute of International and Development Studies. *Small arms survey 2009: shadows of war*, Cambridge: Cambridge University Press, 2009, 344 pp.

Joyner, Daniel H. *International law and the proliferation of weapons of mass destruction*. Oxford: Oxford University Press, 2009, XXIV, 378 pp.

Krishnan, Armin. *Killer robots: legality and ethicality of autonomous weapons*. Burlington: Ashgate, 2009, 204 pp.

Arms – articles

Docherty, Bonnie. “Breaking new ground: the Convention on cluster munitions and the evolution of international humanitarian law”, *Human Rights Quarterly*, November 2009, Vol. 31, No. 4, pp. 934–963.

Koplow, David A. “ASAT-isfaction: customary international law and the regulation of anti-satellite weapons”, *Michigan Journal of International Law*, Summer 2009, Vol. 30, No. 4, pp. 1187–1272.

Biography – books

Barbey, Daniel (dir.) and Durand, Roger (dir.). *Gustave Ador: lettres à sa fille Germaine et à son gendre Frédéric Barbey: 1889–1928*. Fondation Gustave Ador, Geneva: Slatkine, 2009, 3 vols (547 pp., 1167 pp., 113 pp.).

Giampiccoli, Franco. *Henry Dunant: Gründer des Roten Kreuzes*. mit Geleitworten von Massimo Barra und Rudolf Seiters, aus dem Italienischen übersetzung von Elena Ascheri-Dechering, Neukirchen-Vluyn: AUSAAT, 2009, 255 pp.

Jaeger, Gérard A. *Henry Dunant: l'homme qui inventa le droit humanitaire: biographie*. Préface de Jean-François Mattei, Paris: L'Archipel, 2009, 305 pp.

von Seltmann, Lothar. *Henry Dunant: Visionär und Vater des Roten Kreuzes: eine Romanbiographie*. Holzgerlingen: SCM Hänssler, 2009, 277 pp.

Children – books

Eichstaedt, Peter. *First kill your family: child soldiers of Uganda and the Lord's resistance army*. Chicago: Lawrence Hill Books, 2009, 300 pp.

Nosworthy, David (ed.), *Seen, but not heard: placing children and youth on the security governance agenda*, Zurich; Berlin: LIT Verlag, 2009, 314 pp.

Children – articles

Billet, Camille. "Kindersoldaten aus völkerrechtlicher Perspektive – Teil I und II", *Menschen Rechts Magazin*, August 2007, pp. 173–185 and pp. 305–315.

Grossman, Nienke. "Rehabilitation or revenge: prosecuting child soldiers for human rights violations", *Georgetown Journal of International Law*, Vol. 38, No. 2, Winter 2007, pp. 323–360.

Civilians – articles

Kosmopoulos, Georgios. "Collective punishments under international humanitarian law: an analysis of the 2006 war in Lebanon", *Pace Diritti Umani*, Vol. 5, No. 3, September–December 2008, pp. 95–120.

Nasu, Hitoshi. "Operationalizing the 'responsibility to protect' and conflict prevention: dilemmas of civilian protection in armed conflict", *Journal of Conflict and Security Law*, Vol. 14, No. 2, Summer 2009, pp. 209–241.

Conflict, violence and security – books

Carrick, Don, Connelly, James and Robinson, Paul (eds). *Ethics education for irregular warfare*. Military and defence ethics, Farnham, Burlington: Ashgate, 2009, 165 pp.

Chaliand, Gérard. *Anthologie mondiale de la stratégie: des origines au nucléaire*. Préface de Lucien Poirier, postface de Pierre M. Gallois. Paris: R. Laffont, 2009, 1527 pp.

Holmqvist-Jonsäter, Caroline and Coker, Christopher (eds). *The character of war in the 21st century*. LSE International Studies, London, New York: Routledge, 2010, 180 pp.

Karatzogianni, Athina (ed.). *Cyber conflict and global politics*. Contemporary Security Studies, London; New York: Routledge, 2009, 246 pp.

Vasquez, John A. *The war puzzle revisited*. Cambridge: Cambridge University Press, 2009, 477 pp.

Walter, Barbara F. *Reputation and civil war: why separatist conflicts are so violent*. Cambridge: Cambridge University Press, 2009, 255 pp.

Conflict, violence and security – articles

Melander, Erik, Öberg, Magnus and Hall, Jonathan. “Are ‘new wars’ more atrocious? Battle severity, civilians killed and forced migration before and after the end of the cold war”, *European Journal of International Relations*, Vol. 15, No. 3, 2009, pp. 505–536.

Newman, Edward. “Conflict research and the ‘decline’ of civil war”, *Civil Wars*, Vol. 11, No. 3, September 2009, pp. 255–278.

Detention – books

Denbeaux, Mark P. and Hafetz, Jonathan (eds), with Grace A. Brown *et al.* *The Guantánamo lawyers: inside a prison outside the law*. New York, London: New York University Press, 2009, 420 pp.

Droege, Cordula, Spoerri, Philip *et al.* *Le transfert des personnes en situation de conflits armés: actes du colloque de Bruges, 16–17 octobre 2008= Transfers of persons in situations of armed conflict: proceedings of the Bruges Colloquium, 16–17 October 2008*, CICR, Collège d’Europe, Collegium: Nouvelles du Collège d’Europe, No. 39, automne 2009, 134 pp.

Finley, Laura L. *The torture and prisoner abuse debate*. Historical guides to controversial issues in America, Wesport, London: Greenwood, 2008, 187 pp.

Hardy, Colleen E. *The detention of unlawful enemy combatants during the war on terror*. Law and society: recent scholarship, El Paso: LFB Scholarly Publishing LLC, 2009, 240 pp.

Rieucan, Gabriel. *Gabriel Rieucan, PG no. 46 295: 1936–1945: 9 années de guerre et de captivité: 102 mois passés sous les ordres des armées française, allemande et russe: récit et lettres d’un paysan aveyronnais*. S.l.: s.n., juillet 2009, 112 pp.

Rodley, Sir Nigel, with Matt Pollard. *The treatment of prisoners under international law*. 3rd edn. Oxford, New York: Oxford University Press, 2009, 697 pp.

van Kalmthout, Antonius M., Hofstee-van der Meulen, F.B.A.M. and Dünkler, F. (eds). *Foreigners in European prisons*. Nijmegen: Wolf Legal, 2007, 2 vol, 993 pp.

Detention – articles

Marsh, J. Jeremy. “Rule 99 of the customary international humanitarian law study and the relationship between the law of armed conflict and international human rights law”, *The Army Lawyer*, May 2009, pp. 18–22.

Mastor, Wanda. “La prison de Guantanamo: réflexions juridiques sur une zone de ‘non-droit’”, *Annuaire Français de Droit International*, 2008, pp. 23–44.

Murphy, Ray and El Zeidy, Mohamed M. “Prisoners of war: a comparative study of the principles of international humanitarian law and the islamic law of war”, *International Criminal Law Review*, Vol. 9, No. 4, 2009, pp. 623–649.

Waxman, Matthew C., Ojeda, Stephane and Goodman, Ryan. “The war in Afghanistan: a legal analysis: part IV: detention operations”, *International Law Studies*, Vol. 85, 2009, pp. 343–383.

Economy – books

Clare, Bertrand, rédacteur en chef, *Atlaséco 2010*, Paris: MédiaObs, 2009, 266 pp.
Institut français des relations internationales. *Ramses: rapport annuel mondial sur le système économique et les stratégies: crise mondiale et gouvernance globale*, sous la direction de Thierry de Montbrial et Philippe Moreau Defarges, Paris: Dunod, 2009, 335 pp.

Kan, Paul Rexton. *Drugs and contemporary warfare*, foreword by Moisés Naim. Washington: Potomac Books, 2009, 193 pp.

Environment – books

Lee, James R. *Climate change and armed conflict: hot and cold wars*. Routledge studies in peace and conflict resolution, London, New York: Routledge, 2009, 180 pp.

United Nations Environmental Programme. *Protecting the environment during armed conflict: an inventory and analysis of international law*. Nairobi: United Nations Environment Programme, November 2009, 83 pp.

Environment – articles

van der Vyver, Johan D. “The environment: state sovereignty, human rights, and armed conflict”, *Emory International Law Review*, Vol. 23, No. 1, 2009, pp. 85–112.

Geopolitics – books

Bouveret, Patrice *et al.* *Qui arme Israël et le Hamas?: la paix pass(é)e par les armes?* co-ord. Danièle Fayer-Stern et Marc Schmitz, Bruxelles: GRIP, Les livres du GRIP, No. 295-296, 2009, 133 pp.

- Braeckman, Colette. *Les nouveaux prédateurs: politique des puissances en Afrique centrale*, 2e édition revue et augm. Bruxelles: Aden, 2009, 394 pp.
- De Guttry, Andrea, Post, Harry H.G. and Venturini, Gabriella (eds). *The 1998–2000 war between Eritrea and Ethiopia: an international legal perspective*. The Hague: Asser, 2009, 526 pp.
- Littell, Jonathan. *Tchéchénie, an III*, Folio Documents. Paris: Gallimard, 2009, 140 pp.
- Lussac, Samuel. *Géopolitique du Caucase: au carrefour énergétique de l'Europe de l'ouest*, préface de Christophe-Alexandre Paillard, Paris, Technip, 2010, 186 pp.
- Lütgenau, Stefan August (ed.). *Human rights and a Middle East peace process: analyses and case studies from a new perspective*. Innsbruck: Studien, 2007, 286 pp.
- Maher, Joanne (ed.). *The Europa world year book 2009*, 50th edn. London: Routledge, 2009, 2 vol, 5106 pp.
- Marsden, Peter. *Afghanistan: aid, armies and empires*. London, New York: I.B. Tauris, 2009, 234 pp.
- Pankhurst, Alula and Assefa, Getachew (eds). *Grass-roots justice in Ethiopia: the contribution of customary dispute resolution*. Etudes éthiopiennes, Addis Ababa: Centre français d'études éthiopiennes, 2008, 301 pp.
- Starke, Linda (ed.). *State of the world 2009: into a warming world*. London: W.W. Norton, 2009, 262 pp.
- Stevens, Georgina. *Filling the vacuum: ensuring protection and legal remedies for minorities in Kosovo*. London: Minority Rights Group International, 2009, 40 pp.

Geopolitics – articles

- Le Billon, Philippe and Levin, Estelle. "Building peace with conflict diamonds? Merging security and development in Sierra Leone", *Development and Change*, Vol. 40, No. 4, July 2009, pp. 693–715.

Health/Medicine – books

- Brauman, Rony. *La médecine humanitaire, Que sais-je?* Paris: Presses Universitaires de France, 2009, 127 pp.
- de Waal, Alex et al. *HIV/AIDS, security and conflict: new realities, new responses*. AIDS, security and conflict initiative, Brooklyn: Social Science Research Council; The Hague: Netherlands institute of international relations Clingendael, 2009, 83 pp.
- Innovations médicales en situations humanitaires: le travail de Médecins Sans Frontières*, sous la direction de Jean-Hervé Bradol et Claudine Vidal. Paris: L'Harmattan, 2009, 193 pp.

History – books

Bloxham, Donald. *The final solution: a genocide*. Oxford histories, Oxford: Oxford University Press, 2009, 410 pp.

Brooks, Richard. *Solferino 1859: the battle that won Italy its independence*, illustrated by Peter Dennis. Campaign, Oxford, New York: Osprey, 2009, 96 pp.

Human rights – books

Buyse, Antoine C. *Post-conflict housing restitution: the European human rights perspective, with a case study on Bosnia and Herzegovina*. Antwerpen, Oxford: Intersentia, School of human rights research series, vol. 25, 2008, 439 pp.

Ferstman, Carla, Goetz, Mariana and Stephens, Alan (eds). *Reparations for victims of genocide, war crimes and crimes against humanity: systems in place and systems in the making*. Leiden, Boston: M. Nijhoff, 2009, 575 pp.

Forsythe, David P. (ed. in chief). *Encyclopedia of human rights*. Oxford: Oxford University Press, 2009, 5 vol.

Human Rights Watch world report 2009: events of 2008. New York: Human Rights Watch, 2009, 564 pp.

Möller, Jakob Th. and de Zayas, Alfred. *United Nations human rights committee case law 1977–2008: a handbook*. Kehl am Rhein: N.P. Engel, 2009, 603 pp.

Shawki, Noha and Cox, Michaelene (eds). *Negotiating sovereignty and human rights: actors and issues in contemporary human rights politics*. Surrey, Burlington: Ashgate, 2009, 238 pp.

Sriram, Chandra Lekha, Martin-Ortega, Olga and Herman, Johanna. *War, conflict and human rights: theory and practice*. New York: Routledge, 2010, 252 pp.

Human rights – articles

Aurey, Xavier. “The Universal Declaration of Human Rights and armed conflicts: from fragmentation to complexity”, *Anuário brasileiro de direito internacional*= *Brazilian Yearbook of International Law*= *Annuaire brésilien de droit international*, Vol. 2, 2009, pp. 48–67.

Peters, Ann. “Humanity as the alpha and omega of sovereignty”, *European Journal of International Law*, Vol. 20, No. 3, August 2009, pp. 513–573.

Humanitarian aid – books

Development Assistance Research Associates. *The humanitarian response index 2009: whose crisis? Clarifying donor's priorities*. Basingstoke, New York: Palgrave Macmillan, 2010, 246 pp.

Harvey, Paul. *Towards good humanitarian government: the role of the affected state in disaster response*. HPG report, London: Overseas Development Institute, September 2009, 50 pp.

Humanitarian accountability partnership international. *The 2008 humanitarian accountability report*. Genève: Humanitarian accountability partnership international, 2009, 198 pp.

Pantuliano, Sara (ed.). *Uncharted territory: land, conflict and humanitarian action*. Rugby (UK): Practical Action, 2009, 224 pp.

Stoddard, Abby, Harmer, Adele and DiDomenico, Victoria. *Providing aid in insecure environments: 2009 update: trends in violence against aid workers and the operational response*. HPG policy brief, London: Overseas Development Institute, April 2009, 12 pp.

Humanitarian aid – articles

McKenzie, Kevin. “The humanitarian imperative under fire”, *Journal of Language and Politics*, Vol. 8, No. 3, 2009, pp. 333–358.

Pattison, James. “Humanitarian intervention, the responsibility to protect and jus in bello”, *Global Responsibility to Protect*, Vol. 1, No. 3, 2009, pp. 364–391.

Rubenstein, Jennifer. “Humanitarian NGOs’ duties of justice”, *Journal of Social Philosophy*, Vol. 40, No. 4, Winter 2009, pp. 524–541.

Sadouni, Samadia. “Humanisme spirituel et ONG islamiques en Afrique du Sud”, *Afrique contemporaine*, No. 231, 2009, pp. 157–170.

Stephenson, Max and Schnitzer, Marcy. “Exploring the challenges and prospects for polycentricity in international humanitarian relief”, *American Behavioral Scientist*, Vol. 52, No. 6, February 2009, pp. 919–932.

ICRC/International Movement of the Red Cross and Red Crescent – books

Perret, Françoise and Bugnion, François. *De Budapest à Saigon: histoire du Comité international de la Croix-Rouge 1956–1965*. CICR, Genève: Georg, 2009, 628 pp.

ICRC/International Movement of the Red Cross and Red Crescent – articles

Palmieri, Daniel. “Une neutralité sous influence? le CICR, Franco et les victimes”, *Revue Suisse d’Histoire*, Vol. 59, No. 3, 2009, pp. 279–297.

Rieffer-Flanagan, Barbara Ann. “Is neutral humanitarianism dead? Red Cross neutrality: walking the tightrope of neutral humanitarianism”, *Human Rights Quarterly*, Vol. 31, No. 4, November 2009, pp. 888–915.

International criminal law – books

Boas, Gideon, Bischoff, James L. and Reid, Natalie L. *Elements of crimes under international law*. Cambridge: Cambridge University Press, 2008, 444 pp.

Gallant, Kenneth S. *The principle of legality in international and comparative criminal law*. Cambridge: Cambridge University Press, 2009, Cambridge studies in international and comparative law, 603 pp.

Manacorda, Stefano and Nieto, Adán (eds). *Criminal law between war and peace: justice and co-operation in criminal matters in international military interventions: proceedings of the XVth international congress on social defence*= *El derecho penal entre la guerra y la paz: justicia y cooperación penal en las intervenciones militares internacionales: actas del XV congreso internacional de defensa social*. Co-ordination: Manuel Maroto, Daniel Scheunemann, Cuenca: Ediciones de la Universidad de Castilla-La Mancha, 2009, 814 pp.

Peterson, Ines. *Die Strafbarkeit des Einsatzes von biologischen, chemischen und nuklearen Waffen als Kriegsverbrechen nach dem IStGH-Statut*. Berliner juristische Universitätschriften, Stafrecht – Berlin: Berliner Wissenschafts-Verlag, No. 36, 2009, 403 pp.

Stahn, Carsten and Sluiter, Göran (eds). *The emerging practice of the International criminal court*, foreword by Adriaan Bos. Leiden, Boston: Martinus Nijhoff, Legal aspects of international organization; vol. 48, 2009, 770 pp.

van der Wilt, Harmen and Nollkaemper, André (eds), Dolman, Menno and Kleffner, Jann (assistant eds). *System criminality in international law*. Cambridge, New York: Cambridge University Press, 2009, 364 pp.

International criminal law – articles

Cryer, Robert. “Witness evidence before international criminal tribunals”, *The Law and Practice of International Courts and Tribunals*, Vol. 2, No. 3, 2003, pp. 411–439.

Dungel, Joakim and Sautenet, Vincent. “Recent clarifications of superior responsibility by international criminal tribunals”, *The Global Community Yearbook of International Law and Jurisprudence*, Vol. I, 2008, pp. 257–265.

Elewa Badar, Mohamed *et al.* “Islamic criminal justice in the 21st century”, *International Criminal Law Review*, Vol. 9, No. 4, 2009, pp. 591–731.

Knoops, Geert-Jan Alexander. “The duality of the proportionality principle within asymmetric warfare and ensuing superior criminal responsibilities”, *International Criminal Law Review*, Vol. 9, No. 3, 2009, pp. 501–529.

Libby, Sean. “Deffective [effective] control: problems arising from the application of non-military command responsibility by the international criminal tribunal for Rwanda”, *Emory International Law Review*, Vol. 23, No. 1, 2009, pp. 201–230.

Pocar, Fausto. “Violence on civilians and prisoners of war in the jurisprudence of international criminal tribunals”, *Anuário brasileiro de direito internacional*= *Brazilian Yearbook of International Law*= *Annuaire brésilien de droit international*, Vol. 2, 2009, pp. 11–30.

Velásquez-Ruiz, Marco Alberto. “The principles of distinction and proportionality under the framework of international criminal responsibility: content and issues” = “Los principios de distinción y proporcionalidad en el marco de la responsabilidad penal internacional individual: contenido y problemática”, *International Law Revista Colombiana de Derecho Internacional*, no. 14, Enero–Junio de 2009, pp. 15–42.

International humanitarian law – Generalities – books

Civil society initiatives for international humanitarian law (CSI-IHL). *Primer on international humanitarian law in the Philippine context*. Quezon City (Philippines): Civil society initiatives for international humanitarian law, July 2009, 48 pp.

Saribeyoglu, Meltem *et al.* (eds). *Uluslararası insancil hukukta örf ve âdet yuvarlak masa toplantısı raporu* = *Report of customary international humanitarian law round table meeting*. Istanbul: Marmara University, 2008, 79 pp.

Swiss Federal Department of Foreign Affairs. *ABC of international humanitarian law*. Berne: Swiss Federal Department of Foreign Affairs, 2009, 44 pp.

International humanitarian law – Generalities – articles

Abou-El-Wafa, Ahmed. “Current value of customary international humanitarian law”, *Revue égyptienne de droit international*, Vol. 63, 2007, pp. 1–42.

Benvenisti, Eyal. “Rethinking the divide between jus ad bellum and jus in bello in warfare against non[-]state actors”, *Yale Journal of International Law*, Vol. 34, No. 2, Summer 2009, pp. 541–548.

Empell, Hans-Michael. “Die Martens’sche Klausel: grundlegende Norm des humanitären Völkerrechts oder Vorschrift ohne Wert?”, *Humanitäres Völkerrecht: Informationsschriften*, Vol. 22, No. 3, 2009, pp. 145–153.

Fleck, Dieter. “Die IKRK-Gewohnheitsrechtsstudie: polarisierend oder konsensbildend?”, *Humanitäres Völkerrecht: Informationsschriften*, Vol. 22, No. 3, 2009, pp. 120–124.

Gavshon, Daniela. “The applicability of IHL in mixed situations of disaster and conflict”, *Journal of Conflict and Security Law*, Vol. 14, No. 2, Summer 2009, pp. 243–263.

Hampson, Françoise J. and Pomper, Stephen. “The war in Afghanistan: a legal analysis: part VI: human rights issues”, *International Law Studies*, Vol. 85, 2009, pp. 485–539.

Henckaerts, Jean-Marie. “The importance of customary international humanitarian law today”, *Humanitäres Völkerrecht: Informationsschriften*, Vol. 22, No. 3, 2009, pp. 125–130.

Müller, Iris. “Follow-up der IKRK-Gewohnheitsrechtsstudie”, *Humanitäres Völkerrecht: Informationsschriften*, Vol. 22, No. 3, 2009, pp. 131–136.

Reeves, Shane. "The expansive definition of "protected persons" in war crime jurisprudence', *The Army Lawyer*, May 2009, pp. 23–28.

International humanitarian law – Conduct of hostilities – articles

Beard, Jack M. "Law and war in the virtual era", *American Journal of International Law*, Vol. 103, No. 3, July 2009, pp. 409–445.

Blank, Laurie and Guiora, Amos. "Teaching an old dog new tricks: operationalizing the law of armed conflict in new warfare", *Harvard National Security Journal*, Vol. 1, 2010.

Bottoms, Jennifer B. "When close doesn't count: an analysis of Israel's jus ad bellum and jus in bello in the 2006 Israel–Lebanon war", *The Army Lawyer*, April 2009, pp. 23–54.

Cohen, Amichai. "The principle of proportionality in the context of operation Cast Lead: institutional perspectives", *Rutgers Law Record*, Vol. 35, Spring 2009, pp. 23–38.

Garraway, Charles *et al.* "The war in Afghanistan: a legal analysis: part III: the conduct of hostilities", *International Law Studies*, Vol. 85, 2009, pp. 157–339.

Melson, David A. "Targeting war-sustaining capabilities at sea: compatibility with Additional Protocol I", *The Army Lawyer*, July 2009, pp. 44–54.

Salahi, Reem. "Israel's war crimes: a first hand account of Israel's attacks on Palestinian civilians and civilian infrastructure", *Rutgers Law Record*, Vol. 36, Fall 2009, pp. 201–223.

Sperotto, Federico. "Counter-insurgency, human rights, and the law of armed conflict", *Human Rights Brief*, Vol. 17, issue 1, Fall 2009, pp. 19–23.

International humanitarian law –Implementation – books

Report by Frida Castillo, *Playing by the rules: applying international humanitarian law to video and computer games*. TRIAL, Pro Juventute. Geneva: TRIAL; Zürich: Pro Juventute, October 2009, 46 pp.

International humanitarian law – Implementation – articles

Meyer, Richard V. "Following historical precedent: an argument for the continued use of military professionals as triers of fact in some humanitarian law tribunals", *Journal of International Criminal Justice*, Vol. 7, No. 1, March 2009, pp. 43–61.

Stewart, James G. (ed.), "The grave breaches regime in the Geneva Conventions: a reassessment sixty years on", *Journal of International Criminal Justice*, Vol. 7, No. 4, September 2009, pp. 653–877.

Tenefrancia, Roselle C. "A breed of its own: characterizing the CARHRIHL as a legal document", *Ateneo Law Journal*, Vol. 54, 2009, pp. 149–163.

Veuthey, Michel. “Le rôle des acteurs non étatiques dans le respect du droit international humanitaire”, *Annuaire Français de Relations Internationales*, Vol. 10, 2009, pp. 993–1017.

International humanitarian law – Law of occupation – articles

DeFalco, Randle C. “The right to food in Gaza: Israel’s obligations under international law”, *Rutgers Law Record*, Vol. 35, Spring 2009, pp. 11–22.

International humanitarian law – Type of actors – articles

Bogar, Thomas J. “Unlawful combatant or innocent civilian? A call to change the current means for determining status of prisoners in the global war on terror”, *Florida Journal of International Law*, Vol. 21, No. 1, April 2009, pp. 29–91.

Bosch, Shannon. “Private security contractors and state responsibility: are states exempt from responsibility for violations of humanitarian law perpetrated by private security contractors?”, *The Comparative and International Law Journal of Southern Africa*, Vol. 41, No. 3, November 2008, pp. 353–382.

Chapman, Peter F. “Ensuring respect: United Nations compliance with international humanitarian law”, *Human Rights Brief*, Vol. 17, Issue 1, Fall 2009, pp. 2–11.

Eliav Liebllich, “The status of mercenaries in international armed conflict as a case of politicization of international humanitarian law”, *Bucerius Law Journal*, No. 3, December 2009, pp. 115–123.

Higgins, Noelle. “The regulation of armed non-state actors: promoting the application of the laws of war to conflicts involving national liberation movements”, *Human Rights Brief*, Vol. 17, Issue 1, Fall 2009, pp. 12–18.

Linares, Ángeles Cano. “El derecho internacional humanitario frente al uso de la fuerza como actividad empresarial: El fin de un monopolio?”, *Anuario Español de Derecho Internacional*, Vol. 19, 2008, pp. 47–77.

Spies, Sylvia Charlotte. “Berücksichtigung des humanitären Völkerrechts in Einsätzen ausserhalb bewaffneter Konflikte”, *Humanitäres Völkerrecht: Informationsschriften*, Vol. 22, No. 3, 2009, pp. 137–144.

Tuzmukhamedov, Bakhtiyar. “International humanitarian law and non-state actors: the Russian perspective”, *Proceedings of the 102nd Annual Meeting [of the American Society of International Law]*, 2008, pp. 441–444.

International humanitarian law – Type of conflict – books

Trascasas, Milena Costas. *Violencia interna y protección de la persona: una laguna jurídica del derecho internacional*. Valencia: Tirant lo Blanch: Cruz Roja Española, 2008, 606 pp.

International humanitarian law – Type of conflict – articles

Gak, Natali. “The distinction between levée en masse and wars of national liberation”, *Slovenian Law Review*, Vol. 5, Issue 1/2, 2008, pp. 115–129.

Gross, Michael L. “Asymmetric war, symmetrical intentions: killing civilians in modern armed conflict”, *Global Crime*, Vol. 10, No. 4, November 2009, pp. 320–336.

Kastenberg, Joshua E. “Non-intervention and neutrality in cyberspace: an emerging principle in the national practice of international law”, *The Air Force Law Review*, Vol. 64, 2009, pp. 43–64.

Schaap, Arie J. “Cyber warfare operations: development and use under international law”, *The Air Force Law Review*, Vol. 64, 2009, pp. 121–173.

Smith, Colin. “Special agreements to apply the Geneva Conventions in internal armed conflicts: the lessons of Darfur”, *The Irish Yearbook of International Law* = *Bliainiris éireannach an dlí idirnáisiúnta*, 2009, pp. 91–101.

Stevens, Sharon R. “Internet war crimes tribunals and security in an interconnected world”, *Transnational Law and Contemporary Problems*, Vol. 18, Issue 3, Fall 2009, pp. 657–720.

Todd, Graham H. “Armed attack in cyberspace: deterring asymmetric warfare with an asymmetric definition”, *The Air Force Law Review*, Vol. 64, 2009, pp. 65–102.

International organization/NGO/United Nations – books

Contestataires, contestées ... quel avenir pour les ONG dans la nouvelle gouvernance mondiale? = *Gatecrashers, controversial organisations, what future for NGOs in the new global governance?*, sous la direction de Handicap International = under the direction of Handicap International, Enjeux stratégiques. Paris: Dalloz: IRIS, 2008, 488 pp.

United Nations handbook: an annual guide for those working with and within the United Nations. Wellington: New Zealand Ministry of Foreign Affairs and Trade, 2009, 412 pp.

Media – books

Tekwani, Shyam (ed.). *Media and conflict reporting in Asia*. AMIC Asian communication series, Singapore: Asian Media Information and Communication Centre, 2008, 203 pp.

Media – articles

D’Aboville, Benoît. “Médiatisation des opérations de paix et respect du droit international humanitaire?”, *Annuaire Français de Relations Internationales*, 2009, pp. 1027–1036.

Lisosky, Joanne M. and Henrichsen, Jennifer. "Don't shoot the messenger: prospects for protecting journalists in conflict situations", *Media, War and Conflict*, Vol. 2, No. 2, 2009, pp. 129–148.

Moore, Douglas W. "Twenty-first century embedded journalist: lawful targets?", *The Army Lawyer*, July 2009, pp. 1–32.

Saul, Ben. "Prosecuting war crimes at Balibo under Australian law: the killing of five journalists in East Timor by Indonesia", *The Sydney Law Review*, Vol. 31, No. 1, 2009, pp. 83–120.

Peace – books

Arnold, Roberta (ed.). *Law enforcement within the framework of peace support operations*. International and comparative criminal law series, Leiden: M. Nijhoff, 2008, 442 pp.

Chetail, Vincent (ed.). *Post-conflict peacebuilding: a lexicon*, Oxford: Oxford University Press, 2009, 387 pp.

Peace – articles

Lidén, Kristoffer, MacGinty, Roger and Richmond, Oliver P. (ed.), "Liberal peacebuilding reconstructed", *International Peacekeeping*, Vol. 16, No. 5, November 2009, pp. 585–734.

Protection of cultural property – books

Toman, Jiri. *Cultural property in war: improvement in protection: commentary on the 1999 second Protocol to the Hague Convention of 1954 for the protection of cultural property in the event of armed conflict*. World heritage series, Paris: UNESCO, 2009, 892 pp.

Protection of cultural property – articles

Gerstenblith, Patty. "Protecting cultural heritage in armed conflict: looking back, looking forward", *Cardozo Public Law, Policy and Ethics Journal*, Vol. 7, No. 3, Summer 2009, pp. 677–708.

Psychology – books

Fassin, Didier and Rechtman, Richard. *The empire of trauma: an inquiry into the condition of victim hood*. translated by Rachel Gomme. Princeton, Oxford: Princeton University Press, 2009, 305 pp.

Sagot, Béatrice. *Des portes de l'enfer tchéchène à l'errance: une victime du syndrome de stress post-traumatique témoigne*. Paris: L'Harmattan, 2009, 123 pp.

Public international law – books

Bianchi, Andrea (ed.). *Non-state actors and international law*. The library of essays in international law, Surrey, Burlington: Ashgate, 2009, 604 pp.

Green, James A. *The International Court of Justice and self-defence in international law*. Oxford, Portland: Hart Publishing, Studies in international law, Vol. 25, 2009, 229 pp.

Mancini, Marina. *Stato di guerra e conflitto armato nel diritto internazionale*. Studi di diritto internazionale, Torino: G. Giappichelli, 2009, 336 pp.

Public international law – articles

Oesterdahl, Inger and van Zadel, Esther. “What will jus post bellum mean? Of new wine and old bottles”, *Journal of Conflict and Security Law*, Vol. 14, No. 2, Summer 2009, pp. 175–207.

Refugees, displaced persons – books

Agier, Michel. *Gérer les indésirables: des camps de réfugiés au gouvernement humanitaire*. Bibliothèque des savoirs, Paris: Flammarion, 2008, 349 pp.

Hurwitz, Agnès. *The collective responsibility of states to protect refugees*. Oxford monographs in international law, Oxford: Oxford University Press, 2009, 350 pp.

Refugees, displaced persons – articles

Cohen, Roberta and Deng, Francis M. “Mass displacement caused by conflicts and one-sided violence: national and international responses”, *SIPRI Yearbook: Armaments, Disarmament and International Security*, 2009, pp. 15–38.

Religion – books

Esposito, John L., Voll, John O. and Bakar, Osman (eds). *Asian Islam in the 21st century*. Oxford: Oxford University Press, 2008, 306 pp.

Hogan, Linda and Lehrke, Dylan Lee (eds). *Religion and the politics of peace and conflict*. Princeton theological monograph series, Eugene, Or: Pickwick, 2009, 240 pp.

Kelsay, John. *Arguing the just war in Islam*. Cambridge, London: Harvard University Press, 2007, 263 pp.

Miles, William F.S. *Political Islam in West Africa: state–society relations transformed*. Boulder, London: Lynne Rienner, 2007, 221 pp.

Sachedina, Abdulaziz. *Islam and the challenge of human rights*. Oxford: Oxford University Press, 2009, 248 pp.

Terrorism – books

Baud, Jacques. *Encyclopédie des terrorismes et violences organisées*. Renseignement histoire et géopolitique – Etudes, Paris: Lavauzelle, 2009, 1278 pp.

Heisbourg, François. *Après Al Qaida: la nouvelle génération du terrorisme*. Parti pris, Paris: Stock, 2009, 192 pp.

Torture – books

Pyle, Christopher H. *Getting away with torture: secret government, war crimes, and the rule of law*. Washington: Potomac Books, 2009, 339 pp.

Wisnewski, J. Jeremy and Emerick, R.D. *The ethics of torture*. London, New York: Continuum, 2009, 164 pp.