Columbia University
Graduate School of Arts & Sciences
Human Rights Studies Master of Arts Program

Rethinking Gendered Violence as Genocidal Violence:
Examining the Nexus of Sexual Violence and Genocide in International Criminal Law

Aditi Shetty

Thesis Advisor: Bruce L. Cronin
Submitted in partial fulfillment of the
Requirements for the degree of
Master of Arts

May 2022

Table of Contents

Abstract ii

Introduction 1

Approach and Methodology 5

The Evolution of Sexual Violence as an International Crime 8

The Structural Paradigm of "Rape as a Tool of War" 14

Defining Conflict-Related Sexual Violence in International Criminal Law 18

Sexual Violence as Genocidal Violence: Revisiting the Former Yugoslavia and Rwanda 23

Situating the Paradigm: Analyzing Genocidal Sexual Violence in Darfur and Beyond 33

Bibliography 43

Abstract

One of the most significant social, political, and legal developments in contemporary international human rights has been the recognition of the specific gendered impacts of war and armed conflict. The convergence of transnational feminist advocacy with the conflicts in the former Yugoslavia and the Rwandan genocide in the 1990s gave rise to a legal regime that shaped the ways in which women and their experiences of war could be understood as a matter of international security. Against the historic neglect of women's rights in the international human rights regime, the recognition of sexual violence in conflict has emerged at the dominant frame through which international politics perceives and understands women's specific experiences of conflict. In this context, conflict-related sexual violence has come to be seen as a hallmark indicator specifically of genocide, which itself is a deeply contested frame for political violence. In this project, I examine the embeddedness of gendered violence within the frame of genocide and how this elides the more nuanced realities of gender and conflict in ways that undermine the broader normative goals of international criminal law. I trace the development of sexual violence as an international crime, focusing on the *Akayesu* and *Kunarac* cases at the ICTR and ICTY respectively. I then turn to the ICC developments on the Darfur conflict to develop an analysis about what the concept of genocidal rape enables and forecloses in international politics and human rights.

Introduction

In 2018, the Norwegian Nobel Committee awarded Nadia Murad and Denis Mukwege the Nobel Peace Prize "for their efforts to end the use of sexual violence as a weapon of war and armed conflict."[1] Indeed, the press release announcing the award recognizes Murad and Mukwege as promoting a more peaceful world that "can only be achieved if women and their fundamental rights and security are recognized and protected in war."[2] By then, Murad in particular had become the prominent face of the Yezidi people, whose victimization at the hands of the Islamic State in 2014 had come to signify the brutality and danger of the militant group. Working with lawyer Amal Clooney, Murad has briefed the United Nations Security Council (UNSC) on human trafficking and conflict, served as a United Nations Goodwill Ambassador, and published a memoir recounting her experiences under the Islamic State's captivity and eventual escape. That Murad, along with Mukwege, was eventually awarded the Nobel Prize seemed not only to solidify her status as an international feminist symbol for human rights but also to culminate a decades-long effort to recognize sexual violence as the ultimate form of gendered violence in situations of war and armed conflict.

Arguably, the Nobel Prize represents a watershed moment, one of global recognition for the specific and gendered harms that women experience during times of conflict. For women's rights activists who had long fought for the inclusion of women's issues on the global and transnational human rights agenda, such a recognition of "rape as a tool of war" seems a landmark victory. But the fact that women's experiences of conflict are largely confined to rape and other forms of sexual harm indicates a glaring issue with the global and transnational human rights

[1] The Nobel Prize, "The Nobel Prize for 2018," last modified October 5, 2018, https://www.nobelprize.org/prizes/peace/2018/press-release/.
[2] Ibid.

movement, particularly since entire frameworks and institutions concerned with human rights devote significant attention and resources to the issue of sexual violence in conflict. What consequences does the emphasis on sexual harm have not only on our understanding of how women experience conflict but also on the very women who navigate the complexities of war every day? This is the primary concern of the project undertaken here.

It is common knowledge that women are not simply just passive victims of sexual harm during war; during the civil war in Sri Lanka that lasted for more than twenty-five years for example, women played a significant role in the ranks of the Liberation Tigers of Tamil Eelam (LTTE, or more commonly the Tamil Tigers). Women gradually moved from roles focused on recruitment, propaganda, medical care, and fundraising to ones directly involved in militancy, including suicide bombings.[3] Similarly, women have played an active role in the Islamic State in various capacities, while more recently, women in Ukraine have taken up arms to join the military resistance against Russia's invasion in February 2022. If women are known to have more complex experiences of conflict other than sexual harm, why then has sexual violence in conflict remained the pervasive framework by which the international community comes to understand gendered experiences of war?

Engle traces an expansive genealogy of how feminists and activists played an instrumental role in influencing and shaping the primacy of sexual violence in conflict in the international human rights and international law discourse and praxis concerned with women's rights.[4] That sexual violence—specifically rape—became the prominent and dominant form of gendered violence recognized within international institutions reflects as much the structural embeddedness

---

[3] Kim Wall and Mansi Choksi, "A Chance to Rewrite History: The Women Fighters of the Tamil Tigers," *Longreads*, May 2018, https://longreads.com/2018/05/22/a-chance-to-rewrite-history-the-women-fighters-of-the-tamil-tigers/.
[4] Karen Engle, *The Grip of Sexual Violence in Conflict* (Stanford: Stanford University Press, 2020).

and institutionalization of essentialized notions of gender, sex, sexuality, and ethnicity as it does the tactical choices made by feminists concerned primarily with the sexual domination of women by men as the defining issue of the international feminist agenda around women's rights. As a result, feminists concerned with women's rights as implicated in economic inequality, resource maldistribution, and imperialism—in general, though not exclusively, concerns of activists and feminists outside the global hegemonic powers—were overtaken by the "hyper-attention to sexual harm in considerations of gender and armed conflict."[5]

Given the centrality of the law in the human rights framework and how it functions, international law and its attendant mechanisms served as one of the sites of this negotiation, contestation, and institutionalization. As Engle notes, "because human rights law excluded the private, or domestic, sphere from its scope—the very space in which women were presumed to operate—it could not include women," meaning that the push to integrate women's issues into the human rights framework needed to bring women's issues to the forefront in way that both brought the private into the public and captured international attention within the existing and hegemonic imaginary of how women were and could be violated.[6] The resulting mainstream appeal of "rape as a tool of war" has given rise to an entire industry within international politics and human rights devoted to the monitoring and regulation of sexual violence, particularly in conflict.

The breakup of the former Yugoslavia and its accompanying wars and the genocide in Rwanda served as the basis upon which dominance feminists could assert sexual violence as the defining women's issue in human rights discourse. That sexual violence was perceived to be widespread in the conflicts in the former Yugoslavia and Rwanda paved the way for sexual violence in conflict to become entrenched as an international crime necessitating political and legal

[5] Engle, *The Grip of Sexual Violence in Conflict*, 12.
[6] Ibid, 24.

attention and resources, first through the international criminal tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), then the Rome Statute that established the International Criminal Court (ICC), and finally the Women, Peace, and Security (WPS) agenda.[7] As such, sexual violence in conflict not only became the dominant issue that shaped the international women's rights agenda but eventually came to be framed as *genocidal* violence in a way that has influenced international politics concerned with subsequent conflicts in Sudan, the Democratic Republic of the Congo, Iraq, Libya, Myanmar, and Ethiopia.

The evolution of sexual violence as the dominant agenda of the human rights framework as it concerns women's rights provides the foundation upon which the research undertaken here rests. Specifically, the central concern is not whether international law adequately responds to sexual violence in conflict or whether it elides the complexities of gendered violence in situations of armed conflict. In fact, it makes no evaluation of the former and takes the latter as a given. Rather, this research is interested *how* the structures, institutions, and processes of international law perpetuate what Engle refers to as the "common sense" of sexual violence and how this implicates international criminal law, the main body of law that adjudicates sexual violence in conflict. That is, understanding how international criminal law's structures and processes address the issue of sexual violence is a way of examining how the emphasis on the *spectacular* nature of mass violence in international justice accounts for the *everyday* dimensions of this violence, as well as the consequences this has for the achievement of normative goals in international criminal law.

The primary aim of this research then is to contribute scholarship that aims to surface some of the contradictions of the international human rights framework. This serves as a means of

[7] Engle, *The Grip of Sexual Violence in Conflict*, 12.

elucidating the tensions between human rights as a dominant and entrenched vision of social justice and the local realities of how human rights structures and norms play out in the lived realities of people facing marginalization, persecution, and violence. Existing research along these lines are the crucial foundation upon which the research here rests and seeks to build.

Approach and Methodology

My intention with this work is neither to dismiss wholesale international criminal law or its institutions and practitioners nor to suggest their irrelevance or inefficacy as a legitimate means of redress in the face of mass atrocity. International criminal law, though relatively young in the course of international history, has proven an important space of validation and contestation for communities affected by horrific violence. I also do not intend to suggest that sexual violence in conflict does not occur or that the experiences of those who have experienced such violence do not matter. On the contrary, my goal is to show that the institutionalization of sexual violence in international criminal law may actually lead to outcomes contrary to the goals of the well-intentioned institutions behind a legal regime designed to deliver justice and accountability for grave crimes.

First, I trace the history of how sexual violence came to be construed as an international crime against the backdrop of genocidal violence. This background then supports an examination of how international criminal law institutions and processes address the issue of sexual violence in conflict, looking at specific international situations where sexual violence allegedly comprised one element of genocidal campaigns. I revisit the Yugoslav Wars and Rwandan genocide as the seminal moment for the international attention to wartime sexual violence before turning to more contemporary cases. The final section undertakes an analysis of these approaches and their implications for the achievement of the goals of the international community as articulated through

international criminal law, examining how the international criminal legal framework dealt with Darfur, where the ongoing conflict has been referred to as a genocide and where sexual violence has occurred concurrent to and within the context of that violence. In short, I hope to examine a very specific and narrow element of the international human rights regime as a means of contributing to a growing body of work interested in the complexities and contradictions of a universalized framework for social justice. As such, the work here employs existing scholarship from a variety of disciplines to examine and analyze the epistemic processes of adjudicating sexual violence in conflict and their implications as a mode of achieving justice and accountability.

While the central focus of this research is the legal architecture governing sexual violence in conflict, the analysis itself is not a legal one. I draw from Hannah Arendt, Nancy Scheper-Hughes, and Gregory Stanton to shape a critique of the legal framework, examining the focus on the spectacular at the expense of the everyday to advance the analysis. I do cite legal scholars to develop the history and background of wartime sexual violence as a legal prohibition; I also cite scholars of legal expressivism to articulate an understanding of the normative aims of international criminal law. Generally speaking, however, I am more interested in forming a feminist critique of the ways in which international criminal law functions and how it achieves its normative goals. Thus, the rich feminist literature on sexual violence as a matter of international human rights has shaped much of my thinking on this issue and also informs a great deal of my analysis here.

Equally as important as articulating the approach used for this project is an explanation of the methodologies not employed. Merry, in examining the process and politics behind "vernacularization" of human rights, implicates the role of translators, or those who serve to interpolate local realities within the established imaginaries of international human rights.[8] As a

[8] Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006), 219.

scholar and researcher in the field of human rights, a core element of my praxis is understanding my own positionality within my work. It is not my intent to speak for or on behalf of any particular people or experiences—to undertake a process of translation in Merry's conception. Indeed, there are many scholars, particularly those outside global spheres of power, who are foregrounding the experiences and stories of their own peoples and communities. Of course, it may be inevitable to avoid complicity in processes of translation entirely given the power structures that influence how research is conducted and validated, especially in academia. But my intention with the research design of this project—particularly given the subject matter focus on sexual violence—was to consider methods that did not reassert the simplistic and voyeuristic frames that are in some ways the critique of this research.

In short, the underlying goal of the research design at the heart of this project is to ground my work in ways that are rooted in an ethics of care. Despite having extensive training and experience in survivor-centered care for victims of gendered violence and trauma-informed interviewing, I have chosen not to conduct interviews with survivors of gendered violence for the purposes of this research. To a degree, this is a missed opportunity to foreground the voices and experiences of survivors. But it is my belief and experience that interviewing is a deeply personal and intimate act that requires a shared relationality built on mutual trust, compassion, and respect between the interviewer, participant, and the participant's wider community, however defined by the participant. Building the core relational foundations for successful interviewing takes immersive time, care, and attention that are not necessarily feasible within the bounds of a Masters graduate degree. I acknowledge that the absence of testimonial research may be viewed as a limitation to the scope of this research and the rigor of the analysis that flows from the research, but the ethical considerations at the heart of my chosen research approach—which also took into

account the ethics and complexities of conducting research during the global COVID-19 pandemic—presented an opportunity to think critically about the kinds of questions I was asking about the issue of gendered violence in conflict and how to try and answer those questions in ways that were both academically rigorous and ethically sound.

The Evolution of Sexual Violence as an International Crime

Sexual violence, most often construed as rape but encompassing a wide range of behaviors, has taken place during wars and conflicts throughout history, with research indicating that rape in fact occurs during all wars.[9] This is not to say that sexual violence occurs on the same scope or at the same scale across conflicts nor that the motivations for or factors contributing to the perpetration of such violence are the same within a given conflict or across conflicts. Incidents of sexual violence in conflict can occur for a multitude of reasons, including opportunism or as a result of systemic policy.[10] In some cases, consensual sexual relations during times of armed conflict—particularly if between people on opposing sides of a war—have been misinterpreted or wrongly criminalized as rape in conflict. And while all genders can experience sexual violence in conflict—with increasing attention being paid to men and boys, as well as gender and sexual minorities, as legitimate and common victims of wartime sexual violence—women are more often seen as the predominant victims of wartime rape, reflecting the centrality of "patriarchy" and sexual difference between men and women in Western feminist analysis, as well as the historic invisibility of women and women's issues in mainstream human rights discourse.[11]

---

[9] Maria Eriksson, *Defining Rape: Emerging Obligations for States Under International Law* (Leiden: Martinus Nijhoff Publishers, 2011), 135.
[10] Kerry F. Crawford, *Wartime Sexual Violence: From Silence to Condemnation of a Weapon of War* (Washington, DC: Georgetown University Press, 2017), 33-34.
[11] Dubravka Žarkov, "From Women and War to Gender and Conflict?: Feminist Trajectories," in *The Oxford Handbook of Gender and Conflict*, ed. Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji (Oxford: Oxford University Press, 2018), 2.

Before the emergence of the contemporary laws of war that form the basis for international humanitarian law, wartime rape of women was less regulated and indeed more accepted, even if not officially sanctioned. In ancient Greece for example, women's legal status as the property of a man permitted war rape since the conquest of enemy property was considered a legitimate act of war.[12] Even as the distinctions between the right to wage war (*jus ad bellum*) and the duties and rights invoked during war (*jus in bello*) became clearer, the restrictions and duties articulated generally applied to weapons and the treatment of combatants rather than the treatment of civilians.[13] As Askin notes about war in the Middle Ages, one of the ways in which soldiers measured their battlefield success was by the number of women who had been raped.[14] Thus, even if wartime rape was not officially disallowed, the commodification of women as the privilege of victory effectively encouraged such acts, though one should caution that this is not necessarily evidence supporting a claim that wartime rape was a systematic policy or command at that time.

While general rules guiding the conduct of hostilities have existed as early as 500 B.C., the 1863 Lieber Code, providing guidelines on military conduct during the American Civil War, is widely considered the first articulation of customary laws of war.[15] Though the Lieber Code formed the basis for the emergence of international humanitarian law and codified the first prohibition of rape during war, wartime rape was ultimately excluded from the Geneva Conventions until the 1949 adoption of the Fourth Geneva Convention on the protection of civilians. Even in the Fourth Geneva Convention, the prohibition of rape was weak, requiring only the protection of women from "any attack on their [honor], in particular against rape, enforced

[12] Kelly Dawn Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (The Hague: Martinus. Nijhoff Publishers, 1997), 20.
[13] Ibid, 25.
[14] Ibid, 27.
[15] Ibid, 5.

prostitution, or any form of indecent assault."[16] Rape was not codified as a grave crime (in other words, as a "grave breach" in the Geneva Conventions). In Common Article 3—which governs the Geneva Convention rules for non-international armed conflicts—rape is an implicit prohibition as "violence to life and person, in particular murder… mutilation, cruel treatment and torture," as well as "outrages upon personal dignity, in particular humiliating and degrading treatment."[17] The 1977 Additional Protocols to the Geneva Conventions also did not explicitly recognize sexual violence as clear crimes under international law.[18] Copelon argues that human rights law in this respect lagged even further behind than international human rights law and that mainstream human rights reflected an "androcentric vision of human rights," echoing Engle's argument that women's rights were not seen as an explicit part of mainstream human rights discourse and law until the 1990s.[19] Even the 1948 Convention on the Prevention and Punishment of the Crime of Genocide does not clearly articulate a gendered dimension to genocide, referring vaguely only to the cause of "serious bodily or mental harm" to members of a "national, ethnical, racial, or religious" group.[20]

Moreover, the jurisprudence concerned with punishing violations of the rules of war did not emerge until the Nuremburg Trials in 1945, meaning that even as sexual violence was slowly beginning to be articulated as a wartime prohibition before the Second World War, albeit in limited ways that reflected the emphasis on the sovereignty of individual states rather than a transnational

---

[16] *Convention (IV) relative to the Protection of Civilian Persons in Time of War* (August 1949): Art. 27.
[17] "Article 3: Conflicts not of an International Character," *Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (August 1949): Arts. 1(a) and (c).
[18] *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts* (June 1977) and *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts* (June 1977).
[19] Rhonda Copelon, "Toward Accountability for Violence Against Women in War: Progress and Challenges," in *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human Rights*," ed. Elizabeth D. Heineman (Philadelphia: University of Pennsylvania Press, 2011), 238.
[20] *Convention on the Prevention and Punishment of the Crime of Genocide* (December 1948): Art. 2.

concern with the welfare of women, legal redress and accountability for violations of these prohibitions are a relatively modern development. Indeed, Copelon notes, "[historically], as an international legal matter, rape may have been prohibited but was rarely prosecuted," and legal regulations of wartime rape were often restricted to implicit references to women's honor and gender-based propriety rather than addressing the acts of violence themselves.[21] Despite the witness testimonies at Nuremburg demonstrating the "extensive practice of rape committed by the armed forces of several nations" during the Second World War, the trials focused on "other violations deemed to be of graver danger and no individual was prosecuted for rape as an international crime." And while prosecutions of sexual violence occurred during the Tokyo trials, Maria Eriksson notes that these efforts were limited and unsatisfactory in scope and substance.[22] It was not until the 1990s that prosecutions of rape in war gained momentum as conflicts in the former Yugoslavia and Rwanda brought wartime rape and sexual violence to mainstream international attention. As Heineman notes, "[although] international humanitarian law had condemned wartime rape since the early twentieth century, with some exceptions at the Allied war crimes trials following World War II, 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."[23]

It is almost a matter of mythological truth that the Yugoslav Wars and genocide in Rwanda in the 1990s shocked the international conscience and spurred the major international shift towards the criminalization of wartime rape. Crawford argues that the systemic nature of sexual violence

---

[21] Copelon, "Toward Accountability for Violence Against Women in War," 235.
[22] Eriksson, *Defining Rape*, 4.
[23] Elizabeth D. Heineman, "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*," ed. Elizabeth D. Heineman (Philadelphia: University of Pennsylvania Press, 2011), 1.

in both conflicts brought the realities of conflict-related sexual violence to the international collective consciousness. Up to 60,000 women were raped and forcibly impregnated as part of the ethnic cleansing campaign in Bosnia, while estimates of Rwandan rape victims range from 250,000 to 500,000.[24] This is not to say that between the Second World War and the 1990s conflicts did not take place or that sexual violence did not occur as a feature of armed conflict; in fact, an estimated 200,000 women were allegedly victims of a systematic campaign of rape during the 1971 Bangladesh Liberation War.[25] But the convergence of the significant lobbying of the transnational women's rights movement in the 1990s with the failure of the United Nations Security Council to authorize large-scale military intervention in the former Yugoslavia meant that the international community needed an alternate mode of intervention to demonstrate their ability and willingness to prevent, mitigate, and respond to contemporary mass atrocity following the end of the Cold War and the subsequent emergence of human rights as the dominant and ostensibly global language of civil and political (if not always social and economic) change. In effect, the wars in the former Yugoslavia and Rwanda "serve as the first and most critical analogues or reference points for horrific sexual violence… [setting] the standards against which the international community came to understand how, why, and to what extent sexual violence could be used systematically as a weapon of war."[26]

The conflicts in the former Yugoslavia and Rwanda, along with subsequent conflicts in places like Liberia, Sierra Leone, East Timor, Iraq, Afghanistan, Darfur, and the Democratic Republic of the Congo "starkly illustrated the limitations of the existing normative framework for the legal regulation of armed conflict and its capacity to adequately protect women in conflict, as

[24] Crawford, *Wartime Sexual Violence*, 42.
[25] Ibid, 13.
[26] Ibid, 52.

well as to 'capture' the harms they experience for the purposes of post-conflict accountability."[27] Thus, the attention to sexual harm against women in the former Yugoslavia and Rwanda—particularly in Western media—highlighted the need for accountability and justice for these gender-based harms, eventually giving rise to the *ad hoc* criminal tribunals that shaped the dominant international human rights agenda concerning women, peace, and security.[28]

The ICTY and ICTR—both established by United Nations Security Council Resolutions in May 1993 and November 1994 respectively—were created in the absence of any other mechanism at the time to address what were viewed as grave violations of international norms. Because international criminal law was still in its nascent stages, the two *ad hoc* tribunals relied on the application of the full range of international legal instruments to advance prosecutions of alleged violators and perpetrators of genocide, crimes against humanity, and war crimes. The two tribunals also contributed to the other's legal reasoning and conclusions, reflecting an emergent—if complex and ill-defined—legal consensus on the articulation and adjudication of international crimes.[29] The case law developed in the *ad hoc* tribunals, alongside sustained advocacy on international justice, shaped what would ultimately become the Rome Statute, a multilateral treaty that established the ICC in 1998. The Rome Statute has the strongest codification of international crimes, though its success has been hampered to various degrees by resource constraints, accusations of bias (particularly towards African nations), and political pressures, namely with the United States. Still, the creation of an international court to adjudicate grave crimes represents a significant and historic development in international politics.

[27] Naomi Cahn, "Introduction: Mapping the Terrain: Gender and Conflict in Contemporary Perspective," in *The Oxford Handbook of Gender and Conflict*, ed. Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji (Oxford: Oxford University Press, 2018), 3.
[28] Ibid, 4.
[29] Eriksson, *Defining Rape*, 362.

Interestingly, the discursive frame of “rape as a weapon of war” coincided with the turn towards an internationalized security order that opened up an at times uncomfortable nexus between transnational feminists and the emerging neoliberal international politics, largely driven by the global hegemonic powers.[30] Moreover, as Crawford notes, transnational feminists brought wartime atrocities to light in order to advance a broader struggle for gender equality, “but the idea of sexual violence as a systematic tool used by combatants resonated far more profoundly with states than the idea that sexual violence was the manifestation of societal gender norms and ideas about identity and personhood.”[31] Thus, the structures and frames for sexual violence in conflict as an international crime were limited to the neoliberal imagination of the state, limiting the ability of transnational feminists and human rights advocates to advance a truly transformative agenda for issues of gender in situations of armed conflict. Instead, sexual violence in conflict remained strictly in the domain of international criminalization and securitization, engaging “a limited scope of issues concerning a very specific period of time and set of behaviors”—a development, as this paper will argue, delineates exceptional gendered violence from more systemic forms of such violence in ways that run counter to some of the aims of the international legal regime.[32]

The Structural Paradigm of “Rape as a Tool of War”

As the previous chapter demonstrates, there has been an increasing confluence of social, political, and legal consciousness around gendered experiences of war, particularly those of women. This has meant that the “growing visibility of women in conflict… is being reflected in institutional attention and policy reorientation.”[33] Furthermore:

---

[30] Vasuki Nesiah, “Gender and Forms of Conflict: The Moral Hazards of Dating the Security Council,” in *The Oxford Handbook of Gender and Conflict*, ed. Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji (Oxford: Oxford University Press, 2018), 8.
[31] Crawford, *Wartime Sexual Violence*, 47.
[32] Ibid, 51.
[33] Cahn, “Mapping the Terrain,” 1.

> This cumulative political and legal movement has placed corresponding pressure on those involved in conflict-resolution processes to pay greater attention to the experience of women and to ensure their inclusion in peace negotiations and agreements. Consequently, how women fare in the aftermath of war has garnered greater scrutiny, with the transformative potential of conflict, as well as its detrimental effects on women's social, political, and economic security, now better understood.[34]

While an entire global political apparatus has emerged to address the issue of sexual violence in conflict—reflected in the broader "Women, Peace, and Security" agenda and the dominance of humanitarian intervention in the 21st century—these developments, or what Nesiah refers to as International Conflict Feminism, are underpinned by the evolution of the international legal framework to pay more attention to issues of gender, particularly in situations of armed conflict.[35] Heineman notes that "[two] rhetorical activities have dominated the human rights community's efforts to address sexual violence in conflict zones: collecting and disseminating testimony of atrocities, and reforming and applying international law… Both have practical implications."[36] This reflects the symbiosis between human rights advocacy and demands for justice and accountability for victims and survivors of wartime sexual violence, both a driver and byproduct of the emergence of international legal institutions in which such matters can be adjudicated. These developments have attracted scrutiny from a range of feminists concerned with international human rights.

As Engle notes, feminist attention to the issue of sexual violence in conflict served to mediate a number of debates among transnational feminists and helped feminists gain power in the spheres of international politics, primarily in the development of international criminal law and

---

[34] Cahn, "Mapping the Terrain," 1.
[35] Nesiah, "Gender and Forms of Conflict," 1.
[36] Heineman, "The History of Sexual Violence in Conflict Zones," 15.

its institutions.[37] Gardam argues that the feminist legal scrutiny on the law of armed conflict is limited to an "intense—and some might say obsessive—focus on the criminalization and punishment of sexual violence during hostilities through international criminal law," while international human rights law is assuming an increasing role during times of armed conflict.[38] Still, the law of armed conflict remains the *lex specialis* during periods of armed conflict, meaning that its treatment of women merits further scrutiny and analysis, as do the legal developments that flow from it.

Engle suggests that two assumptions are representative of the dominant legal, political, and popular understandings of the relationship between gender and conflict: "sexual violence is the predominant, if not paradigmatic, concern regarding gender and conflict, and—at times—conflict in general, [and] sexual violence is a tactic of war that both accompanies and is fueled by a culture of impunity, and should be primarily responded to with criminal sanctions."[39] Engle traces the various expressions of sexual violence in conflict as the fundamental threat to international peace and security in United Nations documents and other international political fora.[40] Indeed, a Council on Foreign Relations report on the topic notes that sexual violence in conflict "has consequences that increase the costs of armed conflict, rendering its management more difficult. Wartime rape fuels displacement, weakens governance, and destabilizes communities, thereby inhibiting [post-conflict] reconciliation and imperiling long-term stability."[41] Copelon has a more essentializing

---

[37] Karen Engle, "A Genealogy of the Centrality of Sexual Violence to Gender and Conflict" in *The Oxford Handbook of Gender and Conflict*, ed. Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji (Oxford: Oxford University Press, 2018), 7.
[38] Judith Gardam. "The Silences in the Rules that Regulate Women during Times of Armed Conflict," in *The Oxford Handbook of Gender and Conflict*, ed. Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji (Oxford: Oxford University Press, 2018), 1.
[39] Engle, "A Genealogy of the Centrality of Sexual Violence to Gender and Conflict," 1.
[40] Ibid, 2.
[41] Jamille Bigio and Rachel Volgenstein, *Countering Sexual Violence in Conflict* (New York: Council on Foreign Relations, 2017).

view, which is that wartime sexual violence "functions to expel, stigmatize, and marginalize women as accepted members of their familial, social, and cultural circles," reflecting the dominant views of gender and vulnerability to violence that pervade the underlying assumptions of the international human rights framework.[42] Others are more critical of the emergent paradigm around gender and conflict. Žarkov for example argues that "the elevation of war rape to the position of ultimate violence against women, as women's ultimate experience of war and an international security threat, has opened up a discursive space for the return of some old racist, colonial tales of (local) victims and savages, and (international/Western) saviors," implicating discourses on interventionism and humanitarianism that have shaped international politics and human rights in the past two decades.[43]

Moreover, sexual violence is not recognized equally across wars and armed conflict situations. Despite sexual violence being widely reported in conflicts in Afghanistan, the Central African Republic, the Democratic Republic of the Congo, Ethiopia, Iraq, Libya, Myanmar, Sudan, Uganda, and now Ukraine, media attention and political pressures shape what forms of sexual violence—in what context and where they take place—are recognized as gross human rights violations and as amounting to the level of international crimes that merit legal action. This is not to say that humanitarian intervention in the name of alleviating gendered violations of war or prosecutions of violators of international humanitarian and human rights law are perfect antidotes or remedies to the problem of sexual violence in conflict. Those debates are not within the scope of this project, but they do reflect an ongoing concern about who and what merits international attention.

[42] Copelon, "Toward Accountability for Violence Against Women in War," 232.
[43] Žarkov, "From Women and War to Gender and Conflict?," 12.

Of specific interest and exploration here is how the law shapes what is considered a violation so grave as to be an international crime. As the following section explores, sexual violence is ill-defined as an international crime, and its links to the three major crimes recognized and codified in international criminal law—genocide, crimes against humanity, and war crimes—indicate some of the challenges that arise in how sexual violence across contexts may be recognized and addressed differently within the international criminal legal framework. Following an examination of the challenges in defining sexual violence as an international crime, I then undertake a study of the specific nexus between sexual violence and genocide through an examination of the case law of the ICTY and the ICTR. A chapter analyzing the Darfur situation, applying the insights gleaned from the ICTY and ICTR jurisprudence on genocidal rape, then follows.

Defining Conflict-Related Sexual Violence in International Criminal Law

One of the central contentions around the concept of sexual violence as an international crime is what constitutes sexual violence and what gets defined as such within the international legal framework. The definitional scope of sexual violence in international law is not necessarily a separate issue from domestic or municipal legal concerns around sexual harm, but there are distinct implications for international law, such as codifying states' responsibility in preventing sexual violence or even delineating acts of genocide from crimes against humanity or war crimes. Ultimately, however, "distinguishing the different forms of sexual violence primarily lies in the level of harm to which the victim is subjected and the degree of severity, and therefore becomes a matter of sentencing."[44] Thus, issues of non-consent, coercion, and force are often key considerations of what constitutes sexual violence—especially rape—in conflict settings, though

[44] Eriksson, *Defining Rape*, 11.

some argue that the existence of a conflict presupposes the lack of conditions or circumstances necessary to provide legitimate and valid consent.[45] As such, in international criminal law, there are no consistently robust definitions of sex crimes or what constitutes sexual violence as an international crime, but the implicit assumption is that wartime sexual violence differs from sex crimes during peacetime.

Brownmiller first articulated the centrality of sexual violence in wartime as an attack on women and an attack against the opposing side—"a message passed between men—vivid proof of victory for one and loss and defeat for the other."[46] MacKinnon argued that rapes in Bosnia were part and parcel of a campaign of genocide against non-Serbs, placing emphasis on the nature of rape as genocide in the former Yugoslavia.[47] Indeed, there are key political questions concerning how sexual violence in conflict is recognized and defined, including by feminists. Copelon articulates some of these questions, which still remain a source of contestation and debate:

> "Would rape be recognized as a result of the sexualized violence in Bosnia by virtue of exceptionalism, because this was a European conflict involving 'white' women? Would rape be recognized only when considered to be 'genocidal' or 'ethnic' as opposed to 'normal' rape? Would the emphasis on numbers render rape significant only when called 'mass' or 'systematic'? Would rape attract scrutiny only when characterized as 'a weapon of war,' a war crime only when it was conscious military strategy? Would wartime rape be recognized while women raped in everyday life—in prisons, streets, and homes—remain suspect and excluded from the international system? Would the acknowledgment of gender violence be confined to rape or include all forms of sexual violence? Would the emphasis on rape and sexualized violence play to protectionist or voyeuristic instincts, threatening to obscure other forms of gender violence that, under patriarchal systems and structures, victimize women in both war and so-called times of peace?"[48]

---

[45] Eriksson, *Defining Rape*, 108.
[46] Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: Simon and Schuster, 1975), 13.
[47] Catharine A. MacKinnon, "Rape, Genocide, and Women's Human Rights," in *Mass Rape: The War Against Women in Bosnia-Herzegovina*, ed. Alexandra Stiglmayer (Lincoln: University of Nebraska Press, 1994): 183-195.
[48] Copelon, "Toward Accountability for Violence Against Women in War," 233.

As Copelon's questioning alludes, rape occupies the dominant legal and political imagination of what constitutes wartime sexual violence. Indeed, that rape is seen as the most serious expression of sexual violence means that international law stipulates more extensive obligations regarding rape for states than sexual violence and that rape "is the form of sexual violence that has particularly prompted discussion as to its definition."[49]As Eriksson notes, "[the] *prohibition* of rape is thus uniform in international law. A *definition* of rape has, however, been a late concern of international law."[50] Furthermore "[whether] harm is considered to be similar to a violation of property rights, the [dishonor] of the victim, a crime against the community or the autonomy of the person" is an essential concern at the heart of classifying and defining rape at both the domestic and international levels.[51] Ultimately, as Eriksson argues, "[the] debate on the definition of rape has been infused with the dichotomy on the one hand of seeking to protect the sexual freedom of the individual while on the other hand allowing the state to create moral demands for appropriate behavior of its citizens."[52] Indeed, this morality extends to the international legal domain, which—backed by the international human rights regime—increasingly seeks to express and guide a more universal and transnational morality through the law.

Regardless, sexual harm as an international crime is not just confined to physical injury or a violation of the victim's autonomy to control their sexuality or personal liberty; it is also often analogous to an act of harm towards a group or community linked to the victim of sexual harm.[53] In this way, it seems that international criminal law takes the position that sexual violence is more

[49] Eriksson, *Defining Rape*, 10.
[50] Ibid, 7.
[51] Ibid.
[52] Ibid, 56.
[53] Ibid, 55.

than a physical violation of the body. Where the ICTY statute included rape as a crime against humanity, the ICTR statute included rape as a crime against humanity and added rape, enforced prostitution, and any form of indecent assault as war crimes; both considered sexual violence as an instrument of genocide, though the link between sexual violence and genocide was more explicit in the ICTR jurisprudence.[54] But while the nexus between sexual violence and genocide requires a group component and the link between sexual violence and crimes against humanity and war crimes does not, sexual violence in general is largely conceptualized as a harm to a community or group in the framework of international criminal law.

Furthermore, the burden of proof for international crimes including sexual violence relies on the *mens rea*, or criminal intent, to commit any act defined as such. *Mens rea* is treated differently in international law than in domestic law because it applies both to the larger umbrella crime as well as the specific act that constitutes that crime.[55] In a practical sense, establishing the specific intent of genocidal rape means not only that the *dolus specialis*—the specific intent to destroy part of or the whole of a group based on nationality, ethnicity, race, or religion—must be established but also that rape in this instance was conducted in pursuit of those particular objectives. Given the high threshold for proving the commission of a genocide, it would seem that proving rape as a crime against humanity might be a more achievable alternative for prosecutors. But an additional challenge then is to establish not just the *mens rea* but also the systematic or widespread nature of such violence. The ways in which international criminal law handles the issue of sexual violence then reflects the ambiguity in an assumed legal consensus, particularly as intent specifically is often inferred based on context and surrounding facts.

---

[54] *The Prosecutor versus Jean-Paul Akayesu*. ICTR-46-4-T (September 1998).
[55] Eriksson, *Defining Rape*, 118.

The developments at the ICTR and ICTY paved the way for "a broader reliance on criminalization that has dominated responses to rape and sexual violence in conflict," establishing the case law that ultimately culminated in the establishment of the ICC in 1998, ensuring that the adjudication of grave crimes would have a wider reach and application than the *ad hoc* tribunals.[56] The Rome Statute, which established the ICC, further codified sexual violence—expanded to also include "sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form"—as an international crime.[57] Still, as Cahn argues, "[rape] has only recently been formally included as a breach of the laws of war, and the paucity of full legal recognition for the range of harms experienced by women in conflict has only been partly ameliorated by the [Rome Statute]."[58] Various forms of sexual harm in conflict are excluded by the "weapon of war" frame according to Crawford: "sexual exploitation by peacekeeping forces, humanitarian aid workers, and deployed state or international military forces; rape and other forms of violence committed by combatants of their own volition and outside the context of military strategy; intimate partner violence during and in the aftermath of armed conflict; and the daily forms of sexual and gender-based violence experienced before, during, and after armed conflict as a result of gender inequality and structural violence."[59] Furthermore, individuals belonging outside the dominant image of a cisgendered female victim of male-perpetrated violence "experience neglect and nonrecognition despite the increase in commitments to improving survivor assistance and strengthening the capacity of investigation and prosecution mechanisms."[60] As a result, we are offered a "concise

[56] Engle, "A Genealogy of the Centrality of Sexual Violence to Gender and Conflict," 8.
[57] *Rome Statute of the International Criminal Court* (July 1998): Art. 7.1(g).
[58] Cahn, "Mapping the Terrain," 3.
[59] Crawford, *Wartime Sexual Violence*, 163.
[60] Ibid, 160.

story of a wartime atrocity [that] makes political and legal condemnation and efforts to assist victims and punish perpetrators more feasible" if not more equitable.[61]

Sexual Violence as Genocidal Violence: Revisiting the Former Yugoslavia and Rwanda

The move to develop sexual violence as constitutive of genocide first developed in the *ad hoc* tribunals, effectively delinking the destruction of a group in whole or in part from the idea that destruction effectively always results in death. As Short suggests, "while rampant sexual violence was an underlying crime directed against women… these attacks were part of a larger systematic and strategic plan" to create a religiously, culturally, and linguistically homogenous Serbian nation.[62] Similarly in Rwanda, incidents of sexual violence against women "were genocidal in nature because they were not solely acts directed at harming women, but were instead used to accomplish ethnic cleansing and occurred with great frequency."[63] Still, the decision to group the two crimes is controversial, and just as there is debate about what constitutes sexual violence, so too is there discussion about what genocide is and how it functions in society. So, in order to situate the broader discussion of genocidal rape, I first examine the concept of genocide in international law and some of the tensions it presents in order to provide a foundation for the subsequent discussion of specific cases of genocidal rape in international law.

The arguably narrow definitional scope of genocide in international criminal law serves to clarify the bounds within which mass atrocity crimes like genocide can be reasonably adjudicated, but it also reflects the influence of political disagreement on the legal purity and sociopolitical integrity of the term.[64] For example, the role and determinacy of the *dolus specialis* in the

---

[61] Crawford, *Wartime Sexual Violence*, 160.
[62] Jonathan H. M. Short, "Sexual Violence as Genocide: The Developing Law of the International Criminal Tribunals and the International Criminal Court," *Michigan Journal of Race and Law* 8 (2003): 504.
[63] Ibid.
[64] *Convention on the Prevention and Punishment of the Crime of Genocide* (December 1948).

commission of a genocide remains a key feature of scholarly and legal debate, as does the exclusion of social and political groups as targets of genocide. While genocide is clearly defined in international criminal law, there is of course a great deal of variability in how genocide is interpreted beyond the law. Horowitz examines various sociological approaches to genocide, acknowledging that it is exactly the "transformation of the criminal into the political" that gives genocide its special meaning, as well its structural form—that is, as a systematic form of political violence and policy.[65]

Other discussions of genocide focus on specific elements of the definition as codified in various legal instruments, including the Genocide Convention. Lewy focuses specifically on the question of intent, arguing that "proof of specific intent is necessary to find an individual guilty of genocide" as well as to assess historical episodes of mass violence as genocide.[66] Lewy criticizes accounts of genocide as structural violence, noting that individuals cannot be held accountable for structural violence, as well as more consequentialist accounts of genocide—that is, accounts that suggest that genocidal outcomes are indicative of a genocide having occurred—which disregard questions of intentionality entirely.[67] Lewy's argument is focused exclusively on the legal framework and what can be adjudicated within it rather than more fundamental questions of what genocide is. If, as Lewy suggests, "the disregard of intentionality will create an incomplete or distorted picture and lead to false conclusions," then he must also acknowledge that the overt focus on intentionality can also lead to incomplete or distorted pictures of historical truth by virtue of excluding events that may otherwise be considered genocides if not for the intent question.[68]

---

[65] Irving Louis Horowitz, *Taking Lives: Genocide and State Power* (New York: Routledge, 2017), 17.
[66] Guenter Lewy, "Can There Be Genocide Without the Intent to Commit Genocide?," *Journal of Genocide Research* 9, no. 4 (2007): 671.
[67] Ibid, 666.
[68] Ibid, 671.

Proving the specific intent to destroy—rather than a generalized intent to cause harm that results in genocidal results—makes sense from a legal standpoint, even if it can be challenging to prove in a court. But the burden of proof under the law may obfuscate or disqualify instances of genocidal violence where general intent is present or where limited evidence of specific intent may be insufficient under the law.

Other scholars look at the range of protected groups covered by the current definition of genocide. Hassellind adopts a gender lens, interrogating whether groups defined by gender can be afforded the status of a protected group under the Genocide Convention and international criminal law (understanding that gender constructions themselves are ill-defined).[69] However, the umbrella of crimes against humanity is an insufficient alternative for this problem since in Hassellind's interpretation it does not adequately describe attacks against groups.[70] Hassellind, like Sands, also points out that "the way we label crimes has a deeper meaning than solely relating to parameters of culpability of the crime. It also expresses a form of hierarchy between the core international crimes," but the subordination or elimination of gender within this hierarchy is an entirely political choice.[71]

Similarly, Lingaas looks at the use of the terms "race" and "racial" in international criminal law, arguing that objective approaches to determining racial group membership presume rationality on the part of perpetrators and that entirely subjective approaches offer no clarity or scope for what is considered a protected group.[72] Indeed, the inclusion of certain categories of groups, particularly in terms of what is considered the most extreme and egregious form of

---

[69] Filip Strandberg Hassellind, "Groups Defined by Gender and the Genocide Convention," *Genocide Studies and Prevention: An International Journal* 14, no. 1 (May 2020): 69.
[70] Ibid.
[71] Ibid.
[72] Carola Lingaas, "The Elephant in the Room: The Uneasy Task of Defining 'Racial' in International Criminal Law," *International Criminal Law Review* 15, no. 3 (2015): 512.

violence, creates categories and hierarchies of victimization by virtue of offering legal and political recognition to some categories of groups and excluding others. Ultimately however, the debate about which groups are protected is both reductive and essentialist in that it leads to arguments about what a group is and how to classify, define, and classify a group under the law. This glosses over more fundamental points about whether the current definitional boundaries of genocide are fit for purpose—that is, whether the ways in which we construct and understand genocide allow us to prevent and seek accountability for such acts of violence regardless of the population in question.

Conceptually speaking, genocide also occupies a particular place in our collective moral imagination as a form of violence that is both exceptional in frequency and scale and so, as a terminological categorization of violence, must be rigorously (or selectively, depending on one's positioning) applied. The influence of the Holocaust as the defining genocide has been examined by scholars, but the element of relevance to this discussion is how the hegemonic influence of what is considered genocide shapes hierarchies of violence within the frame of international justice. One such discussion is about the use of crimes against humanity as a catch-all for atrocities that do not fit the definition of genocide. Sands untangles the tensions between individualist and collectivist accounts of grave crimes (in other words, crimes against humanity and genocide respectively). He argues that a hierarchy has emerged where crimes against humanity and even war crimes are seen as lesser evils than genocide, partly because of the implicit connection between the possibility of justice and the right of some usually marginalized or othered group to exist that is not a characteristic of crimes against humanity.[73] As a result, the naming of a genocide as such carries significant communicative and moral weight.

[73] Philippe Sands, "Genocide at 70: A Reflection on its Origins." *Netherlands Quarterly of Human Rights* 36, no. 3 (2018): 171.

The emergence of a framework for atrocity crimes in the 20th century represents a significant and influential point of departure for how to address mass violence through legal means. But the international community has also struggled to identify or appropriately deploy the term *genocide* as mass violence has unfolded, including in the genocides against the Tutsi in Rwanda and the Rohingya in Myanmar, meaning that political, economic, military, and legal responses to such violence often arrive too late to prevent such violence from occurring and spiraling. Mazur and Vollhardt examine the specific policy implications of whether an act of mass violence is considered genocide or not, "as it determines whether the international community perceives a moral obligation to intervene and protect civilians."[74] By focusing on external and third-party observers and interpretations of prototypes of genocide—that is, "the idea that features of a category can render particular exemplars more or less central, and readily recognizable, members of the category"—they argue that people generally agree on the central features of genocide, and when these features are used to describe mass violence, political and military interventions were supported more.[75] This lends credence to the idea that social and political conceptions of genocide are not necessarily limited by the legal construction, but this does not necessarily negate the cognitive influence of legal frames or discourse on shaping the defining features of genocide, particularly sexual violence.

The 1997 trial of Jean-Paul Akayesu at the ICTR signaled the first concrete shift away from linking genocide purely to killing by including prosecutions for gender-based violence under international criminal law. As Eriksson notes, *Akayesu* was a landmark case in classifying sexual violence as genocide, promulgating a definition of rape at the international level for th first time,

---

[74] Lucas B. Mazur and Johanna Ray Vollhardt, "The Prototypicality of Genocide: Implications for International Intervention," *Analyses of Social Issues & Public Policy* 16, no. 1 (Dec 2016): 291.
[75] Ibid, 315.

and for representing the first genocide conviction at an international tribunal.[76] Akayesu, as mayor of Taba commune, was responsible for the "executive functions and the maintenance of public order" within the commune, having exclusive control over the communal police.[77] As the verdict for Akayesu, issued in September 1998, notes, at least 2,000 Tutsis were killed in Taba during the time of the genocide and while Akayesu was still in power—meaning that he both had knowledge of the violence as well as the authority and responsibility to prevent them.[78] The verdict goes on to make the explicit connection between the violence in Taba and acts of sexual violence, alleging that Akayesu knew of these acts and even encouraged them.[79] Akayesu was charged with fifteen counts of genocide, crimes against humanity, and violations of Common Article 3 to the Geneva Conventions, and found guilty on nine of those counts, with the allegations of sexual violence tied to all three violations.

In revisiting the decision to include sexual violence in the indictment against Akayesu, the Prosecution notes that "evidence previously available was not sufficient to link [Akayesu] to acts of sexual violence and acknowledged that factors to explain this lack of evidence might include the shame that accompanies acts of sexual violence as well as insensitivity in the investigation of sexual violence."[80] The verdict alludes to a debate about whether the original indictment was amended to include sexual violence due to public pressure, concluding that while the spontaneous testimony of witnesses was the impetus for the inclusion of sexual violence, highlighting the nexus of the two main "rhetorical activities" of the international community as concerns sexual violence in conflict:

[76] Eriksson, *Defining Rape*, 366.
[77] *The Prosecutor versus Jean-Paul Akayesu*. ICTR-46-4-T (September 1998): para. 4.
[78] Ibid, para. 12.
[79] Ibid, para. 12B.
[80] Ibid, para. 417.

> "Nevertheless, the Chamber takes not of the interest shown in this issue by non-government organizations, which it considers as indicative of public concern over the historical exclusion of rape and other forms of sexual violence from the investigation and prosecution of war crimes. The investigation and presentation of evidence relating to sexual violence is in the interest of justice."[81]

Section 5.5 of the *Akayesu* verdict lays out in greater detail the charges and actual findings on sexual violence. Importantly, the factual findings note that in some cases, there is no evidence that any of the perpetrators were Interahamwe, the Hutu paramilitary group largely responsible for the genocide in Rwanda. Still, "all evidence of rape and sexual violence which took place on or near the premises of the bureau communal," as well as many outside it, point to Interahamwe perpetrators.[82] There was no evidence or suggestion that Akayesu himself was implicated in committing sexual violence, but the Trial Chamber nonetheless found that he had reason to know and in fact knew about the sexual violence taking place in Taba during the time of the genocide. While the Trial Chamber could not assess Akayesu's criminal responsibility as a superior for the acts of a subordinate—there is no allegation that the Interahamwe were in the direct command responsibility of Akayesu—it established that sexual violence was committed as part of a widespread and systematic attack on the civilian Tutsi population in Taba and that Akayesu was individually criminally responsible for having ordered, committed, or otherwise aided and abetted in the commission of acts that inflected serious bodily and mental harm on members of the Tutsi group.

The ICTY and ICTR case law symbolized the first turn away from sexual violence as perceived violations of a victim's honor and dignity and towards genocidal violence. On the connection to sexual violence as genocidal violence, the Trial Chamber argued that sexual violence constitutes genocide in the same way as long as the *dolus specialis* is present. The *Akayesu* verdict

[81] *The Prosecutor versus Jean-Paul Akayesu*. ICTR-46-4-T (September 1998): para. 417.
[82] Ibid, para. 450.

notes that sexual violence "was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole... destruction of the spirit, of the will to live, and of life itself."[83] It importantly asserts that while rape has historically been translated to mean non-consensual sexual intercourse, variations can include acts "which involve the insertion of objects and/or the use of bodily orifices not considered to be intrinsically sexual," a reflection of some of the testimony about incidents of sexual violence heard by the Trial Chamber and an articulation of a broader understanding of rape as an act of harm.[84]

The Trial Chamber goes on to draw a parallel between rape and torture, highlighting their use for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control, or destruction of a person, reflecting the approach of the Convention against Torture that focuses on the conceptual framework of state-sanctioned violence rather than the specific acts in the definition of torture.[85] In the ICTY, the focus on Bosnian Muslim women as victims of sexual violence both created and shaped a clear victim-perpetrator narrative and reinforced an essentialized view of (Muslim) women as particularly vulnerable to family and community harm as victims of sexual violence.[86] The clear link to genocide then is that the physical and psychological damage inflicted by rape and other forms of sexual violence is also a direct and significant threat to the group as a whole, primarily because the autonomous reproductive capacity of the group has been threatened and violated. This biological and reproductive logic also extends to the conception of forced pregnancy as the other primary method of genocidal sexual violence, though forced pregnancy is not as clearly defined in the ICTY or ICTR case law as it is in the

[83] *The Prosecutor versus Jean-Paul Akayesu*. ICTR-46-4-T (September 1998): para. 732.
[84] Ibid, para. 686.
[85] Eriksson, *Defining Rape*, 368.
[86] Short, "Sexual Violence as Genocide," 509.

Rome Statute. The Trial Chamber in *Akayesu* also made the distinct connection between reproductive capacity, sexual violence, and genocide, invoking Article 2(d) of the Genocide Convention (imposing measures intended to prevent births within the group).[87] Short is critical of those who view the Trial Chamber as emphasizing "the reproductive consequences as the hallmark of rape as a genocidal measure."

> "First, to *not* emphasize the reproductive impact on the community would ignore the calculated intentions of the perpetrators of sexual violence to commit genocide… Second, this view does not tend toward a biological view of identity. What genocide law is meant to protect—racial, ethnical, and religious groups—*are* social constructs. The law's protection of the biological ability to procreate is incidental to the protection of the ethnic group as a whole. It is naïve to denounce genocide law's protection of the group's right to exist, via its ability to procreate, when the intent of the perpetrators of genocide is to destroy the ethnic group by destroying its ability to procreate."[88]

The *Kunarac* appeal judgement in 2002 rested solely on crimes of sexual violence against women, focusing mostly on the ethnic cleansing campaign in the town of Foča from April 1992 to January 1994. It was also the first ICTY judgement to recognize rape as a crime against humanity.[89] In defining rape, the Trial Chamber referred to the earlier *Furundzija* case, stating that the requirement of coercion, force, or a threat of force was too narrow and did not "refer to other factors which could render an act of sexual penetration non-consensual or non-voluntary on the part of the victim" and that the exclusion of non-consent as a relevant factor was contradictory.[90] Thus, the *Kunarac* judgement broadened the definition of rape to consider sexual autonomy of the individual by way of the question of consent, particularly in the case of women who engaged in

[87] *The Prosecutor versus Jean-Paul Akayesu*. ICTR-46-4-T (September 1998): paras. 507-508.
[88] Short, *Sexual Violence as Genocide*, 520.
[89] Eriksson, *Defining Rape*, 383.
[90] *Prosecutor v. Dragoljub Kunarac, Radomir Kovac, and Zoran Vukovic*. IT-96-23-T & IT-96-23/1-A (June 2002): para. 129.

sexual relations with their captors, while also considering the particularly circumstances borne out in situations of armed conflict.[91]

Still, the developments at the *ad hoc* tribunals merit further examination, especially as the definitions of rape and sexual violence contained in the verdict are relevant to the Trial Chamber's determination of whether these acts were constitutive of genocide. As Eriksson notes about the *Akayesu* decision, the ICTR "preferred a conceptual, wide definition of rape in order to spare witness the ordeal of providing explicit accounts of the violation."[92] Interestingly, as paragraph 134 on the application of the Rules of Procedure and Evidence notes, corroboration of sexual assault testimonies is not required—meaning that a single testimony of sexual assault was sufficient for the Trial Chamber.[93] As Sellers argues, "[the] gendered descriptions recited in judgments often attest to their value as material evidence going to the proof of war crimes, crimes against humanity, or genocide."[94] Crawford highlights the international community's disregard of Serbian women as victims of wartime sexual violence, women who did not fit into the dominant narrative of the ideal victim in the former Yugoslavia because they were seen to be on the side of the aggressor in the conflict.[95] Similarly in Rwanda, the dominant narrative of genocidal rape reaffirmed the Tutsi victim-Hutu perpetrator lens. As Buss argues, "rape as a modality of violence is treated as relatively uniform in practice and experience. The emphasis is on shared patterns of violence (Tutsi women attacked by Hutu men) and continuity of impact (destruction of a community) rather than considering variances and exceptions."[96]

---

[91] Eriksson, *Defining Rape*, 388.
[92] Ibid, 71.
[93] *The Prosecutor versus Jean-Paul Akayesu*. ICTR-46-4-T (September 1998): para. 134.
[94] Patricia Viseur Sellers, "(Re)Considering Gender Jurisprudence," in *The Oxford Handbook of Gender and Conflict*, edited by Edited by Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji, Oxford: Oxford University Press (2018): 2.
[95] Crawford, *Wartime Sexual Violence*, 165.
[96] Doris E. Buss, "Rethinking 'Rape as a Weapon of War,'" *Feminist Legal Studies* 17 (2009): 155.

Situating the Paradigm: Analyzing Genocidal Sexual Violence in Darfur and Beyond

What, then, is the impact of this emergent shift towards addressing sexual violence in international criminal law? How has the momentum of the *ad hoc* tribunals for the former Yugoslavia and Rwanda—and the subsequent establishment of a permanent International Criminal Court—shaped the ways in which international law treats the issue of sexual violence in conflict? The ICC's efforts to bring Omar al-Bashir, the former president of Sudan, to trial for the campaign of violence against civilians in Darfur provides a useful basis for further examination.

Collins provides a historical overview of the dynamics in the Darfur region of Sudan, where in 2003 rebel groups began fighting with the government in Khartoum, accusing it of oppressing the non-Arab population in Darfur.[97] Deploying the Sudanese military and the Janjaweed—a militia trained by the military and supported by Khartoum—the government of Sudan engaged in a campaign of ethnic cleansing in Darfur, leading the deaths of hundreds of thousands of civilians and the displacement of millions. The Janjaweed and government forces engaged in a consistent and widespread pattern of atrocities that included killings, rapes, and burning of villages of the Fur Masalit, and Zaghawa groups.[98] Askin notes that rape and other forms of sexual violence, including sexual slavery and forced pregnancy through rape—have been documented as especially prominent features of Khartoum's campaign in Darfur.[99] Despite the signing of a comprehensive peace agreement in 2020 between Sudanese authorities and several rebel factions, conflict activity continues in Darfur.

---

[97] Robert O. Collins, "Disaster in Darfur: Historical Overview," in *Genocide in Darfur*, ed. Samuel Totten and Erik Markusen (New York: Routledge, 2006), 3.
[98] Ibid, 20.
[99] Kelly Dawn Askin, "Prosecuting Gender Crimes Committed in Darfur: Holding Leaders Accountable for Sexual Violence," in *Genocide in Darfur*, ed. Samuel Totten and Erik Markusen (New York: Routledge, 2006), 145.

The ICC Prosecutor at the time, Luis Moreno-Ocampo, indicated that his office intended to focus on indicting those who bore the greatest responsibility for the most serious crimes, including genocide, which was largely agreed by many experts as well as the government of the United States.[100] In 2009, the ICC issued the first arrest warrant for al-Bashir on the charges of crimes against humanity and war crimes, ruling that there was insufficient evident to bring charges of genocide. This was followed by a new arrest warrant in 2010 that, unlike the first warrant, included a charge on genocide.[101] The indictments represented the first for a sitting head of state, and the Sudanese government rejected both the warrant and the authority of the Court in bringing the charges against al-Bashir. Various countries have refused to arrest al-Bashir and surrender him to the Court. Following the 2019 coup d'état that ousted al-Bashir from power, the Sudanese military council agreed to hand him over to the ICC to face the charges brought against him.

The second arrest warrant for al-Bashir notes that:

> "'requiring that the existence of genocidal intent must be the *only* reasonable conclusion amounts to requiring the Prosecutor to disprove any other reasonable conclusions and to eliminate any reasonable doubt (…).' Imposition of such a standard would be tantamount to the creation of an obligation on the part of the Prosecution to prove genocidal intent beyond reasonable doubt, a 'higher and more demanding' standard than the one required under… the Statute."

Thus, the Court established that when it comes to genocidal violence, it is sufficient that the *dolus specialis* is one among a number of reasonable conclusions in order to bring charges of genocide. Noting that the rape was included within the count of genocide, the Court argued that the sexual violence inflicted by the Sudanese military and the Janjaweed amounted to "genocide by causing serious bodily or mental harm," reflecting a similar line of thought connecting sexual harm to bodily and mental harm as the *Akayesu* verdict.[102] Still, al-Bashir has not been tried, and the Court

[100] Askin, "Prosecuting Gender Crimes Committed in Darfur," 153-154.
[101] *The Prosecutor v. Omar Hassan Ahmad Al Bashir*. ICC-02/05-01/09 (July 2010): para. 1.
[102] Ibid, para. 30.

has not advanced meaningful progress towards accountability for crimes in Darfur, though the first trial on the ICC's Darfur docket opened in April 2022.

The issue here is that by linking sexual violence to genocide, the international legal framework forecloses other avenues for prevention and accountability for sexual violence in conflict. As Heineman argues, "[privileging] atrocities in the context of events that men and governments recognize as extraordinary could reinforce the invisibility and tacit acceptance of sexual violence in women's everyday lives," but armed conflict environments also facilitate specific and particularly dynamics of sexual violence.[103] I interpret "everyday" violence differently than Heineman and other scholars cited in this project, drawing from Arendt's concept of the "banality of evil" and Scheper-Hughes' concept of "everyday violence." In this way, I am to highlight the ways in which the sexual violence-genocide nexus in international criminal law elides more everyday forms of violence that are not necessarily structural in nature but rather genocidal violence as a lived daily reality. I do not mean to suggest that structural violence is genocide or that structural violence is an irrelevant frame but rather that the high threshold to classify a genocide automatically makes a distinction between genocidal sexual violence and all other forms of sexual violence in conflict.

Various scholars have written about or alluded to everyday violence as structural violence. Some scholars refer to the ways in which genocide as a criminal category limits the understanding of who is a victim under international criminal law. Heineman argues that the "culturally sensitive reading of rape's impact [on Bosnian Muslim women] had an orientalizing effect."[104] Similarly, Žarkov argues that much of the scholarship concerning the Yugoslav Wars "failed to ask how ethnicity became the privileged category of difference, by which social, economic, political, and

[103] Heineman, "The History of Sexual Violence in Conflict Zones," 2.
[104] Ibid, 19.

symbolic processes" were reduced to ethnic identities."[105] Furthermore, the attention to war rapes in the Balkans was a double-edged sword that simultaneously "put the rape of women on the international agenda, and created momentum that impacted international laws and legal practices on sexual violence in war" at the same time that "the overwhelming attention to war rape as women's ultimate war experience has drastically reduced the subjectivity of the Muslim women in Bosnia and Tutsi women in Rwanda to that of the 'rape victim,' and has equated their sexual vulnerability with their ontological position."[106] Gardam argues that the treatment of gender in the law of armed conflict forms the basis of how it deals with the subject of gender in times of armed conflict, reinforcing limiting and destructive stereotypes of the civilian as a feminine subject endowed with natural characteristics of modesty and weakness that underpin the necessity of protecting her honor.[107]

Not only does the law of armed conflict frame women in reductive ways, but it also fails to take into account the underlying systemic discrimination that women experience in all societies.[108] Short acknowledges these erasures but argues that "[theorizing] a conviction under the genocide statutes for sexual violence is difficult and requires sacrifice. Primary among those sacrifices, at least for the purpose of genocide, are the conceptions of the woman as an individual and as a member of the female gender."[109] Conversely, Cahn notes that "[there] is increasing recognition that gendered harms are insufficiently captured by the narrow rubric of sexual harm and encompass a range of economic, social, and political dimensions," which is arguably an important project, but these dimensions are outside the purview of this research.[110]

[105] Žarkov, "From Women and War to Gender and Conflict?," 10.
[106] Ibid, 11.
[107] Gardam. "The Silences in the Rules that Regulate Women during Times of Armed Conflict," 2.
[108] Ibid, 7.
[109] Short, "Sexual Violence as Genocide," 526.
[110] Cahn, "Mapping the Terrain," 5.

Stanton's "ten stages" frame for genocide elucidates the processional nature of genocide from classification to denial and is therefore a useful point of departure for understanding what I mean by the particular framing of "everyday" violence that I have proposed.[111] Stanton's framework for describing the way genocidal violence evolves from less exceptional forms of human rights violations—including violence like discrimination and hate speech—can evolve into mass atrocity is a useful tool for analyzing how international courts understand genocidal violence. As the case law developed in the *ad hoc* tribunals and the arrest warrant for al-Bashir demonstrate, genocidal violence—especially sexual violence—is often conceived of as a particular moment in time, implying that there is a specific temporal element to mass violence becoming genocidal violence.

Of course, not all sexual violence committed during a genocide is committed as part of that genocide, but as the *Akayesu* verdict shows, courts can overlook those contextualities in pursuit of the overarching accountability for a crime. This is not a question that is addressed by the debates on force or non-consent or even the specific intent to destroy. In effect, courts conceive of sexual violence as necessarily eliminatory without considering that genocidal sexual violence is implicated in various stages of genocide or not implicated in genocide at all but rather a broader conflict (consider for example the allegations of sexual violence leveled at the Rwandan Patriotic Front or the Hutu victims of sexual violence). In this way, sexual violence in conflict that is not expressly viewed as genocidal comes to be seen as banal in comparison to the spectacular nature of implied by the association with genocide.

Admittedly, Stanton's frame is limited in that it presents a linear processional framework for genocide. Conflict and sexual violence continue alongside each other and apart from each other,

[111] Gregory H. Stanton, "The Ten Stages of Genocide," Genocide Watch, accessed February 23, 2022, http://genocidewatch.net/genocide-2/8-stages-of-genocide/.

and not always in concert with genocide, as is the case in Darfur, but that violence is no longer considered genocidal such that it evokes the kind of international attention and mobilization it did in 2003. Indeed, the mandate for the UN peacekeeping mission in Darfur ended in 2021, reflecting that the international community—despite its proclamations of genocide twenty years ago—has moved on from Darfur. Furthermore, sexual violence as a wartime violation is simultaneously both hyper-visible and un-visible, leading us to ask what erasures the overt visibility of rape as genocide facilitates.[112] Buss recounts how Hutu women who were subjected to sexual violence fell outside the genocide frame, noting that "[as] categories of harm, rape as a crime against humanity and rape as genocide structure not only which harms are recounted (and which are not), but also the subjects who can speak to those harms.[113]

What, then, does this imply for the success of international courts? Feminists are critical both of the institutionalization of feminist issues within international politics—what Halley calls *governance feminism*—as well as the alignment of feminists with the neoliberal politics of carcerality reflected in the push towards international law and institutions.[114] As Engle argues, the dominant paradigm of sexual violence and the attendant focus on impunity for such violence in war promotes a carceral response to international crimes as a mode of accountability, justice, and deterrence, one that reflects the broader human rights and feminist discourse—both transnationally and domestically—towards countering "the culture of impunity" by investigating, prosecuting, and punishing violators of human rights.[115] Crawford also notes the broader politics of international law:

[112] Buss, "Rethinking 'Rape as a Weapon of War,'" 154.
[113] Ibid, 158.
[114] Elizabeth Bernstein, *Brokered Subjects: Sex, Trafficking, and the Politics of Freedom* (Chicago: The University of Chicago Press, 2018) and Janet Halley, *Governance Feminism: An Introduction* (Minneapolis: University of Minnesota Press, 2018).
[115] Engle, "A Genealogy of the Centrality of Sexual Violence to Gender and Conflict," 9.

> "[legal] instruments are not isolated from political forces; indeed, their very existence is shaped by the distribution of power and influence among states and organizations… The crimes that courts recognize are the crimes that global society remembers and the experiences it validates. This is problematic because the establishment of international courts and [post-conflict] justice mechanisms is by nature rooted in the specific interpretations of wars, genocide, and the crimes committed therein courts process and perpetuate 'selective memory.'"[116]

Legal scholarship also describes the law's expressive qualities—or its ability "to augment the moral value of law, stigmatize those who break it, and establish an authoritative public, and transnational, narrative regarding the heinousness" of mass violence, whether intentionally or unintentionally.[117] This ability means that "laws and legal institutions have the potential to alter people's behavior and attitudes" through punishment of mass atrocity crimes.[118] These extra-legal, or what Drumbl calls communicative and pedagogical goals, are not mutually exclusive with the other goals of punishment in international criminal law, which can entail any combination of deterrence, retribution, incapacitation, reintegration, reconciliation, and restitution.[119] In international criminal law, trials serve as the primary mechanism of its expressive function for a variety of audiences, including perpetrators, victims, and society at large, meaning we should not simply analyze the progress of international criminal law on its prosecutorial success alone but also consider its broader communicative power.[120] Buss alludes to some of this communicative force in international criminal law in highlighting the contradictory or paradoxical treatment of rape in the legal framework: courts have "a strikingly low conviction rate for rape or sexual

---

[116] Crawford, *Wartime Sexual Violence*, 17.
[117] Mark A. Drumbl, "The Expressive Value of Prosecuting and Punishing Terrorists: Hamdan, the Geneva Conventions, and International Criminal Law," *George Washington Law Review* 75, no. 5/6 (August 2007): 1170.
[118] Tim Meijers and Marlies Glasius, "Trials as Messages of Justice: What Should Be Expected of International Criminal Courts?," *Ethics & International Affairs* 30, no. 4 (2016): 432.
[119] Drumbl, "The Expressive Value of Prosecuting and Punishing Terrorists," 1170.
[120] Meijers and Glasius, "Trials as Messages of Justice," 433.

violence offences but relatively strong and repeated recognition of rape as a widespread and instrumental component of genocide."[121]

If international criminal institutions distinguish between genocidal violence and other forms of similar violence, this has implications for what the law and legal institutions are broadly communicating. To perpetrators of violence, it perhaps reinforces the sense of impunity for grave crimes that do not meet the threshold for genocide. To the international community, the messaging carries implications for what merits intervention and attention. And to communities affected by violence, such distinctions serve to create or reinforce narratives of the "ideal" victim or suffering in the eyes of the law. In all, the association of sexual violence with genocide both reflects a growing understanding of what constitutes genocide and the gendered nature of these constitutive acts, but the international system designed to address genocide and mass atrocity risks undermining itself because of the place that genocide occupies in the contemporary social, political, and legal imagination.

Of course, international justice cannot and does not need to account for every aspect of this issue—by nature, it cannot be everything to everyone—and legal redress may not be the only goal for conflict-affected communities. Social and political recognition are perhaps equally relevant and useful goals as assigning legal responsibility and culpability. If people derive meaning from law and legal institutions, particularly those that adjudicate some of the worst atrocities, then this has implications for the legal framework, especially in societies that have been fractured by violence and conflict. That is to say, the function of the international criminal legal framework must be considered beyond its legal capabilities—we must understand if and how these functions promote and achieve such norms as truth and recognition.[122]

---

[121] Buss, "Rethinking 'Rape as a Weapon of War,'" 147.
[122] Drumbl, "The Expressive Value of Prosecuting and Punishing Terrorists," 1170.

Conclusion

The recognition of gendered harms in conflict represents a significant moment in international politics, signifying a landmark achievement for transnational feminist politics and international human rights. But in the wake of the early enthusiasm for and momentum around international justice, we are left to contend with the material legacies of the rapid legal developments to address mass atrocity in the wake of genocide in Rwanda and conflict in the former Yugoslavia. Specifically of concern in this project is the "rape as a weapon of war" paradigm and what consequences it has as the dominant frame for thinking about and perceiving women's experiences of conflict. As Buss articulates, "[while] the post-conflict period is often heralded as a richly transformative time in which social and political relations can be reconstituted," an emerging body of literature "has begun mapping how gender identity and relations are often reiterated in conservative ways, particularly through the assessment of gender and sexualized harm."[123] This project seeks to contribute to that literature.

The jurisprudence of the *ad hoc* tribunals and the ICC have developed what are in some ways progressive and broad definitions of sexual violence as genocidal violence, but the issues at hand go beyond definitional scope alone. Stone argues that genocides must be seen as part of a history that is continually evolving and asserts that we should seek "to understand genocide in historical context without either eliminating the differences between them or collapsing the phenomenon into a unitary and undifferentiated form of societal crisis."[124] In this way, genocide is not a fixed or ideal type but rather an evolving form that can at times be historically or culturally contingent. I think this is certainly true of sexual violence, which as a broad category of gendered

---

[123] Buss, "Rethinking 'Rape as a Weapon of War,'" 146.
[124] Dan Stone, "The Historiography of Genocide: Beyond 'Uniqueness' and Ethnic Competition," *Rethinking History: The Journal of Theory and Practice* 8, no. 1 (2004): 135.

violence that is institutionalized in international politics is subject to its own critiques. My contention is not that sexual violence is not and cannot be a constitutive act of genocide. Rather, the concern of this project is what the legal linkage between sexual violence and genocide can foreclose in the broader pursuit of justice and accountability for grave crimes.

On a final, more personal note: This project is both a labor of care and the product of long, sustained—and constantly evolving—thought about what role human rights discourse plays in society and how the human rights framework treats the issue of gender. My insight and views on this topic have grown and changed not only during the course of my professional career and graduate studies but also alongside this project. As a result, the analysis presented here is necessarily incomplete and imperfect; indeed, the feminist project requires continuous questioning of the structures and norms that shape our society and introspection of our own place and complicity in within them. Despite my own pragmatic views of the law and its functions in our world, one of the fundamental questions at the core of my work is how we can work to advance the notions of equity and human dignity that form the basis of contemporary human rights. This project is a result of some reflection on that question, oriented towards reimagining international human rights as a truly transformative agenda for social change and equity.

Bibliography

Arendt, Hannah. *Eichmann in Jerusalem: A Report on the Banality of Evil*. New York: Penguin Books, 2006.

Askin, Kelly Dawn. "Prosecuting Gender Crimes Committed in Darfur: Holding Leaders Accountable for Sexual Violence." In *Genocide in Darfur*, edited by Samuel Totten and Erik Markusen, 141-160. New York: Routledge, 2006).

———. *War Crimes Against Women: Prosecution in International War Crimes Tribunals*. The Hague: Martinus Nijhoff Publishers, 1997.

Bernstein, Elizabeth. *Brokered Subjects: Sex, Trafficking, and the Politics of Freedom*. Chicago: The University of Chicago Press, 2018.

Bigio, Jamille and Rachel Volgenstein. *Countering Sexual Violence in Conflict*. New York: Council on Foreign Relations, 2017.

Brownmiller, Susan. *Against Our Will: Men, Women and Rape*. New York: Simon and Schuster, 1975.

Buss, Doris E. "Rethinking 'Rape as a Weapon of War.'" *Feminist Legal Studies* 17 (2009): 145-163. https://doi-org.ezproxy.cul.columbia.edu/10.1007/s10691-009-9118-5.

Cahn, Naomi. "Introduction: Mapping the Terrain: Gender and Conflict in Contemporary Perspective." In *The Oxford Handbook of Gender and Conflict*, edited by Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji. Oxford: Oxford University Press, 2018.

Collins, Robert O. "Disaster in Darfur: Historical Overview." In *Genocide in Darfur*, edited by Samuel Totten and Erik Markusen, 3-24. New York: Routledge, 2006.

Copelon, Rhonda. "Toward Accountability for Violence Against Women in War: Progress and Challenges." In *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human Rights*, edited by Elizabeth D. Heineman, 232-256. Philadelphia: University of Pennsylvania Press, 2011).

Crawford, Kerry F. *Wartime Sexual Violence: From Silence to Condemnation of a Weapon of War*. Washington, DC: Georgetown University Press, 2017.

Drumbl, Mark A. "The Expressive Value of Prosecuting and Punishing Terrorists: Hamdan, the Geneva Conventions, and International Criminal Law." *George Washington Law Review* 75, no. 5/6 (August 2007): 1165-1199. https://heinonline.org/HOL/P?h=hein.journals/gwlr75&i=1175.

Engle, Karen. "A Genealogy of the Centrality of Sexual Violence to Gender and Conflict." In *The Oxford Handbook of Gender and Conflict*, edited by Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji. Oxford: Oxford University Press, 2018.

———. *The Grip of Sexual Violence in Conflict*. Stanford, California: Stanford University Press, 2020.

Eriksson, Maria. *Defining Rape: Emerging Obligations for States under International Law?*. Leiden: Martinus Nijhoff Publishers, 2011.

Gardam, Judith. "The Silences in the Rules that Regulate Women during Times of Armed Conflict." In *The Oxford Handbook of Gender and Conflict*, edited by Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji. Oxford: Oxford University Press, 2018.

Halley, Janet. *Governance Feminism: An Introduction*. Minneapolis: University of Minnesota Press, 2018.

Hassellind, Filip Strandberg. "Groups Defined by Gender and the Genocide Convention." *Genocide Studies and Prevention: An International Journal* 14, no. 1 (May 2020): 60-75. https://doi.org/10.5038/1911-9933.14.1.1679.

Heineman, Elizabeth D. "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*, edited by Elizabeth D. Heineman, 1-22. Philadelphia: University of Pennsylvania Press 2011.

Horowitz, Irving Louis. *Taking Lives: Genocide and State Power*. New York: Routledge, 2017.

Lewy, Guenter. "Can there be genocide without the intent to commit genocide?" *Journal of Genocide Research* 9, no. 4 (2007): 661-674. https://doi.org/10.1080/14623520701644457.

Lingaas, Carola. "The Elephant in the Room: The Uneasy Task of Defining 'Racial' in International Criminal Law." *International Criminal Law Review* 15, no. 3 (2015): 485-516. https://web-p-ebscohost-com.ezproxy.cul.columbia.edu/ehost/pdfviewer/pdfviewer?vid=2&sid=db23e213-a8dc-4dca-adcb-49950a2f464b%40redis.

Catharine A. MacKinnon, "Rape, Genocide, and Women's Human Rights." In *Mass Rape: The War Against Women in Bosnia-Herzegovina*, edited by Alexandra Stiglmayer, 183-195. Lincoln: University of Nebraska Press, 1994.

Mazur, Lucas B. and Johanna Ray Vollhardt. "The Prototypicality of Genocide: Implications for International Intervention." *Analyses of Social Issues & Public Policy* 16, no. 1 (Dec 2016): 290-320. https://web-p-ebscohost-

com.ezproxy.cul.columbia.edu/ehost/detail/detail?vid=0&sid=9c45a2bb-f06c-4e87-bded-8956d1fde3b1%40redis&bdata=JnNpdGU9ZWhvc3QtbGl2ZSZzY29wZT1zaXRl#AN=120386709&db=sih.

Merry, Sally Engle. *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago: University of Chicago Press, 2006.

Meijers, Tim and Marlies Glasius. "Trials as Messages of Justice: What Should Be Expected of International Criminal Courts?" *Ethics & International Affairs* 30, no. 4 (2016): 429-447. https://www.proquest.com/docview/1846665103?accountid=10226&pq-origsite=summon.

Nesiah, Vasuki. "Gender and Forms of Conflict: The Moral Hazards of Dating the Security Council." In *The Oxford Handbook of Gender and Conflict*, edited by Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji. Oxford: Oxford University Press, 2018.

Sands, Philippe. "Genocide at 70: A reflection on its origins." *Netherlands Quarterly of Human Rights* 36, no. 3 (2018): 167-172. https://doi-org.ezproxy.cul.columbia.edu/10.1177%2F0924051918784983.

Scheper-Hughes, Nancy. "Small Wars and Invisible Genocides." *Social Science & Medicine* 43, no. 5 (September 1996): 889-900. https://doi-org.ezproxy.cul.columbia.edu/10.1016/0277-9536(96)00152-9.

Sellers, Patricia Viseur. "(Re)Considering Gender Jurisprudence." On *The Oxford Handbook of Gender and Conflict*, edited by Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji. Oxford: Oxford University Press, 2018.

Short, Jonathan M. H. "Sexual Violence as Genocide: The Developing Law of the International Criminal Tribunals and the International Criminal Court." *Michigan Journal of Race and Law* 8 (2003): 503-527. https://repository.law.umich.edu/mjrl/vol8/iss2/5?utm_source=repository.law.umich.edu%2Fmjrl%2Fvol8%2Fiss2%2F5&utm_medium=PDF&utm_campaign=PDFCoverPages.

Stanton, Gregory H. "The Ten Stages of Genocide." Genocide Watch. Accessed February 23, 2022. http://genocidewatch.net/genocide-2/8-stages-of-genocide/.

Stone, Dan. "The Historiography of Genocide: Beyond 'Uniqueness' and Ethnic Competition." *Rethinking History: The Journal of Theory and Practice* 8, no. 1 (2004): 127-142. https://doi-org.ezproxy.cul.columbia.edu/10.1080/13642520410001649769.

The Nobel Prize. "The Nobel Prize for 2018." Last modified October 5, 2018. https://www.nobelprize.org/prizes/peace/2018/press-release/.

Wall, Kim and Mansi Choksi. "A Chance to Rewrite History: The Women Fighters of the Tamil Tigers." *Longreads*, May 2018. https://longreads.com/2018/05/22/a-chance-to-rewrite-history-the-women-fighters-of-the-tamil-tigers/.

Žarkov, Dubravka. "From Women and War to Gender and Conflict?: Feminist Trajectories." In *The Oxford Handbook of Gender and Conflict*, edited by Fionnuala Ní Aoláin, Naomi Cahn, Dina Francesca Haynes, and Nahla Valji, Oxford: Oxford University Press, 2018.