# USING INTERNATIONAL HUMANITARIAN LAW TO PREVENT TACTICAL SEXUAL VIOLENCE IN CONFLICT: A CRITICAL ANALYSIS OF THE *PREVENTING SEXUAL VIOLENCE IN CONFLICT INITIATIVE* AND THE ENDING IMPUNITY APPROACH

by

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## Abstract

From the Geneva Conventions to the war crimes tribunals of the 1990s, the use of sexual violence as a military tactic has been recognised as a war crime, and one for which high-ranking political and military leaders can be prosecuted. Despite these significant developments, international efforts have failed to live up to expectations. This thesis evaluates one part of this international campaign, the United Kingdom's *Preventing Sexual Violence in Conflict Initiative* (PSVI). I evaluate the PSVI policy and programs to evaluate its impact on the problem of tactical sexual violence in conflict and find it wanting.

I analyse the PSVI from 2012-2017, assessing the impact and effectiveness of policy and programs intended to prevent the grave breach war crime of rape and sexual violence in conflict, with particular attention to the use of sexual violence as a tactical weapon of war. The PSVI has received minimal academic and scholarly attention; yet when analysed carefully the PSVI acts as a microcosm for the international society's approach to preventing tactical sexual violence in conflict. Using feminist social constructivist theory and applying critical discourse analysis as a methodological tool, I demonstrate how the PSVI produced primarily legal-based solutions and relied only on a narrow legal framing of sexual violence in conflict, focusing upon international prosecutions and convictions. The PSVI programs and policy as the road to achieve deterrence and an end the culture of impunity, fail to address the underlying causes of tactical sexual violence. Nor do they consider gender, which must be at the centre of any approaches. First, I examined the case of

tactical rape and sexual violence in Bosnia which impelled international attention and subsequent international action, an international court and subsequently prosecution. I set out the elements that produced and characterised the strategy of tactical rape and sexual violence and genocidal rape to enable investigation of other instances in conflict. Then I turn to the PSVI work in Burma, with the crisis of the Rohingya as a case study. Burma, as a former British colony, has long been identified as a priority focus in UK foreign policy, yet in relation to the situation of the Rohingya minority which has been in the forefront of international attention since 2012, the policy impact of PSVI work shows little beyond nominal success.

Attempting to end impunity through prosecution was a valuable goal and was a notable first step. My research, however, reveals a framing that is too narrow to lead to the long-term change in attitudes, gender roles and gender norms –for both men and women–needed in conflict areas that are driven by ethnonationalism. Nor do the results of prosecution of tactical sexual violence in international courts provide sufficient deterrence to end the practice without other programmatic support. If we are to ameliorate the tactical use of sexual violence, we must focus on root causes and upon ways to alter the gender and cultural norms that make it effective.

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# ACRONYMS:

BiH – Bosnia and Hercegovina

CRSV – Conflict-Related Sexual Violence

DRC – Democratic Republic of Congo

FCO – Foreign and Commonwealth Office – GOV.UK

G8/7 – Group of Eight/Seven

GBV – Gender-Based Violence

HRD – Human Rights Defender

HRDs – Human Rights Defenders

ICC – International Criminal Court

ICJ – International Court for Justice

ICRC – International Committee of the Red Cross

ICTR – International Criminal Tribunal for Rwanda

ICTY – International Criminal Tribunal for the former Yugoslavia

IFOR. Implementation Force – Bosnia 1995-1996

IHL – International Humanitarian Law

IR – International Relations

JNA – Jugoslovenska Narodna Armija. Became the Yugoslav People's Army in 1991.

NATO – North Atlantic Treaty Organization

PGA – Principles for Global Action (PSVI)

PSVI – Preventing Sexual Violence in Conflict Initiative

SGBV – Sexual and Gender-Based Violence

UN – United Nations

UNGA – United Nations General Assembly

UNPROFOR – United National Protection Force– 1992-1995

UNSCR – United Nations Security Council Resolution

WHO – World Health Organisation

WILPF – Women's International League for Peace and Freedom

WPS – Women Peace and Security Agenda – made up from UNSCR 1325,1820,1888,1889,1960,2106, 2122, 2242,2493.

# CHAPTER ONE: INTRODUCTION

## INTRODUCTION

As I walked through the streets of Sarajevo in 2006 and when I bought food at the market where 37 people were killed by a Serbian launched mortar in 1995, I was struck by reminders of the ravages of war. It had been 11 years since the official end of the conflict, but the scars of the conflict remained. Bullet holes in buildings, divots from artillery shells in the streets and sidewalks, filled with pink concrete and known as Sarajevo roses, and dilapidated structures that still stand - all act as a reminder of the atrocities that had been committed just over a decade earlier. Yet what shook me the most about the conflict left no visible marks. I was mesmerised by the stories of the tens of thousands of women who had been raped as part of the military strategy of genocide. Held in rape camps, forcefully impregnated, these women became the battlefield of a violent ethnonationalist conflict. Targeted because of their sex and ethnicity, 20,000 to 50,000 women were raped during the three years of fighting, intentionally committed as part of a genocidal strategy by Serbian-led forces. The numbers are but estimates–the real figure is unknown, and likely much higher. The long-lasting impact on these women, their families, their communities, and Bosnia-Herzegovina as a whole has yet to be fully documented, and programs in place just skim the surface.

What happened in Bosnia in the 1990s was not just a case of mass sexual violence, or sexual violence that is equivalent to peacetime sexual violence; this was sexual violence as part of an intentional strategy of mass destruction, of "ethnic cleansing". This was sexual violence being used as a military tactic, and that is what struck me as so appalling. It was the ordered and purposeful use of something so vile that garnered my focus. Yet the Bosnian case is not unique, far from it. Tactical sexual violence is, and has been, used in conflicts around the world, probably for as long as there has been war. This does not mean it has to happen, however, for it does not. There is nothing inevitable about the choice to use sexual violence as a tactic; it is that, a choice. It can, therefore, theoretically be prevented. This is no easy task, but it is a worthwhile one, for tactical sexual violence is one of the worst and most destructive weapons of war.

As a consequence, I wondered what the member states of international society[1] were doing to address such destructive and brutal acts. My interest and research began with my thoughts as I walked the streets of Bosnia, but the more I read, the more I became aware of the deeply rooted gendered causes which drove the effectiveness of such a tactic. I wanted to know how this tactic was being addressed by those in the sphere of international relations, and if these causes were being addressed by international policy aimed at preventing tactical sexual

[1] By "international society" I mean the international system made up of states, while "international community" refers to the wider range of international actors, including civil society and non-governmental organizations (NGOs).

violence. My desire to undertake sustained research grew. I was driven by the question – *how does the discursive construction and framing of sexual violence in conflict frame and consequently shape responses to the problem?*

I undertook to research this question by analysing the United Kingdom's *Preventing Sexual Violence in Conflict Initiative* (PSVI) as a case study. The PSVI was undertaken as a cause by United Kingdom (UK) Foreign Secretary William Hague and launched in 2012. The PSVI was initiated by both Hague and the US actor and social activist Angelina Jolie, who was also a UN Special Envoy for Human Rights and Refugees. The PSVI is not only a document or policy but also a wider effort to galvanise political will and resources to fight sexual violence in conflict, and to get the members of international society to follow the UK's lead. The PSVI builds upon the acknowledgement by the international community, and the resulting international laws, that tactical sexual violence during conflict is a war crime and a crime against humanity. It takes an ending impunity approach towards prevention of tactical sexual violence, framing the problem as one of law and order. That is to say, tactical sexual violence is committed because there is no fear of legal ramifications for violating international laws banning its use. Following this belief, the PSVI aims to create accountability through improving investigations and training about sexual violence as a war crime. More, and more successful, prosecutions will, it is hoped, establish a deterrence against future violations. It also targets the political will of the international

community, aiming to increase awareness, and thus efforts to address and stop the tactical use of sexual violence in conflict.

Historically, sexual violence in conflict has been treated as an inevitable by-product of war, often condoned, perhaps as revenge for the enemy's real or perceived misdeeds, or largely ignored. Indeed, it was not illegal until the Geneva Conventions of 1949, under which sexual violence was first explicitly defined as a war crime because it so deeply violates military codes of honour and dignity and targets members of civilian populations. Actual prosecution and conviction for these crimes did not come until the 1990s, however, in the wake of conflicts in Bosnia and Rwanda. Today, in 2021, tactical sexual violence is explicitly recognised as a war crime, a crime against humanity, and a predicate tool of genocide. This recognition was a major accomplishment. The war crimes Tribunals of the 1990s, the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) resulted in a number of convictions for the use of sexual violence as a weapon of war. Legal progress in the 21st century appears to have stalled despite evidence of tactical sexual violence in multiple cases and conflicts since the 1990s there have been only two convictions for sexual violence war crimes since the International Criminal Court (ICC) launched in 2002, and one of these was overturned on appeal. Almost 30 years on from the conflicts that raised the issue to prominence in the international arena, the problem is still endemic. It is evident that the success of the

1990s in regard to international law has not served as a deterrent against the use of tactical sexual violence in conflict.

Addressing sexual violence in conflict began with the law; achieving recognition as a criminal act for which one could be held accountable was the first step is stopping tactical sexual violence. Feminist activists fought in the 1990s to have sexual violence recognised as a crime prosecutable in its own right, and written international law now recognises sexual violence in conflict as a violation of individual honour and dignity, and not purely a violation of the community's (and primarily its men's) honour. In the 21st century, the failure to prosecute violations of law has shifted the focus to enforcement of the law. The problem is now seen as one of a culture of impunity, with a need to deter violations through prosecution. That is to say, the law is there but it is not being sufficiently enforced, and thus perpetrators do not fear legal ramifications for their actions; sexual violence thus continues to be used as a tactic during war.

This focus on ending impunity is logical. Now that the law is clear, the next step is to ensure that it is enforced. Yet, prevention efforts aimed to confront and tackle the culture of impunity have been disappointing. It gives rise to the question of whether or not a legal approach to tackling sexual violence is actually the best path to follow in prevention efforts. This question has driven my research; I set out to evaluate initiatives like the PSVI and in so doing question whether the emphasis currently placed on prosecutions and deterrence is actually succeeding and, if not, whether more effort and resources should be put

into grass roots prevention work and other programs that address and attempt to change the gender constructions that underlie the use and effectiveness of tactical sexual violence. Gender and gender norms must be at the centre of this work.

In my thesis, I critically assess and evaluate the UK's PSVI through its first five years, from 2012-2017. In undertaking this assessment, I examine the PSVI as from a "problem-solving" approach to sexual violence in conflict, an approach that acknowledges the reality of sexual violence as a weapon of war and uses available (legal) tools and means to ameliorate, if not end, its use as a tactic in war, by tackling the culture of impunity. To this end, I adopt a "middle-ground" social constructivist perspective. I also undertake a deeper analysis of how efforts like the PSVI construct the problem of sexual violence. In this effort, I utilize critical discourse analysis to unpack the discursive constructions which underlie policies and the consequences of the framing of the problem for policy efforts and outcomes. I discuss my theoretical position and methodology in more detail in Chapter Two.

The PSVI represents the possible 'next steps' in addressing tactical sexual violence and is therefore worthy of study to determine the level of success achieved by the legal approach. As a national initiative with international reach, it is unique and holds the potential to have great impact, yet it has not been assessed in depth in the current academic literature. I will discuss the extant research on the PSVI in Chapter Five. My goal is to understand how the underlying

approach of the PSVI frames the problem of tactical sexual violence, and the effect this has on the solutions posed and resulting policy outputs. This understanding is important because how the problem is framed determines whether prevention policy is likely to be successful or not. I undertook this research with a subsidiary goal of showing how improvements in policy might be arrived at, and also if there were better ways to approach the problem.

## Sexual Violence in Conflict

My research is situated within the discipline of International Relations (IR), which examines conflict, military tactics, and international responses. I treat tactical sexual violence as a military weapon, and thus my research is appropriate for the field. Moreover, in so far as sexual violence has been raised to the status of international crime in the laws of war, addressed in numerous United Nations (UN) Security Council Resolutions and confronted in efforts like the PSVI which have been deployed in conflicts throughout the world, responses to sexual violence are also truly international. There is a growing body of literature dealing with sexual violence in conflict within IR and security studies specifically, although the research on the PSVI is still minimal. My thesis will make a contribution to the literature on the PSVI specifically and to the literature on the prevention of war crimes more broadly.

My research focuses on the prevention of tactical sexual violence in conflict. By tactical sexual violence I mean that which is used as a

tactic as part of a wider military strategy during war. This is often referred to as 'rape as a weapon of war', a term which dates back to the 1990s. I want to make clear that the term is specific to sexual violence that is committed in the furtherance of the conflict and not all sexual violence that occurs in conflict zones or as a result of the conflict environment. This is not to say that different types of sexual violence are not connected, but that there are enough differences that it behoves us to separate them when trying to understand and prevent such violence so as to better target policy and increase the likelihood of success.

By narrowing my focus to tactical sexual violence, I achieve an in-depth and more useful analysis of policy and its effectiveness. I chose to use the term 'tactical sexual violence' as opposed to the variety of other terms available because it best describes the type of sexual violence I address in my research. The UN uses the term 'conflict-related sexual violence' (CRSV), but I think this term to be loaded and somewhat confused. The UN defines CRSV as

> Rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence of comparable gravity perpetrated against women, men girls and boys that is linked, directly or indirectly (temporally, geographically, or causally) to a conflict. This link may be evident in the profile of the perpetrator; the profile of the victim; in a climate of impunity or State collapse; in the cross-border dimensions; and/or in violations of the terms of a ceasefire agreement. (UN S/2015/203 2015, 1)

By definition, it refers to sexual violence that has a nexus with the conflict, meaning, in actuality, tactical sexual violence. Yet in actuality,

the term confuses sexual violence that is part of a military tactic and sexual violence that is caused by the conflict environment but is not committed in furtherance of it. This is an important distinction, for the amount of sexual violence that occurs in conflict zones that is not tactical is often quite high, but it is not the same type of sexual violence. In evaluating prevention policy, it is necessary to make this distinction to properly understand the causes of the problem policy is trying to prevent.

## Relevance

My research is relevant to those researchers whose work speaks to the prevention of sexual violence in conflict, particularly that which is used as a weapon of war. It also has implications for both national and international policy targeting sexual violence in conflict. There are a number of declarations and initiatives at the international level which aim to address the issue, but the actual impact of such efforts has yet to be assessed thoroughly. Resources are limited, so it is vital that resources allocated to preventing tactical sexual violence are placed where they will have the widest possible impact in the conflict societies.

My thesis will argue that while, in theory, the legal approach should reduce the incidences of tactical sexual violence, in reality the situation is quite different. The level of political will of the international society necessary to support and achieve the goal is yet to be seen, and practical problems exist with the PSVI's approach. The PSVI centres arguments on the illegality of tactical sexual violence, with

the criminal nature of the violence as a focus. Tactical sexual violence is, first and foremost, referred to as a grave breach of international law, one of the most heinous war crimes possible. The focus remains on law, and legal solutions dominate efforts. This is the result of the framing, whereas a different frame – or way of understanding the problem – may open up different avenues for prevention that are undervalued or marginalised by a legal framing. Law dominates policy efforts with little practical success to show for it.

This research is important, for we must do all that we can to stop the tactical use of sexual violence in conflict; while progress in law has been made, the current reliance on legal solutions is in need of evaluation. There is little criticism of the dominance of the legal approach within policy spheres, yet it is necessary if we are to have the best available prevention policy. Tactical sexual violence continues to be rampant in conflicts around the world, with devastating and long-lasting effects. In a time when defending human rights and stopping war crimes are prominent goals of international society, we cannot ignore the fact that the continuing intentional choice to use sexual violence as a destructive weapon during war reflects the reality that those goals remain unattained. The PSVI does not address the underlying causes of the tactical use of sexual violence, and a policy directed at changing cultural constructions of gender and ethnonationalism that make the tactic effective would add to and complement the overall effort.

## Overview of Structure

In Chapter Two, I set out my theoretical framework and outline the methods I employ in my thesis. I take a feminist social constructivist position which regards categories like gender, and, indeed, social reality, to be socially constructed. In this chapter, I outline the central tenets of feminist social constructivism. I also explain why critical discourse analysis is an appropriate methodology for my research. Ethnonationalism also lies at the basis of my analysis. In this chapter I will rehearse the major theories on ethnonationalism and also discuss the social constructivist understanding of ethnonationalism. In ethnonationalist conflicts, the likelihood of the tactical use of sexual violence in conflict is exacerbated, for the societal beliefs render it a very destructive and effective military tactic. I go on to address the feminist nature of my research and briefly address the tactical use of sexual violence in Bosnia.

In Chapter Three I discuss the Bosnian conflict of the 1990s as an illustration of the problem of sexual violence as a weapon of war in conflicts driven by ethnonationalist ideology. Bosnia is also important in understanding subsequent developments in international humanitarian law. I outline the major theories regarding sexual violence in conflict and show how strategic rape theory informs my research. After a brief discussion of how feminists have understood the relationship between militarisation and patriarchy, I show how social constructions of gender are responsible for the effectiveness of sexual violence as a military tactic, as was the case in Bosnia. In

ethnonationalist conflicts, women's roles and status are constructed in a particular way that allows for their rape to perform a symbolic function. Within these societies, women are seen as symbols and property of the nation, something that must be protected, for they carry the honour and dignity of the community in their chastity. These gender constructions lie at the foundation of the effectiveness of tactical sexual violence as a weapon in conflict, but they are not immutable traits or beliefs; they are social constructions and can therefore be altered.

Chapter Four offers a discussion of the history of sexual violence in conflict as addressed by International Humanitarian Law (IHL), focusing particularly on the framing of the problem within the law and legal precedents. I begin with the Geneva Conventions of 1949, for they represent the first explicit recognition of sexual violence as an illegal act of war. I argue that the Conventions' recognition is, however, based on a problematic framing of sexual violence in conflict as a moral violation of honour and dignity, particularly the honour of the community and its men. While this reflects the attitude and perceived reality of much of the world at that time, it perpetuates the harmful norms which allow sexual violence to be an effective military tactic.

I then move to the 1990s, which offers the next moment of change and progress with regard to tactical sexual violence in international law. The tribunals established in the 1990s to deal with the conflicts in Bosnia and Rwanda play a pivotal role in establishing precedents for convictions of sexual violence as a war crime, as well as

establishing definitions for the use of sexual violence in conflict which violates the laws of war. The underlying framing of honour and dignity remained largely the same throughout this period, though with a shift of priority from communal damage to violations of individual rights. After the prosecutorial success of the 1990s, the 21st century has brought about a change in focus, from the language of the law to the enforcement of it. Policy and efforts now focus on deterrence through prosecution to punish offenders, end impunity for perpetrators of tactical sexual violence and provide justice, in legal terms, to the survivors.

Chapter Five provides a background to the PSVI and my initial analysis of the initiative. As noted above, the PSVI was established by Lord Hague, then UK Foreign Secretary, with the intention of increasing and improving UK and international efforts to stop the tactical use of sexual violence in conflict. While prevention is the ultimate goal, the path to that goal is deterrence; the PSVI's main strategy is to end impunity for sexual violence in conflict through prosecution of its perpetrators. It does this in a number of ways, from increasing international awareness to improving standards and knowledge about investigating and documenting sexual violence war crimes for future international trials. The PSVI is based on a framing of tactical sexual violence as a grave breach of international law, making the problem seen to be primarily one of law and order. It uses the narrative of rape as a weapon of war to guide policy, while the framing of sexual violence as a crime of honour and dignity remains.

This, again, perpetuates the harmful gender norms which make sexual violence an effective military tactic. It also seeks to establish deterrence through prosecution, a goal which has proven illusory.

Chapter Six examines the work of the PSVI and British government in Burma[2] (Myanmar) in relation to the accusations of the use of tactical sexual violence against the Rohingya community by Burmese forces. The situation in Burma offers a crucial case where the PSVI could make a difference, especially with regard to potential future prosecutions. The British government, with its colonial ties to Burma, is in a prime situation to wield influence in the region. The conflict in Burma is also another example of ethnonationalist violence, with the context ripe for the effective tactical use of sexual violence by the military. The PSVI takes a number of steps regarding Burma in an attempt to provide justice and hold perpetrators accountable, but with little, as yet, to show for it. The focus on efforts to end impunity and gather evidence assumes that successful prosecution will lead to an end of the use of tactical sexual violence. At the time of writing however, it does not appear that we are any closer to ending the culture of impunity or realising justice for survivors of sexual violence than at the launch of the PSVI in 21012.

[2] Throughout this thesis I use the name "Burma", rather than "Myanmar" for consistency. The British government refers to the state as "Burma" and as I am analysing British policy, I shall do the same.

Chapter Seven offers a deeper critique of the legal approach upon which the PSVI is based, highlighting the problems with the overall effort. The PSVI makes a number of assumptions and, I argue, these assumptions are flawed. This chapter outlines the problems with the PSVI, from faulty assumptions to an underlying problematic framing of sexual violence. There are both theoretical and practical problems with the legal approach, and thus with the PSVI, which ultimately means it should no longer be the only or even dominant vehicle for prevention efforts. It fails to address the gender constructions underlying causes of tactical sexual violence and perpetuates, rather than erases, harmful gender norms. The PSVI also relies on a level of international outrage and willingness to act that does not appear to be present at the moment, while focusing discussions on the illegality of tactical sexual violence. The PSVI also puts a great amount of faith in the ability of the ICC and other international courts to deter future use of tactical sexual violence, with little evidence to support such a belief. A substantial amount of policy is also based on the assumption that a lack of admissible evidence is to blame for the failure of the ICC to prosecute and convict for sexual violence war crimes, focusing efforts on training and educating about how sexual violence violates international law and how to properly document such atrocities. Again, there is minimal evidence to show that these policies will lead to international convictions for tactical sexual violence sufficient in number, timeliness, and scope to create the desired deterrence effect.

Chapter Eight provides a conclusion to my thesis. Here I summarize my main findings and also discuss alternatives to the ending impunity approach which, I argue, hold potential to have a substantial effect upon the likely use of sexual violence as a military tactic. While ending impunity is a laudable goal and a step in the process of addressing the problem, the PSVI and similar policy fail to adequately address the underlying causes of tactical sexual violence and therefore offer only a partial solution to a deeply rooted problem. The emphasis upon the underlying framing of tactical sexual violence as a grave breach of international law is problematic, resulting in the limited resources being funnelled into prosecution alone. I propose a change in framing in order to open up the number of viable solutions to the overall problem. This new frame must put gender in the middle of the picture. There are programs aimed at mitigating gender-based violence that show promise in addressing deeply rooted gender constructions and altering them. Policy in this vein holds more potential for positive change across conflict regions, as it targets what makes sexual violence an effective tactic rather than offering a response to the violence after the fact. It attempts to mitigate and prevent it before it happens. We should direct the focus of policy and resources to this holistic approach as a worthy component of the effort to end sexual violence.

# CHAPTER TWO:
# THEORETICAL FRAMEWORK & METHODS

## INTRODUCTION

This chapter sets out the theoretical and methodological framework within which I evaluate international approaches to the prevention of sexual violence in conflict, specifically against women and girls. In addition to setting out my theoretical framework, this chapter locates my research within the disciplinary context of International Relations (IR) and in the context of some of the key theoretical and methodological debates in the discipline over the past three decades. I further define and clarify some of the key concepts that inform my argument; notably gender, ethnonationalism, and tactical sexual violence. This chapter also includes a brief outline of the scope of my research theory and methods as applied to analysis of the Preventing Sexual Violence in Conflict Initiative (PSVI) developed within the United Kingdom with the goal of preventing future sexual violence in conflict. The PSVI serves as the vehicle with which I analyse the issues around tactical sexual violence in conflict.

After contextualizing my research within debates in IR, I offer a brief discussion of social constructivism and how social constructivists understand the nature of reality. Second, I relate my research to the wider literature on ethnonationalist conflicts. I move from discussions

of theoretical, ontological, and epistemological questions to ethnonationalist conflict in this section of the chapter because, as will become evident, gender norms and gender constructs are critical to the construction of ethnonationalist boundaries and identities. In the third section, I further apply feminist social constructivism to the phenomenon of tactical sexual violence in conflict, using the case of Bosnia in illustration. Finally, in section four, I outline my chosen methodology and explain why this methodology is appropriate given my theoretical approach to my subject matter. I explain how and why social constructivism necessarily leads me to adopt critical discourse analysis as my preferred methodological tool for the evaluation of policy in relation to sexual violence in conflict. I then briefly set out how I develop my CDA through individual chapters in the thesis, before concluding with a brief summation of the key points I make in this chapter.

### *Locating my research and my approach within the Discipline of International Relations*

My thesis is located within the discipline of International Relations (IR) and specifically within the existing literature on feminist International Relations. I locate my research within IR because this field of scholarship is centrally concerned with how international society is constituted and how the norms of international society evolve and change overtime. Furthermore, IR scholars understand war and conflict to have played a central role in the construction of

international society historically, and to still play a role in the evolution of international society and the norms upon which it is grounded.

Social constructivism emerged within IR in the late 1980's and early 1990s as part of a larger post-positivist turn that challenged the then dominant structuralist theory in IR of neorealism, and also neoliberal institutionalism (Klotz & Lynch 2007, 3). On one side of the positivist/postpositivist debate, positivists believe there to be an *a priori* knowledge that exists in the world outside of human consciousness, and that this world can be accessed through "scientific" research that emulates, as far as possible, the methodological tools of the natural sciences (Zehfuss 2002, 4). Neorealists argue that the world of politics can be studied objectively using scientific theories; just as scholars in the life sciences seek to identify and understand patterns in nature, in physics or chemistry, for example, similar patterns could be identified in world politics and international society (Adler 1997, 321). Scientific theory and method could be used, for example, to investigate and classify long cycles revealed in studying war or define an empirically verifiable relationship between peace and democracy.

Social constructivism, along with radically constructivist positions like poststructuralism, challenged the notion that *a priori* world of objective "truth" and a "reality" exists outside of human consciousness. Constructivists argued that reality is, to paraphrase Alexander Wendt, what we make it to be–what we, as a society, have constructed and, in turn, come to believe to be reality, fact or truth (Wendt 1999). While some things may seem natural, this, social

constructivists argue, is because these beliefs are so embedded within society that they assume structural properties–structuring and guiding practice and, in so doing, reproducing, and naturalizing socially constructed beliefs and norms. In actuality, socially constructed norms are never fully fixed. As Hay outlines, they cannot be assumed or taken to exist in an *a priori* state outside of human consciousness and interaction, as positivists assume (2016, 2). To assume so is to reify social norms and neglect the important processes by which they are constituted and might be, and usually are, contested and changed (Klotz & Lynch 2007, 3). It is important to question these perceived "natural" traits and norms to investigate and change the roles they play within any society. For as Wendt claims, "what we see in the world is always and necessarily mediated by the background understandings we bring to bear on our inquiries" (1998, 106). As I elaborate below, constructivism has much more utility than positivist theories when studying tactical sexual violence because they ignore the social and cultural aspects of the conflict society, which are necessary for understanding why certain military tactics are used and, in particular, the underpinnings of military decisions for the use of tactical sexual violence.

I concur with the social constructivist position that it is the social reality and not the material reality that is of key importance if we are to gain deep knowledge and understanding of the world in which we live, and it is social constructions, rather than so-called "essential" nature, that make up our reality. While the material realm matters, the

materiality of the world is constructed through discourse, as Onuf has concluded (2012, 36). I do not deny that physical territory and military power are important to any discussion of conflict, but these two aspects do not encompass all important aspects of military conflict; in order to examine the problem of sexual violence in conflict it is necessary to understand how the social aspects of identities and boundaries are constructed and how this relates to socially constructed ideas about the centrality of territory to identity. Who possesses the land is important, but we cannot understand its importance unless we examine the social constructs and discourses that give that territory meaning to specific identity groups (Wendt 1998, 115)?

Constructivist "analysis focuses around the way in which norms are constructed and guide behaviour. [They] highlight the contingent nature of reality and the social construction of meaning" as shown by Savigny and Marsden (2011, 38). Reality – which includes identity categories and notions of interests – is constructed through discourses within particular societies or in specific fields of social practice. Discourses in this analysis "refers to a specific series of representations and practices through which meanings are produced, identities constituted, social relations are established, and political and ethical outcomes made more or less possible" (Campbell 2007, 216). Discourse can be verbal or written, but meaning is also enacted, inscribed and re-inscribed through non-verbal performances, as in dress and particular forms of behaviour. Through discourse, we create rules or norms that are commonly accepted within a society and which,

consequently, guide our thinking and actions. These norms form the basis of the social and political institutions and structures within society which govern our behaviour. Although norms are socially constructed, a society is often unreflective about their constructed nature and take them to be natural or immutable.

For example, gender is a social construction. Gender norms, which are also constructed, routinely inform everyday practice – in effect, gender is naturalized and normalized in everyday life and everyday practices. Assumptions about gender also inform policies designed to solve specific problems like sexual violence but may also serve to reproduce dominant ideas about gender and so perpetuate problems. My research design, and particularly the methodological tools employed in my research, which I elaborate below, is designed to make visible underlying constructs and discourses that inform policy on sexual violence and to evaluate the practice that flows from this. This research design will allow for investigation of the way discourse can reinforce or alter gender relations that are constructs rather than reality.

As social constructivists have shown, the only way we can study reality is to study the social constructions that determine how we act, while also understanding the rules, norms and institutions that we, as social beings, use to govern our behaviour (Wendt 1999, 1; Onuf 2012, 13). Wendt argues for two basic tenets of constructivism;

> 1. That the structures of human association are determined primarily by shared ideas rather than

> material forces (idealist) 2. That the identity and interests of purposive actors are constructed by these shared ideas rather than given by nature (structuralist) (1999, 1).

It follows that the rules, norms, structures, and institutions that make up society are all social constructs – they are what make up a society and, therefore the way members of specific societies view reality. Reality does not exist outside of the social meanings that we give to things (Wendt 1999). By analysing the social aspects of a collective we are able to get a vision of a reality, but no one can say there is but one reality (Onuf 2012, 101). In evaluating any policy, therefore, we must first understand how the problem is constructed – what understanding of reality it is based on – for this determines the choice of solutions and likely success of these efforts.

Constructivism "focuses on the role of ideas, norms, knowledge, culture and argument in politics, stressing in particular the role of collectively held or 'intersubjective' ideas and understanding on social life" (Finnemore & Sikkink 2001, 394). It is these intersubjective ideas and beliefs we must examine if we are to understand how reality is constructed in any given context or situation. The intersubjectivity of ideas and behaviour is essential to any constructivist understanding in that it is these beliefs and actions that make up reality. In turn, a shared understanding of what constitutes reality (or truth) determines practice – how we act. In order to understand the realm of practice, which includes the domains of national and international policy, we

need to critically analyse the underlying constructs and discourses upon which policy is built. In my evaluation, I focus on the prevailing concepts and framing of tactical sexual violence within specific domains of international policy.

## The Social Construction of Gender in International Relations Theory

I will revisit the significance of social constructivist work on international norms, institutions, practices, and policies for my thesis presently, but first, I will elaborate on where I locate myself theoretically within the current literature in IR and feminist IR. As a social constructivist, I argue that our ontological reality, what we take to be real, is socially constructed. It follows that from an epistemological standpoint, the only way to know our reality is by deconstructing and analysing the social constructions upon which our reality is built. My position is *feminist* because I not only approach gender as socially constructed, but also embrace a political commitment to the transformation of gender norms, gender relations and social practices that are harmful, especially to women and girls.

That gender is socially constructed does not make gender any less essential to the analysis of sexual violence; social constructs inform social practices. I have concluded that the most effective approach for analysing tactical sexual violence in conflict and its prevention is one that is built upon recognition of the socially constructed nature of the "reality" in which sexual violence occurs. Feminist social constructivism supplies the best theoretical framework to analyse the

problem of tactical sexual violence in conflict and also how it is currently addressed in policy seeking to prevent and/or deter acts of sexual violence at the international level.

My approach falls into the category of a "middle-ground" constructivist, in the vein of Adler's work (1997). This approach endeavours to build a bridge between rationalists, who argue that our actions are driven by rationally defined interests, and poststructuralists who argue that there is nothing–no interest in example–outside of language and discursive construction (Adler 1997, 319). Rationalists, and theories of rational actors and actions, are oriented towards problem-solving. In contrast, radical constructivists are often criticized because the radical politics of deconstruction that they proffer have no immediate or obvious application to "real world" problems. Middle-ground constructivism attempts to bridge this gap by taking the basic ideas and concepts of constructivism and applying them in a problem-solving mode, applying constructivism to concrete problems that arise in our socially constructed world.

To simplify, radical constructivists offer deep understanding of how the world and its problems are constructed and thereby offers aid to understanding, but do not attempt to explain or solve specific problems. On the other hand, rationalist theories do aspire to "do some explaining" and also proffer solutions to problems in world politics. In terms of the debate in IR on understanding and explanation, I follow the argument, adopted by middle ground constructivists, that certain things can be taken as "facts" for the purposes of research (Klotz &

Lynch 2007, 13). For example, gender and other identities, while socially constructed, can be analysed *as if* they were stable categories, because they are in actuality "sticky." By sticky, I mean that they are relatively stable and fixed over a time and place. This is because people largely take gender and gender relations to be natural and so approach gender and other constructed identities as "things" (that is, entities with a real, ontological existence), even as they are actually social and cultural constructs. This does not conflict with the idea that these identities are constructed.

> In the constructivist view … actions continually produce and reproduce conceptions of Self and Other, and as such identities and interests are always in process, even if those processes are sometimes stable enough that – for certain purposes – we plausibly can take them as given. (Wendt 1999, 36)

Because people act as if gender is fixed, we can take gender to be a stable and fixed category of analysis as long as we are clear about the time and place over which it is treated as a fixed category. As Hopf contends, "conventional constructivism, while expecting to uncover differences, identities, and multiple understandings, still assumes that it can specify a set of conditions under which one can expect to see one identity or another" (1998, 183).

Therefore, when trying to understand a problem, a conflict for example, one can analyse certain actions and behaviours when certain variables are present. We, as researchers, can assume certain things in the process of understanding and explaining in order to assist in

solving the overall problem. There are obvious implications in the use of this approach, because categories that may appear fixed are in fact socially constructed and can therefore be changed (Klotz & Lynch 2007, 3).

I acknowledge that policy makers, who are required to operate in a problem-solving mode, can understand and analyse a problem by treating some identities as fixed. However, in accordance with my feminist stance, I also explore how policy and practice can be put to the end of changing these same gender categorisations. I will therefore elaborate on feminist social constructivism and the concept of gender below. First, it is necessary to understand the way in which reality as socially constructed phenomenon works within ethnonationalist entities because this construction of identity works alongside gender constructions and helps us to understand how tactical sexual violence is so deeply embedded in war and conflict.

## ETHNONATIONALISM

My thesis examines framing of, and responses to, sexual violence, specifically tactical sexual violence, in conflict. I am particularly concerned with conflicts that are driven by ethnonationalist ideology and which seek to achieve ethnonationalist political ends. In the earlier part of my thesis, I use illustrations from the conflict in former Yugoslavia, Bosnia particularly, to support my argument. My case study on the PSVI is applied to the Rohingya crisis, which is also an ethnonationalist conflict. As such, it is important to set

out here my understanding of ethnonationalism and explain how my understanding is consistent with my theoretical position on gender and sexual violence. First, however, I will clear the ground by explaining the differences between nations and states, because they are often conflated in everyday political discourse and, indeed, some strands of IR theory.

Historically, the nation-state has served as a, if not *the*, foundational building block of the IR discipline. The centrality of the nation–state is understandable in so far as the state has served as the actual foundation of international society since the Treaty of Westphalia (1648) and nationalism has, arguably, been a, if not *the,* dominant ideological glue holding together this society of states from the nineteenth century onward. However, in realist (and latterly neorealist) theory, the state system, an historical construction, is reified–that is, treated in an ahistorical way as if it was a timeless and objective structural entity. In taking the nation-state to be an actor, the historical origins of nationalism and it's ideological, constructed nature are not investigated. This is not true of other established schools of IR theory, such as the English School, which explicitly recognizes the historical foundations of the international society of states and, hence, the possibility that the laws, norms and practices on which the society of states is founded can and do change over time (see, for example, Bull, 1977). Contemporary social constructivism owes an intellectual debt to the English School, although social constructivism has further developed and elaborated on their insights.

When referring to a nation, scholars do not always or necessarily mean a *nation*-state (a concept that conflates nation and state). The state is something different altogether from the concept of a nation. The state is a created legal and political institution that functions to distinguish identifiable geographical areas of rule and sovereignty It has a governing hierarchy and holds a monopoly on the use of organized violence. This sovereignty should be recognized and respected with respect to the control of territory and population. Sovereignty itself is a social construction. Members of international society agree on the idea of sovereign states. This agreement is formally recognized in the constitution of a society of sovereign states through international law, most commonly in the form of treaties. In this way, an idea has become commonplace, universally accepted, and now informs international political practice. This includes the prosecution of war.

Nations can be states, but they do not have to be. For example, though Wales is a nation under the state of the United Kingdom, Wales is not a sovereign nation–state in its own right, even though the Welsh people are recognized as a nation. The same situation exists in Scotland. Another example is the Kurds of the Middle East. While the Kurdish people believe themselves to be a nation, they are not recognized as a nation-state by the international community despite decades of efforts to create a separate state. There is no widespread recognition of Kurdistan because this national community is spread across the borders of a number of separate states. The barrier to the

Kurd's aspirations is that recognition of a separate state of Kurdistan would threaten the sovereignty of existing states who belong to international organizations and thus would undermine a constitutive norm of contemporary international society.

In nationalist discourse, the nation is commonly represented as an age-old entity which is rooted in some primordial sense of identity based on the ethnic origins of group members. However, there has been debate as to the precise definitions of nationalism and ethnicity, largely because they both refer to groups whose qualifiers for membership are defined by the particular group itself, as Oberschall argued (2007, 3). Albanese, citing Gellner, states that "nationalism refers to the belief that people are divided into nations and that each of these nations has the right to be a self–governing unit or nation state of its own" (2001, 1006). Nationalism is the driver to create a nation–state. My position is that a nation is a group of people whose characteristics are determined through a shared (inter-subjective) social discourse about national identity among specific members of the group. These shared components can be ethnicity, religion, tribe, or language (among other things) but what is key to this understanding is that the nation is a construction; it is not natural or primordial (Anderson 2006, 6). Nations are created by people and society acting as social beings. The national collective itself sets out parameters for the nation, both culturally and territorially, which give the nation meaning to those members within, and outside of, the ascribed collective (Varshney 2003, 86). However, while specific groups may

have a shared belief in what Benedict Anderson (2006) termed the imagined community of the nation, the nation cannot be formally recognized as an independent nation state without the recognition attributed to them by international society; recognition is the ultimate mark of sovereignty.

Ethnonationalism, as Denitch argues, "ascribes boundaries that designate who is and who is not a member of the political nation, the political community to which sovereignty belongs" (1996, 187). In the ethnonationalist imaginary, citizenship is determined by membership within the particular group, and that membership is determined by possessing certain characteristics ascribed by those within the nation itself (Anderson 2006). Ethnonationalism also refers to the ideology shared by groups who seek an autonomous nation-state with citizenship based on one's ethnicity (Denitch 1996, 127). Ethnicity, for all intents and purposes, as Korac has written, can be understood as a believed set of ties and bonds, such as history, language, race, or religion, and is often defined by "common blood and origin" (Korać 2008, 109).

Rather than being naturally determined, Oberschall argues that ethnic identity is created when particular characteristics are identified that are then used to tie a specific group together and separate them from the "other" (Oberschall 2007, 4). What is essential to emphasise is that it is the collective itself that defines and reinforces ethnic identity. For example, it may be a religion, territory, or language that creates the bond that ties the group together, but that bond is a social

construction and decided upon by the group in question (Denitch 1996, 127). Ethnic identity is often seen as natural traits, but the emphasis on particular traits and the grouping of traits that make one a member of an ethnic group is, essentially, self-constructed and defined.

Oberschall argues also that ethnonational wars are driven by the mistrust of the "other" and most often caused by "collective fears for the future" (2007, 102). Those driving the conflict must make clear the distinctions between ethnic groups in order to create the will to fight, die or kill for the ethnically defined nation. In the former Yugoslavia, ethnic groups were separated largely by religion and origin of family birth. Under Communist rule, they were compelled to see themselves as primarily Yugoslavs rather than members of a particular ethnic group. Ethnicity became a stronger identifier with nationalist movements across the territory after the death of Tito in May of 1980 (Jovic 2001, 104). Nationalists then used ethnicity to separate people by creating an imagined homogeneous nation of one ethnic group.

In the extreme, in the ethnonationalist imagination, the opposing group is constructed as not only other, but as a dangerous and threatening "other" who constitutes a threat to the ethnic/national group. The other might is often dehumanized–viewed as so far from human that murder is acceptable. These dehumanized people must die if the original group is to survive. Group survival is in turn linked to territory and the nationalist claim to a homeland that must be occupied and defended by members of the national collective. As feminist scholars have shown, and as I will elaborate later, gender is crucial to

the constitution of this imagined homeland or nation. There are important implications for any analysis of ethnonationalist conflicts that follow hard upon the heels of created gender roles within the ethnonationalist imaginary.

## Feminisms in International Relations

Feminist scholars in International Relations have examined the way in which "global politics shapes and is shaped by ideas about gender, placing emphasis on the importance of identities, norms and culture regarding gender and gender roles in international politics" (Sjoberg 2009, 188; also see Nye 2003, 7). I follow Sjoberg's definition of gender as "the socially constructed expectation that persons perceived to be members of a biological sex category will have certain characteristics" (2013, 3). My analysis is based on the understanding of gender as a social construction, not biologically determined but created through cultural norms and conceived ideals (Sjoberg 2009, 187).

Gender expectations, or norms, are socially attributed to each person based on their perceived biological sex. Gender as a concept, however, is different from sex. Sex refers to the distinction made on the basis of sexual organs, a purely biological difference. I note here that this distinction between sex and gender is becoming less clear according to recent poststructuralist scholarship. Notably, Butler has argued that sex too should be understood as a socially constructed category (1999). However, in defining gender, a distinction (man and woman and male and female) is drawn; we, as a society, also assigned cultural ideals and norms to these gendered differences historically, and continue to do so (Sjoberg 2009, 191).

My research is based in feminist theory because I, like other feminist IR scholars, take gender to be a central category of analysis when examining any society and its structures and values. It is important to note here that while feminists argue that gender must be at the centre of all international relations' research, there is no one feminism but many strands that share in common a focus on gender. Zalewski rightly states that "feminism is better understood as numerous sets of practices, theories, philosophies and perspectives which take gender as an important and often central category of analysis" (1995, 314). As such "feminism" is more of an umbrella term that is attached to an approach, rather than a singular theory. For as Peterson wrote,

> Feminism is an orientation that views gender as a fundamental ordering principle in today's world, values women's diverse ways of being and knowing, and promotes the transformation of gender and related hierarchies (1998, 47; note 1).

Feminist constructivism draws our attention to the way in which gender is constructed within a society, and the role gender norms play within that society (Savigny & Marsden 2001, 34). This focus, too long ignored, is fundamental to understanding why particular actions are taken, and specific behaviours exist. Men and women are understood and treated differently, in line with gender norms and expectations. However, these norms and expectations are not innate but rather contextually and historically specific. This is crucial to understanding gender as constructed; this is also why any political, social, or economic analyses must consider gender as a category of analysis.

It should also be noted that in some contemporary social constructivist work gender is adopted as an explanatory category without any explicit feminist commitment. Carpenter, for example, has argued that

gender should not to be confused with women as a focus and/or as part of an agenda to liberate or emancipate women, which is the case in most feminist work. Carpenter has criticised feminists for conflating gender and women and for assuming all work on gender necessarily involves a commitment to feminist emancipatory goals, asserting that a focus on gender does not necessarily make it feminist research (Carpenter 2002, 154). I concur with Carpenter that gender as a category alone does not make the research "feminist" (2002). As Carpenter explains,

> Explanatory gender analysis involves (1) demonstrating that a taken-for-granted belief about men and women is actually socially constructed rather than biologically inherent; and (2) demonstrating that those adhering to the belief act differently than they would in the absence of the belief. (2003, 663)

This is to argue that we, as social agents, assign roles that are based on a belief, and without these beliefs men and women are likely to act differently.

While there is nothing inherently feminist about this, if the aim is to address those gendered variables, and to simultaneously consider ways in which policies, political action and campaigns can be devised that change gender constructs and gender norms in ways that are favourable to women, then the work becomes feminist. This position then means that practical change can happen by addressing these social constructs and gender norms. As I shall explain presently, gender is not a fixed category, and therefore changes in policy, expanded access to education, work, and increased equality under the law, are, at least theoretically, capable of affecting change in gender norms and thus overall changes within a society.

When socially constructed ideals and norms of masculinity and femininity are what creates ideas of gender, then gender and gender roles seem natural to a society under analysis because the gender structures and

institutions created are so embedded that they are perceived to be fixed, but they are not. As Zalewski has highlighted, "there is nothing natural, inherently or biologically inevitable about the attitudes, activities and behaviour" that are commonly associated with gender (1995, 341). Gender is actually a "sticky" and yet malleable construct that is constantly either being reconstructed, reinforced, and reproduced, or contested within a particular society; it is not fixed, as clearly shown by Carpenter (2003, 663). Gender tends to be "sticky" in that it is exceedingly difficult to shift embedded concepts, but it is not impossible.

Gender norms are capable of being altered or changed over time with a change in discourse, along with changes in practice and policies with regard to gender norms and gender roles. Changes in gender norms have been well documented in the international context and in historical analysis. For example, in particular places and times women's rights and equality under the law, their access to education, to the professions, to membership in the political polity, have all changed over time. It was once unthinkable for women in many Western oriented states, to hold powerful positions within political or economic spheres in their own right as individuals as opposed to by virtue of family or kinship relationships. Yet today femininity is still constructed as inferior (to masculinity), and there are many nations in which this translates into women being greatly oppressed, with limited rights, and where they are heavily constricted by prevailing gender norms. This oppression and inequality is exacerbated by the militarisation of society, with strict gender ideals carrying great weight within the functioning of society (Shepherd 2015). What this shows us is the ability to alter gender beliefs and constructions within a society over a period of time, and that there is still a need to do so within and by the international community.

It is necessary to emphasise that gender is not universal; there is no one gender construction but many, and all are shaped by the cultural and societal values of the community in question. Approaching gender as a universal identity has had the unfortunate effect of ignoring differences across specific societies and contexts. We cannot, as scholars of international relations, take gender constructions to be inevitable or preordained, nor should we universalize gender by assuming that gender norms function in the same way regardless of the specific nature and condition of particular conflicts. I will elaborate on specific ethnonationalist gender constructions later in this chapter, but first I shall briefly discuss the constructing of gender and the role these norms play in sexual violence in conflict.

## Constructing gender

As discussed earlier in this chapter, constructivists view gender as constructed through discourses about masculinity and femininity, male and female, and men and women, as well as by non-verbal performances (e.g. modes of dress). These constructions of gender form the basis for, and expectations of, gender norms within a particular society; both men and women are expected to embody particular characteristics and act and behave in ways consistent with those gendered norms and behaviours. These norms, then, become entrenched within society, for as Steans notes, "[g]ender is embedded in and reproduced by a range of social institutions and practices. Conformity to the characteristics held to be specifically 'masculine' and 'feminine' is encouraged – if not enforced – through social institutions as well as in day-to-day practices" (2013, 26-27).

Traditionally, in common-sense terms, gender is portrayed and understood as a binary relationship[3]. It is important to emphasise that femininity and masculinity are mutually constituted constructions. Masculinity can be understood as the characteristics that men should possess and that guide their actions and behaviours. Femininity, by contrast, is seen as embodying the opposing characteristics of masculinity, the antithesis if you will. Femininity is a lack of masculinity; femininity and masculinity cannot exist without the other. For as Connell and Messerschmidt argue, "gender is always relational, and patterns of masculinity are socially defined in contradistinction from some model (whether real or imaginary) of femininity" (2005, 848). What is categorised as masculine or feminine may change, but the mutual constitution or the binary relationship will remain.

A society creates and reinforces ideals of gender, while placing value on different characteristics, often (nearly always) placing masculine characteristics over feminine ones: for example, rationality, perceived as masculine, over intuition or empathy, perceived as feminine, or strength (masculine) over weakness (feminine). Binary constructs of men/women, male/female thus form hierarchical workings that are used to privilege constructs of men and masculinity over women and femininity within a society. Cockburn notes one constant she sees within feminist gender analysis as follows: "the differentiation and relative positioning of women and men is seen as an important ordering principle that pervades the system of power and is sometimes its very embodiment" (2004, 28).

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[3] While there is certainly some debate as to whether this binary is acceptable, gender, as a concept, was established as a binary and thus it is conceptually useful at this time to generally treat it as such. In addition, within militarised and conflict societies, the binary relationship remain strong.

Traditionally, societies have been patriarchal, that is, men, along with masculine characteristics and norms, are privileged over women and female characteristics and norms; this situation is exacerbated by the processes of militarisation and nationalistic ideology (Skjelsbaek 2001, 216). Patriarchy and militarisation play a major role in both shaping and reinforcing particular gender norms, and therefore societal gender norms must be understood in relation to these ideologies. Feminist scholars within peace and conflict studies have found that "war polarised gender relations in hierarchal and patriarchal ways" (Skjelsbaek 2012, 140). Discussing militarised discourse, Cockburn notes how it

> ... is often accompanied by a renewal of a patriarchal familial ideology, deepening the differentiation of men and women, masculinity and femininity, preparing men to fight and women to support them. The more primordial the rendering of people and nation, the more are the relations between men and women essentialised. (2004, 32)

It becomes necessary to the functioning of the militarised society that all members adhere to these extreme gender ideals, and the more diversion from such dogmas are severely punished (Steans 2013, 7).

In a similar vein, Enloe's work reveals the reliance of militarised societies upon certain gender ideals (1989). Beliefs about nationhood and identity must be inculcated in members of the national collectivity. Men particularly, as those singled out as combatants, must be trained to have those militaristic values that make them willing and able to kill and die for the nationalist project (Leatherman 2011, 81). When militarised ethnonationalism is combined with a deeply gender driven hierarchical and patriarchal society, problematic gender constructions are deeply entrenched (Korac 1998, 166). Therefore, when examining military tactics during violent

conflict, it is essential that we examine the gender constructions that lie at the foundation of specific military strategies rather than considering them in isolation from the context of the society in which they appear.

## Gender and ethnonationalism

I use feminist theories of gender in my analysis of both ethnonational identity construction and in the practice of war, because, as I have shown, feminist theory focuses on the socially constructed nature of gender and the centrality of gender to constructs of identity. Militarized ethnonationalism is that in which militaristic values permeate not only the military, but also civil society through ethnonationalist rhetoric. This is often achieved through bureaucratic means, but can be, and often is, also through violent means. As Korac found, "militarization of ethnic-national collectives is the central point for an aggressive ethnic-national project," and can become particularly dangerous in states which have become unstable, as was the case in Yugoslavia after the death of Tito (1998, 166).

In regard to ethnonationalist studies, feminist theorists, including Cockburn, have shown that masculinity, in ethnonationalist settings, is constructed around ideals like physical strength, willpower, courage, discipline, competitiveness, combativeness, assertiveness and ambition (2013, 438). Femininity, by contrast, is constructed around ideals which demand emotional, sensitive, committed, sympathetic, supportive, caring, and passive behaviour from women (Korac 1998 167; Mostov 1995, 520). These gender constructions become polarised and entrenched within the society and expectations to embody these strict gender ideals are high.

Masculinity, however, is not itself a homogenous construct. Constructs of masculinity are organized into a hierarchy in which some

constructs of masculinity are privileged over others. The concept of hegemonic masculinity, which is associated with definitions of a powerful and dominating masculinity, encapsulates how specific constructs of masculinity are promoted as an ideal to which all men must aspire. Hegemonic masculinity serves as an archetype, that which each man should strive to become according to the prevalent gender norms in specific societies, and also within specific institutional contexts (Connell & Messerschmidt 2005, 837). When it comes to the military, a hegemonic masculinity is pervasive, generally constructed in terms of courage, honour, and an unflinching capacity to kill if necessary.

Because gender has been constructed in binary terms, femininity is the "other" to idealized constructs of masculinity, the polar opposite of a hegemonic masculinity within specific institutions. When societies are militarized, these hegemonic constructs become pervasive throughout a society as a whole, not simply within the military, as Enloe has shown (1989). Women, under these conditions, are expected to possess the particular ideals of womanhood that are the creation of the militaristic hegemonic masculinity. Women must accept the roles and behaviour that follow upon these definitions of femininity or risk being ostracised by society (Connell & Messerschmidt 2005, 848).

With strongly militarised ethnonationalism, where men are overtly and stridently masculine in their belief in their roles as warriors, women become symbols of the nation in a number of ways, for "the symbolic realm is elevated to strategic importance: symbols become what's worth fighting – even dying – for, and cultural metaphors become weapons in the war" (Peterson 1998, 44). A putative "return" to traditional patriarchy in ethnonationalist ideology results in a polarized gender dichotomy and a

reinforcement of a male dominated society (Nagel 1998, 243). As Korac noted,

> The predominant concern of ethnic-national ideologies with a struggle for cultural and religious "authenticity" involves assigning to women the roles and responsibilities for the reproduction of the group and for the custody of cultural values and cultural identity. (1996, 159)

Indeed, feminist researchers have found that in ethnonationalist movements gender norms that construct women as symbols of the nation and bearers of the nation's honour are the foundation for the effectiveness of tactical sexual violence (Carter 2010, 350). This message of destruction runs deep, for in ethnonationalist societies identity is so tied to men being masculine and women being feminine that an attack on the enemy that aims to destroy the gender system is an attack on the nation's identity (Sofos 1996, 3).

As in traditional conceptions of patriarchy, patriarchy in ethnonationalism is built on the idea that the father is the head of the family (Ramet 1999, 3). These ideals permeate society and become structural and institutionalised in the state through both policy and law. Thus, within militarised ethnonationalist societies, the state and the family also become merged and viewed in a similar light. As the father has all the authority and power in the family, in the same fashion the state acts as the father of the nation, the protector of its land and its people (Kesic 1999, 187). As the father regulates and controls all aspects of the life of the women of the family, the state regulates the women of the nation (Ramet 1999, 3). Women's role as reproducer of the nation makes them an issue of national security, and therefore controlling women becomes an issue under the purview of the state (Korac 1998, 160).

In conflict, sexual violence becomes "a means of constructing and negotiating power between competing ethnic, religious, cultural, and national collectives" (Vojdik 2013, 925). Ethnonationalist gender constructions are a necessary element for the effectiveness of tactical sexual violence. First, constructs of militarized masculinity work to create men as armed fighters, and women as the "protected" are not allowed to be armed (Hansen 2000, 66). Second, the bodies of women become symbolic representations of the nation and the ethnic collective; and become the contested ground on which the battles are fought (Papic 1999, 156). The violation of women's bodies translates into the violation of the nation, its land, and its honour. Violations of the body of a nation's women is thus a means to emasculate and humiliate the enemy men. These gender constructions which "allow women to be the means through which men effectively communicate their dominance and power over the enemy collective are what allow rape to be seen as a justifiable and effective weapon of war" (Schenck 2014, 40).

The pervasiveness of polarised and patriarchal gender constructions thus create an environment in which sexual violence has particularly destructive effects, not just on the immediate victim, but within their family and wider community (Solangon and Patel 2012, 427). Solangon and Patel highlight how sexual violence is "increasingly seen as a display of power, dominance and humiliation through emasculation of the enemy and thereby involving issues of gender inequalities and identities" (2012, 425). I will explore the particular ethnonationalist constructs in more detail in Chapter Three, but first there are some general commonalities that need to be discussed in relation to gender and sexual violence in conflict.

While not all sexual violence in conflict falls into the same category, there are commonalities across types of sexual violence, and particularly within conflict environments (Henry 2016, 45). While theorising sexual violence in conflict, Henry highlights that while sexual violence varies across contexts, "the common thread between all wars is that rape is a product of warped (yet normalised) militarised hegemonic masculinity, which arguably is structurally embedded in pre-conflict gender inequalities and unequal power relations" (2016, 44). Sexual violence is gender-based and relies on male-dominated hierarchal structures in order to achieve its desired aims. Gender constructions of a militarised hypermasculinity and an emphasised and vulnerable femininity work to create an environment in which sexual violence becomes a viable and effective tactical weapon.

Feminist literature has shown how gender ideals are fundamental to the effectiveness of sexual violence, especially in conflict, for "hegemonic models of men as powerful and dominant while conceptualisations of women as subordinate means that sexual violence can be used as a tool of destruction and humiliation" (Solangon and Patel 2012, 427). Skjelsbaek highlights the conclusion that

> … war rape must be understood as a violent relationship in which the perpetrator is masculinised and the victim is feminised. In this process, other identities linked to masculinised perpetrators and the feminised victims are sexualised in a hierarchical fashion, where power follows masculinisation and powerlessness follows feminisation. (2012, 140)

Constructions of gender allow for sexual violence to have a feminising effect upon the victim – female survivors are "socially soiled and unmarriageable,"

while “males are feminised and homosexualised in the eyes of their community” (Drumond 2016, 206). The extreme patriarchal nature of most ethnonational societies means that feminising the victim is a way of degrading them, since the feminine is considered “bad” and deeply degrading for men. This allows for sexual violence to have a destructive effect upon the opposing community and its men, whatever the sex of the victim or perpetrator.

As Skjelsbaek notes, sexual violence also has the effect of masculinising the perpetrator (2012, 140). Vojdik highlights how sexual violence against both women and men “function as gendered tools to empower particular male groups within specific social spaces” (2013, 927). The perpetrator – and their group – is masculinised and thus placed atop the hierarchy, making them “better” than the victim and their group. Sexual violence is thus seen as a way for the perpetrator to demonstrate or reinforce their manliness, to themselves as well as within the group or society (Drumond 2016, 210). As Baaz and Stern argue,

> The fragility and indeed impossibility of militarised masculinity therefore requires continual concealment through military institutional practices, and in the individual expressions of such masculinity. While ‘inherently impossible’, feelings of ‘failed masculinity’ can be seen to contribute to sexual violence in that rape becomes a way to try to perform and regain masculinity and power. (2013, 20-21)

This belief aids in driving acts of sexual violence, and particularly in conflict, where manliness and masculinity is privileged above all else.

Sexual violence has a debilitating effect on both women and men. The shame surrounding sexual violence also plays a fundamental role in the perpetration and continuation of tactical sexual violence. Women are shamed through sexual violence because of the construction of woman’s and the

collective's honour tied to their chastity (Carter 2010, 352). Unlike most victims of crime, women are blamed for the attacks against them, and punished for the loss of their own and their society's honour that comes with sexual violence. Solangon and Patel also found that "gendered binaries and strict gender roles are primarily responsible in accentuating sexual violence against men in terrorising and humiliating victims" (2012, 417).

While it is likely quite prevalent, sexual violence against men and boys in conflict tends to be marginalised and remains largely hidden from both scholarly and policy discussions (Vojdik 2013, 923). Vojdik claims that "the silence around male rape in war reflects the power of social constructions of masculinity that define men as powerful, sexually dominant, and heterosexual" (2013, 940). Sexual violence thus plays on ideals and norms of gender, norms that allow for such a tactic to destroy the enemy both psychologically and physically. Sexual violence is such a destructive, and thus effective, tactic in war because beliefs about gender allow for the victim and their community to be defeated in visceral way.

## Concluding thoughts on theory

Having outlined my theoretical perspective and highlighted the importance of gender in any study of international relations and conflict, I will make some brief points about the aims of my thesis before discussing my chosen methods. I am engaged in a two-fold project: first to understand how existing practices, norms and policy are gendered in ways that reproduce strong gender inequalities which are harmful to women (and girls) specifically and, second, to advocate for change and explore how that change might be fostered in the contemporary world order. My approach is explicitly normative, in that my motivation in conducting my research is to advance

gender equality and contribute to a feminist project of emancipation from gender hierarchies that privilege men over women and masculinity over femininity. Gender emancipation means in this context the eradication of the gender hierarchies that privileges men and masculinity over women and femininity (Sjoberg 2013, 12). While the eradication of gender is the ultimate goal of some feminists, in the short-term, it is unlikely that we can eliminate all gender constructions, because they are so deeply embedded within the structural aspects of any society. What we can do, however, is pursue a short-term strategy of amelioration and a longer-term strategy that seeks to change gender norms with the meanings and privileges ascribed to masculinity and femininity, in order to progressively erode the privileging of one gender over the other.

As discussed above, in the broader intellectual and theoretical debates that have played out in IR, criticism has been levelled at radical (poststructuralist) constructivism on the grounds that it necessarily lacks any normative commitments or concrete policy prescriptions. This criticism has also been made by feminists who argue that poststructuralist feminism necessarily eschews an emancipatory project and, hence, is ultimately unhelpful, or even ultimately undermines and disempowers feminist politics– in short, we cannot have a political commitment to woman as a category if woman as a category is a fiction (see discussion in Fraser and Nicholson, 1989). I will not engage in an extended discussion of these debates here, save to say that some poststructuralist scholars have responded to such criticisms by pointing out that the deconstruction of gender is a form of liberatory politics and, moreover, it is possible to adopt an ethical position of respect for the "other."

In my thesis, however, I aspire to explore the application of feminism to everyday practice, institutions, norms, and policy in the world "as it is," that is, as it is currently constructed. In this respect, I am committed to the application of middle-ground social constructivism to problem solving in world politics, the problem to be solved here being sexual violence in conflict settings. Feminist social constructivism recognises gender as a construct, but a construct which, while sticky and relatively fixed, is open to change over time. Similarly, as a constructivist, I recognise that institutions, constructions of interests, existing norms and so on, are also the product of human creation. They necessarily have historical roots and are also open to change, and do change over time.

I want to finish by reiterating the point that unless gender, gender norms, and gender roles are included in the analysis of tactical sexual violence, any conclusions reached will lack validity. Therefore any policy or political action must take gender into account planning and implementing their efforts. It follows then that any international efforts to prevent the use of tactical sexual violence will also be weakened by the failure to take into account the impact of these extreme views of masculinity/femininity which contribute to the success of these tactics in the destruction of the enemy's social cohesion. This issue must lie at the foundation of any policy if it is to have the greatest impact, and certainly it if is to achieve the overall goal.

## Methods: Critical Discourse Analysis and Framing Analysis

Having contextualized my thesis within the discipline of IR, then feminist IR specifically, having located my research within the context of some key theoretical debates, set out my feminist constructivist theoretical framework and explained the centrality of ethnonationalism, conflict and sexual violence in research problem, I conclude this chapter by turning to the methodological tools I employ to explore the nature of tactical sexual violence as a weapon of war, efforts to eradicate this war-crime, and particularly the preventive efforts undertaken by the United Kingdom under the program known as the PSVI.

I examine how gender is framed in discourse on the prevention of sexual violence in conflict (hereafter "prevention discourse"). The perceived causes of the problem depend, in large part, on the way tactical sexual violence is conceptualised and discussed (that is, the discourse on sexual violence); any solution will depend upon the initial conceptualisation (Choudhry 2016, 410). I examine the construction and framing of sexual violence by analysing the discourse embedded in core policy documents and related materials on sexual violence and the solutions proposed that follow from these discursive constructions and framings. I employ the methodological tools of discourse analysis to this end. The following table summarises the main policies and outputs of the PSVI which are examined throughout this thesis.

Table 1: Main Policies Analysed

| Policy | What it is | Year |
|---|---|---|
| **UK Team of Experts** | Group of experts in investigating sexual violence violations of IHL, dispatched to assess and advise on situation in conflict zones | Launched 2012 |
| **G8 Declaration** | International declaration condemning tactical SV in conflict & committing future efforts & resources to end impunity | 2013 |
| **United Nations Security Council Resolution 2106** | Resolution committing member states to stop sexual violence war crimes not grant immunity | 2013 |
| **International Protocol on the Documentation & Investigation of Sexual Violence in Conflict (The Protocol)** | Educational tool explaining how sexual violence can be a war crime and how to document investigate it for ICC trials | 1st Ed. 2014<br>2nd Ed. 2017 |
| **Global Summit to End Sexual Violence in Conflict** | 3-Day Conference of political leaders and representatives addressing sexual violence in conflict | 2014 |
| **Principles for Global Action (PGA)** | Educational document about how to address stigma surrounding sexual violence crimes | 2017 |

I bring CDA to bear on a range of international policy documents and related strategies, all of which aim to end sexual

violence in conflict and/or end the culture of impunity that currently exists in relations to sexual violence against women and girls specifically. By evaluating the discourse and how those involved frame tactical sexual violence, I can reach conclusions about the successes and failures of the "impunity" approach, as implemented by the PSVI.

In analysing the United Nations Security Council resolutions, international legal texts and the PSVI specifically, through a feminist social constructivist approach, Critical Discourse Analysis is the most appropriate method for evaluating preventive policy because it reveals the ways in which the international community conceives of the problem. As Wood and Kroger have stated, "the overall goal of the analysis is to explain what is being done in the discourse and how this is accomplished, that is, how the discourse is structured or organized to perform various functions and achieve various effects or consequences" (2000, 95).

CDA is based in critical social research that aims "at better understanding how societies work and produce both beneficial and detrimental effects, and particularly how to end or mitigate detrimental effects" (Le & Le 2009, 4). It meets my goal to both examine a social and international problem and to also supply a route to improve existing solutions.

To give some pertinent background to this choice, the Postpositivist debate is essentially a debate about methodology; in effect which methodological tools are most appropriate to apply in the

study of discrete phenomenon in world politics. To simplify the debate somewhat, Positivists are committed to using "scientific" methods that seek to construct and test hypotheses and they seek to identify specific variables in order to interrogate relationships of cause and effect as well as the drivers of action and determinants of outcomes. Postpositivists on the other hand, reject these methodologies on the grounds that these key "variables" are in actuality discursive constructions, not scientific truth, or fixed entities. Moreover, in this theoretical position, there is no objective reality which might be apprehended outside of discourse. Middle-ground constructivists, as the name implies, seek a middle ground in this debate, acknowledging that certain categories and variables are indeed social constructs, but are nonetheless fixed and stable enough over time to be taken as having an "objective" existence. Thus, it is possible to embrace elements of social constructivist theory, without eschewing a commitment to problem–solving in world politics by recognising the stability of elements in international relations.

I reject "scientific method" in this context also on the grounds that gender is not an essential category, but a constructed one. Nevertheless, it is possible to explore how gender is constructed as a category and the way gendered assumptions have shaped the framing of international policies on gender. Since social and cultural constructions entail the use of language, narrative and other forms of discourse, it is necessary to interrogate, analyse and deconstruct the discursive constructions that underpin approaches to gender, conflict,

and sexual violence. Critical discourse analysis makes it also possible to analyse whether specific gender constructions and particular discourse framings lead to outcomes that entrench existing harmful gender stereotypes rather than challenge them, thus ultimately reproducing the problems they are designed to ameliorate or solve. Since social and cultural constructions entail the use of language, narrative and other forms of discourse, it is necessary to interrogate, analyse and deconstruct the discursive constructions that underpin approaches to gender, conflict, and sexual violence.

I find CDA, therefore, the most effective methodological tool available to elucidate the ways in which gender in constructed in the context of deeply gendered power relations. Critical discourse analysis allows for the examination of the context of prevalent norms and driving ideologies/beliefs surrounding a social problem or injustice (Le & Le 2009, 4). Critical discourse analysis supports my theoretical perspective, as it can, as Fairclough states, be considered a "moderate or contingent form of social constructivism" (2013, 5). Critical Discourse Analysis is based on the belief that discourse constructs and reconstructs reality, and that discourse is socially contingent (which is the basis of constructivist theory). As Burnham et al note, "discourse analysis focuses attention on the role that language, text, conversations, the media and even academic research have in the process of creating institutions and shaping behaviour" (2008, 250). Discourse in this manner can be viewed as not just language and text but all social

interactions, including non-verbal forms of behaviour (Fairclough et al 2011, 394).

The importance of CDA when it comes to gender constructions has been explored by feminists both within and outside of IR. Outside of IR, Lazar argues for a distinctly feminist CDA in her work, claiming (I would argue accurately) that it has potential to offer "a rich and powerful political critique for action" (2007, 144). She argues that the main concern of feminist CDA "is with critiquing discourses which sustain a patriarchal social order – relations of power that systematically privilege men as a social group, and disadvantage, exclude, and disempower women as a social group" (Lazar 2007, 145). The patriarchal constructions of a society are fundamental to the effectiveness of the use of tactical sexual violence, therefore feminist CDA thus has a clear application to my research needs.

The aim of feminist CDA is, as Lazar writes, to show "the ways in which frequently taken-for-granted gendered assumptions and hegemonic power relations are discursively produced, sustained, negotiated, and challenged in different contexts and communities" (2007, 142). The role discourse plays in creating, shaping, and reinforcing gender is fundamental to the construction of gender norms and ideals, thus we must understand the societal discourse surrounding gender in order to understand why certain actions and behaviours exist. The goal of feminist CDA is thus both explanatory and emancipatory; that is, to explain the gendered dynamics and then to offer a way to emancipate those who are oppressed.

I evaluate the international community's approach to preventing tactical sexual violence in conflict through an initial evaluation of UNSCR 1325 and subsequent resolutions that have, significantly, progressively focused on the problem of sexual violence in conflict. I examine the discourse surrounding the framing of tactical sexual violence in conflict in these documents, and the underlying assumptions about gender which this framing reveals. In order to understand how dominant constructs of gender are being reproduced in the UN Women, Peace and Security (WPS) agenda, and in UNSCR1325 and subsequent resolutions specifically, it is necessary to analyse the discourse; how meanings are constructed in language and how discourse, in turn, is imbued with dominant power relations.

The discourse surrounding the UN Security Council Resolutions and the WPS agenda has been explored and critiqued by authors like Shepherd (2008), although I would note here that she does not adopt a CDA methodology. The feminist literature in the area (WPS) has noted a progressive narrowing of the discourse on gender, women, and conflict, which deemphasized women's participation and agency, to an increasing focus on women as victims who are in need of protection (Shepherd 2008). Criticisms of the discourse of UNSCR 1325, often from poststructuralist feminists like Shepherd, aim to deconstruct the entire discourse of the resolutions and problematise the underlying constructs. Problematisation and deconstruction are in themselves understood to be critical interventions and thus a form of feminist politics and practice.

Scholars like McLeod have also raised the concern that the WPS agenda is becoming dominated by a focus on sexual violence, which is to the detriment of the original hopes and women's emancipation (2016). That is to say, while this policy was designed initially to address both women's interests and immediate needs in conflict zones, successive resolutions have served to reproduce and reinforce dominant ideas about gender by constructing women (and girls) as inherently vulnerable. Thus, rather than challenging dominant gender norms, UN resolutions have instead had the effect of reinforcing and further entrenching dominant constructs of gender.

However, a significant problem with this poststructuralist analysis, as Klot rightly argues, is that it often acknowledges the context and history of the institutions within which Security Council Resolutions are constructed, but pays insufficient regard to the practical consequences and constraints posed by these institutional and discursive histories for those working within the system to try to effect changes beneficial to women (2015, 66–67). For Klot, who was herself actively involved in the original crafting of the United Nations Women, Peace and Security (WPS) agenda, there is something to be said for working within the institutions that already exist however problematic these institutions might be. Klot argues that UNSCR 1325, and the WPS agenda often does not get enough credit for its accomplishments. Instead, it is criticised for not living up to the overly high expectations of feminist critics (2015); high expectations that were never aspired to

by those who initially devised and sought to advance the WPS agenda at the UN.

On the other hand, it is important to note that UNSCR 1325, and subsequent resolutions, have brought gender closer into the mainstream of security discourse and policy. As Cohn, Kinsella, Gibbings and Muna argue*:*

> I think that we need to be careful not to lose sight of just how extraordinary 1325 is. In fact, perhaps we academics and researchers should slow down, engage in the appreciative aspect of critique, and see what we can learn from it, before focusing on its possible dangers or limitations. It is amazing that the world's largest international security institution has now publicly declared that attention to gender is integral to "doing security." Even if at this point the Security Council's re-envisioning of security is more rhetorical than practical, it still puts the UN far ahead of any academic security studies or international relations program that I can think of (2004,139, cited in Klot, 2015: 16).

Moreover, while these resolutions are designed to meet the needs of women and girls, as these are understood within the context of existing gender norms, problem-solving measures are in fact required, indeed urgently required, in a world where the problem of war remains pervasive and women and girls continue to be targets of sexual violence. As Cohn argues:

> For women in many war-torn regions, in many local, national, and international non–governmental organisations, and in many multilateral institutions, what happens at the UN matters a lot. For those women, just saying "1325" evokes a host of new possibilities and the promise of a radical change from politics-as-usual… The issues it addresses are literally matters of life and death for women across the globe. (Cohn 2004, 8–9)

While there may be problems with the institutions leading international security, this does not mean that they cannot be of no use, and reshaped. In part, my thesis interrogates the problems in UN resolutions and other policy initiatives, in terms of how gender is constructed and how the problem of sexual violence is framed. However, even as I aim to analyse and critique discourses on gender, conflict, and sexual violence, I engage in a sympathetic critique in the chapters that focus on the PSVI in action. I follow Cohn's invitation to engage in the appreciative aspects of critique and assess what these measures have achieved and how they might be further improved in Chapter Eight.

For example, UNSCR 1325 and subsequent resolutions assume that sexual violence in conflict is best addressed by challenging the culture of impunity. Therefore, there is provision in these documents to facilitate prosecutions in the international criminal courts. This is an important advance to the previous situation of regarding sexual violence as an inevitable aspect of war and the victims as simply collateral damage. However, challenging the culture of impunity does not, or does not necessarily, involve challenging existing gender norms. The UN goal is to ameliorate, and ultimately to prevent, SGBV violence within war/conflict, but does not challenge deeply embedded identities and gender norms which, as I have shown, are actually profoundly implicated in the perpetration of sexual violence in conflict. While ending the culture of impunity is a much-needed start, this approach to

sexual violence in conflict might only work to reproduce constructs of women (and girls) as victims who are essentially without agency.

Since a principal achievement of UNSCR 1325 and subsequent resolutions is to increase prosecutions and thereby end the culture of impunity, in Chapter Four I consider major developments in the international laws of war since the conflicts in Rwanda and former Yugoslavia that have facilitated the prosecution of sexual violence, specifically tactical sexual violence, in the international criminal courts. I am principally concerned to analyse the framing and discursive construction of sexual violence in official and legal texts.

Having examined the discursive construction and framing of gender and sexual violence in the WPS and in the laws of war, in Chapter Five, I critically analyse the discursive construction and framing of the PSVI. I further examine key international policy documents pertinent to the PSVI, PSVI outputs and programmes, as well as all relevant British government reports and communiques, to assess the underlying framing of gender and tactical sexual violence.

In Chapter Five, I look in more detail at one attempt to take forward the prevention agenda through the United Kingdom's *Preventing Sexual Violence Initiative* (2012). The PSVI was put forth by then Foreign Secretary William Hague and Special Representative (at the UN) Angelina Jolie in May 2012. This initiative was intended to improve both the UK and the international community's efforts to stop tactical sexual violence in conflict. As yet, there is only a modest

amount of published academic research on the PSVI and its programs. With my case study on preventive efforts, I intend to make a substantive contribution to the literature on sexual violence in conflict in feminist IR.

A further reason for focusing on the PSVI is because it is an important and useful initiative, especially for evaluating the broad approach the international community takes with prevention efforts regarding tactical sexual violence. The PSVI, when examined as a whole, acts as a microcosm for the international communities' efforts to preventing tactical sexual violence in conflict. My results can be generalised to the wider international community's approach to preventing sexual violence in conflict. I analyse the PSVI over its first five years, from 2012-2017, to evaluate the impact and effectiveness. Until now, efforts to address tactical sexual violence were based at the international level, with funding and resources coming from large multinational organisations and international NGOs. Yet the PSVI is a push by a national government to effect international efforts and improve how the international community addresses tactical sexual violence in conflict. It is vital to evaluate these efforts, for the PSVI holds great potential. Initially at least, it showed the political will to push forward and implement its aims, which is something that has been lacking in past initiatives and programs. The PSVI has not been examined in such a way to date and, as such, my case study makes a substantive contribution to the extant literature.

However, I also acknowledge limitations in the capacity of initiatives like the WPS agenda and PSVI to change underlying gender norms. For this reason, in Chapter Eight, I make the case for a holistic approach to ameliorating and ultimately eliminating sexual violence in conflict. By holistic, I mean a combined effort by international institutions and civil society organisations which focuses on the problem with the widest lens, taking gender as central to the issue, particularly in consideration of legal remedies. In Chapter Eight, I elaborate on how grass roots efforts by NGOs to challenge dominant gender norms in conflict afflicted and post-conflict societies must also be harnessed in this effort.

## Conclusion

In this chapter, I have set out my theoretical framework which I term feminist social constructivism. I have outlined how reality is socially constructed and now gender must be therefore both understood and addressed, especially when analysing tactical sexual violence in conflict. I have discussed how tactical sexual violence is made effective through gender constructions that arise with a militarised ethnonationalism, all of which are socially constructed and by no means fixed. I have also argued that how the problem is framed is essential to understandings the likely success of policy efforts, as well as the constraints, limitations, and failures. I have further specified that I adopt what has been termed a "middle-ground" constructivist position. Middle-ground constructivism recognises that social reality is

constructed, but also concedes that on a day-to-day basis, we tend to believe and act as though our socially constructed reality is natural. However, since we make our worlds, we can also change them, albeit some problems might be deeply entrenched, making the prospects for change slow and gradual over time.

My aim is sympathetic to problem-solving initiatives. Even though there is a substantial volume of critique of existing policies and practices in my thesis, my aim is to go beyond critique. My desire is to improve policy and its impact. I specify a feminist social constructivist position because I am not merely interested in problem solving narrowly conceived. I undertook this research with the goal of evaluating and improving policy aimed at preventing tactical sexual violence in conflict. I am not content to "take the world as it is" and suggest ways to ameliorate the problem of gendered and sexualized violence in war. I aspire to examine the potential, and constraints, in the existing international policymaking, in existing norms, and suggest ways to change underlying constructs of identity – masculinity, femininity, nation – so that the incidences of sexual violence in war are significantly reduced, if not overcome completely. My ultimate goal is to highlight the problems within existing approaches so as to improve their impact and likely success.

I think this is best done by working with policy that exists and trying to change it. While I acknowledge that existing institutional structures, norms, and approaches pose important constraints on feminist aspirations to empower, if not emancipate women, I find it

useful to work within them because those involved have begun to appreciate the depth of the problems of gender-related violence.

In this chapter, I have also identified and explained the key concepts that I employ throughout the thesis, notably ethnonationalism, gender and tactical sexual violence. My research concerns are with ethnonational conflicts and tactical sexual violence specifically. For this reason, I draw from historical ethnonationalists conflicts like that in former Yugoslavia and Bosnia specifically and choose a case study–the Rohingya crisis– that has been driven by ethnonationalist ideology for ethnonational political ends. Militarized ethnonationalism often comes with a return to, and emphasis on, traditional patriarchal values, bringing about particular gender constructions that make sexual violence a highly effective tactic during armed conflict.

I concluded this chapter by setting out my methodology. I employ critical discourse analysis because I find this methodological tool to be most compatible with my underlying theoretical position, and most helpful in examining the nature of our current social constructed world order, and in understanding the potential for change. By adopting a feminist social constructivist approach, and analysing the underlying frames of, first, international policy and then the PSVI and its policy approach, I will provide a reasoned assessment of the likely impact of such efforts, and their relative success. This is based on the theory that policy outputs aimed at solving problems are, in large part, a result of how the problem is framed. It is thus essential to

understand the discourse which underlies policy, for it is what forms the policy itself.

# Chapter Three: Understanding Sexual Violence in War: The Case of Bosnia

## Introduction

Rape has been part of war across the millennia, including the use of rape, along with looting and pillage, to subdue a civilian population (Inal 2016). My research focuses on tactical sexual violence used as a part of a wider military and/or political strategy, which, because it was a humanitarian disaster, rose to the attention of the Western world in newspapers and reports during the Bosnian war (1992-1995) in the former Yugoslavia. The Bosnian war attracted enormous attention as journalists reported from the war zones; it resulted in a wide array of often contradictory scholarship on causes and consequences and was the stimulus for new international law.

Rape was, and still is, an effective and cheap weapon against an enemy. As Fitzpatrick has observed about rape and sexual violence in war, it "requires no special equipment, no special training, no ongoing maintenance or supply of those capable of employing such tactics for an identified goal" (2016, 52)." In 1975, feminist Susan Brownmiller, trying to end the overwhelming legal and political silence on this topic, had a particularly explosive description of the impact of rape in war, writing, "rape by a conquering soldier destroys all illusions of power and property for men of the defeated side. The body of a raped woman becomes a ceremonial battlefield, a parade ground for the victor's

trooping of the colours. The act that is played out upon her is a message passed between men" (as cited in Inal 2016 ,59). Chinkin and Kaldor conclude that rape as an intentional strategy has become identified as part of "new wars," which are "largely fought by men in the name of political identity that usually has a significant gender dimension. They use tactics that involve deliberate attacks on civilians, including systematic rape as a weapon of war, and are financed by predatory economic activities that tend to affect women more than men" (2013,167). This was the case in Bosnia.

This chapter will lay out the debates on sexual violence in conflict and its causes, focusing on what is categorised as tactical sexual violence, using the case of Bosnia as an illustration and case study. I use the Bosnian conflict between 1992-1995 as a starting point for my examination of the causes and consequences of tactical sexual violence because it is a prime example of an ethnonationalist conflict in which sexual violence was used as a tactic by militarised groups; it is the example that prompted international action. In Bosnia & Herzegovina (hereafter Bosnia) an estimated 20,000 to 50,000 women were raped (although the actual number is not known), with women being held in 'rape camps' where women were raped, forcefully impregnated, all perpetrated with a clear genocidal intent (Card 1996, 9; Wood 2014, 461).

As early as 1994 Boutros Boutros-Ghali at the UN reported the conclusions of a fact-finding mission conducted between 1992 and 1994, writing that there were "substantive findings of alleged crimes of

'ethnic cleansing', genocide and other massive violations of elementary dictates of humanity, rape and sexual assault and destruction of cultural property committed in various parts of Bosnia and Herzegovina. Furthermore, the 'ethnic cleansing,' and rape and sexual assault, in particular, have been carried out by some of the parties so systematically that they strongly appear to be the product of policy" (UN Security Council, 1994, p 1-2). There can be little question as to the strategic nature of the use of rape in the conflict, later confirmed in ICTY trials and convictions, and the way in which the conflict serves as a starting point to the examination of the phenomenon.

The Bosnian conflict is key to the analysis of wartime tactical rape because as a result of the war tactical rape was declared a war-crime. Many international organisations, such the Women's International League of Peace and Freedom (WILPF), began to focus on the issue, and international efforts included the Women, Peace and Security (WPS) Agenda at the United Nations (UN), and the Rome Statute of 1998, which established the International Criminal Court and included sexual violence in its enumeration of crimes against humanity (Article 7 (g)). There were notable legal developments at the international level, most significantly in relation to the laws of war and the creation of international criminal courts to oversee cases. It has also sparked important initiatives such as the British effort, the *Preventing Sexual Violence in Conflict Initiative* (PSVI) of 2012 onwards, which is the case study I analyse in Chapters Five, Six and Seven.

This chapter begins with a background narrative of the history of Bosnia as a country of ethnic and religious diversity and continues with an overview of the fighting which began in the winter of 1991 and grew into full scale war in 1992, ending in 1995 with the intervention of the United States, NATO, and the UN, which concluded with the Dayton Accords, signed in December of 1995. Next, I discuss the different categories of sexual violence and examine causal theories of sexual violence in conflict to explain how a social constructivist analysis of sexual violence which focuses on all types of discourse, while drawing from work on militarism and patriarchy, differs from other strands of theory. Exploration of the use of rape as a tactic of war during the Bosnian war follows in this section, with a deep analysis of the role gender norms played in the Bosnian conflict and how these gendered constructs and norms made sexual violence a deeply effective tactic, destroying the morale of the enemy as well as their communities. The last section offers a brief discussion on the international responses to sexual violence in conflict, which were, in large part, a result of the reports of human rights' advocates, journalists, photographers, and reporters who documented the atrocities taking place: mass rape, genocidal rape, and other forms of sexual violence. The Bosnian war coincided with the mass deaths and rape reported from Rwanda in the early 1990s; the two disasters combined to fuel a demand for an international response.

## THE BALKANS, THE RISE AND FALL OF YUGOSLAVIA, AND THE BOSNIAN WAR

In this section, I provide an analysis of the history of Yugoslavia, its dissolution after 1980, and the Bosnian war (1992-1995) as necessary background to understanding the rise in ethnic nationalism and the causes and nature of the Bosnian war. The history of the breaking apart of Tito's Yugoslavia and the Bosnian War is contested territory, with an outpouring of work appearing during the years of the conflict and subsequently (Campbell, 1998). Scholars of many disciplines, experts from international organizations like the World Bank and the United Nations, journalists, and other individuals and organizations produced a myriad of reports and interpretations, culminating in often conflicting accounts of the break-up of Yugoslavia and the causes and conduct of the war in Bosnia.

The origins of the destruction, the violence, the use of rape as a tactic to destroy morale, and genocidal rape as a part of what was euphemistically labelled "ethnic cleansing" in Bosnia does have roots in the long history of the Balkans but the balance of scholarship has concluded that the rise of militant ethnonationalism after 1980, particularly the effective propaganda work of the Milosevic regime in Serbia, is the phenomenon that bears the preponderance of the weight of evidence for the causes of the Bosnian war. As Malcom has maintained, "the history of Bosnia itself does not explain the origins of this war" (1994, xix). Malcolm also points out that, because the history of Bosnia was so little studied, it was hard during the war to "distinguish between the fog of ignorance and the smokescreen of

propaganda" in the outpouring of writing and the speeches of political leaders (1994, xxii). Prime Minister John Major told the House of Commons that the cause of war was "ancient hatreds" which had resurfaced (Malcolm 1994, xx). Douglas Hurd, the British Foreign Secretary described the fighting as a "civil war" (Malcom 1994, 239). Neither was an astute or accurate interpretation. The Bosnian conflict was much more complicated than these hasty and superficial judgments which were echoed in various forms in Europe and the United States.

At the fault line between Europe and the Islamic Ottoman Empire, Yugoslavia lay on the Adriatic sea, the site of trading centres over the centuries; it was the part of the Roman Empire, then one of the hubs of the vast Venetian trading networks, the battleground between European kingdoms and the Byzantines, leading to two forms of Christianity. In the 1300s the Ottoman Empire captured much of the area, moving as far as the gates of Vienna, threatening the Habsburg lands. At the same time, for a brief period of less than 100 years after the middle of the 1300s, there was a medieval kingdom in the Bosnian lands, which ended in the 1470s with Ottoman conquest. During the 19th century the Habsburg ––after 1867 the Austro-Hungarian –– Empire and the Turkish controlled Ottoman Empire fought for control, with Austria-Hungary taking control over Bosnia after the Congress of Berlin, in 1878, although it was still nominally under the Ottomans. At the turn of the century the Habsburgs sparked the Bosnian Crisis in 1908 that led to World War I when they formally annexed Bosnia and Hercegovina.

In terms of religion, after 500 AD the Balkans became populated by Roman Catholic and Eastern Orthodox Christians, and once the Ottomans overran portions of the area in the 1300s, many men and women in what became Albania, Kosovo, Bosnia, and Herzegovina converted to Islam. By the 19th and 20th centuries there were Muslims in all parts of the region. This did not mean that there were clear cut lines between the religious groups, nor did the Ottomans have a policy of forcibly converting their subjects; in general, the edges of the Ottoman Empire were left alone as long as they raised money and provided soldiers. Intermarriage was a significant feature, and by the 1980s all the identifiable ethnic groups who had emerged – Croats (Roman Catholic) Slovenes (Roman Catholic), Serbs (Eastern Orthodox/Serbian Orthodox) , Albanians (Muslim), Muslim Bosnians ––who took the label Bosniaks officially in 1993–– and other minor groups (Roma/Gypsies, Magyars, Germans, and Jews) had migrated across the areas of Yugoslavia. By World War II no one region held one ethnic or cultural group.

On the eve of World War I in 1914, both the Austro-Hungarian Empire and the Ottoman Turkish Empire were in decline and were subject to further dissolution as a result of the peace treaties of 1918 and 1945. Woodrow Wilson, with his Fourteen Points doctrine at the end of World War I, pushed the combatants in Paris in 1918 to support nationalist self-determination, particularly among the various ethnic groups who lived within the boundaries of the dismantled Austro-Hungarian Empire. The Croats and Serbs, who had developed the strongest sense of ethnic identity during the second half of the 19th

century, were ready to claim what they could. Out of the negotiations emerged the Kingdom of the Serbs, Croats, and Slovenes, which included Bosnia, in 1918, renamed Yugoslavia in 1929.

Yugoslavia was engulfed by World War II in April of 1941, when it was surrounded by territories controlled by the Axis powers and forced into an alliance with the Tripartite Pact of German, Italy, and Japan. Yugoslavia split into several regions, with varied loyalties as civil war broke out. Croatia became an Axis puppet state whose Ustasha (fascist) forces fought alongside the Italians and Germans. Montenegro and Serbia were directly controlled by the Axis. Two major partisan movements fought the Germans; one under the young Communist, Josip Broz – known as Tito – and the other, called the Chetniks, led by Serbian Colonel Draza Mihailovic. Tito, the far more popular leader, was a Croat/Slovene trained in the Soviet Union, whose goal was to establish a Communist state. The fighting was conducted with enormous brutality, as Croats slaughtered Serbs, Jews, Roma, and Muslims in concentration camps. Some Serbs were forcibly converted to Roman Catholicism, and some 500,000 were killed.

Before the official end of the war, Tito, with Allied aid, established control in parts of Yugoslavia and was ready in November of 1945 to declare the Federal People's Republic of Yugoslavia. Tito created a federation with Serbia, Croatia, Slovenia, Montenegro, Macedonia, and Bosnia-Herzegovina as the main units, as well as two smaller autonomous units within Serbia – Kosovo and Vojvodina. The hills and mountains of Bosnia-Hercegovina, with its ethnically diverse populations of Serbs, Croats, and Bosnian Muslims, under Tito

leadership saw the hardest fighting during World War II. Tito forged a Communist authoritarian state and supressed ethnic nationalism, although it continued to bubble below the surface. Even so, the majority of the political and bureaucratic leadership was Serbian, which had implications for the future. After his 1948 falling-out with Stalin, Tito turned for aid to the United States and the West and built an economy upon western loans and tourism as he generally modernised the region.

During the Tito decades women's status – legal, cultural, and economic – improved. The first breath of hope for equality for women had come within the partisans during World War II, where in a break with tradition some two million women joined the war effort, with reports of 100,000 of those women fighting as soldiers. Estimates are that 280,000 women died in the concentration camps in Germany and Croatia. Some of the strongly traditional patriarchal world of rural areas, and the less strong authoritarian patriarchy in cities, was disrupted. Denitch concluded that Tito hastened "the entry of women into modern society" (1976,50).

Women's legal, employment and political rights improved under Tito. The use of the veil was banned in 1950 and later Tito the veil was seen more in rural farming areas than in cities. and during the war in Bosnia when ethnic nationalism feeling encouraged this religious symbol. Women were awarded the right to abortion. In a sign of increased legal equality, The Family Act of 1946 assigned parental authority to both mother and father, "legal discrimination against 'illegitimate' children was abolished, and property acquired after

marriage was considered to be owned jointly by both partners." Both women and men could declare their chosen nationality. While there was in all likelihood the double burden for women of working for a wage outside the home while still carrying the burden of domestic work at home, there was, nonetheless, official promulgations of gender equality from the Communist Party (Reeves 1990, 125-138). Women got the right to vote, and the Yugoslav constitution included the following statement; "women have equal rights with men in all fields of state, economic and socio-political life" (Albanese 2016, 112). Albanese comments that the result was that through "urbanization, industrialization, and social mobility, the large, patrilocal zadruga (extended family), which had been typical throughout rural Yugoslavia, declined in frequency and importance" (2016, 113).

By 1948 women made up 47 percent of the industrial work force, and nearly 40 percent of the total employment in the socialist economy, although there were differences by region and between rural and urban areas. Before the break-up of Yugoslavia in Slovenia, for example, women's employment rate was 46.1 percent, but in Kosovo it was only 23.0 percent. In politics women held 55 percent of the seats in the federal parliament, but significantly held only two percent of seats in the individual republic assemblies, a fact that would shape women's political power in the independent states after 1990 (Reeves 1990, 130-131). More women became literate, had more access to education under Tito, although after 1980 there is evidence that the system intensified social stratification (Reeves 1990, 132). Once again, the statistics change with the region and the urban/rural divide. Reeves

argues that the "rate of illiteracy for women is positively related to conservative traditions," given as an example the rural Muslim population in Kosovo where girls are not encouraged to attend secondary schools because it would make them less marriageable in the Muslim community. (132) Women did find access to universities increase, where they clustered in education and the health and social work professions.

We should not be surprised that underneath these statistics lay another set of barriers to gender equality. By Tito's death there is evidence that men were preferred in hiring practices, received more rewards in their occupations, and gradually regained the position of superiority in terms of higher status jobs and the percentage of the workforce. To conclude, under socialism women held a greater status than before Tito. Once Tito died, and the process of dissolution began, women's rights and access to power came under attack.

Tito's death in May of 1980 began the process of dissolution of a federated Yugoslavia, as both ethnic nationalisms increased, and the economic situation deteriorated. Ethnic nationalist identities appeared in public discourse as the political and cultural divides hidden by Tito's rule resurfaced with renewed energy, particularly by Serbian intellectuals. Slovenians put forth a "national program" and talked of independence, so much so that, as Albanese points out, by late 1990 nearly 90 percent of Slovenes supported secession (2016, 111). In May of 1991 94.3 percent of Croats voted for independence (Albanese 2016, 111). The leadership of Croatia, Slovenia, Bosnia, and Macedonia were men identified with ethnic and nationalist causes who had been

dissidents under Tito. Future leaders Franjo Tudjman of Croatia and Alija Izetbegovic, a Bosnian Muslim, were both imprisoned by Tito.

In 1984 Serbian nationalists revived the idea of a Greater Serbia and saw the growing autonomy of Kosovo as a threat. It was viewed as Serbian "sacred territory", and the site of a 14th century battle with the Ottomans grew larger in Serbian nationalist mythology (Rogel, 17). The institutions of the federal government fell apart, and the loyalties of the army, the JNA, whose officers were a majority Serbian, turned to support Milosevic and his grand cause, the carving out of a Greater Serbia. Kosovo and Vojvodina were absorbed into Serbia and Montenegro supported Milosevic's leadership; in 1992 the two states formed the Federal Republic of Yugoslavia (Yugoslavia). The Slovenes walked out of the Federation Congress in January of 1990 and declared independence. Croatia followed suit. In 1991 on June 25 Slovenia and Croatia announced their independence. Two days later the JNA army forces invaded Slovenia, but the conflict lasted a mere ten days before they withdrew.

The JNA turned its attention instead to Croatia in July and brutal fighting ensued with both Dubrovnik and Vukovar bombed heavily. Serbs in Croatia announced their own Serbian Autonomous Region (SAR) and created paramilitaries to defend the region. As a result, in September, the UN banned all weapons shipments to the entities of the former Yugoslavia in an ill-fated effort to secure peace. The UN ban did little to undermine the Serbian army, who had been the best-armed force and secured weapons from Russia and the Middle

East, but it fatally undermined any efforts to fight back by Bosnia, which did not have a well organised military and far fewer weapons and materiel than Croatia or Serbia. Left with the choice of being swallowed by Serbia (or Croatia) Bosnia also took steps toward a separate government in October of 1991.

Fighting in Croatia ceased in January of 1992 after mediation and the UN set up UNPROFOR, with peace-keeping troops. Milosevic's attentions turned to Bosnia. Serbian Bosnians had formed militias, collected weapons, and begun a campaign for a Serbian autonomous region (SAR) in late 1991, declaring themselves an independent republic in March, and by April 1992, war in Bosnia began in earnest.

By the summer news of the brutalities taking place at the hands of the Serbians in Bosnia began to leak out and it became clear that genocidal efforts by the Serbians and Montenegrins, along with mass rape as a strategy of the conduct of the war, led by decisions in Belgrade, were taking place (Human Rights Watch, 1998). Evidence piled up in the following years. Women's groups, human rights organizations, and journalists reported on the violence of the war and evidence of mass rape. Most documented cases happened between fall of 1991 and end of 1993 with rapes of Muslim, Croatian and Serbian women, but the majority of cases were rapes of Muslim women from Bosnia by Serbian men. Perpetrators were soldiers, paramilitary groups, local police, and civilians. A European Community delegation estimated 20,000 rapes, and the Bosnian ministry said 50,000. The precise number will never be known.

The mass killings and rape in one municipality, Visegrad, in 1992, show the nature of the genocidal intent of Serbian political leaders as carried out by Bosnian Serbs and the Serbian army. The genocide went on for days and was witnessed by the local population, including women and children. Bosniaks were killed in the streets and people were burned alive in their homes. Given the order to drive all non-Serbs from the area, people were pushed from the bridge over the river Drina where they could be seen from windows of houses all over the town. In a macabre result, so many people were killed that the corpses clogged a dam further down the Drina river. Trucks ferried more men, women, and children for massacre in a public display in the streets, both day and night. Homes were burned, mosques levelled. In Vilna Vas, a hotel close to the town, Bosniak women were raped, others were tortured and killed. Rounding up Bosnian Muslims from rural areas, bussing groups of men, women, and children to concentration camps, systematically killing, raping, and torturing, Serb fighters accomplished the goal of "ethnic cleansing" (Becirevic, 2015, pp 125-129).

A report by Human Rights Watch related the "ethnic cleansing" in Foca, where in after April of 1992 the terror, mass killings, and rapes were particularly dreadful, and where it was clear that the genocide was planned and carried out with the direction and help of Serbian leadership (1998). The takeover of Foca was planned and managed by a crisis committee, similar to committees that were formed in other areas of the Serb territory. Under the authority of the Crisis

Committee, military, and paramilitary forces from the Serb-controlled territory in Bosnia and from Serbia and Montenegro carried out "disappearances," detentions, expulsions, torture, executions, and rape, with the assistance of the local police. Businesses and factories, as well as private property belonging to non-Serbs, were expropriated and the former owners and directors either imprisoned, expelled, or "disappeared". What took place in the Foca municipality after the Bosnian Serbs were firmly in control was beyond anyone's worst nightmare (Human Rights Watch, 1998). Women who were not Serbs were held in detention centers and systematically raped and sexually assaulted as a part of the genocidal efforts. Some were held in camps, others in private houses and at the high school. The events in Foca later formed the basis for convictions at the ICTY of Serb perpetrators.

In August of 1992, the UN Commission on Human Rights appointed a Special Rapporteur and a few months later the Security Council established a group of experts to analyse data on atrocities and to conduct its own investigation. The resulting report, documenting interviews with 223 people, victims and witnesses of rape came out in 1994 (UN Security Council, 1994). They established clearly that what was taking place was systematic killing and systematic rape –tactical rape as a strategy of conducting war – about which the Security Council investigators had little doubt was "not coincidental, sporadic or carried out by disorganized groups or bands of civilians who could not be controlled by the Bosnian-Serb leadership" (UN Security Council, 1994). These campaigns revealed that they were undertaken with "a

purpose, systematically and some planning and coordination from higher authorities" (UN Security Council, 1994). The Serbians involved believed that their efforts were "positive, patriotic accomplishments," while the motivation, the UN investigators concluded, was rooted in ethnic nationalism, perceived historic grievances and the desire for revenge for those historic "wrongs" (UN Security Council, 1994).

The reports piled up, and international concern and pressure for intervention increased. Efforts to broker a cease-fire which included consideration of a Croatian/Serbian plan, drawn up in 1991, to divide Bosnia, were undertaken by the UN and NATO but with little success. 6,000 UN troops were in Bosnia by November of 1992 but were markedly unsuccessful in stopping the violence or enforcing "safe havens" in the cities of Sebrenica, Sarajevo, Zepa, Gorazde, Tuzla, and Bihac. The United Nations Protective Force (UNPROFOR) were "peacekeepers with no peace to keep," were expected to remain politically neutral in a place where there was no peace settlement and where a horrific humanitarian disaster was taking place (Hendrickson, 2005).

Croatia's position strengthened, and in May of 1995 their now 100,000 strong army took the Krajina area, the stronghold of Croatian Serbs (Rogel, 36). The Croats then turned to support Bosnian troops against the Serbian Bosnians and Serbians. In July of 1995, at Srebrenica, a UN declared "safe area", Dutch peacekeepers stepped aside and allowed the Serb forces to take over the town. The resulting massacre of 7,000 to 8,000 Muslim men and boys Srebrenica proved to

be the turning point to the whole war. President Clinton and NATO/UN leadership finally took stronger military action. In August the Serbs, who had been besieging Sarajevo from their positions in the hills surrounding the city since May of 1992, launched mortar shells on to the marketplace in the centre of the city, killing 37 people and injuring many more. In February of 1994, 68 people had been killed in the same market by a Serbian attack, but this time, two days later, NATO responded with force and began large scale bombing of the Serb targets. Facing weakening control in Serb occupied areas, and forced to withdraw from others, Milosevic agreed to peace talks, which began in early November, in Dayton, Ohio where the United States hosted peace negotiations. The Dayton Accords were signed officially in Paris in December. Part of the agreement was the deployment of 60,000 peacekeepers. As with most such agreements, not everyone was happy; Bosniaks opposed the division of Bosnia into a two-part state, one Serbian, the other Bosniak/Croat; the Serbs were angry at the loss of territory.

The tasks of resettling refugees, holding free and fair elections, promoting human rights, maintaining law and order, and building a functioning economy posed enormous barriers for the commission given the task of reconstruction. Would the post-war Bosnia be able to restore the multicultural society, where religious and ethnic differences were "not generally reasons for hostility," as Rogel points out (2004, 45)? The Serbs, under the onslaught of propaganda and invented history managed by Milosevic, saw themselves as defenders of

Christianity against the "infidel Turks," and included in that label the Bosnians. This hatred did not dissolve with the end of the fighting. Ethnic nationalism remained, and with it grew a sense of ethnic self-identity for more and more of Bosnia's citizens; Orthodox Serbs, Catholic Croats and Bosniaks found themselves in a cumbersome shared government system whose problems still remain.

Under the auspices of the United Nations, an international war crimes tribunal was created at The Hague, Netherlands in January of 1993, and its work began in November of that year. This court, the International Criminal Tribunal for the former Yugoslavia (ICTY) was the start of the international prosecution efforts to address the issue of war crimes committed during the Bosnian war. The Bosnian conflict, seen on televisions and read about in newspapers across the world brought attention to tactical rape as a strategy of war, brought the declaration by the ICTY of tactical rape as a war-crime, engendered efforts to bring justice for the victims of the conflict, and spurred humanitarian organisations' efforts to address the immediate and long term needs of rape and sexual violence victims.

## Sexual Violence in Conflict: Categorizing sexual violence and theories of causation

Tactical sexual violence exists on a continuum with other sexual and gender-based violence, but all sexual violence does not share similar causes or manifestations. However, they do share a connection in that the sexual nature of the violence can be related to gender norms

in any given society. How gender norms are in play differs within the different arenas of sexual violence in all conflict, which is why when examining and evaluating policy targeting sexual violence, it is most useful to address the different types separately and to consider the various theories used in analysis of tactical wartime rape and sexual violence. As a consequence, this section of the chapter outlines the main categories and causal theories of sexual violence in conflict in general, as necessary background to a focus on tactical sexual violence in ethnonationalist conflicts with its use in Bosnia used as illustration. Sexual violence overall is not a singular phenomenon with one cause, but a complicated phenomenon that cannot be fully understood using one monolithic theory (Wood 2014, 463)

Categorisation is, therefore, necessary as a tool for differentiating the various forms of sexual violence and particularly war-time violence against women. Moreover, since sexual violence in conflict is complex, it is also difficult to respond to effectively unless there is clear analysis of the phenomenon for peace and conflict workers to refer to where categorisation is of concrete use. Theorist Wood, for example, divides sexual violence in conflict into three categories: "opportunistic," "practice" and "strategic" (2014, 470). "Opportunistic" is that which is carried out by individuals, most similar to peacetime sexual violence; "practice" refers to sexual violence, that is tolerated by commanders in the field, that is not particularly ordered but has become accepted/condoned during conflict; and "strategic" is that used intentionally by one or both of the warring parties as a tactic

and weapon (Wood 2014, 470-71). Wood's categories have proved the most useful for my research.

Fitzpatrick summarises another set of categories, created by Enloe, who, in writing about the "militarization of rape," provided three types of war-time rape. Recreational rape is the rape that occurs when soldiers do not have access to "militarised prostitutes". A second category was "national security rape" as a way of bolstering morale in the troops, and lastly "widespread rape as an instrument of open warfare" which fits the case of Bosnia (Fitzpatrick, 2016, 54)

Niarchos writing about the systemic rape in the wars in Yugoslavia categorised the rapes into what she described as five "patterns" in another, more targeted effort at categorisation. In the first pattern there were rapes committed before heavy fighting began in any region where individuals or small groups broke into houses of the enemy, terrorized those there, raped women, often in gang rapes and in front of their family, and then stole property. The second pattern happened when towns and villages were invaded, and the inhabitants assembled for removal. Women were raped in houses or in public, often again by gangs of men. Niarchos relates the example of one elderly woman raped in front of 100 villagers (Niarchos 1995, 37). In the third pattern women were raped while held in detention camps after an area was cleared on non-Serbs. Women were raped by soldiers, camp guards, paramilitaries, and civilians. Gang rapes and rapes which were particularly "sadistic, involving severe beatings and torture" took place. The level of sadism and torture escalated in the

fourth pattern where rapes occurred in “rape-camps” some of which were “large and well-organized; others consist of houses or cafes. In this setting the women are raped frequently, perhaps numerous times each day. They are humiliated, beaten, and some are killed. Some captors say their intention is to impregnate the women, to make ‘Chetnik babies.’” (1995,41). The last pattern, the fifth, was where women were forced into brothels to be used by soldiers. These women were more often killed than released.

Niarchos sees similarities in all the rapes, in that most of the rapes were conducted by groups –gangs– of men, even though some might only watch. Many rapes were conducted as spectacle and many women suffered multiple rapes. Rapes could include sexual torture and sadism. Victims were subject to sexual torture with “guns, broken bottles, or truncheons” and family members were forced to assault each other. Some witnesses “describe atrocities of a ritualistic nature where, after the rapes, women’s breasts are cut off and their stomachs slit open.” Rapes might copy rapes seen in pornography and particularly sadomasochistic pornography. Finally, Niarchos points to the filming of rapes which were then shown on Serbian television where Bosnian or Croatian victims were described as Serbian women being attacked by Muslim or Croatian men. All these categories or patterns can be seen as “strategic rape” in the sense that the conditions under which they happened were shaped by the policy of ethnic cleansing and were a strategically targeted weapon where women were used to destroy the

morale of both men and women of the enemy ethnic group. They were targeted also because of their gender.

IR scholars have also developed a number of competing theories as to the causes of conflict-related gender violence. Gottschall in 2004 provided a summary of the main theories into four groups (2004). Gottschall quickly dismissed the utility of what he labelled as "feminist theory," although he acknowledged that feminists were the first to systematically examine the problem of mass rape. Gottschall described feminist theory as extending rape in peace time on a continuum into war, "not as a crime of sexual passion but as a crime motivated by the desire of man to exert dominance over a woman" and then concluded it was not sufficient as a universal explanation across all societies. Second, according to Gottschall, is "cultural pathology theory," which finds causation in past history in terms of cultural and social values and attitudes toward women. A third category is "biosocial theories" which he describes as arguing that rape is "wholly under genetic control." The fourth category, strategic rape theory argues that sexual violence can be used as a tactic and a weapon of war. This is the theory that best fits the type of sexual violence I focus on, and thus I elaborate on this type later in the chapter.

Biosocial theories of rape/sexual violence in conflict are essentialist, arguing that man's essential nature and sexual urges are heightened by militarisation and conflict, thus causing men to rape and sexually assault women in order to satisfy their natural sexual urges (Snyder et al 2006, 186). This type of sexual violence is often

considered to be a result of the lack of law and order in conflict societies allowing men to fulfil their sexual desires without risk of punishment. This argument is based on the conviction that all men are rapists, but society's rules and norms keep their normal biological sexual urges in check. This theory fails to account for the variation in conflict-related rape. Some armies and insurgent movements show little evidence of rape of civilians. Biosocial theories perpetuate the belief that there is no stopping sexual violence in conflict, claiming it is natural and inherent in man. Biosocial theories also cannot explain the existence of women perpetrators and male victims. Such cases are rare, but there are a number of documented cases (Leatherman 2011, 43). Biosocial theories and biological essentialism feed the argument that rape and sexual violence in conflict is 'inevitable' (Hansen 2000, 58). Moreover, as Wood argues, sexual violence is not always committed on a mass scale by all conflict parties, there are wide variations in types of sexual violence used across conflict settings (2006).

A further example of the failure of biosocial and essentialist arguments is found in the work of Baaz and Stern who described soldiers in the Democratic Republic of the Congo (DRC) speaking of two types of rape, "lust rape" and "evil rape." "Lust rape," the soldiers described as happening out of an individual's frustration. Superficially, the label of lust rape would seem to support biosocial theories, but it equally fits the category of "practice" developed by Wood, meaning that category of rape which takes place with the tacit knowledge and permission of commanders as a common event.

Radical constructivists, Baaz and Stern were trying to uncover the social and cultural meanings invested in rape by individual perpetrators and the way these relate to social and cultural constructs of masculinity (2008). The understanding and meanings attached to rape by Baaz and Stern's research subjects in relation to both "lust rape" and "evil rape" are compatible with strategic rape theory, as I interpret it. Biosocial theories cannot explain these differences.

Cultural pathology theories argue that sexual violence in conflict is a result of societal and cultural norms that promote sexual violence (Gottschall 2004, 134). "Opportunistic" and "practice" sexual violence as defined by Wood can be explained by cultural pathology theories. MacKinnon argues that sexual violence in conflict is a result of the cultural pathology of the conflict society. She points to the widespread use of pornography in the former Yugoslavian conflict as one example (1994). Using this framework, patriarchal gender norms (a cultural phenomenon) can be called pathological. Leatherman, however, takes issue with these theories, because they paint all men as (potential if not actual) perpetrators and all women as (potential if not actual) victims, which, Leatherman argues, is not the reality (2011, 16). While theories that see cultural pathology as the root cause of sexual violence allow insights into how gender constructs –and pathologized masculinity particularly–are at play in acts of sexual violence, they do not sufficiently explain sufficient manifestations of sexual violence in conflict. Wartime rape and sexual violence is a complex and multi-

layered phenomenon where one mono-causal theory is insufficient to explain the global instances of war-time rape.

Perhaps most widely accepted today, of all the theories, and solidified by its use in the international courts, is the theory of rape as a strategy, used systematically and intentionally to destroy the enemy (Farwell 2004, 393). In strategic rape theory, sexual violence is deployed as a tactic for a military or political purpose. To be considered tactical, sexual violence must be "intentional or the product of some other intentional acts performed to serve particular ends" (Sjoberg 2013, 181). While not all strategic rape theory is constructivist, this theory is compatible with constructivist approaches. Rather than focusing only on individual manifestations of pathological masculinity or pathological and gendered cultural norms that pervade patriarchal and militarized societies, feminist constructivists in IR have focused with a more holistic view, on the social and symbolic significance of gendered constructs, how they become politically significant in conflicts and are manifest in the tactical and strategic goals of military forces. This does not exclude the analysis of the way cultural and social gender norms shape war-time rape.

Sjoberg contends that tactical sexual violence "is a key war tactic because of the symbolic function it serves in attacking (or corrupting the purity of) women as a way to communicate dominance over the enemy state and/or nation" (2013, 179). The body is central here both physically and as symbol. As I have discussed, the bodies of women become symbolic representations of the nation and the ethnic

collective; and become the contested ground on which battles are fought (Papic 1999, 156). These gendered constructions are used to communicate the message of destruction to the enemy nation. Through particular militarized ethnonationalist and patriarchal constructions of gender, the rape of a woman becomes seen as rape of a collective body. However, it should be noted here that this tactical use of rape is not merely symbolic, it is also part of the destruction of property and a taking of territory as was the case in Bosnia. All this is accomplished by a targeted attack on women's bodies and the violation of their boundaries, which serves symbolically as the violation of the national body.

In Bosnia in the 1990s MacKinnon concluded that "evidence documents that women are being sexually and reproductively violated on a mass scale, as a matter of conscious policy, in pursuit of a genocide through war" (1994, 6). A further category of wartime sexual violence is genocidal rape, which has enormous – and intended – impact beyond the immediate act. The goal of genocidal rape is to destroy the enemy collective, and this is communicated symbolically and physically through women's bodies and aimed at destroying and exploiting gender norms of the enemy. It is my contention that in the case of genocidal rape, constructs of gender within the group attacked were key to communicating a particular message of destruction.

I use the case of genocidal rape in Bosnia during the Bosnia war (1992-1995) as an example of tactical sexual violence in conflict and show in detail the gender constructions which make sexual violence an effective military tactic in the context of ethnonationalists conflicts. The gender constructions and extreme patriarchal values underlying the decision to use genocidal rape in Bosnia are an exemplar of ethnonationalist militarism whose elements can then be compared to other conflicts in which sexual violence is used as a military tactic.

The war was characterised by violent ethnic conflict and the use of genocide, perpetrated in good part by the widespread and systematic use of sexual violence as a military tactic and political tool. Card found that "the expulsion and dispersion of entire ethnic groups appear[ed] to be a primary aim of some perpetrators and failing that, genocide by a combination of murder and forcible impregnation" (1996, 9). There is clear evidence that the rapes in Bosnia were systematic and tactical in nature, part of a wider military strategy of genocide, committed with the intent to destroy the entire ethnic collective (MacKinnon 1994, 85). While rapes were reported as having been perpetrated by all sides, only the Serbian forces seemed to have a clear policy of rape as a military tactic, that is, genocidal rape (Allen 1996, 43).

During the collapse of Yugoslavia, with heavy militarization and strong nationalist sentiment came with a return to traditional patriarchal values. Women were forced back into the home and their

role was to be as mothers and caregivers of the nation (Korac 1998, 158). For a woman to be a proper member of the nation, she was to be a mother and a caretaker and those who disagreed or tried to rally against these constructions were shunned and ostracised from society (Ramet 1999, 6).

Women, particularly in ethnonationalist conflicts, are seen as bearers of the reproduction of the nation and its honour, markers of national territory and also property of the nation and its male citizens (Sofos 1996, 3). These constructions put women in tremendous danger in ethnonational conflict for these constructions drive the use of sexual violence as a tactic in war.

As I have shown, the drivers of sexual violence in conflict differ in different contexts and conflicts. The nature of rape and other sexual violence in war can be categorised so as to make these differences clearer to the researcher. However, in the ethnonational conflicts in former Yugoslavia, it is evident that gender constructs of nation and the symbolic construction of women as reproducers of the nation and its boundaries, indeed as symbols of the nation itself, was undoubtedly a principal driver of sexual violence perpetrated by predominantly male combatants against women. Such gender constructions or norms are common in militarized ethnonational conflicts, not just former-Yugoslavia, however. I will illustrate this point further in Chapters Six, when I interrogate sexual violence during the Rohingya crisis.

Within ethnonationalist discourse, the nation and the family often become conflated in descriptions of the workings of the state. The state acts as the "father" of the nation, the protector of the land and its people. In these states, after the state itself the most important unit of government is the family. Within the family the father, as head, is the natural source of authority and power and thus controls his wife and children and any other extended family dependent upon his largesse. Women in the state are regulated and controlled by the head of the family and the state simultaneously. Women in this societal context are believed to be the property of men, and thus by extension property of the nation in a clearly hierarchical fashion. The state has, therefore, a role in reinforcing gender norms because of its legal and social control over women. The state will govern women's role as mothers, for example, in abortion and family planning laws and policies.

In the former Yugoslavia, as ethnonationalism grew stronger, abortion rights became increasingly restricted after the fall of Communism and women were encouraged, if not compelled to have more children (Ramet 1999, 92). Women's role as reproducer of the nation made them an issue of national security. In public discourse and by legal means, women's gender roles included a strong directive to reproduce, so the militarised nation would have the men to fight. Women are here the essence of the nation, and this essence exists largely in their bodies (Korac 1998, 160). Womanhood, or the gender roles belonging to women narrow to become equated only with

motherhood; they are the symbol of the nation and its metaphorical mother (Sofos 1996, 3). Even with this emphasis upon male domination, the nation itself is symbolically female – the "motherland," for which the state and the family unit labour and must support. Men and women, each with their own separate and constrained gender constructions, must protect the motherland.

Ethnonationalist discourse is highly patriarchal in other respects. Ethnicity is often believed to be carried in the seed of the father, and therefore the woman is a vessel for carrying the man's (and therefore also the ethnic group's) child (Sofos 1996, 14). The child belongs to the ethnic group of the father, regardless of that of the mother. Rape is thus a contamination of women and their womb and they are no longer viable reproducers of the ethnic nation. Rape "permanently threatens the purity of the entire ethnic group" by putting into question "the authenticity, legitimacy, and purity of the blood ties that bind the ethnic group, diluting its purity and ultimately even threatening it with annihilation" (Albanese 2001, 1013).

In these deeply authoritarian and patriarchal societies, where women are the property of the male head of the family, and by extension, of the nation, the rape of a woman is not simply a violation of the individual woman's body and her individual rights, but a violation and destruction of a man's property (Card 1996, 7). Men are humiliated because they are shown to be unable to protect their women. Kelly cites the organization Women in Black, from 1993, saying "the rape of their women is not lived as pain in her body but as a

male defeat: he could not protect his own properly" (2000, 54). To emphasise this central consequence of ethnonationalist thinking, women are vessels for carrying the male seed and are the property of both their men and the nation, since the control of women's fertility and bodies is necessary for the reproduction of the nation and is connected to the status of the nation's power and territory, further entrenching the idea that sexual violence is a destruction of the national community.

In ethnonationalist discourse and therefore in wartime conflicts, women are also territorial markers of the society because of the social construction of women as property. Korac has argued that "as women are seen as precious property of the "enemy" their bodies become territories to be seized and conquered" (1998, 170). An attack on a collective's women is an attack on, and a taking of, the collective's land. The perpetrating collective is metaphorically raping the land, like a scorched earth policy, by raping the collective's women. In the situation where territorial control is key to conflict, it is clear that the gender constructions involved make women's position during conflict key to the morale of the ethnocentric nation. Tactical rape as a weapon of war has a particularly destructive impact in ethnonationalist conflict because of the distinctive nature of the construction of gender in these societies.

In ethnonationalist conflict, the honour of the men and also the nation lies, by extension, in the continuing chastity and purity of its women (Carter 2010, 352). Rape is a violation and destruction of a

woman's chastity, and, according to patriarchal gender norms, not only her honour but also the honour of the men charged with her protection. For women, this puts them in a world limited by the militaristic extremes of masculinity and femininity as practiced within the ethnonationalist society. A woman's reproductive rights and her right of self-determination are hostage to the control of men and the nation, with their sexual fidelity a vital symbol of national pride. In this situation women are often blamed for the act of rape in war and shunned by the community suffering a life-long stigma. Children born of rape in war are also stigmatised in the same way.

As I will explore further in later chapters, these gender constructions made it extremely hard, if not impossible for victims and survivors of rape to tell their stories and/or give testimony. Rape has a particularly destructive effect in the context of ethnonationalist conflict. Where honour is bound to chastity, rape is able to communicate an attack on the enemy collective's honour (Farewell 2004, 397). As Snyder and others explain, "by dishonouring a woman's body, which symbolises her lineage, a man can symbolically dishonour a whole lineage. On a larger scale within the context of war, the concept of lineage extends to the entire ethnic group or culture" (2006, 190).

## Gender & Tactical Rape and Sexual Violence in Bosnia

In this section, I will analyse in more detail the role of the gender constructions that underlie tactical sexual violence's

effectiveness. Identity in the post-Tito Yugoslavia became tied to ethnicity, with gender as an intricate part of that identity. Ethnonational leaders in the former Yugoslavia drew upon constructs of traditional patriarchal values and mythologies to establish and enforce gender roles to the point where gender distinctions became a basis for a newly re-constructed ethnonationalist identity (Denitch 1996, 73). As Papic claims, "ethnic nationalism is based on a politics of specific gender identity/difference in which women are simultaneously mythologized as the Nation's deepest 'essence' and instrumentalised as its producer" (1999, 155). Sofos found in her research that "national and ethnic identity, as well as conflict, is inextricably linked with particular interpretations of sexuality and with processes of formation of masculinity and femininity" (1996, 3). Sofos also demonstrates how those men who did not fit in with the "traditional" role were "effectively deemed to lack the attributes of real men" (1996, 8).

How women became symbols of the nation through their role as the biological reproducer of the nation, can be seen in the case of Bosnia. Kesic found that the "nationalistic use of gender imagery during war centres around images of "good" women, usually mothers who produce strong soldier sons, and "bad" women, usually pacifists and feminists who are single and do not fit the women as wombs image" (1999, 200). Womanhood becomes equated with motherhood; women are seen as the mother of the nation, bringing terms such as Motherland into being and further equating mothers with the nation (Snyder et al 2006, 188). During conflict in the region, women

(especially Serbian women) were encouraged to have more children, both to fight for, protect, and expand the ethnic nation (Papic 1999, 160). President Tudjman of Croatia even argued that women with ambition "beyond the home" were mortal enemies of the nation (Mostov 1995, 518).

Milicevic argues that women's rights in Yugoslavia became overshadowed "by attention to their symbolic and reproductive importance" (2006, 275). Reproduction became an issue of national security, as men were needed to fight, and so women's rights began to be trumped by ethnonationalists claims (Korac 1998, 161). Abortion became an issue in pre-conflict Yugoslavia, with the right to abortions abolished by the nationalist governments (Ramet 1999, 96-97). Sofos found that proposed and approved legislation in the transition after Tito's death represented women as "reproducers of the national community, whose only useful and desired contribution to their society would be to bolster the nation's demographic regeneration" (1996, 5).

In patriarchal societies which also embrace ethnonationalist ideals, ethnicity is believed to be carried in the seed of the father, and therefore the woman is viewed as merely a vessel for carrying the father's child (Mostov 1995, 519). This means that the child belongs to the ethnic group of the father, regardless of that of the mother (Allen 1996, 87). The rape of Bosnian women by Serb combatants was, therefore, seen as a contamination of women and their womb. Raped women were therefore no longer seen as viable reproducers of the ethnic Bosnian nation. There were reports of Serbian soldiers telling

women that they would “put little Chetniks” inside them before they were raped (Snyder et al 2006, 190). Women in Bosnia were forcefully impregnated to further the reproduction of the ‘enemy’ nation and stop them from being able to reproduce ‘their’ nation (Kesic 1999, 198). This is a clear example of gendered constructs playing out in war, for the belief that ethnicity is transferred by the father further raises the women to a symbolic level and denies them agency, even in pregnancy and birthing.

In patriarchal societies, women are viewed as the property of the male members of the family, and by extension, of the male members of the nation steeped in ethnonationalism (Copelon 1998, 71). This makes the rape of a women, the violation of men’s property; the men are humiliated because they cannot protect their property. In Bosnia, women were taken to rape camps, symbolising the taking of the enemy men’s property. Kelly cites the organisation Women in Black from 1993 saying that “the rape of their women is not lived as pain in her body but as a male defeat: he could not protect his own property” (2000, 54). When women are seen as property, as was the case in Bosnia, rape is both an attack on the property of male citizens and an attack on the ability of male citizens to protect the nation.

Women are also seen as territorial markers of the society through their construction as property (Allen 1996, 88). As Korac argued, “as women are seen as precious property of the “enemy”, their bodies become territories to be seized and conquered” (1998, 170). As who controls the territory is vital in these conflicts, an attack on a

collective's women is seen as an attack on, and a taking of, the enemy collective's land. The perpetrating collective is essentially raping the land, like a scorched earth policy, by raping the collective's women. Mostov writes about the 'border fantasies' of the narrative tales within the region, and finds these tales reinforce the gendered notion of women as both physical and symbolic territory of the nation (1995, 517). In Bosnia, where territorial conquest was fundamental to political success, the rape of the collective's women is equated with taking the enemy collective's land. Olujic's study concluded that the rapes in Bosnia of individuals "were microcosms of the larger invasions of territory" (1998, 45).

In ethnonationalist conflict, and particularly patriarchal ones, the honour of the men and the nation lies in the chastity and purity of its women (Carter 2010, 352). Rape is a violation and destruction of a women's chastity, and, according to patriarchal gender norms, her honour, but it is not just her honour that is at stake but the man's and nation's as well (Farewell 2004, 397). In Yugoslavia, as with similar conflicts, the woman is blamed for the act of rape and shunned from the society. Thomas and Ralph found that in Bosnia the emphasis placed on "women's sexual purity and the fact that [the] societies define themselves, in overt or less clear-cut fashions, relative to their ability to protect and control that purity" (1999, 210). Where honour is bound to chastity, rape is able to communicate an attack on the enemy's honour. If honour was not tied to chastity of the women of a collective, then

rape would not have the communicative effect of a destruction of the men's and nation's honour.

Because of their role outlined above, in particular their role as reproducer of the nation, women must be protected (Korac 2008, 112). The desire and feeling of the need to protect women is a dominant theme throughout gender studies. Men believe they cannot be 'true' men unless they fulfil their role of protecting their women (Korac 1996, 139). Thus, rape of a women is a violation of a man's ability to protect, and an attack on his ability to be a 'true' man. It emasculates him, and when it is done on a massive scale it emasculates the collective as a whole. It is therefore able to be used as a tool of genocide because the rape of a nation's women translates to the rape of a nation itself. Hansen found that in traditional Balkan patriarchal societies, "men's inability to protect 'their' women and to control their sexual and procreative powers is perceived as a critical symptom of weakness" (2000, 66). Thus, sexual violence and rape has a profound effect on the psyche of the men of the enemy collective and the opposing society.

## Responding to Tactical Sexual Violence in Conflict: The Wider Significance of the Bosnia War as a Case Study

I have shown that the case study of the former-Yugoslavia is indeed useful because it illustrates the centrality of gender to the construction of ethnonationalist identity and also because it served to show why rape becomes a tactical military tool to achieve a political end. While acknowledging that sexual violence in conflict does not

always take the same form in all conflicts, I argued that the Bosnian case is, nevertheless, relevant to understanding the drivers of tactical rape in other ethnonationalist conflicts. I will return to this theme later in my thesis when I discuss the case of the Rohingya.

However, there is another reason why the case of Bosnia has been discussed at some length. Mass rapes in Bosnia spurred a range of initiatives in the realm of international policy and also led to significant developments in international law. Bosnia and responses to Bosnia are of great significance in terms of the central preoccupations of my thesis; how sexual violence is framed and how these framings shape policy responses. Bosnia played a pivotal role in advancing the fight against sexual violence in conflict and transforming the issue of sexual violence in war from previous discourses on the inevitability of rape or raped women as collateral damage to discourse in which the issue of sexual violence was central to international peace and security. This was a highly significant discursive shift.

The media reports on mass rape in Bosnia, along with the political activism and resistance of feminist civil society groups like Women in Black –founded in 1991 in the Balkans –garnered international attention and caused much public reaction, paving the way for substantial changes in international laws regarding the conduct of war. Another impact was change in analysis of the way sexual violence in conflict was discursively constructed and responded to in the international policy domain. In many ways the Bosnian conflict – and the Rwandan genocide – gave a significant boost to feminist efforts

to have rape addressed at the highest level of international relations and in the international criminal courts.

These efforts culminated in changes in international law and in United Nations (UN) action on conflict related sexual violence, particularly with the Women's Peace and Security (WPS). The UN and particularly the Security Council (UNSC) resolutions 1325 and 1820, along with 1888, 1889, 1960, 2160, 2122, and 2244 make up the WPS Agenda, which requires the inclusion of women in all forms of post-conflict reconstruction and peacebuilding measures. I will discuss these in Chapter Four, but briefly notable here is the choice of focus on conflict-related sexual violence (CRSV) within the UN and the wider international community.

Bosnia –along with Rwanda– also spurred significant developments in the laws of war. The reports of rape camps and the irrefutable use of sexual violence as a military tactic helped to erode the common belief that it was an inevitable by-product of war. The emphasis on the intentional use of sexual violence, that recognition that rape was not an inevitable by-product of war, but an integral part of war, made it possible to hold perpetrators accountable for war crimes in the international criminal courts.

If rape was strategic and a tactical weapon of war, the high-ranking officials responsible for strategic and tactical decisions could ultimately be held responsible for sexual violence perpetrated by combatants under there command, even if they were not themselves

direct perpetrators of rape. Moreover, individual soldiers who had perpetrated rapes as part of the war effort could also be held accountable for war crimes. The creation of the International Criminal Tribunal for the former Yugoslavia (ICTY) to investigate and try war crimes committed during the atrocities in Bosnia became foundational in setting up sexual violence as a crime within the laws of war. The ICTY was also the scene of some of the first convictions for sexual violence during war, raising hopes that these crimes would finally be recognised and punished by the international community. However, it is important to note that international legal jurisdiction and the domain of the international community only cover certain crimes that are considered to be of international concern, and therefore for which national sovereignty can be infringed. Also, these crimes must reach a certain threshold in order to be considered under international humanitarian law. I will discuss the significance of developments in international law in more detail in the following chapter.

## Conclusion

In this chapter I have outlined different manifestations of sexual violence in conflict. I have also engaged with some of the major theories of sexual violence in conflict, each of which offers different insight into the problem, from different theoretical perspectives; biological, cultural, and strategic. I have outlined a constructivist position on rape in war that emphasizes the symbolic function of rape and which stresses the importance on constructs of nationhood, identity, and boundaries. I have shown how women's bodies serve a

symbolic function in ethnonationalist conflicts. Consequently, rape is not an attack on individual women by pathological men, nor a consequence only of militarized and patriarchal values, but is a tool deployed in ethnonationalist conflicts to achieve political ends. It is for this reason that while I acknowledge that sexual violence on conflict does not always take this form, it is the tactical sexual violence that is central to my interests in this thesis.

Social constructivists are principally interested in ideas and discourse-the ideation realm and the realm of language. However, I have also drawn from a longer tradition of feminist scholarship on wartime sexual violence which stresses the role of militarism, patriarchy, and the construction of women as property. This is because militarism, patriarchy, and the construction of women as property were features of ethnonational discourse and practice in the conflict in former Yugoslavia. I argued that in so far as the language of patriarchy and militarist vales can become entrenched, they become structural features in militarized, societies. In this sense, it is possible to see patriarchy and militarism as drivers of sexual violence in ethnonationalist conflicts. While the drivers of sexual violence in conflict cannot be universalize, they might, nevertheless, assume a similar form in other ethnonationalist conflicts.

I used the example of Bosnia to show the tactical use of sexual violence in conflict and to show the fundamental role that gender plays in the effectiveness of such a strategy. The communicative effect of rape to the entire collective is only effective because of particular

gender norms that are the foundation for the communication. Women's bodies are used as a tool of communication and, in the case of genocidal rape, destruction of a collective.

This chapter has shown why challenging and transforming gender constructions which allow for the effectiveness of sexual violence as a tactic, could lessen, if not end, the use of sexual violence in conflict. Rape would no longer be as destructive a communicative act. By ending some of the necessary conditions for genocidal rape, we could become one step closer to preventing it altogether. This would require a wide range of action on the part of international and state actors.

I concluded this chapter by considering the wider international impact of the Bosnian conflict. I sketched out how widespread international reportage and so awareness of mass rape as a weapon of war, combined with feminist lobbying by organizations like Women in Black and other international feminist NGOs combined to generate change. At the UN, the issue of sexual violence was raised to the level of the Security Council. I also noted how Bosnia had a significant impact on developments in the laws of war. In the following chapter, I set out in more detail the progress made in international policy and in the laws of war and international humanitarian law particularly in dealing with sexual violence in conflict, focusing on the framing of the problem and the effects of such framings.

# Chapter Four: Sexual Violence in Conflict: Key Developments in International Humanitarian Law and in the International Policy Domain

## Introduction

How the framing of an issue has significant effects in determining how the problem is understood and addressed, as discussed in Chapter Two. A fundamental issue facing those wishing to change the gendered nature of the law is how sexual violence is framed, and thus understood, within different communities. Sexual violence has always been a part of war, it is the framing and treatment of it that has changed over time, not the instances of sexual violence in militarised settings or the use of it as a military tactic. As noted in the previous chapter, mass rapes and other forms of sexual violence during the war in former Yugoslavia, Bosnia particularly (along with genocide in Rwanda in 1994), led to significant changes in public discourse on sexual violence in conflict and to significant developments in the laws of war and in the domain of international policy, particularly at the UN. Sexual violence in conflict, which has a long history, was previously framed as inevitable, a view that seemingly drew from, and implicitly supported, biosocial or essentialist approaches to gender and sex. While revelations of rape perpetrated by soldiers would bring

dishonour and shame on states and their armed forces and so was often unreported and victims silenced, sexual violence was largely framed as peripheral to the actual war. Instead raped women were constructed as collateral damage or, in some instances, "booty"– a reward for victorious soldiers.

Prior to the Second World War, the violation of women's boundaries and autonomy and possession of female bodies, along with the violation and possession (or temporary occupation) of the territory of the enemy, by victorious combatants was not publicly espoused or condoned, but rather implicitly accepted as a feature of war, though not a conscious military tactic or political aim. After the Second World War, the Geneva Conventions offered some protection to women and children as "innocent" civilians, as opposed to active combatants, but in practice combatants who violated the provisions in the Convention seldom faced sanctions. After Bosnia, things changed. How far they changed and the significance of these changes in terms of how sexual violence in conflict is discursively constructed and framed is the subject of this chapter.

Condemnation and criminalisation of sexual violence in conflict increased dramatically over the latter half of the 20th century. In the wake of mass rapes in Bosnia and Rwanda particularly, the use of sexual violence as a military tactic was recognized as an international crime calling for prosecuting in the international criminal courts. More recently, military leaders and commanders have actually been held accountable for such crimes. This recognition is a result of presenting

the issue in a different way, of framing sexual violence not as by-product of war and, as such, "collateral damage", but as an intentional act – a war crime that should be explicitly prohibited by the international society in both law and practice. The rise in criminal accountability is not simply a result of an increase in acts of sexual violence, but rather a change in how sexual violence in conflict is framed and addressed by in international society[4]. Feelings and reactions to sexual violence have changed from the belief that it is a private matter or a matter of transgressions against individuals, to an acknowledgement that it is an issue of public concern, with criminal ramifications signifying a norm change.

In this chapter, I track and analyse developments in international law and international policy. The change in framing of sexual violence in conflict has occurred mainly since WWII, and, therefore, I analyse texts from this point onward. The first major change arose with the Geneva Conventions in 1949, in which sexual violence in conflict was first explicitly recognised as constituting a war crime. Implicitly, the Conventions' framing of the issue as one of honour and dignity, with sexual violence violating the honour of women, their family, and their community. This framing remained consistent until the 1990s, when sexual violence in conflict was reframed as a weapon of war. I then focus on and analyse the results of

[4] Again, by international society I mean the group of states within the international community, which refers to the wider group including civil society.

the two major tribunals of this period, the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR), as well as the Rome Statute, ratified in 1998, which established the International Criminal Court (ICC). The efforts by human rights and women's rights activists and advocates in the 1990s were fundamental in this re-framing of sexual violence in conflict as intentional and therefore prosecutable, so I also include brief discussions on the role of civil society actors in generating change. This framing largely stands but has been advanced in the 21st Century to focus on ending impunity for violations of international law about sexual violence in conflict. In the final section of this chapter, I track parallel developments to address sexual violence in conflict in the United Nations (UN), specifically the Women, Peace and Security (WPS) agenda and the most relevant UN Security Council Resolutions.

In the first section of the chapter, I chart the developments in sexual violence in conflict within international humanitarian law, and I highlight how sexual violence was framed and the implications of such framings. I first discuss the Geneva Conventions of 1949, where sexual violence was first explicitly recognised as a criminal act, but with a problematic framing. The second section outlines the developments during the 1990s, when fundamental changes occurred with regard to how sexual violence in conflict was framed and treated. The chapter concludes with a discussion of the 21st century efforts and the shift of focus towards ending impunity for perpetrators. This progression in framing led, in turn, to the PSVI in 2012 and efforts to address and

prevent sexual violence in conflict, which is the subject of the following chapter.

## International Humanitarian Law

What are commonly referred to as the "laws of war," International Humanitarian Law (IHL) regulates the use of force (*jus ad bellum*), and set limits on, and set requirements for, the conduct of hostilities (*jus in bello*) (Shaw 2012, 1054). IHL was established to govern the conduct of states during armed conflict. IHL essentially dictates what is considered acceptable and unacceptable conduct for states during armed conflict. Existing in some form since the mid-19th century, IHL did not address the crime of sexual violence during war until after WWII (Shaw 2012, 1054).

## Post-Second World War Period

There were numerous accounts of tactical sexual violence during WWII (Cole 2010). With regard to sexual violence, potentially IHL might have been first put to the test at the International Military Tribunals (IMT), set up in 1945 and 1946 to address the atrocities committed by Axis states, particularly Germany and Japan. There was documented evidence of widespread sexual slavery and enforced prostitution sanctioned by the Japanese state (Cole 2010, 49). Yet neither the charter of the tribunal at Nuremberg nor the one for the Far East made explicit reference to rape, and while evidence of sexual violence was presented before the tribunals, it was not mentioned in any of the judgements (Niarchos 1995, 651-652; 677). Cole argues that

during this period “crimes of rape and sexual violence were not only slipping through the cracks of international law but were blocked and ignored to the point of almost denying they even happened” (2010, 50).

Among some of the most well-known accounts of sexual violence during WWII was that of the Korean ‘Comfort Women’; enslaved women kept in ‘brothels’ to serve the sexual needs of Japanese soldiers (Totani 2011, 218). As Heineman notes, “the wartime Japanese government authorized recruitment, detention, and sexual enslavement of the female civilian population in Korea as a means to cope with widespread military disciplinary problems” (2011, 220). The housing for the women, who were kept against their will, was termed ‘brothels’, which brings with it connotations of voluntary sex work. The case of the Comfort Women was diminished during the tribunal and it was clear that crimes of sexual violence were not high on the hierarchy of crimes in war. In the “absence of proof of criminal orders,” the Tribunal for the Far East “stopped short of giving any conclusive ruling regarding the Japanese government’s institutional responsibility” for sexual violence (Heineman 2011, 222).

### Geneva Conventions

After the genocidal atrocities of WWII, the Geneva Conventions of 1949 were convened to deal with the treatment and protection of soldiers, and, importantly, the treatment and protection of civilians during armed conflict (Shaw 2012, 1055). Shaw posits that the “foundation of the Geneva Conventions system is the principle that

persons not actively engaged in warfare should be treated humanely" (2012, 1055). Prior to the Geneva conventions, there was no explicit reference in the standards for conduct during war for crimes of sexual violence, although its presence was acknowledged. As sexual violence had historically been treated as an inevitable side-effect of war, or even a private matter, and therefore not under international jurisdiction, legally addressing acts of sexual violence in conflict posed a challenging task.

For the purposes of my discussion, Article 3 (1) (c) is worth reproducing here:

> In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ' hors de combat ' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
>
> (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture
> (b) taking of hostages
> (c) outrages upon personal *dignity,* in particular humiliating and degrading treatment (my italics).

Notably, sexual violence was not included under the category of torture, which was recognised as a grave breach of the convention, but rather fell under A 3 (1)(c), as an outrage on personal dignity. I will return to this framing of sexual violence below.

Sexual violence was first explicitly prohibited in IHL in the Fourth Geneva Convention under Article 27, in which "[w]omen shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault" (ICRC 75 UNTS 287 1949, 179). As I have argued in Chapter Two, constructions of women as the "protected" serve to legitimise gendered social relations, while the construction of "honour" renders rape and other forms of sexual violence a crime against the collective (family/community/nation) in which women's lives are embedded rather than a violation of the rights of women as individuals.

The Fourth Geneva Convention did establish rules for the treatment of civilians, and thus subsequently became the focus of efforts by feminist and human rights activists to have sexual violence recognised as a war crime. Reference to sexual violence in conflict falls under *Part III: Status and Treatment of Protected Persons* of the Fourth Geneva Convention, thus classing women as a group that was in need of legal protection. This has the effect of constructing women as a class into victims, a group without agency. Women were to be protected *because* they were women; the group is portrayed as at risk because of their sex. This is important because it perpetuates the idea of women as passive victims of war. The supposed passiveness of women will be discussed in more detail in Chapter Seven. Here it suffices to say that this construction is necessary for the effectiveness of tactical sexual violence and therefore important to note here.

The recognition of rape and sexual violence as an international crime under the Geneva Convention was based on the belief that, when widespread and systematic, sexual violence violates the honour and dignity of the entire community. The main reason sexual violence in war was unacceptable under the Convention's framing is thus the psychological and symbolic attack against the honour and dignity of the group as a result of a physical attack on the female members (Niarchos 1995, 672). As I explain in Chapter Three, attacks on community are actually understood to be attacks on men and masculinity. Women are essentially framed as the passive victims of a group of men's attacks on enemy men, as "protectors."

The language of the Geneva Conventions and it's framing of sexual violence, while an improvement over the void which preceded it, is thus fundamentally problematic. It is gendered in both it's construction of the meaning of sexual violence and in its interpretation of sexual violence and explanation for why the acts constitute international crimes. Niarchos highlights some of the issues surrounding this conception of rape,

> In conception and enforcement, the prohibition of rape reflects confusion as to whether it is a crime against women or against men and the community, and whether it is persecution based on gender or an inhuman act, like maiming or torture, in which gender is of no relevance. (1995, 672)

The framing of sexual violence as criminal under the Geneva Conventions was not expressed in terms of the extreme violence and trauma experienced by the immediate victim – and in this case women

– but as a compilation of acts that results in an attack upon and destruction of the community's honour and dignity (Copelon 2000, 221). Rape was seen, in this interpretation of the law, as a collective crime –one group of men against another, using women as the battlefield.

A primary reason for concern was the fact that the Conventions' framing highlights rape as a crime against honour and not a violent crime in itself. The conception of rape as a crime of honour and dignity comes from the social construction of rape as an attack on the community and its men through the body of its women (and sometimes men). This is communicated because the honour of the community is seen to rest in the chastity of its women. This classification reinforces the social construction of male honour and dignity tied to female chastity which is vital to the effectiveness of the sexual violence is a military tactic, allowing it to have such a devastating effect (Halley 2008, 58).

Niarchos lists three major problems with the connection of rape to honour and dignity (1995, 674). First, she argues that it denies the reality of the true injury, representing rape more like "seduction with 'just a little persuasion' rather than a massive and brutal assault on the body and psyche," thus denying the victims true acknowledgement of the crime they were subjected to (Niarchos 1995, 674). Niarchos also accurately contends that the injury is expressed in terms of the society, resurrecting the notion of victim – the raped women – as "soiled or disgraced" (1995, 674). Importantly, Niarchos also highlights how the

framing of the Geneva Conventions places sexual violence lower on the scale of crimes, for it is only one of honour and therefore less worthy of prosecution than those crimes of personal injury (1995, 674). This third point leads to the exclusion of rape and sexual violence from the list of *grave breaches* – those crimes which are so horrible they demand universal condemnation and jurisdiction.

Moreover, the connection of women, sexual violence, and honour is also based on the idea that women are the property of men, as well as the nation, and military rape is therefore an attack on the community's men, and thereby the nation. Women are not seen as individuals in the same way as men, or male soldiers specifically, thus this framing strips victims of agency and perpetuates the idea that women are objects belonging to the community. As Buss argues, "the rape of a woman is a crime against the honour and definition of a community, much like an attack on a church or other cultural symbol" (1998, 181). This framing reinforces the belief that women are property of the community, which is dangerous for it continues to take away the victims' agency and makes them passive objects of male conflicts. This also perpetuates the conception that rape is not a crime of violence, but of honour and dignity (Buss 1998, 182).

As noted above, with sexual violence conceptualised within IHL as a crime of honour and dignity, this also had the result of placing it lower down the hierarchy of crimes dealt with by the international courts. This meant that the crime of rape in war was not automatically a prosecutable offence under international humanitarian law – like an

enumerated grave breach – but had to be articulated and proven as constituting a 'worse' crime, unlike those crimes listed as grave breaches which demand universal jurisdiction and prosecution. As Copelon argues, this meant that the Conventions "treated rape and sexualised violence as a matter of domestic discretion rather than international concern" (2011, 236). As such, rape and sexual violence were thus not treated as seriously as some other crimes such as torture, which is listed as a grave breach.

For all its faults in framing and language, the law did finally make it clear that certain acts of sexual violence in conflict could constitute criminal acts of war. The theory was that now perpetrators could be held accountable at the international level for the use of tactical sexual violence. In principle, ensuring written acknowledgement that tactical sexual violence during war can constitute violations of international law was a fundamental step in stopping the use of sexual violence in conflict, yet it is but the first, and this was not without complications. Because the framing of rape in IHL accepted the societal connections between rape and male honour as the fundamental basis for the crime, problematic beliefs of sexual violence tied to honour are validated and become further entrenched within local and international communities.

Moreover, while the Geneva Conventions acknowledged that sexual violence could constitute an international crime, the post-Second World War period brought virtually no recognition of sexual violence crimes (Houge & Lohne 2017, 758). While there were efforts

to address the legal inadequacies after the Geneva Conventions, the greatest developments in IHL with regards to sexual violence, Halley argues, have come in the last 30 years, through ad hoc tribunals and the ICC, post Bosnia and Rwanda. In large part, this is due to the feminist activism surrounding the subject of sexual violence in conflict (2008, 2).

## Developments in International Law in the 1990s

As Copelon states, before the 1990s, "sexual violence in war was, with rare exception, largely invisible. If not invisible, it was trivialized; if not trivialized, it was considered a private matter or justified as an inevitable by-product of war, the necessary reward for the fighting men" (2000, 220). This framing of sexual violence in war established by the Geneva Conventions remained essentially unchanged until the 1990s, when, in the wake of Rwanda and Bosnia, feminist activists saw an opening to renew conversations about sexual violence in conflict and the international community's response (Houge and Lohne 2017, 758). Media reports of the use of sexual violence as a military tactic in Rwanda and Bosnia in the first half of the decade gained widespread attention and morally shocked civil society groups who constitute, in part, the international society or international community, and ordinary people who read about events in newspapers or watched reports on television. This was also the early age of the internet/worldwide web which facilitated the dissemination of accounts of wartime rape in former Yugoslavia by groups like *Women in Black*. This publicity allowed for wider knowledge of the use of

tactical sexual violence in war and for different understandings and framings to be presented, and thus provided a chance to reframe both the legal language and understanding of sexual violence in conflict.

Evidence that sexual violence was intentionally being used as part of a military strategy – ordered, systematic and widespread – with disastrous effects, meant organisations like the UN, as well as their member states, could no longer deny the criminal and heinous nature of the use of sexual violence as a tactic. As Heineman noted, it was "only in the 1990s that international organizations, from courts to the United Nations, took action against conflict-based sexual violence as a violation of human rights and a crime of war" (2011, 1). I will revisit developments at the UN below.

The 1990s brought about the opportunity to readdress the framing of sexual violence from the Geneva Conventions through ad hoc tribunals and, eventually, through the establishment of the International Criminal Court. Feminists generally wanted to change the conception of rape from a crime of honour to a crime of violence (Halley 2008, 5). The decade brought great attention to feminist concerns and there was much activism surrounding the tribunals and the drafting of the Rome Statute. Through organisations like the Women's Caucus for Gender Justice, activists worked to ensure that sexual violence in conflict was treated as among the most heinous war crimes possible. Feminists activists "wanted to establish that rape, sexual violence, and sexual slavery are IHL/ICL crimes," and they saw the ad hoc tribunals and the creation of the Rome Statute as a way to

introduce “feminist-defined crimes” as high on the IHL hierarchy (Halley 2008, 49-50; 54-55).

This also came at a time when women’s rights were being equated to human rights in the push for universal human rights at such fora as the UN Fourth Conference on Women (The Beijing Conference). It was, as Engle notes, that “feminists began to pursue these enforcement mechanisms for the international criminalisation of rape in conflict around the same time that women’s rights began to receive mainstream attention as human rights” (Engle 2016, 222). Delegations like the Women in the Law Project (WILP), made up of human rights lawyers to investigate rape and sexual violence, were pivotal in ensuring these issues were addressed (Halley 2008, 12-13). Organisations like WILP, along with the events at the Beijing Conference in 1995, brought women’s issues (and the issue of women’s rights as human rights) to the forefront of international efforts.

## THE TRIBUNALS

The creation of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) by the United Nations (UN) to hear accusations of war crimes committed during the respective conflicts provided a prime platform to consider the failings of the Geneva Conventions’ language and the international responses. In 1993, the United Nations established and chartered the ICTY to address the wrongs committed during the conflict that erupted as a result of the collapse of Yugoslavia

in the 1990s (McMahon & Miller 2012, 421-422). The statute gave the tribunal jurisdiction over violations of the laws of war, grave breaches of the Geneva Conventions, genocide, and crimes against humanity. While rape was only specifically mentioned in the latter article, the Tribunal dealt with sexual violence as falling into a number of categories, even though it was not explicitly mentioned in all articles (Niarchos 1995, 681). The ICTR was established in a similar manner in 1994, with the same goals of the ICTY but regarding the genocide in Rwanda during the first part of the 1990s.

Halley states that there was a consensus among the feminist organisations involved that "IHL's most authoritative statements of law must not legitimate and entrench the ideas that the rape of a woman harmed her because of its meaning to her family or culture, or that it harmed a wife, daughter, or sister because it impugned a husband's, father's, or brother's honour" (2008, 57). Feminist activists also wanted to classify rape as a grave breach, which then guarantees universal jurisdiction for the crime, as well as working to criminalise persecution based on gender as a crime against humanity (Halley 2008, 72). In feminist activist discourse, sexual violence was no longer framed as an attack on male honour, but as a violent crime that targets civilian females systematically, based on their gender, violating their human rights, and destroying lives and communities. This shift to the language of human rights is of particular significance, although it has not (yet) displaced concepts of rape as a violation of honour embedded in IHL (Kinsella 2011). In the founding documents for both tribunals,

activists were integral in expanding the legal understanding of sexual violence crimes within international laws, as well as providing clearer requirements for proving such crimes in court.

This framing was based on the conception of rape as a weapon of war, which largely came as a result of the policy of "ethnic cleansing" and genocide in the former Yugoslavia, and worked to reframe rape from a "private, off-duty, collateral, and inevitable" act to something that is "public or 'political' in the traditional sense" (Copelon 2000, 223). Rape was not something that was unavoidable but was something that was used as a weapon, intentionally, and should be dealt with as such. The conception of rape as a weapon of war was highly prevalent during the tribunals and used to demonstrate the intentional and violent nature of the use of sexual violence as a tactic.

However, when it came to the ICTY and ICTR, both chambers acknowledged the ambivalence of the definition of the crime of rape within international law, and chose to define it in different ways, setting a confusing precedent (Weiner 2013, 1208). Weiner, in his analysis of the evolving jurisprudence of the crime of rape in international law, highlighted three issues on which the differences within the courts' definitions centre:

> [1] Whether force or lack of consent is an element of the crime; [2] Whether a general or a more mechanical description of the sexual act must be used in the definition; and [3] How concern for fairness for the victim should be balanced with protection of the rights of the accused. (2013, 1208)

As a result of the ICTY cases, numerous precedents were set recognising sexual violence in conflict as multiple forms of shocking and terrible violence (Copelon 2000, 231). There are two cases that are commonly cited when it comes to the definition of rape within IHL. They are *Furundzija* (1998) and *Kunarac* (2001). The *Furundzija* definition is often cited, although this is not a case of genocidal rape as Furundzija was a Croat and did not perpetrate his crimes with genocidal intent, so no charge of genocidal rape was possible. Nonetheless, *Furundzija* is foundational in some senses in that the trial panel in *Furundzija* identified the elements of the crime of rape. These were noted as:

> (i) 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:
> (ii) By coercion or force or threat of force against the victim or a third person. (ICTY-95-17/1 1998, 185)

This is important because the act of rape must necessarily then involve coercion and force. This means that the prosecutor has to prove the victim was coerced, whereas the *Akayesu* case at the ICTR in 1998, which I discuss next, found that the environment of war overrode certain concerns for consent.

The most often cited case coming out of the ICTR is the case of *Prosecutor v. Akayesu*, in which Jean-Paul Akayesu was charged with, and eventually convicted of, the crime of genocidal rape. Mr. Akayesu was the mayor of Taba in Rwanda during the genocide and was

ultimately held responsible for the actions of his men. This case is considered important for a number of reasons, from the definition of rape used to the final judgement. The original indictment did not include charges of sexual violence, and so Rwandan women's organisations and the Coalition for Women's Human Rights in Conflict Situations filed an amicus brief asking the Prosecutor to amend the charges (Copelon 2011, 244). The charges were finally amended to include charges of sexual violence as war crimes, crimes against humanity, and genocide (Copelon 2011, 244). *Akayesu* was the first conviction to recognise rape and sexual violence as acts of genocide (Copelon 2011, 245).

The trial chamber in *Akayesu* defined rape as "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive" (ICTR-96-4 1998, 598). This is important as it is an overly broad definition; the broadness of the definition allows for a number of acts to be shown to fit within the definition of rape, making it easier to prove in court. The *Akayesu* case also took the perspective that "the element of coercive *circumstances* replaced requirements that emphasised force, coercion, and the victim's nonconsent" (Copelon 2011, 245). This is important when it comes to proving the crime happened, for not having to demonstrate lack of consent in the way most domestic courts require, which makes a huge difference to the prosecution. A noteworthy point in the *Akayesu* definition is that it is gender neutral, and thus by not specifying particular acts, the *Akayesu* definition of rape allows for rape of a man

by a woman to be considered a crime in court (Weiner 2013, 1210). This is important because generally only women were seen as victims, and thus this definition allows for a broader conception and treatment of sexual violence in conflict by the courts.

Another major case from the ICTY for definitional jurisprudence comes from the *Prosecutor v. Kunarac, Kovac, & Vukovic* (also referred to as the *Foca* case). The Trial Chamber in the *Kunarac* case noted that the

> *actus reus* of the crime of rape in international law is constituted by: 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) the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances. The *mens rea* is the intention to affect this sexual penetration, and the knowledge that it occurs without the consent of the victim. (ICTY-96-23&32/1 2001, 127)

The *Kunarac* definition of rape thus involves the issue of consent. While the definition is broad, its breadth is in how it defines the crime and not necessarily in how it is prosecuted (Copelon 2011, 247). *Kunarac* also addressed the issue of rape as torture, ruling that rape satisfied the first element of torture – "the infliction of severe physical or mental suffering" (Copelon 2011, 246). It did, also, clarify how sexual violence is a war crime and a crime against humanity (Copelon 2011, 247).

Yet even with an unclear definition, both tribunals showed willingness to address and prosecute sexual violence in conflict far

more than any prior courts. In the end, both the ICTY and ICTR recognized rape as a crime against humanity within their Statutes, which was a huge step, as "rape had never before been unequivocally classified as constituting a crime under the framework of an international criminal tribunal" (Pruitt 2012, 305).

Aside from establishing the change in the language, the tribunals resulted in a number of successful charges for sexual violence crimes, including convictions which accept that sexual violence can constitute torture and is a predicate act of genocide. The jurisprudence that came out of the ICTY and ICTR with regard to sexual violence has been foundational in the codification of rape as a prosecutable offence under the jurisdiction of the ICC (Copelon 2000, 231). The Tribunals provided optimism for activists in their successful prosecution of sexual violence as a breach of international law, and high-ranking officials could, for once, be held accountable on the international stage, in principle at least.

### The Rome Statute

Another chance to address the problems of the Geneva Conventions during the 1990s was the drafting of the Rome Statute, in which feminist activism was again important in solidifying sexual violence as constituting a violation of international law (Engle 2016, 224). The Rome Statute, ratified in 1998 and implemented in 2002, founded the International Criminal Court (ICC), established to address future war crimes and violations of international humanitarian law

(Cole 2010, 58). It, as Halley points out, "specifies the scope of the ICC's jurisdiction, sets up the various institutional authorities of the Court, provides for interpretive rules for the ICC to use in construing the Statute, and authorizes the promulgation of the rules of evidence and further definition of crimes" (2008, 10). It is important to note, as Halley does, that the Rome Statute is a treaty, and therefore only States that have ratified the treaty are bound by it (2008, 10). Note here that at the time of writing, neither the United States nor Russia have ratified the Rome Statute. This demonstrates that, like defining the act of rape, accountability and punishment are shaped by the international political context, and the constitution of international society is still primarily a society of sovereign states. The court cannot escape the political climate of the time. As I will argue later, this is highly significant in determining whether violations of the laws of war, specifically sexual violence, ever reach the courts. In practice, the ICC has tended to prosecute mainly cases from conflicts in Africa and, consequently, stigmatized African countries have threatened to withdraw from the Statute and participation with the ICC.

Copelon highlights the two main goals of the influential group the Women's Caucus for Gender Justice in the drafting of the Rome Statute;

> One was to codify explicitly a range of serious sexual violence crimes in order to ensure that they are always … understood as crimes in themselves. The second was to incorporate, as a principle … that sexual violence must be seen as part of, and encompassed by, other recognised egregious

> forms of violence, such as torture, enslavements, genocide, and inhumane treatment. (2000, 234).

The goal was to frame sexual violence in conflict as a grave breach, making it an act that demands international response. No longer is the framing of sexual violence as a crime of honour, but as a crime in and of itself; a crime of violence rising to the level of a war crime. However, as Halley argues, "the legitimacy of the ICC also rested in part on the representation of the Rome Statute as merely a codification of *existing* humanitarian law" (Halley 2008, 41). Because sexual violence in conflict was not classed as a grave breach, feminists had to show that the crime of rape as violence already existed within law and that this just had to be demonstrated, and not that they were creating new crimes.

Sexual violence is specifically addressed in the Rome Statute, which explicitly lists "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" as a crime against humanity under Article 7 of the Statute (UNGA 1998, 3). While the Tribunals enumerated rape as a crime against humanity, the Rome statute expands the list to include a number of types of sexual violence, while remaining open for broader interpretations where necessary by using the term "of comparable gravity" (Rogers 2016, 295). Ultimately, the Rome Statute "codifies the prohibition against sexualized and reproductive violence as well as gender-based persecution" (Copelon 2011, 248).

With respect to genocide, the Statute uses the words of the Genocide Convention, which does not mention rape, but includes a footnote that recognises that rape can inflict "severe mental or physical suffering" (Copelon 2011, 248). While rape was shown to constitute genocide in the *Akayesu* case, the wording of the Genocide Convention was repeated verbatim in the Rome Statute. While the Rome Statute clearly accepts that rape is a crime of violence, it must still meet certain "chapeau" requirements to fall under the jurisdiction of the Court (Copelon 2011, 248)[5]. This shows a failing, for sexual violence is still not classified as a grave breach under the Rome Statute, and it must often therefore be shown to constitute a listed grave breach and may not suffice as a crime in and of itself. In having to prove sexual violence as another crime, the task of the prosecutor is made that much harder and the likelihood of conviction lessened.

An achievement of the Rome Statute was that while the ad hoc tribunals did not necessarily accept that persecution and discrimination based on gender was a crime against humanity, the Rome Statute did (Halley 2008, 65). The Rome Statute defines gender; "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

[5] These requirements are those to prove a grave breach, such as torture. Sexual violence in conflict is not immediately a prosecutable crime but rather must be demonstrated as constituting another crime that is listed as a grave breach. The requirements to prove a grave breach depends upon the breach in question, each with specific elements that must be shown.

above" (UNGA 1998, 4). This footnote defines gender as a social construction, and aids in allowing prosecution based on gender, a category that tactical sexual violence clearly falls within.

### 21ST CENTURY EFFORTS: ENDING IMPUNITY

The specific language of the law is still an issue of debate[6], as I will elaborate in Chapter Eight, yet the developments during the 1990s clearly solidified certain acts of sexual violence as constituting war crimes; the use of tactical sexual violence was classified as violating basic human rights, and therefore compelled the international community to respond. While not without problems, the decade provided optimism for feminists that the accountability and justice delivered by the tribunals would continue with the enforcement of the Rome Statute and the launch of the ICC (Dallman 2009, 1).

Public attention and international efforts have maintained focus on the ICC to gauge the progress of prevention efforts, while it is acknowledged that it is difficult to measure the effects of any effort to fight such a massive problem in a relatively short amount of time. Yet legal progress in addressing sexual violence in conflict appears to have slowed over the last two decades, if not virtually stalled altogether. The international legal system has struggled to live up to hopes and expectations, encountering a number of obstacles in its short tenure.

[6] Particularly with the definition and use of the term "gender" and the push to solidify gender as grounds for discrimination, making gender-based violence crimes under international law.

Legal precedents and the language of the law now clearly accepts that tactical sexual violence can constitute a number of international crimes, yet the use of sexual violence as a military tactic continues with relative impunity. There have been numerous reports of the use of tactic sexual violence in conflicts around the world since the launch of the ICC in 2002 (such as the DRC and Syria), yet relatively few charges for sexual violence have been brought forward, or even added when potential evidence is presented during trial proceedings (Chappell 2016, 103; 106). As of July 2019, there have been just two convictions at the ICC for sexual violence crimes. The first, Jean-Pierre Bemba Gombo (Bemba) in March of 2016 relating to the conflicts in the Central African Republic, was short lived, with the conviction overturned on appeal in 2018. The second conviction, of Bosco Ntaganda in July of 2019 relating to actions in the Democratic Republic of Congo, has been praised for its acknowledgement of gender-based crimes, but will likely be appealed (ICC 2019, 1). This means that the Ntaganda conviction potentially faces the same fate as the Bemba conviction, for politics is always at play. As mentioned earlier, African nations are pulling out of the ICC with claims of bias and unfair treatment, and thus there is pressure on the court to show that the judgments of law are applied universally and prosecuted equally – across all nation-states– and that court does not appear to pick and choose cases to target a particular group of nations.

The focus in the 1990s was on the language of the law itself. Subsequently, in the light of the lack of prosecutions and convictions,

the problem of sexual violence in conflict has come to be presented as a result of a lack of proper legal enforcement and accountability, resulting in a culture of impunity. The failure of the ICC to prosecute and convict commanders for the use of tactical sexual violence is proposed as a result of a compilation of factors that create a culture of impunity, for over the last 20 years, "the fight against conflict-related sexual violence has become the fight against impunity" (Houge and Lohne 2017, 756). Here I briefly address the change in focus to ending impunity, while I elaborate on the approach in the following chapter.

This shift in focus and framing came about rather quickly, for as Engle notes, the "explicit fight against impunity" in human rights discourses only began in the early 1990s (2015, 1071). The shift in human rights discourse was from one of largely "naming and shaming" to a focus on trying to hold individuals criminally responsible (Engle 2015, 1071). In citing an Amnesty International quote from 1991, Engle highlights how "impunity is not simply a failure to remedy human rights violations; it is a unique cause of them" (2015, 1077). The problem becomes framed as one of criminalisation and a failure to enforce punishment. There is a shift of focus from the issues with the law, to the issues with enforcing the law, namely the culture of impunity surrounding specific crimes. The dominance of the necessity to end impunity has risen to the most prominent heights, showing a narrowing focus in international efforts.

Since the turn of the century, efforts to address sexual violence in conflict have become founded in the belief that eliminating the culture of impunity that surrounds such crimes must be a priority of the international society if efforts to fight the use of sexual violence in conflict are to succeed (Houge and Lohne 2017, 756). The focus on ending impunity follows the belief that allowing perpetrators to go unindicted is fundamental to the continued use of tactical sexual violence in conflict. The underlying principle is that if the likelihood of punishment is realistic, IHL will provide a deterrent effect, stopping conflict parties from using sexual violence as a tactic for fear of subsequent prosecution (Cronin-Furman 2013, 434).

The solution to the tactical use of sexual violence in conflict is thus proposed as a need to eliminate the causes of the culture of impunity through continued focus and improved efforts and attention (Houge and Lohne 2017). The primary aim is to hold accountable and punish commanders, primarily through the ICC, who are ultimately responsible for the military use of sexual violence (Cronin-Furman 2013, 437). The theory is that this will then deter future use of tactical sexual violence, and ultimately bring justice to survivors. The result is that major discussions and policy centre on the barriers to the proper enforcement of international laws regarding sexual violence in conflict and how to eradicate the causes of impunity.

The use of the ICC as a gauge for progress and success of prevention efforts demonstrates the dominance of the legal approach to addressing violence and stopping criminal behaviour. Policy is

subsequently constructed based on a legal approach, as I will elaborate below and in Chapter Five, and will ultimately centre on legal-based solutions if the assumed measure is effective legal deterrence through the international criminal system. The problem becomes framed as one of law and order rather than violence, shifting the policy focus to legal solutions. While not wholly problematic, this construction has a number of unintended effects on policy and efficacy of effort, which will be outlined in more detail in the following chapters (Five–Eight).

Houge and Lohne raise concerns about the "rapid and exhaustive naturalization of criminal prosecution not only as *a* means by which conflict-related sexual violence can be addressed, but as the *primary* means through which such violence is to be prevented" (2017, 758). The focus on impunity results in policy aimed at enforcing the criminalisation of tactical sexual violence rather than targeting the underlying causes leading to the sexual nature of the violence and its effectiveness as a tactic. Engle examined the turn towards accountability and a focus on criminal prosecutions, after finding that few had critically examined this change in frame (2015). She is critical of the turn, arguing that a focus on criminal law detracts from actual protection of human rights (Engle 2015, 1127). Having set out significant developments in the laws of war, I now turn to parallel development at the UN–"parallel" in the sense that they stem from the same events, atrocities in Rwanda and Bosnia and the failure of the UN to prevent these atrocities or respond effectively when they occurred, and that they happened during roughly the same timeframe.

## United Nations

Following advances in the legal realm, there have been a number of international declarations against sexual violence, with the aim of getting the international society to recognize and acknowledge the crime of sexual violence and to aid in the effort to prevent sexual violence in conflict. Events in Bosnia and Rwanda had a knock-on effect in relation to how sexual violence in conflict is addressed as part of the Women's Peace and Security Agenda (WPS) at the United Nations (UN). Following the Rwandan genocide, then UN Secretary General Kofi Annan addressed sexual violence against female civilians by UN Peacekeepers in the Brahimi Report (2000). However, it is the subsequent UN Security Council Resolutions on women, peace, and security, which finally came to fruition in 2000 and have been subsequently extended, that are of most significance in relation to the prosecution of crimes of sexual violence.

The most notable of these declarations is UNSCR 1325, which launched the UN Women, Peace and Security Agenda in 2000 (Labonte & Curry 2016, 311). UNSCR 1325 was itself a biproduct of the 1995 Beijing women's conference, specifically the section of the Beijing Platform of Action devoted to women in armed conflict. The fundamental principle behind UNSCR 1325 is that women should be included in all peace and reconciliation negotiations, and that women's rights are human's rights that should not be ignored or side-lined (2000). Importantly for the purposes of my thesis, the Resolution points to the need to implement international humanitarian and

human rights law to protect the rights of women and girls during and after conflicts. It further sets out a wide range of measures to address the adverse impacts that armed conflict has on civilians, and women and girls specifically, as targets of aggression and violence by combatants and as refugees and internally displaced persons. Finally, it requires states to undertake "special measures" to protect women and girls from gender-based violence, particularly rape and sexual violence, in situations of armed conflict.

UNSCR 1325 has been followed by a number of other resolutions, including UNSCR 1820, which explicitly addresses widespread sexual violence in conflict, either when used systematically to achieve military or political ends, or when opportunistic and arising from cultures of impunity (2008). UNSCR 1820 further identifies sexual violence as a matter of international peace and security that necessitates a security response and notes that sexual violence can exacerbate situations of armed conflict and can impede the restoration of peace and security (2008). The Resolution also notes explicitly that sexual violence is a war crime and that there should be no amnesty or impunity for perpetrators. Subsequently, UNSCR 1888 has included the provision for a UN inter-agency initiative to address sexual violence in conflict and the appointment of a special representative for sexual violence (2009). UNSCR 1888 has welcomed the efforts of member states to create National Action Plans (NAP) to implement UNSCR 1325. UNSCR 1960 (2010) called for the creation of institutional tools to combat impunity

from conflict-related sexual violence, while UNSCR 2106 (2013) reiterated and further reinforced the existing UN institutional infrastructure addressing sexual violence in armed conflict. Finally, UNSCR 2122 urged for a consistent and improved implementation of UNSCR 1325 by calling for the gathering, inclusion and collation of more detailed information relating to gender and post-conflict contexts, and by encouraging member states to develop funding mechanisms to support civil society organisations implementing UNSCR 1325 (2013) (McLeod 2016 ).

These resolutions make up the foundations for the WPS agenda and outline the basic principles that member states and the UN should follow in all peace and reconciliation issues. Collectively, these resolutions further establish and strengthen the understandings of rape in war and in conflict affected states as a "plan" or a "large scale commission" instead of viewing rape as a crime committed on an individual level by renegade soldiers. Importantly, these resolutions further allow the crime of tactical sexual violence to be tried in front of the ICC.

Critiques have argued that while UNSCR 1325 is foundational in its rhetoric and aims, its efficacy in practice has been questioned. Much of the literature on the WPS Agenda produced in IR has tended to focus on how, with progressive resolutions, the agenda has become progressively narrower, de-emphasizing women's active participation in conflict and in post-conflict reconstruction. Instead, as the agenda has become increasingly focused on conflict-related sexual violence (i.e.

tactical sexual violence), it has progressively emphasized and thereby reinforced the victimhood of women. Critics argue that this has come at the detriment of other gendered aspects of the original goals of UNSCR 1325 (see, for example, Reilly 2018, 635). Kirby and Shepherd second this opinion, arguing that this narrowing of the WPS agenda "risks losing the critical significance of articulating women as agents of change in conflict and post-conflict environments" (2016, 380). Kirby and Shepherd also argue that the WPS agenda has become more and more state-centric, which is problematic because it risks excluding vital civil society organisations and NGOs that are necessary to carry out the work on the ground (2016, 383-384). I will revisit these criticisms in Chapter Eight.

For the purposes of my thesis, it is also important to note here that the narrowing of the agenda and the emphasis placed on women (and girls) as victims in ways that erase the agency of women also serve to re-inscribe a conception of women as among the "protected", rather than as bearers of human rights that have been violated. This highlight, once again, the central importance of language and discourse in the framing of rape and sexual violence. As McLeod notes, "UNSCR 1325 did not appear in a vacuum. The concepts embedded within UNSCR 1325 did not "suddenly occur to the UN system", and "the ideas and language in the resolution were built on documents and treaties passed through the UN system since its inception in 1945" (McLeod 2016, 274; she also Hill et al. 2004, 1256). The discursive heritage of UNSCR 1325 and its location within the UN system has meant that its

implementation has not been transformative in the way envisaged by feminists (2016). The emphasis on sexual violence in conflict might be welcome, were it followed up with effective actions. In fact, as noted above, the rate of prosecutions for crimes of this nature remains profoundly disappointing. With the rise of criticism against the UN's efficacy and arguments that the WPS Agenda is stalling, it is, I argue, timely to look at other initiatives like the PSVI that aim at preventing sexual violence in conflict. I will turn to this in the following chapter.

## Conclusion

The international legal system first addressed sexual violence in war under the Geneva Conventions in 1949, but as a crime of honour against a community, failing to treat the violence against women as a crime in and of itself. While a fundamental step, the underlying framing of the criminalisation of sexual violence in war was problematic for a variety of reasons. As Halley argues, by "including language about honour and dignity in the Geneva Conventions [it] reinforces notions, ratifies stereotypes, denies harm, casts crimes inaccurately, sends outdated and potentially harmful messages, represents the crime as being about the victim not the perpetrator" (2008, 58). While the acknowledgment in the Geneva Conventions of the illegality of tactical sexual violence during war is a fundamental step, the problematic language of the law and underlying framing, along with the lack of prosecutions, remained a serious concern.

The 1990s brought the next round of fundamental change, where sexual violence was framed as a crime against women because they were women, and finally recognised as a crime of violence and not honour. It was the atrocities committed in both Bosnia and Rwanda, and the publicity they received, that led to the recognition that rape in war was in fact, a violent crime prosecutable under IHL. There was much uproar from some, who wished to keep rape classified and related to issues of family, religion, or culture, but the feminist lobby overpowered this contingent in the end (Copelon 2011, 249). Through the jurisprudence of the ICTY and ICTR, along with the text of the Rome Statute, the law reflected a reframing of sexual violence in conflict that increased the proper recognition of the crime.

At the UN, the WPS, UNSCR 1325, and successive resolutions have also served to move sexual violence in conflict up the international political agenda. While the language and framing in these documents is not unproblematic–tending to re-inscribe victimhood on women in conflict and erase the agency of women–in principle these measures should work to ensure the problem is taken more seriously by member states and that the culture of impunity that surrounds sexual violence in conflict is brought to an end. In practice, however, this has not happened.

While international law and the international community, both states and civil society groups, now recognize sexual violence as crime in war and while the use of tactical sexual violence in war is prohibited, practical efforts to stop the military use of sexual violence have been

minimal in comparison to the scale of the problem. The international community's response to sexual violence in conflict has essentially always been in relation to international law and the international nation-state political system. While I do not question the necessity of law, the primacy of legal-based approach needs to be examined at this time. Critically assessing the ending impunity approach to prevention is not to say that ending impunity is not necessary, but that it should not dominate efforts to address sexual violence in conflict. I elaborate my argument in Chapters Seven and Eight.

The dominance of legal approaches to preventing sexual violence in conflict, I argue, is problematic for a number of reasons. Potentially working in theory[7], in practice the ability of international law to provide a deterrent effect against war crimes with respect to sexual violence is far from a reality, and therefore it is essential that all avenues for preventing sexual violence in conflict receive due attention and resources. Before my overall assessment of the legal approach to preventing sexual violence in conflict, I will demonstrate, through a critical analysis of the PSVI, how ending impunity dominates current prevention efforts and how it works in practice. This analysis will demonstrate how the particular framing of sexual violence in conflict, and efforts to fight it, that underlie the PSVI lead to the outcome of a narrow suite of legal-based solutions and policy.

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[7] The validity of the deterrent theory of international law with regards to war crimes is an issue that I will address in later chapters in an assessment of the overall legal approach to prevention of sexual violence in conflict.

# Chapter Five: The Preventing Sexual Violence in Conflict Initiative

## Introduction

As I argued in the previous chapter, while high rates of sexual violence have been acknowledged during armed conflict throughout history, it was commonly considered to be an inevitable side-effect of war, and thus the issue was largely ignored. In the 1990s, feminist activists worked to ensure that the laws of war explicitly recognised tactical sexual violence as an intentional act, constituting a war crime – making it a clearly prohibited and punishable offense. As a result of feminist activists' involvement in the drafting of the Rome statute in the late 1990s, as well as ground-breaking efforts with the tribunals of the 1990s, legal conceptions and understanding of sexual violence in conflict changed (Halley 2008, 72). Consequently, tactical sexual violence in conflict is no longer assumed inevitable, but can now explicitly constitute a war crime, a crime against humanity, and a predicate crime in acts of genocide.

The progress since WWII is without doubt important, yet the optimism engendered by the developments of the 1990s has been short-lived. While the written law and legal precedents which have been established now prohibit the use of tactical sexual violence in

conflict, such violence continues with relative impunity nearly three decades after the conflicts which brought the problem to the forefront of international attention. There have been numerous reports of the use of tactical sexual violence in conflicts around the world since the launch of the International Criminal Court (ICC) in 2002 (such as in the Democratic Republic of Congo and Syria), yet the international legal system struggles to live up to expectations of those activists and advocates who hoped it would be the harbinger of significant change in regard to the use of sexual violence as a tactic in war. Since the 1990s, few charges for sexual violence have been issued or brought to trial, and there has been a failure to add charges when evidence indicating the use of tactical sexual violence has been presented during trial proceedings (Chappell 2016, 103; 106).

Historically, much of the academic and activist focus on sexual violence in conflict was on the language of the law itself, attempting to ensure clear and explicit recognition of sexual violence as a serious war crime. Subsequently, in light of the lack of prosecutions and convictions, efforts to prevent sexual violence in conflict have shifted focus to enforcement of the law, in effect ending impunity (Houge and Lohne 2017). The problem of sexual violence is now presented, primarily, as one of law and order, with the main reason for the pervasive use of sexual violence as a tactic in conflict being the lack of fear of accountability. The solution is, therefore, seen as the need to increase enforcement of international laws prohibiting sexual violence in conflict, so that legal ramifications are seen as likely, allowing the

courts to serve as an effective deterrent. Ensuring explicit international criminalisation of tactical sexual violence is then no longer the main objective, having been largely achieved; the focus is now on enforcement of this criminal recognition, using a growing body of international laws and arenas established to uphold them.

Progress in tackling sexual violence in conflict is, therefore, now largely gauged by the ability of the ICC to prosecute and convict combatants and high-ranking officials and thus instilling a fear of accountability. This drive has come to dominate prevention efforts, for as Houge and Lohne argue, over the last 20 years "the fight against conflict-related sexual violence has become the fight against impunity" (2017, 756). The belief is that the law is now there; it simply must be enforced. The current policy approach thus focuses on ending impunity through recourse to law–prosecuting and convicting those responsible for the use of sexual violence as a military tactic. Achieving this goal, however, has proven anything but simple.

In this chapter, I focus on one of the most recent efforts to end impunity and stop sexual violence in conflict, the British government's *Preventing Sexual Violence in Conflict Initiative* (PSVI) founded by then UK Foreign Secretary William Hague and UN Special Envoy Angelina Jolie in May 2012 (Hague 2012). Angelina Jolie is an actor and an "A List" Hollywood celebrity who also directed a motion picture on sexual violence in the Bosnian conflict, *In the Land of Blood and Honey* (2011). Hague stated that he was moved to act on the problem after seeing the film. As such, the initial impetus to the PSVI arose from

a combination of UK government effort led by Hague, and the use of celebrities to promote major UN initiatives, a growing practice at the UN, in this case, to end sexual violence in conflict.

This chapter offers a background to my analysis of the PSVI, providing a good example of how the ending impunity approach towards preventing sexual violence in conflict translates into policy. There is, at present, extraordinarily little by way of published academic literature on the PSVI. As such, in my analysis of the PSVI and its application in the Rohingya crisis (Chapters Six and Seven), I aim to make a substantive contribution to the academic literature on sexual violence in conflict developed in the context of IR. Here, I provide a critical analysis of the major documents and statements, the main policy and its underlying arguments, and the framing of sexual violence in conflict by the PSVI over its first five years, from 2012-2017. In critically assessing the approach, I am not arguing that ending impunity is not a necessary or desirable end. As stated before, I aim to develop a sympathetic critique. I am not opposed to problem solving approaches to sexual violence in conflict. As I argued in Chapter Two in relation to middle-ground constructivism, it is possible to support policy initiatives that are based on tackling problems on the basis of how gender is constructed and its effects in the real world. At the same time, it is necessary to be reflective about the limitations certain framings impose on tackling the root causes and main drivers of sexual violence, and to also consider whether such efforts do not further entrench the problem. I will return to this issue in Chapter Eight. Here

it is enough to say that by engaging in a sympathetic critique, I aim to arrive at some conclusions as to whether legal-based approaches to preventing tactical sexual violence should be the sole or main approach and whether they are actually the most effective way to prevent the use of sexual violence in conflict.

As discussed in previous chapters, policy and prevention efforts are predicated on a particular framing, or understanding, of sexual violence in conflict, thus determining where resources and energies are spent, and leading to particular proposed solutions which, in turn, determine policy outputs. Framing refers to both the narrative on the issue as well as the underlying beliefs about the problem that result in particular policy choices. It is, therefore, necessary to understand the particular framing of sexual violence in conflict that underlies the PSVI as a prevention policy.

I undertake this case study to assess the framing of the problem within the PSVI and the solutions it proposes. As such, much of this chapter is more descriptive than analytical. My aim here is to demonstrate how this approach relies on a legal framing of sexual violence in conflict as a war crime, resulting in a focus on impunity, and so legal/prosecution-based policy solutions. I conclude that on the basis of the current evidence these efforts are ultimately unlikely to achieve the desired result, doing little to practically curtail the problem. Current policy does little to address the underlying causes of the sexual nature of the violence, nor the reasons for its use and effectiveness as a military tactic. I will revisit this claim in Chapter Eight.

Before going further, I want to reiterate that my interest is focused upon the tactical use of sexual violence in conflict and is not intended to assess how all sexual violence in conflict is addressed and tackled. As discussed earlier, there is a mounting debate surrounding which category of sexual violence should be, or is, addressed in policy within current international efforts. Opportunistic sexual violence is still classed as a domestic crime and therefore falling under the jurisdiction of national justice systems. Therefore, international laws, and policy based on it, only address sexual violence that has a 'nexus' to the conflict, having been committed in the furtherance of the conflict as part of a military strategy. Because of this generally accepted distinction among policy makers, and the highly complex nature of sexual violence as a phenomenon, it is reasonable to separate the types of sexual violence in conflict when evaluating prevention policy. I acknowledge that policy aimed at tactical sexual violence is likely to have effects on rates of opportunistic sexual violence, however a deeper assessment, while necessary, remains outside the scope of my research.

The first section of this chapter provides some background to the PSVI. This is followed by an outline of the Initiative and its major outputs, showing what it presents as the main causes of impunity and how this policy aims to address them. I then discuss how underlying the PSVI is a legal framing of sexual violence in conflict as an international crime. This section will show how the legal framing of sexual violence in conflict underlies discussions on policy and the actual policy approach. This chapter concludes with a summary of the

PSVI's policy approach, which in turn leads to an analysis of the impact of the PSVI relating in the Burmese/Rohingya conflict in Chapter Six[8].

## THE PSVI: ORIGINS

As Hague articulated in the forward to the *2012 Human Rights and Democracy Report*, the aim of the PSVI "is to strengthen and coordinate international efforts to prevent and respond to atrocities involving sexual violence, and to break down the culture of impunity around such crimes" (FCO 2013, 5). As initially conceived by Hague, the PSVI was not one document or policy, but an endeavour to implement the commitment to ending sexual violence in conflict throughout all government efforts internationally. It was an attempt to renew and expand existing UK efforts, promising action, and resources in a long-term commitment, as well as a promise by the British government to galvanise the international society to do the same (Hague 2012). As outlined in the Global Summit Report,

> …the aim of the campaign is to raise awareness, rally global action, promote greater international coherence and increase the political will and capacity of states to do more to address the culture of impunity that exists for these crimes, to increase the number of perpetrators held to account and to ensure better support for survivors. (FCO 2014k, 10).

[8] Again, I use "Burma", as opposed to "Myanmar", for consistency with the British Government. Burma is also listed as a priority country, making it a suitable case for examination of PSVI efforts.

Spearheaded by Hague and Jolie, the Foreign and Commonwealth Office (FCO) launched the PSVI at a screening of Jolie's film *In the Land of Blood and Honey* which, as noted above, addressed sexual violence during the war in Bosnia in the 1990s (Hague 2012). Speaking at the launch, Hague said that;

> All these women told me of the unspeakable violence perpetrated against them. They talked to me of their rights unfulfilled and violated; their desire for justice for themselves, for their children and families, and above all their desire for peace. I was shocked for example when I learnt that only around 30 people have been convicted so far for the up to 50,000 rapes committed during the war in Bosnia in the 1990s. (2012, 2)

Hague also noted the immense influence first-hand accounts of survivors from this war had on his desire to take a leading role in ending sexual violence in conflict, and to use his position on the international stage to ensure that the international society followed his lead (2012).

The PSVI has produced a number of tangible outputs in its first five years, as well as making progress in spreading its influence throughout all British government departments and policy. Table 1 outlines the major outputs of the PSVI from 2012-2017. The following section offers a summary of the main outputs of the PSVI during this period, organised according to their main objective.

Table 1: Major Output of the PSVI; 2012-2017

| Output | Specifics | Aim | Date |
|---|---|---|---|
| **UK Team of Experts** | Group of experts in investigating sexual violence violations of IHL, dispatched to assess and advise on situation in conflict zones | Improve current investigations and advise UK on where to focus resources | 2012 |
| **G8 Declaration to End Sexual Violence in Conflict** | International declaration condemning tactical SV in conflict & committing future efforts & resources to end impunity | Increase int'l involvement by organisations addressing peace and security | 2013 |
| **UNGA Declaration to End Sexual Violence in Conflict** | General Assembly declaration to stop sexual violence war crimes and not grant immunity | Ensure all UN member states increase efforts to stop sexual violence in conflict | 2013 |
| **UNSCR 2106** | Resolution committing member states to stop sexual violence war crimes and end impunity | Re-establish commitments and increase resources by int'l community | 2013 |
| **Global Summit to End Sexual Violence in Conflict** | 3-Day Conference of political leaders and representatives addressing sexual violence in conflict | Improve efforts and increase int'l awareness and commitments | 2014 |
| **Int'l Protocol on the Documentation & Investigation of Sexual Violence in Conflict** | Educational tool explaining how sexual violence a war crime can be and how to document and investigate it for ICC trials | Provide 'best practices' to those working in conflict zones and to standardise evidence gathering procedures | 1st Ed. – 2014<br>2nd Ed. – 2017 |
| **Principles for Global Action** | Educational document about how to address stigma surrounding sexual violence crimes | Increase knowledge about stigma and how to counter its effects | 2017 |

## POLICY APPROACH

The PSVI made the argument from the outset that ending impunity was the priority, impunity being synonymous with the failure or inability to hold accountable those violating international laws and standards. Outlined in the UK's 2012 HR&D report,

> The objectives of the initiative are to address the culture of impunity by increasing the number of perpetrators brought to justice both internationally and nationally; strengthening international efforts and coordination; and supporting states to build their national capacity to prosecute acts of sexual violence committed during conflict. (2013, 90)

The fundamental belief underlying the PSVI is that greater enforcement of the law will lead to a decrease in the use of tactical sexual violence in conflict because the international legal system will provide a deterrent effect in future conflicts. While prevention was the ultimate goal, the aim of the PSVI at its inception, and thus its policy objective, was to end impunity by increasing prosecutions and convictions for tactical sexual violence. As Hague said at the launch of the PSVI, "we want to see a significant increase in the number of successful prosecutions for these crimes, so that we erode and eventually demolish the culture of impunity and establish a new culture of deterrence in its place" (Hague 2012, 2).

Impunity is presented throughout the years as the main problem, and the PSVI takes the position that impunity can be ended through policy and related efforts which address the causes or issues

that impede and prevent successful investigations and prosecutions of sexual violence war crimes. The PSVI is predicated upon and endorses the view that a main cause of impunity is inadequate investigations. As will be shown, the PSVI presented the prevailing causes of problems with investigating as insufficient evidence gathering for future cases and a lack of political will and practical action on the part of the international society to appropriately react to the crime of tactical sexual violence.

A review of the main policies of the PSVI shows a conviction that there is a lack of standards and expertise on the ground with regard to gathering evidence and investigating sexual violence war crimes, and that these shortcomings are a result of the failure of the international society to address the issue properly as revealed in these comments in the Summit Report;

> All too often, rape and other forms of sexual violence have been considered as inevitable consequences of war, and a 'lesser crime' compared with other grave breaches of the Geneva Conventions such as torture and extra-judicial killings. As a result, procedures for investigating and documenting acts of sexual violence committed in conflict have often proved inadequate … (FCO 2014k, 8)

Underlying the policy of the PSVI is an assumption that a lack of knowledge and understanding, as well as a general lack of expertise in investigating sexual violence war crimes in conflict zones, results in the failure to gather necessary and sufficient evidence for future cases. This is presented as an issue that can be solved with training and

education and by expanding adequate knowledge to those working and living in conflict zones, as evidenced by The Protocol and by the provision of a UK Team of Experts to be deployed on the ground. A substantial part of the PSVI is dedicated to training and educating various groups (from government officials to civil society leaders) about sexual violence as a war crime. The PSVI further aims to work with the UK Ministry of Defence (MoD) in order to ensure appropriate gender training for military personnel.

The PSVI is also based on the belief that the international society does not place sexual violence in conflict at the top of its agendas, where it should be, and is lacking the necessary political will to end sexual violence in conflict. Funding and resources addressing the problem in conflict zones are vastly insufficient, and while international laws prohibit the tactical use of sexual violence in conflict, action beyond verbal condemnation is relatively minimal. Hague tried hard to increase the political will and actions of various international organisations;

> Our generation has an opportunity to confront the use of rape and sexual violence in war. The UK will seek a clear statement of intent and concrete commitments to begin to address the culture of impunity for those who use rape and sexual violence as a weapon of war … Now is the time to act to prevent and address sexual violence in order to resolve conflicts and build sustainable peace. (Hague 2013b)

Through efforts in various international bodies and multinational organisations, Hague and the PSVI make substantial effort to address

this lack of political will and concrete action to stop tactical sexual violence and move the issue to the top of all international agendas related to conflict, peace, and security.

### Insufficient Evidence & Investigating

The PSVI presents as a primary reason for the continual failure at the ICC the inability to prove in court the nature, intent, and responsibility for sexual violence crimes during war due to a lack of admissible evidence. There are specific requirements for international criminal prosecutions as to what is necessary to first, establish that the crime is within the jurisdiction of the presiding court, and second, to prove the defendant is criminally responsibility for said crimes. Only certain evidence is admissible in court, and therefore useful, and all this is dependent upon the legal system within which the court operates. For example, prosecutors must show sexual violence to be widespread and systematic in order to demonstrate a crime against humanity. While the requirements to prove sexual violence crimes at the international level are far clearer than in the past thanks to the proceeding of the previous tribunals (ICTR and ICTY) and the Rome Statute, the collection and presentation of the requisite evidence has proved extremely difficult. Human Rights Defenders (HRDs) and other practitioners seeking to provide aid and assistance experience a lack of safety and access in conflict regions, facing a wide range of obstacles and threats throughout the investigation and trial processes.

### UK Team of Experts

As part of the launch of the PSVI in May 2012, Hague announced the creation of a UK Team of Experts (UK ToE), a civilian force with expertise related to investigating sexual violence in conflict and working with survivors (FCO 2013). Members of the team, consisting of "doctors, lawyers, police, psychologists, forensic specialists and experts in the care and protection of victims and witnesses," are available to support local efforts investigating violations of international law in conflict-effected regions (Hague 2012; FCO 2013). The UK ToE reports back to the British government on what resources are needed and where to focus efforts regarding sexual violence crimes in particular conflict zones (FCO 2014i). The aim of the UK ToE is to expand and increase the amount of knowledge and expertise in conflict zones so as to increase efficiency in gathering the "correct" type of evidence for future prosecutions. Hague claimed the UK ToE "will significantly strengthen the specialist capabilities that we are able to bring to bear on these issues as the United Kingdom" (2012).

In the Foreign and Commonwealth Offices (FCO) 2012 HR&D Report, the UK ToE is highlighted as a "key strand" of the inaugural year of the PSVI, reflecting the importance given to the UK ToE (FCO 2013, 91). The objectives of the UK ToE are broad, as Hague stated,

> The team will be available to support UN and other international missions, and to provide training and mentoring to national authorities to help them develop the right laws and capabilities. It will also be able to work on the frontline with grassroots organisations, local peace builders and human rights. (Hague 2012, 3)

Members have reportedly been deployed over 90 times since 2012 to aid and advise with "a range of issues from documenting crimes to rehabilitating survivors" (Ahmad 2018). Their first deployment was to the Syrian border, in which *two* (a very small number) former police officers from the UK provided "training on the collection, handling, documentation and storage of evidence," and worked with local human rights organisations to train Syrian medical professionals (FCO 2013, 92). The UK ToE was created to address the perceived lack of understanding and/or inadequate knowledge about sexual violence violations of international law and how to carry out proper investigations for international criminal cases. The belief is that if we can share the knowledge and expertise of the UK in current conflict regions, investigations will improve, and the likelihood of future prosecutions and convictions will increase.

## THE PROTOCOL

The most tangible thing coming out of the PSVI is the *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict* (The Protocol), with the first edition launched at the Global Summit in 2014. The Protocol is a training tool intended to increase the quality and quantity of evidence for future international cases by setting out "best practices on how to investigate and document, sexual violence as a war crime, crime against humanity, acts of genocide or other serious violations of international criminal, human rights or humanitarian law" (FCO 2017a, 11). The Protocol has been translated into at least 9 languages, with a substantially updated

second edition released at a five-year PSVI anniversary event at the Foreign and Commonwealth Offices in London in 2017, which both Hague and Jolie attended (FCO 2017a); FCO 2017e).

Copious resources have been devoted to producing, translating, and disseminating the Protocol, so it represents a clear priority for the PSVI and an example of where resources are focused. Compiled with input from over 200 people from a variety of areas with expertise and knowledge surrounding sexual violence in conflict, it aims "to improve accountability for sexual violence in conflict by capturing information and evidence that can be used to support future accountability processes" (FCO 2014g, 4; FCO 2014k, 14). The Protocol is not a legally binding document, but rather an educational tool intended to provide the necessary information about sexual violence as an international crime and the evidentiary requirements for successful prosecutions. The Protocol was created with the intention of helping to "overcome the barriers to prosecution, by setting out clearly and comprehensively the basic principles of documenting sexual violence as a violation of international law" (FCO 2017a, 6). There is no requirement that it be used, but the aim is that the more readily available, accessible, and widespread this information becomes, evidence gathering procedures will improve and the likelihood of future charges increases.

"The main purpose of the Protocol is to promote accountability for crimes of sexual violence under international law," thus the evidentiary requirements referred to within the PSVI's policy address only sexual violence crimes that fall under the jurisdiction of the ICC,

meaning they are violations of international humanitarian or human rights law (FCO 2014g, 10). While there are debates about the current evidentiary requirements for international trials and their efficacy, the PSVI generally accepts the current standards. This means that while domestic crimes and national law are referenced, the evidentiary requirements referred to and used throughout the PSVI do not directly cover domestic prosecutions.

### Principles for Global Action

Throughout the PSVI, there is also the claim that stigma surrounding sexual violence crimes is a major factor contributing to failed investigations. The belief that sexual violence is a "private" or "domestic" matter still plays a strong role in the denial of justice in conflict societies. Many survivors and witnesses do not report sexual violence during conflict or seek aid as a result of stigma about both the sexual violence and the pursuit of criminal prosecutions for such crimes, creating a dangerous environment for survivors and impeding help. As noted in previous chapters, the stigma and shame experienced by victims and survivors is undoubtedly in consequence of how sexual violence is constructed as a blow not only against individual dignity, but also the honour of communities and the men charged to protect them. Survivors often stay silent to spare their nationals and menfolk shame and dishonour. They might also face some form of retribution for speaking out, from being shunned to being attacked. Stigma thus contributes to underreporting, an inability to investigate and gather the requisite evidence, and real threats of physical danger to all involved.

For these reasons, the PSVI makes an effort to address the harmful stigma that victims and witnesses face.

In September 2017, the PSVI took practical action to fight this stigma by releasing the Principles for Global Action (PGA), "a key tool for policymakers and practitioners and aims to provide a survivor-centred approach to working to end stigma associated with conflict-related sexual violence" (FCO 2017b, 8). Stigma is defined as "not only the expression of individual values, beliefs or attitudes; it is the forceful expression of social norms that are cultivated within a given society through the behaviours and actions of groups of people and institutions" (FCO 2017b, 7). This focus on norms is important, and will be revisited in Chapters Seven and Eight, but is likely to be limited in its actual impact; societal change requires long-term commitment. The PGA is another training tool, a document based on input from a wide variety of fields and expertise regarding the harms and effects of stigma on survivors, their families, and the entire community (FCO 2017b).

The PGA represents a slight shift in focus, although stigma has always been an issue within the PSVI. The PGA draws attention to the attitudinal and behavioural products of tactical sexual violence and brings into focus the need to address such stigma.

> Developed through extensive consultation with survivor groups, experts and activists across the world, this document – a first of its kind – develops a shared understanding of stigma, why it needs to be addressed and how to make progress in different contexts. (FCO 2017b, 8)

Again, I will delve into this shift in focus more in Chapters Seven and Eight, but here it suffices to say the PGA represents some progress in attempting to change attitudes surrounding sexual violence in conflict, which is necessary if it is to be eliminated altogether.

## Raising Sexual Violence in Conflict on the International Agenda

Hague also makes the argument that the international community fails to provide the necessary required resources and action towards ending sexual violence in conflict. This failure is perpetuating the culture of impunity. While verbal condemnation is clear, practical action on the part of the international community to address this heinous crime is deeply lacking. Through the PSVI, Hague attempts to take practical action, both domestically and internationally, committing to turn conversations into concrete actions and effective policy (Crawford 2017, 122). Along with the UK taking practical steps, a substantial amount of time and the resources of the PSVI are aimed at galvanising the international community to follow the UK's lead. The UK's position at the G8, particularly during Hague's tenure as Foreign Secretary during which time the UK held the presidency, as well as its role as a permanent member on the UN Security Council, offers a major platform from which to push efforts to fight sexual violence in conflict on the international agenda, adding to the importance of the PSVI.

Granting immunity during peace negotiations when trying to settle armed conflicts still occurs, obviously contributing to impunity, so a key aim of the PSVI is to work to ensure that this will not continue. UNSCR 2106, as well as both the G8 Declaration and the UNGA *Declaration of Commitment*, state that under no circumstances will immunity be granted for sexual violence crimes (UN S/RES/2106 2013; G8 2013). The gravity of the crime, and, therefore, the need to not grant immunity or treat sexual violence crimes as lesser offences, was also a major message at the Global Summit, as it attempted to instil the commitment in as many nations as possible.

### G8 Declaration

With the UK holding the presidency of the G8 during his tenure as Foreign Secretary, Hague was in a prime position to spread the influence and principles of the PSVI to the international arena from the outset. During this period, Hague put forth the *G8 Declaration on Preventing Sexual Violence in* Conflict (The Declaration). The G8 Declaration is a case of Hague using the UK's position to push the issue of tactical sexual violence up the main agenda of a major multinational organisation addressing peace and security, and assuring more resources and funding are provided in the fight against sexual violence in conflict. Impunity is again a priority, with improving investigations tied to future success, as Hague states when discussing the upcoming G8 meeting;

> First, we will seek a clear statement of intent and concrete commitments to begin to shatter the culture of

> impunity for those who use rape and sexual violence as a weapon of war, including support for a new International Protocol on the investigation and documentation of sexual violence in conflict and practical assistance in countries affected by this problem. (Hague 2013c, 2)

The Declaration requires signatories to commit to ending impunity for sexual violence in conflict, as well as providing funding and resources to address crimes of sexual violence (G8, 2013). The Declaration "recognises that further action at the international level is imperative to end sexual violence in armed conflict, to tackle the lack of accountability that exists for these crimes" (G8 2013, 1). Prior to this Declaration in 2013, the G8 had not specifically put sexual violence in conflict on the main agenda. The opening paragraph of the Declaration asserts "Ministers emphasised that more must be done to address these ongoing crimes, including by challenging the myths that sexual violence in armed conflict is a cultural phenomenon or an inevitable consequence of war or a lesser crime" (G8 2013).

The aim of the Declaration is to increase the political will of member states in fighting sexual violence in conflict and addressing it as a grave breach of international law, as it states, "we recall that rape and other forms of serious sexual violence in armed conflict are war crimes and constitute grave breaches of the Geneva Conventions and their first Protocol" (G8 2013, 1). The G8 Declaration recognised tactical sexual violence as a grave breach of the Geneva Conventions, which had not been done previously (Crawford 2017, 123). As Hague stated,

> … My personal priority for the G8 was to agree a major declaration that rape and serious sexual violence in conflict are grave breaches of the Geneva Conventions. I am delighted that we have reached agreement on that declaration, as well as a number of practical commitments to make real, tangible progress on the ground on the prevention of sexual violence in conflict, including £23 million in new funding towards this effort from different countries. (Hague 2013a, 2)

This was certainly a big step, for despite all the accomplishments of the Rome Statute in recognising the use of sexual violence as constituting a grave breach, it fell short of an explicit acknowledgment of tactical sexual violence itself as a grave breach war crime.

### United Nations

Hague also used the UK's position at the UN to increase efforts to address sexual violence in conflict and push for the political will to do more. As a senior representative of a permanent member state of the Security Council, Hague proposed and worked to achieve the passage of UNSCR 2106, which further commits the international community to ending impunity and honouring prior commitments to fight sexual violence in conflict (2013). As noted in Chapter Four, UNSCR 2106 is part of the Women Peace and Security (WPS) Agenda and aims to keep the issue at the top of the agenda and make it harder for member states to ignore sexual violence war crimes and so to contribute to the culture of impunity.

UNSCR 2106 highlights the criminalisation of sexual violence in conflict and the need for prosecutions from the outset, when it noted,

> that sexual violence can constitute a crime against humanity or a constitutive act of, with respect to genocide; further recalls that rape and other forms of serious sexual violence in armed conflict are war crimes; *calls upon* Member States to comply with their relevant obligations to continue to fight impunity by investigating and prosecuting those subject to their jurisdiction who are responsible for such crimes. (2013, 2)

This quote shows again the importance placed on impunity and the reliance on prosecutions for delivering justice. UNSCR 2106 also alluded to the need for more and better monitoring and evidence gathering for sexual violence war crimes as it "recognizes the need for timelier, objective, accurate, and reliable information as a basis for prevention and response" (2013, 3).

UNSCR 2106 contains a new and important discursive step, explicitly mentioning the problem of sexual violence against men and boys, expanding the conversation to address all types of tactical sexual violence that occurs in conflict and not just that which is against women;

> Noting with concern that sexual violence in armed conflict and post-conflict situations disproportionately affects women and girls, as well as groups that are particularly vulnerable or may be specifically targeted, while also affecting men and boys and those secondarily traumatized by forced witness of sexual violence against family members. (UN S/RES/2106 2013, 1-2)

It might be emphasised here, that although my focus is upon women and wartime violence it is true that although rarely mentioned, the reality is that victims of sexual violence, as well as perpetrators, can be of any sex is fundamental to a proper understanding of the overall problem, because it is constructs of gender as a whole that drive the problem. Men who are targeted in rape are thereby feminized, subordinated, and humiliated according to dominant social and cultural norms as to what it means to be a man/masculine. While sexual violence in conflict is still closely tied to women throughout the PSVI, it took a noteworthy step forward by explicitly acknowledging sexual violence against men and boys at this point (Kirby 2015).

Within the UN, Hague also proposed the UN General Assembly (UNGA) *Declaration of Commitment to End Sexual Violence in Conflict*– now recognised by 155 members– was presented in June 2013, and which focused on the need for member states to challenge the culture of impunity and promote accountability for international crimes of sexual violence during conflict (FCO 2014k, 10). The UNGA Declaration acknowledges that "sexual violence in conflict can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security," thus emphasising that sexual violence in conflict is an issue of international peace and security and therefore of concern to the UN (UNGA Declaration 2013, 1). Impunity is highlighted and justice foregrounded, "we must shatter the culture of impunity for those who commit these crimes, by bringing those responsible to justice – as a critical element of our prevention

efforts. There should be no safe haven for the perpetrators" (UNGA Declaration 2013, 1). The Declaration focuses on ending impunity;

> We therefore pledge to do more to raise awareness of these crimes, to challenge the impunity that exists and to hold perpetrators to account, to provide better support to victims, and to support both national and international efforts to build the capacity to prevent and respond to sexual violence in conflict. (2013, 2)

## THE GLOBAL SUMMIT

In 2014 Hague and Jolie hosted the *Global Summit to End Sexual Violence in Conflict* in London, bringing together members of the public, government officials, and other important actors (i.e. prominent Non-Governmental Organizations (NGOs), to discuss tackling the problem of sexual violence in conflict (Summit Report 2014). Held over three days at the Excel Conference Centre in London, the Summit involved delegates from over 120 countries and 900 experts from around the world in the largest gathering of its kind (FCO 2014k, 2).

> The purpose of the Summit was to create a sense of irreversible movement towards ending the use of rape and sexual violence in conflict through a set of practical agreements that brought together and focused the efforts of conflict and post-conflict affected countries, donors, the UN and other multilateral organisations, NGOs and civil society in an ambitious and cohesive programme for change. (FCO 2014k, 14)

The *Summit Report* is the most highly publicised output of the PSVI, touted as the largest gathering of influential people in a targeted effort to end sexual violence in conflict, with a reported nearly £5 million spent on the build-up and during the event (Rees 2015, 2).

The Summit Fringe was an ancillary series of events and was a successful venture in gaining public momentum for the issue, with 175 different events organised by national and international groups; nearly 20,000 members of the public visited the event over the three days (FCO 2014k, 26). The goal of the Summit Fringe was to engage the general public and increase international awareness and involvement;

> We also sought to use the Summit Fringe and other public events as a means to bring civil society and the public into the policy-making process, and through the UK's network of diplomatic missions around the world to engage otherwise unheard voices from across the globe in the discussion. (FCO 2014k, 8)

A major goal of the Global Summit was to break the silence that surrounds sexual violence in conflict and establish a set of practical actions that the international society could take to address the problem. As Hague wrote in the forward to the *Summit Report*,

> Holding an event at this level was, in itself, a major milestone in breaking the international silence on this subject. And by bringing the world's foremost experts in the field together with the top international decision-makers, we have all helped to generate the long-overdue international political will necessary to end acts of sexual violence in conflict (2014k, 2).

To reiterate, the argument underlying PSVI policy is that by improving evidence gathering and on-the-ground investigations for future cases, while increasing international involvement and action in efforts to fight sexual violence, impunity can effectively be eradicated, and the use of tactical sexual violence in conflict ended. With attention then on these causes of impunity, the PSVI argues that policy can address them by focusing resources on increasing and improving awareness and knowledge of sexual violence as a war crime, and on the available avenues for delivering justice. The PSVI and the subsequent policy approach is predicated on a legal framing of sexual violence in conflict alone, situated within international law, and based on the belief of legal accountability as the primary way to stop criminal behaviour. This framing has consequences for the way in which the initiative constructs, proposes, and implements policy. The focus placed on the international criminalisation of sexual violence ultimately results in legal solutions dominating policy, while marginalising alternative approaches and limiting possibilities for success and positive impact. Most central to my analysis is that this approach fails to see that gender constructs and gender norms have been central to the problem of wartime sexual violence and must be taken into account for any initiative to be fully successful. I explore this deeper in Chapter Eight.

Thus, while gender norms are addressed within the PSVI, this is peripheral to the main focus because the PSVI frames sexual violence as an international crime, presenting it as a problem because

prohibited acts are occurring with widespread impunity. Sexual violence in conflict is now essentially discussed in tandem with the impunity that surrounds it, with the one issue inseparable from the other. As the problem is framed as an international crime, conversations then centre on criminality and legal accountability.

### Rape as a Weapon of War

Often used in PSVI-related speeches and discussions is the narrative of 'rape as a weapon of war' to distinguish the international nature of the violence, making it of concern to the international society as a whole. As Hague stated in 2014, "the aim of the PSVI is the eradication of rape as a weapon of war, through a global campaign to end impunity for perpetrators, to deter and prevent sexual violence" (2014). The narrative of 'rape as a weapon of war' is used to portray both the deeply horrifying nature of the crime and the need for international attention and action to eradicate sexual violence in conflict. This 'rape as a weapon of war' narrative does offer an opening for conversations about sexual violence in conflict as it distinguishes between everyday sexual violence, which is often considered a private affair or one for local authorities, and sexual violence that constitutes a war crime, which is clearly an issue of international concern and must therefore be addressed. The PGA opens with the statement that "sexual violence as a weapon of war continues to demoralise, destabilise and destroy individuals, communities and societies across the world" (FCO 2017b, 8). This phrasing is repeated in many other policy documents.

## Grave Breach of International Law

The issue of sexual violence in conflict is presented throughout the PSVI and its policy, primarily, as "one of the most serious forms of violations or abuses of international humanitarian law and international human rights law" (G8 2013, 1). Established as a clear international crime, an essential part of the argument driving the PSVI and its policy is that tactical sexual violence constitutes a grave breach of international law. This classification, at least theoretically, demands certain actions be taken by the international community where evidence of such acts exists.

One of Hague's main arguments is that tactical sexual violence is such a moral outrage that it constitutes a grave breach, meaning it is amongst the worst war crimes, and is therefore unacceptable and inexcusable under all circumstances (Hague 2013a). Hague makes clear throughout his work the fundamental argument that tactical sexual violence is so inhumane that it constitutes a grave breach;

> Sexual violence committed in conflict must not be viewed as a lesser crime. … We must shatter the culture of impunity for those who commit these crimes, by bringing those responsible to justice – as a critical element of our prevention efforts. There should be no safe haven for the perpetrators. (*Declaration to End Sexual Violence in Conflict* 2013, 1)

PSVI policy is based on the belief that if this classification is properly realised and accepted by the international society, then states and

international organizations will do more to fight sexual violence in conflict. The underlying and undeniable argument was that the use of sexual violence as a military tactic is such a moral indignity that, like genocide, international intervention is required, and perpetrators must be held accountable in order to protect universal human rights and ensure international peace and stability.

In attempting to ensure that, as an ongoing effort, sexual violence is treated and prosecuted as a grave breach, a substantial portion of available resources have gone into compiling and disseminating information about what constitutes sexual violence violations of international law, and how to investigate and document such atrocities. This is shown throughout the Protocol and the significance given to the UK ToE. The PSVI also has a focus on training and educating those living, working, or involved in conflict regions, as to the background of sexual violence being a grave breach and how to investigate such violations. Hague and others have highlighted the need for professional training of police, military, and government officials on sexual violence and how to properly deal with both investigations and survivors.

While classification as a grave breach is theoretically beneficial, it results in a focus on the brutality of the violence and the destructive effects on the community as a whole. The argument underlying the position that tactical sexual violence is a grave breach implies, like the language of the Geneva Conventions, that the worst effect of sexual violence in conflict is the attack on honour and dignity, particularly the

honour and dignity of men and the overall community, ignoring the fact that the violence is first of all toward women and women's bodies and psyche. In this narrative women are only passive victims, the result of gender stereotypes which reinforce the roles of women as confined to the home, bearers of children and keepers of the household, who are the property of men who must be controlled in all aspects of their lives. These are not women who are active members of the wider polity, or women with individual agency. Tactical sexual violence cannot be seen as primarily affecting men, men's honour, and the national honour if it is to treat the problem with any effectiveness.

The destructive effects on the victims, survivors and the community as a whole is emphasised in this frame to establish the devastating nature of the violence and prove its necessary classification as a war crime warranting response. The use of sexual violence as a tactic is framed as a criminal act so atrocious, the international community has a moral obligation to respond if the laws criminalising such acts are violated. Tactical sexual violence is presented as a violation of the most basic human rights and dignity, such a destructive and inhumane act that it must be considered inexcusable under all circumstances. The basic message is that this violence rises to the level of international concern because of the violation of a community's dignity as a result of the use of sexual violence as a military tactic. The underlying gender constructions which make tactical sexual violence effective are still reinforced through the focus on why the acts are

criminal, rather than why sexual violence was chosen as the preferred tactic.

### Issue of International Peace & Security

Through the PSVI, the international crime of using sexual violence as a military tactic is also presented as an issue of international peace and security, for its effects destroy women's livelihoods, and thus their communities as well. As a result, it is necessary for the international community to stop tactical sexual violence in conflict to ensure peace and stability, for "sexual violence in conflict can significantly exacerbate situations of armed conflict and many impede the restoration of international peace and security" (G8 2013). This theme is consistent throughout PSVI outputs.

According to Hague, the international society is not properly treating tactical sexual violence as the fundamental threat to international peace and security that it is. As Hague argued in the forward to the Global Summit Report; "We share a deep conviction that the international community must do more to tackle rape and other forms of sexual violence in war, not only as a moral imperative but also as a matter of fundamental importance to peace and security" (2014k, 2).

Presenting sexual violence in conflict as posing a threat to peace and security as a whole aims to ensure that all efforts addressing conflict and reconciliation will include adequate and proper measures addressing crimes of sexual violence. This framing does provide an

avenue for funding, resources, and action that would otherwise not necessarily be available, and expands the number of agencies addressing the issue to further increase the visibility of criminal sexual violence in conflict.

Some of the most widely publicised and well-known efforts of the PSVI seek to increase awareness within the global community and galvanise international action. The principle of the G8 Declaration and UNSCR 2106 is that the more sexual violence in conflict is on the agenda of every nation and every international body, and the more it is talked about, the more resources will be committed to fight impunity and the use of sexual violence as a military tactic. A major reason for the Global Summit was to demonstrate to the international community that the use of tactical sexual violence is an international peace and security issue, and one that must be dealt with immediately (FCO 2014k, 2).

> However, success cannot be achieved by a single country or organisation acting alone. … It is only by working together that we can bring about the change in global attitudes that will remove the culture of impunity that exists for these crimes and see an end to the use of rape and sexual violence as weapons of war finally. (FCO 2014k, 6)

The crime of sexual violence during conflict is presented as impeding peace and reconciliation efforts primarily as a women's issue, with sexual violence portrayed as a problem which destroys women's livelihoods and halts progress towards equality. Throughout discussions and policy, the problem is intricately connected to the issue

of women and their equality, and it is made clear that sexual violence must be addressed in order to properly deal with the larger issues of women's rights. As Hague states, "it is my firm conviction that tackling sexual violence is central conflict prevention and peacebuilding worldwide. It must be as prominent in foreign policy as it is in development policy, for the two cannot be separated. And it also cannot be separated from wider issues of women's rights" (Hague 2012).

The issue of sexual violence in conflict has always been closely tied to the issues of women's safety and equality. Issues surrounding violence against women in conflict and the necessary role of women in peace efforts, have been recognised as fundamental for a sustainable peace by the international community; connecting sexual violence to those organisations already addressing women in conflict has strong benefits according to some researchers. Yet this connection results in a dominance of policy targeting women's equality being focused on sexual violence, and policy addressing sexual violence centring on women – detracting from the overall goal of tackling underlying gender constructs and gender norms, save for the small amount of effort devoted to this. Moreover, the heavy focus on legalistic approaches, approaches that drive policy initiatives like the PSVI, also divert resources from grass roots organizations who are working to challenge and change gender norms in conflict affected societies and other settings. This might be justified if the ending the culture of impunity approach was actually working, but as I will aim to demonstrate in the

following chapter, despite initiatives like the PSVI, this approach is inadequate to the task.

## Conclusion

I approached this chapter with the task of understanding how the PSVI, as a whole, worked to prevent tactical sexual violence in conflict, and I did so from a problem-solving perspective as a middle-ground social constructivist. My goal is to improve policy, not simply to critique it. This chapter has laid out how the PSVI attempted to prevent tactical sexual violence through ending impunity on the international stage. A fundamental understanding of policy makers of the PSVI is that the issue of sexual violence as a war crime was not being sufficiently addressed by international society and was therefore perpetuating the use of sexual violence as a military tactic and failing in its effort to end the culture of impunity. Underlying the PSVI policy is the assumption that there was too little expertise or knowledge in the conflict zones about sexual violence, or at least about how to investigate it for international criminal cases. The premise of the policy and its implementation was and still is that by increasing knowledge and expertise in conflict regions, the quality and quantity of evidence will increase, leading to more prosecutions and convictions. This is the ultimate aim of the PSVI, predicated on the fact that more prosecutions and convictions will deter future use of tactical sexual violence.

Underlying this legal approach as shown in the discourse is a framing of tactical sexual violence as a grave breach of international

law, a war crime and an issue of international peace and security. This framing results in legal solutions which dominate prevention efforts, but, as will be shown, to not enough effect. I argue that the ability of international law to deter the use of tactical sexual violence in conflict is a reactive-based approach which does not address the roots of the problem and has been too weak or too ineffective because of lack of funding and the lack of a strong climate of international support. Moreover, the PSVI efforts do not focus on the causes of the tactical use of sexual violence or the sexual nature of the violence itself, rather they disseminate legal definitions and distinctions and highlight the criminality alone. The PSVI was a visionary start but limited by the framing of the problem as a solely criminal question to be solved in the courts. A better recognition of the role of gender norms and the impact of the particular social constructions of gender in the conflict-ridden arenas would have altered the directions taken by the PSVI even in terms of the existing programs.

In recent years, the status and funding of the PSVI has come under some scrutiny for the lack of success. Chapter Seven includes a fuller evaluation of the use of law to tackle sexual violence in conflict and a deeper evaluation of the PSVI specifically. The following chapter will examine how the PSVI was deployed in the current ethnic and religious conflict in Burma as a second case study of the PSVI in action. In Burma widespread reports of the tactical use of sexual violence by Burmese forces against the Rohingya minority and the creation of huge

refugee camps have drawn international attention to the widespread horror or the status of the Rohingya.

# Chapter Six:
# Burma & The PSVI

## Introduction

As I discussed at length in the previous chapter, the PSVI aims to end impunity for perpetrators of tactical sexual violence in conflict. In this section of my thesis (Chapters Six and Seven) my aim is to lay the groundwork for an assessment of the realistic impact and effectiveness of this policy approach in practice. As such, this chapter is more descriptive than analytical, but it sets out all the necessary detail upon for my analysis and assessment of the PSVI and the effectiveness of international law more generally, in Chapter Seven. The underlying argument of the PSVI, as presented in the previous chapter, is that ending impunity can be achieved by increasing awareness and the knowledge of sexual violence as a war crime, by collecting stronger evidence that will stand up in court and by protecting survivors, and those who advocate on their behalf, so that they might testify in court. All this will, in theory, lead to prosecutions which will provide justice for victims and, most importantly, deter future transgressions.

In this chapter and the following chapter (Seven), I turn to the Rohingya crisis in order to assess the potential impact of the PSVI on the ground and to also assess and come to some conclusions about the

limitations of the PSVI, and legalistic approaches generally, to sexual violence. This chapter will show how this policy approach has been applied in the case of Burma and the Rohingya people. To recap briefly (Chapter Two), I have chosen the Rohingya as a case study for a number of reasons. First, in terms of my contribution to the knowledge, there are, at the time of writing, no in-depth studies in the academic literature of the PSVI in relation to the Rohingya crisis, yet it is an important case. It ostensibly addressed issues previously argued to be significant in terms of the continued culture of impunity with respect to sexual violence, practical issues regarding evidence and protection of witnesses and, importantly, political will to do something about the problem.

Second, the case of the Rohingya can be classed as an ethnonationalist conflict, as set out in chapter Two. As such, it is a conflict driven by ethnonationalist ideology and political goals and so replete with all the gendered constructs that come with such conflicts. The ethnonationalist ideology that drives the conflict is, in turn, based upon gendered discourses which make the use of sexual violence a highly effective tactic and therefore a likely part of military strategy.

Third, the UK considers itself a leading defender of human rights around the world, taking the position that if a state is committing war crimes and denying people their basic human rights, the international community bears the responsibility of protecting those vulnerable people and delivering justice and accountability for violations of international law. Baroness Anelay, the UK's Special

Representative on Preventing Sexual Violence in Conflict, in her statement at the UN Third Committee's session in 2014, reaffirmed the British government's commitment to fighting for human rights around the world, stating that "the UK will continue to be tireless in our efforts to speak out for those without a voice and to stand up for the universality of human rights in all fora" (2014). The case of Burma[9] is no different and, as such, has been the object of UK concern and efforts.

Finally, as noted previously, Burma was identified as one of the UK's priority countries. Burma is one of six focus "Countries of Concern" in the 2013 *Human Rights and Democracy Report* (HR&D Report), making it a priority of British government policy and resources addressing human rights (FCO 2014a, 13). However, Burma is also a country in which the UK has a problematic colonial past history, while retaining some diplomatic influence. Reports of tactical sexual violence and other war crimes by Burmese forces against the Rohingya population have garnered increasing international attention and concern since the outbreak of the current armed conflict in 2012 (Mahmood et al 2017, 1841). Soon after, the British government claimed a leading international role in working with the Burmese Government, arguing that

[9] Again, I use the name 'Burma', as opposed to 'Myanmar'. The current British government refers to the nation as Burma, and it is therefore practical and useful for this research to do the same.

> We are well positioned to have a positive impact in Burma. Many aspects of Burma's institutions, including the parliamentary and legal system, the military and the police still reflect their British roots. Burma looks to the UK as a centre of excellence on education, and as a preferred partner in health. (FCO 2014l, 4)

As I have noted previously, the effectiveness of efforts to use legal means to tackle sexual violence in conflict are necessarily shaped by the wider political context in which such interventions take place. Burma's history as a British colony makes the conflict a particularly useful case when assessing the impact of the PSVI and the ending impunity approach, especially considering the influence the colonial period had on creating the environment for the current ethnonationalist conflict. The colonial period played a major role in dividing ethnic groups within Burma, and thus the British bear some responsibility, at least in principle, when it comes to the current conflict, for their past influence has played a fundamental role in the current state of affairs (Taylor 2007). For these reasons, Burma is a pertinent case study when assessing the PSVI and its capabilities as a tool of UK foreign and diplomatic interventions.

In the opening section of this chapter, I provide an overview of the Rohingya conflict, placing the conflict it its broader historical context. In the second section, I will establish the context of the Rohingya conflict and the violence and discrimination the Rohingya people have faced since the 1960s, leading to the current outbreak of armed conflict. Third, I address the shift in language from solely

International Humanitarian Law (IHL) to that of incorporating the language of Human Rights Law as well. Human rights language focuses on violations of the individual's bodily autonomy and harm caused to the individual, rather than constructing women as among the protected and so essentially without agency, or as cultural and symbolic representatives of the collective body of the nation and so targeted in war as a tactic to shame, humiliate and, in some cases, actually destroy the national body. The fourth section assesses the PSVI and the British government's work in Burma regarding the tactical use of sexual violence against the Rohingya community. I end with an initial conclusion that ultimately the approach of the PSVI results in a narrow focus on legal solutions, with little guarantee of anything beyond nominal success. By analysing the PSVI in Burma, and the British government's overall response to tactical sexual violence, this chapter will highlight the dominance and limitations of legal framings and solutions in a conflict setting, demonstrating how the vast majority of funding and resources have been spent on legal solutions, yet has contributed little to solving the fundamental problem. I further develop these themes in Chapter Seven.

## The Rohingya, Ethnonationalist Conflict & the Burmese State

Before analysing PSVI policy, I offer some context and background on the ethnonationalist conflict in Burma in which the Rohingya face severe ethnic discrimination, leading to the current armed conflict and accusations of war crimes against the group. In his chapter on British policy towards the region in *Myanmar: State,*

*Society and Ethnicity*, Taylor lays out how the history of British rule and policy in the region greatly contributed to the ethnic tensions and ethnonationalist discourse that underlies the modern conflicts in Burma (2007). With British rule in neighbouring India solidified, Burma became of geopolitical and economic importance to the British in the nineteenth century. Colonised in 1826, Burma was controlled by the British until its independence in 1948 (Taylor 2007). Throughout the colonial period the importance and role of ethnicity and ethnic division increased drastically, and "a history of ethnic antagonism was created rather than a history of ethnic cooperation and accommodation" (Taylor 2007, 76). The policy of the British, which was somewhat haphazard, resulted in socio-economic divisions along ethnic lines, although much of this was largely unintended consequences rather than intentional separation (Taylor 2007). There are a number of factors which contribute to the current ethnic tension in Burma, and the influence of British colonisation is certainly one of them.

With the ethnic tensions and divisions exacerbated under British rule, WWII and its aftermath gave rise to ethnonationalism and the drive for independence in the region (Taylor 2007). Taylor argues that in the fight for Burmese independence, ethnicity "was transformed from an object of discussion and a principle of organisation to political rallying cry" (2007, 78). Ethnically driven Buddhist nationalists used the British as a reason for the problems within the country and saw them "as deliberately manipulating indigenous and alien minorities to

disadvantage and disempower the unified Myanmar nation" which the Buddhist nationalists strove to form and rule (Taylor 2007, 82). Ultimately successful in achieving political independence, Buddhist nationalists secured power through a military coup in 1962, maintaining control for roughly the next 50 years until democratic rule was established (Ullah 2017, 287)[10].

Zawacki shows how the discrimination and violence against the Rohingya "can be attributed to systemic discrimination … a political, social and economic system – manifested in law, policy, and practice – designed to discriminate against this ethnic and religious minority" (2012, 18). Using the narrative of a "fearsome Other" as a fundamental threat to the nation, the ethnic Rohingya have been "systematically erased by the increasingly anti-Muslim military-controlled government's" efforts since obtaining power (Schissler et al. 2017, 378; Zarni and Cowley 2014, 685). Ethnonationalist rhetoric and violence in Burma against minorities, and particularly the Rohingya, continues to escalate, with ethnic discrimination now entrenched in legislation, state action and societal discourses (discussed presently).

A gendered ethnonationalist discourse underlies the narratives used to justify the discrimination, violence, and conflict, which makes the use of sexual violence as a military tactic highly effective and therefore increases the likelihood of this war crime occurring (Davies &

[10] At time of submission, February 2021, there has just been a military coup in Burma; the current situation is unstable and concerning, but it is too soon to tell the effect this will have on the conflict and the Rohingya minority.

True 2017). McCarthy and Menager found that widespread rumours, and their underlying narratives play a vital role in Burmese society, with many of the rumours "about the threat posed by Muslim men to the social and literal reproduction of Buddhist conceptualisations of 'the nation' in the context of Myanmar's democratisation" (2017, 403). They argue that "narratives of nationalism often evoke metaphors of gender, family, sexuality and vulnerability," working to "construct ideas of women, men, femininity and masculinity that deny agency to women and allocate responsibility for their protection to men," and this is certainly the case in Burma (McCarthy and Menager 2017, 399). Davies and True note how the society is deeply patriarchal, and that in Burma there are "high levels of gender inequality and gender discrimination," placing women, and particularly minority women, in a dangerous and precarious situation (2017, 6; 8).

The Rohingya are a Muslim ethnic group residing in Burma's Rakhine State, the mountainous region bordering Bangladesh (Parnini 2013, 281). A fundamental issue surrounding the Rohingya, and underlying the conflict, is their ancestral origins in the area and whether they have, or are guaranteed, rights as natural citizens of the State of Burma (Mahmood et al. 2017, 1841). There are records from Francis Buchanan, a Scottish physician, in 1799 making reference to an Islamic ethnic group in the region, the "Rooinga", which is often used to demonstrate their presence prior to colonisation (Zarni and Cowley 2014, 692). While the international community generally acknowledges the ancestral history and rights of the Rohingya to the

region, the Burmese government argues that those identifying as Rohingya are illegal Bengali immigrants and therefore not rightful citizens of Burma (Zarni and Cowley 2014, 685).

Ullah outlines the two main positions regarding this group that have emerged within the modern state of Burma–one arguing the group settled in the region as early as the ninth century, while the other claims that the "Rohingyas are a modern construct" and their settlement in Burma is a "by-product of British colonial rule" (2016, 286). Yet Zarni and Cowley point out that while the Rohingyan "identity as an ethnolinguistic group was recognised under successive Burmese regimes after independence," it has been systematically erased since the Buddhist-run military regimes came to power in 1962 (2014, 685). This dispute underlies the ethnonationalist conflict which has erupted in violence, with the Rohingya facing mass and widespread human rights violations, and the Burmese government arguing they do not have the right to live in Burma as natural citizens (Mahmood et al. 2017).

Religion is closely tied to ethnicity within Burma and has played an increasingly important role in politics since independence, with Buddhist nationalists monopolising control for much of the modern state's territory throughout its existence (Ullah 2016, 287). There are three major religions in Burma, with the vast majority 87.9%, of the population identifying as Buddhist, followed by 6.2% Christian and 4.3% Muslim (worldpopulationreview.com 2019). Due to the exclusion of the Rohingya from official government censuses, the data coming

from the Burmese government is questionable, yet according to the 2014 census, roughly 63% of the population of Rakhine practice Buddhism, while just over 34% are Muslim (RUM 2016, 12-15). The Muslim population reside predominantly in the coastal regions and on the border with Bangladesh, while the majority Buddhist Rakhine ethnic group occupy the valley areas (Myanmar Population Housing and Census Report 2016). The Rakhine ethnic group currently make up the majority population in the State of Rakhine, however their majority is slight, and there are over a million Rohingya who have fled the region over the past 40 years. Schissler et al. argue that the fear of the Muslim taking over "seemed to be primarily demographic and based on ideas of rapid Muslim population growth driven by large families, intermarriage and forced conversion of Buddhist women, illegal immigration from Bangladesh and the use of violence" (2017, 382).

The rule of the Buddhist nationalists in Burma has come with noticeable and increasing state discrimination against the Rohingya throughout its tenure. In 1974, the official name of the region dominated by the Rohingya, historically known as Arakan, was changed to Rakhine State, and the Buddhist Rakhine people were recognised as a "major race" in Burma (Mahmood et al 2017, 1842). Earlier that year, the Rohingya had been denied the right to elect representatives in the first election held under the new constitution (Mahmood et al. 2017, 1842). These changes were underscored by a

desire to emphasise the dominance of the Buddhists Rakhine group living in the region over all others (Mahmood 2017, 1842).

The 1982 Citizenship Act, a fundamental piece of discriminatory legislation, underlies the State's attempts to "eliminate the Rohingya from the demographic map of citizenship" (Zarni and Cowley 2014, 697). This law required "so-called non-major races," which include the Rohingya, to have "evidence of ancestral residency in Burma 160 years earlier," which resulted in most of the Rohingya being classified as illegal foreigners, thus rendering them stateless (Mahmood et al. 2017, 1842). Zarni and Cowley point out how this legislative discrimination demonstrates the influence of anti-Rohingya and anti-Muslim nationalist Rakhine groups in overall state policy (2014, 697). The main effect of this, as Zawacki notes, is that it results in the Rohingya being denied state protection and aid, as well as opening them to state policies and practices which violate their basic human rights and freedoms (2012, 19).

While state discrimination was prevalent under the military regime, the "democratic" Burmese Government, which led the country until the coup in 2021, continued to stand by legislation and acts that discriminate on ethnic grounds. Once a symbol of hope and optimism for change, leader Aung San Suu Kyi, as cited by Schissler from a BBC interview in October 2013, claimed "fear is not just on the side of the Muslims, but on the side of the Buddhists as well … there's a perception that Muslim power, global Muslim power, is very great" (2017, 381). In 2014, the Rohingya were again excluded from the national census

(Mahmood et al. 2017, 1843). Under this census, the government recognised and gave national status to 135 different ethnic groups, however the Rohingya remained off the list – even with the international community watching (Ullah 2016, 286). This choice clearly makes one question how committed the democratic government was to rectify the problems underlying the conflict.

This discrimination continued in 2015 when the Burmese parliament, in the face of international opposition, passed the 'Laws for Protection of Race and Religion' – four bills which further infringed upon the rights of the Rohingya and other minority groups (McCarthy & Menager 2017, 396). The Population Control Law, the Conversion Law, and particularly pertinent to this thesis, the Monogamy Law, and the Buddhist Women's Special Marriage Law, were justified and legitimised "under the cover of the moral panic around Muslim perpetrators" (McCarthy & Menager 2017, 397). Schissler et. al. note that the groups responsible for the drafting of these laws, including powerful public figures and Buddhist leaders, "have risen to prominence since 2013 as they have mobilised to project an existential threat, in which Buddhism is vulnerable and needing protection lest it be supplanted by Islam" (2017, 381).

Davies and True highlight how these laws exacerbate ethnic and religious marginalisation by legalising

> …ethnic divisions and authorizing state control over women's bodies. These laws permit regional authorities to enforce control on birth spacing and require women to seek the permission of regional

> authorities to marry non-Buddhist men (directed in particular against Muslim and Rohingya populations) (2017, 8).

In discussing Burma, Hutchinson argues that "this level of state control over the reproductive rights of a certain group of women is a prima facie indicator of ethnic cleansing," with women put in an even more precarious situation through actions of the state (2018, 4).

Along with legislative discrimination, the Rohingya have faced periods of mass violence and displacement at the hands of the Burmese military and government-supported paramilitary forces since at least the 1970s (Parnini 2013, 281). In both 1978, under Operation Dragon King, and 1992, under Operations Clean and Beautiful Nation, Burmese forces carried out campaigns of widespread killings, torture, rape and property destruction against the Rohingya community, resulting in at least 200,000 refugees fleeing to Bangladesh and countless internally displaced people as a result of each campaign (Zawacki 2012, 18). Davies and True argue that "since 1995 there has been an intensified effort by the [Burmese military] to 'double' their forces to end the civil conflict," which has led to "heightened eviction, relocation, displacement and atrocities, with attacks in villages" in Rakhine, as well as on a smaller scale across the country (2017, 7).

In 2012 the current period of armed conflict began in Rakhine State, with violence breaking out in June following reports of the rape of a Buddhist woman by three Muslim men (Mahmood et al. 2017, 1842). The conflict quickly escalated, yet when state authorities

responded to the so-called communal violence, they "joined the Rakhine [peoples] in the looting and killing of Rohingya" (Mahmood et al. 2017, 1842). The conflict continued throughout the year and, as Zawacki contends, "by the end of 2012, hundreds of Rohingya villages or settlements had been destroyed, tens of thousands of homes razed, and at least 115,000 Rohingyas displaced in camps or 'ghettos' in Myanmar, across the Bangladeshi border, or further afield on boats" (2012, 23).

After the 2012 outbreak of violence, McCarthy and Menager found that among the majority of Burma "the discourse of Muslims in Rakhine State immediately began to be reframed as a larger national crisis. The discourse focused on the need to protect and promote reproduction – literally and metaphorically – of Myanmar as a Buddhist nation" (2017, 396). The gendered connotations of the term 'reproduction,' as was the case in Bosnia, makes sexual violence against 'enemy' women an effective tactic, targeting the reproduction of the opposing community (Schenck 2014). Issues of gender and the reproduction of the nation were featured heavily in accounts of the violence, with "stereotypes of Islam as oppressing women and of Rohingya Muslims as 'bad guests' compared with their generous Rakhine Buddhist and Myanmar hosts [becoming] recurring features of national media coverage and political debate" (McCarthy & Menager 2017, 401-402). These narratives and beliefs clearly contribute to violent behaviour or "the violence" and put women of the opposing group in a dangerous position.

In 2014, riots broke out in Mandalay after rumours, later determined to the false, of the raping a Buddhist woman by her Muslim employer (McCarthy & Menager 2017, 397). McCarthy and Menager claim how "the events in Mandalay highlighted how the discourse surrounding Muslim men, as threats to Buddhist women and the Buddhist nation, could be effectively mobilised through rumours of rape to incite violence, retaliation and defence" (2017, 398). Women are constructed as the battlefield, and something that must be protected in order to ensure the reproduction of the nation (McCarthy & Menager 2017, 404). This increases the effectiveness, and thus the likelihood, of tactical sexual violence for it targets the reproduction of the enemy, which is seen as a threat. That the threat of the Rohingya was couched in these terms reflects why the Burmese military would see their own use of rape as an effective tactic.

Coordinated attacks by Rohingya guerrillas on government forces and local police in Rakhine State in August of 2017 ignited a new round of mass violence and rising accusations of ethnic cleansing (ICGA 2017, 6). A Human Rights Watch report released at the end of the year claims that since the end of August, "Burmese security forces have committed widespread rape against women and girls as part of a campaign of ethnic cleansing against Rohingya Muslims" in Rakhine State (2017, 1). According to Human Rights Watch, the humanitarian crisis has become an increasingly dire situation, with reports of war crimes and human rights violations mounting by the day (2017).

Burma "has been regularly reported to the UN for nearly two decades for state-sponsored human rights violations, protracted displacement," and "has been widely acknowledged as a situation where [sexual and gender-based violence] has taken place" (Davies & True 2017, 7; 6). There is a clear argument by international NGOs and human rights organisations that the international society has the responsibility to respond and protect the Rohingya, yet they struggle to address and stop the violence in Burma, with the UK attempting to lead the international push to stop the conflict and ensure a successful democratic transition in Burma (Southwick 2015, 137; British Government 2014c).

## THE PSVI IN BURMA

Having laid out the context within which the PSVI and the British government work in Burma, I next present my analysis of the PSVI's response to the situation in Burma, highlighting the policy and its focus on ending impunity by delivering justice. I also show how specific outputs and resources are focused on legal solutions and delivering justice in legal terms. First, however, it is important to discuss briefly how the treatment of the Rohingya has been constructed discursively as widespread violation of the human rights of the Rohingya and also to explain the somewhat ambiguous position of human rights in discourse on sexual violence.

The language of the PSVI elaborates on the language of IHL by expanding the focus on the conduct of war, from concerns with honour

and dignity, to the language of individual rights and the violation of those rights. The language of human rights is particularly pertinent to the project of human democracy but has implication for how sexual violence against Rohingya people is understood and addressed. In practice, the underlying framing of tactical sexual violence as a grave breach of IHL remains, but the language used in discussions now also includes human rights and human rights violations. This is an important expansion, as it is intended to increase the efforts to address tactical sexual violence by expanding the body of law that can be used to stop such atrocities and hold perpetrators accountable when they occur. As I noted in the previous chapter, the language of human rights has become increasingly prevalent in discourse on sexual violence in conflict, largely in consequence of the increasing influence enjoyed by NGOs, and human rights organizations specifically, among the epistemic communities and networks that orbit the ICC and who scrutinize its work.

The focus of the PSVI and the underlying approach is on ending impunity. Throughout policy documents and public discussions, the need to end impunity is commonly framed as the need to deliver justice to both survivors and affected communities in Burma. This twin focus is clear throughout policy and discussions, with the problem of tactical sexual violence directly connected to the need for delivering justice by holding perpetrators accountable. The solution to violations of human rights is presented as using available legal avenues to prosecute perpetrators, in order to stop future use of tactical sexual violence.

However, human rights has far from displaced the centrality of long-established laws of war, and its status remains somewhat ambiguous (Kinsella 2011). The ICC and international courts continue to be guided in their judgments principally by IHL; incorporating human rights law has proved to be difficult task. Thus, while the language seems to expand the bodies of law applicable to sexual violence in a beneficial way, in practice the underlying framing of sexual violence remains based on IHL, and so the understanding of tactical sexual violence is seen as one of the violations of communal honour and dignity.

Since the Burmese elections in November 2010, the British Government, along with the international society, has taken the position that "Burma is attempting to transition from an authoritarian military system to democratic governance; from a centrally-dictated to a market-oriented economy, and from decades of conflict in the border areas to peace" (FCO 2014l, 2). Ostensibly in an aim to help this transition, in 2013 the UK lifted the majority of sanctions that had been imposed on the Burmese state during its military rule. UK budgeted funding for development programmes in Burma more than doubled from 2012/2013 to 2013/2014, from £32 million to £68 million as a result of this change in approach (FCO 2014l, 2). The British government focuses on encouraging "responsible investment," while urging the government to continue democratic reforms and work to establish a resolution to the conflict (FCO 2014l, 2). By the end of 2014, the UK had provided nearly £11 million to fund humanitarian aid

and livelihood projects in Rakhine State (FCO 2014a, 62). While the overall approach of the British government appears to be motivated towards democratic and economic progress in Burma, the UK's stance regarding the human rights violations in the region has become increasingly critical.

In the 2013 *Human Rights and Democracy Report* (HR&D report), the British government goes back and forth between praising democratic progress and highlighting the number of continuing human rights concerns in Burma and the inadequate responses of the Burmese government to these issues (FCO 2014a). The 2013 HR&D report includes a case study in which it acknowledges the ancestral history of the Rohingya in the region and the state discrimination which perpetuates the conflict, clearly showing Britain's position when it comes to the issue of the citizenship rights of the Rohingya in Burma (FCO 2014h). The violence in Rakhine State is, however, referenced as "inter-communal" in the 2013 HR&D report, which does not properly convey the role of the Burmese government and military in allowing, encouraging, and committing mass and systematic violence against the Rohingya (FCO 2014a, 90).

Concern on the part of the British government has continued to rise, and with-it criticism of the Burmese response. In 2017, the UK's Special Representative on Preventing Sexual Violence in Conflict Lord Ahmad highlighted the horrific crimes of sexual violence and their tactical use in Burma, expressing that "these abuses are a clear human rights violation and must cease immediately" (FCO 2017d, 1). At a

conference to increase support for the Rohingya in October 2017, International Development Secretary Priti Patel stated that "ethnic cleansing, sexual violence, starvation and the murder of children have no place in our world," and that "today's pledges are only just the start" (DfID 2017b, 2). Calling the actions of the Burmese government "ethnic cleansing" is a notable and highly significant discursive step, because in international law ethnic cleansing constitute a war crime and, therefore, its classification demands an international response. The Minister for Asia and the Pacific Mark Field reiterated this position that same year, specifically blaming the Burmese military for the violence against the Rohingya and increasing public pressure on the Burmese government to accept responsibility and end the conflict (2017, 1-2).

Two other major documents, along with those outlined in Chapter Five, highlight the PSVI and the British government's policy approach in relation to tactical sexual violence in Burma. The first is the 2013 HR&D report from the Foreign and Commonwealth Office (FCO) mentioned earlier, in which there are two case studies on Burma and a Burmese Country of Concern Report (CoC), with a number of updates to the CoC report throughout 2014 (FCO 2014a). The second document is the *UK National Action Plan on Women, Peace and Security 2014-2017* (UKNAP), for which Burma is one of the six focus countries (FCO 2014m). A detailed Implementation Plan for Burma was released as part of the UKNAP, in which the British government outlines their approach and policy objectives for the period of 2014-

2017 (FCO 2014n). Issues concerning sexual violence features in both these documents and continues to be an issue when addressing Burma and the Burmese government through development projects.

## Ending Impunity: Delivering Justice

In 2015, British Ambassador Andrew Patrick stated that "preventing sexual violence in conflict … remains a high priority for the UK here in Burma" (British Embassy Yangon 2015, 2). Both the objectives of ending impunity and protecting human rights underpin the PSVI and policy and efforts of the British government towards Burma. In ending impunity, as I have shown, the main objective of policy is to improve investigations and prosecutions in order to increase convictions for sexual violence war crimes at the international level. Based on the framing of tactical sexual violence as a grave breach of international law, policy is concentrated on legal solutions to the problem of sexual violence as a military tactic.

This focus on ending impunity could be seen when PSVI Co-Founder Angelina Jolie visited Burma in July 2015, with sexual violence presented as the top concern and ending impunity at the heart of efforts, notably connected to the needs of survivors (British Embassy Yangon 2015, 1). During her visit, Jolie met with the President, Defence Minister, Parliamentary Speaker, and a number of other members of the Burmese government "to encourage legal and practical steps to end impunity for sexual violence and help survivors" (British Embassy Yangon 2015, 1). Jolie pushed the importance of law in

providing "justice to show accountability and transparency," and encouraged the inclusion of specific language on sexual violence in conflict in the current Burmese parliamentary draft of the *Preventing Violence Against Women Law* (British Embassy Yangon 2015, 1). The focus on impunity and law is clear in both the statements made by Jolie during her visit and her stated objectives of the visit. In her closing remarks, Jolie highlights the immediate need for "legal and psychosocial support for survivors, and for a strong legal framework to ensure all perpetrators of sexual violence are held accountable" (British Embassy Yangon 2015, 1). While psychological support is mentioned, it is second to the legal avenues and access to justice as far as help for survivors is concerned.

As a major objective under the UKNAP in Burma, the British government sought to "promote access to justice for women and girls in conflict and post-conflict situations" in an aim to end impunity at both national and international levels (FCO 2014m, 34). The issue of sexual violence is immediately connected to the need for improved access to justice and increased awareness of sexual violence as a war crime. The September 2014 CoC update encouraged "the Burmese government to take concrete action" to hold perpetrators to account, focusing on the need to "strengthen legislation and improving access to justice for survivors" (FCO 2014e, 3). The focus was upon the necessity for access, availability, and awareness of legal avenues to hold perpetrators accountable, rather than upon the societal influences and the need for

attitudinal change, even as social and cultural norms are addressed in the PSVI document.

In a statement praising the long sought Burmese endorsement of the UN *Declaration of Commitment to End Sexual Violence in Conflict*, the UK Minister of State, the RT Hon Hugo Swire, welcomed it as the "first step towards recognising and addressing the problem of sexual violence in Burma" (2014). Swire further encouraged concrete actions which strengthen "legislation to ensure that those responsible for these terrible crimes are held accountable for their actions and improving access to services and justice for survivors" as priorities (2014). Thus, the solution to the problem of sexual violence was directly tied to legal actions, and legal avenues for providing justice to survivors. In his second Minister of State letter on the issue, Swire acknowledged the continued reports of tactical sexual violence by the Burmese army (2015). The next four paragraphs, the main part of the letter, focus on the need to hold perpetrators to account and what needs to be done to improve accountability in the country (Swire 2015). Thus, Swire also focused the conversation and pressure on legal accountability.

### Improving Evidence Gathering & Investigations

As noted in the previous chapter, the PSVI presents one of the main causes of impunity as insufficient evidence gathering and inadequate investigations in conflict zones (a priority which I question and discuss in detail in Chapter Seven). A substantial proportion of the PSVI's efforts and resources regarding Burma are targeted at ensuring

proper investigations are being carried out. These policies involve training and education of officers, professionals, and communities on tactical sexual violence as a war crime, and the need to investigate it to provide justice. As a fundamental part of these efforts, the British government also makes clear that Burma must allow safe access for those investigating crimes and other Human Rights Defenders (HRD) delivering aid, as well as guarantee survivors access to justice and medical aid. Ending the stigma around sexual violence is also highlighted as part of these efforts, with stigma presented as a problem which greatly impedes reporting, as well as all other aspects of the investigation and trial processes (Swire 2015).

One concrete action taken by the UK to improve investigations for tactical sexual violence in Burma was funding to establish "legal aid centres and the training of women in basic legal skills," with the purpose of "increasing access to justice in conflict areas for women survivors of sexual and gender-based violence" (FCO 2014m, 34). This policy funds a program run by ActionAid Myanmar, an international NGO which focuses on global rights and justice, with the UK not necessarily directly involved in the training on the ground (myanmar.actionaid.org). In a case study as part of the 2013 HR&D report, the FCO highlights this project and its aim to provide training for 60 women as paralegals by the end of 2017 (FCO 2014a, 34). This project was also noted at an event honouring survivors of sexual violence hosted by the British Embassy in Yangon in June of 2014, with its impact cited as "benefiting women and girls" and "helping people to

understand that sexual violence is unacceptable and inform the public about their legal rights and how to access services" (2014,1).

In 2016, the UK also supported the establishment of ten case management systems throughout Rakhine State to handle gender-based violence cases (FCO 2016c, 9). Sexual violence was only a part of the gender-based violence that these systems addressed, but will no doubt be a substantial amount of their caseload and thus they are an important component in addressing tactical sexual violence. The involvement in gender-based violence programs is a good step towards addressing the underlying drivers of tactical sexual violence. Again, however, the focus is on legal solutions to the problem, monopolising time and resources.

Professional and Officer Training is also addressed as part of the PSVI, and this is included in British policy towards Burma. In 2014, the British government pledged to develop a *Preventing Sexual Violence Initiative/Violence Against Women and Girls* component to police, military, and government official training that the UK provides for Burmese officials (FCO 2014n, 34). Since then, "the UK has educated 167 senior and middle ranking military officers on courses, which included modules on, or raised, the issue of PSVI" (FCO 2017c, 4). The Ministry of Defense (MoD) also worked to integrate a module on sexual violence as a war crime and the stigma surrounding it "as part of the wider gender awareness and pre-deployment training for UK Armed Forces ahead of all large-scale deployments" (FCO 2017c, 14). These programs train officers and professionals on how and when

sexual violence is considered a war crime, and then how to deal with it when evidence points to such crimes.

The UK also commits to training "community leaders, youth leaders, Community Based Organisations, women's groups, faith-based groups, journalists and government staff on their role in preventing sexual violence in their communities" (FCO 2014n, 35). The goal of these efforts is to educate communities on the need for societal change, and to introduce "a new culture of responsibility and acceptability, in order to reduce the number of sexual and gender-based violence offences" (FCO 2014n, 35). These programs increase awareness of the international crime of sexual violence but continue to marginalise other types of sexual violence and its victims and other approaches to the problem.

The two projects funding legal aid attempted to increase awareness in the conflict region of the unacceptability of sexual violence as a war crime, and the availability of legal avenues for justice for survivors. The ActionAid project believes that by training women who can work in the conflict communities about the requirements and standards for international legal processes, this information, and how to access such help, will be spread throughout conflict regions to affected communities, ultimately increasing the amount of evidence for future cases. Swire noted a current funding in July of 2014 of £300,000 for projects that provided greater support and protection to survivors of sexual violence in Burma proper, which included training in legal skills for women and attempts to develop "mechanisms in the

community to prevent and respond to acts of sexual violence" (2014). When considering the number of areas in need of resources and the magnitude of the problem as a whole, this level of funding will make but a small dent in addressing the problem.

The success of all these efforts, however, presumes that more awareness and discussions of sexual violence and legal avenues for justice would result in a decrease of sexual violence and an increase in reporting and evidence gathering for investigations. While reports do seem to be increasing in number, the likelihood of future criminal charges remains slim. There is little evidence that more investigations will lead to significantly more international cases brought before the court. In part this is because the case of Burma seems to be a tricky one on the political stage, as I elaborate in the following chapter.

### Safety and Access

Another obvious issue impeding investigations for sexual violence war crimes is safe access to survivors and crime scenes for investigators and other Human Rights Defenders (HRDs) providing aid. The March 2014 CoC update raised serious concerns over the Burmese government's ordered removal of Médecins Sans Frontières (MSF) from the state, resulting in denial of humanitarian aid and assistance to Rakhine State and the Rohingya community, as well as the loss of the ability to investigate or document human rights violations (FCO 2014c, 3). Baroness Anelay raises the concern over the threats – both verbal and physical – to HRDs and "restrictions to the

space for civil society to operate" during a statement at the closing session of the UN Third Committee later in 2014 (2014, 2). Yet the problems persisted, and the December 2014 update raises the same concern, for despite a *Memorandum of Understanding* signed between the Burmese government and MSF in August, the organisation was still unable to access or provide aid to much of Rakhine State, while reports of intimidation, harassment and arbitrary detentions of Muslims continued to increase (FCO 2014f, 4).

Access for HRDs has increased somewhat over the following years but in 2017 the UK continued to see it necessary to call on the Burmese authorities to "stop the violence and ensure immediate access into northern Rakhine so that UK aid can provide a lifeline to those still suffering in Rakhine State" (DfID 2017b, 3). The British government makes clear that "unacceptable intimidation and restrictions on the movement of humanitarian workers must be ended. Burma must work with international partners to put in place the conditions that will allow people to return to their homes safely, with dignity and hope for the future" (DfID 2017b, 3). This security problem clearly hinders investigations and thus contributes to impunity, but it is unclear what level of impact the UK's pressure is capable of having, with safety and access remaining a clear issue of concern.

To assess the situation on the ground and attempt to ensure investigations are being carried out properly, in 2017 the "Head of Team for the FCO's PSVI Team visited Bangladesh alongside the UN Secretary General's Special Representative on Sexual Violence in

Conflict, Pramila Patten, to meet with survivors, support workers, and government officials" (FCO 2017c, 2). After this, in November of 2017, two members of the UK Team of Experts (UK ToE) were deployed "to Bangladesh to conduct a capacity needs assessment on investigation and documentation of sexual violence, and to provide recommendations on support for evidence gathering," at the Cox's Bazar refugee camp (FCO 2017c, 4).

The role of the experts in the Team is to assess the situation on the ground and note where resources and help were most needed; they were not there to carry out any specific investigations. While this was no doubt useful, by the time the members were sent to assess the situation, the evidence of tactical sexual violence was already quite substantial, for, in this respect, Burma's "treatment of the Rohingya people is now well documented" (Mahmood et al. 2017, 1847). An Executive Summary of their visit was released in May of 2018, and while this falls outside my period of study, it essentially reiterates the concerns of NGOs and human rights organisation about widespread and systematic mass rape (FCO 2018). I argue there is certainly a question of what additional benefit the experts can provide at this point in the conflict. Through funding for two specialist groups under the United Nations Population Fund, the UK also contributes to "strengthen and coordinate the response to gender-based violence in the conflict-affected areas of Rakhine and Kachin states" (FCO 2014l, 8). These specialist groups are, however, similar in make-up and aim

as the UK ToE, and so the need for funding for all three groups is questionable, in that they add little to the solutions already suggested.

## Stigma

So far, I have argued that the PSVI is mainly focused on ending the culture of impunity through legal means. However, the PSVI does speak to the issue of underlying gender norms that are at the root of and perpetuate sexual violence in conflict. The question of how to limit the stigma attached to rape and sexual violence and its wide ramifications is becoming more present in policies and discussions addressing sexual violence. The focus is still extremely limited, however, restricted to the stigma attached rape and mainly confined to how stigma contributes to impunity or how it hinders the delivery of justice by increasing the reluctance of victims to come forward and testify. The underlying conventions and gender norms that create the stigma is not addressed.

In November of 2016, Baroness Anelay visited Burma in her role as the Prime Minister's Special Representative for Preventing Sexual Violence in Conflict and Minister for Human Rights, where she met with Government representatives to highlight the issue of stigma surrounding sexual violence (FCO 2016b). The Baroness highlighted the need to tackle stigma and to secure justice and a sustainable peace (FCO 2016b). Such discussions of stigma centre on eliminating the stigma around sexual violence which contributes and perpetuates impunity. Getting women to speak out is often the main priority, and

thus the stigma addressed surrounds the shame victims feel as a result of social constructions of gender but does not actually address the root cause of this.

During this visit, the Baroness attended "local run workshops on the stigmatisation of sexual violence survivors" sponsored by the UK with the aim to "develop our understanding of local issues and challenges," and improve future policy (FCO 2016a, 1-2; FCO 2016b, 6). This shows promise for the future, yet it is a minor part of the overall efforts to address sexual violence in conflict in Burma. With the time it takes to implement policy in Britain, along with changes in government, government personnel and priorities, I question whether the resources and time that went into organising this would not have been better spent on actual projects. Perhaps the time has come to stop discussing action and start taking it which was one of the main principles of the PSVI, in its original conception and according to Hague.

Addressing stigma is important, yet while this brings up issues surrounding gender constructs and gender norms, stigma is framed through a solely legal perspective of how to solve problems surrounding shame, minimising the impact of policy on addressing the underlying gendered causes of sexual violence within the community. The focus of stigma efforts is on those issues which impede investigations and evidence gathering, namely the shame of coming forward. This is necessary, no doubt, but it is only part of the problem with stigma, which runs much deeper, particularly in those societies in which

ethnonationalism is a potent force, rather than simply being an impediment to legal proceedings. I will discuss this further in Chapter Seven, but it is necessary to note that there are faults with the approach to stigma take by the British government. These faults stem from a failure to put gender at the centre of policy making around sexual violence in conflict, as well as the legal centred initiatives which were the main focus of the PSVI from the start. Funding for these programs is also minimal and allocated on a short-term basis, which minimises the potential for change as these types of programs require long-term funding and commitments.

## Raising the Issue of Sexual Violence in Conflict on the International Agenda

In line with Hague's original goal to galvanise the international community to follow the UK's lead and increase the political will to take action, the British government has also assumed a leading role in pushing the issue of tactical sexual violence in Burma in the international arena, and in stressing the immediacy with which the situation must be addressed. At an event hosted by the British Embassy in Yangon, in association with the beginning of the Global Summit in London in 2014, to honour Burmese survivors of sexual violence in conflict, the UK aimed to "raise awareness of [sexual violence in conflict] and to discuss further how the international community can collectively create an irreversible movement towards ending the use of rape and sexual violence in conflict" (British Embassy

in Yangon 2014, 2). There was, at least initially, a strong display of commitment to the project on the part of the British government.

Prior to the Global Summit in July, in June of 2014 the Burmese Government finally endorsed the UN *Declaration of Commitment to End Sexual Violence in Conflict* and participated at the Summit (FCO 2014d). The Global Summit is mentioned specifically in regard to Burma in the UKNAP Implementation Plan, in which the UK committed to fund training for participants of the Summit on "international and national laws on sexual violence and the importance of providing psychosocial support to survivors" (FCO 2014n, 35). The goal was to better equip government staff on how to "make informed policy decisions and introduce new legislation as appropriate" relating to preventing sexual violence (FCO 2014m, 35). In the hope that their participation would aid efforts in the conflict region and increase the likelihood of peace and reconciliation, the British government also funded a delegation of Burmese civil society and religious leaders to attend the Summit (FCO 2014d).

The UK has also used their position at the UN to address the situation in Burma. In November of 2014, the UK co-sponsored a UN General Assembly Resolution on the human rights situation in Burma, encouraging the Burmese government to properly address these abuses, while increasing international awareness and pressure on them (FCO 2014f, 3). The UK worked with international partners to "strengthen the effectiveness of the Burmese Government Sector Working Group on Gender Equality and Women's Empowerment,"

although no specifics were given on what this work actually entailed (FCO 2016c, 8). By the end of 2017, the UK had "successfully supported the development of a nationally-owned action plan on gender equality, with a specific component on WPS" (FCO 2017c, 4). This move is said to have established "specific 'technical working groups' on Women, Peace and Security and sexual and gender-based violence" involving Burmese high-ranking government officials and a wide-range of Burmese civil society actors (FCO 2017c, 4). The goal is to create a National Action Plan (NAP) for the country on how to approach issues surrounding women and gender equality.

The British government made clear that "a long-term solution to the situation in Rakhine will not be found until the issue of citizenship is resolved and prejudices and support for discriminatory policies are confronted" (FCO 2014m, 62). The March 2014 CoC update addressed the first Burmese census in three decades, for which the UK contributed £10 million to assist the process (FCO 2014c, 3). As mentioned earlier, the Rohingya were again excluded from this census, further entrenching, and perpetuating the conflict. The March update did note how the UK is "deeply disappointed that the Burmese Government went against its long-standing commitment to the UN, donors and wider community that all individuals would have the right to self-identify their ethnic origin" (FCO 2014c, 3).

The June CoC update continued to highlight concerns over the proposed "Race Protection Bills," which appear to further restrict the "rights of women and freedom of religion and belief" in the country

(FCO 2014d, 4). The December update reiterated the potential discriminatory nature of the bills, and their incompatibility with international standards and expectations (FCO 2014f, 4). As mentioned earlier, these bills were passed in the end of 2015, with roughly the same language and a serious discriminatory effect. While the UK raises concerns about the Burmese Government's actions and behaviours towards ethnic and religious minorities, the British government still provides substantial funding to the Burmese state.

### The Possibilities for Success or Failure

Ultimately, however, the issue of sexual violence may come second to the desire to increase and improve international investment in Burma. In his written statement to parliament on the objectives of the UK for the upcoming G8 meeting in 2013, Hague placed securing concrete commitments to end impunity for the use of "rape and sexual violence as a weapon of war" as the first priority. Yet while specifically mentioning Burma two paragraphs later, it is only in reference to "support for a framework for responsible international investment" and does not mention the conflict or sexual violence (2013a). At a press conference following the G8 meeting a month later, Hague did acknowledge the concerns over continued violence in Burma, and emphasised "the need for peace and reconciliation," yet only after praising efforts to improve international investment in the country (2013c). The UK touted their leading role in providing support for the Rohingya in the lead up to a conference on the issue in Geneva in October 2017, committing a further £12 million in humanitarian efforts

(DfID 2017b, 1). However, in the press release, aid for sexual violence survivors is second-to-last on a list of areas where help is needed (DfID 2017b, 2).

In light of this and other issues I have raised above, we have to question how much influence these UK and PSVI efforts have on the ground in Burma. Davies and True also point out that while the National Ceasefire Agreement of October 2015 stated that all parties should "avoid any form of sexual attack on women," immunity for past offenses extends to both military and non-military perpetrators in the agreement (2017, 18; 8). This shows that, even recently, the issue of sexual violence is still being minimalised and essentially accepted, with the mediators and parties involved willing to grant immunity for sexual violence in order to establish a ceasefire. The reports are clear, but we seem no closer to resolving the conflict or 'providing justice' as it is termed.

More recently in a comment on the UN Security Council Presidential Statement on Burma, then Foreign Secretary Boris Johnson praised Aung San Suu Kyi's steps forward "including establishing a domestic body to deliver humanitarian and development assistance in Rakhine, and making efforts to promote interfaith and intercommunal harmony, including a recent visit to northern Rakhine," however he noted that "the UK will be watching closely to ensure that the Burmese security forces do not attempt to frustrate these efforts" (2017). This back and forth ultimately contributes to the argument and belief that the British response, and likely the international

community's response, is largely rhetorical, with little practical impact. While the British government claims to have the political will to punish those responsible for tactical sexual violence, it seems the will to invest in the economy might be stronger.

Though outside my period of study, there has been some progress recently in the international courts in what some call a show of political will and search for justice. In 2019 Gambia brought a suit against Burma in the International Court of Justice (ICJ), the UN's highest court, on charges of genocide against the Rohingya (Mahtani and Birnbaum 2019, 1). While brought by a minor state, the case still represents progress, an example of a rare state-to-state litigation at the UN (Mahtani and Birnbaum 2019, 1). Aung San Suu Kyi represented Burma before the ICJ in December of 2019, denying allegations of state sponsored genocide and claiming that any individuals who may have violated the law are being dealt with by independent national military tribunals (Heijmans 2019a). It is important to note that Suu Kyi, while defending the military which previously held her under house arrest, failed to use the word 'Rohingya' in her statements, further solidifying the Burmese position that the Rohingya are not citizens of Burma (Birnbaum and Mahtani 2019, 1).

In January of 2020, the ICJ issued an order to the Burmese government to "take all measures within its power" to prevent all acts of genocide against the Rohingya population, and to "preserve all evidence relevant to allegations that it committed genocide against the minority Muslims" (Hodge 2020). While the Burmese government

challenged the court's jurisdiction, the ICJ found Burma had violated the International Genocide Convention in 2016 and 2017, and therefore the court maintained its jurisdiction (Hodge 2020). The ruling also demanded that the Burmese government report back to the court with evidence of how they have implemented the courts demands, although Burma has presently declined to do so (Hodge 2020). While the ruling is undoubtedly a positive step, there is a fear that it will fall on deaf ears and Burma will continue to claim they are handling the situation on their own.

Also, in 2019, prosecutors at the ICC finally called for an official investigation into crimes against humanity and "other inhumane acts" against the Rohingya in Burma, with judicial approval granted a few month later (Heijmans 2019b; Mahtani and Birnbaum 2019, 2). Some question the likelihood that any trial will be successful, however, for the Burmese government has already denounced any ruling over jurisdictional issues (Pedersen 2019, 10). This also means, as Pedersen points out, that the ICC "will have no access to the 'crime scene' and no apparent way of apprehending the accused" (2019, 10). While a step in the right direction, the ICC's work has just begun and it is a long road ahead, especially when it comes to access to the region and ability to gain custody of perpetrators in the future. At the time of writing, in February 2021, there was a military coup in Burma. Little information is available and the future of the country uncertain, but suffice to say, the likelihood of the military cooperating with the international society is slim at the moment.

## Conclusion

The overall approach of the British in Burma in PSVI programs aimed at ending impunity. The PSVI policy aimed to increase awareness and knowledge of sexual violence as a grave breach and strengthen the available avenues whereby justice might eventually be delivered. In setting out the policy and approach towards tactical sexual violence in Burma, it can be seen that, through discussions, training, and education, the PSVI targeted tactical sexual violence by increasing awareness and understanding of sexual violence as an international crime, and pushing the issue up the list of fundamental issues of international peace and security by highlighting its devastating effects on women in Burma. In this respect, the PSVI aimed to take forward both the UN Women, Peace and Security(WPS) agenda and take advantage of recent developments in international law, while also exploiting its international position as a G8 state and permanent member of the UNSC and exerting what diplomatic influence the UK held in Burma.

In this chapter, I draw only some tentative conclusions based on the way the PSVI was implemented in practice and on developments during (and to some extent beyond) the period of my study. I note here that while the training programs were useful, already it is evident that the focus on law, prosecution and justice needs to be examined more critically. Efforts seem to have been quite minimal in relation to the scale of the problem, and the political will necessary to prosecute tactical sexual violence comes second to the pursuit of other UK foreign

policy goals, particularly in relation to economic-investment-interests in the region. The British government has nevertheless invested a substantial amount of resources in Burma regarding the Rohingya, yet the outcomes have been quite minimal. The Rohingya were left off the most recent census despite international funding and pressure, which shows a lack of willingness to change on the part of the Burmese government. I do not disparage the efforts of the UK, for they have taken concrete steps in the right direction with an almost intractable problem and with little help from the Burmese government, but the overall impact of the ending impunity is too small.

Progress has been measured in terms of prosecutions and measures that improve the prospects of delivering justice to survivors, so the focus is on prosecutions and convictions of perpetrators and not on the immediate well-being of survivors and their communities or the root causes of the problem. While there is a clear need for justice, the narrow focus needs to be re-evaluated. Justice – in the form of legal accountability – is essentially posed as the desired end result, with policy targeted at improving this accountability. Justice in this context is "male centred" and has not taken into account the real needs of the women in this situation, and the legal efforts have not been gender blind. The PSVI approach might have been justified if the initiative actually realised stated goals. As I noted in Chapter Two, problem solving approaches that work with the world as it is, that is, within the constraints of existing structures and institutions and norms, and gender constructions and norms, can be helpful if they do something to

improve the lives of survivors or at least deliver recognition and justice to the survivors of sexual violence. However, so far this has not been achieved through significant prosecutions or the deterrent it was hoped prosecutions would provide.

In the meantime, alternative avenues for prevention are marginalized. With ending impunity posed as the central goal, the means – which policy aims to achieve – are set as improving only legal avenues as solutions. The problem here is that everything ultimately relies of the law and accountability through the court system, thus marginalising alternative or complementary approaches as well as ignoring the basically male-centred legal system. The PSVI engages with gender norms in relation to Burma, which is a shift from earlier efforts in Bosnia, but in a rather superficial way, because there are so many barriers to women survivors seeking justice through law. The focus on legal solutions in turn makes alternative programs and approaches less likely because there are just not enough resources put into the programs by the British government to support prevention and sexual violence in conflict unless it is the legal and impunity approach. Everything is framed through a legal lens, with legal solutions therefore dominating efforts and monopolising resources and ultimately failing to deliver a sufficient measure of justice to victims of tactical sexual violence.

# Chapter 7:
# Evaluating the Effectiveness of Legal Approaches to Sexual Violence in Conflict

## Introduction

Having provided an outline of the main provisions of the *Preventing Sexual Violence in Conflict Initiative* (PSVI) and its underlying approach in Chapter Five and demonstrated how the PSVI's approach works in practice in Chapter Six, I now move to a fuller critique of the ending impunity approach specifically, which underlines the PSVI prevention policy and funding for its efforts. I will also expand this critique to international legal approaches to sexual violence in conflict generally. In doing so, my goal is not to argue that ending impunity is not necessary and should be eschewed, but that as an over-riding focus it results in a singular focus that is insufficient to preventing tactical sexual violence in conflict. In this chapter I set out a number of concerns that stem from the narrow legal focus, and from the problematic framing of sexual violence in conflict which underlies the approach.

In this thesis I have argued and demonstrated how in the last three quarters of a century, tactical sexual violence has gone from being accepted and/or ignored to becoming a prosecutable offence under

international humanitarian law. The first explicit recognition of sexual violence as a war crime came with the Geneva Conventions in 1949. However, enforcement of the laws prohibiting tactical sexual violence didn't come until the 1990s, when feminists' activism finally resulted in convictions for sexual violence war crimes at international tribunals. With this change, there has been a change in how the problem is framed; from an inevitable side-effect of conflict to crime recognized within the laws of war and also a violation of the human rights of victims. Yet, in the 21st Century progress has stalled. During the same time span, there has been widespread sexual violence in conflicts throughout the world, most notably in the ongoing war in the Democratic Republic of Congo. This failure to prevent sexual violence in conflict has been explained in terms of a culture of impunity; the law needed to prosecute sexual violence exists, but offenders are seldom prosecuted and hence there is no real deterrent. As the PSVI attests, efforts have been dedicated to ending impunity, by holding to account commanders and perpetrators of tactical sexual violence in conflict. However, despite a focus on increasing prosecutions and convictions in an aim to end impunity, there have been few positive outcomes at the international level beyond the successes of the 1990s, with the ICC issuing only two convictions (one now overturned) for sexual violence war crimes since its launch in 2002.

In my thesis, I have adopted a social constructivist perspective and used critical discourse analysis to interrogate and critique how sexual violence in conflict is constructed and deployed in a variety of

legal and policy documents, public statements, and related materials. My critique of the discourse on sexual violence in conflict is a sympathetic one. Adopting a middle-ground social constructivist position, I acknowledge that policymakers (and law makers) must work with constructed categories, and within existing norms, which are taken to be relatively fixed. The ultimate test of the effectiveness of law and policy, however, in this area must be how far they have actually succeeded in ameliorating or overcoming the use tactical sexual violence specifically in conflicts. As noted above, in actuality despite significant developments in both international law and policy at the international level since the conflicts in Bosnia and Rwanda, sexual violence in conflict remains endemic. The notion of a culture of impunity, assumes that the legal and policy tools now available to address the problem are fundamentally sound. Failure is explained by either a lack of political will to use these tools and/or in the case of law, a lack of solid, robust evidence to secure convictions, or both. It might be, however, that it is the underlying framing of the problem that ultimately explains the continuation of widespread sexual violence in conflict, along with the failure to afford recognition and deliver justice to survivors.

In this chapter, I will assess and evaluate efforts to confront sexual violence in conflict, end the culture of impunity and lessen, if not ultimately end, the practice of targeting women and girls in the service of military objectives and political aims driven by ethnonationalist ideology. I will first undertake an assessment and evaluation according

to the ends and objectives in a problem-solving mode. To this end, I will revisit and further develop my evaluation of the successes and failures of the PSVI, focusing on the case of Burma. Second, I will revisit the argument that the framing of sexual violence reproduces problematic constructs and norms that fuel the use of sexual violence as a tactic in conflict, while also marginalising alternative approaches that might ultimately be more effective in tackling the problem.

## The PSVI as a "Problem-Solving" Approach to Tactical Sexual Violence in Conflict

In this section I will first evaluate the effectiveness of the PSVI in terms of what it explicitly sets out to do: galvanise the political will needed to tackle the problem; provide greater expertise on the ground in conflict zones; collect better evidence; protect survivors and those who advocate on their behalf; and end the culture of impunity by increasing the number of prosecutions and convictions.

The PSVI is reliant on the political will of the member states of international society to increase efforts to hold to account perpetrators of tactical sexual violence. The PSVI rests on the assumption that increasing awareness of tactical sexual violence as a grave breach in international law will generate sufficient political will to take serious and effective action to end the tactical use of sexual violence by military leaders and that greater awareness on the international stage will increase the political will necessary for prevention efforts to be effective. The PSVI aims to increase the political will among member states of the

international society (not just within the UK) to the point that they take effective action to actually stop the use of tactical sexual violence. One of the main arguments underlying the policy of the PSVI is that the more knowledge and awareness of the use of sexual violence as a grave breach of international law and a threat to international peace and security, will result in the international society being moved to the point of action. As Lord Hague said in his speech at the launch of the PSVI, "we want to use Britain's influence and diplomatic network to rally sustained international action and to push the issue up the global agenda" (2012). Hague's work at the G8 and the UN, as well as events like the Global Summit, aimed to further these objectives.

Despite such efforts, it is far from clear that political will now exists with regards to sexual violence in conflict. The principle behind outputs like the G8 and UN Declarations, as well as UNSCR 2106, is that states will stand by the commitments outlined in these documents and ensure they are not violated. There is little empirical support for this conclusion. One only has to look at the unwillingness of the international society to define acts as genocide in order to avoid being drawn into conflicts, to see the problems in efforts to galvanize political will.

The framing of tactical sexual violence as a grave breach of international law means that the international society must deem both the perpetration of these acts, and ignoring them when they occur, is so heinous and morally wrong they are universally unacceptable. Such a policy approach assumes a level of moral outrage and political will that

is evidently not apparent at the national, let alone international level. International society, while verbally condemning tactical sexual violence, has done little practically to address the problem.

Moreover, the status of the PSVI within the British government is also now in question and has been so since Hague ceased to be Foreign Secretary in 2014. Gone with his person is his personal influence and the presence he brought to policy efforts – not to mention a decrease in staffing for the PSVI team. A milestone, and possibly the highlight, of the PSVI was the Global Summit held in 2014. The Global Summit was based, at least in part, on the assumption that increasing awareness of the crime would result in such a moral outrage that it would increase political will and lead to action. It aimed to 'break the silence' that surrounds sexual violence in conflict by acknowledging and publicly discussing sexual violence in conflict. In Hague's foreword to the Summit Report, he highlighted how "by bringing the world's foremost experts in the field together with the top international decision-makers, we have all helped to generate the long-overdue international political will necessary to end acts of sexual violence in conflict" (FCO 2014k, 2). I note here that Hague and Jolie also addressed the root causes in this Foreword, although this is still connected to impunity. They said,

> Overcoming the prevailing societal norms and attitudes that perpetuate the subordination of women and girls and prevent their full participation in all areas of life is critical to challenging the culture of impunity for sexual violence crimes and its acceptance as an inevitable by-product of war. We all

> have an obligation to tackle the root causes and drivers of sexual and gender-based violence as essential part of our fight against sexual violence in conflict. (FCO 2014k, 4)

This nod to the deeper causes of tactical sexual violence was definitely a step in the right direction, however the goal remained to end impunity and was therefore focused on a narrow set of solutions to what was recognised to be a larger, more deeply rooted problem. The theory behind the Global Summit was that if we openly discuss the heinousness of the crime, the more action will be taken against it. While this is certainly true up to a point, evidently the practical outputs of the Global Summit have been limited for the global moral outrage anticipated by Hague and Jolie has not occurred.

While the event itself seemed to be a success at the time, its lasting impact is unclear. So far, there has been little by way of tangible outcomes from the discussions and declarations. Further, we have seen extraordinarily little action on the part of those involved in the Global Summit. Burma is a prime example. The Burmese government signed the Summit's *Declaration to End Sexual Violence in Conflict* yet reports of sexual violence and other war crimes have increased, with 2017 marking a particularly violent year. The UK funded a coalition of community members from Burma to attend the Global Summit, and while these officials and community leaders received some beneficial training, it is difficult to see what difference this has made on the ground.

Hague's efforts to increase political will on the international stage can further be seen clearly through his work with the G8. Prior to Hague, this international body had not explicitly addressed sexual violence in conflict. For this, Hague deserves praise. He managed to secure the *Declaration to End Sexual Violence in Conflict* (G8 Declaration) and secure commitment specifically targeting sexual violence in conflict. Touted as a major accomplishment of the PSVI, the G8 Declaration explicitly recognised tactical sexual violence as a grave breach of international law (G8 2013). Yet it is questionable as to whether the political will necessary to push for action was present at the G8 after Hague's departure. The G7[11] (formally the G8) has done little to increase action in the fight against tactical sexual violence. With Germany taking up the presidency following Hague, the G7 continued to acknowledge the problem but did extraordinarily little to address it practically. As such, overall, the conversation was had, a small success, but the practical commitment was not and is not yet there. Funding to tackle the issue remains minimal and attention to the issue easily side-lined.

The Declaration firmly established tactical sexual violence in conflict as a universally unacceptable crime. Yet this frames the problem of tactical sexual violence as one of law and order, a criminal act that can be stopped through punishment of those who violate laws. The focus is on ending impunity and improving investigations so that

[11] The G8 became the G7 after expelling Russia from the group.

perpetrators can be held to account, which ultimately offers a narrow set of solutions to the problem even if the political will to take action was there. I will return to this point presently.

At the UN, Hague also pushed to get tactical sexual violence recognised as a grave breach, and thereby aimed to galvanise the political will necessary to increase action and hold perpetrators to account. The UNGA *Declaration of Commitment to End Sexual Violence in Conflict* (UN Declaration), as well as UNSCR 2106, aimed to increase commitment on the part of the international society to address sexual violence in conflict. However, these documents, while laudable, largely repeat prior commitments and reinforce previous goals, there is little new within them. UNSCR 2106 does solidify the need to end impunity, again narrowing the set of solutions to the problem. While these commitments are well intentioned and certainly should be followed, the level of commitment and ability on the part of the UN and its member states remains questionable. The UN struggles to live up to the commitments of the Women's Peace and Security (WPS) Agenda, and more resolutions and declarations does not necessarily mean more work is being done or that practical progress has been made.

### Improving Investigations and Evidence Gathering

This section outlines how the PSVI attempts to improve investigations and how the resulting solutions are narrowly targeted legal approaches to prevention. I would first note that the Protocol only

addresses sexual violence that is an international crime and is not intended to address other types of sexual violence (FCO 2014g, 6). This limits the scope of usefulness when it comes to translating practice into accountability for acts of sexual violence perpetrated in conflict zones. I will return to this point later. Here, I will assess the effectiveness of the PSVI in terms of its stated aspirations.

The PSVI makes the assumption that improving investigations will ultimately lead to the prevention of tactical sexual violence in conflict. As Hague said when launching the PSVI, "We want to see a significant increase in the number of successful prosecutions for these crimes, so that we erode and eventually demolish the culture of impunity and establish a new culture of deterrence in its place" (2012). The PSVI puts a large amount of resources into attempts to address this through policy by both increasing awareness and knowledge about sexual violence as a grave breach of international law and providing guidance on investigating and documenting such crimes based on International Criminal Court (ICC) requirements. This assumes that the low prosecution rate so far is because of the lack of credible evidence that will stand up in the Court. As shown in previous chapter, most of the tangible policy outputs of the PSVI relate to the target of improving evidence gathering and investigations for war crimes of sexual violence in conflict zones.

A prevailing argument pushed by the PSVI is that there is a failure to investigate tactical sexual violence effectively or properly. Policy outputs like The *International Protocol on Documentation and*

*Investigation of Sexual Violence in Conflict* (the Protocol) and the UK Team of Experts (UK ToE) point to a perceived need for more universal standards and expertise in conflict zones regarding sexual violence as a war crime, as well as more information on how to collect evidence that will be needed for subsequent court cases. This, along with a dangerous environment for Human Rights Defenders (HRDs), leads to a failure to charge offenders, bring cases to court and/or convict at the ICC, and, to a lesser extent, other international arenas. Outputs like the Protocol and the UK ToE rest on a fundamental assumption that more admissible evidence will increase the number of prosecutions and convictions. Yet, as I will elaborate later, these objectives are ultimately based on a flawed assumption, which undermines the likely success and overall impact of policy. While there is certainly a lack of admissible evidence in some cases, it is not clear that this is the cause of a failure to prosecute or convict.

One of the most touted outputs of the PSVI is the Protocol. Again, this rooted in the assumption that there is a lack of knowledge and awareness of standards of how to properly and thoroughly investigate and document sexual violence war crimes. The point of the Protocol is to correct this lack of standards in an aim to increase the amount of admissible evidence gathered for future international cases. This aim is stated clearly in the early pages of the document, "the main purpose of the Protocol is to promote accountability for crimes of sexual violence under international law" (FCO 2014g, 10). The Protocol is thus focused on legal solutions, with efforts targeting improving

evidence gathering in the hopes of increasing prosecutions and convictions at the international level, which will ultimately lead to a deterrent effect. While seemingly logical, the solutions are narrowed by the belief that law is the way to prevent tactical sexual violence. Policy targets one part of the international legal system, the beginning. This is laudable, but the ability of it to make a difference is hard to measure. So far, there is little evidence that this has been effective in achieving its stated aim.

In 2013 The World Health Organisation (WHO) identified certain gaps in knowledge and awareness of standards about what and how to gather evidence that the Protocol does address, and for this the Protocol deserves credit (Maras and Miranda 2017, 12). The Protocol targets increasing knowledge, by providing the best legal investigative practices and translating them into a number of languages to increase accessibility. However, while I find the Protocol to be a worthy effort, the information within the Protocol is not new; its main contribution is the compilation and availability or ease of access of this information. The knowledge that is provided by the Protocol is already there, and it is unclear as to whether the lack of standardisation is truly a major problem. With such limited resources available for prevention measures of all kinds, I question as to whether it is time and money truly well spent.

The Protocol was created as an educational tool; there is no requirement for its use. While it does increase the accessibility of information about sexual violence as a war crime and how to

investigate it, the Protocol does not guarantee that more admissible evidence will be gathered, simply that more people may be aware of what evidence is required and how to obtain it as to be admissible in court. Thus, the PSVI assumes achieving access to more evidence will result in that evidence being gathered and marshalled for an increase in prosecutions and convictions, with little but theory backing this approach.

Furthermore, efforts to gather evidence also rely heavily on witness testimony, with international courts having shifted away from traditional documentary evidence (Maras and Miranda 2017, 11). This is in part due to the difficulty in obtaining such documents during conflicts. However, the result is that there is a massive amount of witness testimony to process while simultaneously trying to complete cases quickly. Keydar questions whether the turn to reliance on mass evidence in international criminal cases is beneficial, highlighting the battle between efficiency and the difficulty in obtaining and processing huge quantities of testimonial evidence (2016). Maras and Miranda discuss how international courts focus on testimonial evidence, discounting other types of evidence (such as physical or digital). This, they argue, perpetuates the belief that witness testimony can negate the need for these other types of evidence (2017, 12).

Moreover, it is not clear that the faith placed in testimonies will lead to more prosecutions and convictions. I will revisit this issue below in regard to stigmatisation. Here, the problem can be summarised in Dallman's statement that while

> some proponents of the ICC argue that testimony allows individuals to account for their narrative, others contend that ongoing security concerns, lack of legal aid during the application phase, the burden of proof, the right to silence and lack of survivors' control over the criminal trial may actually reinforce victimization instead of mitigating it. (2009, 12)

Finally, with regard to evidence, the PSVI takes the position that the problem of low prosecutions rates lies with the lack of awareness of current evidentiary requirements for the ICC, rather than with the court's requirements themselves.

### Expertise

The most obvious policy addressing the lack of expertise on the ground as an impediment to overcoming the culture of impunity is the creation of the UK ToE. The creation of ToE coincided with the launch of the PSVI in 2012 (Hague 2012). The UK ToE was established with the aim of sharing British expertise in investigations in conflict zones. These team serve a mostly advisory function in said conflict regions. The usefulness and results of such a group need to be questioned. Is the UK ToE really necessary, especially considering the UN currently has groups established whose aim is similar, if not practically identical? This can be seen in the case of Burma. Two members of the UK ToE – an exceedingly small number given the scale of the problem-were sent to the largest Rohingya refugee camp in Bangladesh in November 2017 to assess the current situation and investigation processes. Yet, the British government also helped fund a UN team deployed to the region

nearly three years earlier with similar intentions (FCO 2014l, 8). By 2017, the evidence of war crimes in Burma was quite clear, and so I question whether the members' report provides any useful or unique information. An executive summary of the report was released in May 2018, and while this lies outside my period of study, it essentially reiterates information about the dire situation and widespread human rights violations against the Rohingya in Burma (FCO 2018).

Another issue with the UK ToE is that the members' priority is not to assist in investigations, but to use their expertise to assess where challenges appear with on-the-ground investigations and advise the British government on problem or target areas. While this is important, the time and resources spent on the UK ToE are not necessarily consummate with the results they achieve. There are a number of organisations reporting on such information in conflict zones, so the usefulness of another group seems minimal in comparison to the overarching problem. This is not to say that more resources may not be useful, but I do question whether, in terms of their ultimate outcome, more funding and resources need to be spent on assessing investigations. These resources, I argue, would be better spent in providing support for survivors, or on alternative approaches – as outlined in Chapter Eight.

The PSVI is also based on the belief that improving investigation techniques and training more legal staff for future cases will result in increasing the number of prosecutions and convictions for tactical sexual violence sufficiently to deter future transgressions. This has

resulted, as shown in existing evaluations, in a narrow set of legal solutions being the almost singular approach to preventing tactical sexual violence. There is little tangible evidence, however, to support such a focus.

### Safety & Access

The PSVI further aims to improve investigations by ensuring that HRDs have safe access to crime scenes, survivors, and witnesses. Policy aimed at this problem generally involves exerting international pressure on states involved in the conflict to improve safety and access to experts and HRDs. Again, the assumption is that international pressure will increase the access for HRDs to investigate, thus improving evidence gathering and the likelihood of future criminal cases. Hague and others made a point of affirming that HRD's must have safe access, although little was done to achieve this beyond verbal declarations.

The questionable impact of this approach can be seen in the situation in the Burma/Rohingya crisis and the plight of Médecins Sans Frontières (MSF) in the region. As noted in the last chapter, even with international pressure and a *Memorandum of Understanding* signed between the Burmese government and MSF, their access remained minimal and their safety questionable. While the situation has improved since 2014, HRDs still face serious threats to their safety and limited access to survivors in Rakhine state and other parts of Burma.

Thus, it is unclear as to whether the PSVI's push to protect HRDs has really succeeded. In the case of Burma, it seems not.

### Ending the Culture of Impunity through Prosecution

As noted above, a key belief behind the ending impunity approach is that more prosecutions and convictions at the international level will deter future use of the crime of tactical sexual violence. This assumption behind much of the initial efforts of the PSVI. Certainly, prosecution punishes the guilty and provides survivors with recognition and a sense of justice. However, its value as a deterrent is belied by the inability of the international legal system to actually convict more than a few of those responsible.

To summarise this section of the chapter, I have evaluated and assessed the effectiveness of the PSVI on its own terms. To this end, I have adopted a middle-ground constructivist position that acknowledges the constructed nature of social and political orders, and recognizes that constructed identity, norms, and institutions change overtime. However, in the short term, policy efforts to solve problems must work within the international order as currently constituted. The PSVI exploits recent changes in international norms and the laws of war in an effort to end the culture of impunity surrounding sexual violence in conflict. I have assessed the provisions of the PSVI on those terms, specifically in regard to galvanising political will, improving investigations and evidence gathering capabilities and providing better security for witnesses and HRDs. In all respects, I have found the

outcomes and achievements wanting. I do not conclude from this that efforts to confront sexual violence in conflict through initiatives like the PSVI should be abandoned, but I do question the weight afforded to the promise of law and the resources-small as they are-devoted to this effort relative to alternative approaches.

Fundamentally, however, the disappointing results of the PSVI, and legal approaches generally, points to the need to interrogate the underlying roots of sexual violence, which make sexual violence an effective tactic in conflict. The PSVI recognises this. However, save for the occasional public statement (cite above and alluded to in the previous chapter), on the importance of confronting prevalent gender norms, the PSVI largely fails to address the gendered causes of tactical sexual violence and the cultural beliefs that make tactical sexual violence an effective military tactic. This position ultimately detracts from efforts which address the deeply embedded nature of the problem of tactical sexual violence in favour of legal retribution and deterrence. It is to the underlying assumptions in this framing of the problem of sexual violence in conflict and the "discursive heritage" on which it rests, that I now turn.

## The Discursive Construction and Framing of Sexual Violence in Conflict

To recap, my research has been investigating how the international society conceptualises tactical sexual violence within prevention discourse. How the problem is framed has consequences for

how the problem is dealt with; the solutions posed or seen as viable are mediated by the framing of the issue. Current prevention discourse takes a clear legal approach, for the dominant argument is that we must increase prosecution and conviction rates and end impunity for perpetrators. Tactical sexual violence is framed predominantly as a crime that can be deterred through prosecutions, making the issue seem to be one of law and order. Prevention efforts currently focus on ending impunity for the tactical use of sexual violence in conflict. Initiatives like the PSVI continue with this framing and are founded in the belief that the solution to the problem is better law enforcement, which results in a narrow set of solutions presenting themselves as viable and/or worthwhile. The PSVI and the Protocol specifically offers a useful tool for those wishing to document sexual violence war crimes yet proposes a narrow definition of sexual violence in conflict and narrows the solutions to international legal ones.

When the problem of sexual violence is framed as a crime, the inherent response is legal, and so the solutions and policy of the PSVI focus on the law and its enforcement. Yet a legal focus fails to adequately address the drivers of the tactical use of sexual violence – what makes it an effective and thereby useful part of a military strategy. As Houge and Lohne argue, "instead of addressing the root causes … criminal law is offered as a solution" (2017, 779). When law is seen as the solution, it is obvious why policy focuses on enforcing said laws, but there are serious questions as to whether this is really the best way to solve the problem of tactical sexual violence in conflict. To begin this

questioning, I will examine the lineage and discursive heritage of international laws of war.

## Gendered Constructs of Honour and Dignity

As I argued in Chapter Four, the framing of sexual violence, rape specifically, underlying the Geneva Conventions categorised tactical sexual violence as a violation of the honour and dignity of the community and men given the task of defending the community. This served to make the violation of the "honour" of women, not a crime against their person, but a violation of the honour of her community or collective (in effect, the honour of the nation in nationalist ideology that underpins the nation-state system). This served to marginalise the status of immediate victims in law, through a focus on the harms to the community as a whole. Rape was also placed lower on the list of existing war crimes, such as torture which was treated as a grave breach of the Convention.

In the 1990s and early 21st century the frame shifted from the construct of rape as solely a communal violation to an individual violation of the honour and dignity of victims, centralising the immediate victims and highlighting the destructive effect tactical sexual violence has on the lives of survivors. Notably, human rights discourse now came to be deployed, by NGOs particularly, with regard to sexual violence in conflict, although human rights has not succeeded in displacing the position of IHL in relating the conduct of war and in the prosecution of war crimes. With the underlying framing of tactical

sexual violence as a grave breach of international law (and thus a violation of honour and dignity) remaining, the focus shifted from communal honour to individual honour. This construct of honour still has gendered conations, specifically in regard to notions of the innocence and sexual fidelity, particularly of women. As such, harmful gender norms were reinforced rather than eradicated.

As discussed in Chapters Four and Five, the framing of sexual violence as a grave breach highlights the destructive nature of the acts and focuses on the moral indignation that results from such violations of honour and dignity. This framing of sexual violence centres on the belief that sexual violence becomes of international concern as a moral violation, reinforcing the belief that sexual violence is an attack on honour and dignity. Rather than helping, this frame works to perpetuate the harmful idea that sexual violence is a violation of honour, a belief which lies at the foundation of the effectiveness of sexual violence as a tactic.

This frame is intended to make the international society care about the tactical use of sexual violence as a moral outrage and place it at the top of the list of acts that are considered universally unacceptable. The underlying logic is that the international society should care about such a moral violation of honour and dignity, yet this violation of honour is a large part of what destroys communities when tactical sexual violence is used. As Ní Aoláin argues,

> Paradoxically, the very process by which sexual harms are elevated in legal norms, popular

> narratives, and cultural discourses can act as a means to further subjugate women and entrench rather than undo presumptions about honour (individual and communal), purity of the female body, and status loss when sexual harm is experienced. (2016, 90)

True and Davies offer some praise for the PSVI in its attempts at norm entrepreneurship, that is spreading and establishing norms, in foreign policy (2017, 1). While offering some criticism, they highlight how Hague was able to use his position to attempt to solidify the norm of sexual violence in conflict as a fundamental issue of international peace and security (Davies and True 2017). This argument is a basis for much of the PSVI's international work. While I agree with Davies and True that Hague deserves credit for broadening the discussions within the international arena, there are problems with how this norm is constructed. For one, the belief is based on the idea of tactical sexual violence as a grave breach, thus reinforcing the problematic language of honour and dignity iterated above.

The focus on sexual violence in conflict as an issue of international peace and security works to reinforce the connection of sexual violence to women and highlight the destructive effects of tactical sexual violence on women's lives. As Ní Aoláin argues, "in the context of conflict-related sexual violence the passive, dependent, innocent, shamed, and vulnerable woman trope is seen to be essential to mobilizing law and protection for the geopolitical sites in which harm occur" (2016, 90). While the frame is intended to expand the

resources available and organisations involved, it reinforces the harmful norms which make sexual violence an effective tactic.

This framing also has the unwanted result of making sexual violence into a women's issue, side-lining men as victims and agents of change.

### Women as Symbols of the Nation

As noted above, nationalism as a dominant ideology serves as the glue that holds together international order, as a system or society of nation states, even as there are rights based and cosmopolitan challenges to this order. Tactical sexual violence in conflict is effective because of the conflation of women and the feminine with the nation. As discussed in Chapter Three, it is particularly effective in conflicts driven by ethnonationalist objectives because of deeply rooted gender norms within ethnonational societies. The construction of women as symbols of the nation and its reproduction in war, allow rape and sexual violence to target the entire community – the ethnic collective is attacked through the rape of its women. Militarised ethnonationalism lays the groundwork for sexual violence to be an effective military tactic, and this is based on the gender norms that are entrenched within these societies. Understanding this is vital to the elimination of sexual violence as a tactic in conflict, for particular gender norms lie at the foundation of the reasons for the use and effectiveness of sexual violence as a weapon.

International society also views war crimes as issues that can be dealt with primarily through international humanitarian law and legal

ramifications, thus narrowing possible solutions. Complications also arise because the underlying framing of sexual violence as a grave breach in international law and as a fundamental issue of international peace and security ultimately reinforces harmful gender norms which make sexual violence an effective military tactic. The framing of sexual violence in conflict as a grave breach highlights the criminal nature of the act and implies it is a problem that can be solved by resolving issues with law and order. This framing also understands the issue as a violation of the victim and their community's honour and dignity, reinforcing harmful gender stereotypes.

The framing of sexual violence in conflict as a fundamental issue of peace and security, as in the series of UNSC resolutions that have come into force since 2000, also has the unwanted side-effect of focusing solutions on women, and marginalising men as both victims and agents of change. This has the result of hindering, rather than helping, efforts by reinforcing the perception of women as victims in need of protection.

### Stigma

Another major issue is that the PSVI, while addressing the problem of stigma, it is addressed in a limited manner as a barrier to survivors coming forward. Stigma is the negative reactions and norms which exist in a conflict society that shame and harm the victims, stopping them from coming forward or reintegrating into their community and living a normal life post-conflict. The problem here is

that, while acknowledging that stigma harms individuals, the underlying framing is still focused on how stigma impacts on the ability to provide legal solutions to the problem. Policy addressing stigma ultimately aims at legal retribution and justice based in legal terms. The need for witness testimony, and the harm to survivors, is framed through a legal lens. This is a problem because attention focuses largely on gaining witness testimony and evidence, rather than addressing deeply embedded gender norms that drive tactical sexual violence and the stigma that falls on victims when these norms are violated.

Stigma remains a fundamental issue facing survivors of tactical sexual violence. Stigmatisation is "the social process that leads to the marginalisation of individuals or groups" (FCO 2017b, 7). There is immense stigma surrounding tactical sexual violence, and it greatly inhibits recovery and justice. Policy like the Principles for Global Action (PGA) aims to eradicate stigma, focusing on that which inhibits the investigation and trial processes. The PGA notes that the stigma associated with tactical sexual violence is

> Not only the expression of individual values, beliefs, or attitudes; it is the forceful expression of social norms that are cultivated within a given society through the behaviours and actions of groups of people and institutions. It is an extension of the stigma that is present pre-conflict. (FCO 2017b, 7).

Policy like the PGA and those addressing stigma get closer to the deeply rooted gendered causes of tactical sexual violence.

While there are certainly benefits to policy which addresses stigma, the legal framing results in a focus on legal avenues for justice and so only some of the problematic gender constructions from being addressed. The fact that women should not discuss or report sexual violence is the target of stigma-focused policy. Efforts focus on the societal beliefs that inhibit legal processes, largely focusing on witness testimony and the community acknowledging that sexual violence war crimes were committed. This narrows the focus on only some forms of stigma and does not address the deeper gendered drivers of tactical sexual violence.

The belief that women who are survivors of sexual violence are somehow tainted is addressed, as is the belief that this assault also shames the family. The latter ties into the gender constructions which are part of the causes of tactical sexual violence, that the family of the victim is shamed by the assault. Stigma-targeting policy does connect to the belief that a woman who has been raped is no longer a viable reproducer of the community. This belief is fundamental to the effectiveness of sexual violence as a tactic. Yet this connection is tangential, and the problem requires more work and focus to eradicate than the PSVI is willing to commit.

### Law/Prosecution as Deterrent-Ending the Culture of Impunity

When the problem is framed as a crime, the inherent response is legal, and so logically the solutions and policy of the PSVI focus on the law and its enforcement. Yet a legal focus fails to adequately address

the causes of the tactical use of sexual violence – what makes it an effective and thereby useful part of a military strategy. As Houge and Lohne argue, "instead of addressing the root causes … criminal law is offered as a solution" (2017, 779). The legal framing of sexual violence as a war crime results in a focus on criminalisation and the criminal nature of the violence, rather than the causes of its tactical use.

The concept of international courts providing a deterrent is something that, as Cronin-Furman notes, has come about as a priority and aim only recently (2013, 436). She claims that the trials after WWII, which are foundational for international law, were more for retributive justice than deterrence, with the aim of deterrence arising in the 1990s during the tribunals for the former Yugoslavia and Rwanda (2013, 436). Cronin-Furman highlights the unique situation of the Tribunals, for they took place while violence in the regions continued, yet argues deterrence was not the primary goal of their architects (2013, 436). However general deterrence as a priority is clear in the Rome Statute of the ICC, with prevention mentioned as a main objective (Rome Statute 1998, 1). Dallman states that "states parties to the [Rome] statute also anticipated that the court would contribute to preventing egregious violence committed against future generations" (2009, 1).

Jo and Simmons discuss two types of deterrence that the court is able to provide – prosecutorial and social (2016, 444). They argue that while prosecutorial deterrence is the most obvious type a court can provide, the court is also able to provide a social deterrent;

> *Prosecutorial deterrence* is a direct consequence of legal punishment: it holds when potential perpetrators reduce or avoid law-breaking for fear of being tried and officially punished. *Social deterrence* is a consequence of the broader social milieu in which actors operate: it occurs when potential perpetrators calculate the informal consequences of law-breaking *(italics original)*. (Jo and Simmons 2016, 444)

The first works through "anticipated legalised, court-ordered punishment," while the latter derives from "extra-legal social costs associated with law violation" (Jo and Simmons 2016, 446). Thus, the ability of the ICC to provide a deterrent is twofold, however its success in providing said deterrents is highly debateable. I argue this is ultimately an unrealistic assumption, for the ability of the ICC to provide a deterrent against sexual violence war crimes is likely minimal at best.

For one, the ICC is only realistically able to prosecute high-ranking officials from some conflicts, and the majority of perpetrators will go unpunished (Dallman 2009, 12). The concept of a deterrent thereby assumes a rational calculation on the part of those in charge of conflicts (Cronin-Furman 2013, 439). As Houge and Lohne argue, "if leaders are held accountable for the behaviour of their troops, they will make sure that their troops will not put them at risk of prosecution" (2017, 760).

Cronin-Furman breaks down the potential defendants – those whom the deterrent is aimed at – into two groups; commanders who order war crimes, and those who allow or fail to punish their use (2013,

435). Both these officials theoretically make a cost-benefit analysis regarding either ordering or allowing widespread sexual violence. The problem lies in the belief that the fear of international law enforcement will outweigh the effectiveness of sexual violence for these commanders, but evidence does not necessarily support this argument (Houge and Lohne 2017, 761).

In addition, for laws to work – that is to provide a deterrent – they also require social acceptance. At the moment, international law is not fully accepted as universal across the globe. The future of the court and its ability to have the desired impact is under question. It is important to note again that the US, Russia, and China have not ratified the Rome Statute and are therefore not technically bound by the rules and jurisdiction of the ICC (Dallman 2009, 11). A number of African countries have also recently announced their withdrawal from the Rome Statute and the ICC, citing bias and one-sided prosecutions. It was not until 2009 that the first international criminal trial at the ICC actually began, seven years after the Rome Statute came into force (Dallman 2009, 11). As Dallman rightfully argues, the ICC's "ability to serve as both a symbol of deterrence and as a catalyst for the elimination of sexual violence in armed conflict altogether remains questionable" (2009, 2). This has not changed in the ten years since Dallman published her assessment of the ICC.

The ICC also faces a number of challenges in the trial phase that are not addressed by the efforts of the PSVI. The Office of the Prosecutor (OP), responsible for charging and prosecuting the accused,

has a finite amount of resources and time to do its job. The ICC relies heavily on states and international organisations to carry out much of the investigation processes, for it is limited in funding and ability to do so.

Another problem with the legal framing of sexual violence as a war crime, along with the use of the term 'CRSV', is that this framing implies that all sexual violence related to the conflict is tactical and committed by armed forces, and all other sexual violence is a domestic or national issue, and therefore not directly connected to the armed conflict. This is notably problematic. The main issue is that not all sexual violence in conflict regions is tactical; armed conflict nearly always comes with a rise in opportunistic and domestic sexual violence. While these types of sexual violence are considered under national jurisdiction, that does not mean they are not related to the conflict or a result of the conflict environment. This, while perhaps unintentionally, excludes consideration of the sexual violence that is not part of a military strategy, thereby limiting the policy's potential impact on all sexual violence in conflict zones. The dehumanization of the enemy, the "other", can occur in conflict outside official policy, removing social barriers to sexual violence beyond the specific tactical use dictated by commanders.

A more minor purported aim is to establish national laws in line with international norms, for "if [these international] norms become accepted as military and domestic law, sexual violence will no longer be exempt from punishment and hopefully will become less tolerated

legally as well as culturally" (Copelon 2003, 3). While the PSVI attempts to encourage national alignment, it exerts little more than verbal pressure. Researchers Maras and Miranda criticise the international focus of the Protocol, arguing that it does little to aid national investigations and progress (2017, 11). Maras and Miranda are quite concerned with the assumption that international law requirements can transfer easily to national courts, for during armed conflict cases (as opposed to national sexual violence cases) consent is not a major focus and the victim's sexual history is not considered relevant (2017, 11). They claim the effect of this discrepancy on national prosecutions and developments is highly problematic, for this is a substantial difference and a failure to acknowledge such a difference further masks the complexity of prosecuting sexual violence (Maras and Miranda 2017, 11-12).

## The Marginalization of Alternative Approaches

The emphasis upon the 'grave breach in international law' legitimises and promotes the view of international organizations that focusing efforts and resources on legal solutions is the only effective methodology to stop tactical sexual violence. This has had the unfortunate impact of pushing into the background alternative approaches which might well be more effective eventually. The lack of a wider scope of analysis and assessment of the PSVI impact leave us with no way to judge the value of programmes with significant funding which focus upon those cultural constructions which make the decision to use tactical sexual violence so effective.

Sexual violence also comes to monopolise discussions of women's rights, thus marginalising cultural and economic alternatives for development and advancement. These frames and understandings can be seen throughout PSVI policy and outputs, particularly those involving the international community.

## Conclusion

The PSVI's approach results in a policy objective based on improving and increasing awareness and knowledge of sexual violence as a grave breach of international law. Resources and efforts target spreading information about how sexual violence constitutes a war crime, as well as how to investigate and document such atrocities. Policy is based on the premise that as tactical sexual violence is a crime, and thus law should be the primary solution. The correlation between crime and law is inherent, thus the choice of framing of the problem is fundamental to the understanding of, and attempts to solve, the issue. The problem is framed in such a way that the best solution is seen as a legal avenue, yet the legal realm is unlikely to provide the prevention that initiatives like the PSVI aim to achieve.

The legal framing of sexual violence as a war crime results in a focus on criminalisation and the criminal nature of the violence, rather than the causes of its tactical use. This means that policy will only be partially useful at best, for it only addresses a part of the problem. The PSVI is useful to a point, however the ending impunity approach is

insufficient as a dominant approach because it fails to address the underlying causes of tactical sexual violence and relies on problematic and unrealistic assumptions in order to be successful. Tactical sexual violence would be better understood as an extreme form of gender-based violence, part of a wider societal issue rather than purely a legal matter. This frame does a better job at understanding the gendered causes of tactical sexual violence and would expand the viable solutions to more holistic approaches which target changing social norms rather than enforcing international law.

The PSVI, while well intentioned, is based on an approach that is unlikely to ultimately succeed. The failings of the underlying approach to the PSVI will be addressed in this chapter in order to indicate where reassessment of goals and priorities must be done if the PSVI is to have a lasting and meaningful impact on ending tactical sexual violence in conflict. Weaknesses in the current policies have culminated in outcomes that could be strengthened by a more holistic approach, with a deeper understanding of the way in which social and cultural constructions by both the military forces and the victim communities undermine the overwhelming focus on legal remedies.

The PSVI is only useful in the effort to legally hold accountable those who command and/or condone the use of sexual violence as a tactic; a small part of the necessary effort required to prevent tactical sexual violence. This, at best, may deter a few, but tactical sexual violence is too effective and cheap a weapon to be prevented through legal means alone. Therefore, it makes more sense to evenly distribute

resources into approaches that have a higher potential to address a larger part of the problem; this is done by more directly targeting the gendered causes which make tactical sexual violence so effective. These alternatives will be discussed in the following chapter in which l expand on the need for an holistic approach to the problem of sexual violence in conflict.

# Chapter Eight: Conclusions and Alternatives

## Introduction

Sexual violence in conflict is explicitly recognised as a war crime, a crime against humanity, and a predicate tool of genocide. Yet prevention of tactical sexual violence is an objective that the international community has had as a goal only relatively recently, that is, within the last 30 years or so. For centuries, rape and sexual violence as a part of war were not explicitly illegal, let alone something that members of the international society of states declared a war crime or tried to prevent (except in so far as it was proscribed by the code of "honourable" conduct among fighting men). In 1949 sexual violence in conflict was finally legally recognised as a violation of international law under the Geneva Conventions. In the 1990s, rape, enforced prostitution and sexual slavery were recognised as grave breaches of the laws of war, and for the first time, commanders were prosecuted and convicted on the international stage.

As the law became solidified in relation to the banning of tactical sexual violence, efforts to prevent such conflict-related atrocities have markedly increased. In 2012, under the leadership of William Hague, then Foreign Secretary for the United Kingdom, alongside actor,

human rights defender, and UN Special Envoy Angelina Jolie, the UK created the *Preventing Sexual Violence in Conflict Initiative* (PSVI). What followed was a number of policies and outputs that the UK, through the vehicle of the PSVI, aimed to make prosecution of sexual violence war crimes more likely, and thus more effective as a means of deterrent. The goal was to ensure that sexual violence in conflict would no longer be committed with the impunity that it is today.

These prevention efforts, however, have yet to be fully assessed by academics and scholars of International Relations, with minimal literature available on the PSVI. Maras and Miranda examined The Protocol in some detail, while Kirby assessed the Global Summit and the PSVI's efforts to some extent in 2015 (2017; 2015). Davies and True offered the post positive assessment of the PSVI, focusing on Hague and norm entrepreneurship, while Gray was more critical in 2018 for the initiative's overall distinction between war-related and "other" types of sexual and gender-based violence (2017; 2018). Yet few have truly assessed the PSVI as a whole at this juncture, and analysis of the underlying legal approach is scant. While the focus on criminalising tactical sexual violence was a profound step, the time has come to assess efforts to prevent tactical sexual violence in conflict as they emerged from the PSVI and its implementation in terms of their impact on prevention. My thesis has undertaken such an assessment and evaluation.

To this end, I have employed a critical discourse analysis of the PSVI, guided by a feminist social constructivist perspective, to assess

prevention policy and gauge its current objectives, its underlying approach, the contexts in which it operates, and its accomplishments. I have engaged with the middle-ground social constructivist project which centres on problem solving efforts in International Relations, while acknowledging that international practice and policy, largely created and implemented by male leadership, is shaped by and shapes international order and the socially constructed institutions, norms, and identities on which it is founded.

Having evaluated the objectives and outcomes of the PSVI from a middle-ground constructivist position, I then moved on to a deeper analysis of the discourses and framing surrounding policy efforts, in order to determine how the problem was constructed for the purposes of the PSVI in the first place. A core claim that I make is that the initial framing of the issues as ones that could be best attacked by legal means, while initiated with a feminist intent, it is a single-pronged and retroactive approach which fails to adequately address the underlying gendered nature of tactical sexual violence. This legal framing has an overwhelming impact upon proposed solutions and their outcomes, narrowing the overall efforts to a particular set of options and marginalising alternative approaches.

My analysis has shown how the PSVI, based on an ending impunity approach to the problem of tactical sexual violence in conflict, constructs the issue as primarily one of law and order, and, therefore sought to improve enforcement of the existing body of laws as the solution. The PSVI framework, logically enough given the framing of

the problem, prioritised increasing prosecutions as the linchpin of the campaign against a still entrenched culture of impunity. Reliance on the laws of war and finding ways to end impunity is now the preferred strategy of the both the UN, via the Women's Peace and Security (WPS) Agenda, and individual member states like the UK, and a significant amount of resources and attention are now devoted in this effort.

Yet, as my analysis shows, there are problems with this approach, both practically and theoretically. The PSVI assumed, with little evidence, that prosecution numbers would rise with more and better admissible evidence. This approach also put a heavy reliance on the ICC and the international legal system, which is practically limited in its ability to successfully address the problem. The case of Burma is used here to show the lack of progress made in prevention efforts, and the problems with the current ending impunity approach. Fundamentally, there are problems with the framing of sexual violence in conflict within international law, for it fails to adequately address or recognise the underlying gender norms which make tactical sexual violence effective. All this leads to policy with little hope of creating a climate for effective change and meaningful impact, ultimately hampering prevention efforts overall.

Given the poor results thus far from UN efforts and initiatives like the PSVI, I argue that the emphasis on, and predominance of, legal remedies is unwise. As previously mentioned, there have only been two convictions for sexual violence crimes in the courts 20 years of existence, with the first being subsequently overturned. Sexual

violence continues to be used as a tactic in conflicts throughout the world, with devastating effects and few, legal or otherwise, consequences. I propose a shift in focus to a more holistic approach which targets the underlying gender norms which allow for the effectiveness of tactical sexual violence in conflict.

In the House of Lords Select Committee on Sexual Violence in Conflict Report of Session 2015–16, expert witnesses repeatedly stressed the need for a holistic approach to the problem and questioned "the prominence of justice in responding to the needs of victims and survivors". The Gender and Development Network, for example, stated that accountability was "but one part of a holistic, survivor-centred" approach (2016, 68). My research leads me to the same conclusion. The emphasis needs to shift to a more holistic approach, incorporating ending impunity into a much larger breadth of policies and initiatives which address issues of gender norms and gendered sexual violence at the societal level. Such an approach holds promise for combatting both tactical sexual violence in conflicts and gender-based violence in general.

While programmes to tackle entrenched gender norms and harmful gender constructs continue to be funded by international and national aid agencies, these efforts are now necessarily marginalized or overwhelmed in international public discourse like the PSVI by the focus on ending impunity. To redress this imbalance, I therefore offer an suggestion of some alternative or additional approaches to prevention of tactical sexual violence which are already in existence,

and can provide models for development of further efforts to attack the problem.

Before elaborating on the fundamental problem of the legal approach's failure to recognise the gender drivers of tactical sexual violence, there are also clear practical problems with implementation of the ending impunity approach, as seen in the PSVI. I reiterate these issues first, for they greatly limit the likely effectiveness of the initiative, regardless of the framing issues. I then elaborate on the fundamental problem that the ending impunity approach fails to address the gendered nature of tactical sexual violence, and conclude by presenting examples of existing programmes which target gender-based violence within conflict societies.

## THE PSVI: PRACTICAL PROBLEMS

The PSVI was, and still is, a unique initiative, a national plan to stop the global use of tactical sexual violence in conflict. For this, it deserves credit as a humanitarian effort that few, if any, other countries have attempted. Moreover, the PSVI has achieved some success, at the least theoretically, both in improving investigations and increasing international recognition of the need to stop the tactical use of sexual violence in conflict. Yet there are also practical problems with the approach of the PSVI, both in its objectives and its implementation. These issues, from the lack of international political will to the difficulties with the international legal system, result in a legal

approach which is ultimately problematic because it has led to few convictions and little societal change. Therefore, the ending impunity approach needs reconsideration as the dominant approach to prevention of tactical sexual violence.

On the international stage, Foreign Secretary Hague (2010-2014), given the difficulties facing his efforts, managed to accomplish much with the G8, as well as being a key figure in pushing for UN declarations and resolutions. The Global Summit in 2014 increased international awareness and discussions, for a time at least, of the problem of tactical sexual violence, and as increased public discussion can be seen as progress, the efforts deserve acknowledgement. Yet while Hague and his staff did manage an increase in the number of international declarations condemning tactical sexual violence and the impunity that surrounds it, little – if any – practical action came from these efforts.

The final product efforts like the PSVI, Kirby argues, is "a great deal of commitment to ending sexual violence in principle, and what has been called 'a devastating implementation gap' in practice" (2015, 460). Kirby criticises the Global Summit, showing how the commitments declared at the Summit "were largely rhetorical or repetitions of existing obligations" (2015, 471). This brings into question whether even the fact of the forum for discussion was advantageous in progressing efforts towards more practical action. While the rhetoric is there, the political will to ensure action is absent, making any substantial progress nearly impossible. Discussions and

commitments can only get us so far in prevention; there comes time, as Hague argued, for practical action, and the political will required for such action was not there to continue his efforts and follow through on commitments.

Thanks to UNSCR 2106 and Hague's efforts to push this resolution through the UN, men and boys are now explicitly recognised as victims of sexual violence in conflict, and worthy of the same redress as women. In recognising men and boys, as well as women and girls, as victims of tactical sexual violence, progress has been made in policy and in gaining a better understanding of sexual violence in conflict has been made. Kirby, while largely critical of the PSVI, acknowledges that its "recognition of sexual and gender-based violence against men and boys serves as an important advance on existing policy, and promises to open up the implementation of programmes on gender violence in the coming years" (2015, 458-459). A vital point in understanding the full breadth of the problem, this expansion to include men is a laudable success, for it allows for women to be seen as perpetrators and men as victims, thus expanding understanding of the problem. The language of this resolution, however, falls short of acknowledging the deeply gendered nature of sexual violence which specifically impacts all victims and drives the perpetration of sexual violence in conflict.

A major part of the PSVI programmatic work has been put into improving investigations for future international cases, yet there is actually little evidence to support the belief that this will lead to significantly more convictions, or, indeed, that more convictions will, in

turn, have a deterrent effect upon the use of tactical sexual violence (Kirby 2015, 465). While the Protocol certainly organised necessary information about investigating sexual violence as a war crime into a convenient and well-presented package, its overall impact is likely to be minimal at best because its success relies on the argument that more evidence will increase prosecution rates, which will increase the deterrent effect of the international legal system. However, more and better evidence is by no means the only thing stopping prosecutions, and these issues are not addressed by the PSVI or the ending impunity approach. Even with more evidence, the number of prosecutions is unlikely to be enough to provide a deterrent.

One central issue for failure is that the policies of the PSVI which target investigations place great hope in the international legal system and its ability to prosecute, convict and provide a deterrent, seemingly without deep consideration of the practical realities of the ICC and international legal system. Kirby, for example, highlights how the aim of ending impunity "fails to fully reckon with the lack of evidence for strong deterrence effects, and the significant resource challenges involved in supporting local and national justice programmes" (2015, 458). The limited success of prosecutions goes beyond a failure to create a deterrent. Funding for the ICC is necessary, and trials require a lot of money and resources, which are becoming harder to find. The ICC is only capable of prosecuting a few of those in charge of the conflict, and thus most perpetrators will go free. This brings into

question how much "justice" the ICC is truly able to provide for most victims of tactical sexual violence.

International successes in this area have been problematic. Though the ICTY was able to prosecute the leaders and a number of perpetrators from the Bosnian conflict, the years-long investigations and trials and the expense involved reflect problems with even a well-staffed and well-funded effort. International will to continue the court in Bosnia waned, and pending investigations and prosecutions have been sent to the courts of the countries where the crimes occurred. Nor has the ICC provided the desired result of continuing the accountability success that was achieved in the Tribunals of the 1990s. As the realistic ability of the ICC to provide a strong deterrent is slim, and with their power and reach seemingly waning, the PSVI's reliance upon the court is not warranted.

The practical problems with the PSVI and its overall approach can be seen in particular with the case of Burma and the implementation of the PSVI. Though the reports of war crimes and crimes against humanity in Burma have been widespread and are continuing to rise, the likelihood of international punishment for these crimes seems minimal at this juncture. As discussed in Chapter Six, there has been one trial at the International Court of Justice (ICJ), yet Burma denied all charges of genocide and war crime violations and it seems unlikely they will comply with the court's ruling. The Burmese government has claimed it will address reports of war crimes through internal military tribunals, but there is little hope of these tribunals

delivering justice to the Rohingya, especially as the group is still not recognised by the Burmese government. A government seen as condoning and directing the violence cannot be expected to punish or stop it.

Nearly all efforts in Burma by the UK focused on legal avenues for redress, doing little to address the gendered nature of the crime itself. It is perhaps too soon to tell if policy outputs like the Protocol have had an impact, but on the basis of my assessment, I predict that this is unlikely. The primary issue at the moment does not seem to be with the evidence, but rather with the political will of the member states of the international society to pursue charges and a basic lack of understanding of the central role of gender norms in the conflict ridden region. At the time of writing (beginning of 2021), there has just been a military coup in Burma, which makes internal prosecutions and international cooperation all that more unlikely in this increasingly unstable country.

Ultimately, the success of initiatives like the PSVI in tackling, if not ending entirely, the culture of impunity depends on the political will to prioritize the issue at both national and international levels. The PSVI relies on the conviction that increased and improved awareness and knowledge of tactical sexual violence on the international stage would increase the political will necessary for an effective legal prosecution of the war crime, and that prosecution would deter future violations. This conviction has proved rooted in flawed logic. Even with expanded international attention to the violation of laws and the

prosecution of violators, achieving the hoped-for deterrence through prosecution would be unlikely; the practical obstacles to securing sufficient prosecutions are too great.

The problem can be analogised to efforts to rid a poverty-stricken city neighbourhood of crime and violence. Prosecutions, while necessary, cannot alone solve the dilemma. The root causes of the crime and violence – poverty, discrimination, gang culture, lack of work, broken family norms, drugs – must be addressed for any meaningful and lasting solution to be reached. Prosecutions in that domestic setting have more available laws, greater investigative resources, and an environment much more conducive to prosecution and conviction than do courts attempting to deal with sexual violence in conflicts. It is simply unrealistic to assume that courts facing the myriad problems war crime tribunals confront could ever successfully prosecute their way to deterrence and elimination of tactical sexual violence. Prosecution can valuably provide punishment, retribution, a sense of justice done, and some measure of deterrence, but if real success in eliminating sexual violence is to be realised, it must come from addressing, and changing, the gender and societal norms that underlie the crime.

## A FAILURE TO RECOGNISE GENDER

Rather than speak of causality, constructivists speak of theory and practice or discourse and practice, meaning that the solutions that

present themselves are very much dependent upon the framing of the problem (Choudhry 2016, 409-410). As discussed in Chapter Two, how the problem is understood, or how it is framed, has consequences for policies that aim to end the practice of using sexual violence as a tactic in war. Thus, understanding the framing of sexual violence within the PSVI policies and outputs is essential for gauging its impact and assessing overall success of its prevention policy.

The PSVI, along with the broader ending impunity approach, frames tactical sexual violence as a grave breach of international law, which places it on the list of the most heinous crimes imaginable, and, in turn, is used to garner international attention and drive practical action. This has perpetuated the belief that sexual violence is best addressed as an issue of law and order through the arena of international law. PSVI policy and outputs focus on legal solutions because the underlying approach frames sexual violence in conflict as a war crime. The logical solutions are then focused on law and legal avenues for redress.

There are consequences to such a framing, however, and they ultimately hinder, rather than help, overall efforts and the likelihood of success. A legal framing narrows the foreseeable set of solutions to the problem, and therefore limits its potential impact and effectiveness. The solutions posed by a legal approach have a number of practical problems as discussed. Yet ultimately is the fact that this framing means policy fails to adequately address the gendered nature of the

crime and the gender norms which allow for the effectiveness of sexual violence as a military tactic.

Admittedly, the problem of tactical sexual violence is a complex one which is understood and explained in a number of ways in discrete bodies of literature. Most of these strands of literature posit that gender, or patriarchal gender relations, is the key "causal" factor in explaining sexual violence as a tactic in war; this includes many of the feminist literatures within IR (see, for example, Cockburn, 2010). In Chapters Two and Three, I showed how gender constructions lie at the foundation of tactical sexual violence, particularly in ethnonationalist conflicts. Sexual violence is both tactical, effective, and destructive because it violates gendered norms.

I have demonstrated how the effectiveness of tactical sexual violence relies on particular gendered social constructions, for example, the representation of women as symbolic within the community or nation. In making this argument, I used strategic rape theory to show how sexual violence was used intentionally and systematically to destroy the community; attacks on the women translate into attacks on the men and the nation due to the gendered connections between women and the nation.

At a basic level, the victim is feminised and the perpetrator is masculinised, and this is possible because of the gendered norms surrounding men and power and women and submission. Rape and sexual violence in conflict emasculates men, and when it is done on a massive scale it emasculates the collective as a whole (Leatherman 2011, 81). As

Skjelsbaek argues when discussing the theorisation of sexual violence in conflict,

> the perpetrator, and his (potentially also her) ethnic/religious/political identity become masculinised, while the victim's ethnic/religious/political identity becomes feminised. Further, the masculinised and feminised identities are situated in a hierarchical power relationship where masculinised identities are ascribed power and feminised identities are not. (2001, 226)

In Bosnia, for example, sexual violence was so effective because of the highly restrictive and patriarchal gender norms surrounding women and men in ethnonationalist conflict. Where honour is bound to chastity – as it was in Bosnia and is in ethnonational societies – sexual violence is able to translate as an attack on the enemy collective's honour (Kelly 2000, 54). As Snyder and others explain, "by dishonouring a woman's body, which symbolises her lineage, a man can symbolically dishonour a whole lineage. On a larger scale within the context of war, the concept of lineage extends to the entire ethnic group or culture" (2006, 190). Sexual violence thus becomes a way for one group to dominate an enemy, and this domination is accomplished because of gender norms.

Understanding the connection between gender and sexual violence, indeed the importance of gender in the perpetration of sexual violence, must be fundamental to any policy or campaign attempting to prevent it in conflict. The legal approach, as I have shown, does little to acknowledge the gendered norms which drive the tactical use of sexual

violence, focusing instead on investigations and prosecutions. The focus of efforts, due to the legal framing, is on prosecutions and investigations for future trials, and gender-based approaches are subsequently marginalised. The failure to put gender as the centre of the driving policy doomed the legal approach.

The focus on law and the underlying framing have meant that radical changes in gender norms are marginalised in lieu of incremental reforms within the legal system (D'Aoust 2017, 218). As O'Rourke points out;

> The very process of formulating a campaign for legal change means translating social and political problems, which require dramatic social and political responses, into legal deficiencies that require incremental technical change. In the process, initially radical feminist analysis tends to become flattened into reformist demands for more or 'better' laws. (2013, 6)

If efforts remain focused on legal responses, as is seen with the PSVI, the fundamental issue of gender and gender equality which drive sexual violence's tactical use remain secondary. Framing the issue as one of law and order subsequently narrows the solutions to those that fit within the legal process, thus limiting policy and efforts overall impact.

Indeed, as D'Aoust argues, "international law is based on an approach where the norm of the system is male, with special provisions made for women" (2017, 215). International law is not gender neutral, rather it is based on particular constructions of men and women; established by men and with men in mind, while women are added

almost as an afterthought. A legal framing is thus problematic for it reproduces rather than eradicates the harmful gender stereotypes which allow for sexual violence to be such an effective weapon.

D'Aoust highlights the issue in arguing that "international regulations reproduce gender discrimination by representing victim groups as feminine and dominant groups as masculine," with the effect of re-inscribing narratives of victimisation and dependency (2017, 216). The position of women (particularly) as "victims" without agency is reproduced in the prosecution processes; dominant gender constructs and norms stand unchanged while emphasis is placed on prosecution numbers.

Henry, citing Smart, argues that "law, as discourse of power, reproduces women in a sexualised and subjugated form, whose bodies become sites of power and a mode of political identity" (2014, 101). Houge and Lohne explain how the "explicit narrative construction of victims in need of rescue and the more subtle construction of perpetrators' individual autonomy constrain the prognostic frames available, leading 'naturally' to an emphasis on criminal law" (2017, 763-764). Thus the "women as victims" narrative is used to drive legal efforts, while at the same time ignoring the nuances and gendered nature of the problem of tactical sexual violence.

Tactical sexual violence is framed, primarily, as a war crime, a grave breach of international law, and something that therefore demands a legal response. This framing narrows the set of viable

solutions while, perhaps unintentionally, marginalising alternative approaches to the problem. Houge and Lohne cite critics' concerns that "the extreme focus on criminal law is seen as a distraction from the broader efforts needed to fundamentally address the challenges of sexual and gender-based violence" (2017, 759). It fails to address the underlying gendered drivers of tactical sexual violence and what makes it an effective part of a military strategy. This failure ultimately dooms policy from ever being truly successful, for until the gendered nature of the crime is adequately addressed, sexual violence will continue to be used as a tactic in conflict.

## Time for a change

My core proposal is that if the tactical use of sexual violence is to be stopped, the best way is to make it ineffective as a weapon of destruction. This can be done by challenging dominant social constructions of gender which make sexual violence an effective and destructive tactic. That is to say, by changing attitudes and behaviours within a society, sexual violence can become tactically ineffective because the underlying the gender constructions that make this type of violence effective are no longer present within the conflict community. As discussed, gender is constantly being reproduced through discourse. Therefore, if we change the discourse, we can change how gender is constructed. If gender norms related to sexual violence are altered, it

will no longer have the same effect upon the society in question, and is therefore no longer an effective tactic in conflict.

Belief in this approach comes from my perspective as a feminist social constructivist, for while gender seems fixed, and is indeed "sticky", gender norms are capable of changing. This is not an easy task, but that does not mean it is impossible or unachievable. Changing or altering gender norms does not end sexual violence completely, or war for that matter, but it does make tactical sexual violence an ineffective tactic, which will eliminate, or at least reduce, its use in war. Sexual violence is used as a tactic because it is cheap and effective, but if it becomes ineffective – or even counter-productive – militaries and forces will no longer employ it as part of their overall strategy.

This conclusion has important policy implications, for if policy focuses on changing, or at least addressing, particular gender norms, the likelihood of success is significantly increased. Using a feminist social constructivist perspective, I began by discussing how gender, as well as ethnonationalism, are based on social constructions, and that these social constructions are not fixed. They are, however, relatively stable, continually reproduced in practice, and so are unreflectively accepted as "natural" by members of a specific community. Social constructions, such as particular gender norms, can be changed, however. This change is fundamental to preventing the tactical use of sexual violence in conflict, for its effectiveness relies on particular social constructions of gender that, while deeply rooted, are ultimately

capable of being transformed. I suggest that the key to effective policy is addressing these gender norms and ideals (discussed in Chapter Three) and focusing efforts on trying to change these norms. My analysis has shown that current policy does not focus on these norms; rather, legal solutions and ramifications dominate efforts and monopolise resources.

As I have made plain, I am not suggesting that developments in international laws of war with respect to the prosecution of sexual violence are unimportant or unwelcome. Survivors deserve some measure of recognition and justice. Punishment of perpetrators engenders a sense of fairness and respect for the law, and some level of deterrence can be achieved. The goal of ending sexual violence in conflict, however, is not being achieved in the present system, and improving aspects of the system, such as evidence gathering, will not achieve that end. In the meantime, alternative approaches are marginalized in discourses on the promise of international humanitarian law, human rights, and justice. There are existing alternatives to the ending impunity approach and purely prosecutorial legal solutions which hold the potential to have a broader impact upon the incidence of sexual violence in conflict societies.

An example of a programme that attempts this shift in attitudes and behaviours is UNICEF's Communities Care programme, launched with the aim of addressing gender-based violence in conflict regions (UNICEF 2017). The programme has two goals, with the first being to ensure comprehensive and accessible support for survivors of sexual

and gender-based violence during conflict (UNICEF 2017). The second goal is more pertinent to my research, for it aims to "reduce tolerance for [gender-based violence] within the community and catalyse community-led action to prevent it by transforming harmful practices and social norms that perpetuate gender inequality and related violence" (UNICEF 2017). This part of the programme aims directly at harmful social norms similar to (if not directly) those which lead to and perpetuate the tactical use of sexual violence in conflict.

The Communities Care programme works with community members and leaders in an attempt to alter behaviours and, hopefully, attitudes about gender-based violence and the harmful gender norms which perpetuate such violence. These norms are, for example, a belief that women who are sexually assaulted are to blame for their assault. As Glass and others argue, "[gender-based violence] primary prevention programmes seek to facilitate change by addressing the underlying causes and drivers of violence at a population level" (2019, 2). The Communities Care programme is "a theory-driven programme using social norms perspective and a feminist-informed public health approach to [gender-based violence] prevention and response that draws on the ecological framework" (Glass et al 2019, 3).

In practice, the programme works at the community level by training community members to lead discussion groups relating to harmful gender norms and practices. A fundamental step in the programme is

> engaging diverse and influential community members in structured dialogues that aim to lead to collective reflection and exploration on values, aspirations, and existing social norms that tolerate [gender-based violence], and alternatives to replace harmful social norms. (Glass et al 2018, 3)

These community members then go on to facilitate a 15-week programme with groups of community members, some single-sex and some mixed, incorporating a variety of ages within these groups (Glass et al 2018, 3). The Communities Care programme is being tested in South Sudan and Somalia, both regions which have experienced severe conflict and a dire humanitarian situation. While it is difficult to measure the success of such efforts, Perrin and others created a measurement tool to assess changes in harmful attitudes and behaviours (2019). This analysis found that the programme had some effect upon norms about protecting honour and a husband's right to violence, while these remained the same in control districts (Glass et al 2019, 7). The results, while still new, are promising.

There are similar programmes which address the gender inequalities in conflict societies which could provide a model for those which deal specifically with tactical sexual violence. A program run by the International Rescue Committee (IRC) on the Thai-Burma border, for example, targets reducing domestic sexual violence through a gender-based violence approach (Alvarado and Paul 2007, 56). Using similar methods to the UNICEF programme mentioned above, the IRC effort aims particularly to include men in the process (Alvarado and

Paul 2007). This is important to note because without including men, efforts are doomed to fail. This is one of the problems with framing sexual violence as a women's issue, for it marginalises the need to include the male members of society. Programs such as these have the benefit of addressing society's gender constructions and altering behaviours within the community to no longer accept sexual violence.

For policy to truly be effective, it must take a more holistic approach to the problem and include gender at the centre of these approaches. Policy incorporating some of the alternative approaches, such as the one's outlined above, will better address the underlying causes of tactical sexual violence. This may come in the form of more coordination with the Department for International Development (DfID), which works with grass roots organisations and already does some gender-based violence prevention work. In doing so, the likelihood of the use of sexual violence as a tactic decreases within the conflict society. I am not arguing that law should be abandoned as a policy objective, for it is necessary, but it is insufficient to prevent tactical sexual violence and should therefore no longer dominate policy efforts. Holistic approaches that have been created to date aim to address the deeply rooted gendered causes of sexual violence, and thus hold potential for a broader impact than do legal solutions alone.

While the legal approach made sense in terms of the world view of those who wrote the PSVI in light of a problem needing immediate attention, it is ultimately a reactionary response, attempting to deter future tactical use of sexual violence by introducing fear of legal ramifications in those in charge of war tactics and their implementation. The criminality of tactical sexual violence became the focus, and the need to enforce the laws banning such use were the priority for policy makers in the United Kingdom. While the PSVI has contributed to increased international recognition of the illegal nature of the tactical use of sexual violence in war, the root causes of tactical sexual violence in ethnonationalist conflicts remain largely unaddressed. In order for prevention efforts to move ahead, and to have a greater impact, efforts must shift to target these root causes – namely the gender constructions which make sexual violence an effective tactic – and expand the current policy approach which focuses on the criminality of tactical sexual violence and the need to punish those responsible.

PSVI has proved to be but a small step, dealing with only part of the problem. The belief that legal impunity is the dominant factor in the continued commission of war crimes of sexual violence leads to the conclusion that prosecutions are the key to ending that impunity and the crime it encourages. But this is not the essence of the problem, but rather a part of it that has been addressed because the problem of tactical sexual violence was framed as a legal issue. Even a fully

functioning international legal system is not enough to stop war crimes; there must also be social condemnation of the tactic. If international law is not seen as valid by the conflict societies and the underlying beliefs continue to render these crimes effective tools of war, the laws are rendered relatively useless. The PSVI does recognise that societal change is necessary, yet efforts and resources were focused on improving the enforcement of legal ramifications for tactical sexual violence; deeper societal issues were marginalised and fundamental gender norms essentially ignored. We cannot prosecute our way out of the problem, and that must be recognised if prevention efforts are to be successful and have a broad impact.

The best way to prevent tactical sexual violence is to address what makes it an effective weapon in the first place. Sexual violence is such a deeply effective tactic because of the gender constructions which allow it to have a destructive effect. If national efforts are directed more towards addressing sexual violence as an extreme form of gender-based violence, more solutions for prevention efforts emerge. The focus needs to be on the gendered dynamics of the society in conflict, and resources should be spent addressing the harmful stereotypes and beliefs that allow sexual violence to be an effective tactic. Only then can we begin to hope to prevent the tactical use of sexual violence in conflict. As I think back to the streets of Sarajevo, and the women I met there, I am optimistic that change will come.

# BIBLIOGRAPHY


Aas, S.E. (2010) *'Nothing about us without us": sexual violence in conflict-how to end impunity?: a qualitative mapping study to identify good practices in the international response to sexual violence in conflict.* International Review of the Red Cross, 96 (894), pp. 457-478.

Adler, E. (1997) 'Seizing the middle ground: constructivism in world politics', *European Journal of International Relations,* 3 (3), pp. 319-363.

Ahmad, T., and UK Foreign & Commonwealth Office (2017) *Sexual violence abuses against the Rohingya in Burma* [Press release]. 14 November.

Albanese, P. (2006) *Mothers of the nation: women, families, and nationalism in twentieth-century Europe*. Toronto, ON: University of Toronto Press, Scholarly Publishing Division.

Alvarado, M. and Paul, B. (2007) 'Involving men on the Thai-Burma border', *Forced Migration Review,* 27, pp. 56-57.

Anderson, B. (2006) *Imagined communities: reflections on the origin and spread of nationalism*. Revised edn. London: Verso Books.

Anderson, L. (2010) 'Politics by other means: when does sexual violence threaten international peace and security?', *International Peacekeeping,* 17 (2), pp. 244-260.

Anelay, J. and UK Foreign & Commonwealth Office (2017) *UK continues to lead on Preventing Sexual Violence in Conflict* [Press release]. 13 March.

Anelay, J. and UK Foreign and Commonwealth Office (2014) *UK welcomes conclusions of UN General Assembly's Third Committee* [Press release]. 28 November.

Appel, B.J. (2018) 'In the shadow of the International Criminal Court: Does the ICC deter human rights violations?', *Journal of Conflict Resolution,* 62 (1), pp. 3-28.

Baaz, M.E. and Stern, M. (2008) 'Making sense of violence: voices of soldiers in the Congo (DRC)', *The Journal of Modern African Studies,* pp. 57-86.

Baaz, M.E. and Stern, M. (2009) 'Why do soldiers rape? masculinity, violence, and sexuality in the armed forces in the Congo (DRC)', *International Studies Quarterly,* 53 (2), pp. 495-518.

Baaz, M.E. and Stern, M. (2013) *Sexual violence as a weapon of war?: perceptions, prescriptions, problems in the Congo and beyond.* Uppsala, Sweden: Zed Books Ltd.

Baaz, M.E. and Stern, M. (2018) 'Curious erasures: the sexual in wartime sexual violence', *International Feminist Journal of Politics,* 20 (3), pp. 295-314.

Banda, F. & MacKinnon, C.A. (2006) *Sex, gender, and international law*. Washington, DC: The American Society of International Law.

Bećirević, E. (2014a) *Genocide on the Drina River*. New Haven, CT: Yale University Press.

Benson, L. (2004) *Yugoslavia: A concise history*. Hampshire, UK*:* Palgrave.

Boesten, J. (2017) 'Of exceptions and continuities: theory and methodology in research on conflict-related sexual violence', *International Feminist Journal of Politics,*19 (4), pp. 506-519.

Booth, K. (1997) 'Discussion: a reply to Wallace', *Review of International Studies,* 23 (3), pp. 371-377.

Bouffard, L. & Goodson, A. (2017) 'Sexual coercion, sexual aggression, or sexual assault: how measurement impacts our understanding of sexual violence', *Journal of Aggression, Conflict and Peace Research,* 9 (4), pp. 269-278.

Brahimi, L. (2000) *Report of the Panel on United Nations Peace Operations (Brahimi Report)*, New York: United Nations.

British Embassy Tokyo (2017); *UK and UN women celebrate International Women's Day by joining together to address conflict-related sexual violence* [Press release]. 8 March.

British Embassy Yangon (2014) *Burma: Honouring survivors of sexual violence in conflict* [Press release]. 11 June.

British Embassy Yangon (2015) *Co-Founder of the PSVI initiative visits Burma* [Press release]. 31 July.

Burnham, P., Lutz, K.G., Grant, W., and Layton-Henry, Z. (2008) *Research methods in politics*. London: Macmillan International Higher Education.

Buss, D. (2002) 'Prosecuting mass rape: Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic', *Feminist Legal Studies,* 10(1), pp. 91-99.

Buss, D.E. (1998) 'Women at the borders: rape and nationalism in international law', *Feminist Legal Studies,* 6 (2), pp. 171-203.

Buss, D.E. (2009) 'Rethinking 'rape as a weapon of war'', *Feminist Legal Studies,* 17 (2), pp. 145-163.

Butler, J.P. (1999) *Gender trouble: feminism and the subversion of identity.* 10th anniversary edn. New York: Routledge.

Butler, J.P. (2003) 'Gender trouble', in Cahill, A.J. and Hansen, J. (eds.) *Continental Feminism Reader.* Lanham, MD: Rowman & Littlefield, pp. 29-56.

Card, C. (1996) 'Rape as a weapon of war', *Hypatia,* 11(4), pp. 5-18.

Carlsnaes, W., Risse, T., and Simmons, B.A. (eds) (2013) *Handbook of international relations*. London: SAGE Publishing.

Carmichael, C. (2015) *A Concise history of Bosnia*. Cambridge: Cambridge University Press.

Carpenter, R.C. (2000) 'Surfacing children: limitations of genocidal rape discourse', *Human Rights Quarterly,* 22, pp. 428.

Carpenter, R.C. (2002) 'Gender theory in world politics: contributions of a nonfeminist standpoint?', *International Studies Review,* 4 (3), pp. 153-165.

Carpenter, R.C. (2003) 'Stirring gender into the mainstream: constructivism, feminism and the uses of IR theory', *International Studies Review,* 5 (2), pp. 297-302.

Carter, K.R. (2010) 'Should international relations consider rape a weapon of war?', *Politics & Gender,* 6 (3), pp. 343-371.

Carter, K.R. (2010) 'Should international relations consider rape a weapon of war?', Politics & Gender, 6 (3), pp. 343-371.

Cecil, N. (2017) "Bring soldiers who rape Rohingya to justice', Foreign Office minister urges', *London Evening Standard,* 1 December.

Chappell, L. (2016) *The Politics of gender justice at the International Criminal Court: legacies and legitimacy*. Oxford: Oxford University Press.

Chappell, L. (2017) 'The Gender injustice cascade: 'transformative' reparations for victims of sexual and gender-based crimes in the Lubanga case at the International Criminal Court', *The International Journal of Human Rights,* 21 (9), pp. 1223-1242.

Charlesworth, H., Chinkin, C., and Wright, S. (1991) 'Feminist approaches to international law', *The American Journal of International Law,* 85 (4), pp. 613-645.

Cho, Y.C. (2009) 'Conventional and critical constructivist approaches to national security', *The Korean Journal of International Relations,* 49 (3), pp. 75-102.

Choudhry, S. (2016) 'Towards a transformative conceptualisation of violence against women-a critical frame analysis of Council of Europe discourse on violence against women', *The Modern Law Review,* 79 (3), pp. 406-441.

Cockburn, C. (2004) 'The continuum of violence: a gender perspective on war and peace', in Giles, W. and Hyndman, J. (eds.) *Sites of violence: gender and conflict zones*. Berkeley, CA: University of California Press, pp. 24-44.

Cockburn, C. (2010) 'Gender relations as causal in militarization and war: a feminist standpoint', *International Feminist Journal of Politics,* 12 (2), pp. 139-157.

Cockburn, C. (2013) 'War and security, women and gender: an overview of the issues', *Gender & Development,* 21 (3), pp. 433-452.

Cohen, D.K. (2013) 'Explaining rape during civil war: cross-national evidence (1980–2009)', *American Political Science Review,* 107 (3), pp. 461-477.

Cohen, D.K. and Nordås, R. (2014) 'Sexual violence in armed conflict: Introducing the SVAC dataset, 1989 - 2009', *Journal of Peace Research,* 51 (3), pp. 418-428.

Cohen, D.K., Green, A.H. & Wood, E.J. (2013) *Wartime sexual violence: misconceptions, implications, and ways forward*. Washington, DC: United States Institute of Peace.

Cohn, C., Kinsella, H. and Gibbings, S. (2004) 'Women, peace and Security Resolution 1325', *International Feminist Journal of Politics,* 6 (1), pp. 130-140.

Cole, A. (2010) 'International criminal law and sexual violence: an overview', in McGlynn, C. and Munro, V.E. (eds.) *Rethinking rape law:*

*international and comparative perspectives*. Abingdon, UK: Routledge-Cavendish, pp. 63-76.

Combs, N. (2018) 'Deconstructing the epistemic challenges to mass atrocity prosecutions', *Washington and Lee Law Review,* 75(1), pp. 223-300.

Connell, R.W. and Messerschmidt, J.W. (2005) 'Hegemonic masculinity: rethinking the concept', *Gender & Society,* 19 (6), pp. 829-859.

Copelon, R. (1998) 'Surfacing gender' in Stiglmayer, A. (ed.) *Mass rape: the war against women in Bosnia-Herzegovina*. Omaha, NE: University of Nebraska Press, pp. 197-218.

Copelon, R. (2000) 'Gender crimes as war crimes: integrating crimes against women into international criminal law', *McGill Law Journal,* 46, pp. 217.

Copelon, R. (2011) 'Toward accountability for violence against women in war: progress and challenges' in Heineman, E.D. (ed.) *Sexual violence in conflict zones: from the ancient world to the era of human rights*. Philadelphia, PA: University of Pennsylvania Press, pp. 232-256.

Copelon, R. and Kelly, P. (2003) 'Rape and gender violence: from impunity to accountability in international law', *Human Rights Dialogue,* 2 (10), pp. 21-22.

Crawford, K.F. (2013) 'From spoils to weapons: framing wartime sexual violence', *Gender & Development,* 21 (3), pp. 505-517.

Crawford, K.F. (2017) *Wartime sexual violence: from silence to condemnation of a weapon of war*. Washington DC: Georgetown University Press.

Cronin-Furman, K. (2013) 'Managing expectations: international criminal trials and the prospects for deterrence of mass atrocity', *International Journal of Transitional Justice,* 7 (3), pp. 434-454.

Dallman, A. (2009) *Prosecuting conflict-related sexual violence at the International Criminal Court*. Stockholm, Sweden: Stockholm International Peace Research Institute.

Davies, S.E. and True, J. (2015) 'Reframing conflict-related sexual and gender-based violence: bringing gender analysis back in', *Security Dialogue,* 46 (6), pp. 495-512.

Davies, S.E. and True, J. (2017a) 'Norm entrepreneurship in foreign policy: William Hague and the prevention of sexual violence in conflict', *Foreign Policy Analysis,* 13 (3), pp. 701-722.

Davies, S.E. and True, J. (2017b) 'The politics of counting and reporting conflict-related sexual and gender-based violence: the case of Myanmar', *International Feminist Journal of Politics,* 19 (1), pp. 4-21.

Denitch, B.D. (1996) *Ethnic nationalism: the tragic death of Yugoslavia*. Minneapolis, MN: University of Minnesota Press.

Department for International Development (DfID) (2017a); *Alistair Burt visits Bangladesh* [Press release]. 29 September.

Department for International Development (DfID) (2017b); "UK leads international support for Rohingya crisis at landmark conference [Press release]. 23 October.

Department of Population, Ministry of Immigration and Population, Republic of the Union of Myanmar (2015) *The 2014 Myanmar population and housing census – the union report – census report volume 2*. Department of Population, Ministry of Immigration and Population, Myanmar. pp. 12–15.

Dewey, S. & St Germain, T. (2012) 'Between global fears and local bodies: toward a transnational feminist analysis of conflict-related sexual violence', *Journal of International Women's Studies,* 13 (3), pp. 49-64.

Drumond, P. (2016) 'Conflict-related sexual violence' in Steans, J. and Tepe-Belfrage, D. (eds.) Handbook on Gender in World Politics, Cheltenham, UK: Edward Elgar Publishing, pp. 206-214.

Durham, H. & O'Byrne, K. 2010, 'The dialogue of difference: gender perspectives on international humanitarian law', *International Review of the Red Cross,* 92 (877), pp. 31-52.

Engle, K. (2015) 'Anti-impunity and the turn to criminal law in human rights', *Cornell Law review,* 100 (5), pp. 1069-1127.

Engle, K. (2016) 'Feminist legacies', *American Journal of International Law Unbound,* 110, pp. 220-226.

Enloe, C. (1989) *Bananas, beaches and bases*. London: Pandora Press.

Enloe, C. (2000) *Maneuvers: The international politics of militarizing women's lives*. Berkeley, CA: University of California Press.

Fairclough, N. (2013) *Critical discourse analysis: the critical study of language*. 2nd edn. New York: Routledge.

Fairclough, N., Mulderrid, J. and Wodak, R. (2011) 'Critical discourse analysis', in van Dijk, T.A. (ed.) *Discourse Studies,* London: Sage Publications, pp. 394-417.

Farwell, N. (2004) 'War rape: new conceptualizations and responses', *Affilia,* 19 (4), pp. 389-403.

Field, M. (2017); 'Burmese military to blame for humanitarian crisis facing Rohingya', Sky News, 14 November.

Field, M. and Foreign and Commonwealth Office (2017) *The Rohingya people of Rakhine State: UK government actions update [Press release*]. 29 November.

Finlan, A. (2014) *The collapse of Yugoslavia 1991–1999*. London: Bloomsbury Publishing.

Finnemore, M. & Sikkink, K. (2001) 'Taking stock: the constructivist research program in international relations and comparative politics', *Annual Review of Political Science,* 4 (1), pp. 391-416.

Fitzpatrick, B. (2016) *Tactical rape in war and conflict: international recognition and response*. Bristol, UK: Policy Press.

Fraser, N. & Nicholson, L. (1989) 'Social criticism without philosophy: an encounter between feminism and postmodernism', Social Text, 21, pp. 83-104.

Friedman, F. (1996) 'The Bosnian Muslims: denial of a nation', *Canadian-American Slavic Studies,* 31 (4), pp. 494-496.

G8 Foreign Ministers (2013) *G8 Foreign ministers' meeting statement*. 11 April. Available at: https://www.gov.uk/government/publications/g8-foreign-ministers-meeting-statement

Gaggioli, G. (2014) 'Sexual violence in armed conflicts: a violation of international humanitarian law and human rights law', *International Review of the Red Cross,* 96 (894), pp. 503-538.

Germain, T.S. and Dewey, S. (2013) 'Justice on whose terms? A critique of international criminal justice responses to conflict-related sexual violence', *Women's Studies International Forum*, 37, pp. 36-45.

Glass, N., Perrin, N., Clough, A., Desgroppes, A., Kaburu, F.N., Melton, J., Rink, A., Read-Hamilton, S., and Marsh, M. (2018) 'Evaluating the communities care program: best practice for rigorous research to evaluate gender-based violence prevention and response programs in humanitarian settings', *Conflict and Health,* 12 (1), pp. 1-10.

Glass, N., Perrin, N., Marsh, M., Clough, A., Desgroppes, A., Kaburu, F., Ross, B., and Read-Hamilton, S. (2019) 'Effectiveness of the communities care programme on change in social norms associated with gender-based violence (GBV) with residents in intervention compared with

control districts in Mogadishu, Somalia', *BMJ open,* 9 (3), Available at http://dx.doi.org/10.1136/bmjopen-2018-023819

Gottschall, J. (2004) 'Explaining wartime rape', *Journal of Sex Research,* 41 (2), pp. 129-136.

GOV.UK (2016); *PSVI BURMA WP1508-country-studies-Burma*. London: UK Foreign & Commonwealth Office.

GOV.UK, *Preventing Sexual Violence in Conflict Initiative: About Us*. Available at: http://www.gov.uk/government/organizatioins/preventing-sexual-violence-in-conflict-initiatiove/about (Accessed: 2018).

Gray, H. (2019) 'The 'war'/ 'not-war' divide: domestic violence in the preventing sexual violence initiative', *The British Journal of Politics and International Relations,* 21 (1), pp. 189-206.

Hagan, J. (2003) *Justice in the Balkans: prosecuting war crimes in the Hague Tribunal*. Chicago, IL: University of Chicago Press.

Hague, W. and Foreign and Commonwealth Office (2012) *Foreign Secretary launches new government initiative to prevent sexual violence in conflict* [Press release]. 29 May.

Hague, W. and UK Foreign & Commonwealth Office (2013a) *G8 UK Presidency: foreign ministers' meeting: progress report* [Press release]. 14 March.

Hague, W. and UK Foreign & Commonwealth Office (2013b) *Foreign Secretary's remarks on constructive G8 foreign meeting* [Press release]. 11 April.

Hague, W. and UK Foreign & Commonwealth Office (2013c) *"Statement to Parliament on the G8 foreign ministers meeting* [Press release]. 15 April.

Hague, W. and UK Foreign and Commonwealth Office (2014) *Preventing sexual violence in conflict: next steps* [Press release]. 14 July.

Hajdarpasic, E. (2015) *Another Bosnia*. Whose Bosnia?*: nationalism and political imagination in the Balkans*. Ithaca NY: Cornell University Press.

Halley, J. (2008) 'Rape at Rome: feminist interventions in the criminalization of sex-related violence in positive international criminal law', *Michigan Journal of International Law,* 30, pp. 1.

Hansen, L. (2000) 'Gender, nation, rape: Bosnia and the construction of security', *International Feminist Journal of Politics,* 3 (1), pp. 55-75.

Hansen, L. (2006) 'Discourse analysis, identity, and foreign policy' in Hansen, L. (ed.) *Security as practice: discourse analysis and the Bosnian war*, New York: Routledge, pp. 15-32.

Hansen, L. (2013) *Security as practice: discourse analysis and the Bosnian war*. 2nd edn. New York: Routledge.

Hay, C. (2016) 'Good in a crisis: the ontological institutionalism of social constructivism', *New Political Economy,* 21, (6), pp. 520-535.

Hayden, R.M. (2000) 'Rape and rape avoidance in ethno-national conflicts: sexual violence in liminalized states', *American Anthropologist,* 102 (1), pp. 27-41.

Haynes, D.F., Ni Aoláin, F. & Cahn, N. (2011) 'Criminal justice for gendered violence and beyond', *International Criminal Law Review,* 11 (3), pp. 425-443.

Heijmans, P.J. (2019a) 'ICC prosecutor calls for investigation Into Rohingya atrocities', *Bloomberg News,* 4 July.

Heijmans, P.J. (2019b) 'Aung San Suu Kyi defends Myanmar military against genocide charges, *Bloomberg News,* 11 December.

Heineman, E.D. (2011a) 'Introduction: the history of sexual violence in conflict zones', in *Sexual violence in conflict zones: from the ancient world to the era of human rights*. Philadelphia, PA: University of Pennsylvania Press, pp. 1-21.

Heineman, E.D. (2011b) *Sexual violence in conflict zones: from the ancient world to the era of human rights*. Philadelphia, PA: University of Pennsylvania Press.

Henry, N. (2011) *War and rape: law, memory, and justice*. New York*:* Routledge.

Henry, N. (2014) 'The Fixation on wartime rape: feminist critique and international criminal law', *Social & Legal Studies,* 23 (1), pp. 93-111.

Henry, N. (2016) 'Theorizing wartime rape: deconstructing gender, sexuality, and violence', *Gender & Society,* 30 (1.), pp. 44-56.

Hodge, A. (2020) 'Myanmar ordered. by ICJ to prevent genocide', *The Australian,* 24 January.

Hollis, M., and Smith, S. (1991) *Explaining and understanding international relations*. Oxford: Clarendon Press.

Hopf, T. (1998) 'The promise of constructivism in international relations theory', *International Security,* 23 (1), pp. 171-200.

Houge, A.B. and Lohne, K. (2017) 'End impunity! Reducing conflict-related sexual violence to a problem of law', *Law & Society Review,* 51 (4), pp. 755-789.

Hutchinson, S. (2018) 'Gendered insecurity in the Rohingya crisis', *Australian Journal of International Affairs,* 72 (1), pp. 1-9.

Inal, T. (2013) *Looting and rape in wartime: law and change in international relations*. Philadelphia, PA: University of Pennsylvania Press.

International Committee of the Red Cross (1949) *Geneva Conventions I, II, III, and IV (1949)*. Available at: https://www.icrc.org/en/doc/war-and-treaties-customary-law/geneva-conventions.htm

International Criminal Court (2019) *ICC Trial Chamber VI declares Bosco Ntaganda guilty of war crimes and crimes against humanity* [Press release]. 8 July.

International Criminal Tribunal for Rwanda (1998) *The Prosecutor v. Akayesu* (ICTR-96-4-I) (Judgement of ICTR-96-21-T).

International Criminal Tribunal for the former Yugoslavia (1998) *The Prosecutor v. Furundzija* (Judgement of ICTY-95-17/1).

International Criminal Tribunal for the former Yugoslavia (2001) *The Prosecutor v. Kunarac, Kovac, and Vukovic* (Judgement of ICTY -IT-96-23 and IT-96-23/1).

International Crisis Group Asia (2017) *Myanmar's Rohingya crisis enters a dangerous new phase*. Brussels: International Crisis Group.

Jaleel, R. (2013) 'Weapons of sex, weapons of war: feminisms, ethnic conflict and the rise of rape and sexual violence in public international law during the 1990s', *Cultural Studies,* 27 (1), pp. 115-135.

Jarvis, M. (2016) 'Overview: the challenge of accountability for conflict-related sexual violence crimes' in Brammertz, B.S. and Jarvis, M. (eds.) *Prosecuting conflict-related sexual violence at the ICTY*. Oxford: Oxford University Press.

Jo, H. and Simmons, B.A. (2016) 'Can the International Criminal Court Deter Atrocity?', *International Organization,* 70 (3), pp. 443-475.

Johnson, B. and Foreign & Commonwealth Office (2017) *Foreign Secretary comment on UN Security Council Presidential statement on Burma* [Press release]. 6 November.

Jovic, D. (2001) 'The disintegration of Yugoslavia: a critical review of explanatory approaches', *European Journal of Social Theory,* 4 (1), pp. 101-120.

Kappos, K.I. 2016, 'Current developments at the International Criminal Court', *Journal of International Criminal Justice,* 16 (2), pp. 425-488.

Kesic, O. (1999) 'Women and gender imagery in Bosnia: amazons, sluts, victims, witches, and wombs', in Ramat, S.P. (ed.) *Gender politics in the western Balkans: women and society in Yugoslavia and the Yugoslav successor states*. State College, PA: Penn State Press, pp. 187-202.

Keydar, R. (2019) 'Mass atrocity, mass testimony, and the quantitative turn in international law', *Law and Society Review,* 53 (2), pp. 554-587.

King, K.L. and Greening, M. (2007) 'Gender justice or just gender? The role of gender in sexual assault decisions at the international criminal tribunal for the former Yugoslavia', *Social Science Quarterly,* 88 (5), pp. 1049-1071.

Kinsella, H. (2003) 'For a Careful Reading: The Conservativism of Gender Constructivism', *International Studies Review,* 5 (2), pp. 294-302.

Kinsella, H.M. (2011) *The image before the weapon: a critical history of the distinction between combatant and civilian*. Ithaca, NY: Cornell University Press.

Kirby, P. (2015) 'Acting time; or, the abolitionist and the feminist', *International Feminist Journal of Politics,* 17 (3), pp. 508-513.

Kirby, P. (2015) 'Ending sexual violence in conflict: the Preventing Sexual Violence Initiative and its critics', *International Affairs,* 91 (3), pp. 457-473.

Kirby, P. and Shepherd, L.J. (2016) 'The futures past of the women, peace and security agenda', *International Affairs,* 92 (2), pp. 373-392.

Klot, J. (2015) 'The United Nations Security Council's agenda on 'Women, Peace and Security': bureaucratic pathologies and unrealised potential' (PhD thesis, London School of Economics and Politics). etheses.lse.ac.uk/view/creators/Klot=3AJennifer=3A=3A.html.

Klotz, A. and Lynch, C. (2007) *Strategies for research in constructivist international relation*. Armonk, NY: M.E. Sharpe.

Koo, K.L. (2002) 'Confronting a disciplinary blindness: women, war and rape in the international politics of security', *Australian Journal of Political Science,* 37 (3), pp. 525-536.

Koos, C. (2017) 'Sexual violence in armed conflicts: research progress and remaining gaps', *Third World Quarterly,* 38 (9), pp. 1935-1952.

Korać, M. (1996) 'Understanding ethnic-national identity and its meaning: questions from women's experience', *Women's Studies International Forum,* 19 (1-2), pp. 133-143.

Korać, M. (1998) 'Ethnic-nationalism, wars and the patterns of social, political and sexual violence against women: the case of post-Yugoslav countries', *Identities Global Studies in Culture and Power,* 5 (2), pp. 153-181.

Labonte, M. and Curry, G. (2016) 'Women, peace, and security: are we there yet?', *Global Governance: A Review of Multilateralism and International Organizations,* 22 (3), pp. 311-320.

Lamb, C. (2019) *Our bodies, their battlefield: what war does to women*. Glasgow: William Collins.

Lazar, M.M. (2007) 'Feminist critical discourse analysis: articulating a feminist discourse praxis', *Critical Discourse Studies,* 4 (2), pp. 141-164.

Lê, T. and Lê, Q. (2009) 'Critical discourse analysis: an overview', in Le, T., Le, Q., and Short, M. (eds.) *Critical discourse analysis: an interdisciplinary perspective*. Hauppauge, NY: Nova Science Publishers, pp. 2-15.

Leatherman, J. (2011) *Sexual violence and armed conflict*. Cambridge: Polity.

Lee, S. (2017) *Children born of war in the twentieth century*. Manchester, UK: Manchester University Press.

Locher, B. and Prügl, E. (2001) 'Feminism and constructivism: worlds apart or sharing the middle ground?', *International Studies Quarterly,* 45 (1), pp. 111-129.

MacKinnon, C.A. (1994) 'Rape, genocide, and women's human rights', *Harvard Women's Law Journal,* 17 (5), pp. 5-16.

MacKinnon, C.A. (2006) 'Defining rape internationally: a comment on Akayesu', *Columbia Journal of Transnational Law,* 44 (3), pp. 940-958.

Magocsi, P.R. (2018) *Historical atlas of Central Europe*. Toronto, ON: University of Toronto Press.

Mahmood, S.S., Wroe, E., Fuller, A. and Leaning, J. (2017) 'The Rohingya people of Myanmar: health, human rights, and identity', *The Lancet,* 389 (10081), pp. 1841-1850.

Mahtani, S. and Birnbaum, M. (2019) 'Suu Kyi defense of genocide charges may shock the West. But it bolsters her status at home.' Washington Post. 9 December

Malcolm, N. (1994) *Bosnia. A short history*. New York: NYU Press.

Malcolm, N. (1996) *Bosnia: A short history*. updated edn. New York: NYU Press.

Maloney, S.M. and Jackson, M. (2018) *Operation Kinetic*: *stabilizing Kosovo*. Lincoln, NE. University of Nebraska Press.

Maras, M. & Miranda, M.D. (2017) 'Overlooking forensic evidence? a review of the 2014 international protocol on the documentation and investigation of sexual violence in conflict', *Global Security: Health, Science and Policy,* 2 (1), pp. 10-21.

Mccarthy, G. and Menager, J. (2017) 'Gendered rumours and the Muslim scapegoat in Myanmar's transition', *Journal of Contemporary Asia,* 47 (3), pp. 396-412.

McGlynn, C. and Munro, V.E. (eds.) (2010) *Rethinking rape law: international and comparative perspectives*. New York: Routledge.

McLeod, L. (2016) 'The women, peace and security resolutions: UNSCR 1325 to 2122', in Steans J. and Tepe-Belfrage, D. (eds.) *Handbook on gender in world politics*. Cheltenham, UK: Edward Elgar Publishing, pp 271-279.

McMahon, P.C. and Miller, J.L. (2012) 'From Adjudication to aftermath: assessing the ICTY's goals beyond prosecution', *Human Rights Review,* 13 (4), pp. 421-442.

McWilliams, M. and Ni Aolain, F.D. (2013) "There is a war going on you know': addressing the complexity of violence against women in conflicted and post conflict societies', *Transitional Justice Review,* 1 (2), pp. 4-44.

Milićević, S.A. (2006) 'Joining the war: masculinity, nationalism and war participation in the Balkans war of secession, 1991–1995', *Nationalities Papers,* 34 (3), pp. 265-287.

Mostov, J. 1995, "Our womens'/'their womens' symbolic boundaries, territorial markers, and violence in the Balkans', *Peace & Change,* 20 (4), pp. 515-529.

Myrttinen, H. and Swaine, A. (2015) 'Monster myths, selfies and grand declarations: a conversation on the global summit to end sexual violence in conflict', *International Feminist Journal of Politics,* 17 (3), pp. 496-502.

Nagel, J. (1998) 'Masculinity and nationalism: gender and sexuality in the making of nations', *Ethnic and Racial Studies,* 21 (2), pp. 242-269.

Neville, F.G. (2015) 'Preventing violence through changing social norms', in Donnelly, P., and Ward, C. (eds.)*, Oxford textbook of violence prevention: epidemiology, evidence and policy*. Oxford: Oxford University Press, pp. 239-244.

Ní Aoláin, F. (2014) 'Gendered harms and their interface with international criminal law: norms, challenges and domestication', *International Feminist Journal of Politics,* 16 (4), pp. 622-646.

Ni Aolain, F. (2015) 'Feminism facing international law', *European Journal of Women's Studies,* 22 (4), pp. 457-462.

Ní Aoláin, F. (2016) 'The 'war on terror' and extremism: assessing the relevance of the women, peace and security agenda', *International Affairs,* 92 (2), pp. 275-291.

Ni Aolain, F.D. (2014) 'The gender politics of fact-finding in the context of the women, peace and security agenda', in Alston P. and Knuckey, S. (eds.) *The Future of Human Rights Fact-Finding*. Oxford: Oxford University Press, pp. 14-31.

Niarchos, C.N. (1995) 'Women, war, and rape: challenges facing the international tribunal for the former Yugoslavia', *Human Rights Quarterly,* 17 (4), pp. 649-690.

Niarchos, C.N. (1995) 'Women, war, and rape: challenges facing the International Tribunal for the Former Yugoslavia', *Human Rights Quarterly*, 17 (4), pp. 649–690.

Nicholson, L. (1994) 'Feminism and the politics of postmodernism', in Ferguson, M., and Wicke, J. (eds) *Feminism and postmodernism*, Durham, NC: Duke University Press, pp.69-87.

Nye, J.S. (1999) *Understanding international conflicts,* London: Longman.

O'Rourke, C. (2017) 'Feminist strategy in international law: understanding its legal, normative and political dimensions', *European Journal of International Law,* 28 (4), pp. 1019-1045.

Oberschall, A. (2007) *Conflict and peace building in divided societies: responses to ethnic violence*. New York: Routledge.

Office of the Prosecutor, International Criminal Court, (2014) 'Policy paper on sexual and gender based crimes – ICC outlines policies to improve prosecutorial outcomes.', *Harvard Law Review,* 128 (2), pp. 793-801.

Olujic, M.B. (1998) 'Embodiment of terror: gendered violence in peacetime and wartime in Croatia and Bosnia-Herzegovina', *Medical Anthropology Quarterly,* 12 (1), pp. 31-50.

Onuf, N. (1989) *Making sense, making worlds: constructivism in social theory and international relations. New York:* Routledge.

Onuf, N. (2012) *World of our making: rules and rule in social theory and international relations*. New York: Routledge.

Onuf, N. (2013) *Making sense, making worlds: constructivism in social theory and international relation*. 3rd edn. New York: Routledge.

Oosterveld, V. (2005) 'The Definition of gender in the Rome Statute of the International Criminal Court: A step forward or back for international criminal justice', *Harvard Human Rights Journal,* 18, pp. 55.

Papic, Z. (1999) 'Women in Serbia: post-communism, war, and nationalist mutations', in Ramet, S.P. (ed.) *Gender politics in the western Balkans: women and society in Yugoslavia and Yugoslav successor states*. State College, PA: Penn State Press, pp. 153-169.

Parnini, S.N. (2013) 'The crisis of the Rohingya as a Muslim minority in Myanmar and bilateral relations with Bangladesh', *Journal of Muslim Minority Affairs,* 33 (2), pp. 281-297.

Pedersen, M.B. (2019) 'The ICC, the Rohingya and the limitations of retributive justice', *Australian Journal of International Affairs,* 73 (1), pp. 9-15.

Perrin, N., Marsh, M., Clough, A., Desgroppes, A., Phanuel, C.Y., Abdi, A., Kaburu, F., Heitmann, S., Yamashina, M. & Ross, B. (2019) 'Social norms and beliefs about gender based violence scale: a measure for use with gender based violence prevention programs in low-resource and humanitarian settings', *Conflict and Health,* 13 (1), pp. 1-12.

Peterson, V.S. (1998) 'Feminisms and international relations', *Gender & History,* 10 (3), pp. 581-589.

Pouliot, V. (2007) "Subjectivism': toward a constructivist methodology', *International Studies Quarterly,* 51 (2), pp. 359-384.

Pruitt, L. (2012) 'Looking back, moving forward: international approaches to addressing conflict-related sexual violence', *Journal of Women, Politics & Policy,* 33 (4), pp. 299-321.

Ramet, S.P. (ed.) (1999) *Gender politics in the western Balkans: women and society in Yugoslavia and the Yugoslav successor states*. State College, PA: Penn State Press.

Read-Hamilton, S. and Marsh, M. (2016) 'The communities care programme: changing social norms to end violence against women and girls in conflict-affected communities', *Gender & Development,* 24 (2), pp. 261-276.

Reilly, N. (2018) 'How ending impunity for conflict-related sexual violence overwhelmed the UN women, peace, and security agenda: a discursive genealogy', *Violence Against Women,* 24 (6), pp. 631-649.

Rejali, D.M. (1996) 'After feminist analyses of Bosnian violence', *Peace review,* 8 (3), pp. 365-371.

Rittner, C. & Roth, J.K. (2012) *Rape: weapon of war and genocide*. St. Paul, MN: Paragon House

Rogel, C. & Poirier, C.R. (2004) *The breakup of Yugoslavia and its aftermath*. Westport, CT: Greenwood Publishing Group.

Rogers, S. (2015) 'Sexual violence or rape as a constituent act of genocide: lessons from the ad hoc tribunals and a prescription for the International Criminal Court', *The George Washington International Law Review,* 48 (2), pp. 265-314.

Rubin, M. (2016) *Kurdistan Rising*? Washington, DC: American Enterprise Institute.

Saha, A. (2009) 'Rape as a war crime: the position of international law since World War II', *Journal of East Asia & International Law,* 2, pp. 497.

Savigny, H. & Marsden, L. (2011) *Doing political science and international relations: theories in action*. New York, NY: Macmillan International Higher Education.

Schenck, K.P. (2014) *Gender constructions and the logic of wartime rape*. M.A. Thesis. University of Kent.

Schissler, M., Walton, M.J. and Thi, P.P. (2017) 'Reconciling contradictions: Buddhist-Muslim violence, narrative making and memory in Myanmar', *Journal of Contemporary Asia,* 47 (3), pp. 376-395.

Seifert, R. (1996) 'The second front: the logic of sexual violence in wars', *Women's Studies International Forum,*19 (1), pp. 35-43.

Shaw, M.N. (2012) *International law*. 5th edn. Cambridge: Cambridge University Press.

Shepherd, L.J. (2008) 'Power and authority in the production of United Nations Security Council Resolution 1325', *International Studies Quarterly,* 52 (2), pp. 383-404.

Shepherd, L.J. (2008) *Gender, violence and security: discourse as practice*. London: Zed Books Ltd.

Shepherd, L.J. (2010) 'Women, armed conflict and language–gender, violence and discourse', *International Review of the Red Cross,* 92 (877), pp. 143-159.

Shteir, S. (2014) *Conflict-related sexual and gender-based violence*. Canberra: Australian Civil-Military Centre.

Sjoberg, L. (2009) 'Introduction to security studies: feminist contributions', *Security Studies,* 18 (2), pp. 183-213.

Sjoberg, L. (2013) *Gendering global conflict: toward a feminist theory of war*. New York: Columbia University Press.

Sjoberg, L. (2014) *Gender, war, and conflict*. Cambridge: John Wiley & Sons.

Sjoberg, L. & Peet, J. (2011) 'A(nother) dark side of the protection racket: targeting women in wars', *International Feminist Journal of Politics,* 13 (2), pp. 163-182.

Skjelsbaek, I. (2001) 'Sexual violence and war: mapping out a complex relationship', *European Journal of International Relations,* 7 (2), pp. 211-237.

Skjelsbæk, I. (2012) 'Responsibility to protect or prevent? victims and perpetrators of sexual violence crimes in armed conflicts', Global Responsibility to Protect, 4 (2), pp. 154-171.

Smith, S. (1997) 'Power and truth; a reply to William Wallace', *Review of International Studies,* 23 (4), pp. 507-516.

Snyder, C.S., Gabbard, W.J., May, J.D. & Zulcic, N. (2006) 'On the battleground of women's bodies: mass rape in Bosnia-Herzegovina', *Affilia,* 21 (2), pp. 184-195.

Sofos, S.A. (1996) 'Inter-ethnic violence and gendered constructions of ethnicity in former Yugoslavia', *Social Identities,* 2 (1), pp. 73-92.

Solangon, S. & Patel, P. (2012) 'Sexual violence against men in countries affected by armed conflict', Conflict, Security & Development, 12 (4), pp. 417-442.

Southwick, K. (2015) 'Preventing mass atrocities against the stateless Rohingya in Myanmar: a call for solutions', *Journal of International Affairs,* 68 (2), pp. 137-XVIII.

Spangaro, J., Adogu, C., Ranmuthugala, G., Davies, G.P., Steinacker, L. and Zwi, A. (2013) 'What evidence exists for initiatives to reduce risk and incidence of sexual violence in armed conflict and other humanitarian crises? A systematic review', *PLOS ONE,* 8 (5), pp. 6-26.

St. Germain, T. and Dewey, S. (2012) *Conflict-related sexual violence: international law, local responses*. Sterling, VA: Kumarian Press.

St. Germain, T. and Dewey, S. (2013) 'Justice on whose terms? a critique of international criminal justice responses to conflict-related sexual violence', *Women's Studies International Forum,* 37, pp. 36-45.

Steans, J. (2003) 'Engaging from the margins: feminist encounters with the 'mainstream' of international relations', *The British Journal of Politics and International Relations,* 5 (3), pp. 428-454.

Steans, J. (2006) *Gender and international relations: issues, debates and future directions*. Cambridge: Polity.

Steans, J. (2013) Gender and international relations: theory, practice, policy, 3rd edn. Cambridge, UK: Polity Press, 2013.

Steans, J. and Tepe-Belfrage, D. (2016) *Handbook on gender in world politics*. Cambridge: Edward Elgar Publishing.

Stiglmayer, A. (1994) *Mass rape: the war against women in Bosnia-Herzegovina*. Omaha, NE: University of Nebraska Press.

Swaine, A. (2015) 'Beyond strategic rape and between the public and private: violence against women in armed conflict', *Human Rights Quarterly,* 37, pp. 755.

Swire, H. (2014a); *Burma: sexual violence– Minister of State letter*. 1 July. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/329720/Hugo_Swire_letter_on_sexual_violence_in_Burma.pdf

Swire, H. and UK Foreign & Commonwealth Office (2014b) *Foreign Office Minister welcomes UN General Assembly Resolution on Human Rights in Burma* [Press release]. 22 November.

Swire, H. and UK Foreign & Commonwealth Office (2015); *Hugo Swire responds to letters on sexual violence in Burma -Minister of State Letter* [Press release]. 8 January.

Taylor, R.H. 2007, 'British policy towards Myanmar and the creation of the 'Burma problem', in Ganesan, N. and Kyaw, Y. H. (eds.) *Myanmar: state, society and ethnicity*. Singapore: ISEAS-Yusof Ishak Institute, pp. 70-95.

Thomas, D.Q. and Ralph, R.E. (1999) 'Rape in war: the case of Bosnia', in Ramet, S.P. (ed.) *Gender politics in the western Balkans: women and society in Yugoslavia and the Yugoslav successor state*. State College, PA: Penn State Press, pp. 203-218.

Tickner, J.A. and True, J. (2018) 'A century of international relations feminism: from World War I women's peace pragmatism to the women, peace and security agenda', *International Studies Quarterly,* 62 (2), pp. 221-233.

Totani, Y. (2011) 'Legal responses to World War II sexual violence: the Japanese experience', in Heineman, E.D. (ed.) *Sexual violence in conflict zones*. Philadelphia, PA: University of Pennsylvania Press, pp. 217-231.

True, J. and Davies, S.E. (2017) 'Ending sexual violence in conflict: what can UK efforts tell us', *IPI Global Observatory,* 29 March. Available at: htrtps://the globalobservatory.org/2017/03/sexual-violence-conflict-sri-lanka/

Turan, G. (2017) 'The identity of 'the other' for sexual violence victims: is there anything new in sexual violence prosecutions before the International Criminal Court?', *Journal of Gender Studies,* 26 (6), pp. 662-674.

UK Delegation to the Organization for Security and Co-operation in Europe (OSCE) (2016) *Intervention on preventing sexual violence in conflict* - Baroness Anelay speech [Press release]. 21 July.

UK Foreign & Commonwealth Office (2013) 2012 *Human rights and democracy report*. London: UK Foreign & Commonwealth Office.

UK Foreign & Commonwealth Office (2014a) *2013 Human rights and democracy report*. London: UK Foreign & Commonwealth Office.

UK Foreign & Commonwealth Office (2014b) *Burma - country of concern: report taken from the 2013 human rights and democracy report*. London: UK Foreign & Commonwealth Office.

UK Foreign & Commonwealth Office (2014c) *Burma - country of concern:* latest update, 31 March 2014. London: Foreign & Commonwealth Office.

UK Foreign & Commonwealth Office (2014d) *Burma - country of concern: latest update, 30 June 2014*. London: UK Foreign & Commonwealth Office.

UK Foreign & Commonwealth Office (2014e) *Burma - country of concern: latest update, 30 September 2014*. London: UK Foreign Office & Commonwealth Office.

UK Foreign & Commonwealth Office (2014f) *Burma - country of concern, latest update 31 December 2014*. London: UK Foreign & Commonwealth Office.

UK Foreign & Commonwealth Office (2014g) *International protocol on the documentation and investigation of sexual violence in conflict*. London: UK Foreign & Commonwealth Office.

UK Foreign & Commonwealth Office (2014h) *The plight of the Rohingya*: *a case study from the 2013 human rights and democracy report*. London: UK Foreign & Commonwealth Office.

UK Foreign & Commonwealth Office (2014i) *PSVI UK Team of Experts*. London: UK Foreign & Commonwealth Office.

UK Foreign & Commonwealth Office (2014j) *Responding to sexual violence in Burma*: *case study from the 2013 human rights and democracy report*. London: UK Foreign & Commonwealth Office.

UK Foreign & Commonwealth Office (2014k) *Summit report: the global summit to end sexual violence in conflict*. London: UK Foreign & Commonwealth Office.

UK Foreign & Commonwealth Office (2014l) *UK Activities in Burma*. London: UK Foreign & Commonwealth Office.

UK Foreign & Commonwealth Office (2014m); *UK national action plan on women, peace and security 2014-2017*. London: Foreign & Commonwealth Office.

UK Foreign & Commonwealth Office (2014n) U*K national action plan on women, peace and security 2014-2017*: *country-level implementation plan*. London: UK Foreign & Commonwealth Office.

UK Foreign & Commonwealth Office (2015); *2010 to 2015 government policy: sexual violence in conflict*. London: UK Foreign & Commonwealth office.

UK Foreign & Commonwealth Office (2016a) *Baroness Anelay opens conference on tackling the stigma of sexual violence*. [Press release]. 28 November.

UK Foreign & Commonwealth Office (2016b) *Baroness Anelay promotes human rights on first visit to South Asia*. [Press release]. 28 November.

UK Foreign & Commonwealth Office (2016c); *Report to Parliament: UK national action plan on women, peace and security 2014-2017*. London: UK Foreign & Commonwealth Office.

UK Foreign & Commonwealth Office (2017a) *International protocol on the documentation and investigation of sexual violence in conflict: basic standards of best practice of the documentation of sexual violence as a crime under international law; 2nd edn*. London: UK Foreign & Commonwealth Office.

UK Foreign & Commonwealth Office (2017b) *Principles for global action: preventing and addressing stigma associated with conflict-related sexual violence*. London: UK Foreign & Commonwealth Office.

UK Foreign & Commonwealth Office (2017c) *Report to Parliament: UK national action plan on women, peace and security 2014-2017*. London: UK Foreign & Commonwealth Office.

UK Foreign & Commonwealth Office (2017d) *Sexual violence abuses against the Rohingya in Burma*. London: UK Foreign & Commonwealth Office.

UK Foreign & Commonwealth Office (2017e) *UK continues to lead on preventing sexual violence in conflict*. London: UK Foreign & Commonwealth Office.

UK Foreign & Commonwealth Office (2018) *Sexual and gender based violence assessment: Dhaka and Cox's Bazar Bangladesh, November 2017*. London: UK Foreign & Commonwealth Office.

Ullah, A.K.M. (2016) 'Rohingya crisis in Myanmar: seeking justice for the "stateless"', *Journal of Contemporary Criminal Justice,* 32 (3), pp. 285-301.

UN General Assembly (1998) *Rome Statute of the International Criminal Court (last amended 2010)*. New York: UN General Assembly. Available at: https://www.icc-cpi.int/resourcelibrary/official-journal/rome-statute.aspx

UN General Assembly (2013); *General Assembly Resolution 68/242 on situation of human rights in Myanmar*, 24 December.

UN Security Council (1992) *Security Council resolution 780 on the former Yugoslavia – international humanitarian law*, 6 October.

UN Security Council (1994) *Final report of the commission of experts established pursuant to security council resolution 780 (1992)*, 27 May.

UN Security Council (2000) *Security Council resolution 1325 on women and peace and security – women in armed conflict,* 31 October.

UN Security Council (2008) *Security Council resolution 1820 on women and peace and security - acts of sexual violence against civilians in armed conflicts,* 19 June.

UN Security Council (2010) *Security Council resolution 1960 on women peace and security – preventing sexual violence in armed conflict*, 16 December.

UN Security Council (2013) *Security Council resolution 2106 on women and peace and security – sexual violence in armed conflict*, 24 June.

United Nations Children's Fund (UNICEF) (2014) 'Communities care: transforming lives and preventing violence toolkit', Available at: https://inee.org/syustem/files/resources/CC Toolkit Introduction.pdf

United Nations Children's Fund (UNICEF) (2017) *Communities Care: Transforming Lives and* Preventing *Violence*. New York: United Nation.

Vojdik, V.K. (2013) 'Sexual violence against men and women in war: a masculinities approach', Nevada Law Journal, 14, pp. 923-952.

Wallace, W. (1996) 'Truth and power, monks and technocrats: theory and practice in international relations', *Review of International Studies,* 22 (3), pp. 301-321.

Weiner, P. (2013) 'The evolving jurisprudence of the crime of rape in international criminal law', *Boston College Law Review,* 54, (3) pp. 1207-1236.

Weitsman, P.A. (2008) 'The politics of identity and sexual violence: a review of Bosnia and Rwanda', *Human Rights Quarterly*, 30 (3), pp. 561–578.

Wendt, A. (1998) 'On constitution and causation in international relations', *Review of International Studies,* 24 (5), pp. 101-118.

Wendt, A. (1999) *Social theory of international politics*. Cambridge: Cambridge University Press.

Wendt, A. and Fearon, J. (2002) 'Rationalism v. constructivism: a sceptical view', in Carlsnaes, W., Risse, T. and Simmons, B.A. (eds.) *Handbook of international relations*. London: SAGE Publications, pp. 52-72.

Wheeler, S. (2017) '*All of my body was pain': sexual violence against Rohingya women and girls in Burma*. New York: Human Rights Watch.

Wintour, P. (2016) 'Plan to tackle sexual violence during wars 'at risk without William Hague'', *The Guardian,* 12 April.

Wodak, R. and Meyer, M. (2009) *Methods for critical discourse analysis*. London: SAGE Publications.

Wood, E.J. (2006) 'Variation in sexual violence during war', *Politics & Society,* 34 (3), pp. 307-342.

Wood, E.J. (2009) 'Armed groups and sexual violence: when is wartime rape rare?', *Politics & Society,* 37 (1), pp. 131-161.

Wood, E.J. (2014) 'Conflict-related sexual violence and the policy implications of recent research', *International Review of the Red Cross,* vol. 96, no. 894, pp. 457-478.

Wood, E.J. (2016) 'Conflict-related sexual violence and the policy implications of recent research', *Estudios Socio-Jurídicos,* 18(2), pp. 13-46.

Wood, L.A. and Kroger, R.O. (2000) *Doing discourse analysis: methods for studying action in talk and text*. London: SAGE Publications.

World Health Organization (WHO), United Nations Office on Drugs and Crime (UNODC), and United Nations Action Against Sexual Violence in Conflict (UNAASVC) (2015) Strengthening the medico-legal response to sexual violence. Geneva: World Health Organization. Available at: https://www.who.int/reproductivehealth/publications/violence/medico-legal-response/en/

World Population Review (2019) *World Population Review*. Available at: https://worldpopulationreview.com/countries/myanmar-population (Accessed: July 2019).

Yuval-Davis, N. (1997) *Gender and nation*. London: SAGE Publications.

Yuval-Davis, N. (2001) 'Contemporary Agenda for the study of ethnicity', *SAGE perspectives* 1 (1), pp. 11-13.

Yuval-Davis, N. (2004) 'Gender, the nationalist imagination, war, and peace', in Giles, W. and Hyndman, J. (eds.) *Sites of violence: gender and conflict zones*. Berkeley, CA: University of California Press.

Zalewski, M. (1995) 'Well, what is the feminist perspective on Bosnia?', *International Affairs,* 71 (2), pp. 339-356.

Zalewski, M. (2003) '"Women's troubles" again in IR', *International Studies Review,* 5 (2), pp. 291-302.

Zarni, M. and Cowley, A. (2014) 'The slow-burning genocide of Myanmar's Rohingya', *Pacific Rim Law & Policy Journal,* 23 (3), pp. 683-754.

Zawacki, B. (2013) 'Defining Myanmar's Rohingya problem', *Human Rights Brief,* 20 (3) pp. 18-25.

Zehfuss, M. 2002, *Constructivism in international relations: the politics of reality*. Cambridge: Cambridge University Press.