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Analysis of juridical system on sexual violence against women in internal armed conflicts.

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Abstract.

This paper presents a gender analysis of the United Nations Security Council Resolution 1820(2008), the International Human Rights Law and the International Humanitarian Law.

The study is regarding resolution 1820 as a breakthrough in the writings of legal documents that criminalizes sexual violence against women in internal armed conflict. Using textual analysis and a feminist theoretical approach the study highlights the construction of gender norms in the legal document. The study suggests that the narrative of legislative bodies of the IHL and IHRL is dominated by masculinity. Furthermore I am discussing if such norms are evident as a form of essentialism in the legal document, if essentialism is apparent in local and international juridical systems, and what effect does it have on the resolution 1820.

Keywords.


DISCLAIMER.

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List of acronyms & abbreviations.

CEDAW – Convention on Elimination of Discrimination Against Women
CERD – Convention on Elimination of all Racial Discrimination
ICC – International Criminal Court
ICRC – International Committee of the Red Cross
ICTR – International Criminal Tribunal for Rwanda
ICTY – International Criminal Tribunal for the former Yugoslavia
ICCPR – International Covenant on Civil and Political Rights
ICJ – International Court of Justice
IHL – International Humanitarian Law
IHRL – International Human Rights Law
OHCHR – Office of the High Commissioner of Human Rights
SIDA – Swedish International Development Agency
UDHR – Universal Declaration of Human Rights
UN – United Nations
UNGA – United Nations General Assembly
UNSC – United Nations Security Council
1. Introduction.

Based on the report made by SIDA in 2013\(^1\) on gender relations, sexual violence and the effect of armed conflict on the civilian population, the women feel most unsecure in their local environment. What is interesting in the report is that women and men show to have different views about the needs and the situation of women, which can be seen as crucial in the discussion on processes like the negotiations for peace after an armed conflict. The report also indicates that cases of sexual violence are not decreasing, that the perpetrators are often civilians, and above all that sexual violence is being normalized by the structures of the society.\(^2\) In order to build sustainable peace and security in a post-conflict context a gender perspective needs to be implemented, tentatively by focusing on the disadvantages of one gender over the other and the inequalities that follow in the structures in law and decision-making. It ought to be that every individual in a society can be offered a safe and secure juridical system to address, about their experiences of sexual violence and violation of freedom, without the fear of reprisal or lengthy legal processes.

It is questionable whether the international legal documents have become more attentive to the situation of women - the international and local juridical systems seem to be inadequate in the implementation of such practices.\(^3\) This study is using a feminist approach for an analysis of gender structures in human rights and international law by focusing on the United Nations Security Council Resolution 1820(2008), and regarding it as a breakthrough in the writings of legal documents that focus on sexual violence against women. The study also demonstrates that a discussion about gender is an important contribution to the discourse about women’s perspective in the International Human Rights Law and the International Humanitarian Law by focusing on the crimes of sexual violence against women in non-international (generally known as internal) armed conflicts.


\(^2\) Ibid. p 10.

\(^3\) The subject has been discussed by many scholars, which is presented in the next section of this paper.
1.1 Background.

Violence during conflict inflicts major suffering on the civilian population including massacres, rapes and forced displacement, where sexual violence against women and girls can be regarded as most vicious cases of human rights violations. Wars, armed conflicts and occupation of territories often lead to increased prostitution, trafficking and sexual assault on women. Women, children and men are also placed in vulnerable position during conflicts, as the societal breakdown means that any normal forms of protection are suspended. However, being the major part of the civilian population during armed conflicts, the women remain largely unarmed and unprotected when traditional forms of moral and institutional safeguard does no longer exist in a community. This situation results in serious consequences to individuals, families and whole communities that require specific protective and punitive measures. In any armed conflict, sexual violence is a serious violation of international law that fall under the jurisdiction of the international human rights law and the international humanitarian law. Today, sexual violence is internationally recognized as a crime by treaties and national legislations, by international institutions and processes like the International Criminal Court, but also by ad hoc tribunals like the ICTR and ICTY. The treaties and legislations are being operationalized by prosecuting wartime rape and sexual violence as crimes against humanity and crimes of war. Following the ad hoc tribunals of ICTR and ICTY, was the passing of the United Nations Security Council

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4 In recent years there have been many conflicts with criminal acts of sexual violence of pressing gravity, such as the conflicts in former Yugoslavia, Sierra Leone, Democratic Republic of Congo, Sudan, Burma and so on.
8 Ibid. p 98.
9 Governed by the Rome Statue, is the first permanent, treaty based, international criminal court established to help end impunity for the perpetrators of the most serious crimes to the international community. Recognizing rape and a range of other sexual violations as offences, over which the court have jurisdiction. The International Criminal Court, A/CONF.183/9 article 8(c)(e), ICC, 1998, (2002).
10 International Criminal Tribunal for Rwanda was an international court established in November 1994 by the United Nations Security Council in Resolution 955 in order to judge people responsible for the Rwandan Genocide and other serious violations of international law in Rwanda, or by Rwandan citizens in nearby states, between 1 January and 31 December 1994.
11 International Criminal Tribunal for the former Yugoslavia was a court established by resolution 827 of the United Nations Security Council, which was passed on 25 May 1993. It has jurisdiction over four clusters of crimes committed on the territory of the former Yugoslavia since 1991: grave breaches of the Geneva Conventions, violations of the laws or customs of war, genocide, and crimes against humanity.
Resolution 1325(2000)\textsuperscript{13} that acknowledged the impact of war on women. In my opinion, the resolution constituted a victory for the feminist struggle to recognize women as individuals in post-conflict peace processes and the reconstruction of the society. In succession of the UNSCR 1325 was the passing of the UNSCR 1820(2008)\textsuperscript{14} that criminalized the act of rape and sexual violence; by noting that all forms of sexual violence can constitute a war crime or a crime against humanity.\textsuperscript{15} Above all, the resolution 1820 emphasizes the role of women in conflict resolution and peace building.\textsuperscript{16} Both resolutions 1325 and 1820 urge the participating parties in armed conflict to protect and ensure the security of all civilians, and particularly women, from all forms of torture including rape and sexual offences.\textsuperscript{17}

I believe that introducing a terminology that reflects on women’s experiences of violence in armed conflict and naming the crimes of the violations has helped the development of international law. The recognition of violations against women during armed conflict as a crime can be regarded as a standardizing setting and a significant step for the accountability of international treaty bodies. Also the naming of the state and non-state actors as responsible actors for prevention of crimes and protection of individuals can be seen as an important advancement of the international law:

Demands that all parties to armed conflict immediately take appropriate measures to protect civilians, including women and girls, from all forms of sexual violence, which could include, inter alia, enforcing appropriate military disciplinary measures and upholding the principle of command responsibility, training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, vetting armed and security forces to take into account past actions of rape and other forms of sexual violence, and evacuation of women and children under imminent threat of sexual violence to safety; and requests the Secretary-General, where appropriate, to encourage dialogue to address this issue in the context of broader discussions of conflict resolution between appropriate UN officials and the parties to the conflict, taking into account, inter alia, the views expressed by women of affected local communities.\textsuperscript{18}

Nevertheless, the awareness of international resolutions that prohibit crimes against humanity is relatively low in conflict areas, which is visible both among the combating parties and the

\textsuperscript{15} Ibid. paragraph 4.
\textsuperscript{16} The resolutions 1325 and 1820 recognize rape as a weapon of war that can be used in order to destroy communities. Urges the participating parties that they must observe the rules and take every necessary action so that sexual violence do not occur. Recognizes that women and girls are particularly targeted by the use of sexual violence. Articles 9, 10, 11, 12, UNSCR 1325, S/RES/1325, UN, (2000). and Articles 1, 2, 3, 4, UNSCR 1820, S/RES/1820, UN, (2008).
\textsuperscript{17} It is worth to mention that the resolutions are binding to all UN-member states, yet there is no system to ensure that countries do implement its force.
\textsuperscript{18} UN, UNSCR 1820 Article 3, UN, (2008).
civilian population (The statistics of awareness is presented by the International Committee of the Red Cross in figure 1 below). It is therefore possible that the lack of awareness about the resolutions may increase the violations during armed conflict and that it can also lead to the denial of human rights in conflict areas.

![Table: Why combatants attack civilians](source)

1.2 Problem & Purpose Statement.

The lack of knowledge about the international laws among local combating actors can be seen as one of the causes that influence the implementation of international restraint mechanisms. Simultaneously there is a noticeable disagreement about how the international legal system can be more inclusive. According to feminist critique the absence of female voice from any meaningful participation in negotiating, developing, articulating, drafting, and implementing human rights norms is regarded as a consequence of male hegemony over the public life and institutions. Resulting in a system that fails to reflect, and/or ignore the concerns of women. Women are also lacking the space and participation in drafting documents and legislations on

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local levels. One example is the peace negotiation for the Democratic Republic of Congo\textsuperscript{20} in Addis Abeba (PSCF) 2013\textsuperscript{21} which included only one paragraph that remarked women’s and girl’s role as victims of sexual violence (article 3).\textsuperscript{22} In my opinion it should be obvious that the victims need to be protected from all forms of discrimination, re-victimization, further abuse, and to be able to trust the legal system in order to find peace and see the perpetrators in the court of justice. Most importantly, since women are more often the victims of sexual violence and discrimination\textsuperscript{23}, the cases of such violations must be protected from being ignored due to the marginalization of the victims.

This paper will discuss how gender norms are noticeable in the legal documents, how they have a context of masculinity and how a fixed set of perspectives on women in the socio-political context is reflected in the juridical systems. Proposing an issue for discussion, I believe that this is because of structural gender inequality in the legislative bodies. I also believe that structural gender inequality poses a challenge to the international legislations and the responsibilities of the actors that are involved in post-conflict peace processes. In my argument I will focus on the importance of a gender perspective of the internationally recognized resolution UNSCR 1820(2008), but also that the laws and policies assume a male narrative in their response to women’s needs in post-conflict context. Consequently it is imperative that everyone recognizes the crimes of sexual violence as unacceptable and that those who commit these crimes must be made aware of that they will be prosecuted and punished.\textsuperscript{24}

By selecting a feminist approach, the purpose of this thesis is to question the gender norms of legislative bodies and analyse possible structural gender inequalities in post conflict context. I am also presenting a deeper analysis of the resolution 1820. Consequently, the study is structured by asking two overall questions:

1. \textit{How is the construction of gender manifested in the UNSCR1820?}

2. \textit{Are there any weaknesses in the juridical structure in a post conflict setting in the regard to women’s role or position of women, and if so, how to counter these?}

\textsuperscript{20}Democratic Republic of Congo will be hereafter referred to as DRC.
\textsuperscript{24}Crimes must be seen as individual crimes rather than crimes of honor. See chap 1 in Mibenge. (2013).
1.3 Interdisciplinary and feminist approach.

The ad hoc tribunals of Yugoslavia and Rwanda brought gender, violence and armed conflict into the discussion of international scholars from particularly legal, social and media disciplines. By discussing the support services provided (or not provided), the interdisciplinary approach focuses on the interpretation of statutes and rules of evidence and procedure but also the needs of the victims and witnesses. The outcome of the feminist discussion has produced studies by various experts, ranging from the interpretations and definitions of sexual violence to rape trauma syndromes.\(^{25}\) On the domestic levels scholars focus on factors such as how race, ethnicity and class affect the roles of prosecutor, witnesses and victim.\(^{26}\) On the other hand on international level, the approach has focused on studies how state and media include and exclude victims from their victimhood in transitional societies.\(^{27}\) What is revealed in all disciplines is the circumstances that show the disadvantages of victims of sexual violence when it comes to accessing effective justice.

The contribution of previous research shows that feminist scholars have challenged and changed the way of analysing armed conflicts and its impact on socio-political contexts by emphasizing the centrality of gender. This is made evident by raising issues like the reparations for victims and witnesses as a form of social justice. To date, feminist theories contribute with strong and important arguments in both the political sphere as well as in the academic debate. To analyse the contexts behind the norms is probably feminist theory strongest contribution to the academy and the society, which is done by presenting how gender is associated to the inequality in power structures.

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\(^{25}\) See the work of André Klip and Göran Sluit in Annotated leading cases of international criminal tribunals (2007) which provide legal commentary on the decisions of the ad hoc tribunals of Rwanda and former Yugoslavia, the Sierra Leone special court, the Timor Leste special panels for serious crimes, and more recently the International Criminal Court.

\(^{26}\) See the work of Maria Eriksson Baaz and Maria Stern in The Complexity of violence: A critical Analysis of sexual violence in the DRC (2010) which critically explores and convincingly challenges existing stereotypes and narratives about the nature of sexual violence in conflict settings. By identifying forms of conflict-related violence, and explaining the role of various complex factors, it draws attention to the need for a more nuanced understanding of sexual violence, including its invisible victims.

\(^{27}\) See the work of Zarkov, Dubravka in Media, Ethnicity and Gender in the Break Up of Yugoslavia (2007) in which she discusses interconnection between gender and ethnicity, and the role of media narratives in the creation and/or recreation of gender and ethnic identities, based on rich empirical material from Croatian and Serbian press. She is focusing on the special value of the critical and provocative analysis of the contribution of feminists themselves to the media production of ethnicities.
1.4 Theoretical approach of the study.

This thesis is arguing for a gender analysis in order to open up a discussion if there is a problem with essentialism and if there is an absence of women’s perspective in the juridical structures and legislative bodies. Consequently, the theoretical approach of this paper is positioned in the feminist critique. Based on the writings of Alice Edwards I am suggesting an anti-essentialist feminist approach that details how international human rights system treat women as a single collective group, and that the interpretation of legal documents is based on the norm that women share and experience one common identity.\(^{28}\) To emphasize my criticism, I am assimilating Edwards’s argument that points out essentialism as an issue within the law generally because the women are not regarded as subjects. To explain this Edwards refers to Chandra Mohanty by pointing out that “women are constituted as women through the complex interaction between class, culture, religion and other ideological institutions and frameworks”.\(^{29}\) According to Edwards “the treaty bodies continue to locate women primarily within traditional perceptions of women and women’s roles, and downplay their roles and responsibilities in other spheres of life”.\(^{30}\) Concern need to be raised that the international legal system is built on stereotypes and that it is rooted in cultural norms that reflect the inferiority of women to men. By failing to recognize women as autonomous human beings the law adopts strategies that characterise women as weak or helpless which play into preserving stereotypical and male dominated norms.\(^{31}\) Example of such in the legislative language is the violation of honor\(^ {32}\), which also is a frequent approach of feminist criticism. Violation of honor focuses on the purity and inviolability of a community that is dominated by men’s protective roles by pointing out the conception of purity of the community and womanhood as more crucial than targeting sexual violence as an individual crime. This can be regarded as a form of silencing through legal means as well as direct personal pressure which is a part of oppressive social arrangements in which subordination of women is true in many social settings.\(^ {33}\)


\(^{29}\) Ibid. p 77.

\(^{30}\) Ibid. p 316.

\(^{31}\) Ibid. p 84.

\(^{32}\) The Geneva Conventions and its protocols also have a specific provision regarding sexual violence in international armed conflict. Article 27 of the 4th Geneva Convention states that: the women shall be especially protected against any attack on their honor, in particular rape, enforced prostitution, or any form of indecent assault.

The feminist critique is adopting gender as a category of analysis where it is generally understood as a concept that is socially constructed and influenced by culture; expectations on the roles of men and women and how they are intended to interact; and how the society position these roles. In my thesis power relations are considered to be the root of gender relations that are socially and culturally constructed and are forming the identities, status and responsibilities attributed to men and women respectively. Women can thus be subjected to violence due to the oppression of gendered understandings of the values and the worth of women, portraying women as subordinate. Edwards stipulates that a feminist analysis requires some kind of subordination between male and female. She is doing that by identifying two main features in feminist theory firstly ”the observation – the world has been shaped by men, particularly white men, who for this reason possess larger share of power and privilege”; and secondly “the aspiration – all feminists believe that all men and women should have political, social and economic equality”.\(^{34}\) She argues that “the treaty bodies, in their work, need to rebalance the perception of women across regions to match the varied realities of women’s life’s” and that “they ought to be concern with violence against women wherever it occurs”.\(^{35}\) What is outlined in Edwards’s theory is the absence of women and women’s voice from most international and domestic law-making processes. That it excludes the women from human rights discourse, and that it is usually operationalized by the omission of women’s rights from the regulatory mechanisms.

Additional central issue in the feminist critique is why the international legal system has done so little to address the inequality and oppression of women.\(^{36}\) Women’s representation in international treaty bodies is still primarily found in specific treaties on women and children and continue to be a part of gender norms that are dominated by the realities of men. That is because of “the international human rights norms were initially articulated by and continue to be interpreted and applied to reflect men’s experiences while overlooking harms that most commonly or disproportionally affect women”.\(^{37}\) Edwards points out that “although there has been a dramatic increase in the number of references of both ‘women’ and ‘violence against women’ in international jurisprudence, the analysis of women’s lives has been largely rhetorical”.\(^{38}\) In this case Edwards is criticizing the international human rights law for assuming

\(^{35}\) Ibid. p 317.
\(^{36}\) Ibid. p 3.
\(^{37}\) Ibid. p 51.
\(^{38}\) Ibid. p 4.
a “male” standard that governments and institutions adopt and promote as a norm. Her critique suggests that the male hegemony over the public life and institutions mean that rights are defined by men. She refers to this in term of “structural inequality” which is a form of discrimination that is rooted in traditional attitudes by which women are regarded as subordinated to men or as having stereotyped roles. Structural inequality can therefore be regarded as an underlying cause of women’s exclusion or marginalisation from enjoyment of human rights and human rights mechanisms, which include oppression, discrimination and political deprivation. Edwards argues that the international and local legislative bodies interpret human rights norms by assuming that women share common experience and identity as mothers and wives which relegates women to the legal value of “homemaker”. The different interpretation of human rights can be exemplified in those rights that refer to the protection of the family. The Universal Declaration proclaims the family as the “natural and fundamental group unit of society and is entitled to protection by society and the state”. Subsequently she is asserting that the provision ignores the fact that many women regard family as the unit for abuse and violence, and that the protective mechanisms of the state are mainly regulated by men; hence, preserving the male dominated power structures in both public and private domains. Edwards feminist critique can be summarized that the rights of free and independent women can be difficult to protect if the ideology about women renders them to a position of mothers and wives, and stereotyping women as weak, helpless and in need of protection by her male counterpart.

Based on the feminist critique presented in Edwards’s theory it is fair to state that the notions of gender are reproduced by the individual through daily activities, meaning that gender norms are not created by one individual but are constructed by the interaction between individuals. Thus, the theoretical approach of my paper is connecting the feminist critique to the jurisprudence of international treaty bodies by adopting Edwards’s theoretical framework. I will argue that women are underrepresented in the language of the treaty bodies, that the discourse privileges the lives of men, and that this is correspondingly marginalising the concerns of women.

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39 Ibid. p 53.
1.6 Textual analysis as the analytical tool.

The theoretical approach of Edwards and her argument on essentialism and structural inequality is well suited for an analysis of the landscape of human rights apparatus in my paper. The feminist framework used in my paper includes the concepts of critical analysis, which makes it suitable for a study of text in order to uncover the relationships between structures of meanings, ideologies and representation. Reflecting on gender identities and how these identities are contextualized in legal documents and legislative bodies the feminist approach is helping me to identify the way these are operationalized and how they are affected by gender values and social structures.\(^43\) The method of textual analysis is used to discuss gender values in written documents, mainly the UNSCR 1820.\(^44\) It also enabled to conduct a comparative analysis of the documents which was done through reading and reviewing the texts, thus problematizing the substance of the texts according to the research questions.\(^45\) Furthermore, I am discussing the function and structures of the IHRL and the IHL, with the focus of interest on what the legal documents actually mean for women, conceptually, structurally and procedurally. The questioning of gender structures in legal documents and what is included and what is not, is done by analysing the context of text and recognizing the position of gender identities; what can be expected of the actors; and how a victim in a post-conflict context is manifested. A textual analysis is simultaneously contributing to explain what kind of actors, ideals and experiences are fostering the legislations.\(^46\)

Furthermore, it is relevant to mention that this study is not testing the theory but is rather theory oriented, thus only involving elements of deduction. The methodological choice of this study is pointing to my own identity in influencing the research, where the risks of a feminist narrative is placing me as “the knower”, simultaneously underlining the importance of the sources that contribute to help and identify the silences of any marginalised group.\(^47\) This assumption places me, in a strongly subjective position, as one who “uncovers” what no one else can see and articulate. The critics point out that the relationship between the researcher, the source and the


\(^{44}\) The research also analyses to some extent the Geneva Conventions Additional Protocol II and to some extent remarks the legislative “grey zone” between the International Humanitarian Law and the International Human Rights Law.


issue that is supposed to be identified is evident when presenting the biased results of the study.\textsuperscript{48} The feminist approach is based on the assumption that it is impossible to retain objectivity and therefore any ideals of such should be abandoned in all disciplines.\textsuperscript{49} In this paper I acknowledge myself as the knower by positioning my study in a reflection of my personal self-evident values.

The reliability and validity in this study is covered by the principles of internal and external factors. I believe that the results presented in my thesis can be duplicated using the same legal documents and theories that are presented in this essay. However, since the study is conducted by one sole person, it is fair to question the internal reliability. Here, it is suggested that the reader have good insight in the material collected and its contexts as well the literature on feminist theory in order to read the forthcoming text critically.

\textbf{1.7 Material & delimitation.}

The scope of this study poses huge limitation that underlines the presented method of textual analysis as being most suitable approach, rather than trying to set up a number of interviews or ethnographic observations often associated as the primary data in a qualitative research.\textsuperscript{50} Due to the delimitation of the study, the main material consists of the United Nations Security Council Resolution 1820(2008), which is complemented by secondary material that apply to the obligations of the IHL and the IHRL such as the Geneva Conventions additional protocol II. The resolution 1820 was adopted by the UN Security Council on 19 June 2008. Guided by the principles of the Charter of the UN, the resolution is affirming the UNSC commitment to the continuing and full implementation of the resolution 1325(2000). The resolution 1820 is the result of debate on the commitments of the UN at the 2005 World Summit Outcome\textsuperscript{51} and the obligations to the Convention on the Elimination of All Forms of Discrimination against Women\textsuperscript{52}. The Geneva Convention additional protocol II was adopted on 8 June 1977 as a supplement of the Geneva Conventions of 1949, to significantly improve the legal protection of civilians and wounded and – for the first time – lay down detailed humanitarian rules that apply.

\begin{flushleft}
\textsuperscript{48} Ibid. p 107.
\textsuperscript{50} This is also why other legal documents like the convention on torture (which might have changed the result of the study) where abandoned. An element that could also overwhelm the actual research, due to the vast number of legal documents published by the UN and other institutions. See in: Bryman. (2012). p 383.
\end{flushleft}
in civil wars. These documents are chosen because of their focus on the rights of individuals, in particular the rights of women in internal armed conflict. These rights are also perceived as fundamental by the international legislative bodies of the IHRL and IHL. In my opinion these rights can be defined as a sort of higher order rights which cannot be derogated from even the times of state emergency of any local legal system. As the material needed for this study consists of official documents available for the public, they are very easy to access in written form and as online sources.

As for the delimitation of the theoretical approach, the critique can be found in the very same argument that is used in this study, namely: essentialism. The strongest critique is that Western feminists are essentialising women’s image as rooted in the western canonical tradition. As for my study, it can be stated that not all male / female relationships are characterized by oppression and exploitation, and that a feminist approach over-emphasize factors that separate women from men (by over-stating the significance of biological differences, and also by unsupported / uncritical assumptions about male and female psychology). In defense of my paper, I believe it is relevant to point out that there are many aspects in power relations in a society that can be identified as based on gender relations between authority and masculinity.

1.8 Disposition.

The following three chapters: analysis, discussion, and conclusion, represent the essence of this paper. The chapters have been structured in order to recapitulate to the two study questions and reflect on the argument of essentialism of the feminist approach that is presented in the theory. Chapter 2, the analysis, is divided into 4 sections that complement each other: Section 2.1 includes a textual analysis of resolution 1820 and its substance. It also analyses its background and intended use which is done in order to be able to discuss how gender is constructed and manifested in the document; Section 2.2 is analysing the legislative bodies of the International Humanitarian Law and the International Human Rights Law. By representing the international juridical system, it is relevant to see how these legislative bodies refer to the situation of women in internal armed conflict; Section 2.3 is discussing the relation between gender, moral and responsibility with the latter two as a synonym for accountability in instances of war crimes and human rights violations. This section reflects on the issues of essentialising individuals into a

collective group; Section 2.4 is briefly discussing the challenge of non-state actors, seeing it relevant for the UN legislative bodies to have universal jurisdiction for crimes in internal armed conflict. Chapter 3 consists of a discussion based on the analysis of the previous chapter. It also presents four reflections on how structures implicitly favour one gender over the other. The study ends with a conclusion in chapter 6 that summarise the views brought up in the analysis and discussion by answering to the study questions. It is followed by a short chapter 7, that is presenting ideas for future studies.

2. Analysis.


The forthcoming section is conducting a textual analysis of the resolution 1820. By analysing the substance of the resolution it helps me to discuss how gender is constructed and manifested in the document. The UNSCR 1820(2008) can be described as a set of laws generated by the human rights discourse with the focus on international peace and security that is directly addressing women’s experiences of armed conflict. The resolution can be seen as the culmination of decades of efforts to place gender-based violence within the narrative of a criminal act of grave human rights violations.\textsuperscript{55} It is also worth mentioning that the UNSCR 1820 has been the launchpad for increased Security Council interventions in conflict areas where sexual violence is widespread and systematic.\textsuperscript{56}

Ending sexual violence pursuant the resolution 1820 requires judicial processes. Prior to the adopting of resolution 1820, UN adopted resolution 1325 which did set forth the agenda aimed at protecting female civilians in conflict areas. However resolution 1325 did not identify rape as a war crime, resulting in the International Criminal Court not charging or punish any military leaders for crimes of sexual violence.\textsuperscript{57} Preventing the violations of women’s rights did not arise as a component of UN strategy for its missions for many years, where UN failed to recognize rape as a war crime until 2008.\textsuperscript{58} Recognizing rape as a weapon of war by the resolution 1820 made it possible for the ICC for prosecuting individuals responsible for crimes of rape. The

\textsuperscript{55} Mibenge. (2013). p 58.
\textsuperscript{56} Ibid. p 57.
\textsuperscript{58} UNSCR 1820(2008), article 4. (Setting forth Resolution 1820 and declaring rape as war crime). The United Nations passed Resolution 1820 in 2008, finally recognizing rape as a war crime. As a result, perpetrators are punished as if they violated any other war crime. See appendix 3. Article 4. UNSCR 1820(2008).
resolution also allowed the ICC to hear cases involving large scale wartime rape perpetrated as a part of a strategy or tactic. Through the framework of the ICC the objectives of resolution 1820 include prosecuting perpetrators and rehabilitating victims, simultaneously improving the effectiveness and efficiency of the international trials.59 Emphasizing on the importance of the international community’s comprehension that sexual violence is a weapon of war, the preamble of the resolution specifies the significance of early protective instruments against gender based crimes such as the obligation under the CEDAW, to protect, condemn, and punish sexual violence in conflict:

Reaffirming also the resolve expressed in the 2005 World Summit Outcome Document to eliminate all forms of violence against women and girls, including by ending impunity and by ensuring the protection of civilians, in particular women and girls, during and after armed conflicts, in accordance with the obligations States have undertaken under international humanitarian law and international human rights law;

Recalling the inclusion of a range of sexual violence offences in the Rome Statute of the International Criminal Court and the statutes of the ad hoc international criminal tribunals.60

Unfortunately individual perpetrators are rarely penalized, which is due to the international tribunals focus on prosecuting the leaders (which also are rarely prosecuted due to the lack of evidence and the resources to investigate particular cases).61 Another obstacle in the legal accountability is that the perpetrators cannot appear in front of the ICC unless the UN peacekeepers or local authorities capture them. Bringing the perpetrators before the ICC is also costly and unless sufficient evidence can be found, punishment mechanisms are not activated.62 Furthermore the processes of the ICC are complex and there is no guarantee that the state parties in a post conflict setting are willing to add or adopt the jurisdiction of the ICC over their own jurisdiction as a form of reparation.63 By assuming that gender is a social construction in itself, the process of legal accountability acknowledges that both individual and structural aspects determine gender relations and that women and men reinforce the social spaces in which they live, work and operate. Edwards is referring to a similar argument in which she explains that: “The desire to include equal representation of women on law making bodies, for example,

61 Leaders are often the only perpetrators captured, but are rarely punished because of lack of evidence and bias within the ICC. See in: Mollmann. p 167. International organizations that document human rights violations tend to have limited resources and as a result focus their investigations only on particular cases. See in: Wood, J. Elisabeth. Variation in Sexual Violence during War. in: Politics & Society. Vol. 34 No. 3. Sage Publications. (2006). p 319. 
assumes that women speak with one voice, a voice that differs from that of the male. The feminist classification that human rights are ‘men’s rights’ relies, too, in a central dichotomy between the lives of men and women”. Due to traditional attitudes the gender roles can therefore be stereotyped into practices that can involve violence, abuse and marginalization. Women can thus become the subject to oppression due to the understandings of the value and worth of women in the legal processes initiated by state parties in a post conflict context.

The resolution stresses the continuum of sexual violence into the aftermath of conflict, by assigning to all actors the responsibility for working against any acts of abuse or exploitation of women. It also emphasizes the importance of women in the prevention and resolution of conflicts and peace building by equal participation and full involvement in all efforts of maintenance and promotion of peace and security:

Noting that civilians account for the vast majority of those adversely affected by armed conflict; that women and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group;

Reaffirming the important role of women in the prevention and resolution of conflicts and in peacebuilding, and stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security.65

Due to the discrimination of women’s capacity as a result of violence, the resolution emphasizes that there are many obstacles in a post conflict setting that limit women’s participation. Underdevelopment, poverty and gender segregation can be pointed out as some of the underlying causes. Edwards explains that many of these issues affect both men and women; however, many societies worldwide experience these deprivations of rights in different ways.66 Conclusively this can be linked to the discussion on unequal power relations and to gender inequality in different societies and cultures as well as over time. Excluding women’s experiences and concerns can occur in the processes of balancing the competing rights by decision making bodies. In the international human rights law this is done in balancing the rights of freedom of religion versus the equality before the law, in which freedom of religion can justify the oppression of women.67

The resolution is pointing out the need of women and girls to have equal access to justice and equal protection under the law. The resolution remarks that there is little consultation with

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67 I will not deepen my discussion about competing rights in my paper but for those who are interested a very good discussion about the competing rights is presented in Charlesworth Hilary, Chinkin Christine, Wright Shelly. Feminist Approaches to International Law. The American Journal of International Law. Vol 85, No 4 (1991), pp 613-645. pp 635-638.
women to develop effective mechanisms that can provide protection for women from sexual violence, emphasizing the marginalization of women’s involvement on practical level. This is made evident by stressing that peace building needs to prosecute the act of sexual violence committed during conflict in the aftermath of the conflict, however this is only mentioned in the context of national reconciliation:

[...] affirms in this regard that effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security, and expresses its readiness, when considering situations on the agenda of the Council, to, where necessary, adopt appropriate steps to address widespread or systematic sexual violence.68

The resolution also mandates that peacekeepers must adhere to the UN principles and objectives in an effort to enforce the resolution, simultaneously prohibiting the peacekeepers themselves from committing acts of sexual violence and acquiring a particular duty for protecting women and children:

[...] upholding the principle of command responsibility, training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, vetting armed and security forces to take into account past actions of rape and other forms of sexual violence, and evacuation of women and children under imminent threat of sexual violence to safety.69

The code of conduct of the peacekeepers is regulated by what the objectives of the resolution are instead of how to enforce the resolution. The resolution further requests an appropriate training program for peacekeeping and humanitarian personnel in order to help them better understand and respond to sexual violence against civilians. Conclusively this suggests that the UN personnel have little knowledge about how to deal with gender related crimes and individual understanding of women’s perspective, pointing to that the norms for understanding gender related issues is dominated by male perspective:

[...] to develop and implement appropriate training programs for all peacekeeping and humanitarian personnel deployed by the United Nations in the context of missions as mandated by the Council to help them better prevent, recognize and respond to sexual violence and other forms of violence against civilians.70

It also urges the contributing countries to consider steps to heighten the awareness and responsiveness of their personnel to protect civilians:

Encourages troop and police contributing countries, in consultation with the Secretary-General, to consider steps they could take to heighten awareness and the responsiveness of their personnel participating in UN peacekeeping operations to protect civilians, including women and children, and prevent sexual violence against women and girls in conflict and post-conflict situations, including wherever possible the deployment of a higher percentage of women peacekeepers or police.71

The above add to the argument that the contributing countries lack the knowledge of responsiveness to cases of sexual violence. Further pointing to that the peacekeeping operations and humanitarian interventions are built upon male hierarchy, which in turn can be referred to that the contributing countries societal structures and marginalization of women’s voices on domestic level is reflected in UN operations. A broader incorporation of women’s rights and increased attention to gender related issues needs to be delegated to decision makers of both sexes, thus helping to sideline the rights of women to the general view of human rights. Enforcing this view by the rule of law among the peacekeepers has been done before with success in specific missions.\(^\text{72}\)

There is a noticeable bias that influences the (mal)administration of the ICC that is weakening its power which affects the ICC in a way that it becomes unable to punish the alleged perpetrators of sexual violence. In this case it is also possible that the internal and external (to the legislative body of the UN) perpetrators will never recognize the ICC as a threat. Conclusively this can contribute to the victim’s mistrust of the international juridical framework and regarding it as an ineffective resource for justice. By adopting the UNSCR 1820(2008) the UN created a strategic method focused on preventing sexual violence, setting forth the objective to strengthen prevention, protection and response to sexual violence.\(^\text{73}\) However, peacekeeping missions are a component of various cultural groupings that include representatives from a range of governments and institutions. Officials that can have contradicting views to the agenda proposed by the resolution 1820 when enforcing the principles of the UN. Of course the complex mix of various cultural groups is a challenge but still it should not be a barrier to effectively implement the principles of international juridical system.

In the international arena women’s silence has been broken through key documents such as the UNSCR 1325(2000) and the UNSCR 1820(2008). While recognizing rape and sexual violence and referring to it as an act of crime the resolution 1820 is a start point for processes that still have a lot to improve. In the time of writing this thesis the resolution does little more than present a written method for implementation, where implementation in practice is much more


\(^{73}\) UN Comprehensive Strategy art 1. (Listing four components of U.N. mission). The following four components are identified as necessary to end sexual violence in the DRC: (1) combating impunity for cases of sexual violence; (2) prevention and protection of sexual violence; (3) security sector reform; (4) multi sector response for survivors of sexual violence.
difficult. Women’s contributions to peace are thus still marginalized, despite the international recognition and the importance of women’s participation in decision making and integration of a gender perspective. Conclusively it can be stated that the language of the resolution is defined by a reference to military consensus and traditional definitions of peace and security, which are mostly created by men. Asserting that security and legislations during times of conflict is a dominant male narrative, points to the existence of structural gender inequalities. The male dominant narrative is essentializing women’s perspective by restricting them access to realms of national and international justice. A protocol like the resolution 1820 can in this sense be viewed as recognition of the specific gap in the women’s rights. A protocol of such is however not free from constraints, because it can marginalize the issue from the human rights discourse into a more women specific one. Like any legislation it will rely on the god intentions of the decision makers and the interpretation of its parameters by political negotiation and compliance with the dominant social structures and the political will to uphold it.

2.2 International human rights law & International humanitarian law.

In this section the analysis of the international juridical systems of the IHL and IHRL, will show that it is relevant to see how these legislative bodies refer to the situation of women in internal armed conflict. This is because of that the jurisdiction of these legislative bodies applies in the context of internal armed conflict and has become the standard language of international community.

By drafting the Universal Declaration of Human Rights of 1948, various scholars proclaimed the universality of international laws trough translating various religious ideologies into one human rights framework with the idea that it could transcend national boundaries. In the light of the UDHR the International Human Rights Law has responded substantively in the post-world war II period to the reality of belligerents that willfully target civilians as proxies for enemy combatants. Subsequently the human rights developed into an international movement, with the United Nations as the main treaty body, which came to set the legal obligations of states. The

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legal obligations are legitimized through binding international agreements that are contained in treaties and declarations, such as the convention against torture of 1984.\(^7^9\) These events culminated in the establishment of the International Criminal Court\(^8^0\) that became the body of the IHRL.\(^8^1\) The ICC includes in its jurisdiction rape and other forms of sexual violence such as enforced prostitution, forced pregnancy, and sexual slavery, as crimes against humanity and as war crimes when committed in the context of international or non-international armed conflict.\(^8^2\)

In theory the International Human Rights Law applies to individuals and sets the obligations for states. The law applies both during armed conflict as well as during peacetime. By signing the treatises and conventions states take responsibility to enforce its legislations in their own jurisdiction no matter who has the effective control of the state as an institution. Unfortunately, by simply stating that an individual or a group of individuals have rights does not necessarily mean that such persons can act on them. Also, a state’s violation of human rights during peacetime brings no further consequences, more than condemnation of other states and international institutions.

Regarding internal armed conflicts it is defendable to point out the IHRL has become the standard language of the international community and has overtaken the role of the International Humanitarian Law in protecting women against violations.\(^8^3\) Consequently, the committees for CERD\(^8^4\) and CEDAW\(^8^5\) and its interpretations of the relationships between human rights and armed conflict have contributed to forming the main narrative about women’s rights in armed conflict which is done by articulating for the understanding of rights and duties of actors that impact on women’s lives. The work of the committees have also identified three reasons for


\(^8^0\) The Rome Statute of the International Criminal Court is the international treaty that founded the ICC. Comprising a Preamble and 13 Parts, it establishes the governing framework for the Court. Adopted at the Rome Conference on 17 July 1998, it entered into force on 1 July 2002, thereby creating the International Criminal Court. The Statute sets out the Court’s jurisdiction over genocide, crimes against humanity, war crimes and – as of an amendment in 2010 – the crime of aggression. In addition to jurisdiction, it also addresses issues such as admissibility and applicable law, the composition and administration of the Court, investigations and prosecution, trials, penalties, appeal and revision, international cooperation and judicial assistance, and enforcement. *Rome Statute. ICC. (1998).* [Online 2016-04-15] https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf

\(^8^1\) Chandra et al. (2014), pp 34-35.

\(^8^2\) Mibenge. (2013). p 51.


general failure in addressing women’s voice\textsuperscript{86}: the lack of understanding of the systematic subordination of women and of the social, political, and economic structures that perpetuate such subordination; a failure to recognize the subordination of the women, particularly in the private sphere, as a violation of their human rights; and state neglect of both condemning and providing redress for discrimination and other violations against women. It is also evident that male dominated social and political structures exist before the conflict, and that women are marginalized in many spheres of life in the societies long before the conflict. The special rapporteur on violence against women provides far reaching analysis of violence against women in armed conflict by presenting an insight into existing structural inequalities in Rwanda and Sierra Leone before the conflict, such as women lacking the rights to land access and poorly reproductive health care.\textsuperscript{87}

In contrast to the IHRL the International Humanitarian Law\textsuperscript{88} can be regarded as an international set of laws that specialises in the reduction of human suffering during times of war and international armed conflict by regulating the methods and means of warfare. Unlike the IHRL there are no elements in the IHL that can be suspended by a state. However, the IHL with the International Court of Justice\textsuperscript{89} as the legislative body is limited in its application and applies only during times of war and armed conflict.\textsuperscript{90} The basic principles of IHL can be found in the four Geneva Conventions of 1949 and its additional protocols of 1977.\textsuperscript{91} The only applicable provision to non-international armed conflicts (prior to the adaptation of Protocol II) was common article 3\textsuperscript{92}, to all four Geneva Conventions of 1949. The aim of Protocol II was to


\textsuperscript{87} Mibenge. (2013). p 56.


\textsuperscript{89} International Court of Justice. (1945). [Online 2016-05-05] \url{http://www.icj-cij.org/homepage/}


\textsuperscript{92} Common Article 3 of the all four Geneva conventions of 1949 applies explicitly to all internal armed conflicts. However, the article is rather referring to the prisoners of war instead of the civilian population by referring to the individuals “hors de combat”. \url{www.icrc.org} [Online 2016-06-24] \url{https://ihldatabases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=BAA341028EBFF1E8C12563CD00519E66}
extend the protection of international humanitarian law to the victims of non-international armed
conflicts fought by parties with organized command and effective control over a territory.93

The protocols of the IHL include articles that specify the treatment of women by entitling
women to the same protection as this for men in a notion of fundamental gender equality.94
However, there are cases of dominant male perspectives in the IHL provisions that seem to
ignore the traumatizing impact of sexual violation as an act on individual women, which is
evident in the fourth Geneva Convention, article 27 that stipulates:

Protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family
rights, their religious convictions and practices, and their manners and customs. They shall at all times be
humanely treated, and shall be protected especially against all acts of violence or threats thereof and against
insults and public curiosity.
Women shall be especially protected against any attack on their honor, in particular against rape, enforced
prostitution, or any form of indecent assault.95

Conclusively, concepts of virtue and family honor objectify the “pure” women and can
stigmatize the “impure” women according to the gender standards of the day. Chiseche Mibenge,
who is a PhD in International Human Rights, explains this as “opaque language conceptualizing
sexual violence as a crime offending the virtue of women as opposed to a crime of aggression
violating the human dignity and physical integrity of women”.96 The Article 27 of the laws of
war strips women of their individuality and focuses legal protection on women’s sexual
reproductive potential by referring to sexual violence as a crime offending the virtue of women
as opposed to a crime of aggression. Referring to women’s honor the narrative of the article is
also suggesting that it reflects on the protective role of the male that is rooted in gender
structures. This can be explained as when enemy combatants kidnap, rape or impregnate women.
The fear is that men will be deprived of a reproductive asset which solidifies the construction of
rape as an honor crime, i.e. as an atrocity that is harming the structures of male dominant social

databases.icrc.org/applic/ihl.nsf/Article.xsp?action=openDocument&documentId=B97883DC12AC4998C12563
databases.icrc.org/applic/ihl.nsf/Article.xsp?action=openDocument&documentId=A30C39F7F85D71CD12563
databases.icrc.org/applic/ihl.nsf/Article.xsp?action=openDocument&documentId=F9CBD57D47CA6C8C12563
CD0051E783
95 Convention (IV) relative to the Protection of Civilian Persons in Time of War. www.icrc.org (1949). [Online 2016-
06-24]. https://ihl-
databases.icrc.org/applic/ihl.nsf/Article.xsp?action=openDocument&documentId=F9CBD57D47CA6C8C12563
CD0051BB9
structures and that simultaneously can ignore the traumatizing impact of sexual violence of individual women.

2.3 Gender, moral & responsibility in international law.

In discussing the relation between gender, moral and responsibility, this section refers to the latter two as a synonym for accountability in instances of war crimes and human rights violations. The forthcoming text reflects on the issues of essentialising individuals into a collective group.

The increasing number of non-international conflicts also increases the number of non-state actors, which present serious challenges for the international juridical system to impose and demand responsibility for crimes committed during such conflicts. Because of the diversity of non-state actors it is often questioned how the international law obligations and responsibilities may apply, as well as what kind of crimes the group or an individual can be made responsible for. Applicable law is a critical issue in considering individual responsibility and accountability for committed crimes. However, determining which international law applies is complex since conflicts and abuses vary on the gravity and contexts, indicating that different conflicts activate different laws and regulations.

The concept of moral & responsibility has mostly featured either as a synonym for accountability in instances of war crimes and associated human rights violations or as a duty or responsibility of states and international organizations in their pursuit of global justice. However, current international security discourse has adopted a narrative that key political actors should take a stance and acknowledge a responsibility to protect specific populations under specific circumstances. For instance, with the passing of the resolution 1820 sexual violence has been recognized as a “tactic of war” and as a critical issue to international security, simultaneously laying out the responsibility of member states and the UN. The international security discourse is indicating that in the context of non-international armed conflict the responsibility has slipped into an everyday language of policies, legislations and practices. In this manner, the responsibility can be understood as related to the modes of context and concept, in which it is recognized as legal or practical, but also as moral. Thus the concept of legal responsibility entails accusation followed by retribution. To be a responsible moral agent is in this sense one who is

accountable for his actions, assuming that he is free to act in conformity with or in violation of the law. The conception of moral responsibility is in contrast referring to an obligation to act or respond in the sense that the response is accountable beyond the framework of compensation or legal punishment. Manifesting this, an analysis of responsibility, in terms of legal and moral imperatives, can focus on social and normative processes (assuming that juridical decisions correlate with moral judgments). Accordingly, I believe that in the setting of international law the responsibility ought to be a part of what constitutes us as subjects and makes us humans, involving concerns of both men and women. The discussion urges that all actors need to have an understanding of gender, violence and responsibility at every level in order to comprehensively address the issues of the victims and perpetrators.

Feminist accounts on moral and responsibility focus on women’s issues in the discourses of law, international relations and security studies, which focus on contextualizing sexual violence impact on women in a broader pattern of discrimination against women. In studies, like the one presented in this paper, a feminist approach offers the possibility to explore the silences, the gaps and margins of any constellation of power. The focal point in the discourse is that women are violated in ways that men are not, specifying most violations as sexual and reproductive. I believe that such position can normalize the articulation of sexual violence in the context of legal documents and possibly marginalize the crimes as abnormal or exceptional. This can be exemplified by the presented fixed set of ideas about women in the two previous chapters, where men normally are not the victim of sexual discrimination and violence. It also indicates that who’s body matter and who’s bodies are visible in the discussion can alienate a gendered perspective in spheres where power dynamics are evident. This is due to the generally accepted norm that men suffer war in a more serious way than women, since they are the ones that are getting killed.

For me it is evident that the absence of female voice is a direct consequence of male hegemony over the public life and institutions that is affecting the relevance of the laws and the processes of the institutions. The absence of women from participation in decision making processes has

101 In this case it is relevant to mention that some scholars have noted the existence of female perpetrators of sexual violence in a way that has challenged the dominant discourse construction of female victim versus male perpetrator, implying that sexual violence against men is an exception to the norm. See: Alison 2007, Oosterveld 2011, Hedlund 2016.
also resulted in a system of rights that does not fully reflect the needs of women. Accordingly, when the interpretation of laws is undertaken by men it can favor the male norms due to the construction of male centered perspective. Bringing the notion of objectivity to be equivalent to the experiences of men.\(^{102}\) It is therefore crucial to emphasize the need to be open and alert to legal, moral and contextual responsibilities in addressing occurrences of sexual violence. Recapitulating to Edwards: “women and women’s voices are absent from mainstream institutions; that the formulation, interpretation, and application on human rights norms reflect the experiences of men while ignoring or marginalizing those of women” and that because of this: “women are stereotyped into ‘gendered’ roles”.\(^{103}\) Her critique indicates that the logic of the international legal system can inscribe conventional links between bodies, and behaviors that are fixed as male, aggressive/powerful, and women as passive/powerless.\(^{104}\) It is therefore possible that the formulation, implementation and the interpretation of legal norms, which mainly reflect the realities of men, can consolidate women’s issues to the margins of politics and law, thus stereotyping gender roles.\(^{105}\)

Feminist scholars argue that structural and symbolic interpretation of femininity in most societies is based on inequality, by emphasizing the victim’s experience of the harms and suffering in institutional and legal process in the aftermath of a conflict.\(^{106}\) In my opinion, to address women’s losses and harms and weigh it alongside men’s social identity is an issue for the available system of justice. My understanding of current gender structures is that domination, violence, and silencing of women’s perspective remain a fact of the legal narrative that it is dominated by the masculine factor in all societies. Despite the fact that regime of control and the methods of law enforcement vary in diverse cultural and political contexts. Men’s and women’s unequal positions are constantly measured in relation to women and men of their own and other social groups. Socially speaking I believe that many men and perhaps even women have difficulties to see and identify violence and the subordination of women as a violation of human rights. Privileged positions of men and women may also collude in ignoring gendered power and


\(^{103}\) Ibid. p 32.

\(^{104}\) See the gender reports on Women’s Initiatives for Gender Justice. [Online 2016-05-02]: http://4genderjustice.org/

\(^{105}\) In 2000 the HRC stated that Article 3 in the ICCPR is impaired whenever any person is denied the full and equal enjoyment of any right. From the General Comment No 28 document, para 2; outlined in relevance to Article 3, it is clear that the HRC considered violence against women as one issue that impairs women’s entitlement to enjoy ICCPR rights in equality and in totality. Edwards. (2011). pp 180-183.

\(^{106}\) Women often need or require the permission of men to speak. Walker. (2009). p 23.
violence within their own social group, by a hierarchy enforced by coercion and violence of relative power.

2.4 The challenge of non-state actors.

In order to understand an internal conflict setting it is vital to present non-state actors. Targeting civilians is in many cases used by armed groups for instance in the practice of ethnic cleansing, including methods like torture, rape, forced impregnation, i.e. crimes that have no evident military value. Examples can be found in a number of armed conflicts like the one in former Yugoslavia; with the responsible groups such as the KLA (Kosovo Liberation Army), as well as in the violations of civilians in Srebrenica in Bosnia by the Serbian paramilitary forces.

Today, the UN institutional framework provides the main apparatus for international peacekeeping and peace building. Human rights obligations fall on states that have signed treaties and conventions, mostly covering the relations between the state and the citizen. None-recognized armed groups have therefore no specific obligations according to human rights agreements like the CEDAW (Convention on elimination of discrimination against women) or ICCPR (International covenant on civil and political rights). Individual responsibility has been extended through the creation of ad hoc tribunals, and the creation of International Criminal Court to exercise universal jurisdiction by imposing individual criminal responsibility. However, the proliferation of non-international armed conflicts is a challenge for international legislations in regulating activities of all non-state actors, including those of multinational corporations, non-state armed groups, terrorists and private military and security companies. This is due to that the regulations and control of non-state armed groups are underdeveloped mainly because none of the non-state actors can formally sign an ad-here of international treaties or conventions. Despite the UN efforts to end crimes of sexual violence it still appears to be an inevitable natural consequence of war. This indicates that the overall problem of the UN seems to be accountability and the effectiveness of juridical processes and legislative bodies in their work with very detailed resolutions (like the resolution 1820).

107 Chandra et al. (2014). p 91.
109 In many cases the humanitarian actors rely on private military contractors for protection, which results in direct and indirect confrontation with armed groups. Ibid. p 72.
3. Discussion.

This chapter consists of a discussion based on the analysis of the previous chapter. As the central part of my study is a complex and interdisciplinary undertaking I believe it is important to scrutinize the legal and institutional responses to sexual abuses and where they occur. Conclusively, the chapter presents four reflections on how gender structures implicitly favour one gender over the other.

Sexual violence whether inside or outside of an armed conflict, or whether experienced in private or public sphere, carries a unique stigma because of its general perception as a specific violation. I believe this is because of that the majority of those that it happens to are women and that it has not been registered as a record of human atrocity until recently. Furthermore, the international provisions do not fully reflect the nature and the extent of violations faced by women, and that the violations that happen to women also happen to men. Referring to the argument in Edwards theory\textsuperscript{110}, my study is pointing to that essentialism affects both men and women in a sense that the issue of the IHRL is whether it is able to accommodate the diversity of women and women’s lives without compromising its strength that lies in its appeal to universality and gender equality. I believe that in the clash between cultures and / or religious norms and gender equality it is the right to equality what must be the normative agenda. The current image of women in the international discourse is somewhat problematic, which suggest that it is necessary to be conscious of how human rights discourse plays into the ways in which women are presented as victims, rendered only as mothers or caretakers of homes and children. Underlying ought to be the focus on women as legal subjects and rights claimants under the international law and the acceptance that women do share common attributes and experiences, and that they also have their differences to other women.

One could argue that human rights norms in internal conflict are defined by criterion of what men fear will happen to women, or more radically what will happen to groups of men without having dominance over women. The content of the rules of the international legislations benefit men to the extent that when women’s interests are acknowledged at all they are marginalized. Women who are affected by these rights are thus redirected to the instruments of soft law where the interpretative discourse supports a view that mainly reflects male priorities.\textsuperscript{111} Hence, the interpretative inclusion ought to be a part of the system by broader understanding of gender,

\textsuperscript{110} Chapter 1.4 of this paper: \textit{Theoretical approach of the study}. p 7.
\textsuperscript{111} Mibenge. (2013). p 26-42.
gender relations and gender equality and the application of contextual reasoning, and by taking into the account the identity and personal account of individual women. As the analysis of the resolution 1820 has shown\textsuperscript{112}, the inclusion of female perspectives relies on the individual ability and the interest of individual decision makers to apply gender reasoning as a significant process for decision making. Accordingly, pointing to that institutional and procedural reform seems vital to an overall improvement in women’s participation and inclusion. Simultaneously I don’t believe that a broader representation of women through UN enforced quotas is a long-lasting solution for inclusion of women’s voice and their perspectives in the political debate. This can be exemplified in the case of the peace process in Myanmar where quotas have been the subject for discussion and disagreement among the government officials, causing the alarm from women’s rights activists for not taking women’s participation seriously.\textsuperscript{113} In this sense women’s inclusion still marginalizes their position and is essentialising women as a homogenous group. To my understating the inclusion of women in the legislative bodies is still nothing more than symbolic. Accordingly, it is evident that women alone cannot bring about better decision making that treats women equally to men. Decision makers must endorse contextual analysis to any case of sexual violence that include a broad understanding of gender and gender relations in which gender relations must be understood as fluid and variable, rather that unchangeable and static.

Furthermore, the mainstreaming of specific women’s rights can have an effect of excluding women from universal standards of international law. The analysis of section 2.2\textsuperscript{114} in this study is pointing to that the victims of sexual violence need to be recognized as individuals and be treated accordingly the UNSCR1820, and that the women’s rights need to be recognized in the context of internal armed conflict. Interpretation of the resolution need to be applied on various acts of sexual violence by referring to the rights of the individual as these are described in Article 1 of the UDHR.\textsuperscript{115} Human rights framework need to conceptualise violence against women as a manifestation of gender inequality and interpret existing legal provisions by applying them on the experiences of individual women, reflecting upon universal values, shared legal system, and articulating for basic standards of life and dignity. The analysis of this paper

\textsuperscript{113} During the peace conference in Myanmar in August 2016, the UN General Ban Ki- Moon insisted on a minimum 30% representation of women on all levels. The male dominance is however persistent, especially in hard security matters such as demobilisation and disarmament, upsetting women’s groups representative: “They don’t say, ‘the Women’s League of Burma are coming,’ they say, ‘Oh the 30% are coming.” Human Rights Watch interview with Soe Soe New. Women’s League of Burma. Rangoon. May 18. (2016).
\textsuperscript{114} Chapter 2.2 of this paper: International human rights law & International humanitarian law. p 21.
\textsuperscript{115} All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 1. UDHR. (1948).
also argues that the resolution 1820 is failing to provide an argument and accountability in post conflict contexts. This is because of that the essence of resolution 1820 is not defined in local pre-conflict law, which normally applies in the aftermath of the conflict. Hence, the juridical discourse on local level cannot prosecute violence against women due to the social structures and accepted pre-war gender norms. The resolution 1820 ought therefore to have additional provisions to be legitimate, which presents a set of problems that correlate but need to be illustrated individually.

It is also a fact that women are more likely to be poorer than men due to economic and societal construction. In this sense, a gender perspective on life and liberty on local level can lead to greater acknowledgement of women's rights, where legislations like the resolution 1820, that obligate states to respect and protect human rights, can give rise to individual accountability in the global political sphere. Research on this topic requires access to detailed local sources, which is not always possible during or in the aftermath of an armed conflict. In the case of sexual violence, the term “wartime rape” is reveling a “grey zone”, suggesting that there is something called “normal rape”, that happens only occasionally in peaceful societies. Differentiating between rape in war and peace may therefore carry the danger of prioritizing sexual assaults as moral outrage in contrast to accepted forms of forced sex in the private and local environment. The very idea of “normal rape” in peacetime ought to separate the violent sexual relations and the construction of masculinities and femininities from an analysis of power relations as with the domestic violence in peacetime or organized trafficking. While the IHL is expanding its focus to internal armed conflicts, the protection of civilians that is involving non-state actors is challenging the implementation of IHL’s temporal jurisdiction which is mainly restricted to active hostilities. The call for individualization of sexual violence by the IHL needs therefore to focus on it as an act of aggression instead of as a crime of honor or a crime against the community.

The feminist argument of my paper suggests that justice processes are based on legal, political and social narratives that are codified by various actors within a society on any given subject. Legal as well as factual findings based on evidence of the persecutors and witnesses are

116 In this case I refer to that the pre-conflict structures and legislations also apply in post-conflict context in which marginalization of women continues to be an issue. Read more in: Chandra et al. (2014). p 53.
119 Chapter 1.4. Theoretical approach of the study. p 7.
submitted before the court that legitimates the victims and condemn perpetrators of human rights abuses. In cases of sexual violence the decision making processes are not free from a particular tendency where hegemonic power relations contribute to the formulation of courts and legislations.\(^\text{120}\) It is also relevant to have in mind that it is only since 2008 that sexual violence in war has been internationally recognized and referred to as a crime against humanity that requires punishment. Despite the resolution 1820 and the power of juridical institutions like the ICC it is evident that the tribunal judges have difficulties in getting sexual violence into the inducements of the tribunals and the political agendas of local governments.\(^\text{121}\) Also the tribunals and national courts have only begun to refer to the ICTR and the ICTY statutes and decisions. In particular their definitions of sexual violence and rape are being incorporated into national and international justice processes.\(^\text{122}\) Still, the inequalities that arise from gender based discrimination are the result of power imbalances between men and women in which one of the arguments in the discourse is that men suffer worst from human rights abuses since they are being killed and not “only” raped.\(^\text{123}\) The impact of this dominant narrative on the experiences of women both excludes and includes the group from full and authentic legal reception. In countries like Sierra Leone, DRC and Myanmar, that have or are experiencing systematic and widespread violations of human rights, women’s security remain marginalized from the peace processes.\(^\text{124}\)

Until the 1990s the international community showed little recognition of the scale and insecurity that women experienced in the juridical systems of IHL and IHRL in the relation to internal armed conflict. Accordingly, advocating for women's inclusion within the human rights norms and institutions in internal armed conflict was much shaped by the events in former Yugoslavia during the war in 1990’s. This was done by acknowledging that all parties have used sexual violence as a deliberate military strategy and as psychological warfare. The events pushed for women's issues on the human rights agenda, and above all recognized sexual violence against women as a violation of the laws of war.\(^\text{125}\) By presenting this view I believe it can be challenged by the structures that implicitly favour one gender over the other. In order to recapitulate the discussion, I am presenting four reflections on the subject in the following text:

\(^\text{122}\) Ibid. p 18.
\(^\text{124}\) Ibid. p 12. See also the Adis Abeba peace agreement for DRC - PSCF (2013).
Firstly, the ad hoc tribunals of ICTY in Hague and ICTR in Arusha, showed that they are good training grounds for domestic courts and systems in international justice\textsuperscript{126}, simultaneously identifying international legal institutions as important in promoting legal norms in local context. This highlights the need to adapt a gender perspective in post conflict processes in order to denote any out-dated pre-war male hierarchy structures. In my understanding it is therefore relevant to suggest that universal jurisdiction ought to be a principle for international law. International courts should be permitted for the prosecution of certain serious crimes in domestic courts of any state in the world, which currently is not feasible due to out-dated international structures.\textsuperscript{127}

Secondly, the dominant perspective among the combating actors is that all claim legitimate reasons for combating the other. Claims that most of the time focus on dominance over the other. In most cases the claims for violence reflect a male hierarchy structure and correlate with the structures of the civilian community with what is perceived as social norms and values. In these settings women continue to remain outside the parameters of legal redress that ought to be offered by the society.\textsuperscript{128} The limitation of formal inequality of women to men is further reinforced by the fact that many women require permission of a male guardian.\textsuperscript{129} Based on the structures of society, the formal equality of rights is limiting women’s rights since men and women are not similarly suited for having rights.

Thirdly, according to Edwards, the human rights system is hierarchical in the sense that not all rights are of equal legal value by emphasizing that: “One way this occurs is through a balancing of ‘competing’ rights by decision-making bodies, which reduces women’s power”.\textsuperscript{130} The proliferation of the rights and the competitiveness in the international law can in this sense marginalise women’s rights due to the symbolic weakness as rights. This supports the essentialist critique in its claims that “treaty bodies continue to locate women primarily within traditional perceptions of women and women’s roles”.\textsuperscript{131} Accordingly, gendered interpretations of human

\textsuperscript{126} Chandra et al. (2014). p 179.
\textsuperscript{127} The preference of national sovereignty before international rights based system is creating a concern not to have international courts sitting in judgement upon internal activities of individual countries and its citizens. Universal jurisdiction may constitute significant infringement upon national sovereignty and may violate the principle of non-interference in the internal affairs of states as enshrined in Article 2(7) of the UN Charter. States generally exercise exclusive jurisdiction over acts committed on their own territories and by their own individuals, making it the case of territorial sovereignty of the state. Chandra et al. (2014). p 179. & p 185.
\textsuperscript{128} Mibenge. (2013). p 25.
\textsuperscript{129} Ibid. p 24.
\textsuperscript{131} Ibid. p 316.
rights norms assume that women share a common experience and identity. This is played out in the international legislative bodies and courts in their treatment of crimes such as sexual violence against women; due to the desire to include equal representation of women in the legislative bodies and unwittingly assuming that women represent one single voice. This “single voice of women” is according to Edwards collectively located in the private sphere with limited access to the public realm. It is thus important to individualize the multiple harms that women experience during war, and not ignore their identities in the name of the collective.

Fourthly, in spite of the international legislations the probability of bringing perpetrators to justice and face trial is low. Much of it is because sexual violence is not addressed in a broader context of building rule of law institutions on the local level. Another issue is that most of the policy makers at the international level do not possess the necessary knowledge to grasp the causes of structural limits of post-conflict societies. I believe that this originates in the acceptance of local community values and the room for interpretation of international resolutions. The “misunderstanding” of international law by local institutions is due to that local juridical structures are associated to norms of a specific region and represent specific cultural values. These norms and values are often dominated by a masculine hierarchy model long before the conflict. It seems that the juridical framework has little coherence between the local structures and international norms. Furthermore, in processes of peace and security building there is a contrast between formal peace negotiations and community peace-building. The peace negotiations main purpose is to end violence and establish legitimate ruler(s). However, the actors participating in these negotiations most often consist of male combatants and third parties. By implementing women’s quotas in these processes does not guarantee the inclusion of women’s perspective in the process. The community peace building on the other hand is seen as a mechanism to rebuild social relations. The distinction between the two, some feminists argue, divides the public sphere of politics, government and state with the private sphere of home and family. Due to this marginalisation women do not find themselves in decision making positions and are excluded from the very beginning in negotiations in political structures. This might well be considered as creating a hierarchy of people’s contribution to any agreements on

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132 One of the reasons is that the legislative bodies focus on prosecuting the leaders of committed crimes and unwittingly identifying women as a group. Chapter 2.1 of this paper: United Nations Security Council Resolution 1820(2008). pp 14-15.
134 Pre-war norms of male dominance are evident in drafting documents and legislations on local levels. One example is the peace negotiation for the DRC in Addis Abeba (PSCF) 2013.
legislation. In a post conflict setting the informal mechanisms of custom and conventions are an important factor for realization of internationally recognized values. Local and traditional systems of justice may not meet the international standards of human rights and the recognition of international legal institutions. However, these systems are those that local communities rely on in their pursuit for justice which makes them very important and accountable. I believe that by reflecting on gender roles at the root causes of conflict and the role of local law and traditional justice may have an output on understanding the concept of international gender values proposed by international legal documents. Affecting current social norms and values also requires understanding of gender at the institutional level. Internationally recognized principles that favour equality should therefore be seen as guidelines for communication in post conflict contexts.

4. Conclusion.

Based on the analysis and discussion I will here present the answers to the study questions of this paper. The organized violence from both the state actors and non-state actors has increased since the end of the cold war. Armed conflicts have taken new shapes, creating reasons for feminist theory to explore the relations of armed conflict and limited security as the opposite to peace and democracy. Today, more and more nations, groups of society and individuals are dependent on the outcome of globalization, which illustrates that the institutionalization of international legislations and jurisdiction need to be dependent on both groups of people and nations. If peace and security is defined by the enjoyment of human rights through the achievement of equality and justice, then the whole society has a role to play in building and maintaining peace and security - not only combatants and political players. Collective efforts to prevent and resolve any armed conflict need to be a central focus for international responsibility, targeting the structural positions of the main actors involved in conflict prevention, resolution and post-conflict reconstruction, emphasising the UN as legal and institutional framework.

How is the construction of gender manifested in the UNSCR1820?

By the legal documents like the UNSCR 1820(2008) and the legislative body of the ICC the crimes of sexual violence can now be charged as crimes against humanity, war crimes, and grave breaches of humanitarian standards. While sexual violence against women in armed conflict is now recognized by the resolution 1820, still much needs to be accomplished in terms of
compliance, implementation and accountability. The analysis of my paper presents that rereading existing provisions and applying them on specific circumstances can have mixed results and is carrying its own problems and limitations. It has revealed that understanding of gender and gender relations is presented as important to the extent that it can be used as a method of analysis to explore any marginalisation of women’s perspective in legal documents. This is done by raising the concern that the international legal system is built on stereotypes that originate in cultural norms that often reflect the superiority of men over women. Women can thus be subjected to marginalisation due to the oppression of gendered understandings, and the norms and values that portray women as subordinate. Accordingly there is a sense of a male narrative in the resolution 1820 that can be referred to as “structural inequality” which is a form of discrimination that is rooted in traditional attitudes by which women are regarded as subordinated to men or as having stereotyped roles.136 By failing to recognize women as autonomous human beings the law adopts strategies that characterise women as weak or helpless which play into preserving stereotypical and male dominated norms. This suggests a number of necessary changes that need to include the training of UN peacekeepers about gender equality and women’s perspective in internal armed conflict. To fully effectuate the resolution 1820, it is also important to include the responsibility and role of non-combatant actors and international corporations that undertake an active role in armed conflict areas. For instance, in areas where international companies take the advantage of the natural resources, despite the political instability in a country, they also should be made responsible for helping to bring justice, infrastructure, promoting equality and protecting the civilians of those same areas.

Are there any weaknesses in the juridical structure in a post conflict setting in the regard to women’s role or position of women, and how to counter these?

Reports like the one conducted by SIDA137 show that the loss of social status is closely linked to the loss of civil status where women’s property rights or citizenship is in many cases depended on a male guardian. In concert with the theoretical approach of my study, the structural gender inequality is well conceived and accepted as a norm, shaping the perception of the values of the society and its legislations. The weakness of the juridical structure is that it continues, to an extent, to locate women within traditional perception of women’s roles while downplaying their

part in legislative bodies. In post conflict settings, women, seen as caretakers of homes and passive actors, are often bound to submission. This is a dominant value in the structures of the society, making the victims of sexual violence not accounted for in the societal restoration. It also indicates that this is due to a fixed set of ideas that refer to women as a collective, which is essentialising women in the socio-political context where women are the main victims of discrimination. By discussing the system of international human rights as marginalizing women’s lives, my study suggests that women’s rights should reflect the concerns of women by focusing on the individual rather than the collective. I believe that the discussion presented by my study is touching an issue that ought to be a part of a broader debate on how and if human rights should be individualized. Victims of sexual violence need to be protected from all forms of discrimination, re-victimization and further abuse. They also need to be able to trust the legal system in order to find peace and see the perpetrators in the court of justice. Furthermore, to listen to the voices and experiences of the victims (that have been affected by armed conflicts) can provide a deeper reflection upon the effects of the legislations and its impact on the actors of an armed conflict.

According to the analysis of this paper the reconstruction of a society seems to comprise mainly one gender. Therefore, I need to emphasize that the masculine side of the society needs to be included, participatory and more open to the discussion that relate to women’s perspectives, which is of course important since women’s issues are affecting both men and women. In building sustainable peace and security a gender perspective need to be addressed by focusing on the inequalities of gender (but also on the qualities) in social structures and decision making, simultaneously enabling the women to actively participate in all spheres of life.

5. Future Studies.

A suggestion for a future study would include the concepts of individual responsibility in contrast to the political immunity, by focusing on a person’s responsibility for aspects of the individual situation that is actively chosen, or that of the consequences of such choices, or the aspects of a person’s situation that arise from the circumstances beyond a person’s control. In this case it would be interesting to examine how justice for crimes of sexual violence can be made accountable for from political leaders that endure political immunity after an armed conflict. It would also be relevant to study how the crimes are perceived in the local post-conflict context, and how gender norms in the legislations are protecting the perpetrators. A contextual
analysis of such would take into account the intersectional reasoning about gender by asking questions such as: How was the person individually affected by the act of omission in question? How did it impact on the person’s life? What are the consequences to the family relations, social relations, or economic position? However, as interesting as it is, my following study will explore if there are any conflicting viewpoints between the normative gender approach of the resolution 1820 and the views of local actors in the current peace process in Myanmar. My aim will be to find out if and how conflicting gender perspectives refer to women in a peace process.

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Appendix 1 - Cases of sexual violence against women in non-state conflict.

In recent years there have been many conflicts with criminal acts of sexual violence of pressing gravity, such as the conflicts in former Yugoslavia, Sierra Leone, Democratic Republic of Congo, Sudan and so on.

Sierra Leone – The Wife’s operation by the Revolutionary United Front, where girls was abducted as personal belongings to the rebel soldiers is the most evident violation of sexual violence. Sexual violence and rape was common among all groups with violations committed by the non-state groups and the state could be challenged by the Additional Protocol II article 4 of the IHL, ensuring humane treatment of civilians. This conflict was not an ethnic conflict all thou attacks on civilians could have been described as genocide. All thou ethnic conflict with the association to some political groups did exist.

Democratic Republic of Congo - Multiple armed groups, supported by a number of neighboring states. Sexual and gender based violence have been used by all parties systematically and on a massive scale. Despite the presence of the UN the conflict continues to the east, maintaining the instability in the region138. Confrontations between local groups and

warlords pose serious consequences on civilian population as apparent of abuse in nationwide conflict. Ethnic rivalries led to widespread violence and massacres in 2002 and 2003. The EU sent the Artemis mission to regain control over the situation for the UN forces. Ethnic conflict figured as the base, targeting fleeing civilians. Hutu vs. Tutsi vs. Mai-Mai, included Rwanda and Uganda to influence the conflict. HR violations can clearly be the causes for conflict, including the exploitation of natural resources by state and international actors, on the expense and devastating consequences for the population. UN high commissioner report 2010 mapping violations between 1993-2003 by presenting the sexual and gender based violence\textsuperscript{139}. Here the distinction between the international and national armed conflict becomes salient. All acts can be qualified as crimes against humanity, giving the fact that they have been addressed on non-combatant population. The scale and nature of HR violation can be argued as transformed the conflict from local violations to mass-genocide. The conflict is very complex since it involves both national and international actors, both state and non-state armed groups, using proxies when committing the atrocities and abuses, states found themselves liable according to the principles of state responsibility\textsuperscript{140}.

The DRC have ratified the Geneva conventions and its two additional protocols, indicating that both the state and the armed rebel groups have violated the additional protocol II and article 3 of the IHL, by committing crimes in conduct of internal armed conflict and not being capable for providing security for non-combatant actors against criminalized acts of sexual violations against women according to UNSCR 1820.

\textbf{Appendix 2 - Geneva Convention additional protocol II & article 3 of all Geneva Conventions.}

\textit{Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.}

\textbf{Treatment I. General observations.}

\textbf{ARTICLE-27}
Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated

\textsuperscript{139} Ibid. p 128.
\textsuperscript{140} Ibid. p 129.
with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion. However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

[The Geneva Conventions and its protocols also have a specific provision regarding sexual violence in international armed conflict. Article 27 of the 4th Geneva Convention states that: the women shall be especially protected against any attack on their honor, in particular rape, enforced prostitution, or any form of indecent assault.]


Common Article 3 of the all four Geneva conventions of 1949 applies explicitly to all internal armed conflicts. Additional protocol II of 1977 is also recognized but less widely accepted. The common Article 3 is also rather referring to the POW instead of the civilian population as seen here:

**Common Article 3 of all Geneva Conventions.**

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: 1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed “hors de combat” by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples. 2. The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict. See more at: http://www.crimesofwar.org/a-z-guide/407/

**Appendix 3 - United Nations Security Council Resolution 1820(2008).**

**Resolution 1820 (2008)**

**Adopted by the Security Council at its 5916th meeting, on 19 June 2008**

_The Security Council,_


_Guided by the purposes and principles of the Charter of the United Nations,_

_Reaffirming also the resolve expressed in the 2005 World Summit Outcome Document to eliminate all forms of violence against women and girls, including by ending impunity and by ensuring the protection of civilians, in particular women and girls, during and after armed conflicts, in accordance with the obligations States have_
undertaken under international humanitarian law and international human rights law;


Reaffirming also the obligations of States Parties to the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol thereto, the Convention on the Rights of the Child and the Optional Protocols thereto, and urging states that have not yet done so to consider ratifying or acceding to them,

Noting that civilians account for the vast majority of those adversely affected by armed conflict; that women and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group;

and that sexual violence perpetrated in this manner may in some instances persist after the cessation of hostilities;

Recalling its condemnation in the strongest terms of all sexual and other forms of violence committed against civilians in armed conflict, in particular women and children;

Reiterating deep concern that, despite its repeated condemnation of violence against women and children in situations of armed conflict, including sexual violence in situations of armed conflict, and despite its calls addressed to all parties to armed conflict for the cessation of such acts with immediate effect, such acts continue to occur, and in some situations have become systematic and widespread, reaching appalling levels of brutality.

Recalling the inclusion of a range of sexual violence offences in the Rome Statute of the International Criminal Court and the statutes of the ad hoc international criminal tribunals,

Reaffirming the important role of women in the prevention and resolution of conflicts and in peacebuilding, and stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution,

Deeply concerned also about the persistent obstacles and challenges to women’s participation and full involvement in the prevention and resolution of conflicts as a result of violence, intimidation and discrimination, which erode women’s capacity and legitimacy to participate in post-conflict public life, and acknowledging the negative impact this has on durable peace, security and reconciliation, including post-conflict peacebuilding,

Recognizing that States bear primary responsibility to respect and ensure the human rights of their citizens, as well as all individuals within their territory as provided for by relevant international law.

Reaffirming that parties to armed conflict bear the primary responsibility to take all feasible steps to ensure the protection of affected civilians.

Welcoming the ongoing coordination of efforts within the United Nations system, marked by the inter-agency initiative “United Nations Action against Sexual Violence in Conflict,” to create awareness about sexual violence in armed conflicts and post-conflict situations and, ultimately, to put an end to it,

1. Stresses that sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security. affirms in this regard that effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security, and expresses its readiness, when considering situations on the agenda of the Council, to, where necessary, adopt appropriate steps to address widespread or systematic sexual violence;

2. Demands the immediate and complete cessation by all parties to armed conflict of all acts of sexual violence against civilians with immediate effect;
3. **Demands** that all parties to armed conflict immediately take appropriate measures to protect civilians, including women and girls, from all forms of sexual violence, which could include, inter alia, enforcing appropriate military disciplinary measures and *upholding the principle of command responsibility*, training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, vetting armed and security forces to take into account past actions of rape and other forms of sexual violence, and evacuation of women and children under imminent threat of sexual violence to safety; and *requests* the Secretary-General, where appropriate, to encourage dialogue to address this issue in the context of broader discussions of conflict resolution between appropriate UN officials and the parties to the conflict, taking into account, inter alia, the views expressed by women of affected local communities;

4. **Notes** that rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide, *stresses the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes*, and *calls upon* Member States to comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and *stresses* the importance of ending impunity for such acts as part of a comprehensive approach to *seeking sustainable peace, justice, truth, and national reconciliation*;

5. **Affirms its intention**, when establishing and renewing state-specific sanctions regimes, to take into consideration the appropriateness of targeted and graduated measures against parties to situations of armed conflict who commit rape and other forms of sexual violence against women and girls in situations of armed conflict;

6. **Requests** the Secretary-General, in consultation with the Security Council, the Special Committee on Peacekeeping Operations and its Working Group and relevant States, as appropriate, to develop and implement appropriate training programs for all peacekeeping and humanitarian personnel deployed by the United Nations in the context of missions as mandated by the Council to help them better prevent, recognize and respond to sexual violence and other forms of violence against civilians;

7. **Requests** the Secretary-General to continue and strengthen efforts to implement the policy of zero tolerance of sexual exploitation and abuse in United Nations peacekeeping operations; and *urges* troop and police contributing countries to take appropriate preventative action, including pre-deployment and in-theater awareness training, and other action to ensure full accountability in cases of such conduct involving their personnel;

8. **Encourages** troop and police contributing countries, in consultation with the Secretary-General, to consider steps they could take to heighten awareness and the responsiveness of their personnel participating in UN peacekeeping operations to protect civilians, including women and children, and prevent sexual violence against women and girls in conflict and post-conflict situations, including wherever possible the deployment of a higher percentage of women peacekeepers or police;

9. **Requests** the Secretary-General to develop effective guidelines and strategies to enhance the ability of relevant UN peacekeeping operations, consistent with their mandates, to protect civilians, including women and girls, from all forms of sexual violence and to systematically include in his written reports to the Council on conflict situations his observations concerning the protection of women and girls and recommendations in this regard;

10. **Requests** the Secretary-General and relevant United Nations agencies, inter alia, through consultation with women and women-led organizations as appropriate, to develop effective mechanisms for *providing protection from violence*, including in particular sexual violence, to women and girls in and around UN managed refugee and internally displaced persons camps, as well as in all disarmament, demobilization, and reintegration processes, and in justice and security sector reform efforts assisted by the United Nations;

11. **Stresses** the important role the Peacebuilding Commission can play by including in its advice and recommendations for post-conflict peacebuilding strategies, where appropriate, ways to address sexual violence committed during and in the aftermath of armed conflict, and in ensuring consultation and effective representation of women’s civil society in its country-specific configurations, as part of its wider approach to gender issues;
12. *Urges* the Secretary-General and his Special Envoys to invite women to participate in discussions pertinent to the prevention and resolution of conflict, the maintenance of peace and security, and post-conflict peacebuilding, and encourages all parties to such talks to facilitate the equal and full participation of women at decision-making levels;

13. *Urges* all parties concerned, including Member States, United Nations entities and financial institutions, to support the development and strengthening of the capacities of national institutions, in particular of judicial and health systems, and of local civil society networks in order to provide sustainable assistance to victims of sexual violence in armed conflict and post-conflict situations;

14. *Urges* appropriate regional and sub-regional bodies in particular to consider developing and implementing policies, activities, and advocacy for the benefit of women and girls affected by sexual violence in armed conflict;

15. *Also requests* the Secretary-General to submit a report to the Council by 30 June 2009 on the implementation of this resolution in the context of situations which are on the agenda of the Council, utilizing information from available United Nations sources, including country teams, peacekeeping operations, and other United Nations personnel, which would include, inter alia, information on situations of armed conflict in which sexual violence has been widely or systematically employed against civilians; analysis of the prevalence and trends of sexual violence in situations of armed conflict; proposals for strategies to minimize the susceptibility of women and girls to such violence; benchmarks for measuring progress in preventing and addressing sexual violence; appropriate input from United Nations implementing partners in the field; information on his plans for facilitating the collection of timely, objective, accurate, and reliable information on the use of sexual violence in situations of armed conflict, including through improved coordination of UN activities on the ground and at Headquarters; and information on actions taken by parties to armed conflict to implement their responsibilities as described in this resolution, in particular by immediately and completely ceasing all acts of sexual violence and in taking appropriate measures to protect women and girls from all forms of sexual violence;

16. *Decides* to remain actively seized of the matter.