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# **Conflict-Related Sexual Violence: Exploring Feminist Engagements with Law and Armed Forces**

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## Lay Summary

Feminist activists and international lawyers have been working to draw attention to the problem of conflict-related sexual violence (CRSV) since the early 1990s. They advocated for rape and other forms of sexual violence to be prosecuted in international tribunals - with notable success. CRSV has been prominent on the agenda of the United Nations Security Council since 2008 and the British Global Summit to End Sexual Violence in Conflict of 2014 attracted significant media and public attention.

Although CRSV is not a new problem, it is only in the last fifteen years that the United Nations, regional organisations and governments have called on and committed *militaries* to prevent and respond to it. It has been proposed that militaries mount patrols designed to prevent CRSV, intervene to stop CRSV, and help to collect evidence and arrest perpetrators, for example. This presents a dilemma for feminists who wish to see an end to CRSV but are sceptical of militaries as a force for good for women, and indeed often identify militarism as an underlying cause of CRSV.

This thesis explores this dilemma through two perspectives. First, it examines the legacy of legal activism around CRSV from the perspective of how it has influenced militaries. It asks whether militaries now understand CRSV as a violation of international law implying positive legal obligations. Second, it examines militaries' ideas about gender, women and the nature of sexual violence. It explores how these ideas influence militaries' approach to CRSV in operations.

This thesis looks at these questions in two cases: NATO, an important military alliance, and the British Armed Forces, an influential military. Using interviews, observation of training, and documentary review, it traces these institutions' commitments and action around CSRV since 2005, identifying key progress and constraints. It finds that both NATO and the British Armed Forces have made progress in incorporating CRSV into their policies and that the topic of CRSV has challenged them to think about women affected by armed conflict in new ways. However, neither NATO nor the British Armed Forces see themselves as being under any legal *obligation* to prevent or respond to CRSV. Moreover, dealing with CRSV often does not easily fit with what militaries understand their role to be. This means that it is

difficult to envision militaries that effectively prevent and respond to CRSV unless they holistically transform to become more focused on human security and less focused on combat.

This project brings new understanding to how international law, military culture, and ideas about gender interact, and how these dynamics influence how militaries behave. This allows for the identification of new avenues for influencing militaries and military organisations to better address human rights violations, including CRSV, during armed conflict.

## Abstract

This thesis explores militaries' efforts to prevent and respond to conflict-related sexual violence (CRSV). As militaries around the world declare their commitment to gender mainstreaming and implementation of the Women, Peace and Security Agenda, CRSV tests the limits of what militaries can and should do. CRSV presents complex legal questions in view of the convergence between international humanitarian law and international human rights law in military operations. For critics of militaries, CRSV also raises dilemmas over whether to resist militarism or urge militaries to change. In examining both these aspects, this thesis opens a new dialogue between feminist approaches to international law and scholarship on gender and militaries.

This study examines international law obligations applying to military action to prevent and respond to CRSV committed by third parties, proposing the relevance of a range of human rights standards. It uses NATO and the British Armed Forces as case studies to explore how militaries understand and integrate these obligations. Using interviews, observation of training, and review of policy, doctrine, directives and training materials, this research traces NATO and the British Armed Forces' commitments and action concerning CRSV since 2005, identifying key progress, shortcomings and constraints. The analysis is guided by feminist methodologies of identifying structural bias within the law.

This thesis proposes that, in certain circumstances, armed forces have an obligation of due diligence to prevent CRSV by third parties and to support the investigation of CRSV. What this requires in practice has been inadequately considered. It finds that NATO and the British Armed Forces have made progress incorporating CRSV into policy, doctrine and training, in particular since 2012. NATO has established institutional structures to support gender mainstreaming and issued a series of operational directives. The British Armed Forces have delivered CRSV training to foreign forces and introduced policy on human security. In both contexts, however, conceptual and cultural obstacles to effectively preventing or responding to CRSV remain. CRSV is framed with reference to the Women, Peace and Security Agenda: in political rather than legal terms. Exploring how militaries understand their possibilities for action concerning CRSV reveals how the primacy of

combat in militaries' strategic culture limits what they consider reasonable, and how this shapes and is shaped by understandings of legal obligation.

In demonstrating the difficulties of and resistance to responding to CRSV, this study offers a sobering counterpoint to progressive visions for the transformation of militaries. It questions expectations that adopting a human rights framework for armed intervention will be enough to orient militaries to human security. In exploring the place of international law in military understandings of CRSV and what militaries see their role in countering CRSV to be, this thesis contributes new insights to scholarship concerning law in armed conflict as well as to critical scholarship on gender, militaries, and security. It urges critical engagement with militaries and military organisations to deepen militaries' commitment to human security goals.

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## Abbreviations

ACT	NATO Allied Command Transformation
ACO	NATO Allied Command Operations
AU	African Union
CEDAW	<i>Convention on the Elimination of All Forms of Discrimination Against Women</i>
CRC	<i>Convention on the Rights of the Child</i>
CRSV	conflict-related sexual violence
DCDC	British Armed Forces' Development Concepts and Doctrine Centre
DRC	Democratic Republic of the Congo
EAPC	Euro-Atlantic Partnership Council
ECHR	<i>European Convention on Human Rights</i>
ECtHR	European Court of Human Rights
EU	European Union
FET	Female Engagement Team
FPU	Formed Police Unit
G8	Group of Eight
GBV	gender-based violence
GCs	<i>Geneva Conventions of 1949</i>
GENAD	Gender Advisor
ICCPR	<i>International Covenant on Civil and Political Rights</i>
ICJ	International Court of Justice

ICRC	International Committee of the Red Cross
IGO	inter-governmental organisation
IHL	international humanitarian law
IHRL	international human rights law
ISAF	International Security Assistance Force
LOAC	law of armed conflict
LGBTIQ	lesbian, gay, bisexual, trans, intersex and queer
MATT	Military Annual Training Test
MoD	Ministry of Defence
MTMC	British Army Mission Training and Mobilisation Centre
NAP	national action plan
NATO	The North Atlantic Treaty Organization
NCGP	NATO Committee on Gender Perspectives
NGO	non-governmental organisation
PSVI	Preventing Sexual Violence Initiative
Rome Statute	<i>Rome Statute of the International Criminal Court</i>
SEA	sexual exploitation and abuse
SGBV	sexual and gender-based violence
SGSR WPS	NATO Secretary General's Special Representative for Women, Peace and Security
SHAPE	NATO Supreme Headquarters Allied Powers Europe
UN	United Nations
UNMIK	United Nations Mission in Kosovo

UNSCR	United Nations Security Council Resolution
UK	United Kingdom
WPS	women, peace and security





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## **PART I: CONCEPTUAL FRAMING**

### **Chapter 1**

#### **Introduction**

To end sexual violence in conflict is a great endeavour and at its heart stands the soldier and the choice that he will make, when all is at its most elemental – a simple, terrible choice – to be a protector or a perpetrator.

Lieutenant General David Morrison, Chief of Australian Army, Address to the closing plenary session at the Global Summit to End Sexual Violence in Conflict, 13 June 2014

#### **1.1 Origins and context of this thesis**

This thesis was born in an office in a Ministry of Defence headquarters, in 2014, when a senior military official told me that militaries could not protect civilians in conflict because there was never the political will to put “boots on the ground”. Political leaders who said militaries could stop sexual violence were asking too much, he said. Militaries were designed for killing people and blowing stuff up and did not have the training for protecting civilians, nor handling victims of sexual violence. The conversation made me question whether the efforts of feminist organisations and practitioners, like myself, to urge militaries to orient themselves to sexual violence prevention and response were a waste of time. I wondered whether we were unwittingly legitimising merely rhetorical performances on the part of militaries. I was annoyed that a military costing the public tens of billions of pounds each year seemed so unuseful. But I wondered whether militaries might change. First, whether they could be made to act differently through the assertion of legal responsibilities in relation to sexual violence. Second, whether militaries might come to see their role as providing protection rather than combat, whether their sense of their own role might shift. These two themes, the role of international law and the nature of militaries, shape this research.

## Are international legal strategies effective against sexual violence in conflict?

In many of the world's contemporary armed conflicts violence is primarily directed toward civilians, and sexual violence used as a tactic to control or destroy communities. Analysis of conflicts in seventy-six countries between 1989 and 2009 identifies seventeen countries where sexual violence was "systematic," "massive," or "innumerable".<sup>1</sup> The number of rebel groups reported as perpetrating sexual violence more than tripled from 1989 to 2015.<sup>2</sup>

Conflict-related sexual violence (widely abbreviated as "CRSV") has been a totemic issue for global feminist activism, and international law has been a key mechanism through which to challenge it.<sup>3</sup> Since the war in Bosnia Herzegovina in the early 1990s, feminist scholars and activists invested great effort in ensuring that courts recognise the many forms of sexual violence committed during armed conflict and punish it with due severity. Feminists set out to dismantle the pervasive culture of impunity for sexual violence during conflict, and to make it a less appealing "weapon" for potential perpetrators.<sup>4</sup> Their success is often invoked to illustrate how advocacy around international law can be used to promote women's human rights.

In the political arena, CRSV has been a prominent theme within the Women Peace and Security (WPS) Agenda since 2008. Established by the adoption in 2000 of United Nations Security Council Resolution (UNSCR) 1325 and (at the time of writing) substantiated

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<sup>1</sup> D. K. Cohen and R. Nordås, 'Sexual violence in armed conflict Introducing the SVAC dataset, 1989–2009' (2014) 51 *Journal of Peace Research* 418–28.

<sup>2</sup> R. Nordås and R. Nagel, *Continued Failure to End Wartime Sexual Violence* (2018) p. 2.

<sup>3</sup> K. Engle, 'A Genealogy of the Centrality of Sexual Violence to Gender and Conflict' in F. Ní Aoláin, N. Cahn, D. F. Haynes, N. Valji (eds.), *The Oxford Handbook of Gender and Conflict*, (2018).

<sup>4</sup> E.g.: H. Charlesworth, 'Feminist Methods in International Law' (1999) 93 *The American Journal of International Law* 379; P. V. Sellers, 'Sexual Violence and Peremptory Norms: The Legal Value of Rape' (2002) 34 *Case Western Reserve Journal of International Law* 287–304; K. D. Askin, 'Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles' (2003) 21 *Berkeley Journal of International Law* 288–349.

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through a further nine resolutions,<sup>5</sup> the WPS Agenda has established a new normative framework concerning the protection of women's and girls' human rights in armed conflict and post-conflict settings, the full and equal participation of women in peace and security, and gender mainstreaming in UN peacekeeping and peacebuilding. Although its implementation remains incomplete, the WPS Agenda plays a significant role in national contexts and regional organisations, implemented through action plans and strategies.<sup>6</sup> The first UNSCR on WPS dedicated to sexual violence in conflict was adopted in 2008, and a further four have been adopted since.<sup>7</sup> From 2013 CRSV received a further boost in political prominence through the British-led Preventing Sexual Violence Initiative (PSVI).

Despite the successes of the 1990s in developing individual criminal responsibility and the subsequent political focus on CRSV, it continues seemingly unabated. The horrific sexual violence by ISIS and the seeming inability or unwillingness of the international community to prevent it or rescue its victims brings into question what all the legal development and summits have achieved.<sup>8</sup> At the same time, concern has grown about possible unintended conceptual, political and practical consequences of CRSV advocacy. Does emphasising CRSV close down space to recognise other forms of harm that women suffer in war? This is one dimension of what Catherine O'Rourke describes as "a strongly critical, reflective thrust about the costs of engaging international law and the quality of ostensible gains" within contemporary feminist work.<sup>9</sup> The potential costs of feminist engagement with the WPS Agenda are perceived to include co-option of women's movements and de-radicalisation of

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<sup>5</sup> *Resolution 1325* (2000); *Resolution 1820* (2008); *Resolution 1888* (2009); *Resolution 1889* (2009); *Resolution 1960* (2010); *Resolution 2106* (2013); *Resolution 2122* (2013); *Resolution 2242* (2015); *Resolution 2467* (2019); *Resolution 2493* (2019).

<sup>6</sup> There is a mature body of scholarship on the WPS Agenda, captured in recent series of handbooks: C. E. Gentry, L. J. Shepherd, and L. Sjoberg, *The Routledge Handbook of Gender and Security* (Routledge, 2018); F. Ní Aoláin, N. R. Cahn, D. F. Haynes, and N. Valji (eds.), *The Oxford Handbook of Gender and Conflict* (Oxford University Press, 2018); S. E. Davies and J. True (eds.), *The Oxford Handbook of Women, Peace, and Security* (Oxford University Press, 2019).

<sup>7</sup> *Resolution 1820*; *Resolution 1888*; *Resolution 1960*; *Resolution 2106*; *Resolution 2467*.

<sup>8</sup> N. Al-Ali, 'Sexual violence in Iraq: Challenges for transnational feminist politics' (2018) 25 *European Journal of Women's Studies* 10–27. For data, see: Nordås and Nagel, *Continued Failure to End Wartime Sexual Violence*.

<sup>9</sup> C. O'Rourke, 'Feminist Strategy in International Law: Understanding Its Legal, Normative and Political Dimensions' (2017) 28 *European Journal of International Law* 1019–45 at 1020.

the feminist peace agenda and fragmentation of gender equality norms.<sup>10</sup> These debates place a question mark over the legacy and future of feminist legal strategy around CRSV.

### Could militaries prevent and respond to CRSV?

One of the achievements of feminist advocacy on CRSV is that addressing sexual violence is now regularly included in the mandates of UN peacekeeping operations. Indeed, where a civil conflict has a high prevalence of sexual violence, it is almost three times as likely that the UN and regional organisations will deploy a peacekeeping operation.<sup>11</sup>

Since 2005, there has been new political commitment to *militaries* playing a role in preventing and responding to CRSV.<sup>12</sup> Some 155 countries have committed their armed forces to review doctrine and training to ensure that it enables more effective prevention and response to sexual violence in conflict.<sup>13</sup> Several militaries have done so, hand-in-hand with broader work on WPS and gender mainstreaming. For example, in 2014, Bosnia and Herzegovina's peacekeeping training centre produced a curriculum on the prevention of CRSV, and the United States military published CRSV scenario-based training.<sup>14</sup> The Norwegian Defence University College is developing a handbook on military capabilities to address CRSV.<sup>15</sup> Images of actor Angelina Jolie visiting a NATO command and a British military base illustrate the new types of conversations happening in those spaces.<sup>16</sup>

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<sup>10</sup> Ibid., 1022, 1028; D. Otto, 'The exile of inclusion: reflections on gender issues in international law over the last decade' (2009) 10(1) *Melbourne Journal of International Law* 11–26.

<sup>11</sup> J. Kreutz and M. Cardenas, 'Women, peace and intervention: how the international community responds to sexual violence in civil conflict' (2017) 23 *Canadian Foreign Policy Journal* 260–76 at 271. Their dataset spans 1989 to 2009.

<sup>12</sup> Militaries can potentially also play roles in preventing and responding to sexual violence in non-conflict contexts, e.g. in disaster relief operations, where deployed in peacetime settings, and most obviously, among their own forces. Because it is framed in relation to legal and political activism focused upon armed conflict, this project does not focus upon these dimensions.

<sup>13</sup> *A Declaration of Commitment to End Sexual Violence in Conflict* (2013).

<sup>14</sup> Peace Support Operations Training Centre, 'Prevention of Sexual Violence in Conflict Generic Reference Curriculum for Training in Security Sector' (2014); U.S. Army War College (ed.), 'Preparing to Prevent: Conflict-Related Sexual Violence Mitigation Scenario-Based Training' (2014).

<sup>15</sup> S. Holen and L. Vermeij, 'Combating Conflict-Related Sexual Violence' (October 2017).

<sup>16</sup> 'Angelina Jolie visits British military team in Kenya' (June 2017); NATO, 'UN Special Envoy Angelina Jolie visits NATO Headquarters' (2018).

### Could we make militaries work for women?

While some feminist activists and scholars urge the military to step up its role in protecting women, others greet military engagement with international efforts around CRSV with scepticism.<sup>17</sup> Feminists have long drawn attention to the negative impacts of military operations on women and girls, and the connections between war, military masculinities, and violence against women.<sup>18</sup> As such, some question whether armed forces are capable of being “forces for good” for women, and strive toward a vision of demilitarisation, rather than “better” militaries. As such, they might argue that militaries are not an appropriate focus for constructive feminist engagement.

In other quarters, feminist critique of militaries is tempered by a vision of “regendered” militaries, based upon new forms of military masculinity observed in peacekeeping and counterinsurgency. A regendered military would work collaboratively with local communities through relationships founded upon respect and empathy, disrupting the masculine/feminine hierarchies constitutive of militarism.<sup>19</sup> This idea has commonalities with theorisation within mainstream security scholarship of “cosmopolitan” militaries and

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<sup>17</sup> E.g. M. Henry, ‘Why is handling and responding to sexual violence a military responsibility?’ *Sexual Violence, the Armed Forces and Military Operations*, (Lillehammer: Norwegian Armed Forces Defence Command and Staff College, 2011), pp. 81–83; C. Cockburn, ‘Snagged on the Contradiction: NATO, Resolution 1325, and Feminist Responses’ (2012) *Women in Action* 48–57; H. Wright, ‘Ending Sexual Violence and the War System – Or Militarizing Feminism?’ (2015) 17 *International Feminist Journal of Politics* 503–507.

<sup>18</sup> C. Enloe, *Maneuvers: The International Politics of Militarizing Women’s Lives*, 1 ed. (University of California Press, 2000); A. Orford, ‘Feminism, Imperialism and the Mission of International Law’ (2002) 71 *Nordic Journal of International Law* 275–96; K. Engle, ‘“Calling in the Troops”: The Uneasy Relationship among Women’s Rights, Human Rights, and Humanitarian Intervention’ (2007) *Human Rights, and Humanitarian Intervention*; S. Whitworth, *Men, Militarism, and UN Peacekeeping: A Gendered Analysis* (Lynne Rienner Publishers, 2004); A. Mama and M. Okazawa-rey, ‘Militarism, conflict and women’s activism in the global era: challenges and prospects for women in three West African contexts’ (2012) *Feminist Review* 97–123.

<sup>19</sup> C. Cockburn and M. Hubic, ‘Gender and the peacekeeping military: a view from Bosnian women’s organisations’ *The Postwar Moment: Militaries, Masculinities and International Peacekeeping: Bosnia and the Netherlands*, (London: Lawrence & Wishart, 2002), pp. 103–21; C. Duncanson and R. Woodward, ‘Regendering the military: Theorizing women’s military participation’ (2016) 47 *Security Dialogue* 3–21.



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proposals for “law enforcement” or “human security” forces.<sup>20</sup> These models envision militaries (or hybrid civilian/military forces) oriented towards protection and policing-type tasks, and cooperating more actively with local communities: tasks which are coded “feminine” in contrast to the “masculine” nature of combat.<sup>21</sup>

Scholarship on cosmopolitan militaries and human security-oriented forces emphasises the importance of international human rights law (IHRL) and international humanitarian law (IHL) guiding military action.<sup>22</sup> Christine Chinkin and Mary Kaldor’s bold strategy of “second-generation human security” argues for committing to IHRL as the predominant legal regime in any military intervention.<sup>23</sup> Whether IHRL is framed as the *predominant* legal regime or a regime operating *in tandem* with IHL, there is as yet scant scholarship examining how militaries interpret legal standards pertaining to CRSV. This leaves complex questions of whether militaries could be fit for CRSV tasks, both in terms of their institutional culture and the strategic and legal frameworks within which they operate.

This project explores these questions about law, militaries, and feminist strategy through examining how the call for militaries to prevent and respond to CRSV has been understood and acted upon in NATO and the British Armed Forces since 2005. More specifically, it seeks to answer the following questions.

- ❖ When and how does international law recognise and demand military response to CRSV?

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<sup>20</sup> L. M. Elliott and G. Cheeseman, *Forces for Defense Good: Cosmopolitan Militaries in the Twenty-first Century* (Manchester University Press, 2004); M. Glasius and M. Kaldor, *A Human Security Doctrine for Europe: Project, Principles, Practicalities* (Routledge, 2006); S. D. Beebe and M. H. Kaldor, *The Ultimate Weapon is No Weapon: Human Security and the New Rules of War and Peace* (PublicAffairs Books, 2010).

<sup>21</sup> A. Kronsell, *Gender, Sex, and the Postnational Defense: Militarism and Peacekeeping* (Oxford University Press, 2012) p. 145.

<sup>22</sup> Other fields of international law such as refugee law or disaster response law can additionally be relevant to military operations (see n 12).

<sup>23</sup> C. M. Chinkin and M. Kaldor, *International Law and New Wars* (Cambridge University Press, 2017) pp. 230, 282.

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- ❖ How is NATO and the British Armed Forces' engagement with CRSV shaped by understandings of international law, and what does this tell us about the workings of international law?
- ❖ What initiatives have NATO and the British Armed Forces developed to prevent and respond to CRSV?
- ❖ How is NATO and the British Armed Forces' engagement with CRSV shaped by gender, and how is engagement with sexual violence challenging these gender dynamics?
- ❖ How does NATO and the British Armed Forces' engagement with CRSV inform debates within feminist scholarship and activism around the potential risks and rewards of engaging with militaries?

The remainder of this chapter situates these questions within international law scholarship and feminist security studies, explains the concepts used, discusses the scope and limitations of this study, and maps out this thesis' structure.

### **1.2 Gaps in knowledge and understanding**

#### Law

The first question this project asks is: "When and how does international law recognise and demand military response to CRSV?" Despite the rich developments in jurisprudence concerning CRSV, the nature of a state's responsibilities to prevent and respond to CRSV (and other violations) by third parties is unclear. The operational demands being placed upon armed forces in relation to CRSV fall into grey areas in terms of positive obligations under IHL, IHRL and any mandate to protect civilians.<sup>24</sup> This speaks to the importance of the

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<sup>24</sup> M. Hakimi, 'State Bystander Responsibility' (2010) 21 *European Journal of International Law* 341–85; S. Wills, 'International Responsibility for Ensuring the Protection of Civilians (Chapter 10)' in H. Willmot, R. Mamiya, S. Sheeran, M. Weller (eds.), *Protection of Civilians*, (Oxford: Oxford University Press, 2016).

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questions raised by feminist critique of IHL, as to whether the legal frameworks governing military operations are fit for purpose when it comes to CRSV.<sup>25</sup>

If the above is a gap in the comprehensive and consistent understanding of the content of international law concerning CRSV, there are likewise gaps in understanding how that law is *understood and applied* within military operations. While there is a great deal of literature on the complex applicability of IHRL during armed conflict, how state armed forces actually understand their IHL and IHRL obligations as regards the protection of civilians has received little empirical attention. As such, this project asks: “How is NATO and the British Armed Forces’ engagement with CRSV shaped by understandings of international law, and what does this tell us about the workings of international law?” Then, fresh attention to the *gendered* nature of the implementation of law *within the context of military operations* is overdue. Feminists have not yet given the day-to-day interpretation by militaries of IHL/IHRL norms the attention it requires. For example, there has been scant gender analysis of military doctrine. As Judith Gardam and Michelle Jarvis observe, it is state militaries that primarily determine the scope and content of IHL rules and their direct implementation, through their training and education, manuals and legal advice.<sup>26</sup>

### Militaries

If one takes militaries, rather than the law, as this project’s starting point, there are likewise gaps in understanding. Within feminist security studies and critical (and not so critical) military studies, there is a vigorous body of work concerning gender and militaries.<sup>27</sup> Much of this scholarship either focuses on the integration of women or conceptual

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<sup>25</sup> E.g.: L. Philipose, ‘The Laws of War and Women’s Human Rights’ (1996) 11 *Hypatia* 46–62; H. Charlesworth and C. Chinkin, *The Boundaries of International Law* (Manchester University Press, 2000); J. Gardam and M. J. Jarvis, *Women, Armed Conflict, and International Law* (Kluwer Law International, 2001).

<sup>26</sup> Gardam and Jarvis, *Women, Armed Conflict, and International Law*, pp. 114, 130–31.

<sup>27</sup> A comprehensive overview is: R. Woodward and C. Duncanson (eds.), *The Palgrave International Handbook of Gender and the Military* (Palgrave Macmillan, 2017). It describes the contributing disciplines as feminist, women’s and gender studies; sociology; criminology; political science; management studies; international relations; war studies; peace studies; anthropology; psychology and human geography; and terrorism studies (p. 7).

understandings of gender and WPS. To explore what is being done in relation to CRSV at strategic and operational levels, this project asks: “What initiatives have NATO and the British Armed Forces developed to prevent and respond to CRSV?”

As highlighted above, scholarship takes widely divergent positions on the potential for gendered transformation within militaries. Gendered institutional dynamics likewise constrain progress towards truly cosmopolitan forces; towards militaries that have turned from a focus on combat toward protection and collaboration. To explore what CRSV can show about the potential for gendered and cosmopolitan change, this project’s fourth question, is: “How is NATO and the British Armed Forces’ engagement with CRSV shaped by gender, and how is engagement with sexual violence challenging these gender dynamics?” The potential for meaningful regendering of militaries speaks to debates as to the potential risks and rewards, from a feminist standpoint, of engaging with militaries.

Connecting all of these questions is attention to the relationships between *gender* and *international law*. The new engagement by militaries with CRSV, a deeply gendered challenge, is an important opportunity to explore the processes underlying militaries’ implementation of IHL and IHRL, and to understand how gendered dynamics shape them.

### **1.3 Political and conceptual approach**

Before outlining the scope and structure of this thesis, it seems necessary to say a little more about my own feminist politics and ethics in researching militaries, as well as to set out the project’s conceptual approach to CRSV and gender.

#### **Pragmatically engaged feminism**

For many feminist international lawyers, the motivating project, to use the phrase coined by Hilary Charlesworth and Christine Chinkin, is to redraw the boundaries of international

law, challenging its categories and dichotomies.<sup>28</sup> Feminists question and disrupt the foundational categories according to which international law is applied, including public/private, international/non-international armed conflict, armed conflict/internal disturbances, and conflict-related/non-conflict related. Within feminist IR this poststructuralist critique is even more vigorous, with some problematising uncritically using even concepts such as “the state,” as reinforcing current geopolitical power relations.<sup>29</sup>

Whilst feminist poststructuralist work makes critical contributions to theoretical development, it can be difficult, in my own experience, to invoke it in engagement outside of feminist communities. We risk that as feminist scholars we are, in Charlesworth’s words, “talking to ourselves”.<sup>30</sup> Of feminist engagement with IHL, for example: Karima Bennouna observes that scholarship on women and IHL is little cited in the mainstream IHL references used by militaries;<sup>31</sup> a former military Legal Advisor in Afghanistan, describes the feminist critique of IHL as not significantly influencing “either the theory or conduct of military operations”.<sup>32</sup> Concurrently with this research, I work with an intergovernmental organisation focused on security sector governance. This affords me an unusual degree of access to policy and military spaces. Through completing this research, I hope to engage

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<sup>28</sup> Charlesworth and Chinkin, *The Boundaries of International Law*. See also: K. Knop, ‘Re/Statements: Feminism and State Sovereignty in International Law Symposium: Feminist Inquiries into International Law’ (1993) 3 *Transnational Law & Contemporary Problems* 293–344; D. Buss and A. S. Manji (eds.), *International Law: Modern Feminist Approaches* (Hart, 2005); G. Heathcote, *The Law on the Use of Force: A Feminist Analysis* (Routledge, 2012); S. Kouvo and Z. Pearson, *Feminist Perspectives on Contemporary International Law: Between Resistance and Compliance?* (Hart Publishing, 2014).

<sup>29</sup> C. Bacchi and M. Rönnblom, ‘Feminist Discursive Institutionalism—A Poststructural Alternative’ (2014) 22 *NORA - Nordic Journal of Feminist and Gender Research* 170–86 at 179.

<sup>30</sup> Hilary Charlesworth, ‘Talking to Ourselves? Feminist Scholarship in International Law’, in *Feminist Perspectives on Contemporary International Law: Between Resistance and Compliance?* Oñati International Series in Law and Society (Oxford: Hart Publishing, 2014), 17–19. Likewise: J. Gardam, ‘Feminist Interventions into International Law: A Generation On’ (2019) 40 *Adelaide Law Review* 219–26 at 221.

<sup>31</sup> K. Bennouna, ‘Do We Need New International Law to Protect Women in Armed Conflict International Justice and Shifting Paradigms’ (2006) 38 *Case Western Reserve Journal of International Law* 363–92 at 391. Making a similar point: J. Gardam, ‘The Silences in the Rules That Regulate Women during Times of Armed Conflict’ (2018) *The Oxford Handbook of Gender and Conflict*.

<sup>32</sup> J. M. Prescott, ‘NATO Gender Mainstreaming and the Feminist Critique of the Law of Armed Conflict’ (2013) 14 *Georgetown Journal of Gender and the Law* 83 at 103.

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mainstream international law communities in dialogue around sexual violence, protection of civilians, IHRL and IHL, as well as contributing to feminist scholarship. I thus chose to use analytical categories and methodologies not too unfamiliar to main(male)stream international law and policy, whilst cognisant that these dichotomies of war/non-war and sexual violence un/related to conflict are themselves gendered constructs. At the same time, I am mindful of David Kennedy's warning against "being drawn into the collaborative exercise of violence" in working on the laws of war.<sup>33</sup> This project tries to keep these approaches in (somewhat uneasy) balance, analysing the law "as law" whilst also reflecting upon and challenging the gendered militarism of IHL and armed forces' application of it.

For many feminists working on peace and security, a motivating project is to dismantle the structures that promote military solutions to conflict and sustain the global arms trade. Indeed, some might consider the very subject of this thesis "dangerous" in the manner suggested by Carol Bacchi and Malin Rönblom; that asking whether militaries could work for women in itself reinforces dangerous "realities" about what militaries are and do.<sup>34</sup> For three reasons, I disagree with any proposition that feminists should refrain from researching or critically engaging with militaries. First, pragmatically, because our governments and societies are far from willing to dissolve our militaries *transforming* militaries must play a role in achieving feminist goals of demilitarisation. Second, normatively, because as citizens we should hold militaries to account when they act in our names, paid from the public purse, and this requires that we scrutinise their practices and demand the change we want to see. As Woodward and Duncanson say, "... for citizens in democracies then, militaries are what we make of them ... For feminists, activists and scholars concerned about peace, it seems important not to concede the point that militaries are capable of reform".<sup>35</sup> Third, I believe that until the utopia of global peace is achieved, there are, unfortunately, circumstances where military action is right, in an ethical sense. I concur with Kaldor's analysis that militaries have a role to play in securing

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<sup>33</sup> D. Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (Princeton University Press, 2016) p. 272.

<sup>34</sup> Bacchi and Rönblom, 'Feminist Discursive Institutionalism—A Poststructural Alternative', 181.

<sup>35</sup> Woodward and Duncanson, *Palgrave Handbook*, p. 6.

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space to allow urgent humanitarian assistance and to enable a political process to occur.<sup>36</sup> To this, I would add securing sites to enable police to collect evidence and apprehend alleged perpetrators of international crimes, including CRSV. For civilians under threat, militaries should be willing and able to provide direct protection in circumstances where the security environment is beyond what police can handle. Nadjie Al-Ali recently wrote a thoughtful and academically courageous piece on sexual violence in Iraq, saying:

My previous political positions were clear in terms of rejecting imperialist and neocolonial military interventions and the need to find non-violent political solutions. However, purist pacifist notions and the call for non-violent resistance are absurd in the face of the threats and atrocities linked to ISIS. My position does not translate into a sudden embrace of military intervention as a way to liberate women, but recognizes that in certain situations targeted military intervention might help those who are putting their lives at risk while resisting fascist and genocidal organizations and ideas.<sup>37</sup>

This captures the discomfort and dilemmas of maintaining a critical feminist and antimilitarist approach in the face of massive CRSV, killing and genocide. These are dilemmas that I believe feminists should more substantively engage with: to move beyond sometimes narrow and binary understandings of military action, to articulate paths to change, and to speak more specifically to defence policy and military strategy. To do so, we need to understand militaries and military organisations, and how they are responding to issues such as CRSV.

Chapter 4 discusses research ethics and reflexivity in more detail.

### Gender and gender analysis

Innumerable organisational-cultural factors could impact upon how a military unit or individual soldier reacts to a victim or potential victim of sexual violence. One might usefully, for example, analyse military responses to CRSV through the lens of race or colonialism; civil-military relations; ethics; or focus on leadership, intelligence or

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<sup>36</sup> M. Kaldor, *New and old wars: organized violence in a global era*, 3 ed. (Polity Press, 2012) p. 133.

<sup>37</sup> Al-Ali, 'Sexual violence in Iraq', 23.

coordination with other agencies. Choosing to engage with feminist scholarship makes particular sense, however, as gender identities are deeply implicated in how sexual violence is understood, and it is feminist scholarship that engages most richly with CRSV.

This project looks through a gender lens to, in the words of Jill Steans: “Focus on gender as a particular kind of power relation, or to trace out the ways in which gender is central to understanding international processes.”<sup>38</sup> Applied to law, a gender analysis reveals how ideas about men, women, the masculine and feminine shape understandings and application of the law, and how law itself contributes to the construction, maintenance and alteration of gender norms. In analysing military responses to CRSV, gender analysis of the law looks, for example, for how assumptions about gender mediate what is understood as obligated, and how the law shapes recognition of victims and perpetrators.

Feminist understandings of gender identify the hierarchical gendered binary as a *symbolic* structure that permeates all language, thought, social and political life. Poststructuralist feminist scholarship explores “how activities, prima facie unconnected to relations between women and men, are actually frequently marked with masculine or feminine labels, that is, how they are ‘gendered’”.<sup>39</sup> When a military is described as “gendered” or a “gendered organisation”, therefore, this is not only a description of the numerical domination by men but also a description of militaries’ *structural patterns* of legitimised gendered inequality, in terms of gender divisions in occupations, opportunities and power, as well as a description of military *organisational culture and ideology*, its idealised practices and symbols being “gendered male and masculine”.<sup>40</sup>

Increasingly, gender scholarship strives to transcend binary understandings of gender referent only to male/female, men/women. This being a project that centres violence inflicted upon bodies, it is appropriate to retain a conceptual focus on the gendered body. Accordingly, this study uses a more everyday understanding of “gender” as its conceptual

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<sup>38</sup> Steans, J. (1998) cited in J. L. Peet and L. Sjoberg, *Gender and Civilian Victimization in War* (Routledge/Taylor & Francis Group, 2020) p. 5.

<sup>39</sup> R. Cavaghan, *Making Gender Equality Happen: Knowledge, Change and Resistance in EU Gender Mainstreaming*. (Routledge, 2017) p. 20.

<sup>40</sup> Woodward and Duncanson, *Palgrave Handbook*, p. 2.



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frame; specifically, that which has been developed within the UN and widely applied in international and national-level institutional frameworks:

Gender refers to the roles, behaviors, activities, and attributes that a given society at a given time considers appropriate for men and women. In addition to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, gender also refers to the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes. They are context/ time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context.<sup>41</sup>

What the above institutional definition of gender fails to adequately acknowledge is the feminist insight that gender is *hierarchical*:

... a constellation of significations, where masculinities and femininities are mutually constituted (along with race, class, sexuality etc.) in specific, hierarchical relation to one another – where (often) masculinities are prized and powerful, while femininities are seen as undesirable and therefore subordinated.<sup>42</sup>

Sexual violence against women and girls, as well as men and boys who do not conform to hegemonically masculine roles, is one way that that this gendered subordination is maintained. The UN definition of gender applied in a manner sensitive to gendered hierarchy provides this project's conceptual framework for analysing how NATO and the British Armed Forces' engagement with CRSV is shaped by gender.

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<sup>41</sup> UN Women, 'UN Women Training Centre Gender Equality Glossary: Gender' (June 2020). For discussion of gender terminology within the UN and broader international community see: V. Oosterveld, 'The definition of "gender" in the Rome statute of the International Criminal Court: a step forward or back for international criminal justice?' (2005) 18 *Harvard Human Rights Journal* 55–84.

<sup>42</sup> Peet and Sjoberg, *Gender and Civilian Victimization*, p. 5.

## Defining conflict-related sexual violence (CRSV)

This project uses the term ‘conflict-related sexual violence,’ abbreviated to CRSV. Several alternatives exist in scholarship and policy. The International Committee of the Red Cross (ICRC), for example, refers to “rape and other forms of sexual violence during armed conflicts”.<sup>43</sup> A number of feminist scholars have offered alternative language to better capture women’s lived experiences of injury, abuse and harassment (discussed in Chapter 2). Because I am interested, in particular, in acts that invoke positive obligations for militaries under international law, I employ - with one difference - the understanding of CRSV articulated by UN Action Against Sexual Violence in Conflict (UN Action),<sup>44</sup> which is drawn from the statutes and case law of international tribunals. UN Action employs the following definition of ‘CRSV’.

Conflict-related sexual violence refers to incidents or ... patterns of sexual violence ... Such incidents or patterns occur in conflict or post-conflict settings or other situations of concern (e.g., political strife). They also have a direct or indirect nexus with the conflict or political strife itself, i.e. a temporal, geographical and/or causal link. In addition to the international character of the suspected crimes (that can, depending on the circumstances, constitute war crimes, crimes against humanity, acts of torture or genocide), the link with conflict may be evident in the profile and motivations of the perpetrator(s), the profile of the victim(s), the climate of impunity/weakened State capacity, cross-border dimensions and/or the fact that it violates the terms of a ceasefire agreement.<sup>45</sup>

UN Action outlines acts included within “sexual violence” as rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, against women, men, girls or boys. Examples given of sexual violence “of comparable gravity” are indecent assault, trafficking, inappropriate medical

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<sup>43</sup> ICRC Advisory Service on International Humanitarian Law, ‘Prevention and criminal repression of rape and other forms of sexual violence during armed conflicts’ (2015).

<sup>44</sup> UN Action is an initiative established in 2006 to unite work across the UN to end sexual violence in conflict. The network is composed of fifteen UN entities and its Chair is the Special Representative of the Secretary-General on Sexual Violence in Conflict.

<sup>45</sup> UN Action Against Sexual Violence in Conflict, *Analytical & Conceptual Framing of Conflict-Related Sexual Violence* (2011) p. 3.

examinations and strip searches.<sup>46</sup> This UN analytical framing excludes sexual exploitation and abuse (SEA), on the basis that it is “addressed elsewhere in the UN system”.<sup>47</sup> In my research, I retain a focus on SEA by foreign military personnel as a form of CRSV.

By including acts of sexual violence with only an “indirect nexus with the conflict or political strife” the UN Action definition of CRSV expands from the framework developed in international criminal law of a direct, or at least sufficient, link or nexus to an armed conflict. The International Criminal Tribunal for the Former Yugoslavia described this as: “the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed”.<sup>48</sup> This criterion of nexus with an armed conflict serves to distinguish sexual violence *as an international crime* from other acts of sexual violence that might be occurring, such as sexual violence within the family or in schools. Although not discussed in terms of “nexus”, this issue of the “boundaries” of CRSV will be explored throughout this thesis.

## 1.4 Project scope and limitations

This research applies a socio-legal qualitative approach, combining doctrinal analysis of the law with two case studies, of NATO and the British Armed Forces. Case studies offer the opportunity to study a single bounded entity in detail, with a variety of methods, over an extended period; to look at the real-life context of a phenomenon.<sup>49</sup> Focusing on just two cases permits this study to engage broadly and deeply, synthesising extensive documentary analysis with interviews and observations conducted over a span of three-and-a-half years. Yet, this methodology, as any, implies limitations.

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<sup>46</sup> Ibid., p. 1.

<sup>47</sup> Ibid., p. 3.

<sup>48</sup> *Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic (Judgement)* (2002) para. 58. See also: *Prosecutor v. Duslo Tadic a/k/a ‘Dule’: Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction* (1995).

<sup>49</sup> N. Blaikie, *Designing Social Research*, 2nd ed. (Polity, 2010) pp. 188–89.

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No claim is made that the findings made as regards NATO and the British Armed Forces are generalisable to all multinational organisations nor all armed forces. However, others studying the implementation of WPS and/or gender mainstreaming may recognise congruence between these case studies and their own research contexts, and accordingly, conclude some transferability of findings. This project cannot assess whether NATO forces nor the British Armed Forces are perpetrators of CRSV.<sup>50</sup> It does not attempt analysis of the impact of NATO or British operations on particular communities and does not engage directly with communities living in conflict to seek their views. Ultimately, this thesis presumes to offer no solution to the horror of CRSV, nor a “magic bullet” to transform militaries. Nonetheless, it does offer a range of new insights: not least because in my interviews and observations, I was often shocked by how frequently what I was hearing contradicted institutional policies and problematized the celebratory tone that has accompanied much NATO and British Armed Forces engagement with WPS.

This research has wider relevance to understandings of law and war. CRSV can be seen as just one issue in relation to which modern militaries are asked to perform an ever-greater range of tasks, moving beyond traditional combat activities and contexts, into law enforcement, stabilisation, and support to statebuilding. As Kennedy has argued, this contributes to the increasing uncertainty and unpredictability of the legal frameworks applicable to military operations.<sup>51</sup> Although there is a body of work on “IHL compliance,”<sup>52</sup>

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<sup>50</sup> Noting that the Sexual Violence in Armed Conflict Dataset records no reports against the British Armed Forces, but isolated reports against USA forces and numerous reports against Turkish state forces (D. K. Cohen and R. Nordås, ‘Sexual Violence in Armed Conflict Dataset. 1 April 2020, from the Sexual Violence in Armed Conflict Dataset website: <http://www.sexualviolencedata.org>’ (2019)).

<sup>51</sup> D. Kennedy, ‘Lawfare and warfare’ *The Cambridge Companion to International Law*, (Cambridge: Cambridge University Press, 2012).

<sup>52</sup> E.g. W. Bradford, ‘In the Minds of Men: A Theory of Compliance with the Laws of War’ (2004) 36 *Arizona State Law Journal* 1243; B. Valentino, P. Huth, and S. Croco, ‘Covenants Without the Sword International Law and the Protection of Civilians in Times of War’ (2006) 58 *World Politics* 339–77; L. Dickinson, ‘Military Lawyers on the Battlefield: An Empirical Account of International Law Compliance’ (2010) 104 *The American Journal of International Law* 1–28; G. Shaffer and T. Ginsburg, ‘The Empirical Turn in International Legal Scholarship’ (2012) 106 *The American Journal of International Law* 1–46; H. Shue, ‘Laws of War, Morality, and International Politics: Compliance, Stringency, and Limits’ (2013) 26 *Leiden Journal of International Law* 271–292.

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the concept of compliance is, in isolation, too blunt and too nascent for the legal complexity of contemporary military operations. Rather, improving prevention of and response to CRSV, and understanding the potential roles for and risks of military involvement, demands nuanced explanations of the mechanisms by which armed forces' actions are shaped by international law, and how they are mediated by institutional culture and practices, including gender norms. This project offers this nuance, through a deep and close examination of NATO and the British Armed Forces' engagement with CRSV, taking into account law and institutional culture and their interactions.

### 1.5 Structure of the thesis

This thesis is in three parts. **Part I**, being this **Chapter 1 and Chapters 2 to 4**, frames this research in terms of scholarship and debates concerning CRSV, international law and militaries, and presents the project's methodology. **Part II, Chapters 5 to 9**, analyses the applicable legal standards concerning CRSV and presents the two case studies. **Part III, Chapters 10 to 12**, explores the implications of this project's findings for gendered understandings of international law, transformation of militaries, and feminist strategy. The following presents this structure in greater detail.

**Chapter 2** traces the apparent success of international feminist advocacy around CRSV from the early 1990s and explains why its legacy has come to be contested. It outlines the (connected) feminist critique of IHL that argues *inter alia* that IHL's recognition of sexual violence remains partial and that military operations reproduce gendered hierarchies of protection. These threads of feminist scholarship and activism remain in tension: on the one hand, progressive understandings of sexual violence have been enshrined in international, national and institutional policies; on the other, there would seem to remain gendered structural flaws in the legal frameworks surrounding military operations and armed conflict. It explores emerging approaches to law in war that foreground IHRL norms.

**Chapter 3** traces how since 2005 the tasking of militaries to prevent and respond to sexual violence has expanded. It highlights how militaries have been simultaneously framed in policy as protectors and perpetrators. Civil society WPS advocates have called for militaries

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to play a role in preventing CRSV. At the same time, there is a longstanding feminist critique of militaries and militarism that understands militaries as particularly implicated in gender-based violence. As such, aspects of feminist scholarship and activism are again in tension: can one anticipate “regendered” militaries which are competent and ready to address CRSV, or are militaries irredeemably part of the problem? This chapter explores the hopes embedded in the theorisation of “regendered” militaries and proposals for militaries more orientated towards human security tasks.

**Chapter 4** introduces this project’s mixed-method socio-legal qualitative approach and feminist methodology. It explains how structural bias feminism is used as a perspective to uncover exclusions and silences. The chapter discusses why NATO and the British Armed Forces were selected as cases and provides a detailed outline of what data was selected and generated, how data was collected, and the approaches applied to analysis. It discusses the ethical and data safeguards used and reflects upon my insider/outsider positionality and biases as a researcher.

**Chapter 5** presents an original doctrinal analysis of armed forces’ legal obligations in relation to CRSV, both as concerns CSRV committed by a third party, and CRSV by one’s own personnel. It opens by drawing out the legal complexity of contemporary armed conflict in light of the concurrent application of IHL and IHRL standards, and the lack of clarity as to what IHRL standards require in practice. Applied to obligations committed by third parties, the analysis establishes that militaries have a due diligence obligation to act to prevent CRSV and to support investigation and prosecution. Although the parameters of this obligation are unclear, this study breaks new ground in drawing upon a range of IHL and IHRL sources to sketch out what actions these due diligence obligations imply as regards CRSV.

**Chapter 6** and **Chapter 7**, on NATO and the British Armed Forces, respectively, present analysis of each institution’s key milestones and turning points in developing responses to CRSV from 2006 to the beginning of 2020. These chapters draw together analysis of policy, institutional structures, operational directives, training and education, as well as rich material from interviews, observation of training sessions and public events. Each identifies

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a range of interconnected challenges to the institution being effective on CRSV, which centre around conceptual understandings and coherence of approaches. In both NATO and the British Armed Forces, one finds a blend of progress and resistance, innovation and inability to change as regards CRSV.

**Chapter 8** then explores more closely the understandings of legal obligation manifested by NATO and the British Armed forces' approaches to CRSV: how they engage with IHL and IHRL in their CRSV discourse, both in formal texts and as articulated in training and interviews. This demonstrates that IHL remains the dominant perspective, with CRSV not approached through the lens of law. There is moreover inconsistency between rhetoric on CRSV and approaches to SEA.

**Chapter 9** considers, in light of the foregoing, how NATO and the British Armed Forces' engagement with CRSV might contribute to processes of regendering, through disrupting gendered binaries and challenging their internal gender cultures. It relates this to discourses within NATO and the British Armed Forces around the appropriate purpose and roles of militaries, which come to the fore in discussing possibilities for action on CSRV.

In the third part of the thesis, **Chapters 10 and 11** consider how these findings enrich understandings of international law and of militaries and in relation to both, the risks and possible rewards of feminist engagement. Chapter 10 reflects upon how indeterminacy of legal obligations and notions of reasonableness manifest gendered power structures in the making of international law and the logics of war. Chapter 11 likewise examines the logics of war but through the lens of military strategic culture. These analyses challenge several aspects of recent feminist scholarship and advocacy concerning CRSV and suggest a number of sites for renewed feminist activism.

**Chapter 12** concludes by reviewing the debates and dilemmas that frame this research, drawing together its findings, and reflecting upon this study's contributions to understanding how gendered dynamics shape international law. It sets out a renewed vision for feminist engagement with militaries and militarism, and new approaches to tackling CRSV.

## Chapter 2

### CRSV, feminist legal activism and new visions of international law

More women need to participate in the process of prescribing and adjudicating the laws of armed conflict. Substantial progress has been made in recent years, but formidable obstacles remain before crimes that are directed exclusively or disproportionately against women and girls will be given the same attention as other crimes of violence in these contexts.

K. D. Askin, 'Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status' (1999) 93 *The American Journal of International Law* 97–123 at 123.

This chapter explores feminist engagements with international law as regards CRSV and war and armed intervention more generally. It traces how international law has been advocated and theorised to address CRSV, and new directions this advocacy is taking in terms of centring a human rights perspective on international interventions. Section 2.1 describes how feminists have deployed international law as part of campaigning against CRSV but have come to problematise terminology associated with CRSV and question the political implications of organising around it. Section 2.2 contextualises this feminist focus on CRSV as part of a broader feminist critique of IHL: how it constructs women, and how its hierarchies of protection are gendered. Section 2.3 extends the discussion to other critical perspectives on IHL and arguments for an expanded role for IHRL as the framework for any intervention on humanitarian grounds.

This chapter establishes a framework for one of the three themes of this project: the roles played by international legal strategies to counter CRSV. While this chapter explores CRSV as the subject of feminist legal activism, Chapter 5 will examine in detail specific state obligations to prevent and respond to CRSV, reviewing a range of doctrinal sources.



## 2.1 Feminist legal advocacy around CRSV

### Expanding international law's recognition of rape during armed conflict

Rape in war has for centuries been recognised as a war crime, although historically rarely prosecuted.<sup>53</sup> The Geneva Conventions of 1949 (GCs) and their Additional Protocols of 1977, the modern codification of the laws of war, explicitly prohibit rape and enforced prostitution, using language wide enough to encompass other forms of CRSV. GC IV, Article 27(2), prohibits sexual violence against women in international armed conflict in the terms that: "Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault." In non-international armed conflict, a more limited IHL framework is established by common Article 3 to the GCs and Additional Protocol II. Common Article 3 demands that persons not (or no longer) taking an active part in hostilities be treated humanely and prohibiting "violence to life and person" including cruel treatment and torture, and "outrages upon personal dignity, especially humiliating and degrading treatment."<sup>54</sup> Additional Protocol II additionally contains a "fundamental guarantee" of humane treatment for all persons who are not taking part in hostilities, including a prohibition of "outrages upon personal dignity, in particular humiliating and degrading treatment, rape, forced prostitution and any other form of indecent assault."<sup>55</sup> This is the first IHL provision prohibiting rape without distinction between women and men. (Elements of these provisions will be examined more closely in Chapter 5.)

Feminist legal activism around CRSV has its origins in the demand of Asian feminists for recognition of the abuse of "comfort women" by Japanese soldiers during the Second World War. In 1992, groups in the Philippines, Okinawa, Indonesia, Korea, and Japan came together as the "Asia Solidarity Network on the Forced Military Comfort Women Problem"

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<sup>53</sup> Discussing European customs and prosecutions, including after World War II: Askin, 'Prosecuting Wartime Rape'; N. N. R. Quénivet, *Sexual Offenses in Armed Conflict & International Law* (Transnational Publishers, 2005).

<sup>54</sup> E.g. *Geneva Convention Relative to the Protection of Civilian Persons in Times of War* (1949) Art. 3.

<sup>55</sup> *Protocol II Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts* (1977) Art. 4(2)(e).

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with an explicit aim to involve global human rights organisations in their campaigning.<sup>56</sup> Against this background, feminist advocates at the 1993 Vienna World Conference on Human Rights drew attention to the sexual violence against women taking place in Bosnia. Framing CRSV as a *violation of international law* was a key advocacy strategy. They and feminist legal scholars through the 1990s galvanised around the problematic framing within the GCs of rape as a crime against women's "honour", which they argued "reinforce[ed] the notion of women as men's property".<sup>57</sup> They criticised rape's omission from the acts listed as grave breaches of the GCs, and as such rape's seemingly lesser status within the hierarchy of war crimes, which left prosecution permissive rather than obligatory.

Scholars allied with feminist activists outside the academy and worked first to influence the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), then the *Rome Statute of the International Criminal Court* (Rome Statute), the Special Court for Sierra Leone and the Maputo Protocol. Karen Engle describes how "the focus on rape in armed conflict both tapped into and gave feminists power in the simultaneous development of international criminal law and institutions".<sup>58</sup> Their achievements included ensuring the explicit recognition of sexual violence as having the status of an international crime. Indeed, the Rome Statute and the International Criminal Court's Elements of Crimes articulate an expansive understanding of the types of violence recognised as sexual violence: not only rape but "sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity".<sup>59</sup> Sexual violence is recognised not only as a war crime but potentially as a crime against humanity and/or constitutive of an act of genocide. Then, feminists worked to influence rules, procedures and structures within the international tribunals to make it more likely that crimes of sexual violence would be indicted and successfully prosecuted, and that victims

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<sup>56</sup> M. E. Keck and K. Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press, 1998) pp. 175–76, 180.

<sup>57</sup> Charlesworth, 'Feminist Methods in International Law', 386.

<sup>58</sup> Engle, 'A Genealogy of the Centrality of Sexual Violence to Gender and Conflict', p. 138.

<sup>59</sup> E.g. *Rome Statute of the International Criminal Court* (1998) Art. 7(1)(g).

and witnesses would be supported.<sup>60</sup> They scrutinised and lobbied for focus on sexual violence in transitional justice processes.<sup>61</sup> Subsequent scholarship and advocacy have highlighted male victims and lesbian, gay, bisexual, trans, intersex and queer (LGBTIQ) victims of sexual violence.<sup>62</sup> Cementing this normative progress, the UN Security Council and states have repeatedly in recent years acknowledged rape and other forms of serious sexual violence in armed conflict as war crimes constituting grave breaches of the GCs.<sup>63</sup> The ICRC study on customary IHL affirms that rape and other forms of sexual violence are

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<sup>60</sup> For key commentary on these developments see Chapter 1 n 4, as well as: F. Ní Aoláin, 'Radical rules: the effects of evidential and procedural rules on the regulation of sexual violence in war' (1997) 60 *Albany Law Review* 905; Charlesworth and Chinkin, *The Boundaries of International Law*, chap. 10; Gardam and Jarvis, *Women, Armed Conflict, and International Law*, chap. 6; Oosterveld, 'The definition of 'gender' in the Rome statute of the International Criminal Court'; R. Gawayana and R. Mukasa, 'The African women's protocol: A new dimension for women's rights in Africa' (2005) 13 *Gender & Development* 42–50; J. Halley, 'Rape at Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law' (2008) 30 *Michigan Journal of International Law* 1–124; P. V. Sellers, 'Gender Strategy is Not Luxury for International Courts Symposium: Prosecuting Sexual and Gender-Based Crimes Before International/ized Criminal Courts' (2009) 17 *Social Policy* 24; C. A. MacKinnon, 'Creating International Law: Gender and Leading Edge' (2013) 36 *Harv. JL & Gender* 105; P. V. Sellers and I. Rosenthal, 'Rape and Other Sexual Violence' in A. Clapham, P. Gaeta, M. Sassòli, I. van der Heijden, *Académie de droit international humanitaire et de droits humains à Genève (eds.), The 1949 Geneva Conventions: A Commentary*, (Oxford, United Kingdom: Oxford University Press, 2015); C. O'Rourke, 'Feminist scholarship in transitional justice: a de-politicising impulse?' (2015) 51 *Women's Studies International Forum* 118–27.

<sup>61</sup> C. Bell and C. O'Rourke, 'Does Feminism Need a Theory of Transitional Justice? An Introductory Essay' (2007) 1 *International Journal of Transitional Justice* 23–44; F. Ní Aoláin, 'Advancing Feminist Positioning in the Field of Transitional Justice' (2012) 6 *International Journal of Transitional Justice* 205–28; V. Nesiha, 'Engendering transitional justice' in S. Kouvo, Z. Pearson (eds.), *Feminist Perspectives on Contemporary International Law: Between Resistance and Compliance?*, (Oxford: Hart Publishing, 2014); A. Swaine, *Conflict-Related Violence Against Women: Transforming Transition* (Cambridge University Press, 2018).

<sup>62</sup> Building on groundbreaking work by, amongst others, R. C. Carpenter, 'Recognizing Gender-Based Violence Against Civilian Men and Boys in Conflict Situations' (2006) 37 *Security Dialogue* 83–103; S. Sivakumaran, 'Sexual Violence Against Men in Armed Conflict' (2007) 18 *European Journal of International Law* 253–76. For more recent work on male victims: C. Dolan, L. E. Fletcher, and S. Oola, 'Promoting Accountability for Conflict-Related Sexual Violence Against Men: A Comparative Legal Analysis of International and Domestic Laws Relating to IDP and Refugee Men in Uganda' (2013); and on LGBTIQ persons: L. Davis, 'Reimagining Justice for Gender-Based Crimes at the Margins: New Legal Strategies for Prosecuting ISIS Crimes Against Women and LGBTIQ persons' (2018) 24 *William & Mary Journal of Women and the Law* 558.

<sup>63</sup> *Resolution 1820; Resolution 1888; Resolution 1960; Resolution 2106; A Declaration of Commitment to End Sexual Violence in Conflict; G8, 'G8 Declaration on Preventing Sexual Violence in Conflict'* (2013).

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prohibited under customary IHL during both international and non-international armed conflict, not only against women and girls but men and boys.<sup>64</sup>

Some argue that gaps in the criminalisation of CRSV remain; for example, that protections against CRSV remain ambiguous; that boys and girls should be the focus of additional protection, and that protection should be extended to children born of conflict-related rape. Patricia Viseur Sellers and Indira Rosenthal argue for a new legal instrument which includes all forms of sexual violence as grave breaches of the GCs, and expressly prohibits sexual violations against all people regardless of gender, sex, gender identity, sexual orientation or any other status.<sup>65</sup> Advocacy continues to influence institutional practice; for example, in 2017, a feminist coalition petitioned the ICC to advance the protection of the rights of women and lesbian, gay, bisexual, transgender, intersex and queer people.<sup>66</sup> As long ago as 2005, Engle noted that “many feminists now have a sense of achievement with regard to the development of international law in this area”.<sup>67</sup> Nonetheless, as will be outlined below, the legacy of this apparent progress has come to be questioned.<sup>68</sup>

#### Problematizing the concept of “CRSV”

“Rape as a weapon of war” is a powerful narrative, and has been used strategically by activists to garner political attention. Analysis of the *16 Days of Activism Against Gender Violence* campaign testifies to the strong relevance of CRSV for women’s advocacy groups in Europe, North America, South Asia, the Middle East and North Africa.<sup>69</sup> CRSV was emphasised by activists from DRC, Rwanda, Uganda, Burundi, Liberia and Sierra Leone in

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<sup>64</sup> ICRC, ‘Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 2nd edition’ (2016) para. 700.

<sup>65</sup> Sellers and Rosenthal, ‘Rape and Other Sexual Violence’, paras 77–80.

<sup>66</sup> Davis, ‘Reimagining Justice for Gender-Based Crimes at the Margins: New Legal Strategies for Prosecuting ISIS Crimes Against Women and LGBTIQ persons’.

<sup>67</sup> K. Engle, ‘Feminism and Its (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovina’ (2005) 99 *The American Journal of International Law* 778–816 at 779.

<sup>68</sup> O’Rourke, ‘Feminist Strategy in International Law’, 1020.

<sup>69</sup> For example, in 2011 and 2012, 20% and 27% respectively of some four hundred 16 Days initiatives focused on CRSV: Center for Women’s Global Leadership (CWGL), *16 Days of Activism Against Gender Violence: Analytical Summary, November 25 - December 10, 2011* (2012) pp. 3–4; CWGL, ‘2012 Analytical Summary’ (2013). See also: Engle, ‘A Genealogy of the Centrality of Sexual Violence to Gender and Conflict’.

the 2013 *Kinshasa Call to Action*.<sup>70</sup> Women's civil society participated in force in the 2014 Global Summit to End Sexual Violence in Conflict.

However, the representation of women in relation to CRSV has become a divisive issue in scholarship and activism, across work in law, feminist security studies, and other disciplines. As Paul Kirby has summarised, "The first generation of scholarship had lamented indifference to sexual violence and successfully agitated to place it on policy agendas; the second came to be more critical of how this new attention from the international community operated".<sup>71</sup> Feminist disquiet around CRSV advocacy has several threads - although they should be understood as critiques in dialogue with each other. Most relevant to this research are the arguments, simply put, that the "weapon of war" narrative is a blinkered representation of women's experiences of conflict, and that elevating CRSV invokes stereotypes of women as victims that ultimately are at odds with gender equality and peace itself.

Over the last decade, in particular, scholarly and policy understanding of the nature and use of CRSV has broadened and deepened. Early narratives tended to frame sexual violence as a form of violence committed against (potentially all) women in conflict, perpetrated by men. Understandings have become more nuanced, recognising that women's victimisation is often based also on their ethnic, national or religious identity; that men and boys too are victims of sexual violence, in different forms to women and girls; that women at times have participated in acts of violence against other women and against men.<sup>72</sup> More conceptually, early research around sexual violence often painted rape as a "weapon of war," emphasising its ordered, organised use for racialised political ends associated with the conflict (with Bosnia often taken as illustrative). Research on the dynamics of sexual violence in specific contexts has questioned these overarching explanatory models, illustrating that rape in conflict is often not ordered, but opportunistic; and that sexual

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<sup>70</sup> GNWP, 'Kinshasa Call to Action' (2013).

<sup>71</sup> P. Kirby, 'Wartime sexual violence' in C. E. Gentry, L. J. Shepherd, L. Sjoberg (eds.), *The Routledge Handbook of Gender and Security*, (London; New York: Routledge, 2018) p. 218.

<sup>72</sup> M. Loken, 'Rethinking Rape: The Role of Women in Wartime Violence' (2017) 26 *Security Studies* 60–92.

violence in public spaces exists on a *continuum* with sexual violence in homes and communities.<sup>73</sup> Fionnuala Ní Aoláin warns of:

... the splintering of impunity discourses on sexual violence – lodging conflict rape in the “extra-ordinary” violence of wartime atrocity – divorcing conflict rape conceptually from the lived experience of routine sexual violence and facilitating the easy dislocation of one kind of harm from the other.<sup>74</sup>

Emphasising a strong nexus between the use of sexual violence and the political or military aims of the perpetrator’s group can serve to render invisible victims of sexual violence committed for other - or no particular - ends, and victims of sexual violence committed by unarmed actors. Recognising the continuum of violence is to see violence against women in myriad forms across the spectrum of peace, conflict, and post-conflict as well as in contexts of humanitarian disaster, and how *structural* relations of power and domination underlie CRSV, as all forms of violence. Aisling Swaine has explored this deeply, explaining,

Considering one set of assault as ordinary and normal and the other as aberrant negates consideration of how pre-conflict and the conflict-responsive changes in masculinities and femininities enable the assault, disciplining, and regulation of women through violent sexual relations.<sup>75</sup>

The *temporality* of the notion of “sexual violence in conflict” is revealed as problematic. Feminists question the distinctions imposed between forms of violence recognised as “in conflict” or “conflict-related” and violence in domestic spaces and at community levels. In

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<sup>73</sup> Enloe, *Maneuvers*; M. Baaz and M. Stern, *Sexual Violence as a Weapon of War? Perceptions, Prescriptions, Problems in the Congo and Beyond* (Zed Books in association with the Nordic Africa Institute, 2013); C. O’Rourke, *Gender Politics in Transitional Justice* (Routledge, 2014); C. Cockburn, ‘Male Violence: Links Between Peace and War’ (2015) 6 *Concept* 19; S. Meger, ‘Toward a Feminist Political Economy of Wartime Sexual Violence: The case of the Democratic Republic of Congo’ (2015) 17 *International Feminist Journal of Politics* 416–34; F. Ní Aoláin, C. O’Rourke, and A. Swaine, ‘Transforming Reparations for Conflict-Related Sexual Violence: Principles and Practice’ (2015) 28 *Harvard Human Rights Journal* 97–146; I. Skjelsbæk, ‘Silence Breakers in War and Peace: Research on Gender and Violence with an Ethics of Engagement’ (2018) 25 *Social Politics: International Studies in Gender, State & Society* 496–520.

<sup>74</sup> F. Ní Aoláin, ‘Gendered Harms and their Interface with International Criminal Law: Norms, Challenges and Domestication’ (2014) 16 *International Feminist Journal of Politics* 622–46 at 626.

<sup>75</sup> Swaine, *Conflict-Related Violence Against Women*, p. 266.

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many settings, even during periods of armed conflict, sexual violence is much more often perpetrated by intimate partners than by armed fighters.<sup>76</sup> Private sphere domestic violence may be a precondition for more visible violence against women in the public sphere and can fuel and exacerbate armed conflicts.<sup>77</sup> Moreover, Charlesworth and Nesiah explore how the almost exclusive focus on sexual violence in legal protection of the human rights of women in armed conflict obscures protection of the economic, cultural and social rights of women; issues such as shortage of food and medicine, the impact of economic sanctions; internal displacement and forced removals.<sup>78</sup> O'Rourke proposes instead theorising a "web of harms against women" during periods of political violence.<sup>79</sup>

The limited forms of CRSV prosecutable under international criminal law and the requirement to demonstrate a nexus to conflict<sup>80</sup> mean that international law does not recognise the relationships between CRSV and violence within the home, on the street, within society at large, also occurring pre-conflict and post-conflict, and how subordination of women produces this violence. We should recall that in the negotiations toward the Rome Statute, feminists argued, without success, for the recognition of "gender violence" – which could include "non-sexual attacks on women or on men based on their gender-defined roles," such as attacks on women's livelihoods.<sup>81</sup>

Whilst these debates are important in identifying those victims who remain invisible in the categories of international law and policy, the horrific nature of sexual atrocity during war remains more than a policy or legal construct. Key empirical authorities, Elizabeth Wood and Dara Kay Cohen, argue that studies of wartime rape have found that 75% or more of

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<sup>76</sup> E. J. Wood and D. K. Cohen, 'Is sexual violence during war exceptional —or a continuation of everyday violence?' (July 2016).

<sup>77</sup> J. True, *The Political Economy of Violence against Women* (Oxford University Press, 2012); C. E. Gentry, L. J. Shepherd, and L. Sjoberg (eds.), 'Violence against women/violence in the world: toward a feminist conceptualization of global violence' *Routledge Handbook of Gender and Security*, (London; New York: Routledge, 2018) p. 17.

<sup>78</sup> Nesiah, 'Engendering transitional justice', p. 149; Charlesworth, 'Feminist Methods in International Law', 388.

<sup>79</sup> O'Rourke, *Gender Politics in Transitional Justice*, chap. 2.

<sup>80</sup> See text at n 48.

<sup>81</sup> Halley, 'Rape at Rome', 83–84.

reported cases are of gang rape; rape is more often by strangers; it is often public, and often accompanied by other forms of torture and mutilation. At least as concerns sexual violence by armed combatants during war, the vast majority “is dramatically different from peacetime sexual violence ... is truly extraordinary, contrasting sharply with ‘everyday violence’.”<sup>82</sup> It is not necessarily the case that a high prevalence of sexual violence means it is being used strategically, however, or inversely that infrequent sexual violence is not strategic.<sup>83</sup> CRSV remains a problem that local women’s organisations want policymakers to address. For example, in civil society consultations in advance of the “Global Study on the implementation of Security Council Resolution 1325”, 317 civil society organisations in seventy-one countries, identified prevention and protection of women from SGBV in conflict as a top advocacy priority.<sup>84</sup> (Civil society advocacy around CRSV is discussed further in Chapter 3.) For these reasons, in my view, it remains important that scholars continue to ask questions about how women, men, boys and girls can better be protected from CRSV, but in a manner that recognises that sexual violence is entwined with other types of gendered harms and that CRSV has deep roots in the structural inequalities that span peace, conflict and post-conflict times and spaces.

### Problematizing women’s victimhood

Some feminist scholars have resisted the focus on sexual violence for a different set of reasons: arguing that putting women’s victimisation in conflict at centre stage detracts from the goal of seeing women as agents of change during peace-making. That is, feminists have problematised the *subjectivities* or stereotypes of women invoked in discourse around

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<sup>82</sup> Wood and Cohen, ‘Is sexual violence during war exceptional —or a continuation of everyday violence?’.

<sup>83</sup> E. J. Wood, D. K. Cohen, and A. Hoover Green, *Wartime Sexual Violence, Misconceptions, Implications and Ways Forward* (2013) p. 9.

<sup>84</sup> D. B. Goldberg, *CSO Survey for the Global Study on Women, Peace and Security* (2015) pp. 12, 37, 95. See also Chapter 3, n 69 and 70. O’Rourke, for example, observes that while transnational feminists were concerned that the WPS Agenda would be narrowed by the focus on CRSV, local activists in Northern Ireland seemingly were not. O’Rourke, ‘Feminist Strategy in International Law’, 1040.



CRSV,<sup>85</sup> which (generally unconsciously) frame women as “the metaphor for vulnerable/victim in war”.<sup>86</sup> Dianne Otto identifies three recurring female subjectivities of women in international legal discourse: first, the figure of wife and mother, who needs “protection” during times of both war and peace; second, the woman who is “formally equal” with men in public life; and third, the “victim,” “who is produced by colonial narratives of gender, as well as by the notions of women’s sexual vulnerability”.<sup>87</sup> Otto argues that each of these three female personas is dependent upon racialized binary male representations.<sup>88</sup>

The notion of the male protector is what Jean Elshtain described as the “Just Warrior”; according to Laura Sjoberg “a masculinized soldier who fights bravely ... but out of a desire to protect the innocent... his masculinity is affirmed by providing protection ... and he is emasculated when he is unwilling or unable to provide that protection”.<sup>89</sup> Importantly, these feminine/masculine binaries are not neutral: in them, sex/gender is organised hierarchically, with the masculine assuming the position of authority. The persistence of female subjectivities that are injured and marginalised, in contradistinction to “protecting” and “civilising” masculinities, Otto argues, serves to *reproduce* masculine, racial and other forms of privilege.<sup>90</sup> Queer perspectives on law and WPS show us that there is also a

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<sup>85</sup> E.g. K. Engle, ‘The Grip of Sexual Violence: Reading UN Security Council Resolutions on Human Security’ in G. Heathcote, D. Otto (eds.), *Rethinking Peacekeeping, Gender Equality and Collective Security*, (London: Palgrave Macmillan, 2014); J. Boesten, *On Ending Sexual Violence, or Civilising War* (2015); Wright, ‘Ending Sexual Violence and the War System – Or Militarizing Feminism?’.

<sup>86</sup> H. Charlesworth, ‘Are Women Peaceful? Reflections on the Role of Women in Peace-Building’ (2008) 16 *Feminist Legal Studies* 347–361 at 358.

<sup>87</sup> D. Otto, ‘Disconcerting “masculinities”’: Reinventing the gendered subject(s) of international human rights law’ in D. Buss, A. S. Manji (eds.), *International Law: Modern Feminist Approaches*, (Oxford: Hart Publishing, 2005) p. 106.

<sup>88</sup> D. Otto, ‘Lost in translation: re-scripting the sexed subjects of international human rights law’ in A. Orford (ed.), *International Law and its Others*, (Cambridge: Cambridge University Press, 2006), pp. 318–56 p. 320.

<sup>89</sup> Cited in L. Sjoberg, ‘Witnessing the protection racket: Rethinking justice in/of wars through gender lenses’ (2016) 53 *International Politics* 361–84.

<sup>90</sup> Otto, ‘Disconcerting ‘masculinities’’: Reinventing the gendered subject(s) of international human rights law’, p. 106.

privileging of the heteronormative, excluding the experiences of LGBTIQ people.<sup>91</sup> Accordingly, some scholars (and activists) worry that the strong political and advocacy focus on CRSV reasserts stereotypes of women's passive victimisation, which (although might lead to improvements in some individual women's lives) ultimately further entrench the gender hierarchies under which all women are marginalised, and which are responsible for producing the gendered violations in the first place. Not only this, but feminist just war theorising would implicate CRSV advocacy in the war system itself: building upon Elshtain, Sjoberg argues that protection of women "becomes a key motivation for fighting and therefore a key cause for making and continuing wars, either explicitly (as a rallying cry) or implicitly (as an internalized metric of masculine sacrifice)."<sup>92</sup>

These are debates around what acts are punishable as crimes under international law, and the implications of CRSV advocacy for progress more broadly on women's rights and equality. This research will be attentive to the extent to which militaries recognise the complex dynamics of CRSV: that CRSV is not always ordered or used for strategic ends; that it has a relationship with structural relations of power and domination, including but not limited to gender; that men and boys can be victims. It will be attentive to whether the manner of military engagement with CRSV tends to represent women merely as victims rather than active in their lives and communities. Understanding how militaries understand CRSV can inform feminist thinking around the potential for transformation, for "regendering" of militaries.

## 2.2 Feminist advocacy on the laws of war

The foregoing sections of this chapter have traced the origins, success and then contestation (particularly from feminist security studies) of advocacy concerning CRSV. This work has both drawn from and influenced a robust body of feminist scholarship focused upon how IHL understands and addresses the distinct needs of women in armed conflict

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<sup>91</sup> H. Myrntinen, L. Khattab, and J. Naujoks, 'Re-thinking hegemonic masculinities in conflict-affected contexts' (2016) *Critical Military Studies* 1–17; J. J. Hagen, 'Queering women, peace and security' (2016) 92 *International Affairs* 313–32.

<sup>92</sup> Sjoberg, 'Witnessing the protection racket'.

and the “anomalies and inconsistencies” that result from the narrow focus of IHL on issues of concern to the male-dominated “warrior caste”.<sup>93</sup> The more recent development of *gendered* analysis of IHL plus consideration of the application of IHRL in armed conflict has brought to attention more diverse range of issues, including the gendered social and economic impacts of war and occupation,<sup>94</sup> healthcare and humanitarian assistance in armed conflict, and legal review of weapons.<sup>95</sup> This section looks at two threads in feminist IHL scholarship of particular relevance to this project: how IHL represents women; and how IHL balances protection of civilians against the protection of military bodies and objectives.

### Limited constructions of “women” in IHL

The GCs afford a range of special protections to women, predominantly when pregnant, as mothers or as potential rape victims, leading Judith Gardam and Michelle Jarvis to claim that “women are valued in IHL in terms of the sexual and reproductive aspects of their lives”.<sup>96</sup> Helen Kinsella’s work looks deeper into the constructions of sex and sex difference throughout the development of IHL, to find that gender difference is invoked in and productive of the essential distinctions that IHL draws between combatant and civilian. The protection of women as civilians has, however, historically been predicated upon women’s sexual modesty and decorum and remaining outside of public life and politics.<sup>97</sup> Kinsella goes on to argue that the “passivity” which premises civilian immunity “... may be both

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<sup>93</sup> Charlesworth, ‘Feminist Methods in International Law’, 386; see also sources at Ch. 1, n 25.

<sup>94</sup> B. Meyersfeld, ‘A gender perspective on the relationship between HRL and IHL’ in E. De Wet, J. K. Kleffner (eds.), *Convergence and Conflicts: Of Human Rights and International Humanitarian Law in Military Operations*, (Pretoria: PULP, 2014); F. Ní Aoláin, *Gendering the Law of Occupation* (2016).

<sup>95</sup> A. Barrow, ‘UN Security Council Resolutions 1325 and 1820: constructing gender in armed conflict and international humanitarian law’ (2010) 92 *International Review of the Red Cross* 221–234; H. Durham and K. O’Byrne, ‘The dialogue of difference: gender perspectives on international humanitarian law’ (2010) 92 *International Review of the Red Cross* 31–52; C. Tengroth and K. Lindvall (eds.), *IHL and Gender: Swedish Experiences* (Swedish Red Cross and Swedish Ministry for Foreign Affairs, 2015).

<sup>96</sup> Gardam and Jarvis, *Women, Armed Conflict, and International Law*, p. 94. See also: Charlesworth and Chinkin, *The Boundaries of International Law*, p. 315.

<sup>97</sup> H. M. Kinsella, *The Image before the Weapon: A Critical History of the Distinction between Combatant and Civilian* (Cornell University Press, 2011) pp. 77, 90–92.

impossible and dangerous to maintain in times of war. To be innocent is also to be without the freedom or agency to act in one's own defense and for one's own life".<sup>98</sup>

If we accept Kinsella's analysis, we expect it to be difficult to link protection of women from sexual violence under IHL with their public and political empowerment, the latter being antithetical to the rationale for women's protection. It has been argued that IHL's association of women so thoroughly with children constructs women as infantilized, seen only as vulnerable; their capacities for resilience, leadership and indeed combat, their individual and collective agency overlooked.<sup>99</sup> In this way, the special provisions for women in IHL reinforce limited representations of women's characteristics and the underlying systematic discrimination that permeates IHL, as a system designed for men. As such, one area of attention in this research is the constructions of women as victims of sexual violence in military doctrine, education and training – are these theorised subjectivities and stereotypes reproduced?

### Gendered hierarchies of protection

These gendered notions of civilian/victim translate into hierarchies of protection where – both in international law and in humanitarian action - women, children and sometimes elderly men are offered protection over and above male youths and men.<sup>100</sup> Scholarship over the last fifteen years has highlighted the invisibility of sexual violence against men and boys, civilian or combatant.<sup>101</sup> This can be linked back to IHL's notions of masculinity, wherein "Masculine privilege and notions of warrior honour and duty obscure, even

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<sup>98</sup> Ibid., p. 196.

<sup>99</sup> E.g. N. Quenivet, 'Special Rules on Women' in A. Clapham, P. Gaeta, M. Sassòli, I. van der Heijden, Académie de droit international humanitaire et de droits humains à Genève (eds.), *The 1949 Geneva Conventions: A Commentary*, (Oxford, United Kingdom: Oxford University Press, 2015), pp. 1271- pp. 1290–91.

<sup>100</sup> R. C. Carpenter, "'Women, Children and Other Vulnerable Groups": Gender, Strategic Frames and the Protection of Civilians as a Transnational Issue' (2005) 49 *International Studies Quarterly* 295–334 at 296.

<sup>101</sup> See n. 62.

preclude the possibility of males being subjected to conflict-related sexual and gender-based violence".<sup>102</sup>

At the same time, within IHL there are profound hierarchies between military and civilian lives, which are in tension with protection norms. IHL does not directly address how to make judgements, either individually or institutionally, concerning acceptable levels of risk to one's own forces vs. other people.<sup>103</sup> But Gardam's early feminist critique of IHL claims an unspoken assumption that male combatants' lives are to be prioritised over civilian lives: "The military resist strongly the notion that combatants should assume risks to protect the civilian population".<sup>104</sup> The concept of "military necessity" central to IHL is not neutral, but incorporates a hierarchy of gendered values: military judgements of the proportionality of civilian injury and damage to anticipated military advantage are (gendered) assessments about the relative value of lives. Louise Arimatsu demonstrates this in relation to IHL's acceptance of reprisals against a civilian population, measures that involve violence that disproportionately targets women.<sup>105</sup> Gardam and Jarvis explicitly link lack of respect for civilian lives with military attitudes toward women, suggesting that the demeaning images of women used to train soldiers influence how the protection of civilians in IHL develops.<sup>106</sup> As such, areas of attention in this research include how victims and perpetrators of CRSV are gendered in military doctrine, education and training, and more broadly, the balance struck between protecting civilian and military lives in sexual violence response.

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<sup>102</sup> Sellers and Rosenthal, 'Rape and Other Sexual Violence', para. 76.

<sup>103</sup> D. Luban, 'Human Rights Thinking and the Laws of War' in J. D. Ohlin (ed.), *Theoretical Boundaries of Armed Conflict and Human Rights*, (Cambridge: Cambridge University Press, 2016), pp. 45–77 pp. 74–75.

<sup>104</sup> J. Gardam, 'Women and the law of armed conflict: why the silence?' (1997) 46 *International and Comparative Law Quarterly* 55 at 72. On this point, see also Chinkin and Kaldor, *International Law and New Wars*, p. 255.

<sup>105</sup> L. Arimatsu, 'Understanding defences in international criminal law' Ph.D., London School of Economics 2007.

<sup>106</sup> Gardam and Jarvis, *Women, Armed Conflict, and International Law*, p. 131.

### 2.3 Feminists reframe IHL and IHRL

#### Disrupting sanctioned violence and moral disengagement

The gendered constructions of victimhood and hierarchies of protection in IHL, discussed above, speak not only to what violence is *prohibited*, but to what violence is “sanctioned and legitimized and made possible by the laws of war.”<sup>107</sup> Indeed, feminist scholarship in IHL is alert to more generalised critiques of IHL as more military than humanitarian in character. As Jochnick and Normand argued, “Despite the humanitarian rhetoric, military concerns have dictated the substantive content of the laws of war.”<sup>108</sup> Critical scholars paint IHL as lending legitimacy to customary military practice, rather than restraining it, demonstrated most vividly in its acceptance of proportionate civilian casualties and the legality of frightful weapons.<sup>109</sup> David Kennedy and Dale Stephens (himself a former military lawyer) discuss IHL as displacing moral and ethical decision-making.<sup>110</sup> In Kennedy’s words, “Law and war have become oddly reciprocal, communicating and killing along the boundaries of the world system ... evading both ethical and political responsibility”.<sup>111</sup>

These perspectives on IHL offer important insights into the possibilities and challenges of constructive military engagement with CRSV. If one accepts that (problematic, gendered) IHL norms are strongly internalised within militaries,<sup>112</sup> how might the *limits* of what IHL requires of armed forces – to be discussed in Chapter 5 - mediate military engagement with CRSV? Does the “morally agnostic” disinterest of IHL in civilian victims of war (beyond try not to kill/rape/injure them yourself) restrain response to CRSV? Militaries themselves explicitly frame CRSV response in terms of individual moral judgement, as illustrated by the

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<sup>107</sup> Philipose, ‘The Laws of War and Women’s Human Rights’, 57.

<sup>108</sup> C. Jochnick and R. Normand, ‘The Legitimation of Violence: A Critical History of the Laws of War’ (1994) 35 *Harvard International Law Journal* 49–96 at 56.

<sup>109</sup> S. Sewall, *Limits of Law: Promoting Humanity in Armed Conflict* (Stanford University Press); G. J. Andreopoulos, ‘Challenges and Opportunities in Advancing Human Protection: Rethinking the Global-Local Nexus’ (2010) 29 *Criminal Justice Ethics; New York* 142–56.

<sup>110</sup> Kennedy, ‘Lawfare and warfare’; D. Stephens, ‘Behaviour in war: The place of law, moral inquiry and self-identity’ (2014) 96 *International Review of the Red Cross* 751–773.

<sup>111</sup> Kennedy, ‘Lawfare and warfare’, pp. 181–82.

<sup>112</sup> Stephens draws upon a range of sources to argue this: Stephens, ‘Behaviour in war’, 769.

## Chapter 2

### CRSV, feminist legal activism and new visions of international law

quote from the Chief of the Australian Army that opened Chapter 1. Lt. Gen. Morrison went on to emphasise that the choices made by individual soldiers reflect the values inculcated by the military, including as regards women and men's value, and diversity.<sup>113</sup> This leads one to ask, how does militaries' gendered institutional culture – to be discussed in the following chapter – mediate response to CRSV?

#### Envisioning a more prominent place for IHRL in military operations

Feminist critique of the divorcing of CRSV from other pervasive forms of gender-based violence (GBV) challenges the demarcation between IHL as applicable in conflict and IHRL as applicable in peace.

*In this future vision of the role of human rights in armed conflict, the existing demarcation between international and non-international armed conflicts will disappear ... there will be a fundamental re-ordering of priorities as the influence of the military diminishes and the legitimate claims of humanity are acknowledged.*<sup>114</sup>

Feminists advocated for accountability for violations of IHRL in conflict as a means of redressing the gaps in IHL from a gender perspective, pushing toward convergence of IHL, IHRL and international criminal law.<sup>115</sup> Jarvis and Gardam, for example, advocated for IHL to be “contained, controlled and fashioned by [IHRL] at every point possible.”<sup>116</sup> This is arguably coming to pass in the contemporary convergence of IHL and IHRL: to be discussed in Chapter 5. Still, the implications of convergence as concerns violence against women and CRSV have not yet been judicially tested.

Against a canvas of uncertainty and debate as to the relationship between IHL and IHRL, Chinkin and Kaldor's *International law and new wars* proposes the international community

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<sup>113</sup> D. Morrison, 'Chief of Army addresses the Global Summit to End Sexual Violence in Conflict' (2014).

<sup>114</sup> Gardam and Jarvis, *Women, Armed Conflict, and International Law*, p. 254.

<sup>115</sup> V. Nesiha, 'Gender and Forms of Conflict' in F. Ní Aoláin, N. R. Cahn, D. F. Haynes, N. Valji (eds.), *The Oxford Handbook of Gender and Conflict*, (New York, NY: Oxford University Press, 2018).

<sup>116</sup> Citing Gerald Draper (1971), Gardam and Jarvis, *Women, Armed Conflict, and International Law*, p. 254.

rethink its understandings of “war” and acceptance of IHL norms. They problematise the sometimes huge losses of civilian life caused by armed interventions based upon claims of self-defence or humanitarian intervention, and how IHL sanctions and seemingly legitimises this. Rather, they argue, IHRL should govern any use of force framed as humanitarian intervention:

Surely, if the language of humanity is being used, the rules of engagement should be based on human rights rather than IHL and should be more like the rules of engagement in domestic policing. The aim is not to defeat the adversary in a conflict but to protect people and arrest criminals responsible for violations of human rights.<sup>117</sup>

As will be explored in the following chapter, their vision of what militaries should do chimes with the commitments made for militaries to be more engaged in prevention and response to CRSV. Chinkin and Kaldor argue that self-defence should be reconceptualised as defending a collective individual right to life, and that in this too states should conform with IHRL as well as IHL.<sup>118</sup> They argue that IHL, whilst no longer concordant with global values, is not to be discarded; its specific protections should be clarified and retained whilst it is complemented by IHRL.<sup>119</sup> Emphasising IHL’s protections rather than its permissions, Chinkin and Kaldor’s vision goes beyond current understandings of the co-applicability of IHRL and IHL. They present a structural, transformational argument for a more central role for IHRL in international intervention and a claim that IHRL provides a credible and legitimate set of standards by which to construct a new world order.<sup>120</sup>

This, then, is one of the framing theoretical debates for this research. What difference might human rights-led approaches make to military action to prevent and respond to CRSV, and what can be learnt about how militaries apply IHL and IHRL standards concerning CRSV?

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<sup>117</sup> Chinkin and Kaldor, *International Law and New Wars*, p. 222.

<sup>118</sup> *Ibid.*, p. 284.

<sup>119</sup> *Ibid.*, pp. 231, 282 and 539.

<sup>120</sup> *Ibid.*, p. 545.



## Conclusions

The purpose of this chapter was, first, to show why we should expect international law to *matter* in strengthening the prevention and response to CRSV. Feminist scholars and activists have invested great energy in trying to develop how international law treats sexual violence, with notable successes. The feminist critiques of CRSV discourse and of IHL presented here suggest several important questions as regards military responses to CRSV. Will militaries continue to (re)produce subjectivities of female victimhood and militarised male protection? Will they overlook linkages between CRSV and other forms of direct and structural violence? In operations tasked to protect civilians from CRSV, will militaries be reluctant to assume risks to their own personnel to do so? This is part of a questioning of the international legal and political order that, some argue, uses law to legitimate existing forms of warfare and is ill-suited to realise human security and human rights. Some see progressive legal development as requiring greater convergence of IHL and IHRL, or an even more ambitious paradigm that places human rights at the centre of any international intervention. What these developments would imply will be examined in Chapter 5, which examines in greater detail armed forces' obligations in IHL, IHRL and on the basis of peremptory norms in relation to prohibition, prevention and response to CRSV.

Could militaries play a positive role in such a new legal world order? Chapter 3, following, will outline the increasing political commitment since 2005 to military engagement in the prevention of and response to CRSV. A feminist critique of militaries and militarism problematises framing military action as a solution to CRSV, although prospects for change may lie in militaries' "regendering" and in visions for militaries articulated with reference to cosmopolitan values and human security. The case studies that follow will then explore these dilemmas, analysing military policy, doctrine, training and institutional structures in NATO and the British military, and using interviews and observations to surface how the gendered structural biases embedded in IHL are expressed, challenged or even overcome in new developing new approaches to CRSV.

## Chapter 3

### CRSV and new visions of militaries

Security forces are often the first responders to sexual violence. They have access to information about events on the ground that is otherwise unavailable to civilians. They may be the only protection that vulnerable sections of society have against sexual violence. In a limited number of cases they may also be the perpetrators.

Chair's Summary, End Sexual Violence in Conflict Global Summit London 2014, para. 34.

This chapter describes how there has been increasing political commitment to military involvement in sexual violence response, and how this has been questioned by some feminist scholars. Indeed, there is a broad community of critical scholarship that is ambivalent, if not hostile, toward militaries. The potential for deep change in the gender regimes of militaries is contested. This speaks to debates at the heart of this project: can feminists, should we, look to militaries to protect women, girls, men and boys from CRSV? Can we imagine different, positive, forms of military intervention, with personnel attuned to protection and human rights?

Section 3.1 describes how militaries have, since 2005, been framed in policy both as potential perpetrators of and potential protectors against CRSV. Section 3.2 relates this to feminist advocacy that has called for militaries to engage with the problem of CRSV, and feminist critique of militarism and militaries that tends to reject militaries as part of the solution to CRSV. Section 3.3 explores theorisations of “regendering” of militaries, and how these speak to the theorisation of cosmopolitan militaries and new forms of human-security orientated intervention. This chapter establishes a framework for the second theme of this project: considering the potential for militaries transform to “regender,” so to be effective in combating CRSV.

### 3.1 Calling in the troops: Committing the military to prevent and respond to CRSV

Since 2005 a new set of training, doctrinal and operational expectations for militaries as regards the prevention of and response to CRSV has been articulated, predominately through the WPS Agenda and the PSVI. It should not be assumed that armed forces had no experience with or guidance concerning CRSV in advance of this. The GCs and other earlier IHL instruments, such as the 1863 Lieber Code, did address CRSV (although often, as was discussed in Chapter 2, obliquely). The UN Security Council acknowledged CRSV in several contexts through the 1990s.<sup>121</sup> The 1995 Beijing Declaration and Platform for Action had a strong focus on women and armed conflict.<sup>122</sup> In 1999, UNSCR 1265 emphasised that peacekeeping mandates must pay particular attention to the protection and assistance needs of women and that peacekeepers need to be trained, by the UN and their own states, in the gender-related provisions of international humanitarian and human rights law.<sup>123</sup> The adoption of UNSCR 1325 on WPS in 2000 was a watershed in focusing international attention on both the needs and contributions of women in conflict and post-conflict contexts. It is from 2006, however, and in particular the adoption of UNSCR 1820 in 2008, that the focus on how armed forces can respond to CRSV sharpens in international discourse.<sup>124</sup>

Figure 1 (on page 41) highlights key points of normative development in and around the UN system concerning military response to sexual violence from 1999. As the following discussion will explore, within this normative framework, militaries are presented both as

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<sup>121</sup> E.g. in 1992 highlighting rape of women in the Former Yugoslavia in UNSCR 798. In 1995, serious injury arising from sexual assault during the Iraqi invasion of Kuwait was included as a basis for compensation by the UN Compensation Commission: UN Division for the Advancement of Women, *Sexual Violence and Armed Conflict: United Nations Response* (1998).

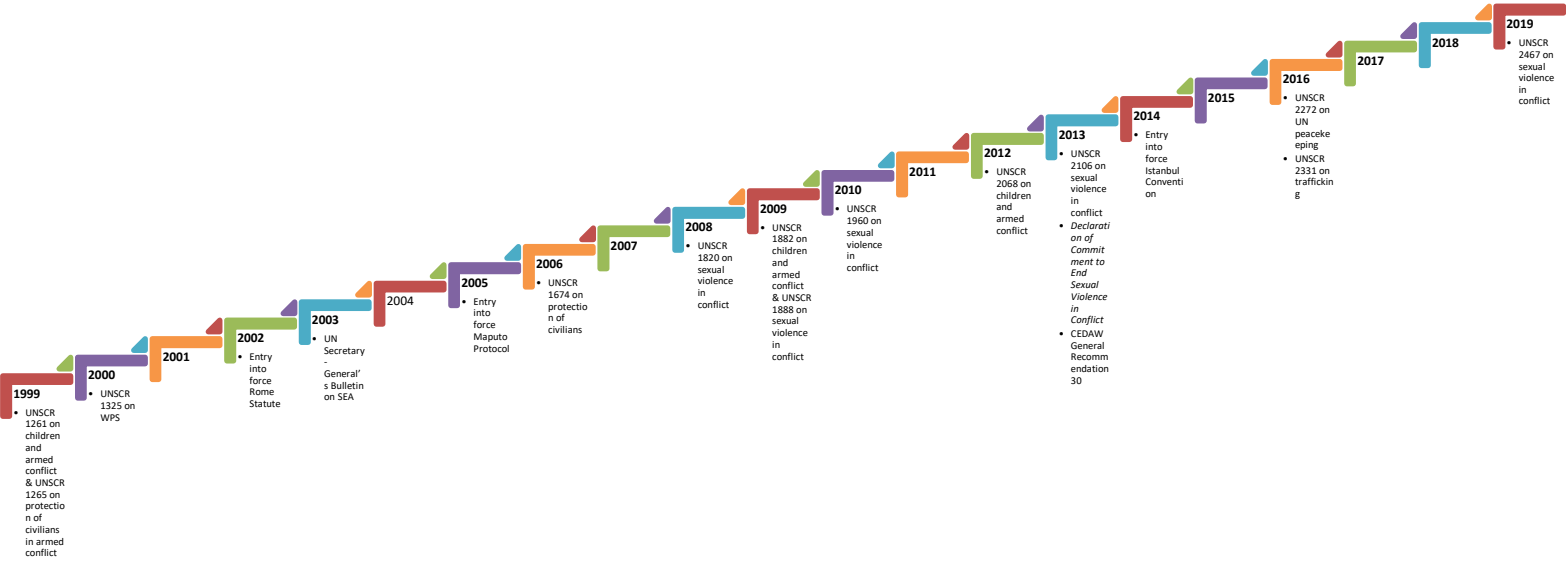
<sup>122</sup> United Nations, and World Conference on Women, *The Beijing Declaration and the Platform for Action: Fourth World Conference on Women, Beijing, China, 4-15 September 1995* (1996).

<sup>123</sup> *Resolution 1265* (1999).

<sup>124</sup> A number of regional human rights instruments, including the Maputo Protocol and the Istanbul Convention refer to protecting women and girls from sexual violence including during armed conflict. They are not described in detail here, although Chapter 5 will illustrate their potential application.

Chapter 3  
 CRSV and new visions of militaries

Figure 1: Key points of normative development concerning military response to CRSV, 1999 - 2019



potential *protectors* of women and children from CRSV, and themselves as potential *perpetrators* of CRSV, sexual exploitation and abuse (SEA, defined below).

### Framing the military as protectors

In 2000, UNSCR 1325 called for parties involved in armed conflict to “abide by international laws that protect the rights of civilian women and girls and to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse”.<sup>125</sup> This wording is broad enough to include not only warring militaries but military peacekeepers and other intervening militaries. From around 2005 military peacekeepers were taking actions specifically directed at CRSV prevention or response. African Union (AU) peacekeepers in Darfur conducted ‘firewood patrols’ to protect women from rape, abduction and murder. The European Union (EU) mission in the Democratic Republic of the Congo (DRC) collaborated with local women’s organisations to ensure they were able to refer cases of sexual violence to arrange for support for the victims.<sup>126</sup> In April 2006, UNSCR 1674 on the protection of civilians in conflict undertook to “ensure that all peace support operations employ all feasible measures to prevent [all sexual and other forms of violence committed against civilians in armed conflict, in particular women and children] and to address its impact where it takes place”.<sup>127</sup> This marks a significant development: seeing peacekeeping operations as having a role in *preventing* and *responding to* CRSV. It is for this reason that 2006 is taken as my starting point to examine changes in military policy and practice throughout this project.

In May 2008, an influential international discussion amongst diplomats, government officials, prominent leaders of women’s organisations, and UN military commanders took place, titled “Women Targeted or Affected by Armed Conflict: What Role for Military Peacekeepers?” Participants agreed that militaries should develop tactical responses to intercept and deter attacks on women and children. A subsequent “analytical inventory” of

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<sup>125</sup> *Resolution 1325*, para. 10.

<sup>126</sup> M. Bastick, K. Grimm, and R. Kunz, *Sexual violence in armed conflict: global overview and implications for the security sector* (DCAF, 2007) pp. 169–70.

<sup>127</sup> *Resolution 1674* (2006) para. 19.

military strategies included: preventative patrols and escorts; establishing safe havens for civilians; evacuating vulnerable groups; freeing women held as sex slaves; providing medical care to survivors; collaborating with local women's organisations and humanitarian agencies to establish victim referral protocols; collecting information about sexual violence whilst patrolling; identifying, securing and preserving evidence to support prosecution; assisting in the apprehension and hand over of suspected perpetrators, and civil-military cooperation activities such as providing fuel or stoves, and construction of shelters for sexual violence survivors.<sup>128</sup> The meeting identified the need for a 'paradigm shift' for militaries to predict, prevent and respond effectively to sexual attacks. Key challenges were identified as: variation in interpretation of mission mandates and rules of engagement as regards sexual violence attacks, in the sense of commanders failing to see CRSV as a priority; divergent attitudes between forces from different nations to violence against women; training gaps; resourcing gaps; and ambiguities between the roles of police and military personnel. It was noted, "It is a mistake to assume that gender analysis/women's protection will come 'instinctively' to soldiers trained in war-fighting".<sup>129</sup>

The following month the UN Security Council adopted its first resolution dedicated to sexual violence in conflict, sponsored by the United States.<sup>130</sup> Anne Marie Goetz explains that discussions around innovative tactics being used by military peacekeepers to prevent CRSV such as "... intelligence-collection from women on impending threats, patrolling in the areas (and at the times) that sexual violence was known to occur" apparently in part *drove* how UNSCR 1820 "reframed" sexual violence in conflict "as a threat to international peace and security and a tactic of warfare that required a security response".<sup>131</sup> UNSCR 1820 frames militaries as potential perpetrators of CRSV in emphasising *inter alia* military disciplinary measures, training of soldiers on the prohibition of sexual violence and vetting

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<sup>128</sup> L. Anderson, *Addressing Conflict-Related Sexual Violence: An Analytical Inventory of Peacekeeping Practice* (2012) pp. 18–34.

<sup>129</sup> A. M. Goetz and L. Anderson, 'Women Targeted or Affected by Armed Conflict: What role for military peacekeepers?' Conference Summary, Wilton Park Conference, (2008) p. 4.

<sup>130</sup> *Resolution 1820*.

<sup>131</sup> A. M. Goetz, 'Stopping sexual violence in conflict: gender politics in foreign policy' (2014).

armed forces.<sup>132</sup> However, it simultaneously called for UN peacekeepers to be trained to prevent, recognize and respond to sexual violence, and on troop and police-contributing countries 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 ...”<sup>133</sup> In the years that followed, the UN Department for Peacekeeping Operations (DPKO) added scenario-based training for peacekeepers on sexual violence response into their protection of civilians modules.

Four further UNSCRs dedicated to CRSV have since been adopted: 1888 (2009); 1960 (2010), 2106 (2013) and 2467 (2019). Their key provisions concerning militaries are set out in Annex 1, with the following summarising commitments made as regards military action in relation to CRSV. The UNSCRs on WPS include the demand that ‘all parties to armed conflict immediately take appropriate measures to protect civilians, including women and girls, from all forms of sexual violence’ which might include, *inter alia*, evacuating women and children to safety.<sup>134</sup> Troops involved in armed conflict should be trained not only on the prohibition of sexual violence but to ‘debunk[...] myths that fuel sexual violence’.<sup>135</sup> As concerns militaries participating in UN peace operations, the UNSCRs direct peace operations to employ ‘all feasible measures’ to prevent sexual violence against civilians and to address its impact.<sup>136</sup> Training of peacekeepers must include how to prevent, recognize, assess and respond to sexual violence; respond to trafficking in persons in the context of armed conflict; in “gender expertise”; and in the importance of involving women in all peacekeeping and peace-building measures.<sup>137</sup> Moreover, peacekeepers’ training on sexual violence, human trafficking and SEA should be integrated into the performance and

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<sup>132</sup> *Resolution 1820*, para. 3.

<sup>133</sup> *Ibid.*, paras 6, 8.

<sup>134</sup> *Resolution 1820*, para. 3; *Resolution 1888*, para. 3. See also: *Resolution 1325*, para. 10. calls upon ‘all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse’.

<sup>135</sup> *Resolution 1820*, para. 3.

<sup>136</sup> E.g. *Resolution 1674*, para. 19..

<sup>137</sup> *Resolution 1265*, para. 14; *Resolution 1325*, para. 6; *Resolution 1820*, para. 6,8; *Resolution 1960*, para. 11,15; *Resolution 2106*, para. 14; *Resolution 2122*, para. 9; *Resolution 2331* (2016) para. 19.

operational readiness standards against which troops are assessed.<sup>138</sup> Linking female bodies to these capabilities, the Security Council has in several resolutions encouraged deployment of greater numbers of female military personnel.<sup>139</sup> In parallel to these processes within the UN Security Council, in 2013 CEDAW published General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations.<sup>140</sup> As will be outlined in Chapter 5, this contains several references to military roles.

Political attention to military roles concerning CRSV was significantly stepped up through the British Government's PSVI, launched in 2012. Founded by then British Foreign Secretary, William Hague, alongside celebrity humanitarian, Angelina Jolie, the PSVI mobilised diplomatic resources to make CRSV an issue for foreign and security policy, not just one for humanitarian assistance.<sup>141</sup> It facilitated the Group of Eight's (G8) *Declaration on Preventing Sexual Violence in Conflict* and endorsement by 155 countries (including all NATO members) of a *Declaration of Commitment to End Sexual Violence in Conflict*. The *Declaration of Commitment* commits that armed forces will review their doctrine and training and ensure that it: "... is in accordance with international law so as to enable a more effective prevention and response to sexual violence in conflict".<sup>142</sup> In June 2014, Britain hosted the Global Summit to End Sexual Violence in Conflict ("Global Summit"), which attracted seventy-nine ministers from 123 nations, hundreds of non-governmental organisations (NGOs), thousands of members of the public, and a flood of mainstream media attention.<sup>143</sup> The Chair's Summary framed militaries as "a critical partner for both

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<sup>138</sup> *Resolution 2331*, para. 19; *Resolution 2467*, para. 24.;

<sup>139</sup> *Resolution 1888*, para. 19; *Resolution 1960*, para. 15; *Resolution 2122*, para. 9; *Resolution 2272* (2016) para. 8. The International Conferences of the Red Cross and Red Crescent (ICRCRC) have also produced what could be interpreted as relevant normative commitments in relation to military responses to sexual violence. Commitments as regard sexual violence response were made in the 2011 and 2015 Conferences. However, these are not referred to in other international forums or in military doctrine or discussions.

<sup>140</sup> CEDAW Committee, *General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations* (2013).

<sup>141</sup> P. Kirby, 'Ending sexual violence in conflict: the Preventing Sexual Violence Initiative and its critics' (2015) 91 *International Affairs* 457–72; S. E. Davies and J. True, 'Norm Entrepreneurship in Foreign Policy: William Hague and the Prevention of Sexual Violence in Conflict' (2017) 13 *Foreign Policy Analysis; Oxford* 701–21.

<sup>142</sup> *A Declaration of Commitment to End Sexual Violence in Conflict*.

<sup>143</sup> FCO, *Summit Report: The Global Summit to End Sexual Violence in Conflict* (2014).



prevention and protection” of CRSV and proposed senior military leadership should be “personally accountable for proactive delivery on tackling sexual violence”.<sup>144</sup> However, it acknowledged that militaries are “not always properly equipped to deal with this sensitive and difficult problem,” and indeed “they may also be the perpetrators.”<sup>145</sup>

### Framing the military as perpetrators

In April 2006, when the UN Security Council adopted the resolution on protection of civilians that for the first time committed peace support operations to prevent sexual violence, highlighted above, it also made its first condemnation of SEA and trafficking of women and children by peacekeepers.<sup>146</sup> SEA within UN peacekeeping had in 2003 been defined:

... “sexual exploitation” means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another ... “sexual abuse” means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.<sup>147</sup>

It was specifically prohibited for UN staff to (amongst other things) have sexual activity with persons under the age of eighteen, regardless of the age of majority or consent locally, or to exchange money for sex.<sup>148</sup> Thus, in advance of the emergence of CRSV as a distinct advocacy and policy agenda, the Security Council was grappling with the tension of calling upon peacekeepers to protect women and children, whilst acknowledging peacekeepers as at times the perpetrators of CRSV against women and children.

The Security Council has asserted states’ responsibilities to *prevent abuses and ensure accountability* for their own forces as regards sexual violence by ensuring that all reports of sexual violence committed by military personnel/one’s own forces are thoroughly

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<sup>144</sup> FCO, *Global Summit Report*, p. 44.

<sup>145</sup> *Ibid.*, p. 43.

<sup>146</sup> *Resolution 1674*, para. 20.

<sup>147</sup> United Nations Secretary General, *Special measures for protection from sexual exploitation and sexual abuse* (2003) p. 1.

<sup>148</sup> *Ibid.*, p. 2.

investigated and alleged perpetrators brought to justice. Measures set out include: enforcing military disciplinary measures and upholding the principle of command responsibility;<sup>149</sup> making and implementing commitments to combat sexual violence, including issuing clear orders through chains of command; and prohibition of sexual violence in Codes of Conduct, military field manuals, or equivalent.<sup>150</sup> Military commanders are specifically called upon to use their authority and powers to prevent sexual violence.<sup>151</sup> For countries contributing troops to peacekeeping, UNSCRs require they use training and other measures to prevent SEA and ensure full accountability, including through swift and thorough investigations and, if appropriate, prosecutions, and repatriation of units.<sup>152</sup> The need to prohibit SEA has been recognised also in AU, EU and NATO missions and by private security providers,<sup>153</sup> meaning that SEA is no longer conceptually limited to peacekeeping or even only to conflict-affected contexts. Unfortunately, as will be considered in Chapter 5, SEA remains prevalent, underreported and its handling beset by jurisdictional and practical challenges.<sup>154</sup>

Within UN discourse and practice, SEA and CRSV are often treated as separate threads – rather than SEA being a “type” or “subset” of CRSV. There are separate peacekeeper pre-deployment training modules for sexual violence in conflict and SEA.<sup>155</sup> As noted in Chapter 1, SEA is excluded from the definition of “conflict-related sexual violence” adopted by the

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<sup>149</sup> *Resolution 1820*, para. 3; *Resolution 1888*, para. 3.

<sup>150</sup> *Resolution 1960*, para. 5; *Resolution 2106*, para. 10.

<sup>151</sup> *Resolution 1888*, para. 7.

<sup>152</sup> *Resolution 1888*, para. 21; *Resolution 2106*, para. 15; *Resolution 2242*, para. 9; *Resolution 2272*, para. 9; *Resolution 2331*, para. 19.

<sup>153</sup> *The International Code of Conduct for Private Security Service Providers* (2010); *Guidelines for Private Security Providers on Preventing and Addressing Sexual Exploitation and Abuse* (2019).

<sup>154</sup> F. Hampson, *Working paper on the accountability of international personnel taking part in peace support operations* (2005); T. Awori, C. Lutz, and P. J. Thapa, *Final report on expert mission to evaluate the risks to SEA prevention efforts in MINUSTAH, UNMIL, MONUSCO, and UNMISS* (2013); R. S. Burke, *Sexual Exploitation and Abuse by Un Military Contingents: Moving Beyond the Current Status Quo and Responsibility Under International Law* (Brill - Nijhoff, 2014); M. O'Brien, *Criminalising Peacekeepers: Modernising National Approaches to Sexual Exploitation and Abuse* (Springer Berlin Heidelberg, 2018); R. Freedman, 'UNaccountable: A New Approach to Peacekeepers and Sexual Abuse' (2018) 29 *European Journal of International Law* 961–85.

<sup>155</sup> DPET/DPKO & DFS, United Nations, 'DPKO-DFS Core Pre-deployment Training Materials (CPTM 2017) for United Nations Peacekeeping Operations' (September 2018).

interagency UN Action Against Sexual Violence in Conflict, and in 2016 a UNSCR dedicated to SEA did not mention “sexual violence”.<sup>156</sup> There was an early sense among UN staff that “the media spotlight” on SEA was in tension with getting peacekeepers to prevent sexual violence:

... distancing [peacekeeping] personnel from the host population, thereby limiting situational awareness of women’s needs and risks. ... Fear of SEA allegations may deter uniformed personnel from operating in proximity to women or undertaking, for example, much-needed night foot patrols. It may also compound efforts to engage local women as language assistants and community liaisons. This could diminish innovation and de-motivate the mission from taking proactive steps to protect.<sup>157</sup>

As was highlighted in Chapter 2’s discussion of how CRSV has been problematised as an agenda, feminist advocates and scholars tend to be critical of lines drawn between SEA and sexual violence in conflict. They rightly emphasise the extent to which sexual abuse at the hands of peacekeepers and the hands of armed and unarmed men (usually) in their communities is linked in theory and lives.<sup>158</sup> One of the criticisms made of the Global Summit was that it ignored that sexual violence committed by international peacekeeping troops, NATO allies and “armed forces supported, funded and/or protected by the US and the UK”.<sup>159</sup>

### 3.2 Resisting and advocating military responses to CRSV

Feminist activists and scholars have shaped the WPS Agenda in many respects and are deeply implicated in its focus on CRSV.<sup>160</sup> Nonetheless, many are troubled by the sexual

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<sup>156</sup> *Resolution 2272*.

<sup>157</sup> Goetz and Anderson, ‘Women Targeted or Affected by Armed Conflict’, p. 15.

<sup>158</sup> E.g. A. Swaine, ‘Beyond Strategic Rape and between the Public and Private: Violence against Women in Armed Conflict’ (2015) 37 *Human Rights Quarterly* 755–86; S. Meger, ‘The Fetishization of Sexual Violence in International Security’ (2016) 60 *International Studies Quarterly* 149–59.

<sup>159</sup> Boesten, *On Ending Sexual Violence*, p. 5.

<sup>160</sup> S. Cook, ‘Security Council Resolution 1820: On Militarism, Flashlights, Raincoats, and Rooms with Doors - A Political Perspective on Where it Came from and What it Adds Advancing the Consensus: 60 Years of the Universal Declaration of Human Rights’ (2009) 23 *Emory International Law Review* 125–40; Engle, ‘A Genealogy of the Centrality of Sexual Violence to Gender and Conflict’.

vulnerability of civilians in war being used to justify or legitimate military action. The accepted truth around feminist dinner tables would seem to be, as Otto put it, “we know that armed interventions ... inevitably make the lives of the majority of women significantly worse”.<sup>161</sup> Indeed, and worryingly, some analyses suggest that external armed military intervention *increases the risk* that sexual violence and other forms of civilian victimization will be used by non-supported factions.<sup>162</sup> At the same time, women living amidst conflict do at times call for military protection from CRSV. The following gives an overview of these longstanding debates.

### Feminist opposition to militarism

Gina Heathcote observes “an uneasy silence in feminist debates about when, if ever, the use of force to save women would be feminist”.<sup>163</sup> Whilst some feminists in the 1990s advocated military humanitarian intervention to protect women during war, this ran counter to revered alliances between feminism and pacifism. Feminist peace activism remains strong, embodied in transnational feminist organisations and movements such as the WILPF and Women in Black, and women’s organising within campaigns such as “NoToNATO”. Indeed, there is a long-standing feminist suspicion of militaries, which understands “militarism” as essentially inimical to feminism. By “militarism” in this context is meant an ideology which frames military force as a necessary resolver of conflict;

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<sup>161</sup> D. Otto, S. Kouvo, and Z. Pearson, ‘Remapping crisis through a feminist lens’ *Feminist Perspectives on Contemporary International Law: Between Resistance and Compliance?*, (Oxford: Hart Publishing, 2014), pp. 75–96 p. 91. See also: Orford, ‘Feminism, Imperialism and the Mission of International Law’; Engle, “Calling in the Troops”; G. Heathcote, ‘Feminist Politics and the Use of Force: Theorising Feminist Action and Security Council Resolution 1325’ (2011) 7 *Socio-Legal Rev.* 23; L. Mitchell, ‘Monsters, Heroes, Martyrs and Their Storytellers: The Enduring Attraction of Culturally Embedded Narratives in the “War on Terror”’ (2014) 35 *Liverpool Law Review* 83–101; N. Pratt and N. Al-Ali, ‘Positionalities, intersectionalities and transnational feminism in researching women in post-invasion Iraq’ in A. T. R. Wibben (ed.), *Researching War: Feminist Methods, Ethics and Politics*, (London: Routledge, 2016); S. Kolmasova and K. Krulisova, ‘Legitimizing Military Action through “Rape-as-a-Weapon” Discourse in Libya: Critical Feminist Analysis’ (2019) 15 *Politics & Gender* 130–50; Peet and Sjoberg, *Gender and Civilian Victimization*.

<sup>162</sup> K. Johansson and M. Sarwari, ‘Sexual violence and biased military interventions in civil conflict’ (2019) 36 *Conflict Management and Peace Science* 469–93; R. M. Wood, J. D. Kathman, and S. E. Gent, ‘Armed intervention and civilian victimization in intrastate conflicts’ (2012) 49 *Journal of Peace Research* 647–60.

<sup>163</sup> Heathcote, ‘Feminist Politics and the Use of Force’, 41.

“militarisation” being a social process by which military approaches to social problems gain elite and popular acceptance.<sup>164</sup> Even where described as pacifying, liberating or humanitarian, military interventions will, in Zillah Eisenstein’s words, demand “opposition, differentiation and the othering of peoples”.<sup>165</sup> As well as perpetrating direct physical violence, militaries are implicated in the structural violence of military-industrial complexes, which absorb vast amounts of funding that could otherwise be spent on achieving human security.<sup>166</sup> As such, feminists have critiqued how claims to be promoting women’s rights or protecting women from CRSV have been used to legitimise military interventions, including in Bosnia, Darfur, Afghanistan, Syria and Iraq.<sup>167</sup> When CRSV was in 2015 framed by the UN as “a global, moral crisis,”<sup>168</sup> feminists again warned that employing the language of crisis securitises violence against women in a manner that prioritises military responses over more transformative social and political change.<sup>169</sup>

### Feminist critique of militaries

Enmeshed with resistance to militarism on a more symbolic level, many feminists see *militaries* as fundamentally different from other institutions, fundamentally problematic, focusing on their historical foundation as the institution of state-legitimised violence to claim that they are “inherently and irredeemably masculinist and violent”.<sup>170</sup> In militaries, hegemonic forms of masculinity - variously described as privileging practices of violence and misogyny, combined with myths of heroic protection of vulnerable civilians; focused upon the domination of women (and subordinate males) and the denigration of the feminine; associated with combat and rape - are produced and reproduced. Military culture

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<sup>164</sup> As articulated in e.g. Enloe, *Maneuvers*.

<sup>165</sup> Z. Eisenstein, *Sexual Decoys: Gender, Race and War in Imperial Democracy* (Zed Books, 2007) p. 25. See also Whitworth, *Men, Militarism, and UN Peacekeeping*.

<sup>166</sup> C. Cohn and S. Ruddick, ‘A Feminist Ethical Perspective on Weapons of Mass Destruction’ in S. H. Hashmi, S. Lee (eds.), *Ethics and weapons of mass destruction religious and secular perspectives*, (Cambridge, U.K.: New York: Cambridge University Press, 2004); A. S. Runyan and V. S. Peterson, *Global Gender Issues in the New Millennium*, 4 ed. (Westview Press, 2013) p. 159; WILPF, ‘WILPF Reflects on the Global Summit to End Sexual Violence in Conflict’ (June 2014) p. 2.

<sup>167</sup> See n 161.

<sup>168</sup> ‘UN: Sexual violence in conflict a “moral crisis globally”’ (2015).

<sup>169</sup> Otto, Kouvo, and Pearson, ‘Remapping crisis through a feminist lens’, p. 92.

<sup>170</sup> Duncanson and Woodward, ‘Regendering the military’, 10.

is moreover dominated by the “potent myth” of combat, that “to be a soldier means possibly to experience ‘combat,’ and only in combat lies the ultimate test of a man’s masculinity”.<sup>171</sup> As Claire Duncanson explains, the dominance of this “combat-orientated masculinity” valorises “tough,” aggressive responses to conflict, and feminises non-violent responses.<sup>172</sup> It is theorised that militarized masculinities not only make militaries problematic actors but have effects rippling through society in terms of how *all masculinities* are constructed.<sup>173</sup> It is not that every aspect of military masculinity is violent: it can also be protective; but, the gendered hierarchy wherein men and “the masculine” are strong and correspondingly, women and “the feminine” are weak and dependent is continually reproduced.

This understanding of military culture sees it as not only complicit in but *productive of* sexual violence in peacetime, conflict, and post-conflict settings. That is, “soldiers rape because the institutional culture of militaries, and the norms of masculinity which they promote, are conducive to rape; and moreover, rape itself is a site at which perpetrators performatively construct themselves as soldierly subjects.”<sup>174</sup> Scandals around sexual harassment and/or sexual violence within the United States, Australian, British, Canadian, French, Spanish and New Zealand militaries, among others, evidence deep-rooted gender problems in the institutional culture of many Western militaries. Globally, state militaries are more likely to be reported as perpetrators of sexual violence than either rebel groups or militias.<sup>175</sup>

Marsha Henry asks more specific questions as to whether the use of militaries is appropriate to address CRSV. She points to the emphasis on combat and acts of violence in

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<sup>171</sup> C. H. Enloe, *Does Khaki Become You? The Militarisation of Women’s Lives* (Pluto, 1983) p. 12.

<sup>172</sup> C. Duncanson, ‘Hegemonic Masculinity and the Possibility of Change in Gender Relations’ (2015) 18 *Men and Masculinities* 231–48 at 235.

<sup>173</sup> E.g., C. Cockburn and C. Enloe, ‘Militarism, Patriarchy and Peace Movements’ (2012) 14 *International Feminist Journal of Politics* 550–57; J. Parpart and K. Partridge, ‘Soldiering on: Pushing militarized masculinities into New Territory’ *The Sage Handbook of Feminist Theory*, (Thousand Oaks, California: SAGE reference, 2014), pp. 550–65 p. 550.

<sup>174</sup> H. Gray, ‘Militarism in the everyday: responses to domestic abuse in the British Armed Forces’ PhD, London School of Economics 2015 p. 41.

<sup>175</sup> Cohen and Nordås, ‘Sexual violence in armed conflict Introducing the SVAC dataset, 1989–2009’, 424; Nordås and Nagel, *Continued Failure to End Wartime Sexual Violence*.

military training, and questions whether peacekeepers, in particular, are adequately prepared for humanitarian roles.<sup>176</sup> She highlights the risk that problematic subcultures within militaries lead them to commit violence against local communities; questions whether local communities who have been victimised by militarized groups will distinguish the military peacekeepers aiming to assist them; and suggests the reputational impact of SEA by peacekeepers may have compromised their ability to offer support and services. She suggests the generally short rotations of peacekeepers make it difficult for them to develop the trusting relationships with local communities, and the risk that military engagement with CRSV response militarizes others' humanitarian work. Nonetheless, Henry goes on to conclude that the reality that peacekeepers might encounter victims of sexual violence seeking their help compels contemporary militaries to try to prepare themselves.

#### Feminist calls for military engagement with CRSV

It is important to acknowledge, nonetheless, that feminist activists, from the local to the international, have *actively called for* militaries to protect people from CRSV. On the adoption of UNSCR 1820, WILPF argued that there needed to be more discussion about ending militarism, but also that it was "necessary to act to provide physical protection to prevent and respond to sexual violence as it is happening".<sup>177</sup> From around 2011, in feminist spaces and advocacy, one begins to find military participants and new attention to the possibility of training and directing militaries to actively protect civilians from CRSV. The influential Nobel Women's Initiative issued a "Call to Action" that implicitly argued for more active military protection:

... much more is needed to see an end to crimes of sexual violence. ... A more coordinated effort involving civil society, government, the military and other people working on the ground ...

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<sup>176</sup> Henry, 'Why is handling and responding to sexual violence a military responsibility?', pp. 81–83.

<sup>177</sup> Cook, 'Security Council Resolution 1820', 128.

... It is unacceptable that such an incident [mass rape] could take place within 30 kilometres of a UN peacekeepers' base where a company of 80 blue helmet troops was stationed.<sup>178</sup>

The Call to Action urged the Canadian Government to implement "training of all Canadian military personnel on gender-based violence and protection strategies".<sup>179</sup> Before the 2014 Global Summit, Britain's umbrella WPS organisation, GAPS UK, called for stepping up of military engagement in CRSV response, advocating for "dialogue between militaries and experts about the skills, training, standards and accountability measures needed to prevent and respond to [CRSV]".<sup>180</sup> In the Summit's aftermath, the Secretary-General of WILPF problematised the strong emphasis on the military as protectors yet commented, "... better to have the Australian Lieutenant General ... talking of the transformation of the military than to pretend the military doesn't exist ... yes of course [UNSCR 1325] must apply to the military."<sup>181</sup> This pragmatism is shared by women's civil society organisations and networks around the world that engage with armed forces and with NATO to influence them *inter alia* to better engage with and protect people affected by conflict, and to steer them toward gendered transformation.<sup>182</sup>

### 3.3 Envisioning "gendered change" within militaries

Much of the feminist scholarship discussed above paints a gloomy picture of the potential for militaries to protect women and girls from CRSV, and the risk that even if they do, this serves to prop up systems of gender subordination that themselves perpetuate CRSV. Other feminist scholars, however, are less pessimistic about the prospects for militaries to evolve in their internal gender culture and for strategic refocus away from combat, finding common ground with cosmopolitan visions of militaries.

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<sup>178</sup> Nobel Women's Initiative, *War on Women: Time for Action to End Sexual Violence in Conflict* (2011) p. 16.

<sup>179</sup> *Ibid.* p.17.

<sup>180</sup> GAPS UK, *Global Summit to End Sexual Violence in Conflict Briefing* (2014) p. 5.

<sup>181</sup> WILPF, 'WILPF Reflects on the Global Summit to End Sexual Violence in Conflict'.

<sup>182</sup> E.g.: K. Lee-Koo, *2015 Third Annual Civil Society Report Card Australia's National Action Plan on Women, Peace & Security* (2016); DCAF/NATO CSAP, *Report of the first Annual Meeting Brussels, 17-18 October 2016* (2016).



### Regendered militaries

It was committed anti-militarist the late Cynthia Cockburn, working with Meliha Hubic to understand Bosnian women's perceptions of international peacekeepers, who first asked if militaries could be "regendered".<sup>183</sup> Cockburn and Hubic relayed Bosnian women as wanting the NATO-led mission to be friendlier, more respectful of the local population, better at communicating and more cooperative, but simultaneously to "pursue, even more energetically, its military work of pacification, demilitarisation, weapons collection, landmine clearance and protection ... arrest of war criminals."<sup>184</sup> It was on this basis that Cockburn and Hubic articulated "a new kind of soldier, a new kind of military".<sup>185</sup> They asked whether military culture could be transformed to allow for the exploration of values and choices, to not require the suppression of feelings of weakness and fear, and to "allow for bonding between men that is not based on the rejection, diminishing and abuse of women and femininity ... the despising of less militarized forms of masculinity?"<sup>186</sup>

Scholars working within critical military studies have documented shifts in militaries' ideal soldier qualities associated with the recent emphasis on peacekeeping, counterinsurgency and stabilisation: soldiers as not only tough and combat-ready, but empathetic and culturally aware.<sup>187</sup> From her work on British peacekeepers, Duncanson argues there is now "an alternative British military masculinity to the combat model; a masculinity that is associated as much with conflict resolution as conflict, with the skills and practices of communication, negotiation, humanitarianism, sensitivity, compassion and empathy".<sup>188</sup> Relating these changes to shifting military masculinities, Duncanson and Woodward develop the implications of Cockburn and Hubic's notion of a regendered military as

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<sup>183</sup> Cockburn and Hubic, 'Gender and the peacekeeping military'.

<sup>184</sup> *Ibid.*, p. 114.

<sup>185</sup> *Ibid.*, p. 116.

<sup>186</sup> *Ibid.*, p. 118.

<sup>187</sup> A. Kronsell and E. Svedberg, *Making Gender, Making War: Violence, Military and Peacekeeping Practices* (Routledge, 2011); L. Khalili, 'Gendered practices of counterinsurgency' (2011) 37 *Review of International Studies* 1471–91; L. Greenwood, 'Chameleon masculinity: developing the British "population-centred" soldier' (2016) 2 *Critical Military Studies* 84–102.

<sup>188</sup> C. Duncanson, 'Hegemonic Masculinity and the Possibility of Change in Gender Relations' (2015) 18 *Men and Masculinities* 231–248.

soldiering “constructed through relations of equality, empathy, care, respect, and recognition of similarities and shared experiences”, implying a disruption and deconstruction of gendered masculine/feminine hierarchies.<sup>189</sup> They emphasise the importance of militaries building relationships with local populations.

In theorising paths of change in military masculinities, Duncanson and Woodward reject deterministic assumptions that militaries are irredeemably masculinist, arguing that the shifts in how women have been accommodated evidence a capacity for militaries to change. They highlight that institutional transformations have at times been founded upon small, incremental changes; that incremental change can be “radical” and galvanise deep shifts.<sup>190</sup> They, with others, see the expansion of women’s presence in militaries as presenting “opportunities for disruption, subversion and even transformation”.<sup>191</sup> Indeed, there is diverse evidence, if scattered and anecdotal, that a military contingent that includes women can better make contact with local women and marginalized groups; and can more easily support conflict-affected women; that having women in operations, within a policy, planning and organisational framework to facilitate gender mainstreaming, can make operations more gender-sensitive.<sup>192</sup>

These are the narratives that militaries are invoking as they commit to prevent and respond to CRSV, as highlighted in Chapter 1, and to pursue gender mainstreaming and/or implementation of the WPS Agenda. Several armed forces, along with the UN, NATO and

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<sup>189</sup> Duncanson and Woodward, ‘Regendering the military’, 12.

<sup>190</sup> Ibid, p. 10–11.

<sup>191</sup> Ibid, p. 5. Likewise arguing that women’s presence changes gender norms, e.g. A. Kronsell, ‘Gendered practices in institutions of hegemonic masculinity: Reflections from feminist standpoint theory’ (2005) 7 *International Feminist Journal of Politics* 280–298; A. King, ‘The female combat soldier’ (2016) 22 *European Journal of International Relations* 122–143.

<sup>192</sup> Goetz and Anderson, ‘Women Targeted or Affected by Armed Conflict’; M. Donadio, C. Mazzotta, I. Castañeda García, and Red de Seguridad y Defensa de América Latina, *Women in the armed and police forces: resolution 1325 and peace operations in Latin America* (RESDAL, 2010) pp. 24–25; Anderson, *Addressing Conflict-Related Sexual Violence*; H. Lackenbauer and R. Langlais, *Review of the Practical Implications of SCR 1325 for the Conduct of NATO-led Operations and Missions* (2013) p. 44; *Whose Security? Practical examples of gender perspectives in military operations* (2015).

the OSCE, and have issued guidance materials on gender in military operations.<sup>193</sup> Some militaries, to varying degrees, are confronting their internal dynamics of male hegemony. Much of the analysis of recent initiatives around gender mainstreaming within militaries is broadly optimistic, differing sharply from the tenor of antimilitarist feminist work, and illustrating meaningful variance in the gender dynamics within different state militaries.<sup>194</sup> Implicit in the dissonance between these bodies of work is their different underlying belief as to whether militaries are likely to change and whether feminists should invest time in looking for such change.<sup>195</sup>

### Cosmopolitan militaries

Duncanson and Woodward point to some militaries' shift toward a focus on human security as a potential opportunity for regendering in militaries.<sup>196</sup> In so doing, they connect feminist critical military scholarship with broader debates around how militaries should change to

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<sup>193</sup> DPKO/DFS, 'Guidelines: Integrating a Gender Perspective into the work of the United Nations Military in Peacekeeping Operations' (2010); NATO ACO, *Gender Functional Planning Guide* (2015); New Zealand Defence Force (2016) "Commander's guide to Women, Peace and Security", Wellington: Chief of Defence Force; OSCE Secretariat, *Gender in military operations: Guidance for military personnel working at tactical level in Peace Support Operations* (2018); *Human Security in Military Operations, Part 2: Guidance* (2019); Canadian Armed Forces (2019) "Integrating gender perspectives in operations: A aide-mémoire for the Canadian Armed Forces", Strategic Joint Staff, Canadian Armed Forces.

<sup>194</sup> E.g. I. Skjelsbaek, *Gender Aspects of International Military Interventions: National and International Perspectives* (2007); L. Sion, 'Peacekeeping and the Gender Regime: Dutch Female Peacekeepers in Bosnia and Kosovo' (2008) *Journal of Contemporary Ethnography*; Kronsell and Svedberg, *Making Gender, Making War*; R. Egnell, P. Hojem, and H. Berts, *Gender, Military Effectiveness, and Organizational Change: The Swedish Model* (Palgrave Macmillan, 2014); G. Holmes, 'Gendering the Rwanda Defence Force: A Critical Assessment' (2014) 8 *Journal of Intervention and Statebuilding* 321–33; J. M. Prescott, E. Iwata, and B. H. Pincus, 'Gender, law and policy: Japan's national action plan on women, peace and security' (2015) 17 *Asian-Pacific Law & Policy Journal* 1–45; J. Wittwer, 'Mainstreaming WPS in the Armed Forces: The Case of Australia' in S. E. Davies, J. True (eds.), *The Oxford Handbook of Women, Peace, and Security*, (Oxford University Press, 2019).

<sup>195</sup> C. Duncanson, 'Anti-Militarist Feminist Approaches to Researching Gender and the Military' in R. Woodward, C. Duncanson (eds.), *The Palgrave International Handbook of Gender and the Military*, (London: Palgrave Macmillan, 2017), pp. 39–58 pp. 52–54.

<sup>196</sup> Duncanson and Woodward, 'Regendering the military', 19. Noting there is a rich critique of the notion of "human security" in international policy (see Chinkin and Kaldor, *International Law and New Wars*, pp. 508–17) to which feminist scholarship has made important contributions (e.g. A. M. Tripp, M. M. Ferree, and C. Ewig, *Gender, Violence, and Human Security: Critical Feminist Perspectives* (NYU Press, 2013).

meet the contemporary security context. Key ideas within these are of *cosmopolitan* militaries and the potential for “human security response forces”.

Theorising around a vision of cosmopolitan democracy provides a framework within which new tasks would be asked of military personnel, including the protection of civilians. This gave rise to notions of cosmopolitan militaries<sup>197</sup>, cosmopolitan peacekeeping<sup>198</sup> and cosmopolitan law-enforcement<sup>199</sup> as models through which protection of civilians could be given its due emphasis, and the concept of human security operationalised. The militaries of Canada, Denmark, Finland, Norway and Sweden have been offered as examples that foreground contributing to international peace and protecting people beyond their own nationals.<sup>200</sup> These attest that a cosmopolitan military is not necessarily a larger military, but one that invests more in peacekeeping and support to humanitarian assistance as compared to combat capabilities. The cosmopolitan military ideal is of a transition to new values and roles rather than merely adding new capabilities. Chinkin and Kaldor’s strategy of second generation human security, outlined in the previous chapter, envisions:

Human security personnel would have the task of dampening down violence, defending people and property, and, where possible, arresting rather than killing those responsible for criminal acts. Such personnel must be trained in various skills, including those currently associated with military, police, humanitarian aid, healthcare, or development expertise.<sup>201</sup>

Kaldor, with Shannon Beebe, has elsewhere developed in more detail this ideal:

The human-security officer is a new type of hero with a mandate to help humanity. Groups of human-security personnel could be called *engagement brigades*. Each brigade might contain a mix of capabilities ranging from the use of force ... [to] capacity to deal with breakdowns in

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<sup>197</sup> L. Elliott and G. Cheeseman, *Cosmopolitan theory, militaries and the deployment of force* (Australian National Univ., Dept. of International Relations, Research School of Pacific and Asian Studies, 2002).

<sup>198</sup> T. Woodhouse and O. Ramsbotham, ‘Cosmopolitan peacekeeping and the globalization of security’ (2005) 12 *International Peacekeeping* 139–156.

<sup>199</sup> Kaldor, *New and old wars*.

<sup>200</sup> Elliott and Cheeseman, *Forces for Good*, chaps 10, 12.

<sup>201</sup> Chinkin and Kaldor, *International Law and New Wars*, p. 521.

law and order ... There is a role for the military, but it is an atypical role - in human-security operations, military personnel act more like police, protecting people ....<sup>202</sup>

To be a cosmopolitan military in this sense requires both “organisational and ‘ideational’ transformation”;<sup>203</sup> a “profound cognitive shift concerning what it means to be a soldier”.<sup>204</sup> But, in work around cosmopolitan militaries/human security forces, how this radical change in military culture and mindset might occur remains largely untheorized. Similarly, the questions that these alternate models of militaries raise *vis a vis* the divisions between policing and military roles are little discussed within the literature on cosmopolitan militaries.

Feminist scholars have explored the gender dimensions of this cosmopolitan military ideal. Annica Kronsell observes that the tasks of the cosmopolitan military, “civilian-like tasks, such as policing, cooperating with locals ... have been coded as feminine through military practices in the past. Hence, it may be considered a demasculinization.”<sup>205</sup> Kronsell and Annika Bergman Rosamond see cosmopolitan military practices as potentially transforming female as well as male soldiers, and in positive ways. When female NATO soldiers were deployed to engage with local women in Afghanistan, doing so simultaneously altered the usual protected/protector hierarchies between foreign military and locals and prompted the female soldiers to reevaluate their gendered identities as a soldier.<sup>206</sup> Nonetheless, Kronsell traces tensions between militaries’ desire to develop new cosmopolitan skills (so to allow them to build relationships with locals, for example) whilst wishing to retain their capacity for combat - recognising that it is the latter that militaries regard as their unique contribution. She emphasises the potentially radical nature of these shifts, that

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<sup>202</sup> Beebe and Kaldor, *The Ultimate Weapon is No Weapon*, chap. 6 ‘Personnel’.

<sup>203</sup> Elliott and Cheeseman, *Cosmopolitan theory, militaries and the deployment of force*, p. 50.

<sup>204</sup> Kaldor (2000) cited in L. Elliott, ‘Cosmopolitan ethics and militaries as “forces for good” (Chapter 1)’ in L. M. Elliott, G. Cheeseman (eds.), *Forces for Good: Cosmopolitan Militaries in the Twenty-first Century*, (Manchester University Press, 2004), pp. 17–32 p. 28.

<sup>205</sup> Kronsell, *Gender, Sex, and the Postnational Defense*, chap. 3, p. 12.

<sup>206</sup> A. Bergman Rosamond and A. Kronsell, ‘Cosmopolitan militaries and dialogic peacekeeping: Danish and Swedish women soldiers in Afghanistan’ (2018) 20 *International Feminist Journal of Politics* 172–187.

“cosmopolitan values hold the potential to demilitarize the military.”<sup>207</sup> Given that a “demilitarisation” of the military is exactly what the main body of feminist anti-militarists seek, I argue that there are important linkages to be developed between anti-militarist and cosmopolitan work.

As well as being a vision for UN peacekeeping better able to deliver protection of civilians, cosmopolitan ideals have been reflected in proposals for regional forces. Within the framework of the EU, a concept was put forward for a “human security response force” that combined the capacity for “robust military force” with integrated civilian/military action.<sup>208</sup> Indeed, the limitations of UN peacekeeping forces being able to deliver protection of civilians<sup>209</sup> underscore the potential importance of a shift toward cosmopolitan practice by major military powers and by regional alliances such as the EU and NATO. NATO has been judged unlikely to be a cosmopolitan military organisation,<sup>210</sup> but recent developments in its approach to the protection of civilians, to be discussed in Chapter 6, call for fresh consideration. That the British Armed Forces are now, as will be explained in Chapter 7, training “Human Security Advisors” as part of developing human security as a “capability” demonstrates that some militaries are taking these ideas seriously. Examining the approach of NATO and the British Armed Forces’ to CRSV has the potential to make important contributions to understanding the potential for meaningful cosmopolitan transformation of militaries. Moreover, my project’s focus on understanding and invocation of IHL and IHRL standards offers scope to add new dimensions to cosmopolitan theorising in terms of how international law mediates these shifts.

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<sup>207</sup> Kronsell, *Gender, Sex, and the Postnational Defense*, p. 145.

<sup>208</sup> Study Group on Europe’s Security Capabilities, *A European Way of Security* cited D. Curran, ‘Muddling on through? Cosmopolitan peacekeeping and the protection of civilians’ (2017) 24 *International Peacekeeping* 63–85 at 67.

<sup>209</sup> UN Office of Internal Oversight Services, *Evaluation of the implementation and results of protection of civilians mandates in United Nations peacekeeping operations* (2014); Curran, ‘Muddling on through?’.

<sup>210</sup> Terriff, Terry. “NATO: Warfighters or Cosmopolitan Warriors?” in Elliott and Cheeseman, *Forces for Good*, chap. 7.

## Conclusions

This chapter has opened the theoretical framework for this project from the laws of war to the warriors. While political discourse (and in some circles, feminist advocacy) has framed state militaries as potential perpetrators of CRSV, it also frames militaries as having important roles to play in preventing and responding to CRSV. Some militaries – including, as will be demonstrated through the case studies to follow, NATO and the British Armed Forces - have expressed enthusiasm for these tasks, within broader commitments to gender mainstreaming and implementation of the WPS Agenda. For feminist activists and scholars, this raises dilemmas. Hostility toward the military is prominent in the feminist dissatisfaction with the achievements of the WPS Agenda.<sup>211</sup> Cockburn went so far as to suggest that the UNSCRs on WPS have been “co-opt[ed] by militarist states and military institutions for military purposes.<sup>212</sup> Yet, theorising regendered or cosmopolitan militaries imagines militaries that better align with feminist and human security agendas. Should feminists focus on resisting militaries and militarism, or engage with processes that have the potential, some argue, to demilitarise the military?

The alternate positions regarding the possibilities for gendered change within militaries, discussed in this chapter, suggest different sets of expectations for this research. A sceptical anti-militarist perspective would expect militaries to engage in CRSV response in a manner that reproduces their existing gendered hierarchies. A more hopeful posture toward change might expect militaries to engage in CRSV response in a manner that reflects or even catalyses a disruption and deconstruction of the gendered masculine/feminine hierarchies that are argued to be constitutive of the military. Understanding which of these alternative scenarios is unfolding is important at many levels. *Most* importantly, because if successful

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<sup>211</sup> E.g. C. Cohn, ‘Mainstreaming Gender in UN Security Policy: A Path to Political Transformation?’ in S. Rai, G. Waylen (eds.), *Global Governance: Feminist Perspectives*, (Basingstoke; New York: Palgrave Macmillan, 2008) p. 203; G. Heathcote and D. Otto, *Rethinking peacekeeping, gender equality and collective security* (2014); Wright, ‘Ending Sexual Violence and the War System – Or Militarizing Feminism?’; D. Otto, ‘Women, Peace, and Security A Critical Analysis of the Security Council’s Vision’ in Ní Aoláin, N. Cahn, D. F. Haynes, N. Valji (eds.), *The Oxford Handbook of Gender and Conflict*, (2018).

<sup>212</sup> Cockburn, ‘Snagged on the Contradiction’, 55.

ways to protect people from CRSV are being developed within military contexts, fostering, sharing and promoting these good practices might help avert or mitigate life-changing harm to real women, girls, men and boys caught up in conflict. Speaking to feminist anti-militarist scholarship, if one accepts the analysis that hegemonic military masculinities *reinforce and are reinforced by militarism*, changes in models of military masculinity “are not just about changes in individual identity, they are about challenging the entire structure of militarism and war”.<sup>213</sup> Therefore, this research examines the potential for processes within militaries related to CRSV prevention and response to disrupt structures of militarism and war.

This project weaves together two themes that have remained largely dissociated in scholarship: feminist critiques of the laws of war (outlined in Chapter 2) and feminist understandings of militaries (outlined in this chapter). To these, Chapter 5 will add new analysis of legal obligations in relation to CRSV, incorporating previously overlooked human rights jurisprudence concerning violence against women. The interactions between these three themes - feminist activism, militaries and international law – will then be interrogated through the case studies and analysis of NATO and the British Armed Forces. The following chapter outlines the methodological approach applied. This study seeks a deeper understanding of possibilities to reorient militaries to protect and promote human rights and human security.

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<sup>213</sup> C. Duncanson, ‘Forces for Good? British Military Masculinities on Peace Support Operations’ Ph.D., University of Edinburgh 2008 p. 6.



## Chapter 4

### Methodology

This chapter outlines the methodology through which this project explores its questions concerning legal obligations and how they are understood, CRSV prevention and response, and gender dynamics. It opens by introducing the feminist legal method employed, then explains how the case studies were selected; what sources were selected, why and how; and how data analysis was conducted. It concludes with a discussion of ethical considerations, data protection and reflexivity.

#### 4.1 Feminist method

This research applies a mixed-method socio-legal qualitative approach. It is mixed-method in combining doctrinal analysis of traditional legal sources (international treaties, jurisprudence and soft law sources, in Chapter 5), with analysis of primary source material at the institutional level (governmental and institutional policy, military doctrine and training materials), interviews and observational research (in Chapters 6 – 9). I describe it as “socio-legal” in the sense that it explores how the law is understood in the context of military institutions. In departing from dominant doctrinal approaches to researching IHL, it responds to calls from scholars working at the intersections of international law and international relations for empirical examinations to understand the *effects* of international law.<sup>214</sup> It is inspired by others who have brought the application of IHL to life through interviews and observation.<sup>215</sup>

My analytical approach blends feminist legal methodologies with theorisations of gender and methodologies from feminist security studies. In analysing understandings of the law

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<sup>214</sup> E.g. W. Bradford, ‘In the Minds of Men: A Theory of Compliance with the Laws of War’ (2004) 36 *Arizona State Law Journal* 1243; G. Shaffer and T. Ginsburg, ‘The Empirical Turn in International Legal Scholarship’ (2012) 106 *The American Journal of International Law* 1–46, which present empirical analyses of compliance with IHL.

<sup>215</sup> E.g. Dickinson, ‘Military Lawyers on the Battlefield’; R. Sutton, ‘Enacting the “civilian plus”’: International humanitarian actors and the conceptualization of distinction’ (2020) *Leiden Journal of International Law* 1–21.

and the work law is doing, I adopt a method developed by Charlesworth and Chinkin in *The Boundaries of International Law*,<sup>216</sup> which Karin Engle terms “structural bias feminism”.<sup>217</sup> Structural bias feminism on one level examines how “apparently ‘neutral’ principles and rules of international law can be seen to operate differently with respect to women and men.”<sup>218</sup> At a deeper level, it “reveals the gendered and sexed nature of the basic concepts of international law, for example, ‘states’, ‘security’, ‘order’ and ‘conflict’”.<sup>219</sup> It reveals gendered biases in the making, structures, operation and symbolic content of international law. Section 2.2’s analysis of gender bias in IHL demonstrates a structural bias feminism approach. Applied intersectionally, structural bias feminism can show how the law affects women of colour, indigenous women, and women from the Global South and people of diverse sexual orientations and gender identities and expressions in particular ways.<sup>220</sup>

Ways to surface structural bias include what Charlesworth describes as “searching for silences” - reflecting upon what is ignored or treated as irrelevant, what ideas are feminised and devalued – and attending to how dichotomies and distinctions are drawn – such as

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<sup>216</sup> Charlesworth and Chinkin, *The Boundaries of International Law*, pp. 48–56.

<sup>217</sup> K. Engle, ‘International Human Rights and Feminisms: When Discourses Keep Meeting’ *International law: modern feminist approaches*, (Oxford; Portland, Or: Hart, 2005), p. 47. Although I reject Engle’s claim that structural bias feminism is not attentive to intersecting forms of hierarchical discrimination, or ignores differences among women. Other useful overviews of the method include: H. Charlesworth, C. Chinkin, and S. Wright, ‘Feminist approaches to international law’ (1991) 85 *The American Journal of International Law* 613; Buss and Manji, *International law*; Kouvo and Pearson, *Feminist perspectives on contemporary international law*; F. Ní Aoláin, ‘Feminism facing international law’ (2015) 22 *European Journal of Women’s Studies* 457–62.

<sup>218</sup> Charlesworth and Chinkin, *The Boundaries of International Law*, p. 49.

<sup>219</sup> *Ibid.*

<sup>220</sup> Non-Western perspectives are particularly considered in: U. Narayan, *Dislocating Cultures: Identities, Traditions, and Third-World Feminism* (Routledge, 1997); R. Kapur, ‘The Tragedy of Victimization Rhetoric: Resurrecting the “Native” Subject in International/Post-Colonial Feminist Legal Politics’ (2002) 15 *Harvard Human Rights Journal* 1–38; B. Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge University Press, 2003); J. Halley, P. Kotiswaran, H. Shamir, and C. Thomas, ‘From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism’ (2006) 29 *Harvard Journal of Law & Gender* 335–424; Nesiiah, ‘Engendering transitional justice’. Considering LGBTIQ perspectives, e.g.: A. Carline and Z. Pearson, ‘Complexity and Queer Theory Approaches to International Law and Feminist Politics: Perspectives on Trafficking Special Issue’ (2007) 19 *Canadian Journal of Women and the Law* 73–118; Davis, ‘Reimagining Justice for Gender-Based Crimes at the Margins: New Legal Strategies for Prosecuting ISIS Crimes Against Women and LGBTIQ persons’.

non-conflict related/conflict-related.<sup>221</sup> I sought to be attentive to law operating not only in terms of formal prescriptions and proscriptions but *symbolically*; to go “beyond compliance” to the wide range of real-world effects that can be produced by involving and applying the law.<sup>222</sup> For example, analysing when and how law was referred to in non-prescriptive forms in relation to CRSV, with what apparent effect.

My application of feminist legal method was enriched by exploring theorising and methodologies in feminist security studies.<sup>223</sup> Reflexivity that is attentive to power, a hallmark of feminist method, is discussed in section 4.6. In exploring how international law directly engages with gender and CRSV I found it useful to apply Rosalind Cavaghan’s concept of “gender knowledge”.<sup>224</sup> Cavaghan, who examines gender mainstreaming within the EU, explains this as examining:

... explicit and implicit representations concerning the differences between the sexes and the relations between them, the origins and normative significance of these, the rationale and evidence underpinning them and their material form [such as text or speech] ... an analytical concept that we can use to capture and analyse competing ideas about gender and gender inequality ...<sup>225</sup>

If we take as a baseline that all institutions are gendered, a gender knowledge approach helps to avoid the error of treating gender policy as dropped into a vacuum. It recognises that ideas about gender pervade and shape institutions. Introducing gender policy or training into an institution is not *introducing* ideas about gender and gender inequality but introducing *competing* ideas about gender and gender inequality. A gender knowledge approach helps one draw out “established ways of thinking about gender dominating within an institution ... how gender and gender inequality is perceived and understood, or

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<sup>221</sup> Charlesworth, ‘Feminist Methods in International Law’, 381–82.

<sup>222</sup> R. Howse and R. Teitel, ‘Beyond Compliance: Rethinking Why International Law Really Matters: Beyond Compliance’ (2010) 1 *Global Policy* 127–36.

<sup>223</sup> Surveyed in: B. A. Ackerley, M. Stern, and J. True, *Feminist Methodologies for International Relations* (Cambridge University Press, 2006).

<sup>224</sup> Cavaghan, *Making Gender Equality Happen*, p. 64.

<sup>225</sup> *Ibid.*

indeed ignored”.<sup>226</sup> Cavaghan’s research on the implementation of gender policy within the EU demonstrates the value of going beyond formal textual sources to how gender policy is understood “in action”; for example, how “re-interpretations of official or written policy occur on the ground”.<sup>227</sup> In the context of this project, this approach directs attention to, for example, how CRSV as a “new” issue for militaries is understood in the context of pre-existing discourses on women and gender, and the shifts that occur between policy texts and implementation.

## 4.2 Case study selection

This project explores its research questions through two case studies: NATO, a multinational security organisation, and the British Armed Forces.

NATO is an important case to study by virtue of the scope of its influence on some seventy NATO member and partner armed forces, and the scale of its footprint. Katharine Wright has demonstrated that NATO acts as a “teaching machine” in relation to WPS and gender, with influence flowing amongst NATO members and Partners.<sup>228</sup> NATO is a thirty-member political and military alliance. Established in 1949 by ten European nations, plus Canada and the United States, NATO has since expanded to include a further eighteen European nations. A broader group of fifty nations is part of NATO’s Euro-Atlantic Partnership Council (EAPC): a multilateral forum for dialogue and consultation on political and security-related issues among NATO Allies and partner countries.<sup>229</sup> Moreover, another twenty nations cooperate with NATO through other modes of partnership, in some cases making substantial troop contributions to NATO missions and operations. In terms of conventional war capabilities, the seventy NATO members and partners include fourteen of the world’s twenty strongest militaries.<sup>230</sup> NATO operations and missions have been on the increase

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<sup>226</sup> *Ibid.*, p. 55.

<sup>227</sup> *Ibid.*, pp. 51, 55.

<sup>228</sup> K. A. M. Wright, ‘NATO’s adoption of UNSCR 1325 on Women, Peace and Security: Making the agenda a reality’ (2016) 37 *International Political Science Review* 350–61 at 352.

<sup>229</sup> EAPC members include, among others, Bosnia and Herzegovina, Finland, Georgia, Montenegro, Sweden, and Ukraine.

<sup>230</sup> ‘2017 Military Strength Ranking’ (2017).

since the early 1990s. As will be outlined further in Chapter 6, it is active in a wide range of theatres and across a range of different types of operations.

In terms of CRSV, since 2014 NATO has adopted a range of policy and training measures to direct and guide operational responses to sexual violence and claims to be a leader on the issue.<sup>231</sup> While there is scholarship examining NATO's engagement with WPS,<sup>232</sup> and a small body of work looking at the intersections of gender and IHL in NATO operations,<sup>233</sup> this has not yet holistically considered how NATO's approaches WPS and CRSV are implemented nor examined NATO doctrine.

The United Kingdom (UK) is likewise significant on a global stage, acting as a "norm-setter" or "norm entrepreneur"<sup>234</sup> in relation to both WPS and CRSV. The UK is influential within the UN Security Council on both WPS and protection of civilians, described as "penholder" on both.<sup>235</sup> The British Government has been at the forefront of advocating increased

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<sup>231</sup> J. Stoltenberg and A. Jolie, 'Why Nato must defend women's rights' (2017).

<sup>232</sup> See: S. L. Dyvik, 'Women as "Practitioners" and "Targets"' (2014) 16 *International Feminist Journal of Politics* 410–29; Egnell, Hojem, and Berts, *Gender, Military Effectiveness, and Organizational Change*; J. Welland, 'Gender and "Population-centric" Counterinsurgency in Afghanistan' in B. Hughes, F. Robson (eds.), *Unconventional Warfare from Antiquity to the Present Day*, (Cham: Springer International Publishing, 2017), pp. 25–46; M. Bastick and C. Duncanson, 'Agents of Change? Gender Advisors in NATO Militaries' (2018) 25 *International Peacekeeping* 554–577; Bergman Rosamond and Kronsell, 'Cosmopolitan militaries and dialogic peacekeeping'; A. Lewis, 'WPS, Gender and Foreign Military Interveners: Experience from Iraq and Afghanistan' in R. Shackel, L. Fiske (eds.), *Rethinking Transitional Gender Justice: Transformative Approaches in Post-Conflict Settings*, (Cham: Springer International Publishing, 2019), pp. 121–44; K. A. M. Wright, M. M. Hurley, and J. Gil Ruiz, *NATO, Gender and the Military: Women Organising from Within*, First ed. (Routledge, 2019); H. Hardt and S. von Hlatky, 'NATO's About-Face: Adaptation to Gender Mainstreaming in an Alliance Setting' (2020) 5 *Journal of Global Security Studies* 136–59.

<sup>233</sup> J. M. Prescott, 'NATO Gender Mainstreaming and the Feminist Critique of the Law of Armed Conflict' (2013) 14 *Georgetown Journal of Gender and the Law* 83; S. Longworth and O. Engdahl, *Getting perspective: Incorporating a gender perspective in military operations and the impact on international humanitarian law* (2014); M. Arvidsson, 'Targeting, Gender, and International Posthumanitarian Law and Practice: Framing The Question of the Human in International Humanitarian Law' (2018) 44 *Australian Feminist Law Journal* 9–28.

<sup>234</sup> M. Finnemore and K. Sikkink, 'International Norm Dynamics and Political Change' (1998) 52 *International Organization* 887–917; J. Brunnée and S. J. Toope, *Legitimacy and Legality in International Law* (Cambridge University Press, 2010); Davies and True, 'Norm Entrepreneurship in Foreign Policy'.

<sup>235</sup> S. Basu, 'Gender as national interest at the UN Security Council' (2016) 92 *International Affairs* 255–73; *In Hindsight: The Informal Expert Group on the Protection of Civilians* (2016); Ministry of Defence, *JSP 1325 Pt 2* (2019), p. i.

military capacity to address CRSV, most notably during the Global Summit. The British Armed Forces are recognised as highly influential on other Western militaries on several levels. For example, the “Anglo-American Warrior” is described as a masculinity ideal for Norwegian soldiers.<sup>236</sup> Concerning IHL, the Canadian Judge Advocate General notes that the UK and US armed forces “often set the example and the ‘best practice’ for the role and responsibilities of a military Legal Advisor, both in the armed forces and in government”.<sup>237</sup>

In terms of CRSV, since 2005 the British Armed Forces have made prominent international statements affirming it as a priority for armed forces, including through the establishment of a Women, Peace & Security Chiefs of Defence Network in 2017. Whilst there is a mature body of scholarship on gender and the British Armed Forces,<sup>238</sup> this has not yet considered either WPS or the role of international law.

Additionally, there were pragmatic reasons for my focus on NATO and the British Armed Forces. With each, I have had prior professional contact, which facilitated access to interview subjects and opportunities for observation. The ethical issues that this raised are discussed in section 4.5.

### 4.3 Data selection

The case studies in Chapters 6 and 7 generate and synthesise qualitative content analysis of the following primary data.

- Documentation in the form of:

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<sup>236</sup> N. Rones and K. Fasting, ‘Theorizing Military Masculinities and National Identities: The Norwegian Experience’ in R. Woodward, C. Duncanson (eds.), *The Palgrave International Handbook of Gender and the Military*, (London: Palgrave Macmillan, 2017) p. 155.

<sup>237</sup> B. Cathcart, ‘The Legal Advisor in the Canadian Armed Forces: Addressing International Humanitarian Law and International Human Rights Law in Military Operations’ in E. De Wet, J. K. Kleffner (eds.), *Convergence and Conflicts: Of Human Rights and International Humanitarian Law in Military Operations*, (Pretoria: PULP, 2014) p. 278.

<sup>238</sup> E.g. P. Higate, *Military Masculinities: Identity and the State* (Praeger, 2003); R. Woodward, *Sexing the Soldier: The Politics of Gender and the Contemporary British Army* (Routledge, 2007); V. Basham, *War, Identity and the Liberal State: Everyday Experiences of the Geopolitical in the Armed Forces* (Routledge, 2013); S. Bulmer, ‘Patriarchal Confusion?’ (2013) 15 *International Feminist Journal of Politics* 137–56; C. Duncanson, *Forces for Good?* (Palgrave, 2013); A. C. King, ‘Women Warriors: Female Accession to Ground Combat’ (2015) 41 *Armed Forces & Society* 379–87.

- policies, action plans, doctrine, directives, guidelines, procedures and training standards and materials related to CRSV (through a broad lens encompassing protection of civilians, gender and women) and/or the application of IHL and IHRL in military operations: and
- highest level defence strategy and policy (for example, NATO Summit Declarations, British Defence Doctrine).
- Participant observation of military education and training sessions related to CRSV.
- Qualitative semi-structured interviews with key personnel responsible for developing doctrine, directives, training and/or education related to CRSV, including military lawyers, gender advisors, trainers and doctrine writers.

According to the ICRC, doctrine, education and training are important in transposing the rules of international law “into concrete mechanisms or measures to ensure compliance” by armed forces.<sup>239</sup> The ICRC describes “doctrine” as the standard principles guiding military decision-making, tactics and behaviour, expressed not only in doctrine documents but in directives, policies, procedures, codes of conduct and reference manuals and their equivalents. In this thesis, I refer to these sources collectively as “documentation” and include training materials within this category. “Doctrine” has a specific meaning within NATO, because shared doctrine is the cornerstone of NATO’s ability to operate in unison and with Partners.

NATO doctrine, as a common language for operations, is essential to interoperability. Accepted and applied doctrine is necessary for effective coalition building. At the intellectual level, doctrine allows commanders from different nations to apply a common approach to operations, while at the procedural level, it enables Allied forces to operate together ...<sup>240</sup>

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<sup>239</sup> *Integrating the law* (2007) p. 1. The ICRC also frames equipment and sanctions as important. In this study, analysis of *equipment* is omitted, being of limited relevance to sexual violence response (although not irrelevant, for example as regards equipping militaries with post-rape treatment kits). Examination of *sanctions*, too, was not part of this project, beyond where sanctions are referred to in documentary sources. Whilst remaining alert for public discussion of relevant sanctions, I made a pragmatic judgement that I would be unlikely to be able to access information about internal disciplinary processes within NATO or the UK military concerning sexual violence cases.

<sup>240</sup> NATO Standardization Office, *Allied Joint Doctrine, Edition E, Version 1* (2017) para. 1.5.

Doctrine also drives the development and content of militaries' education and training curriculum, and the functions set out in doctrine dictate the allocation of resources.<sup>241</sup> As such, formal military doctrine is a critical source for understanding the priority and meaning afforded to any issue and what militaries will do in operations.

The documentary sources outlined above can be expected to reveal formal institutional norms concerning CRSV and military responses to it. The ICRC's recent study on IHL compliance theorises informal norms as also important. These include the influences of informal social norms within peer groups (which might take the form of informal warrior creeds or group ethos) and of external contacts and networks, including leaders outside of the military, the media and international organisations.<sup>242</sup> This study includes observation of military education and training and interviews as a way of seeking to understand these types of peer group and external influences on militaries' understanding of CRSV and of military roles. More specifically, Michael Scharf and Laura Dickinson have shown how interviews with military lawyers can build nuanced accounts of how international law operates in shaping decisions and affecting policy around use of force and IHL.<sup>243</sup> More generically, elite interviews and observations offer the possibility of "information not recorded elsewhere, or not yet available (if ever) for public release".<sup>244</sup> I hoped that through building personal rapport in interviews, I would access "depth, nuance, complexity" beyond that found in documents.<sup>245</sup>

#### 4.4 Data collection, generation and analysis

A database of NATO and British Armed Forces documentation was created in the Computer Assisted Qualitative Analysis software NVivo 10. Only five relevant documents were not available electronically, so to be subjected to Nvivo analysis. The categories of documentation analysed and eventually included in this project were compiled through a

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<sup>241</sup> Jody Prescott, open session of the Annual Conference of the NCGP, 4 June 2019.

<sup>242</sup> ICRC, 'A study on the roots of restraint in war' (2017) pp. 2–5.

<sup>243</sup> M. P. Scharf, 'International Law in Crisis: A Qualitative Empirical Contribution to the Compliance Debate' (2009) 31 *Cardozo Law Review* 45–98; Dickinson, 'Military Lawyers on the Battlefield'.

<sup>244</sup> D. Richards, 'Elite Interviewing: Approaches and Pitfalls' (1996) 16 *Politics* 199–204 at 199.

<sup>245</sup> J. Mason, *Qualitative researching*, Second ed. (Sage Publications, 2002) p. 65.



process of “theoretical sampling,”<sup>246</sup> wherein ongoing collection and analysis of data, beginning with a small number of NATO and British policies, responded to concepts derived from initial data analysis. Other categories of data, including media statements, tweets and (in Britain) responses to parliamentary questions, were considered but discarded as less likely to influence military actions.

The dataset created mirrors the period from which the first significant normative commitment to military engagement in sexual violence response was made, which I place as the adoption of UNSCR 1674 on the protection of civilians in conflict on 28 April 2006. As such, it contains documentation dating from the beginning of 2006. Upon reviewing this documentation, I collected earlier versions of key documents, where available, against which to compare changes made after April 2006. I continued data collection hand-in-hand with data analysis through to the end of January 2020.

The comparably long time span of my documentary review is one of the distinctive methodological contributions of this project to scholarship on WPS and NATO. Existing research around NATO’s integration of gender in military operations is dominated by that conducted pre-2015, when NATO’s WPS rhetoric was most vocal. Many scholars working on that period drew optimistic conclusions based on NATO’s policy commitments and have seemingly turned their attention to other issues. This project’s extended focus leads its findings as concerns the institutionalisation of NATO’s policy commitments to WPS to be markedly less positive than some earlier and contemporary research, demonstrating the importance of returning to institutions to evaluate how policy developments are implemented or stagnate.

The comprehensive review of a broad range of sources - policy, directives, guidelines, training standards and doctrine - is a second distinct methodological contribution of this project. Many comparable studies of approaches to gender and WPS in NATO and national militaries have neglected doctrine and operational guidelines as a key source, focusing

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<sup>246</sup> A. L. Strauss and J. M. Corbin, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory*, 2nd ed ed. (Sage Publications, 1998) chap. 7.

almost entirely on policy and high-level action plans.<sup>247</sup> Moreover, my review of documentation is broader than comparable research in encompassing not only documents “on” WPS and CRSV and the most evidently relevant issues (such as peacekeeping and stabilisation), but the institutions’ *overarching* strategy and doctrine. This enables this research to situate discourse concerning commitments to CRSV within wider strategic narratives; and indeed, to analyse the disconnects.

#### Policy, political guidance, reports, directives, guidelines, and procedures

Political statements, policies and related reports and directives, guidelines and procedures relevant to CRSV and IHL were collected from the official NATO and British Government websites. I built a database of key documents related to CRSV by searching these websites using variants on the expressions “women, peace and security,” “sexual violence in conflict,” “protection of civilians,” “law of armed conflict,” “humanitarian law” and in the British case also “PSVI”.<sup>248</sup> Preliminary analysis and later questioning of interviewees indicated these terms were adequate to identify all relevant documents. For the British Armed Forces case study, I also collected all the UK national reports to the NATO Committee on Gender Perspectives from the NATO website. I continued to monitor these websites through to the end of January 2020, alert for any new documents that might be relevant to this research. During the course of interviews and analysis, a small number of reports, directives, guidelines and procedures referred to in other texts or by interviewees in a manner suggesting their relevance were added to the database.

I used a more tailored approach to collecting highest level defence strategy and policy, informed by literature on NATO and on British security. For NATO, I collected all Summit Declarations and Communiqués and NATO’s Strategic Concept. For the British Armed

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<sup>247</sup> Although there are elements in: Duncanson, ‘Forces for Good?’; Arvidsson, ‘Targeting, Gender, and International Posthumanitarian Law and Practice’; H. M. Kinsella, ‘Sex as the secret: counterinsurgency in Afghanistan’ (2019) 11 *International Theory* 26–47.

<sup>248</sup> The last systematic search of the NATO website was conducted on 7 March 2019. The last systematic search of the British Government website was conducted on 27 February 2019.

Forces, I collected successive National Security Strategies, Defence Engagement Strategy and related reports.

Twenty-two NATO policies, action plans and political declarations were collected, listed in section 1 of Annex 2. Twenty-two NATO reports were collected, listed in section 2 of Annex 2. Twenty-four NATO directives, guidelines and procedures were collected, listed in section 4 of Annex 2.

Twenty-eight British policies and action plans were collected, listed in section 1 of Annex 3. Nineteen British reports were collected. Additionally, ten UK Annual Reports to the NATO Committee on Gender Perspectives (as it became known) were collected. These are listed in section 2 of Annex 3. Three British directives, guidelines and procedures were collected, listed in section 4 of Annex 3.

### Military doctrine

Collecting military doctrine required a different strategy, as there is no doctrine titled “WPS” or “Sexual Violence” in the manner of policy and guidelines, and doctrine is not presented thematically. Existing literature contained hints of what might be relevant to the protection of civilians, and military informants made suggestions, but I found it necessary to actively and widely review the content of doctrine to gain a sense of potential relevance and where content at different levels would be found. Accordingly, I approached the potential relevance of doctrinal publications broadly. Initially, only items that did not appear to have any potential relevance to dealings with local populations in overseas operations, related understandings of IHL and IHRL obligations, or gender roles were excluded from my collection (examples being doctrine on Unmanned Aircraft Systems, cyber, and maritime coordination).

The following sections detail how and where doctrine was sourced, then how a smaller subset was identified for close analysis.

### *Sourcing NATO doctrine*

In a first stage, NATO doctrine and training standards were assembled based upon suggestions from military informants and references in British doctrine. Reviewing these

sources helped to identify promising search terms. In a second stage, I conducted a comprehensive search as follows.

- a. Of the online NATO Standardisation Document Database for any publicly available and current document with following terms in their title: “law” “protection” “civilian” “women” “gender” “sexual” or “rules of engagement”. Those documents identified were reviewed for relevance. Then, the full list of 308 database items was scanned to identify further potentially relevant standards and to verify that the search terms were identifying all materials dealing with WPS, CRSV, or understandings of law in armed conflict.<sup>249</sup>
- b. In the NATO Terminology database as regards terms including “gender” or “sexual”.<sup>250</sup>

I focused my searches from 2005 but looked back further to find specific withdrawn and superseded versions of key doctrine to permit the identification of relevant changes. Where documents identified as potentially relevant in doctrine were not available through the NATO Standardisation Document Database, I looked for them online using Google searches. Using this approach, forty-one NATO doctrine publications and standards were collected.

### *Sourcing British doctrine*

The British Armed Forces ascribe to NATO Allied Joint Doctrine, so all of the doctrine compiled for NATO applies also to the British forces. However, I noticed early on that British personnel rarely referred to NATO guidelines and policies. For this reason, I collected British doctrine independently, to ensure I was identifying what was most relevant in a British context.

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<sup>249</sup> ‘NATO Standardisation Document Database’ (March 2019). This search was conducted on 20 December 2017 and repeated on 5 March 2019.

<sup>250</sup> NATO Standardization Office, ‘NATOTerm’ (December 2017). This search was conducted on 20 December 2017.

In a first stage, British doctrine was assembled based on a handful of doctrinal documents referred to by military informants. In a second stage, a more comprehensive database of doctrine was compiled drawing from:

- a. the “gov.uk” online collections of: “Joint Doctrine Publication,” “Joint Doctrine Note,” “Allied Joint Doctrine,” “Allied Joint Publication” and those “Joint Service Publications” listed under “law and legal issues”; and
- b. the National Archives’ Index of Joint Doctrine and Joint Warfare Publications and Index of Joint Discussion/Joint Doctrine Notes and Joint Doctrine Pamphlets.<sup>251</sup>

These collections are not searchable, so relevant doctrine was compiled by searching individual texts for the terms “law,” “protection,” “civilian,” “women,” “gender,” “sexual,” or “rules of engagement”. Using this approach, sixty-nine British doctrine publications were collected.

#### *Selecting the most relevant NATO and UK doctrine for close analysis*

Initially, I attempted to review and close code all of the 110 NATO and British doctrine publications I had collected. Realising this was producing too fine-grained a level of detail for the scope of this project, I analysed the data to pare out less relevant material in two steps.

First, I marked for analysis what the British Army describes as *capstone* and *keystone* doctrine (using its Army Doctrine Primer as a source to understand the doctrine hierarchy).<sup>252</sup> This identified seven NATO plus seven UK-specific doctrine documents. Second, I ran Nvivo text search queries on NATO and British doctrine using the terms “gender,” “sexual,” “civilian” or “law”. Based upon a review of the results of these queries against the preliminary analysis and coding of doctrine I had already undertaken, I identified doctrine with at least 1.25% coverage of these terms *or* at least sixty-five

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<sup>251</sup> This search was conducted on 20 December 2017 and repeated on 8 February 2019.

<sup>252</sup> DCDC, *Army Doctrine Primer* (2011).

references to them as of high relevance. This identified thirteen high relevance NATO doctrine documents, as well as a further fourteen UK-specific doctrine documents.

Combining these two strategies, twenty NATO doctrine documents and twenty-one UK-specific doctrine documents were subjected to close analysis, as high level or highly relevant. These are listed in Section 3 of Annex 2 and Annex 3, respectively.

### Training materials and standards

NATO-wide training standards and resources concerning IHL, IHRL, gender and/or sexual violence, were sourced from the NATO Standardisation Document Database and the webpages of NATO Allied Command Transformation,<sup>253</sup> or shared with me by trainers. The thirteen training materials collected are listed in section 5 of Annex 2.

In the British Armed Forces, individual trainers develop and adapt materials on CRSV for different training audiences and contexts. As such, I analysed British education and training materials on CRSV in the context of observations of training. There are standardised IHL training materials used in the form of Military Annual Training Tests, but these are classified, and I could not access them.

### Interviews

Interviewees were identified through purposive snowball sampling, initially from pre-existing professional contacts. Issues that this approach raised and dynamics within the interviews are discussed in section 4.6 below. I conducted twenty-four semi-structured interviews between June 2016 and November 2018, with six NATO staff and one independent advisor to NATO (three female, four male); and fourteen members of the British Armed Forces and three civilians working within British Armed Forces institutions (seven female, ten male).<sup>254</sup> Interviews with NATO personnel are listed in section 6 of Annex

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<sup>253</sup> 'NATO Standardisation Document Database'; 'HQ SACT Office of the Gender Advisor' (March 2019). These websites were last checked on 7 March 2019.

<sup>254</sup> One of these three civilians was interviewed on three separate occasions, as they expressed an interest to speak again at the conclusion of the first two interviews. I treat these three conversations as one interview.

2, and with British personnel in section 6 of Annex 3. Interviews with seven people were conducted via Skype video call; one by phone; sixteen face-to-face, determined simply by the feasibility of getting physically together. The face-to-face interviews took place in a variety of places: military bases, cafés, New College, offices, an interviewee's kitchen and my own study. I additionally conducted one focus group with British Army trainees in November 2016, when the opportunity to do so was volunteered by an interviewee.

I developed a slightly different interview schedule for each interviewee, according to what I knew of their function. In general, interviews worked through their tasking as regards developing responses to CRSV; what initiatives had been or were being developed in terms of doctrine, training and education or operations; how they went about developing these initiatives; how they understand militaries' IHL and IHRL obligations applying to CRSV; challenges; and gender culture within the military/NATO. A sample interview schedule is at Annex 4.

It was not possible to identify personnel who had been working on developing doctrine, directives, training and education related to CRSV for the entire period since 2005. The frequent changes of post within both NATO and the British Armed Forces and lack of personal attribution of work generally made it impossible to identify people who had worked on older documents or delivered training and education in the past. Thus, data gathered through interviews and observations of training is a series of snapshots from January 2016 to June 2019, rather than a coherent dataset stretching back to 2005.

#### Observation of education, training and public events

Opportunities to observe education and training were pursued opportunistically, initially through an individual met at a WPS conference and a professional contact, and then in a snowball manner. I observed three NATO and three British Armed Forces education/training seminars, between January 2016 and January 2019. In two of these trainings, I myself delivered sessions as an invited expert. Additionally, I observed three public sessions of the Annual Conference of the NATO Committee on Gender Perspectives and was part of a "knowledge exchange" between British MoD staff, armed forces

personnel, academics and practitioners. These served as further observations. Observations are listed in section 7 of Annex 2, and section 6 of Annex 3.

The interviewees and trainees in this project can be seen as a purposive sample in the sense of this study using them to draw inferences about the entire population of the British Armed Forces and of NATO staff. To determine how many interviews or observations are “enough,” it is customary in qualitative research to strive for “saturation ... the point at which no new information or themes are observed in the data”.<sup>255</sup> I was left feeling that “saturation is reliant on researcher qualities and has no boundaries”<sup>256</sup> – that new information and new potential themes could potentially have continued to emerge *ad infinitum*; I was bounded more by the scope of the project than the subject. Nonetheless, the key theoretical elements that I am working with in this thesis were in place by the time I had completed the bulk of my fieldwork in mid-2018.

### Analysis

Twenty-two of my twenty-five interviews were recorded and transcribed (using a professional transcription service, which I checked against the recording). I made handwritten notes of three interviews (which I unexpectedly had the opportunity to conduct and was unprepared to record) and during observations. These I myself transcribed. All transcriptions were added to the NVivo database and subjected to qualitative data analysis.

In the initial analysis of documentary sources, I coded around the following more empirical themes: military initiatives regarding CRSV; military recognition of CRSV (for example, who are the victims and perpetrators of sexual violence?); and military understandings of their obligations concerning CRSV, including applicable law. This was orientated to explore not only what militaries might and are doing in relation to CRSV, but whether this affects any gendered change within military culture, as discussed in Chapter 3. I also coded around the

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<sup>255</sup> G. Guest, A. Bunce, and L. Johnson, ‘How Many Interviews Are Enough? An Experiment with Data Saturation and Variability’ (2006) 18 *Field Methods* 59–82 at 59.

<sup>256</sup> *Ibid.*, p. 77.



following theoretical themes: feminist critiques of armed forces and international law; and mechanisms by and conditions under which international laws and norms have effect.

These were dimensions to explore the questions posed in Chapter 2 as regards how militaries apply IHL and IHRL in relation to CRSV, gendered hierarchies of protection and prioritisation of military lives, how IHL might act to legitimate military practices, and what difference human-rights led approaches might make. This coding was helpful to iteratively shape my research; but as analysis developed, I largely worked with my sources chronologically, using text queries to explore a range of factors of interest.

Throughout all analysis, I was attentive to what was not mentioned, what was framed as irrelevant or unreasonable or impossible, and gendered dichotomies and distinctions, as outlined in the discussion of structural bias feminism in section 4.1. As such, I analysed data simultaneously to explore *what* was being described as being done or directed, as well as underlying ideas, assumptions and understandings concerning women and men, sexual violence, military roles and the law. In developing this analytical frame, I was mindful of the tensions between examining data from a more theoretical perspective that risks “inhibit[ing] forming fresh ideas and promote[ing] tunnel-vision”<sup>257</sup> and by avoiding theory missing connections between data and important research questions.<sup>258</sup> As will be discussed further below, I endeavoured to be constantly reflexive as to my attitudes towards my data.

## 4.5 Ethical considerations and data protection

My research proposal was reviewed by the University of Edinburgh Law School’s Research Ethics and Governance Committee.<sup>259</sup> Through the course of the project, I periodically reviewed my practices to ensure they complied with University guidance to meet evolving standards, including the General Data Protection Regulation and *Data Protection Act 2018*.

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<sup>257</sup> K. Charmaz, “‘Discovering’ chronic illness: Using grounded theory’ (1990) 30 *Social Science & Medicine* 1161–72 at 1171.

<sup>258</sup> G. W. Ryan and H. R. Bernard, ‘Techniques to Identify Themes’ (2003) 15 *Field Methods* 85–109 at 94.

<sup>259</sup> Ethics approval was granted on 21 January 2016.

Early in the project, I assured myself through review of the guidelines and discussion with more experienced scholars and contacts within the British Ministry of Defence (MoD) that my research did not require formal approval by the MoD's Research Ethics Committee.<sup>260</sup> There is no comparable process within NATO, as far as I was able to ascertain, for vetting and approval of research involving NATO staff.

Since 2009, I have been in contact with some NATO and British Armed Forces staff through a position I hold with an intergovernmental organisation (IGO) that works on WPS. I here refer to this as "my IGO work". My IGO work has involved attending NATO conferences as an expert speaker, facilitating NATO meetings, and conducting training for NATO and the British Armed Forces, all broadly encouraging NATO and the British Armed Forces to implement the WPS Agenda and/or promote gender equality. Through this, I had a pre-existing professional relationship with some interviewees. This required careful attention to consent and reflexivity.

### Consent

I paid particular attention to ensuring meaningful informed consent by interviewees, trainees and (co-)trainers, aware that military personnel likely could not opt out of delivering or attending training where I was conducting research and of the potential for confusion between my research and my IGO work. Interviewees and individuals authorising observation of training received a version of the research information sheet at Annex 5.<sup>261</sup> Where I was conducting participant observation, I endeavoured to make sure that my dual role as trainer and researcher was made clear (for example, in the training programme, on my badge) and took time to explain it. I made available and verbally presented the research information to trainees and (co-)trainers, explaining how participants could privately opt-out of having any of their interactions noted or referred to (even anonymously). In several

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<sup>260</sup> Ministry of Defence, *Research Involving Human Participants, Part 1: Directive* (2014) para. 7.

<sup>261</sup> An exception was made as regards observation of the NATO education sessions at Imjin Barracks and the Norwegian Defence University College and the British Knowledge Exchange Network. As academics were actively invited to attend both, and I and other civilian participants were introduced as part of the audience, informed consent to note aspects of the discussion was not, I judged, necessary. Nonetheless, I anonymised data collected.

interviews and conversations during training sessions, individuals requested that specific comments be “off the record”. I respected this by omitting such material from my analysis.

Where any participant had any contact or possible knowledge of me through my IGO work, I took care to explain that I was acting in a separate personal research capacity. I had thought when planning my fieldwork, that because I visited NATO sites from time to time in the context of my IGO job, I could conduct interviews on these occasions. I quickly realised that “running together” my IGO work and this research would be inappropriate in terms of both the professional confidentiality accompanying my encounters in my IGO capacity, and the integrity of my research. As regards the British Armed Forces, I had a less-developed pre-existing relationship so was more easily able to pursue interviews and observations as a researcher. The result was that I conducted fewer NATO interviews and observations than I intended. However, given that functions related to WPS and CRSV within NATO are concentrated in a small number of individuals, and there is more extensive documentation of NATO approaches, I do not believe that this compromised the comprehensiveness of my research.

### Anonymity

Through the research process, my interview and observational data necessarily included identifiable personal information (name, email address, position), although no data in a “special category”.<sup>262</sup> I pseudonymised this data, removing names and other identifying information. This thesis identifies participants only by generic functions, with care to preserve their anonymity, and as such contains no personal data.

### Data security

I am the only person with access to my raw data, with the exception that recordings of interviews were shared with a professional transcriber (within the UK). All such files were anonymised, and password protected. Electronic data is stored in password-protected files,

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<sup>262</sup> *Data Protection Handbook, Version 7* p. 1.

on a system that is encrypted and protected with Norton LifeLock. Paper records are anonymised and are stored in a locked filing cabinet.

Personal information and recordings of interviews will be retained only until this project is complete.

## 4.6 Reflexivity and spaces between

Phyllis Rose said of qualitative research: “There is no neutrality. There is only greater or less awareness of one’s biases”.<sup>263</sup> Feminist methodologies emphasise the reflexivity of the researcher: taking account of one’s subjectivity and how it inhibits or facilitates research and shapes the knowledge that one produces and shares; how our identities, values and attitudes shape the types of questions we ask, the nature of our interactions with interviewees and our interpretation of data.<sup>264</sup> This is likewise an active discussion in critical military studies, although in writing on international law, as Sarah Nouwen discusses, explicit reflexivity is unusual.<sup>265</sup>

Because this project intersects with work I have long done as a “practitioner,” I inevitably brought to it assumptions and emotions. I have found reflecting upon my own biases and perspectives a meaningful and productive aspect of this research. For example, in my project’s initial phase I did not intend to include SEA, on the hazy assumption that this was not a significant issue as far as my case studies were concerned. As I became aware through

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<sup>263</sup> Rose (1985) cited S. C. Dwyer and J. L. Buckle, ‘The Space Between: On Being an Insider-Outsider in Qualitative Research’ (2009) 8 *International Journal of Qualitative Methods* 54–63 at 55.

<sup>264</sup> Ackerley, Stern, and True, *Feminist Methodologies for IR*; Ní Aoláin, ‘Advancing Feminist Positioning in the Field of Transitional Justice’; Pratt and Al-Ali, ‘Positionalities, intersectionalities and transnational feminism in researching women in post-invasion Iraq’; A. Holvikivi, ‘Gender experts and critical friends: research in relations of proximity’ (2019) 2 *European Journal of Politics and Gender* 131–147.

<sup>265</sup> P. Higate and A. Cameron, ‘Reflexivity and Researching the Military’ (2006) 32 *Armed Forces & Society* 219–33; C. Enloe, ‘The Risks of Scholarly Militarization: A Feminist Analysis’ (2010) 8 *Perspectives on Politics* 1107–11 at 1109–10; H. Gray, ‘Researching from the spaces in between? The politics of accountability in studying the British military’ (2016) 2 *Critical Military Studies* 70–83; C. Baker, V. Basham, S. Bulmer, H. Gray, and A. Hyde, ‘Encounters with the Military’ (2016) 18 *International Feminist Journal of Politics* 140–54; S. M. H. Nouwen, “‘As You Set out for Ithaka’”: Practical, Epistemological, Ethical, and Existential Questions about Socio-Legal Empirical Research in Conflict’ (2014) 27 *Leiden Journal of International Law; Cambridge* 227–60.

interviewing of just how weakly SEA was addressed, I came to recognise this as a bias against fully seeing the forces I was studying as potential abusers, and to include SEA. I have been conscious of reluctance to draw conclusions critical of the work of individuals whom I like and believe well-intentioned. I found that progressively strengthening the anonymisation of my interview material helped to forestall this bias. I continued to read critical literature throughout my project, challenging my own attitudes toward militarism. I became aware that for reasons associated with race, class and family, I found much in a military environment comfortable that others might find alienating.

In any engagement between researcher and researched, including interviews, there are complex and unstable power relations.<sup>266</sup> My prior engagement with some of my interviewees and the institutions I was researching called for care concerning the dynamics between myself and those interviewees. I took various steps to establish a degree of formality and professionalism in my diverse interview spaces. At the same time, I was open “to bringing [my] personal role into the research relationship by answering participants’ questions, sharing knowledge and experience”.<sup>267</sup> Literature on interviewing elites and peers articulates some of the dynamics I experienced, wherein we were each bringing our professional credibility into the interview space, mutually evaluating each other’s knowledge and insight.<sup>268</sup> As an interviewer, I was often, I believe, neither an insider nor entirely an outsider, occupying a “space between”.<sup>269</sup> With some interviewees, we would each identify as part of a shared global community of WPS advocates; yet, with military personnel, I was always an outsider/non-group member because of my civilian status.

In critical military scholarship, research based on high levels of access to the military itself is often considered at risk of being “militarized,” in the sense of co-opted by the institution

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<sup>266</sup> K. E. Smith, ‘Problematising power relations in “elite” interviews’ (2006) 37 *Geoforum* 643–53.

<sup>267</sup> Oakley (1981) cited in Dwyer and Buckle, ‘The Space Between’, 62.

<sup>268</sup> J. Platt, ‘On Interviewing One’s Peers’ (1981) 32 *The British Journal of Sociology* 75; Smith, ‘Problematising power relations in ‘elite’ interviews’; B. Parry, ‘Hunting the gene-hunters: the role of hybrid networks, status, and chance in conceptualising and accessing “corporate elites”’ (1998) 30 *Environment and Planning A* 2147–2162; Ostrander, “‘Surely You’re Not in This Just to Be Helpful’: Access, Rapport, and Interviews in Three Studies of Elites’ (1993) 22 *Journal of Contemporary Ethnography* 1–21.

<sup>269</sup> Dwyer and Buckle, ‘The Space Between’.

and its priorities.<sup>270</sup> But in feminist work, as Aiko Holvikivi discusses, complex dynamics between researcher and researched are not uncommon, “often done from locations that are neither fully inside nor fully outside an academic discipline, professional organisation or social formation.”<sup>271</sup> Insider dynamics might risk bias though the interviewer and interviewee each having “an interest in appearing well to each other intellectually”.<sup>272</sup> The impact is unpredictable: interviewees might seek to appear well either by playing up their institution’s performance or being highly critical of it. Mindful of this, wherever possible I checked interviewees’ key claims against documentary sources and between interviewees and sought out independent assessments and reviews. Balanced against risks attendant upon semi-insiderness, I believe that throughout this project my longstanding engagement with militaries as a practitioner helped me to an unusual level of access to interviewees, training sites and honest reflections. As will be evident in the case studies to follow, I was able to reach below the veneer of what is said on podiums and in policies.

## Conclusions

The glaring limitation of this project is its weakness in terms of direct engagement with communities affected by CRSV. Ann Tickner talks of using women’s experiences as an indicator of the “reality” against which research questions are formulated.<sup>273</sup> It was beyond my capacity (for multiple reasons) to attempt field research in communities that have experienced NATO or British military interventions since 2005. I have, however, sought to take account of women’s experiences in centring perspectives arising from grassroots feminist activism, as well as the theorising around “regendering” of militaries that has its roots in the experiences of Bosnian women (as described in Chapter 3). Ideally, this

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<sup>270</sup> Gray, ‘Researching from the spaces in between?’; Baker, Basham, Bulmer, Gray, and Hyde, ‘Encounters with the Military’.

<sup>271</sup> Holvikivi, ‘Gender experts and critical friends’, 135. See also K. A. M. Wright and M. Hurley, ‘Navigating gender, power and perceptions when researching NATO: a conversation’ (2017) 19 *International Feminist Journal of Politics* 390–92.

<sup>272</sup> Platt, ‘On Interviewing One’s Peers’, 81.

<sup>273</sup> J. A. Tickner, ‘Feminism meets International Relations: some methodological issues’ in B. A. Ackerley, M. Stern, J. True (eds.), *Feminist Methodologies for International Relations*, (Cambridge University Press, 2006), pp. 19–41 p. 26.

research would also explore what women and girls affected by CRSV have to say about militaries being tasked to prevent and respond to it. Although there is some excellent research that engages with communities in this manner,<sup>274</sup> it is not able to speak to NATO and British interventions in the period of this study.

Recognising these constraints, this research does not aspire to decisively declare what militaries *should do* to prevent and respond to CRSV. Any such directions should always be developed through inclusive engagement with communities affected (discussed further in Part III). Still, through the unprecedented scope of its documentary analysis, combined with an unusual degree of access to military personnel and normally closed training spaces, it does offer a perspective markedly different from comparable projects in feminist legal or security studies.

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<sup>274</sup> E.g. Baaz and Stern, *Sexual Violence as a Weapon of War?*; Swaine, 'Beyond Strategic Rape and between the Public and Private'.

Chapter 4  
Methodology



## PART II: THE LAW AND ITS APPLICATION

### Chapter 5

#### CRSV and a military's legal obligations

The application of law in this contemporary operating environment is ... challenging and demanding ... uncertain and unpredictable. The soldier requires and deserves a degree of certainty and clarity which, regrettably, it is often not possible to provide.

P. McEvoy, 'Law at the operational level (Chapter 6)' in D. Whetham (ed.), *Ethics, Law and Military Operations*, (Basingstoke, Eng.: Palgrave Macmillan, 2010), pp. 108–34 p. 110-111.

Chapter 2 illustrated how feminist activism around CRSV has been grounded in the conviction that the *content* of international law matters. Likewise, the visions of human security and of cosmopolitan militaries described in Chapters 2 and 3 emphasise the importance of their compliance with international law, and in particular IHRL. Yet, activism, policy discourse and scholarship which consider military engagement with prevention and response to CRSV has paid little attention to the status of the suggested military tasks (measures to prevent and respond to CRSV) in terms of IHL or IHRL obligations. As such, questions running through this research are: how are the feminist legal victories concerning CRSV translated into military operations? Is international law playing a role in militaries' transition toward cosmopolitanism, or regendering?

This Part II of the thesis returns to the legal standards in relation to CRSV and goes on to explore how they are understood and internalised in NATO and the British Armed Forces. This chapter opens by explaining the complex interaction between IHL and IHRL in contemporary military operations (section 5.1). It then draws out in detail a military's positive obligations under IHL and IHRL concerning *prevention, investigation and prosecution of CRSV by third parties* (section 5.2) and *prohibition, prevention and*

*punishment of CRSV by their own forces* (section 5.3).<sup>275</sup> Its analysis is innovative in tracing the implications of applying a holistic vision of IHRL to military operations, including a state's due diligence obligations in respect of violence against women. While legal analysis structured around tasks rather than around the context of the operation and/or the nature of the conflict is atypical, because the legal regimes applicable to contemporary conflict are so often fluid and contingent upon a difficult-to-determine set of facts, a task-orientated analysis can bring important insights.

This chapter establishes a frame of reference for the third theme of this project: the obligations upon militaries under IHL and IHRL in relation to CRSV, and how militaries understand these. It is followed by the two case studies, of NATO (Chapter 6) and the British Armed Forces (Chapter 7), each tracing how the institution has engaged with the issue of CRSV over the last fifteen years. Chapters 8 and 9 then go deeper into examining how NATO and British Armed Forces understand their legal obligations in terms of CRSV, and how understanding of CRSV is mediated by the institutions' gendered strategic cultures.

## **5.1 Convergence and complexity in legal regimes applicable to military operations**

The legal frameworks governing a nation's involvement in any overseas operation depend upon the legal basis for that operation. State armed forces deploy overseas within a wide range of legal and institutional contexts. These include (but are not limited to) where armed forces are: engaged in armed conflict as *combatants*, for example, based on an asserted right to self-defence or as an occupying force or acting unilaterally in support of another state; part of a *UN peacekeeping force*, under the ultimate authority and control of the UN; part of an operation carried out by a *regional organisation* (for example, the AU or EU) or a *coalition* of states (for example, NATO), which may have peacekeeping and/or

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<sup>275</sup> This is not the *full* range of activities that legal obligations in relation to CRSV might potentially dictate, which might include, for example, providing medical care, education, special provisions for children or detainees. These are the activities, however, emphasized for militaries in the UNSCRs on sexual violence in conflict, as outlined in Chapter 3.

combat functions alongside non-combat functions; and deployed outside of conflict to provide *bilateral assistance* to an ally. Where an operation takes place within an armed conflict, the legal frameworks might simultaneously encompass IHL, IHRL, international criminal law, customary and general principles of international law, norms derived from the UN Charter (for example with regards the right to use force in defence of a Security Council mandate to protect civilians) and the requirements of the domestic legal frameworks of those states concerned (see Figure 2). The latter might incorporate a nation's domestic criminal law regarding, for example, how sexual violence is understood. Host nation domestic law is also important, particularly in operations involving support to a national government. Its application to foreign forces might be regulated through a Status of Forces Agreement.

Characterising the legal regime applicable to a military operation at any specific time is often an immensely complex task. It may be contingent upon *inter alia*: whether any armed conflict is characterised as international or non-international; the regional and national



Figure 2: Key legal frameworks for military operations

location of the operation; the characteristics of opposing armed forces or groups; the international and domestic law commitments of the state parties involved; the intensity of the violence and the organisation of the parties involved; the character, frequency and impact of actions of the force concerned; and the character and wording of any UN mandate in place.<sup>276</sup> Against this complexity, applying the law cannot generate for militaries a series of lists of legally obligated tasks categorised by operation type. It can, however, identify the legal principles that should be applied in their policy, doctrine, training, planning and operations. In doing so, IHRL cannot be overlooked.

### The complex application of human rights law in armed conflict

International juridical opinion since 2004 has confirmed that IHL and IHRL are complementary, rather than mutually exclusive during armed conflict. This is described as “convergence” of IHRL and IHL in armed conflict. The interaction between the two bodies of law depends upon the situation, activities and specific right in question.<sup>277</sup> This co-applicability of IHRL with IHL raises particularly complex legal questions for multinational operations amongst coalition partners that are party to different IHRL instruments,

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<sup>276</sup> See discussion in: L. Colassis and K. Dörmann, ‘International Humanitarian Law in the Iraq Conflict’ (2004) *German Yearbook of International Law* 293–342; S. Vité, ‘Typology of armed conflicts in international humanitarian law: legal concepts and actual situations’ (2009) 91 *International Review of the Red Cross* 69–94; J. K. Kleffner, ‘Human rights and international humanitarian law: general issues’ in D. Fleck, M. Bothe (eds.), *Handbook of the International Law of Military Operations*, (Oxford: Oxford University Press, 2010); T. Ferraro, ‘The applicability and application of international humanitarian law to multinational forces’ (2013) 891/892 *International Review of the Red Cross* 561–612; D. Fleck and M. Bothe, *The Handbook of International Humanitarian Law*, Third ed. (Oxford University Press, 2013); ICRC, ‘Commentary on the First Geneva Convention’.

<sup>277</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)* (2004); UN Human Rights Committee, *General Comment no. 31: Nature of the General Legal Obligation on States Parties to the Covenant* (2004) para. 11. For discussion, see: N. Melzer, ‘Conceptual distinction and overlaps between law enforcement and the conduct of hostilities (Chapter 3)’ in T. D. Gill, D. Fleck (eds.), *Handbook of the International Law of Military Operations*, (Oxford: Oxford University Press, 2010), pp. 33–49; T. Hadden, ‘Battling for Human Rights?’ (2010) 17 *International Peacekeeping* 309–26; A. Clapham, ‘The Complex Relationship between the 1949 Geneva Conventions and International Human Rights Law’ in A. Clapham, P. Gaeta, M. Sassòli, I. van der Heijden, *Académie de droit international humanitaire et de droits humains à Genève* (eds.), *The 1949 Geneva Conventions: A Commentary*, (Oxford, United Kingdom: Oxford University Press, 2015), pp. 701–35; H.-P. Gasser and K. Dörmann, ‘Protection of the civilian population’ in D. Fleck, M. Bothe (eds.), *The Handbook of International Humanitarian Law*, (Oxford: Oxford University Press, 2013).

including NATO and UN forces. The Judge Advocate General of the Canadian Armed Forces has bemoaned the “uncertainty, confusion and ambiguity for states and military commanders, particularly for commanders of multinational forces” caused by the convergence of IHRL and IHL.<sup>278</sup> Twenty-eight of thirty NATO members, including the UK, are party to the *European Convention on Human Rights* 1950 (ECHR) and subject to the jurisdiction of the European Court of Human Rights (ECtHR); two (Canada and the United States) are not. On this basis, analysis is grounded in the legal position as established through ECtHR jurisprudence, whilst recognising that this is neither free from contradiction nor universally accepted. Treaties adopted in the Inter-American System<sup>279</sup> and through the AU<sup>280</sup> likewise provide important standards for their respective regions.

Broadly, the applicability of IHRL to an armed force operating overseas depends upon determinations along two dimensions. First, whether the individuals whose human rights are being identified come within the *jurisdiction* of the state whose armed forces they come into contact and second, as to the *nature of the situation, activities and rights in question*. Jurisdiction is determined as a matter of a person being within the power or effective control of the armed forces in question.<sup>281</sup> The ECtHR interprets the concept of “effective control” as where a State exercises “effective overall control” of an area (spatial jurisdiction), or where a person is in the hands of State organs or agents abroad (personal jurisdiction).<sup>282</sup> Belligerent occupation is one such context where individuals are deemed

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<sup>278</sup> Cathcart, ‘The Legal Advisor in the Canadian Armed Forces: Addressing International Humanitarian Law and International Human Rights Law in Military Operations’, p. 285.

<sup>279</sup> Including: Organization of the American States, *American Convention on Human Rights* (1969); Organization of the American States, *Inter-American Convention on the Prevention, Punishment and Eradication Of Violence Against Women* (1994).

<sup>280</sup> Including: Organization of African Unity, *African Charter on Human and Peoples’ Rights* (1981); African Union, *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol)* (2003).

<sup>281</sup> UN Human Rights Committee, *General Comment no. 31*, para. 10.

<sup>282</sup> For comprehensive list of pertinent ECtHR cases on this point see J. K. Kleffner, ‘Scope of application of international humanitarian law’ in D. Fleck, M. Bothe (eds.), *The Handbook of International Humanitarian Law*, (Oxford: Oxford University Press, 2013), pp. 43–78 p. 76. n 170-173; C. De Koker, ‘Extra-territorial Jurisdiction & Flexible Human Rights Obligations: The Case of *Jaloud v. the Netherlands*’ (December 2014); M. Milanovic, *Jurisdiction and Responsibility: Trends in the Jurisprudence of the Strasbourg Court* (Oxford University Press, 2018).

within an armed force's control.<sup>283</sup> Effective control can also be established by a peacekeeping force.<sup>284</sup> Additionally, in a specific operational context there may be a technical agreement to apply specific IHRL standards. For example, the UN Mission in Kosovo (UNMIK) agreed with the Council of Europe to apply certain provisions of the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*.<sup>285</sup>

When both IHL and a state's IHRL obligations do apply to a situation, the International Court of Justice's (ICJ's) 2004 Advisory Opinion on *The Wall* explained that their interaction depends upon the *specific right* under consideration; "some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law."<sup>286</sup> Subsequently, even during the "active hostilities phase of an international armed conflict", the ECtHR expressly rejected the contention that IHL displaces IHRL entirely.<sup>287</sup> Much ink has been spilt elucidating the application of these principles, and how they apply to forces interacting with citizens of foreign states. Jann Kleffner, for example, cites cases where persons are detained, of belligerent occupation and of non-international armed conflict as amongst those situations understood to be, by their nature, ones in which IHL and IHRL apply simultaneously.<sup>288</sup> Within such a situation, IHRL may help to find an answer to a given question upon which IHL contains a lacuna or is unclear - or *vice versa*.<sup>289</sup> Where there is a

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<sup>283</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)*; *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) Judgment* (2005). See also: Ní Aoláin, *Gendering the Law of Occupation*; N. Lubell, 'Human rights obligations in military occupation' (2012) 94 *International Review of the Red Cross* 317–37.

<sup>284</sup> UN Human Rights Committee, *General Comment no. 31*, para. 10.

<sup>285</sup> Council of Europe, *Agreement between the United Nations Interim Administration Mission in Kosovo and the Council of Europe on technical arrangements related to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (2004).

<sup>286</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)*, para. 106.

<sup>287</sup> *Case of Hassan v. United Kingdom* (2014) para. 77.

<sup>288</sup> Kleffner, 'Scope of application of international humanitarian law', pp. 72–74.

<sup>289</sup> Gasser and Dörmann, 'Protection of the civilian population', p. 265; Kleffner, 'Scope of application of international humanitarian law', p. 73.

clash between the requirements of IHL and IHRL, the principle *ex specialis derogat legi generali* dictates that priority should be given to the rule or norm that is more specific.

To determine priority between IHL and IHRL rules, several recent commentaries suggest drawing a dichotomy between militaries' law enforcement and warfighting activities. Nils Melzer proposes a functional distinction between armed forces undertaking measures to maintain, restore or impose public security, law and order, this being *law enforcement*; and armed forces engaged in the conduct of hostilities. The legal standards governing law enforcement would be derived primarily from IHRL and, in the conduct of hostilities, from both IHL and IHRL.<sup>290</sup> A similar approach is proposed by Daragh Murray, using the terms "security operations" vs. "active hostilities".<sup>291</sup>

### What do human rights obligations demand of militaries?

The convergence of IHRL and IHL is resisted by some states on the basis of military needs,<sup>292</sup> and by scholars who see normative dangers in blurring the boundaries between IHL and IHRL.<sup>293</sup> Yet, as a principle, the co-applicability of IHRL and IHL obligations in military operations is firmly established. In practice, what this means remains mired in uncertainty. Steven Ratner's analysis of the legal frameworks governing occupations suggests that militaries continue to treat IHL as their go-to framework because this seems natural to them and their lawyers.<sup>294</sup> In other contexts, a state might choose to apply IHRL norms even

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<sup>290</sup> Melzer, 'Conceptual distinction and overlaps'.

<sup>291</sup> D. Murray, *Practitioners' Guide to Human Rights Law in Armed Conflict* (Oxford University Press, 2016).

<sup>292</sup> See: M. A. Hansen, 'Preventing the Emasculation of Warfare: Halting the Expansion of Human Rights Law into Armed Conflict' (2007) 194 *Military Law Review* 1–65; M. J. Dennis, 'Non-Application of Civil and Political Rights Treaties Extraterritorially During Times of International Armed Conflict Special Issue: Parallel Applicability of International Humanitarian Law and International Human Rights Law' (2007) 40 *Israel Law Review* 453–502; G. Corn, 'Mixing Apples and Hand Grenades: The Logical Limit of Applying Human Rights Norms to Armed Conflict' (2010) 1 *Journal of International Humanitarian Legal Studies* 52–94.

<sup>293</sup> T. W. Smith, 'Can Human Rights Build a Better War?' (2010) 9 *Journal of Human Rights* 24–44; N. K. Modirzadeh, 'Folk International Law: 9/11 Lawyering and the Transformation of the Law of Armed Conflict to Human Rights Policy and Human Rights Law to War Governance' (2014) 5 *Harvard National Security Journal* 225–304.

<sup>294</sup> S. R. Ratner, 'Foreign Occupation and International Territorial Administration: The Challenges of Convergence' (2005) 16 *European Journal of International Law* 695–719 at 702.

where IHL could be applied for policy reasons, such as to garner legitimacy.<sup>295</sup> Certainly, scholarship and practice enunciating what IHRL means *for military practice* have been slow to emerge.<sup>296</sup> The ICRC's most recent summary of the challenges of contemporary armed conflicts highlights that the relationship between IHL and IHRL in terms of protection requires further "clarification and evolution" (and includes mention of the applicability of the *Convention on the Elimination of All Forms of Discrimination Against Women*, which I will come to shortly).<sup>297</sup> Some scholars assert that application of the vast body of IHRL is not "amenable to reasonable application"<sup>298</sup> or consider that "too strict application of [ECHR] rules could impose unrealistic obligations on States".<sup>299</sup> These arguments have not been fully tested, as case law has focused on matters upon which the substantive rules of IHRL have a direct corollary in IHL obligations, such as the right not to be tortured, rights in detention, or the procedural requirements that follow the accidental killing of a civilian. But, Naz Modirzadeh is surely correct to argue that to suggest that armed forces must comply with only *some* human rights obligations of their state - "basic" rights and "core" provisions of IHRL that are coexistent with IHL - is at odds with the hard-fought recognition of human rights as indivisible.<sup>300</sup>

It is not the intention of this project to unwind, let alone resolve, the full complexity of the application of IHRL in all the contexts in which a military might deploy. But this project works from the proposition that militaries that seek to be counted as professional and legitimate must meet IHRL standards in many of their activities. It is my contention that the co-applicability of IHRL and IHL in armed conflict demands that militaries, at a minimum:

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<sup>295</sup> A. Clapham, 'Human Rights in Armed Conflict: Metaphors, Maxims, and the Move to Interoperability' (2018) 12 *Human Rights & International Legal Discourse* 9–23 at 19.

<sup>296</sup> N. K. Modirzadeh, *The Dark Sides of Convergence: A Pro-Civilian Critique of the Extraterritorial Application of Human Rights Law in Armed Conflict* (2010) p. 369.

<sup>297</sup> ICRC, 'International humanitarian law and the challenges of contemporary armed conflicts' (Geneva: ICRC, 2019).

<sup>298</sup> D. Bethlehem, 'The Relationship between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict' (2013) 2 *Cambridge Journal of International and Comparative Law* 180–95 at 189.

<sup>299</sup> C. Landais and L. Bass, 'Reconciling the rules of international humanitarian law with the rules of European human rights law' (2015) 97 *International Review of the Red Cross* 1295–1311.

<sup>300</sup> Modirzadeh, *Dark Sides*, pp. 376–77, 390.



- a) develop expertise on IHRL, and mechanisms to provide advice on IHRL to the planning and conduct of operations, comparable to structures for advising on IHL;
- b) develop processes for assessing whether and how IHRL obligations apply to any operation, and to different aspects of operations, paying particular attention to when forces are undertaking measures to maintain, restore or impose public security, law and order;
- c) integrate knowledge of IHRL into military education, training and professional development, in a manner comparable to that of IHL;
- d) integrate IHRL standards in military doctrine, in particular concerning measures to maintain, restore or impose public security, law and order, and interactions with civilians; and
- e) implement mechanisms to hold their personnel accountable to IHRL standards.

What does the convergence between IHL and IHRL in military operations imply regarding *prevention and response to CRSV*? First, that IHRL might be used to interpret any IHL requirement to prohibit, prevent and respond to CRSV, where it would fill a *lacuna* in IHL, or be a more specific set of norms appropriate to the circumstances. Second, that IHRL is likely to be considered the dominant legal paradigm for an armed forces' dealings with civilian victims of CRSV; for example, observing and reporting indications of CRSV, providing emergency assistance to victims, detaining perpetrators – these all being of the nature of law enforcement activities rather than the conduct of hostilities. Third, that a principled approach would maintain the indivisibility of human rights - not seek to divide the rights of a victim of CRSV.

The applicable legal frameworks for any military operation may be, as Phillip McEvoy describes, uncertain and unpredictable.<sup>301</sup> Even so, any armed force should be ready and able to apply an IHRL-based understanding of what CRSV is and to engage with CRSV in a

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<sup>301</sup> P. McEvoy, 'Law at the operational level (Chapter 6)' in D. Whetham (ed.), *Ethics, Law and Military Operations*, (Basingstoke: Palgrave Macmillan, 2010), pp. 108–34 p. 111.

manner that meets both their state's IHRL and IHL obligations. The remainder of this chapter examines what this standard suggests.

## 5.2 Legal standards concerning CRSV committed by others

The expectation that armed forces take tactical action to protect civilians from CRSV by non-state armed groups runs through policy narratives concerning military engagement with CRSV. As described in Chapter 3, military discussants have proposed *inter alia* preventative patrols and escorts; safe havens; evacuations and freeing abductees. UNSCRs exhort special measures to protect civilians from sexual violence and training for peacekeepers on prevention of sexual violence. However, the scope of actual positive obligations to protect civilians or prevent CRSV is profoundly uncertain under either IHL or IHRL.

### Obligations to prevent CRSV in IHL

Protection of civilians is a key concept in IHL, but primarily framed as a requirement not to attack civilians or submit them to violence oneself. States, however, do have the obligation to “respect and ensure respect” for the GCs, expressed in Common Article 1 to the GCs as well as Article 1 of Additional Protocol I.

... they must take proactive steps to bring violations of the Conventions to an end and to bring an erring Party to a conflict back to an attitude of respect for the Conventions, in particular by using their influence on that Party. This obligation is not limited to stopping ongoing violations but includes an obligation to prevent violations when there is a foreseeable risk that they will be committed and to prevent further violations in case they have already occurred.<sup>302</sup>

This is widely recognised as an obligation *erga omnes* in both international and non-international armed conflicts for states to “exert their influence, to the degree possible, to

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<sup>302</sup> International Committee of the Red Cross, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (Cambridge University Press, 2016) para. 164.

stop violations” of IHL, whether or not they are party to the specific conflict.<sup>303</sup> This “influence” to prevent IHL violations is usually understood as taking the form of diplomatic protest or collective measures; for example, resolutions by international bodies, investigating possible violations, creating *ad hoc* criminal tribunals and courts, international sanctions and sending of peacekeeping or peace-enforcement troops; not to anticipate forceful measures, beyond any that might be decided upon by the Security Council.<sup>304</sup> As concerns non-state actors, the ICRC Commentary describes states’ obligation as:

... a general duty of due diligence to prevent and repress breaches of the Conventions by private persons over which a State exercises authority, including persons in occupied territory. This is an obligation of means, whose content depends on the specific circumstances, in particular the foreseeability of the violations and the State’s knowledge thereof, the gravity of the breach, the means reasonably available to the State and the degree of influence it exercises over the private persons.<sup>305</sup>

In situations of belligerent occupation, armed forces have more explicit direct responsibilities toward the civilian population. Article 27 of GC IV requires that persons living under occupation be protected against any acts of violence, and that women be protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.<sup>306</sup> Article 43 of The Hague Regulations obliges the occupying power to “take all the measures in his power to restore, and ensure, as far as possible, public order and safety”.<sup>307</sup> In its judgment on *Armed Activities on the Territory of*

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<sup>303</sup> ICRC, ‘Rule 144. Ensuring Respect for International Humanitarian Law Erga Omnes’ (*Customary International Humanitarian Law Database*, 2015) <[www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule144](http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule144)>. See also: International Committee of the Red Cross, *Commentary on GCI*, paras 119, 2842.

<sup>304</sup> ICRC, ‘Rule 144’. While expectations to act have arguably evolved through commitments to “the responsibility to protect,” the legal characteristics of this norm are generally considered synonymous with those under Common Article 1 of the GCs and corresponding provisions in other key human rights treaties: J. Brunnée and S. Toope, ‘The Responsibility to Protect and the Use of Force: Building Legality?’ (2010) 2 *Global Responsibility to Protect* 191–212; A. Peters, ‘The Security Council’s Responsibility to Protect’ (2011) 8 *International Organizations Law Review* 15–54.

<sup>305</sup> International Committee of the Red Cross, *Commentary on GCI*, para. 150. Sassòli concurs: M. Sassòli, ‘State responsibility for violations of international humanitarian law’ (2002) 84 *International Review of the Red Cross* 401–34 at 412.

<sup>306</sup> *Geneva Convention Relative to the Protection of Civilian Persons in Times of War*.

<sup>307</sup> *Regulations concerning the Laws and Customs of War on Land* (1907).

*the Congo (DRC v Uganda)*, the ICJ considered an occupier's IHRL obligations to include to "protect the inhabitants of the occupied territory against acts of violence, and not to tolerate such violence by any third party".<sup>308</sup>

Therefore, it is clear that under IHL all states have an obligation to prevent CRSV by third parties *over which they exercise authority*, including in occupation. This is an obligation *erga omnes* applying in both international and non-international armed conflicts. What practical measures are required by virtue of this obligation are, however, an uncertain matter, determined by the circumstances, the means reasonably available and what would be considered "due diligence". Due diligence is a standard more familiar in IHRL. Considering this, Robin Geiß describes Article 1 GC obligations as structurally similar to due diligence obligations to prevent violations in IHRL, to be considered below.<sup>309</sup>

#### Obligations to prevent CRSV in IHRL

It is well established that states must exert due diligence to protect individuals within their territory or jurisdiction from human rights violations by third parties, whether that third party is another state or a private actor. A Protocol developed by the British Government describes state responsibility in case of:

... rape and sexual violence by non-state actors, including private persons and militia groups, if the state failed to act with due diligence under its duty to protect persons under its jurisdiction. States have indeed a positive obligation to prevent such acts. State responsibility may be engaged for instance where the police or army fails to take action to protect individuals known to be at risk of violence or because of a general environment which allowed such pattern of violence to happen.<sup>310</sup>

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<sup>308</sup> *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) Judgment*, para. 178.

<sup>309</sup> R. Geiss, 'The Obligation to Respect and to Ensure Respect for the Conventions' *The 1949 Geneva Conventions: A Commentary*, (Oxford University Press, 2015), pp. 111–34 p. 125.

<sup>310</sup> S. Ferro Ribeiro and D. van der Straten Ponthoz, *The International Protocol on the Documentation and Investigation of Sexual Violence in Conflict (2nd edition)* (2017) p. 67.

As outlined above, this responsibility can also apply extraterritorially. A foreign military force can be held accountable to at least certain of its state's IHRL obligations where it exercises effective overall control of an area (spatial jurisdiction), including by virtue of belligerent occupation, or where a person is in its hands (personal jurisdiction). These include obligations with regard to the right to life and the prohibitions of torture and slavery. Because CRSV may violate non-derogable and also peremptory norms, states are bound by their respective obligations regardless of which IHRL treaties they have ratified.<sup>311</sup> There may be circumstances such that an armed force has a clear duty to act to prevent CRSV as a violation of the right to life. The ECtHR in *Osman v the UK* described the test as where the state "knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals".<sup>312</sup> This might well be satisfied with regards to immediate risk of CRSV in an armed conflict situation; for example, where a human rights defender has been individually threatened.

The existence and nature of positive obligations to prevent the violation of peremptory norms concerning torture or inhumane treatment by third parties is uncertain in its extraterritorial application.<sup>313</sup> But, jurisprudence and commentary concerning states' due diligence obligation to prevent, investigate and punish GBV perpetrated by non-State actors provide some guidance.<sup>314</sup> The Committee for the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) has made clear that these obligations apply to a military acting extraterritorially:

In conflict and post-conflict situations, States parties are bound to apply the Convention and other international human rights and humanitarian

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<sup>311</sup> Sellers, 'Sexual Violence and Peremptory Norms'; Askin, 'Prosecuting Wartime Rape'; A. Edwards, *Violence Against Women under International Human Rights Law* (Cambridge University Press, 2011).

<sup>312</sup> *Osman v. The UK* (1998) p. 33.

<sup>313</sup> Hakimi, 'State Bystander Responsibility'; S. Wills, 'International Responsibility for Ensuring the Protection of Civilians (Chapter 10)' *Protection of Civilians*, (Oxford, New York: Oxford University Press, 2016).

<sup>314</sup> Y. Ertuk, *The due diligence standard as a tool for the elimination of violence against women: report of the Special Rapporteur on Violence against Women, Its Causes and Consequences* (2006); C. Benninger-Budel, *Due Diligence and Its Application to Protect Women from Violence* (BRILL, 2009); R. Manjoo, 'State Responsibility to act with Due Diligence in the Elimination of Violence against Women' (2013) 2 *International Human Rights Law Review* 240–65.

law when they exercise territorial or extraterritorial jurisdiction, whether individually, for example, in unilateral military action, or as members of international or intergovernmental organizations or coalitions, for example, as part of an international peacekeeping force. The Convention applies to a wide range of situations, including wherever a State exercises jurisdiction, such as occupation and other forms of administration of foreign territory ...<sup>315</sup>

The Committee's General Recommendation No. 30 on addressing GBV in conflict and post-conflict situations suggest "gender-sensitive training and ... codes of conduct and protocols for the ... military, including peacekeepers" as well as training for military authorities on "protection challenges, human rights and the needs of displaced women."<sup>316</sup>

I thus argue that the principles governing the extraterritorial application of IHRL obligations, interpreted in light of IHRL jurisprudence concerning violence against women, infer that deployed militaries could be held to account to their state's IHRL obligations to exercise due diligence to prevent CRSV by third parties. Training, codes and protocols are part of meeting this obligation. Still, what is expected in terms of concrete action and assumption of risk to one's own forces remains unexplored. Due diligence obligations will be discussed further below.

### Obligations under a mandate to protect civilians

Since 1999, at least fourteen UN peacekeeping missions have been given mandates to protect civilians; recent EU, Africa Union and NATO operations have likewise had protection of civilians as a core rationale.<sup>317</sup> Activities related to prevention and response to CRSV, as one aspect of protection of civilians, are mandated for the UN missions in the Central African Republic, Darfur, DRC, Mali, and South Sudan.<sup>318</sup> UN policy describes protection of civilians as an "active duty ... Activities to protect civilians should be planned, deliberate and

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<sup>315</sup> CEDAW Committee, *General recommendation No. 30*, para. 9.

<sup>316</sup> *Ibid.*, para. 38(c), 57(g).

<sup>317</sup> H. Willmot, R. Mamiya, S. Sheeran, and M. Weller (eds.), *Protection of Civilians* (Oxford University Press, 2016) pp. 88–90.

<sup>318</sup> Presentation by Jean-Pierre Lacroix, Under-Secretary General of UN Department of Peacekeeping Operations, *Handbook for Field Missions on Preventing and Responding to Conflict-Related Sexual Violence* (2020).

on-going, and the mission should constantly work to prevent, pre-empt and respond to violence against civilians".<sup>319</sup>

A protection of civilians mandate in UN missions is generally seen as having a distinctive legal basis within the UN Charter, invoking different rights and responsibilities than those under IHL and IHRL.<sup>320</sup> Central to the lack of conceptual and practical clarity is the question of whether it implies positive obligations. Within and around the UN, understandings of what protection of civilians implies vary widely.<sup>321</sup> Haidi Willmot and Scott Sheeran's research demonstrates that "the normative bases, content and responsibilities associated with practical implementation remain contested".<sup>322</sup> The majority view amongst commentators, with which I concur, is that a UN protection of civilians mandate and the accompanying rules of engagement authorise the use of force to protect civilians, but of themselves create no legal obligation.<sup>323</sup>

Looking beyond UN peacekeeping to the EU, NATO, and the AU, there are differing rationales for protection for civilians, leading to different approaches to military protection tasks.<sup>324</sup> As the UK's 2010 *Strategy on the Protection of Civilians in Armed Conflict* observed, "None of the major international or regional organisations running peace operations has a fully formed doctrine on the execution of protection tasks. At a very practical level, it is not always clear to troops and police what is expected of them."<sup>325</sup> Chinkin and Kaldor demonstrate that where, as in Libya in 2011, a political decision to authorise force to protect civilians is made, once the operation starts this is often read down as merely the

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<sup>319</sup> DPKO/DFS, 'DPKO/DFS Policy: The Protection of Civilians in United Nations Peacekeeping' (2015) paras 12, 21.

<sup>320</sup> Willmot, Mamiya, Sheeran, and Weller, *Protection of Civilians*.

<sup>321</sup> I. Bode and J. Karlsrud, 'Practicing norms: The use of force to protect civilians in peacekeeping missions' (Atlanta, 2016).

<sup>322</sup> H. Willmot and S. Sheeran, 'The protection of civilians mandate in UN peacekeeping operations: reconciling protection concepts and practices' (2013) 95 (891/892) *International Review of the Red Cross* 517–538 at 518, 521–22.

<sup>323</sup> Wills, 'International Responsibility for Ensuring Protection of Civilians', p. 228.

<sup>324</sup> S. Kjeksrud, J. A. Ravndal, A. O. Stensland, C. de Coning, and W. Lotze, 'Protecting Civilians: Comparing Organizational Approaches' in H. Willmot, R. Mamiya, S. Sheeran, M. Weller (eds.), *Protection of Civilians*, (Oxford, New York: Oxford University Press, 2016), pp. 88–108 p. 89.

<sup>325</sup> *UK Government Strategy on the Protection of Civilians in Armed Conflict* (2010) p. 11.

obligation under IHL to minimise civilian casualties.<sup>326</sup> State practice does not demonstrate any acceptance that a mandate to protect civilians places any higher obligation to proactively engage in sexual violence prevention and response than might otherwise exist under IHL and IHRL.

### Obligations to investigate and prosecute CRSV

A corollary to the discussion above concerning the prevention of and protection against CRSV is armed forces' obligations in relation to punishing perpetrators. The UN's "analytical inventory" of military strategies to address CRSV includes identifying, securing and preserving evidence to support prosecution and assisting in apprehension and hand over of suspected perpetrators.<sup>327</sup> There have been examples of armed forces playing these roles, such as NATO forces arresting suspected war criminals in Bosnia and Herzegovina.<sup>328</sup>

Both IHL and IHRL affirm states' obligations to support justice processes.<sup>329</sup> Under Article 49 of each of the four GCs, states have an obligation to search for persons alleged to have committed CRSV, being (at least in its most egregious forms) a grave breach of the GCs; "the obligation to make every effort to cooperate, to the extent possible, in the investigation of war crimes and the prosecution of the suspects is part of customary international law".<sup>330</sup> Likewise in IHRL, a state has a due diligence obligation to investigate and, if warranted, prosecute and punish acts of violence by third parties (private actors), even during armed conflict and post-conflict.<sup>331</sup> There is a wealth of IHRL jurisprudence articulating a state's more specific obligations to investigate and punish violence against

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<sup>326</sup> Chinkin and Kaldor, *International Law and New Wars*, pp. 220–21.

<sup>327</sup> Anderson, *Analytical Inventory*, pp. 18–34.

<sup>328</sup> C. Friesendorf and S. E. Penksa, 'Militarized Law Enforcement in Peace Operations: EUFOR in Bosnia and Herzegovina' (2008) 15 *International Peacekeeping* 677–94.

<sup>329</sup> Victims of CRSV have rights to a remedy and reparation if they have suffered a serious violation of IHL and IHRL. These are not addressed here as it seems unlikely militaries would play a role beyond that in regard to supporting investigations. See: Ní Aoláin, O'Rourke, and Swaine, 'Transforming Reparations for Conflict-Related Sexual Violence: Principles and Practice'.

<sup>330</sup> ICRC, 'Commentary on the First Geneva Convention', paras 2871, 2892.

<sup>331</sup> See CEDAW Committee, 'General Recommendation No. 30,' and application in e.g. ECtHR in *Case of Palić v. Bosnia and Herzegovina (Judgment)* (2011); *Case of Jaloud v. The Netherlands (Judgment)* (2014).



women: for example, how evidence should be collected and victims protected.<sup>332</sup> That this applies also to conflict-affected contexts is demonstrated by the Kosovo Human Rights Advisory Panel's jurisprudence on violations of human rights by UNMIK (a largely civilian administration), which applied it in two cases claiming that UNMIK failed to investigate and prosecute CRSV by third-party non-state actors.<sup>333</sup>

Based on principles of IHL and IHRL, one concludes that militaries have an "every effort" obligation to support the investigation of CRSV under IHL and, in parallel, where perpetrators of CRSV come within their power or effective control, an IHRL duty of due diligence to take steps to ensure investigation. In relation to both, they should apply IHRL standards concerning the handling of sexual violence crimes. These principles, however, have not been tested to determine what should reasonably be expected of *armed forces*, as opposed to civilian agencies. Military police will generally lack the specific operational guidelines, resources, skills and experience to investigate sexual violence cases so to appropriately protect the rights of victims.<sup>334</sup>

### Mechanisms of state accountability for failure to prevent CRSV by others

The foregoing sections establish that while a mandate to protect civilians in and of itself may not create positive legal obligations, there are nonetheless obligations in relation to CRSV arising by virtue of peremptory norms, IHRL and IHL. State accountability for failure to meet these obligations could be pursued through a variety of judicial, quasi-judicial and non-judicial mechanisms. Which are available and appropriate will depend upon the national law of the state in question, and the regional and international IHL and IHRL instruments to which the state is a party, and how these have been interpreted in judicial fora, as well as the circumstances of the perpetrator, victim and acts in question – acknowledging that there are many barriers to successful investigation, prosecution and

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<sup>332</sup> E.g. *M.C. v. Bulgaria Judgment* (2003); *Opuz v. Turkey* (2009); *Rantsev v Cyprus & Russia* (2010); and see n 314. Significant jurisprudence is also found in the Inter-American human rights system.

<sup>333</sup> *S.M. against UNMIK, Opinion* (2016) p. 92. *Kostić and Others against UNMIK, Opinion* (2015) paras 340–344.

<sup>334</sup> M. Bastick, *Gender and Complaints Mechanisms: A Handbook for Armed Forces and Ombuds Institutions* (2015) p. 67.

conviction of CRSV.<sup>335</sup> A victim of CRSV might bring a claim to a UN human rights treaty body using, for example, Optional Protocols to the *International Covenant on Civil and Political Rights* (ICCPR), the Convention Against Torture, the *Convention on the Rights of the Child* (CRC) or CEDAW; to a regional human rights court such as the ECtHR; or before the domestic courts of the responsible state. A victim might also bring their allegation through the special procedures of the UN Human Rights Council. If the alleged acts were of the appropriate seriousness, another state might even bring a claim before the ICJ under IHL treaties or the Convention Against Torture, or before a regional court.<sup>336</sup> The following does not attempt to imagine every possible CRSV scenario. As indicative cases, it briefly sets out bases for possible claims in relation to failure to prevent CRSV by a) a host nation force with which one is working; and b) non-state armed groups against civilians whom one has a mandate or mission to protect.

Modern military operations often create circumstances in which armed forces have significant influence over other forces or armed groups; as with, I would argue, NATO support to the Afghan, Iraqi or Ukrainian forces, or the UN Mission in the DRC's support to the national armed forces. Such a scenario might give rise to legal responsibility for CRSV committed by a partner state or armed group by virtue of complicity. This question was raised concerning the UN Mission in the DRC's assistance to the *Forces Armées de la République Démocratique du Congo*. The UN internally acknowledged that positive obligations under customary international law to uphold, promote and encourage respect for human rights and IHL gave rise to an obligation to cease "logistics or 'service' support" if there was reason to believe Congolese armed forces were violating IHL or IHRL.<sup>337</sup> The same principles would apply to bilateral state support, with the standard being whether an

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<sup>335</sup> E.g. K. T. Seelinger, 'Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law' (2014) 96 *International Review of the Red Cross* 539-; S. Brammertz and M. J. Jarvis, *Prosecuting Conflict-Related Sexual Violence at the ICTY* (Oxford University Press, 2016).

<sup>336</sup> As in: 'Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)'. While questions of standing to bring a claim will depend upon the convention and forum in question, the success of The Gambia in obtaining a provisional measures order against Myanmar in the ICJ in relation to obligations under the Genocide Convention ('ICJ Order on Provisional Measures: The Gambia v Myanmar' (January 2020)) will likely fuel interest in complaints by other than "specially affected States", perhaps also in relation to sexual violence crimes.

<sup>337</sup> Wills, 'International Responsibility for Ensuring Protection of Civilians'.

armed force was, in the terms of Article 16 of the International Law Commission's *Articles on Responsibility of States for Internationally Wrongful Acts*, aiding or assisting another State in the commission of a violation of IHL (or IHRL) "with knowledge of the circumstances of the internationally wrongful act", such as by providing military assistance to countries found to be committing serious human rights violations.<sup>338</sup> In view of these standards, one can imagine, for instance, a victim of *bacha bazi* in Afghanistan might hypothetically bring a claim against certain foreign nations that provided military assistance to the Afghan forces, on the basis that those nations had reason to believe at the time that Afghanistan was violating IHRL, and by not ceasing their assistance *were complicit* in those violations.<sup>339</sup>

In a scenario where a foreign force fails to intervene to stop CRSV or fails to take action to protect individuals known to be at risk of CRSV, a claim might conceivably be brought by another state or by a victim on the basis of lack of due diligence. Due diligence to ensure, for example, that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, whether by their own, third state or private individuals; or due diligence to prevent grave breaches of the GCs. One can imagine, for instance, where *bacha bazi* occurred within a foreign force's base and as such in an area under its effective control, a victim might hypothetically bring a claim against that foreign nation by virtue of its failure to exercise *due diligence* to prevent and punish the abuse.

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<sup>338</sup> International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries* (2001).

<sup>339</sup> *Bacha bazi*, also referred to as "bacha baazi," "bachabaze," or "boy play," is a customary practice under which Afghan boys are "made to dance and used as sex slaves by powerful men." The boys are often referred to as "chai boys": A. Abawi, 'Ignored by society, Afghan dancing boys suffer centuries-old tradition' (October 2009). A number of NATO militaries, including Canada and the United States, have faced allegations that their soldiers had witnessed sexual assault of Afghan minors by Afghan National Security Forces, had failed to intervene, and been ordered by their chain of command to ignore such behaviour, even in some cases where boys were being abused on a coalition military base: J. Goldstein, 'U.S. Soldiers Told to Ignore Sexual Abuse of Boys by Afghan Allies' (2015); C. Stephen, *Hand Covers Bruise: The Destruction of Afghanistan's Boys* (2015); N. D. Government of Canada, *Board of Inquiry – Allegation of assault of a civilian by Afghan National Security Forces and the Canadian Forces response to such incidents (Redacted), Executive Summary* (2016).

Accordingly, with reference to both IHL and IHRL obligations, an overarching question is: what steps are expected of an armed force in terms of *due diligence to prevent* CRSV by third parties? While a multitude of strategic, operational and tactical military protective measures to protect from CRSV can be envisioned, any armed force's operations are constrained by resources, force protection requirements and other factors that will temper its ability to deliver protection. In its judgment *Armed Activities on the Territory of the Congo (DRC v Uganda)*, the ICJ found state responsibility to be engaged by "... any lack of vigilance in preventing violations of human rights and international humanitarian law by other actors present in the occupied territory, including rebel groups acting on their own account".<sup>340</sup> Hans-Peter Gasser and Knut Dörmann describe the duty to protect civilians under occupation as requiring that "everything necessary must be done to ward off or reduce suffering ... taking all measures required to ensure the safety of civilians".<sup>341</sup> But, IHRL jurisprudence confirms that the obligation to prevent violence is one of *means*, not ends. The ECtHR has said that a state is under a positive obligation "to take those steps that could be reasonably expected of them to avoid a real and immediate risk of ill-treatment".<sup>342</sup> Still, the ECtHR presents an arguably conservative view of what can be reasonably expected:

... bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities.<sup>343</sup>

Maintaining that the application of IHRL extraterritorially must not pick and choose between human rights, IHRL standards articulated in relation to violence against women apply to the actions of armed forces, as to any other state agent. Unfortunately, jurisprudence applying the "due diligence" standard to violence against women has

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<sup>340</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) Judgment*, para. 179.

<sup>341</sup> Gasser and Dörmann, 'Protection of the civilian population', p. 234.

<sup>342</sup> *Case of Z and others v. The United Kingdom (Judgment)* (2001) para. 94.

<sup>343</sup> *Case of Osman v. The United Kingdom (Judgment)*, para. 116.

emphasized legal frameworks and criminal justice responses, offering little articulation of the reasonable expectations of the state in terms of prevention.<sup>344</sup> As the UN Special Rapporteur on Violence against Women explains, while “the concept of due diligence provides a yardstick to determine whether a State has met or failed to meet its obligations in combating violence against women ... there remains a lack of clarity concerning its scope and content.”<sup>345</sup> Offering some clarity: the ECtHR has in some cases found that the state should have detained a man threatening violence against his wife and provided shelter for her, where she had made numerous complaints to the police;<sup>346</sup> case law in the Inter-American system has found that “failure to adopt a ‘general policy’ concerning the known widespread rapes, disappearances, and murders committed against women in the region amounted to a breach of the obligation to prevent”.<sup>347</sup> This suggests an expectation that where armed forces know of CRSV, something comparable to a policy to deal with it should be developed, and there should be mechanisms to offer protection where there are specific threats.

### 5.3 Legal standards concerning CRSV by one's own forces

Where the preceding section has traced the uncertain parameters of an armed force's obligations in relation to CRSV *by third parties*, the parameters of its obligations concerning its own personnel are better defined, and the expectations higher. As outlined in Chapter 3, among the directives of the UNSCRs on CRSV are for troops to be trained on the prohibition of sexual violence, and for this prohibition to be in military codes of conduct and clearly ordered through the chain of command. The resolutions likewise lay a heavy emphasis on militaries' responsibilities to prevent and punish sexual violence by their own forces, and prohibition, prevention and punishment of SEA. However, where SEA is concerned, its characterisation in terms of IHL or IHRL is difficult to define.

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<sup>344</sup> M. L. Pearce, 'Gendering the Compliance Agenda: Feminism, Human Rights and Violence against Women' (2014) 21 *Cardozo Journal of Law & Gender* 393–442 at 413; Edwards, *VAW under IHRL*, p. 241.

<sup>345</sup> Ertuk, *The due diligence standard: report of the Special Rapporteur on VAW*, para. 14.

<sup>346</sup> *Yildirim v. Austria* and *Goekce v. Austria*, discussed in Edwards, *VAW under IHRL*, p. 242.

<sup>347</sup> *González et al ('Cotton Field') v. Mexico*, discussed in Edwards, *VAW under IHRL*, p. 243.

## Prohibition and prevention of CRSV

The obligation of states to prohibit, prevent and punish CRSV by their own forces is embedded in customary international law, IHL and IHRL. As highlighted in Chapter 2, individual criminal responsibility for CRSV has been developed through the expansion of international criminal law.

Where an armed force is a party to an armed conflict, they are unequivocally bound by IHL's prohibition of sexual violence. Each state party must enact legislation providing effective penal sanctions for grave breaches of the GCs.<sup>348</sup> With respect to CRSV, this means that the domestic criminal and/or military law applicable to one's armed forces should allow for prosecution of the *full range* of acts recognised as constituting sexual violence as a grave breach: not only rape but sexual slavery, enforced prostitution, forced pregnancy and enforced sterilisation, forced public nudity, with the possibility of recognising other forms of sexual violence of comparable gravity.

In terms of prevention of CRSV, a fundamental tenet of the IHL framework is that that states must ensure respect for IHL by their armed forces.<sup>349</sup> IHL requires that the law, including the prohibition against rape and other forms of sexual violence, be disseminated;<sup>350</sup> for example, that "[t]he prohibition against rape and other forms of sexual violence should ... be taken into account in military training and included in military ... manuals ..."<sup>351</sup> According to the ICRC, if violations do occur, disciplinary or penal sanctions

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<sup>348</sup> *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (1949) Article 49.

<sup>349</sup> ICRC, 'Commentary on the First Geneva Convention', p. 43.

<sup>350</sup> *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* Art. 47; *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick and Shipwrecked Members of Armed Forces at Sea* (1949) Art. 48; *Geneva Convention Relative to the Treatment of Prisoners of War* (1949) Art. 127; *Geneva Convention Relative to the Protection of Civilian Persons in Times of War* Art. 144; *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts* (1977) Art. 83; *Protocol II Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts* Art. 19.

<sup>351</sup> ICRC Advisory Service on International Humanitarian Law, 'Prevention and criminal repression of rape and other forms of sexual violence during armed conflicts', p. 4.

“should be imposed as quickly as possible after the act has been committed in order to have a significant deterrent effect”.<sup>352</sup>

In IHRL, rape and other forms of sexual violence have been found to violate individuals' right to physical and mental integrity as well as to be a form of torture and cruel, inhuman or degrading treatment. As such, CRSV is prohibited by all the general human rights treaties. Sexual slavery also falls under prohibitions on slavery. States have positive obligations under IHRL to enact criminal law provisions effectively punishing sexual violence, and to apply them through effective investigation and prosecution.<sup>353</sup> Under CEDAW, states must ensure that the human rights of women and girls are equally protected and put in place specific punitive measures to overcome trafficking and exploitation of prostitution.<sup>354</sup> The CEDAW Committee has made clear these obligations apply “according to humanitarian norms in time of international or internal armed conflict”.<sup>355</sup> There are further specific commitments in the *Convention on the Rights of the Child* (CRC) to protect children from sexual exploitation and abuse.

Specific prohibitions on sexual violence are moreover found in several regional human rights instruments. Given that it is widely ratified by NATO members, the requirements of the Council of Europe *Convention on preventing and combating violence against women and domestic violence* (the Istanbul Convention) are pertinent – but so far neglected in the literature on CRSV. Article 2 of the Istanbul Convention explicitly states its application in situations of armed conflict. The Istanbul Convention obliges States Parties to establish extraterritorial jurisdiction over a wide range of forms of violence against women (including psychological violence, stalking, physical violence, sexual violence and sexual harassment)

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<sup>352</sup> ICRC, 'Commentary on the First Geneva Convention', para. 2842.

<sup>353</sup> For overviews: Edwards, *VAW under IHRL*; Special Rapporteur on violence against women, its causes and consequences, *Report of the Special Rapporteur on violence against women, its causes and consequences* (2013); L. Grans, 'The State Obligation to Prevent Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: The Case of Honour-Related Violence' (2015) 15 *Human Rights Law Review* 695–719; Ferro Ribeiro and van der Straten Ponthoz, *International Protocol*.

<sup>354</sup> CEDAW Committee, 'General Recommendation No. 19: Violence against women' (1992) para. 24(g).

<sup>355</sup> *Ibid.*, para. 7(c).

committed “by one of their nationals”.<sup>356</sup> This broadens the scope of offences for which members of the armed forces operating overseas should be able to be held domestically accountable.

A recent ICRC study found that the prohibition of sexual violence in conflict is rarely explicit in military doctrine, or considered an issue of IHL.<sup>357</sup> Beyond military law, given the breadth of forms of sexual violence recognised in international criminal tribunals and IHRL, many nations almost certainly have gaps in their national law in terms of comprehensively prohibiting all forms of CRSV that their forces might commit. If so, they would be falling short of both IHL and IHRL obligations. This has not been addressed in advocacy concerning militaries that are part of international missions (for example, UN, EU, AU, NATO), which has emphasised rules concerning SEA.<sup>358</sup>

## SEA

The concept of “sexual exploitation and abuse”, explained in Chapter 3, evolved to prohibit UN peacekeepers from abusing or exploiting local women, men, girls and boys, including through fuelling prostitution.<sup>359</sup> It has since been applied to AU, EU and NATO missions. The prohibition of SEA frames *any* sexual exchange between international personnel and intended beneficiaries of their assistance as inherently inappropriate, regardless of whether the exchange is illegal under either the national law of the host or deploying nation. The UN Secretary General’s 2003 Bulletin that established the prohibition of SEA purported to

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<sup>356</sup> *Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence* (2011) Art. 44.

<sup>357</sup> ICRC, *Engaging with State Armed Forces to Prevent Sexual Violence: A Toolkit for ICRC Staff on How to Engage State Armed Forces in Dialogue on Preventing Sexual Violence in Armed Conflict* (2019) p. 11.

<sup>358</sup> E.g. M. Vandenberg, *Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution* (2002); S. Martin, *Must Boys Be Boys?* (2005); Hampson, *Working paper on the accountability of international personnel taking part in peace support operations*; S. E. Mendelson, *Barracks and Brothels* (2005).

<sup>359</sup> Some advocates argue that “prostitution” should be termed “sex work” (e.g. F. Delacoste, *Sex Work: Writings by Women in the Sex Industry* (Cleis Press Start, 2018)). Whilst acknowledging that this might be the case in some contexts, for clarity of reference to international legal standards, and recognising the disempowerment likely to accompany sex-for-payment in conflict-affected contexts, I retain the term “prostitution”.



extend it to military personnel in UN missions through the application of IHL in peacekeeping.<sup>360</sup> Still, armed forces have been slow to integrate SEA into their codes of conduct, administrative rules and regulations as misconduct or crimes.<sup>361</sup>

In legal and policy terms SEA is challenging because it encompasses misconduct of a wide span of severity. "Sexual abuse" may (it goes without saying) be very serious, an act recognised in international criminal law. However, there is legitimate debate as to whether banning consensual adult prostitution is always in the best interests of the individuals offering sexual services,<sup>362</sup> and how consent can be judged in a conflict-affected environment.<sup>363</sup> These are difficult questions upon which it is hard to pronounce divorced from context, but it remains that from a legal perspective, an act of SEA may or may not be a violation of international law.

### Mechanisms of state accountability

As outlined in Chapter 3, the UNSCRs on CRSV and SEA have increasingly emphasised states' responsibilities to ensure full accountability. Where SEA by peacekeepers is concerned, the Security Council demands swift and thorough investigation and, if appropriate, prosecution and repatriation of units.<sup>364</sup> ECtHR jurisprudence gives guidance on what characterises an effective, independent investigation of one's own armed forces during a situation of armed

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<sup>360</sup> United Nations Secretary General, *Secretary-General's Bulletin*, para. 2.2.

<sup>361</sup> O'Brien, *Criminalising Peacekeepers*; G. Simm, *Sex in Peace Operations* (Cambridge University Press, 2013).

<sup>362</sup> Otto critiques the UN's "zero tolerance policy" on SEA as, *inter alia*, infantilising women and undermining their agency: D. Otto, 'The Sexual Tensions of UN Peace Support Operations: A Plea for "Sexual Positivity"' (2007) 18 *Finnish Yearbook of International Law*.

<sup>363</sup> Engle, 'Feminism and Its (Dis)contents'; J. Halley, 'Rape in Berlin: Reconsidering the Criminalisation of Rape in the International Law of Armed Conflict' (2008) 9 *Melbourne Journal of International Law* 78–124; E. Dowds, 'Conceptualizing the role of consent in the definition of rape at the international criminal court: a norm transfer perspective' (2018) 20 *International Feminist Journal of Politics* 624–43.

<sup>364</sup> *Resolution 1888*, para. 21; *Resolution 2106*, para. 15; *Resolution 2242*, para. 9; *Resolution 2272*, para. 8; *Resolution 2331*, para. 19.

conflict<sup>365</sup> and – as noted above – how an investigation of an allegation of sexual violence should be handled.

Accountability of individual perpetrators of CRSV or SEA or of their states can potentially be pursued through criminal prosecution and civil claims, or in judicial, quasi-judicial fora and non-judicial bodies. In reality, there are serious shortcomings in accountability processes concerning SEA and other forms of CRSV by foreign military personnel. There is not space in this project to survey all the legal complexities, which are well-covered elsewhere.<sup>366</sup>

Briefly: a key challenge is that in multinational operations, states almost always retain disciplinary control and exclusive criminal jurisdiction over their national contingents. In UN missions, the host state normally does not have jurisdiction over military peacekeepers because Status of Forces Agreements grant immunity from prosecution. Any perpetrator is usually repatriated to their own country to undergo some type of disciplinary process. The UN's role is most often limited to the provision of investigative and logistical support to investigations conducted by the troop-contributing country. Jurisdictional gaps are only part of the problem. Where SEA allegations are made, they are often not investigated sufficiently thoroughly, rapid rotation of personnel hampers effective gathering of evidence, immunity is over-used, and charges and penalties may not adequately reflect the seriousness of what has occurred.

In most contexts where forces are deployed, any allegation of sexual violence or sexual exploitation against their personnel would, in the first instance at least, almost always be investigated by their own military police. As well as the likely lack of appropriate skills within militaries to investigate sexual violence noted above, the independence of military investigations into allegations concerning their own forces is questionable.<sup>367</sup> The literature discussed in Chapter 3 concerning militaries' tendencies to be accepting of sexual harassment and violence within their own forces begs the question of whether militaries

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<sup>365</sup> E.g. *Jaloud v. The Netherlands* 2014; see N. Lubell, J. Pejic, and C. Simmons, *Guidelines on investigating violations of International Humanitarian Law: law, policy and practice* (2019).

<sup>366</sup> See Ch. 3, n 154.

<sup>367</sup> Bastick, *Gender and Complaints Mechanisms*.

are accepting also of sexual violence by their forces against communities. These are questions that will be considered in Chapters 8 and 9.

## Conclusions

Political and policy commitments to sexual violence response consistently invoke IHL and IHRL. But, until now, in the vast body of policy and academic work on CRSV, there has not been analysis of the content of the legal obligations invoked by these distinct normative frameworks regarding extraterritorial military operations. Specifically, the significance of due diligence obligations for a foreign military in relation to CRSV and the relevance of IHRL jurisprudence concerning violence against women has not been recognised.

Based on this analysis, I propose the following as a summary of applicable law:

- a) Where CRSV by third parties is concerned, in circumstances where a military force is exercising influence, offering support, or exercising authority or control over territory or persons, it has a positive obligation to prevent it and support the prosecution of it.
- b) Where a military knowingly exercises influence over or offers support to a perpetrator of CRSV, that military could be held accountable as complicit in that CRSV.
- c) Absent the above circumstances, a military's obligations in IHL and/or IHRL concerning CRSV are of a general due diligence nature: a still-evolving notion of being vigilant and doing what is "reasonably expected", but not "an impossible or disproportionate burden".
- d) A military must take positive steps to prevent sexual violence by its own forces, and act to stop and punish it where it knows or ought to know of it. Investigation processes should be appropriate to the sensitivities of sexual violence crimes.

These legal norms have been little discussed in military forums, and their practical implications neglected also in IHL and IHRL scholarship. Even in UN military training on

CRSV, connections to legal requirements are not always made.<sup>368</sup> What do they require in terms of practical steps? Siobhan Wills argues the following in relation to UN troops mandated to protect civilians:

...it will not be enough for the UN to say after the event that it tried; it must be able to prove it by producing the documents or other evidence (signed and dated) demonstrating its plan of action and the efforts made to implement it ... it should shape the way the mandate is carried out both at the macro level (e.g. initial assessment of risks and operational planning in light of them) and at the micro-level (e.g. documenting and reporting of protection plans and of the steps taken to implement them at local level), and the continuous updating of protection plans in light of the continuous assessment of risks, assessed at both local and general level.<sup>369</sup>

While a military with a looser commitment to protect civilians might not be held to such a rigorous standard, the above seems a sensible description of reasonable due diligence. It is reasonable to expect, I contend, that a military or military alliance that has made a political commitment to prevent and respond to CRSV demonstrates the implementation of systemised military processes to do so: an overarching strategy relating to CRSV; CRSV risk assessment; operational planning for prevention and response to CRSV; protection plans at local and general levels; mechanisms to respond to specific threats or risks of CRSV identified; and documentation, review and analysis of actions. Given the often hidden nature of sexual violence and the support needs of victims, mechanisms to consult and refer to women's civil society organisations and local support services are needed. To enable all this requires training and education around CRSV and know-how concerning the engagement of civil society. Identifying, securing, and preserving evidence of CRSV requires procedures developed with specialist legal expertise. These are the very sorts of initiatives that were discussed back in 2008<sup>370</sup> and at the 2014 Global Summit. The case studies to

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<sup>368</sup> S. Axmacher, 'Review of Scenario-based Trainings for Military Peacekeepers on Prevention and Response to Conflict-Related Sexual Violence' (2013) p. 15.

<sup>369</sup> Wills, 'International Responsibility for Ensuring Protection of Civilians', pp. 253–54.

<sup>370</sup> See text at Ch. 3, n 128.

Chapter 5  
CRSV and a military's legal obligations

follow will consider how far NATO and by the British Armed Forces' approaches to CRSV conform.

Chapter 5  
CRSV and a military's legal obligations

## Chapter 6

### NATO's responses to CRSV

At NATO, there are always countries – some are wanting to go faster, some slower. But, when it comes to gender, gender advising, we need to find the right minimum.

Lt Gen Steven M. Shepro, Deputy Chair of the NATO Military Committee,  
4 June 2019

This chapter explores how NATO, a key security organisation, has since 2005 progressively engaged with the issue of CRSV. It identifies key milestones in policy, practical guidance, leadership and institutional structures. The Chapter opens, in Section 6.1, with an overview of NATO: its purpose, governance and institutional structure, recent major operational engagements, and a snapshot of the participation of women in NATO. The Chapter then, in sections 6.2 and 6.3, answers one of this project's key questions: *what initiatives has NATO developed to respond to sexual violence in armed conflict since 2005?* I chronologically analyse NATO political declarations, policies and reports; military doctrine, directives, guidelines and procedures; and training and education standards and materials, revealing the disconnects and congruences between different spheres: political and military, headquarters and operational. This documentary analysis is enriched by insights, particularly into operational implementation, gleaned from interviews with seven NATO staff and advisors, and six observations of NATO training or education on CRSV and public events.<sup>371</sup> This chapter provides the scaffold for the analysis to follow, in chapter 8 of how understandings of legal obligations mediate NATO's engagement with CRSV. Chapter 9 will go on to consider to what extent NATO's responses to CRSV challenge feminist critiques of IHL and of militaries and inform theorisation of how militaries can be transformed.

NATO is regarded with particular suspicion by feminists; for example, by Women Against NATO as "an ambitious, expansionist and belligerent war-machine, primarily serving the

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<sup>371</sup> The materials reviewed and details of fieldwork conducted are listed in Annex 2.

economic and strategic interests of the more powerful among its member states".<sup>372</sup> NATO is described as "an institution of international hegemonic masculinity ... reinforcing power hierarchies constructed along gendered and racialised lines."<sup>373</sup> When NATO invokes women's rights, is this progress or co-optation of feminism for militarist ends? Yet, much of the prominent recent scholarship examining NATO's engagement with gender and WPS is broadly positive, praising what it sees as progress, even transformation.<sup>374</sup> This project's close examination of NATO illustrates the value of looking beyond the policy/political level to doctrine, directives, training and feedback from operations, in understanding NATO as a gendered organisation and the factors that facilitate and inhibit transformative change.

The chapter concludes by drawing out key stumbling blocks for NATO in translating commitments to sexual violence response into practice. As such, it paints a less rosy picture of NATO's implementation of WPS than much of the analysis of the mid-2000s, seeing much of the progress promised in NATO's policy and action plans as unfulfilled.

## 6.1 NATO: setting the scene

### NATO's purpose and structures

As noted in Chapter 5, NATO is a thirty-member political and military alliance. Its foundational treaty, *The Washington Treaty*, of 1949 committed members to collective defence. That is, a reciprocal undertaking, under Article 5 of the Treaty, to consider an armed attack from an enemy against one or more of them as an attack upon them all, and to assist the party or parties attacked, if necessary using armed force.<sup>375</sup> NATO's concept of its purpose and tasks evolved with the 1991 dissolution of the Soviet Union and Warsaw Pact. In 1999, it expanded its operational remit to encompass crisis response operations "outside the territory of its member countries with the aim of responding to new security

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<sup>372</sup> Cockburn, 'Snagged on the Contradiction', 50.

<sup>373</sup> Wright, Hurley, and Gil Ruiz, *NATO, gender and the military*, p. 159.

<sup>374</sup> See: Prescott, 'Feminist Critique of the Law of Armed Conflict'; Egnell, Hojem, and Berts, *Gender, Military Effectiveness, and Organizational Change*; Bergman Rosamond and Kronsell, 'Cosmopolitan militaries and dialogic peacekeeping'; Wright, Hurley, and Gil Ruiz, *NATO, gender and the military*; Hardt and von Hlatky, 'NATO's About-Face'.

<sup>375</sup> NATO, *The North Atlantic Treaty (1949)* para. 5.



threats such as terrorism, ethnic conflicts, and human rights abuses".<sup>376</sup> After 9/11 NATO placed greater focus on terrorism and weapons of mass destruction.<sup>377</sup> NATO is described as in a process of transition from an alliance solely concerned with defending its borders, to a global actor ready to address both military and non-military sources of insecurity.<sup>378</sup> That said, since the beginning of the so-called "crisis" in Ukraine in November 2013, NATO's strategic focus has shifted back to countering a perceived threat from Russia.

NATO has been described as defining itself by values consistent with those that inform cosmopolitanism - human rights, rule of law, democracy – without being a cosmopolitan military. NATO is most centrally a collective defence organisation: it first and foremost pursues goals of defence and security, rather than of shared values, and is according to Terry Terriff "very much a self interested community."<sup>379</sup> NATO is reviled by many organisations working for peace and against nuclear weapons, including feminist organisations such as WILPF.<sup>380</sup> However, my own engagement with NATO's Civil Society Advisory Panel on WPS brought me to understand that some women's groups in Europe's east - in Estonia, Georgia, Moldova and Ukraine, for example - see NATO as a friend and defender of their nation. During this research, a member of the Canadian delegation described NATO to me as a "peace organisation".

NATO is generally regarded as a military organisation but in fact, has a dual military and political/civilian structure. Its highest levels of governance and the vast majority of its Headquarters staff are civilian. NATO's highest political decision-making body is the North Atlantic Council, upon which each NATO member country is represented. The North Atlantic Council serves as the interface between the civil and military levels of NATO. It is advised by NATO's Military Committee - the senior military authority within NATO - on

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<sup>376</sup> P. Ochmannova, 'NATO: Evolution and Legal Framework for the Conduct of Operations' (2016) *NATO Legal Gazette* at 120.

<sup>377</sup> NATO, *Active Engagement, Modern Defence - Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organisation* (2010).

<sup>378</sup> Elliott and Cheeseman, *Forces for Good*, p. 283.

<sup>379</sup> T. Terriff, 'NATO: warfighters or cosmopolitan warriors? (Chapter 7)' in L. M. Elliott, G. Cheeseman (eds.), *Forces for Good: Cosmopolitan Militaries in the Twenty-first Century*, (Manchester University Press, 2004), pp. 117–33 pp. 124, 126.

<sup>380</sup> 'No to war – no to NATO Network' (June 2020).

military policy and strategy. The Military Committee, in turn, is composed of the Chiefs of Defence of all NATO member countries. Within NATO Headquarters in Brussels, there are separate staffs for what is referred to as “the political side” and “the military side”. On the political side is the International Staff, some one thousand civilians from NATO member countries. Their role is to provide advice, guidance and administrative support to the thirty member nations’ permanent delegations, under the leadership of the NATO Secretary General.<sup>381</sup> On “the military side” is the International Military Staff: some five hundred military and civilian personnel from member nations’ militaries, which act as the executive of the Military Committee.<sup>382</sup>

Under the authority of the Military Committee, NATO has two military Strategic Commands: Allied Command Transformation (ACT), based in Norfolk in the United States and Allied Command Operations (ACO), based near Mons in Belgium. ACO’s Headquarters is referred to as Supreme Headquarters Allied Powers Europe, or SHAPE. Under it are the headquarters of NATO’s various missions and operations. All of these subordinate NATO military structures and commands are largely staffed by military personnel contributed by NATO members.

### NATO’s recent operational engagements

Since 1990, NATO has conducted a total of forty-one operations. Only two have been classified as collective defence operations, the others as crisis response.<sup>383</sup> The scope of the latter has ranged from the delivery of humanitarian relief and disaster response; enforcing maritime interdiction, embargoes and no-fly zones; train, advise and assist; to counterinsurgency and combat operations, including the air bombing campaign in Libya. NATO operations in Libya and Afghanistan have both asserted civilian protection as a core rationale. As of July 2020, NATO was conducting operations in Afghanistan, where it has been active since 2003 (the International Security Assistance Force, ISAF, followed by Resolute Support Mission); in Kosovo – the Kosovo Force, where it has been present since

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<sup>381</sup> NATO, ‘National delegations to NATO’ (March 2016).

<sup>382</sup> NATO, ‘NATO Organisation’ (April 2020).

<sup>383</sup> Ochmannova, ‘NATO: Evolution and Legal Framework for the Conduct of Operations’, 120.

its 1999 bombing campaign; in the Mediterranean; in Iraq, a training and capacity-building mission; and providing missile defence capabilities to Turkey. NATO also supports AU peacekeeping missions on request. Responding to perceptions of a Russian threat, NATO is conducting air policing missions over the Baltics and Balkans.<sup>384</sup> NATO has in recent years also increased capability development and capacity building in Ukraine.

“NATO forces” are in fact multinational comprised of forces both from NATO member countries and from NATO Partner and other countries, such as Australia, Austria, Finland, Japan, Georgia, Ireland, New Zealand, Sweden, Korea and Ukraine. NATO's guidelines and commitments concerning gender and CRSV in NATO operations thus apply to the forces not only of its thirty members but potentially the many other armed forces that join NATO missions and operations.

### Women in NATO HQ and NATO operations

As discussed in earlier chapters, this research is interested in how gendered institutional culture finds expression in military approaches to CRSV. As such, I am less interested in how many women are in NATO, as in NATO's discourse concerning women. Nonetheless, the physical presence of women is critical to an institution's gender culture - although the degree to and mechanisms by which women make a difference are contested.

A Committee on Women in the NATO Forces has been a formal structure subordinate to NATO's Military Committee since 1976, made up of female military officers from the armed forces of NATO member nations.<sup>385</sup> In 2000, an Office on Women in the NATO Forces was established as part of NATO Headquarters' International Military Staff. Despite these long-established structures to promote women's equality, NATO as an institution, and in particular its senior management remains extremely male-dominated. Charlotte Isaksson, former Gender Advisor (GENAD) at ACO, referred obliquely to NATO's “own internal gender-related challenges,” highlighting “sexual harassment, discrimination, sexual abuse,

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<sup>384</sup> NATO, ‘Operations and missions: past and present’ (June 2020); NATO, ‘Relations with Ukraine’ (June 2020).

<sup>385</sup> Office on Women in the NATO Forces Terms of Reference, 10 July 2000, para. 5(b), in *Committee on Women in the NATO Forces Handbook* (2005).

and sexual assault in our own institutions".<sup>386</sup> As of 2017, only 26% of just over 5,700 civilian staff employed in NATO entities were female, for the most part, employed in support and administrative positions. NATO Headquarters was staffed by 39% at women, but only 20% women in senior leadership roles. Other NATO entities had "little-to-no senior positions filled by female civilian staff."<sup>387</sup> These poor figures may disguise the fact that many staff within any NATO entity are uniformed military, not civilian, personnel. NATO does not seem even to collect sex-disaggregated data on them. As such, one can only extrapolate from NATO-wide data on women in armed forces that women make up an average of 11.3% of active duty military personnel of NATO member nations.<sup>388</sup> (This figure has crept up from 6.1% in 2001, but only modestly, from 10.2%, since 2006.) Occupations across NATO armed forces show strongly gendered patterns. For example, only 7.7% of women serve in the infantry, compared to 20.7% of men.<sup>389</sup> Women are more likely than men to be officers (21% of women, 18% of men) but less likely to advance to senior officer levels (0.03% of women, 0.2% of men) women.<sup>390</sup> When it comes to international deployments to NATO operations, female personnel are starkly underrepresented, even given their low overall representation in NATO armed forces; for example, in 2017, only 5.6% of the personnel deployed to NATO operations were female.<sup>391</sup>

## 6.2 Key phases and milestones in NATO's engagement with CRSV

This chapter now turns to how NATO has engaged with the issue of CRSV since 2005, when the UN Security Council first articulated its call for peacekeepers to "employ all feasible measures" to prevent sexual and other forms of violence committed against civilians in

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<sup>386</sup> Isaksson, 'Fighting for Gender Equality', 59–60.

<sup>387</sup> P. Billaud-Durand, 'Driving diversity at NATO' (March 2019).

<sup>388</sup> Based on the most recent data compiled by NATO: *Summary of the National Reports of NATO member and Partner Nations to the NCGP 2018* (2020) p. 15.

<sup>389</sup> *Ibid.*, p. 51-52.

<sup>390</sup> *Ibid.*, p. 55. A number of scholars have explored the participation of women in NATO member armed forces, and the attitudes, policies and practices that inhibit and enable women's equal participation. NATO-wide studies include: H. Carreiras, *Gender and the Military: Women in the Armed Forces of Western Democracies* (Routledge, 2006); L. Obradovic, *Gender Integration in NATO Military Forces: Cross-national Analysis* (Routledge, 2016).

<sup>391</sup> NATO IMS, *National Reports to NCGP, 2017*, p. 45. The proportion was only slightly higher, 6.2%, as regards deployment to AU, EU, NATO, OSCE and/or UN operations combined.

armed conflict.<sup>392</sup> The following identifies chronologically the key milestones in NATO policy, directives, doctrine and institutional structures related to CRSV. Figure 33 on page 123 illustrates these, set against the key UNSCRs and other commitments concerning military responses to CRSV examined in Chapter 3.

### 2007-2009: The emergence of institutional policy, structures and guidance concerning WPS

It was scandal concerning NATO troops' involvement with sex trafficking in the former Yugoslavia<sup>393</sup> which prompted NATO's first policy engagement with CRSV: the adoption, in 2004, of policy and guidelines on combating trafficking in human beings.<sup>394</sup> The commitments made are vague, stopping short of actually preventing and punishing trafficking-related crimes by NATO personnel, or prohibiting visiting brothels or paying for sex. Implementation of the policy and guidelines has been described as slow, stymied by lack of leadership within NATO and lack of unity across NATO as regards prostitution.<sup>395</sup>

At the close of 2007, the North Atlantic Council approved a paper that was later described as NATO's first policy on WPS: the *NATO-EAPC Framework Document on Implementing United Nations SC Resolution (UNSCR) 1325 on Women, Peace and Security*.<sup>396</sup> It described

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<sup>392</sup> *Resolution 1674*, para. 19.

<sup>393</sup> See Ch. 5, n 358.

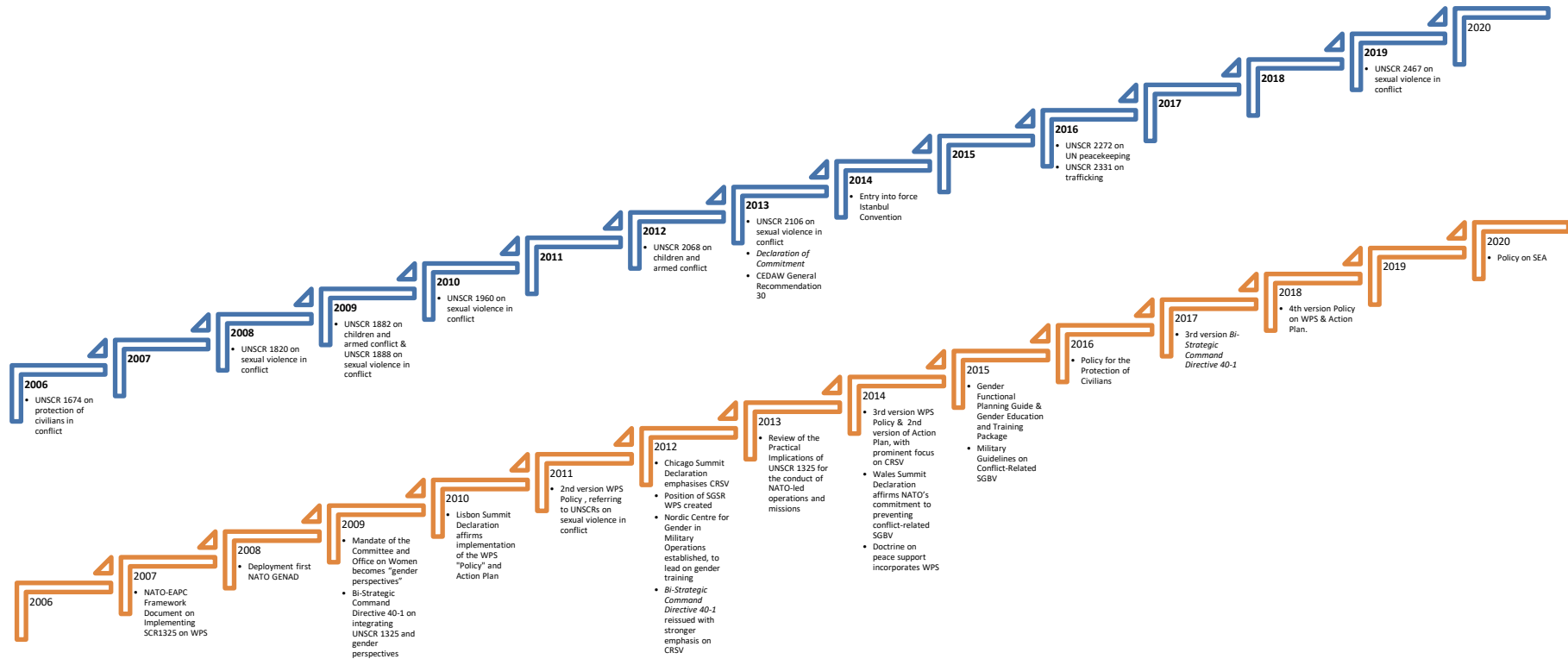
<sup>394</sup> *Policy on combating trafficking in human beings* (2004); *Guidelines on combating trafficking in human beings for military forces and civilian personnel deployed in NATO-led operations* (2004).

<sup>395</sup> Ballesteros, 'Trafficking in Human Beings and International Peacekeeping Missions', 138. K. J. Allred, 'Peacekeepers and Prostitutes: How Deployed Forces Fuel the Demand for Trafficked Women and New Hope for Stopping It' (2006) 33 *Armed Forces & Society* 5–23 at 15–16.

<sup>396</sup> NATO/EAPC, *Implementing UNSCR 1325 on Women, Peace and Security* (2007). Wright, 'NATO's adoption of UNSCR 1325 on Women, Peace and Security' traces the political processes underlying this.

Chapter 6  
NATO's responses to CRSV

Figure 3: Key milestones in UN and NATO policy, directives, doctrine and institutional structures related to CRSV, 2006 - 2020



the rationale for NATO EAPC's focus on the roles of women and on gender as "improv[ing] the effectiveness of NATO-led Operations and Missions to ensure overall mission success ... ensur[ing] that maximum effect can be drawn from incorporating gender perspectives into NATO's approach".<sup>397</sup> From the outset, WPS was strategically framed within NATO as a tool to make NATO more effective in its [other] business, attention to gender as conducive to "operational effectiveness" and a "force multiplier". There is a clear effort to make the implementation of the UNSCRs on WPS "relevant to the day-to-day conduct of NATO-led Operations and Missions."<sup>398</sup> This Framework Document had strengths as a policy on WPS. It recognised "the unique contribution that women can make to conflict resolution" and the need for "their participation at all levels of decision-making," as well as the need to protect women and girls.<sup>399</sup> It implicitly recognised abuse by NATO's own forces, in directing NATO Military Authorities to prioritise measures to "better protect the rights of women and girls in conflict zones, including through the setting of generic standards of behaviour expected of NATO-led forces".<sup>400</sup> The Framework Document did not explicitly refer to CRSV, but suggested missions consider how best to collect information on "gender specific violence issues."<sup>401</sup> It directed NATO Military Authorities to prioritise measures to "better protect the rights of women and girls in conflict zones" if stopping short of actively directing *prevention of violence*.<sup>402</sup>

In mid-2008, as the UN Security Council adopted its first resolution dedicated to sexual violence in conflict, Sweden deployed the first GENAD in a NATO operation in Afghanistan. There followed a period of bottom-up innovation around gender mainstreaming in ISAF as Norway and the Netherlands followed suit.<sup>403</sup> A study of ISAF's implementation of 1325 was conducted and presented within NATO Headquarters. It contains an account of a NATO

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<sup>397</sup> NATO/EAPC, *WPS Framework Document*, pp. 1–1. p.

<sup>398</sup> *Ibid.* p. 1-2.

<sup>399</sup> *Ibid.*

<sup>400</sup> *Ibid.*

<sup>401</sup> *Ibid.* p. 1-3.

<sup>402</sup> *Ibid.* p. 1-2.

<sup>403</sup> For broader analysis of the role of NATO GENADs: see S. Longworth and O. Engdahl, *Getting perspective: Incorporating a gender perspective in military operations and the impact on international humanitarian law* (2014); M. Bastick and C. Duncanson, 'Agents of Change? Gender Advisors in NATO Militaries' (2018) 25 *International Peacekeeping* 554–577.

force giving medical assistance to a victim of sexual violence but worrying that in so doing they had damaged her reputation such that she could not return to her village.<sup>404</sup> The study concluded that soldiers needed further training, instructions and procedures to handle GBV, and conveyed ambivalence as regards NATO's role, asking, "What are long term versus short term effects in terms of achieving the Mission mandate when intervening or not intervening?"<sup>405</sup>

There was a surge of developments around WPS within NATO in 2009. The NATO Summit Declaration committed to putting in place "a comprehensive set of measures".<sup>406</sup> The mandate of the Committee on Women in the NATO Forces and the International Military Staff's Office on Women was changed to "gender perspectives". In mandating these new structures, NATO's adopted definition of gender mainstreaming, or integrating a gender perspective, is essentially the UN system's: "... assessing the implications for women and men of any planned action..."<sup>407</sup> However, NATO omits what should be the overarching purpose, as articulated within the UN: "...so that women and men benefit equally and inequality is not perpetuated ... to achieve gender equality."<sup>408</sup> Instead, NATO, as in its 2007 Framework Document, frames the purpose of integrating gender perspectives only in relation to its own operational effectiveness.

Over 2009-2011, Gender Advisor positions were established within the NATO Strategic Commands, ACO and ACT. These GENADs would be instrumental in developing the key documents shaping NATO's military approach to WPS. The first of these was issued in September 2009: the Supreme Commanders of SHAPE and ACT issued *Bi-Strategic Command Directive 40-1 Integrating UNSCR 1325 and gender perspectives in the NATO command structure*.<sup>409</sup> The Directive is authoritative for all the NATO military entities, as

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<sup>404</sup> L. Olsson and J. Tejpar, *Operational Effectiveness and UN Resolution 1325 - Practices and Lessons from Afghanistan* (2009) pp. 71–72.

<sup>405</sup> *Ibid.*, p. 2.

<sup>406</sup> NATO, *Strasbourg/Kehl Summit Declaration* (2009) para. 36.

<sup>407</sup> *The NATO Committee on Gender Perspectives* (2009) para. 10.

<sup>408</sup> UN Economic and Social Council, 'Resolution 1997/2: Agreed Conclusions' (1997).

<sup>409</sup> NATO ACO ACT, *Bi-Strategic Directive 40-1: Integrating UNSCR1325 and Gender Perspectives in the NATO Command Structure Including Measures for Protection During Armed Conflict* (2009).



well as all NATO establishments that deploy personnel in support of NATO operations and mission. This is the second milestone in NATO engagement with CRSV, being the first direction to NATO military operations on the issue. A NATO interviewee emphasised that this and successive versions of *Bi-Strategic Command Directive 40-1* do not constitute “policy” as these directives are not negotiated and agreed between nations.<sup>410</sup> Even so, they influence all the operational work that ACO directs: operational planning, NATO-approved training, military exercises, work of GENADs, reporting templates etc.

Bi-Strategic Command Directive 40-1 (2009) was progressive in its guiding vision that: “NATO's operational effectiveness includes making a contribution to sustainable and lasting peace, *within which gender equality is a key factor*” (emphasis added). Its “key concepts” included “analys[ing] measures available to protect against gender based violence, particularly rape and other forms of sexual abuse and violence in situations of armed conflict”.<sup>411</sup> Bi-Strategic Command Directive 40-1 directed measures in the planning and conduct of NATO operations to protect women and girls; and that operations, “Analyse ... whether procedures should be implemented (e.g. rules of engagement) to protect civilians with specific consideration given to women and girls, from violence, rape and other forms of sexual abuse”.<sup>412</sup> However, it remained vague in terms of what NATO forces should do about responding to any identified women's/gender issues/concerns/perspectives. No concrete measures for protection or prevention were articulated, and the complexities and possible unintended consequences indicated by the ISAF study were not directly addressed. 40-1 was significant in setting out for the first time the role of GENADs. Their responsibilities include: conducting gender and UNSCR 1325 assessments; gender mainstreaming operational processes and procedures; liaising with local and international women's organisations; and supporting any inquiry or investigation into allegations (against NATO personnel, the context implies) of violence or sexual abuse.<sup>413</sup> As such, although the GENAD was not explicitly tasked with supporting responses to CRSV, their mandate

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<sup>410</sup> Interview with former GENAD, 26 April 2018.

<sup>411</sup> NATO ACO ACT, *Bi-St. Dir. 40-1 (2009)*, pp. 1-8(h).

<sup>412</sup> *Ibid.*, pp. 1-7, 3-3(d).

<sup>413</sup> *Ibid.*, pp. 1-11.

suggests they would at least assess it. 40-1 also included a set of NATO Standards of Behaviour, although this only partially addressed SEA. It refers to “not commit[ing] any illegal act” that could harm women and girls,<sup>414</sup> as such leaving open the possibility of prostitution. But it does direct and set out procedures for swift investigation into any allegations of violence or rape that directed NATO commanders to prevent exploitation of women and girls and ensure rapid inquiry into allegations.<sup>415</sup>

NATO, therefore, made strong progress over 2008 and 2009 in articulating and institutionalising an approach to implementing WPS in operations. From just hesitant policy engagement at the close of 2007, within nineteen months it had translated this into an operational directive and created new gender structures both at Headquarters and in missions. Moreover, in including the abuse of women and girls by NATO forces, it was grappling with a contentious issue among NATO forces. Broader sexual violence response was an element of all of these developments, although not yet a distinct focus.

#### 2010-2013: WPS and CRSV move into the mainstream of NATO policy discourse, but remain poorly addressed in operations

By 2010, the narrative that gender perspectives and a focus on WPS enhance NATO's mission success was well embedded within NATO Headquarters. The successes attributed to ISAF GENADs, for example, are framed in terms of “... enhancing situational awareness ... improving trust and rapport with the civilian population ... [counterinsurgency] and operational effectiveness force multipliers”.<sup>416</sup> The Chairman of NATO's Military Committee is quoted as saying that “... gender is an asset to improve operational effectiveness ... a force multiplier that helps to win hearts and minds ... the gender perspective has to be perceived as a key component in NATO's new Strategic Concept.”<sup>417</sup> Nonetheless, when the new NATO Strategic Concept was adopted during the 2010 Lisbon Summit, it did not refer to WPS or gender. (The Strategic Concept was and remains a key document, often referred

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<sup>414</sup> Ibid., pp. 2–2.

<sup>415</sup> Ibid., pp. 3–2.

<sup>416</sup> *Comprehensive report on the NATO/EAPC policy on the implementation of UNSCR 1325 on women, peace and security and related resolutions* (2010) para. 5.2.4.2.

<sup>417</sup> NCGP, *Template for Pre-deployment Gender Training* (2010) p. 9.

to by NATO staff as having established NATO's "Comprehensive Approach.") Still, NATO's 2010 Lisbon Summit Declaration described the implementation of the WPS Policy and a new WPS Action Plan as "an integral part of our work to improve the Alliance's effectiveness".<sup>418</sup> This was the beginning of a process over 2010-2013 wherein WPS entered the mainstream of NATO's public policy discourse, with CRSV a growing focus.

NATO's WPS policy was revised in June 2011, referring now to the three UNSCRs on sexual violence in conflict. Still, no clear NATO commitments, objectives or actions related to CRSV were identified; rather, the reference in the 2007 Framework Document to collecting information on gender-specific violence was lost. Reference to NATO standards of behaviour was also dropped, and there was no reference to the existing policy and guidelines on trafficking in human beings. In 2012, NATO's Chicago Summit Declaration had a clear emphasis on sexual and gender-based violence (SGBV). WPS was prominently placed as paragraph 6, beginning: "Widespread sexual and gender-based violence in conflict situations, the lack of effective institutional arrangements to protect women, and the continued under-representation of women in peace processes, remain serious impediments to building sustainable peace."<sup>419</sup>

Further steps were now initiated to translate NATO's WPS policy into operations and missions. In December 2010, a "gender annex" had been added to the Operation Plan for the NATO Mission in Afghanistan.<sup>420</sup> GENADs were being deployed in Kosovo as well as Afghanistan (many Swedish, Norwegian or Dutch). Alongside GENADs, US Marines had introduced Female Engagement Teams (FETs) in Afghanistan, based on the all-female "Team Lioness" used in Iraq. By 2012, 149 FETs were operating, from at least eight different NATO nations.<sup>421</sup> Although some FETs did health and hygiene outreach, they were primarily

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<sup>418</sup> NATO, *Lisbon Summit Declaration* (2010) para. 7. The Action Plan adopted at the Summit has never been publicly released.

<sup>419</sup> NATO, *Chicago Summit Declaration* (2012) para. 16.

<sup>420</sup> E. Rorvik, 'Annex X – Gender COMISAF OPLAN' (2011); J. D. Kem and F. A. Smith, *Gender Integration: An Afghan Priority* (2011) p. 9.

<sup>421</sup> Z. Bedell, 'United States Marine Corps Female Engagement Team' (2011). Mederios, cited in B. McNierney, 'Female Engagement Teams: An Evaluation of the Female Engagement Team Program in Afghanistan' (U.S. Naval War College, 2015) p. 82.

tasked with intelligence gathering, psychological operations and building support for ISAF, not with contributing to women's physical protection. Scholarship is generally critical of their impact, either on operations or on local women.<sup>422</sup>

At NATO Headquarters, in 2012 the position of NATO Secretary General's Special Representative on WPS (SGSR WPS) was created to coordinate NATO's policies and activities on WPS within NATO and externally. The Office of the SGSR WPS provides political focus and leadership on WPS, leading work on the successive iterations of the WPS Policy and Action Plan. The Nordic Centre for Gender in Military Operations (NCGM) was established to increase NATO's gender training capacity. Although hosted by the Swedish Armed Forces and not formally a NATO entity, NCGM plays a pivotal role in developing approaches to gender training for NATO member and Partner armed forces and in delivering training.

*Bi-Strategic Command Directive 40-1* was revised in August 2012, now with a much stronger emphasis on CRSV.<sup>423</sup> It highlighted women, girls and boys as potentially vulnerable to SGBV and SEA and needing special protection. Compared to the 2009 Directive, the 2012 version is stronger in terms of response to CRSV by third parties in three ways. First, references to SGBV are more comprehensive and recognise the frequent victimization of boys. The definition of sexual violence used is strong, being drawn from the ICC Elements of Crimes, and inclusive of any "act of a sexual nature," and with a broad understanding of coercion as including *inter alia* "psychological oppression or abuse of power ... or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine

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<sup>422</sup> A. C. Coll, 'Evaluating Female Engagement Team Effectiveness in Afghanistan' Honors, Wellesley College 2012; S. L. Dyvik, 'Performing gender in the "theatre of war": embodying the invasion, counterinsurgency and exit strategy in Afghanistan' PhD, University of Sussex 2 July 2013 p. 137; S. Azarbaijani-Moghaddam, *Seeking out their Afghan sisters: Female Engagement Teams in Afghanistan* (2014); McNierney, 'Female Engagement Teams: An Evaluation of the Female Engagement Team Program in Afghanistan'; Prescott, Iwata, and Pincus, 'Gender, law and policy', 30; A. T. R. Wibben, 'Female engagement teams in Afghanistan' in A. T. R. Wibben (ed.), *Researching war: feminist methods, ethics and politics*, (London: Routledge, 2016). A more positive account is given by Bergman Rosamond and Kronsell, 'Cosmopolitan militaries and dialogic peacekeeping'.

<sup>423</sup> NATO ACO ACT, *Bi-Strategic Directive 40-1 Revision 1: Integrating UNSCR1325 and Gender Perspectives in the NATO Command Structure (Revision 1)* (2012).

consent"<sup>424</sup> Second, the Directive adds a tactical level to implementation, suggesting engaging with the local population whilst on patrol to gather information about their situation. Third, the provisions on reporting of SGBV and trafficking of human beings are stronger: reporting is explicitly required – although the processes for this are not set out.<sup>425</sup> Reports are directed to “include information about the situation of women, boys and girls; the impact of NATO interventions on women, men, girls and boys; and statistics disaggregated by sex”.<sup>426</sup> However, the Directive remains vague about the legal framing of the protection activities it directs, tying them only to increasing operational effectiveness.

It is significant here to highlight the policy choice reflected in the above, which would persist in subsequent instruments defining NATO's approach to CRSV. The UNSCRs (and the 2013 *Declaration of Commitment to End Sexual Violence in Conflict*) focus only on “sexual violence in conflict.” NATO uses the language of “conflict-related sexual and gender-based violence”. There is no one internationally agreed-upon definition of GBV, and it is conceptually difficult; for example, to distinguish violence that is directed against a man because he is a man or that affects men disproportionately, without the concept collapsing into all violence.<sup>427</sup> This makes NATO's subject matter more uncertain in legal terms than merely referring to “sexual violence” - the meaning of which is enunciated extensively in national and international jurisprudence and texts. Indeed, while NATO would continue to define “sexual violence” using the ICC Elements of Crimes, it would attempt no definition of GBV in subsequent WPS policy, iterations of 40-1, later *Military Guidelines on Conflict-*

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<sup>424</sup> Ibid., paras 1-4(f).

<sup>425</sup> Ibid., pp. 3–7.

<sup>426</sup> Ibid., pp. 3–7.

<sup>427</sup> Illustrated by debate as to inclusion of non-female victims in the Inter-Agency Standing Committee (IASC) Guidelines for Gender-Based Violence Interventions in Humanitarian Settings; see C. Dolan, ‘Inclusive gender: Why tackling gender hierarchies cannot be at the expense of human rights and the humanitarian imperative’ (2016) 98 *International Review of the Red Cross* 625–34. There is a definition of gender-based violence against *women* in the *Istanbul Convention* (Article 3(d)).

*Related SGBV* or the compendium of NATO agreed terminology.<sup>428</sup> NATO training materials likewise do not attempt to explore "GBV" conceptually.<sup>429</sup>

On request by the North Atlantic Council, from October 2012 NCGM led a study to review NATO's implementation of WPS in operations and missions. The review team's analysis included fieldwork in Afghanistan and Kosovo over February to April 2013, conducting 142 interviews. This *Review of the Practical Implications of UNSCR 1325 for the Conduct of NATO-led Operations and Missions* remains significant as still the most recent official, operations-based analysis of NATO's implementation of its WPS commitments. The report's headline finding was "significant progress"<sup>430</sup> but a close reading shows that in terms of protecting women and girls from CRSV, little was being done. The Review found that few commanders and staff officers were aware of *Bi-Strategic Command Directive 40-1*; the Kosovo Force's security analyses omitted attention to gender; ISAF's analyses omitted attention to the security of the population altogether, aside from efforts to reduce the civilian casualties of their own actions.<sup>431</sup> One of the researchers told me:

We had some meetings while we were in Kabul with the Legal Advisors ... and they didn't deal with any external cases of any violence, any human rights abuses at all ... I also got the answer, "This is not our problem. We don't deal with this." "This is not our mandate."<sup>432</sup>

The Review "could not find any indications of ISAF efforts to address the security needs of those Afghans, women and men, whom it interacts with."<sup>433</sup> Local men and women are cited as expressing the view that ISAF had not increased the population's security in any substantial way.<sup>434</sup>

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<sup>428</sup> A footnote in a NATO doctrine cites a UNHCR source to define SGBV (see NATO Standardization Office, *Allied Joint Doctrine for Civil-Military Cooperation* (2018) p. B-1) but this can hardly be regarded as agreed NATO language.

<sup>429</sup> E.g. NCGM and NATO ACT, *Gender education and training package for nations* (2015).

<sup>430</sup> Lackenbauer and Langlais, *Practical Implications*, p. 4.

<sup>431</sup> *Ibid.*, pp. 4, 60.

<sup>432</sup> Interview with former GENAD, 26 April 2018.

<sup>433</sup> Lackenbauer and Langlais, *Practical Implications*, p. 45.

<sup>434</sup> *Ibid.*, p. 45.

In 2013, the Annual Conference of the NATO Committee on Gender Perspectives (NCGP) took as the theme of their annual conference: "How NATO can prevent and respond to sexual and gender based violence in conflict?" Delegates' recommendations included referencing CRSV in orders and the Key Operating Concept of a mission mandate; issuing rape kits to medics and kits to support investigations; training and analytical and reporting tools; and mechanisms for engagement with SGBV support agencies. They recommended military police be trained to document for and report to the International Criminal Court. Discussion focused on the need for more detailed guidance around mandates, standards and resources. The pages of concrete, practical measures identified by the NCGP demonstrate that there is a great deal that *could* be done by NATO military forces to address CRSV and a high degree of enthusiasm for doing so amongst staff working on gender in NATO Allies and Partners.<sup>435</sup> But, within NATO Headquarters, efforts to publicise the NCGP's recommendations were openly resisted by the Public Diplomacy Division on the basis that sexual violence was "not a topic for NATO".<sup>436</sup>

Insiders describe a profound resistance to the WPS Agenda within NATO:

... in 2009, '10, '11, '12, gender, 1325 was like the person who had a sickness that you could get ... They said, "... We are a military machine, we don't deal with human rights issues. We don't deal with women, women and girls, 1325, gender, what are you talking about?" ... In 2013 and 2012, if you spoke about sexual violence in conflicts, "What? Are you crazy?" ... protection of civilians, protection from sexual violence, blah, blah, blah it was like, they don't know.<sup>437</sup>

This echoes Hurley's interviews with NATO staff in 2012, describing how they avoided a focus on "female stuff" to establish the relevancy of WPS, instead framing WPS in terms of

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<sup>435</sup> NATO Committee on Gender Perspectives, *Syndicate outcomes* (2013).

<sup>436</sup> Interview with former GENAD, 26 April 2018.

<sup>437</sup> *Ibid.*

NATO's operational effectiveness.<sup>438</sup> It suggests a mismatch between political commitments made by NATO, actual commitment within NATO's walls, and operational realities.

#### 2014 - 2015: Strengthening mechanisms for concrete action to prevent and respond to CRSV

When the *NATO/EAPC Policy and Action Plan for WPS* were revised in 2014, now against the backdrop of the third UNSCR on sexual violence and conflict and widespread endorsement of the *Deed of Commitment*, they made clearer and more specific commitments, objectives and actions related to assessing and preventing CRSV.<sup>439</sup> The Action Plan committed to:

7.1. Ensure that mandates and plans for any future NATO-led operation and mission, as relevant, provide direction on how to respond to conflict-related sexual and gender based violence, and direct creation of systematic and robust monitoring and reporting mechanisms in order to follow trends.

7.2. Develop military guidelines on prevention and response to conflict-related sexual and gender based violence and integrate these aspects into the operational planning processes.

[...]

7.4 Develop the analytical tools necessary to understand the level of risk of sexual and gender-based violence, including development of early warning indicators.<sup>440</sup>

NATO's September 2014 Wales Summit Declaration affirmed this commitment to preventing conflict-related SGBV.<sup>441</sup> However, compared to previous Summit Declarations, WPS plunged in prominence from one of the opening paragraphs to paragraph 90

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<sup>438</sup> M. Hurley, 'Gender mainstreaming and integration in the North Atlantic Treaty Organization' in R. Woodward, C. Duncanson (eds.), *The Palgrave International Handbook of Gender and the Military*, (Palgrave Macmillan, 2017) pp. 411–12.

<sup>439</sup> *Policy for the implementation of UNSCR 1325 on Women, Peace and Security and related resolutions* (2014).

<sup>440</sup> *Women, Peace and Security Action Plan* (2014) p. 5.

<sup>441</sup> NATO, *Wales Summit Declaration* (2014) para. 10.



(positioned below NATO's partnership initiatives) and the commitment was essentially merely to carry on. This has remained the treatment of WPS in Summit Declarations since. Katharine Wright's interviews with staff working on gender in NATO Headquarters and ACT during 2014 testify to the challenges they continued to face during this period: that WPS was tacitly resisted, perceived as outside of NATO's core remit, as a "personal agenda" concerning women rather than an institutional priority.<sup>442</sup> ACO's GENAD described progress on WPS as hampered by lack of resources and "the internal perception that a narrow focus such as 'gender' should not command so much influence".<sup>443</sup>

Even so, in 2015 ACT, ACO and NCGM developed a suite of gender education and training and guidance for military exercises.<sup>444</sup> When NCGM delivered this training, they set out a range of military actions to counter CRSV including detaining perpetrators; deterrent patrolling; supporting the evacuation of civilians at risk; providing post-exposure prophylaxis to victims, and capacity building of local forces.<sup>445</sup> The training materials have a section dedicated to armed forces' codes of conduct concerning SEA, although do not go so far as asserting a ban on sex with prostitutes.<sup>446</sup> Simultaneously, SHAPE and ACT developed, in essence, an extended job description for GENADs, the *Gender Functional Planning Guide*. The *Planning Guide* has a three-page annex on conflict-related SGBV. This lists sixteen possible military tasks and actions to combat, prevent or address it and fourteen potential organisation actions, shown in Table 1 on page 135.<sup>447</sup> This breadth and detail, again, demonstrate the potential for there to be focused and sustained commitment of military attention and resources to address CRSV.

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<sup>442</sup> Wright, 'NATO's adoption of UNSCR 1325 on Women, Peace and Security', 355.

<sup>443</sup> Isaksson, 'Fighting for Gender Equality', 54–55.

<sup>444</sup> *Guidance Note on Integrating Gender in Military Exercises (2015); Whose Security? Practical examples of gender perspectives in military operations*; NCGM and NATO ACT, *NATO gender education and training package*. By January 2016, NCGM reported that at least eight countries were using the *Gender Education and Training Package for Nations* (presentation by NCGM's commander, British Defence Gender Training of Trainers course, 25-28 January, 2016).

<sup>445</sup> NCGM training materials used in Gender Training of Trainers course, Worthy Down Barracks, Hampshire, UK, January 2016.

<sup>446</sup> NCGM and NATO ACT, *NATO gender education and training package* Pre-Deployment Training, Lecture 1.

<sup>447</sup> NATO ACO, *Gender Functional Planning Guide*, pp. D-2-2-D-2-3.

**Table 1: NATO's identified military and organisational tasks to address conflict-related SGBV**

Possible military tasks and actions to combat/prevent/address conflict-related SGBV
(1) Preventive Physical Protection: Armed Patrols and Escorts
(2) Joint Protection Teams
(3) Quick Impact Projects
(4) Deterrent Tasks, Including through Visible Presence
(5) Cordon-and-Search Operations
(6) Community Liaison
(7) Securing the Environment for Delivery of Humanitarian Aid
(8) Gender-Sensitive Camp Design and Management
(9) Information: Monitoring, Reporting, Behavioural Change Communication
(10) Reviving the Political Process: Electoral Security for Women
(11) Restoring Rule of Law: Fostering Gender Justice
(12) Gender-Sensitive DDR/Demilitarization and Ceasefire Monitoring
(13) Gender-Sensitive Justice and Security Sector Reform
(14) Non-combatant Evacuation Operations
(15) Counter Human Trafficking Operations
(16) Ensuring women in detention are correctly treated
Potential Organisational Actions to Combat Sexual Violence
(1) Good leadership backed by strong C2 structure
(2) Integrating effective responses to sexual violence into the planning and execution
(3) Understanding the links between sexual violence and the restoration of peace and security
(4) Willingness and wherewithal to patrol and operate in unconventional space.
(5) Consultation with all segments of the community
(6) Incentives that recognize and reward successful initiatives to combat sexual violence
(7) Training of Medics and MPs in response to survivors of rape.
(8) Effective coordination between military and other protection stakeholders
(9) Operational scenario-based pre-deployment and in-mission/refresher training
(10) Role-modelling and capacity-building to help leave a legacy of security for women and girls
(11) Gender balance in force generation and deployment
(12) Gender awareness training programmes for the force based on UNSCR 1325 and related resolutions
(13) Development of a sustainable internal and external complaints system.
(14) Effective development of SOPs, TTPs and FRAGOs.

At Headquarters, work commenced to draft the military guidelines called for in the Action Plan. One of the staff involved described how difficult a process this was, with nations “Not ready, not willing”, except for a small supportive handful (including the UK, Norway and

Canada); and staff within different NATO structures in disagreement as to whether GENADs should be responsible for protection activities.<sup>448</sup> Nonetheless, in June 2015, NATO's Military Committee did endorse *Military Guidelines on the Prevention of, and Response to Conflict-Related Sexual and Gender-Based Violence (Military Guidelines on Conflict-Related SGBV)*, one of the most significant milestones in NATO's institutional engagement with CRSV.<sup>449</sup> The Guidelines were developed with close reference to initiatives within the UN on CRSV and for some were seen primarily to support NATO's coordination with UN missions.<sup>450</sup> They direct commanders to "undertake, either within their organisation, or in close coordination with international or local actors, measures to prevent and respond to conflict-related SGBV".<sup>451</sup> They direct risk assessment, reporting, cooperation with other actors, and education and training of their own and partner forces.<sup>452</sup> However, as with the Policy and Action Plan, the Guidelines avoid directing NATO forces to *protect civilians* from CRSV; using the weaker language of "reduce the risk of conflict-related SGBV and improve responsive measures that take protection needs into consideration".<sup>453</sup> They are an ambiguous blend of strong language concerning NATO's mandate and responsibility as concerns CRSV, and weak language around the expected actions. The Guidelines do not directly address SEA, although obliquely refer to developing mechanisms to ensure allegations and incidents of conflict-related SGBV are investigated and disciplined.<sup>454</sup>

September 2015 saw an added political impetus for NATO attention to CRSV. The New York Times reported that United States military personnel were aware of *bacha bazi* abuse by Afghan police and militia whom they were mentoring, but had instructions not to intervene, even when boys were being abused on a coalition military base.<sup>455</sup> One GENAD

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<sup>448</sup> Interview with former GENAD, 26 April 2018.

<sup>449</sup> NATO, 'Military guidelines on the prevention of, and response to, conflict-related sexual and gender-based violence' (2015).

<sup>450</sup> Interview with NATO GENAD, 4 October 2017.

<sup>451</sup> NATO, 'Military guidelines on the prevention of, and response to, conflict-related sexual and gender-based violence', para. 11.

<sup>452</sup> *Ibid.*, paras 12-14.

<sup>453</sup> *Ibid.*, para. 8.

<sup>454</sup> *Ibid.*, para. 17(b); read with *Women, Peace and Security Action Plan*, p. 5.

<sup>455</sup> See Ch. 5, n 339.

described this as the “breaking point” for NATO.<sup>456</sup> A commander’s tactical guidance was issued that month, making clear that if NATO personnel “suspect” Afghan National Security Forces have violated human rights, they must report it within their chain of command as well as to Afghan officials.<sup>457</sup>

### 2016-2019 Policy and structures position WPS alongside the protection of civilians and emphasise human security

Within NATO Headquarters during 2015, responsibility for the protection of civilians and reduction and mitigation of civilian casualties had been transferred to the SGSR WPS, along with the topics of children and armed conflict, conflict-related SGBV and human trafficking. This was part of a new focus on the protection of civilians within NATO. In mid-2016 NATO adopted its first *Policy for the Protection of Civilians*. This policy was a significant milestone, in committing NATO not only to minimize negative effects of its own operations on the civilian population but for NATO operations to actively “when applicable ... protect civilians from conflict-related physical violence or threats of physical violence by other actors” and “prevent, deter, pre-empt, and respond to situations in which civilians suffer physical violence or are under threat of physical violence”.<sup>458</sup> (To be discussed in more detail in Chapter 8.) The Policy committed to a gender-sensitive approach and framed protection of civilians as complementing and reinforcing work on WPS and conflict-related SGBV.<sup>459</sup> Nonetheless, it makes no specific commitments as regards CRSV.

There were several signals that momentum within NATO around CRSV was dropping. Although reporting on CRSV remained weak, NATO now said it did not intend to build a specific system: reporting and information sharing “must be completed in the existing reporting structures, building no parallel structures”<sup>460</sup> NATO’s SGSR WPS described the

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<sup>456</sup> Interview with GENAD, 4 October 2017; same point made in Interview with NATO Legal Advisor, 30 May 2018.

<sup>457</sup> PowerPoint presentation “Gender, Sexual Violence and Exploitation (GSVE) on Operations,” Napier Barracks, Kent, 2 November 2016.

<sup>458</sup> *Policy for the Protection of Civilians* (2016), paras 5, 9, 11.

<sup>459</sup> *Ibid.*, paras 12, 16.

<sup>460</sup> *Outcomes of the Workshop on the Military Guidelines on the Prevention of, and Response to, CRSGBV – Progress and Way Ahead* (2016) para. 9.

ongoing challenge of keeping WPS on NATO's political and decision-making agenda,<sup>461</sup> and her early departure would leave the post vacant for much of 2017. Civil society commentators observed that NATO was not adequately resourcing implementation of its WPS Policy and Action Plan.<sup>462</sup> Looking across to the UN Security Council, France was in the spotlight for abuses alleged against its troops in the Central African Republic,<sup>463</sup> but there was apparent silence on this within NATO.

In October 2017, the third iteration of *Bi-Strategic Command Directive 40-1* was issued. This remains NATO's most recent operational guidance document on WPS. It is built upon surprisingly sophisticated gender concepts, introducing new language to NATO. For example, its rationale being that: "... men, women, boys and girls are components of a gendered system ... it is necessary to assess notions equated with traditional masculinity and femininity that underpin organisations, societies and communities."<sup>464</sup> Directive 40-1 now notes conflict-related SGBV as being part of a wider continuum of violence, also affecting men and boys.<sup>465</sup> (This *continuum* framing of CRSV began to appear in other NATO documents: presenting CRSV as part of a spectrum of wartime violence.<sup>466</sup>) The Directive makes several references to data and reporting on conflict-related SGBV, but as just one facet of a gender perspective. For example, it refers to collecting sex-disaggregated data on CRSV, as well as on "political, military, economic civil society, education, refugees, internally

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<sup>461</sup> M. Schuurman, 'NATO and the Women, Peace and Security Agenda: Time to Bring It Home' (2015) 14 *Connections: The Quarterly Journal* 1–6; M. Schuurman, 'The women, peace and security agenda: integrating a gendered perspective into a security operations' (2017) 41 *The Fletcher Forum of World Affairs* 103–11.

<sup>462</sup> Civil Society Advisory Panel on Women, Peace and Security, *Report of the Second Annual Meeting* (2017).

<sup>463</sup> E.g., M. Deschamps, H. B. Jallow, and Y. Sooka, *Taking Action on Sexual Exploitation and Abuse by Peacekeepers: Report of an Independent Review on Sexual Exploitation and Abuse by International Peacekeeping Forces in the Central African Republic* (2016); 'France to fight against sexual exploitation and abuse' (April 2016).

<sup>464</sup> NATO ACO ACT, *Bi-Strategic Directive 40-1: Integrating UNSCR 1325 and Gender Perspective into the NATO Command Structure (Revision 2)* (2017) p. 3.

<sup>465</sup> *Ibid.*, p. 7.

<sup>466</sup> E.g. NATO organises second workshop on military guidelines on the prevention of, and response to, conflict-related sexual and gender based violence (2018); *Inclusive Security Conflict-Related Sexual and Gender-Based Violence* (2018).

displaced persons, prisoners, human rights violations".<sup>467</sup> It suggests geo-mapping incidents of CRSV, but also any "events and incidents that have a disproportionately negative effect on men, women, boys, and girls".<sup>468</sup> As such, the Directive lacks a focus on CRSV that is clearly distinct from a very broad range of issues and concerns identified as related to gender. The Directive's Standards of Behaviour now refer to fostering an environment that prevents SEA but continues to fall short of issuing any clear prohibitions.<sup>469</sup> At the close of 2017, NATO Secretary General Jens Stoltenberg and celebrity activist Angelina Jolie published an *Op-Ed* arguing, "Nato can become the global military leader in how to prevent and respond to sexual violence in conflict".<sup>470</sup>

The 2018 revision of the WPS Policy amplified some of the conceptual shifts noted above: away from a focus on gender mainstreaming within traditional military tasks, towards a more expansive vision of NATO's role in promoting gender equality. The new SGSR WPS, Clare Hutchinson, was questioning the entire basis of NATO's approach to WPS, arguing that in WPS terms, "Operational effectiveness is not effective"; that NATO did not know what gender as an enabler of operational effectiveness meant.<sup>471</sup> NATO's 2018 WPS Policy, under her stewardship, highlights the alignment of the "WPS mandate" with NATO's "holistic approach to human security".<sup>472</sup> It declares, "NATO aims to address gender inequality" and "support the advancement of gender equality".<sup>473</sup> This is a more expansive policy goal and new language for NATO; while previous policies had mentioned cooperation with organisations working for gender equality, NATO had not previously committed *itself* to address or support the advancement of gender equality. The commitment to prevent and respond to sexual violence is stronger, with training "mandatory," and leadership to be accountable "for ensuring that personnel/ troops are trained on preventing and responding to conflict-related sexual violence and take all possible measures to prevent it."<sup>474</sup> For the

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<sup>467</sup> NATO ACO ACT, *Bi-St. Dir. 40-1 Rev. 2 (2017)*, p. 8.

<sup>468</sup> *Ibid.*, p. 11-12.

<sup>469</sup> *Ibid.*, p. 14-15.

<sup>470</sup> Stoltenberg and Jolie, 'Why Nato must defend women's rights'.

<sup>471</sup> Ms Clare Hutchinson, open session of the Annual Conference of the NCGP, 29 May 2018.

<sup>472</sup> *Women, Peace and Security Policy and Action Plan (2018)* para. 6.

<sup>473</sup> *Ibid.*, paras 9-10.

<sup>474</sup> *Ibid.*, para. 34.

first time, there is an explicit reference to SEA in a NATO policy. (NATO's approach to SEA will be discussed in more detail in Chapter 8.)

Despite these demonstrations of apparently increasing political commitment by NATO to prevent and respond to CRSV, a number of key enablers and elements remain missing.

### 6.3 Key shortcomings

In mid-2017, NATO commissioned an independent assessment of progress on implementation of its WPS Action Plan. While it found that there had been advances in integrating a gender perspective in military commands, operations and missions since 2013, the review identified a gulf between NATO's rhetoric and implementation.

A respondent in a senior leadership position said that "We have not found a comfort zone on how to integrate gender and it's not part of day to day work." An [Assistant Secretary General] described it as "Not in the DNA of NATO" ... The highest military leadership had lofty ambitions and promoted the implementation of the WPS agenda. At the same time, it was not an obvious component of the everyday work of chiefs and staff at lower levels.<sup>475</sup>

A GENAD put the problem more bluntly: "... at the end of the day, this is a very sexy agenda and you have a Special Representative going here and there, United Nations, blah blah blah, showing the flag. But always you don't allocate resources..."<sup>476</sup>

The review also highlighted that none of NATO's WPS/gender activities, e-learning courses or face-to-face training programmes had been evaluated as to their impact.<sup>477</sup> Civil society has called for a robust, field-based assessment of the impact of NATO's approach to WPS on communities affected by NATO operations.<sup>478</sup> Absent this, my research can draw from interviews, observations and secondary literature a picture – if fragmented – of what is happening in operations concerning CRSV. The following necessarily draws heavily upon the

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<sup>475</sup> H. Lackenbauer, *#BeBoldForChange* (2017) p. 19. Hardt and von Hlatky, 'NATO's About-Face'. reports similar findings as regards the low priority afforded to gender amongst civilian leadership.

<sup>476</sup> Interview with former NATO GENAD, 26 April 2018.

<sup>477</sup> Lackenbauer, *#BeBoldForChange*, pp. 25–26.

<sup>478</sup> DCAF/NATO CSAP, *Report and recommendations of the Second CSAP Annual Meeting* (2017) p. 22.

missions in Afghanistan, which dominated NATO in the period under examination. Four clear weaknesses in NATO's engagement with CRSV are apparent: in doctrine, there is only piecemeal reference to WPS or sexual violence; there is weak operational implementation of WPS policy and directives; there is active resistance to reporting CRSV; and there are disconnects between NATO's approaches to gender mainstreaming and CRSV. These are explored in more detail below.

### Piecemeal integration of CRSV in NATO doctrine

As explained in Chapter 4, doctrine is at the heart of how militaries function, and how NATO coordinates its multilateral forces. In a seminar on SGBV within a NATO subordinate command trainees were told that "without rules and doctrine" there was "no answer" to many of the questions and challenges raised.<sup>479</sup> NATO doctrine is developed under the coordination of ACT, but the writing process is "caretaked by the nations" and they have specific personnel that they send to doctrine development meetings.<sup>480</sup> A NATO insider described doctrine development as "a very archaic, very slow process."<sup>481</sup> Even accounting for doctrine revision being a slow cycle, NATO's policy and directives on WPS and CRSV are only partially and shallowly translated into doctrine. The following is merely a selection of examples.

In December 2014, NATO's doctrine for peace operations, *AJP 3.4.1 Military contribution to peace support*, was reissued. Given the by now strong commitment to CRSV at a policy level and its perceived significance where NATO was supporting UN Missions, one would expect content on CRSV. Indeed, for the first time in NATO doctrine, a substantive connection with WPS is made, with a discrete section focused upon "gender: understanding different perspectives". It refers to *Bi-Strategic Command Directive 40-1*, and advises that a Peace Support Force should, "understand [its] role in protecting vulnerable groups such as

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<sup>479</sup> Observation of seminar on SGBV, 28 April 2016, NATO Allied Rapid Reaction Corps.

<sup>480</sup> Interview with GENAD, 29 May 2018.

<sup>481</sup> Ibid.



women, children and elderly people".<sup>482</sup> However, the doctrine gives no guidance at all concerning CRSV: anticipating, preventing or responding to it.

At the end of 2015 (after the release of the *Military Guidelines on Conflict-Related SGBV*), a new doctrine on *Military contribution to stabilization and reconstruction* recognised CRSV. It specifies that: "Mission mandates should specifically address gender issues, earmark resources for gender work, and establish accountability and monitoring mechanisms."<sup>483</sup> Nonetheless, the doctrine's directions appear random and disconnected from typical military activities. In terms of *prevention*, it suggests, "specific attention should be paid to investments in the required infrastructure (e.g. forensic laboratories), and human resources needed for the reception of victims".<sup>484</sup> In terms of *protection*, it suggests reviewing and re-drafting constitutions and creating new systems of governance, reform of customary and formal judicial systems.<sup>485</sup> These are not typical military tasks.

In 2016, NATO's capstone document for planning and conducting operations on land (as distinguished from maritime, air or space operations), *Allied Joint Doctrine for Land Operations*, was reissued. Given that almost all of NATO's consideration of WPS has been within the context of land operations, one might expect this doctrine to be a significant resource for embedding into operations new approaches to integrating a gender perspective. It mentions neither gender nor CRSV. Emphasising battlefield manoeuvre and firepower, it positions fighting power and combat as a military's core functions, peppered with quotes from military leaders of past eras. Protecting civilians is referred to only in the sense of "minimal, essential stability tasks".<sup>486</sup>

At the end of 2018, NATO's doctrine on civil-military cooperation was reissued. Compared to the previous version of 2013, it now has a well-developed section on how gender is relevant to analysing the civil environment.<sup>487</sup> The doctrine notes protection of civilians,

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<sup>482</sup> NATO Standardization Office, *Military Contribution to Peace Support* (2014) para. 0337.

<sup>483</sup> *Allied Joint Doctrine for Military Contribution to Stabilization and Reconstruction, Edition A, Version 1* (2015), para. 0309.

<sup>484</sup> *Ibid.*, para. E007.

<sup>485</sup> *Ibid.*, para. E006.

<sup>486</sup> NATO Standardization Office, *Allied Joint Doctrine for Land Operations* (2016) pp. 2–27.

<sup>487</sup> NATO Standardization Office, *Civil-Military Cooperation (2018)*, para. 1.32, 5.8.

children and armed conflict, and WPS as cross-cutting topics. Sexual violence against children is identified as a grave violation, and NATO suggests it can “add value” in reporting violations, supporting monitoring, awareness-raising and training of local forces, and dialogue.<sup>488</sup> The only other suggestion of action related to CRSV, however, is the vague claim that “Deploying gender advisory teams could ... protect [women] from sexual violence”.<sup>489</sup>

Alongside doctrine, NATO sets training standards for nations. In November 2016, a training standard for peace operations was issued. Training objectives to respond to CRSV include:

... knows the obligation to report CRSV when observed, knows the obligation according to UN zero tolerance to report any sexual exploitation and abuse, internally as well as externally ... are able to advise leadership and staff on how to mitigate CRSV, are able to address CRSV in accordance with ROE [rules of engagement] and legal framework ... addresses effectively the procedures to mitigate CRSV in the mission area, applies the mandate of protection as well as prohibition of sexual violence in accordance with regulations ...<sup>490</sup>

This is a mark of progress: detailed and direct coverage of prevention and response to sexual violence in a document that is not specifically about gender or WPS. But, when only three months later a training standard was issued for operations in urban environments, it contained no reference to gender or women.<sup>491</sup> This suggests commitment across NATO structures to engage with WPS and sexual violence was uneven, and there were no coordination mechanisms within NATO able and willing to ensure these issues were reflected in all standards and doctrine. A GENAD said of the doctrine writing “old boys’ club” that “their ability to actually take this on, or willingness to take this on independently isn’t really there.”<sup>492</sup>

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<sup>488</sup> Ibid., para. B-6 – B7.

<sup>489</sup> Ibid., para. 1.33.

<sup>490</sup> NATO Standardization Office, *Training and education for peace support operations* (2016) p. E-6-6.

<sup>491</sup> NATO Standardization Office, *Urban tactics* (2017).

<sup>492</sup> Interview with GENAD, 29 May 2018.

### Slow progress in integrating CRSV in operational planning

A major step forward in translating WPS policy to operations has been the development of “gender annexes” to NATO operational plans. The operational plan for Afghanistan from 2015, for example, contains references to developing training on SGBV.<sup>493</sup> A GENAD working on operational planning for that mission nonetheless underlined gaps in NATO's commitments regarding CRSV:

... they are picking three areas: education and training, reporting, and support to monitoring and security forces assistance. Yeah, but what is the area which is missing? Our response. How do our own operations look like? ... What is in between our arrival and the capacity building and handover of the security response?<sup>494</sup>

The GENAD was highlighting the failure of the *Military Guidelines on Conflict-Related SGBV* to specify any concrete tactical measures by which NATO would prevent, protect from or respond to CRSV. As late as mid-2018, another GENAD explained that, if CRSV is identified as a concern for NATO in a particular area, commanders are asked to “react pre-emptively,” and to consider how NATO can ensure services and effectively communicate with international organisations and with NGOs.<sup>495</sup> But, this was described as “theoretical”; as in, “We certainly aren't quite to that stage yet, we're in the more, just figuring out how we would put this in operational context stage right now, I would say, on our exercises.”<sup>496</sup>

Other GENADs made this point more generally: the gap between political and operational levels in implementing commitments to CRSV. “Translation of political documents into actions on the ground is very difficult.”<sup>497</sup> “The political, the raising awareness or raising the questions, is not physically touching the soldier on foot.”<sup>498</sup> If training is a prerequisite to

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<sup>493</sup> On 1 January 2015, NATO's operation in Afghanistan made a significant transition: from ISAF, which had run since 2003, to Resolute Support Mission. Excerpt from Annex WW to the SACEUR OPLAN 10312 for Resolute Support in Afghanistan (on file with author).

<sup>494</sup> Interview with GENAD, 24 June 2016.

<sup>495</sup> Interview with GENAD, 29 May 2018.

<sup>496</sup> Ibid.

<sup>497</sup> Former NATO IMS GENAD, open (to public) session of the annual conference of NCGP, 4 June 2019.

<sup>498</sup> Interview GENAD, 7 October 2017

being able to address sexual violence in operations: the NATO Mission in Iraq's GENAD described half the NATO personnel as arriving with no gender training, and nations as having an inconsistent commitment to integrating gender.<sup>499</sup> By 2019, there did seem to be some integration of CRSV content into NATO training for ministries and defence institutions in Iraq and Afghanistan.<sup>500</sup> But, a NATO Advisor told me there remained "not much to tell" in terms of people reporting or intervening in sexual violence in operations and missions and, of protection of civilians more broadly, "We are not doing it yet".<sup>501</sup> The Advisor distinguished between NATO's "moral code" and "reality".<sup>502</sup> Progress on incorporating actions around CRSV in NATO's operational planning remains slow and partial.

### Failure to develop a CRSV reporting system

NATO emphasises reporting of conflict-related SGBV as a key element of its institutional response. The *Military Guidelines on Conflict-Related SGBV* direct that "objective, accurate and reliable information on the types of conflict-related SGBV" be collected and reported in a timely manner, including through Periodic Mission Reviews; and that efforts be made to share information on conflict-related SGBV with relevant UN authorities.<sup>503</sup> In his 2017 *Op-Ed*, the NATO Secretary General claimed that to report on CRSV was "now one of the tasks of Nato commanders" and that NATO was developing "a reporting system to record instances of gender-based violence" which NATO soldiers will use "to discern patterns and trends so that they will be able to respond more quickly to prevent potential violence."<sup>504</sup>

NATO staff have for years been trying to develop a common NATO mechanism for reports of CRSV that would allow information to be shared with, for example, the UN or NGOs. But,

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<sup>499</sup> GENAD, Open (to public) session of the annual conference of NCGP, 4 June, 2019

<sup>500</sup> C. Hutchinson, 'NATO Statement in the UN Security Council on conflict-related SGBV' (2019).

<sup>501</sup> Interview with Advisor, 30 May 2018.

<sup>502</sup> NATO session during public seminar on "Conflict related sexual violence and Military Leadership in UN and NATO Operations", Norwegian Defence University College, Oslo, 6 December 2017.

<sup>503</sup> NATO, 'Military guidelines on the prevention of, and response to, conflict-related sexual and gender-based violence', para. 13(a).

<sup>504</sup> Stoltenberg and Jolie, 'Why Nato must defend women's rights'.

reporting CRSV raises concerns about potential implications of the loss of control of sensitive information, including for NATO forces' local relationships and security.

... What happens if you provide a report on sexual violence ... with information like names, streets, with details? This report will ... affect your contingent, will affect your people, your soldiers, while you are deployed ... they didn't want anything restricted to leave their area of responsibility and to go to the ISAF HQ in Kabul and to be an information that could be shared with the Afghan National Police, for example. They didn't want this because ... this will go back to them and they will be punished for this.<sup>505</sup>

Other informants confirmed that nations' concerns around the possible "cultural repercussions" of reporting CRSV and loss of control over sensitive information are "a huge problem".<sup>506</sup> This is why the *Military Guidelines on Conflict-Related SGBV*'s commitment for NATO even to share information with the UN is specified to be "without prejudice to force protection and to the primary requirement of operational security".<sup>507</sup>

In 2016, the format for NATO's six-monthly Periodic Mission Reviews was updated to include parts on conflict-related SGBV.<sup>508</sup> Still, as of October 2017, reports of conflict-related SGBV were not coming up from missions and operations.<sup>509</sup> Efforts have shifted to frame indicators of SGBV as "strategic intelligence requirements" and connect them to higher-profile issues such as hybrid warfare, terrorism and violent extremism.<sup>510</sup> During the 2019 UN Security Council debate on sexual violence, the SGSR WPS said NATO was *still* "working to find better ways to identify and report" CRSV.<sup>511</sup> As will be discussed in Chapter 8, a NATO reporting mechanism concerning SEA is also lacking.

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<sup>505</sup> Interview with former GENAD, 26 April 2018.

<sup>506</sup> Interview with Advisor, 25 May 2018; NATO session during public seminar on "Conflict related sexual violence and Military Leadership in UN and NATO Operations", Norwegian Defence University College, Oslo, 6 December 2017. Confirmed also by Interview with GENAD, 7 October 2017; Interview with Advisor, 30 May 2018.

<sup>507</sup> NATO, 'Military guidelines on the prevention of, and response to, conflict-related sexual and gender-based violence', para. 13(a)3.

<sup>508</sup> Interview with GENAD, 7 October 2017.

<sup>509</sup> Ibid.

<sup>510</sup> Interview with Advisor, 30 May 2018.

<sup>511</sup> Hutchinson, 'NATO Statement in the UN Security Council on conflict-related SGBV'.

### Disconnect between gender mainstreaming and CRSV

As has been highlighted, NATO locates the issue of CRSV within integrating a gender perspective. Gender perspective, in turn, is framed as a tool for operational effectiveness. In practice, this has led to perceived tensions between gender perspective and action concerning CRSV.

NATO consistently frames the use of GENADs in headquarters and operations as the primary mechanism for its “institutionalising” of WPS. GENADs are framed as playing a pivotal role concerning CRSV, including advising on what procedures should be put in place to protect and respond. But, at least in Afghanistan, GENADs reportedly did not regard dealing with CRSV or other human rights abuses as part of their role, and did not, for example, participate in inter-agency sexual violence coordination structures:

When you talk to the Gender Advisors in Kabul, all of them told you the same: ... “We don’t have a mandate to work on human rights abuse or sexual violence ... You only work on implementation of the gender perspective” ... they said that specifically, “We don’t deal with cases of sexual violence. It’s not our job. It is forbidden.”<sup>512</sup>

Even within NATO Headquarters, advising on policy or guidelines to protect women or about CRSV was not regarded as part of a GENAD’s job.<sup>513</sup> This evidences a twisting of gender mainstreaming objectives in their incorporation into NATO operations: taking gender mainstreaming as an inwards-looking strategy to make NATO stronger, but neglecting gender mainstreaming aimed at CRSV or protection or empowerment of local women and girls.

### Conclusions

All of the shortcomings discussed above speak to a deeply rooted problem: that NATO has built its policy and operational engagement with WPS, and likewise CRSV, upon a narrative of *utility*: that integrating gender perspectives is a means by which to increase NATO’s own

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<sup>512</sup> Interview with former GENAD, 26 April 2018.

<sup>513</sup> Ibid.

“operational effectiveness”. This narrative allows WPS and gender to be “inserted” into any priority issue: cyber warfare, counter-terrorism, COVID-19, for example. When applied to CRSV, it implicitly claims that there is alignment between NATO’s strategic aims (operational effectiveness) in any mission and protection of the civilian population from CRSV. As NATO’s Deputy Director of the Operations and Planning Divisions said, “Conflict-related SGBV affects NATO mission’s success ... Empowering and protecting women is not just the right thing to do but the smart thing to do.”<sup>514</sup> In reality, however, NATO mission mandates are not constructed around the protection of civilians. Mission priorities are more likely to be to defeat enemy armed groups in combat, to support particular local forces, to deter terrorism, *et cetera*. This, with the overarching demand to ensure NATO’s own force security, will in many contexts mitigate against prevention and response to CRSV. NATO conflates its strategic interests with the rationale for addressing CRSV, however, when one comes down to the nuts and bolts of deterring CRSV, preventing CRSV and fighting impunity, they do not easily fit together.

Jody Prescott, former Legal Advisor to the NATO-led ISAF in Afghanistan, argued that to meaningfully implement gender mainstreaming would require “expensive and far-ranging ... changes in military systems and policies,”<sup>515</sup> “an extensive and critical re-appraisal of military doctrine, education and training, and intelligence gathering and analysis.”<sup>516</sup> This analysis demonstrates that such far-reaching changes have not occurred. There has been progress in including protection issues within NATO training materials. Doctrine is at least now introducing gender ideas and language to NATO operations, but only partially translating this to concrete responses. There has been institutional progress through the development of GENAD roles, but these individuals remain under-resourced and do not necessarily see CRSV as their responsibility. Most significantly, NATO deploys the language

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<sup>514</sup> NATO organises second workshop on military guidelines on the prevention of, and response to, conflict-related sexual and gender based violence.

<sup>515</sup> Prescott, ‘LOAC and Kinetic Operations’, 30–31.

<sup>516</sup> J. M. Prescott, ‘NATO Gender Mainstreaming: A New Approach to War Amongst the People?’ (2013) 158 *The RUSI Journal* 56–62 at 59.

Chapter 6  
NATO's responses to CRSV

of WPS and gender mainstreaming – even gender equality – without having made a critical reappraisal of the purposes and characteristics of NATO operations.

The following chapter turns to the UK, an important NATO member, to examine how engagement with sexual violence has faced similar and different constraints in a national context. Chapter 8 will return to discussing both NATO and the British armed forces, reflecting upon how in their engagement with CRSV *legal* norms and standards are involved.



## Chapter 7

### The British Armed Forces' responses to CRSV

At its core, the promotion of WPS and PSVI is bringing about a shift in culture and changing people's attitudes. Inevitably, not everyone will agree with the prominence we afford this agenda and some will actively reject its teachings, particularly if some elements do not accord with deeply held cultural or religious beliefs.

MoD written evidence to the House of Lords Select Committee on Sexual Violence in Conflict, 5 February 2016 *Sexual Violence in Conflict: Written and oral evidence* (2016), p. 511.

This chapter explores how the British Armed Forces have since 2005 progressively engaged with the issue of CRSV. The UK is an influential NATO member (currently holding the Chair of NATO's Military Committee), but its engagement with CRSV has followed a different trajectory, as this chapter explores. The findings set out in this chapter will themselves be examined in more detail in chapters 8 and 9, concerning how the British Armed Forces' response to CRSV is shaped by their understandings of international law obligations, by ideas connected to gender, and by their understanding of their strategic priorities.

As with the preceding case study, this chapter opens with an overview of the British Armed Forces' purpose, governance and institutional structure, their major operational engagements since 2005, and a short analysis of how women are integrated. The chapter then, in section 7.2, traces chronologically the British Armed Forces' initiatives to respond to CRSV. This is grounded in original analysis of political declarations, policies and reports; military doctrine, directives, guidelines and procedures; and training and education standards and materials.<sup>517</sup> This documentary analysis is further enriched by insights gleaned from seventeen interviews conducted between 2015 and 2018 with British military personnel, advisors or educators; plus observations of three British military training

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<sup>517</sup> The materials reviewed and details of fieldwork conducted are listed in Annex 3.

sessions and one workshop. Section 7.3 synthesises progress and challenges, drawing out disconnects and congruencies between policy, doctrine and operations.

## 7.1 The British Armed Forces: setting the scene

### The British Armed Forces' purpose and structures

Although not one of the largest militaries globally, the UK ranks in the world's ten top in terms of military spending and its armed forces' conventional war capabilities.<sup>518</sup> The UK has some 191,600 armed forces personnel. Although this top-level figure has remained constant over the last decade, the number of full-time, trained regular personnel has dropped from around 180,000 to around 140,000. Each of the services, but particularly the Army, has been under pressure to reduce numbers. In January 2018, the Armed Forces considered themselves 5.7% below their required workforce.<sup>519</sup> On the civilian MoD side, between 2006 and 2015 staff were reduced from around 110,000 to 58,160, and the Department remains under pressure to reduce staff numbers by a further 30%.<sup>520</sup> This environment of personnel cuts and pressure to save is explained as was often referred to by interviewees as impacting upon the Armed Forces' appetite for engaging with WPS.

Over the last decade, the UK's national security policy has come to emphasise military action as embedded within an overarching political strategy. The 2010 National Security Strategy and 2015 Strategic Defence and Security Review emphasize "integrated action" between defence, diplomacy and development. The concept of "stabilisation" has likewise come to the fore, emphasising that UK overseas engagement be directed toward long term political settlement. Peacekeeping has also enjoyed new political attention, with the 2015 Strategic Defence and Security Review committing to double the UK's commitment to peacekeeping. It has been observed in the past that while the British Armed Forces do

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<sup>518</sup> M. O'Sullivan and K. Subramanian, *The End of Globalization or a more Multipolar World?* (2015).

<sup>519</sup> *Service Personnel Statistics July 2019* (2019); *UK Armed Forces Revised Quarterly Personnel Compendium: 1 May 2009 to 1 October 2011* (2012); National Audit Office, *Ministry of Defence Departmental Overview* (2018) p. 19.

<sup>520</sup> National Audit Office, *A Short Guide to the Ministry of Defence* (2015); National Audit Office, *Ministry of Defence Departmental Overview*.

conduct such “cosmopolitan-like” operations, defence planners prefer “to continue to structure Britain’s military forces for high intensity wartime operations” and “focus their efforts on more traditional war-fighting tasks and capabilities.”<sup>521</sup>

The governance structure for defence in the UK is comprised of a Board, Council and Executive Committee, each a combination of senior military and civilian MoD personnel. These sit under Prime Minister and National Security Council.<sup>522</sup> The Armed Forces themselves are headed by a Chief of the Defence Staff, with a Vice Chief of the Defence Staff (VCDS) as deputy. Command and control of overseas operations sit with Joint Forces Command, responsible also for preparing for operations, preparing “for the future with capabilities and thought leadership” and for joint forces’ education and training.<sup>523</sup>

### The British Armed Forces’ recent operational engagements

Since 2005 the British Armed Forces have been involved in a broad range of types of conflicts in terms of legal contexts: international armed conflict (Iraq) and (internationalized) non-international armed conflict (Afghanistan, Iraq and Syria, depending upon the period in question), occupation (Iraq), peacekeeping (Cyprus and South Sudan) and peace enforcement operations.<sup>524</sup> They also conduct operations in peacetime contexts, as when responding to Sierra Leone’s Ebola outbreak and the Nepal earthquake; and training and advisory missions, as in Afghanistan since 2015. The UK has supported several UN-led peacekeeping missions, notably in Cyprus and South Sudan, although in relatively small numbers; and several EU missions, including in Bosnia and Mali. In recent years, the British Armed Forces’ biggest operations have been in Iraq and Syria, countering Daesh, with significant activities also in Afghanistan and the wider Gulf region. As of early 2019,

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<sup>521</sup> A. Dorman, ‘The United Kingdom (Chapter 14)’ in L. M. Elliott, G. Cheeseman (eds.), *Forces for Good: Cosmopolitan Militaries in the Twenty-first Century*, (Manchester University Press, 2004), pp. 237–49 pp. 242, 246.

<sup>522</sup> ‘Our governance’ (August 2019); National Audit Office, *Ministry of Defence Departmental Overview*.

<sup>523</sup> ‘Joint Forces Command: About us’.

<sup>524</sup> Classification of these conflicts is debatable, of course, and incidental to this project. The current clarifications are drawn from: Colassis and Dörmann, ‘International Humanitarian Law in the Iraq Conflict’; Vité, ‘Typology of armed conflicts in international humanitarian law’; DCDC, *Legal Support to Joint Operations* (2018).

although numbers deployed to each of counter-Daesh operations and Afghanistan was similar (1,100 to 1,200 personnel), expenditure for counter-Daesh operations dwarfed other UK operations.<sup>525</sup> In 2020, it will scale up support to the UN mission in Mali.<sup>526</sup>

The UK is an important contributor to NATO, providing as much as 14% of total NATO capability. The UK hosts two NATO headquarters (the Maritime Command and ARRC, the Allied Rapid Reaction Corps).<sup>527</sup> The British Armed Forces deployed heavily to NATO operations in Afghanistan and Iraq and as of early 2019 had nearly one thousand personnel deployed on NATO missions in Estonia and Poland.<sup>528</sup>

### Women in the British Armed Forces and operations

As at April 2019, the British Armed Forces were 89.4% male and 10.6% female.<sup>529</sup> When compared with the most recent NATO-wide data from 2017, the UK's 10.3% participation of women was below the NATO member average of 11.1%, and significantly less than some of the UK's close military allies: the United States (16.2%), Canada (15.7%), Australia (17.1%).<sup>530</sup> Women's integration into the British Armed Forces has followed different paths within the Army, Navy and Air Force. Women's functional integration has been slowest within the Army - the service most closely involved in the issue of CRSV. It was only in 1992 that the separate Women's Royal Army Corps was disbanded, allowing all women to be recruited through joint processes.<sup>531</sup> As of April 2019, 9.5% of Army personnel, 12% of Army officers, but only 4.2% of senior Army officers were female.<sup>532</sup>

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<sup>525</sup> National Audit Office, *Ministry of Defence Departmental Overview*; Ministry of Defence, *Ministry of Defence Annual Report and Accounts, 2018-2019* (2019).

<sup>526</sup> J. Beale, 'British military steps up West Africa involvement' (2020).

<sup>527</sup> *Indispensable allies: US, NATO and UK Defence relations* (2018) para. 66. Noting that there are a variety of means by which to calculate contribution to NATO: K. H. Hicks and J. Rathke, *Counting Dollars or Measuring Value: Assessing NATO and Partner Burden Sharing* (2018).

<sup>528</sup> Ministry of Defence, *Ministry of Defence Annual Report*.

<sup>529</sup> *UK Armed Forces Biannual Diversity Statistics, 1 April 2019* (2019) p. 5.

<sup>530</sup> NATO IMS, *National Reports to NCGP, 2017*, p. 16.

<sup>531</sup> C. Dandeker and M. W. Segal, 'Gender Integration in Armed Forces: Recent Policy Developments in the United Kingdom' (1996) 23 *Armed Forces & Society* 29-47.

<sup>532</sup> *UK Armed Forces Biannual Diversity Statistics, 1 April 2019*, p. 5.

The ban on women serving in ground close combat roles was lifted only as of October 2018, and gender-free physical fitness standards adopted from April 2019.<sup>533</sup> The exclusion of women from ground close combat roles, and accordingly, the most prestigious regiments, has profoundly shaped and been shaped by how women are perceived within the Army.<sup>534</sup> But, this is not to suggest that women have not been active in operations. Women comprised 2.8% of British forces in the 1990s Gulf War.<sup>535</sup> It is difficult to find detailed data on women's operational deployments since, but, women served in Iraq and Afghanistan as, for example, medics, dog handlers, Royal Military Police, fire support team commanders, engineers, signallers, and in psychological operations; technically "attached to" combat units rather than part of them.<sup>536</sup> Women's combat identities are in flux. Anthony King describes the women who successfully performed *de facto* combat roles in Iraq and Afghanistan over the last decade as having begun to be afforded the status of "honorary men".<sup>537</sup> He sees such women as "treated as gender equals", arguing that "in a highly professionalized military culture, as long as a woman can perform, she might be accepted by male colleagues."<sup>538</sup> Nonetheless, King's interviews with British female personnel attest to their acceptance as equals being contingent on some level of suppression of their femininity, effacement of sexuality, and ability to match men's physical standards. They may be accommodated as individuals with the norms of a masculinized military culture, but those gendered norms are not transformed.<sup>539</sup>

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<sup>533</sup> 'All British Armed Forces roles now open to women'; 'New Physical Employment Standards for the Army'.

<sup>534</sup> Described e.g. in V. Basham, 'Effecting Discrimination: Operational Effectiveness and Harassment in the British Armed Forces' (2009) 35 *Armed Forces & Society* 728–44.

<sup>535</sup> Dandeker and Segal, 'Gender Integration in Armed Forces'.

<sup>536</sup> King, 'The female combat soldier', 122; Berkshire Consultancy, *Qualitative Report for the Study of Women in Combat* (2009) pp. 1, 90.

<sup>537</sup> King, 'The female combat soldier', 126.

<sup>538</sup> *Ibid.*, 126, 132.

<sup>539</sup> See also C. Brownson, 'Rejecting Patriarchy for Equivalence in the US Military: A Response to Anthony King's "Women Warriors: Female Accession to Ground Combat"' (2016) 42 *Armed Forces & Society* 235–42.

## 7.2 Key phases and milestones in the British Armed Forces' engagement with CRSV

This chapter now turns to how the British Armed Forces have engaged with the issue of CRSV. It maps the development since 2005 of policy, institutional structures, doctrine, education and training related to CRSV, and presents examples of how CRSV has been perceived and addressed in recent UK operations. Figure 4 on page 156 illustrates key milestones, set against the key UNSCRs and other commitments concerning military responses to CRSV. The section to follow will synthesise analysis of the key constraints.

### 2006 – 2011: Business as usual

The British MoD was ahead of the curve in 2006 in making a high-level policy commitment to incorporate gender perspectives in military training, doctrine and operations. The UK's first 1325 National Action Plan (NAP), an inter-departmental document developed with MoD input, committed to:

*... undertake audit of gender content of Pre-Deployment Training. Where necessary, develop gender awareness training, and raise awareness of the UN Code of Conduct on personal behaviour. Where appropriate, incorporate gender perspective related training into other military and conflict related personnel doctrines. For example, by the MOD investigating the inclusion of gender considerations in operational planning and training.*<sup>540</sup>

This NAP was developed and formally launched as the "official" first UK 1325 NAP in 2007. The above commitments were expanded to periodic review of the gender content of pre-deployment training and including gender perspectives in military doctrine and planning for peace operations. But defence's training audit concluded nothing further was required: "personnel generally receive sufficient training ... to ensure that they are compliant with the intent of the Resolution".<sup>541</sup>

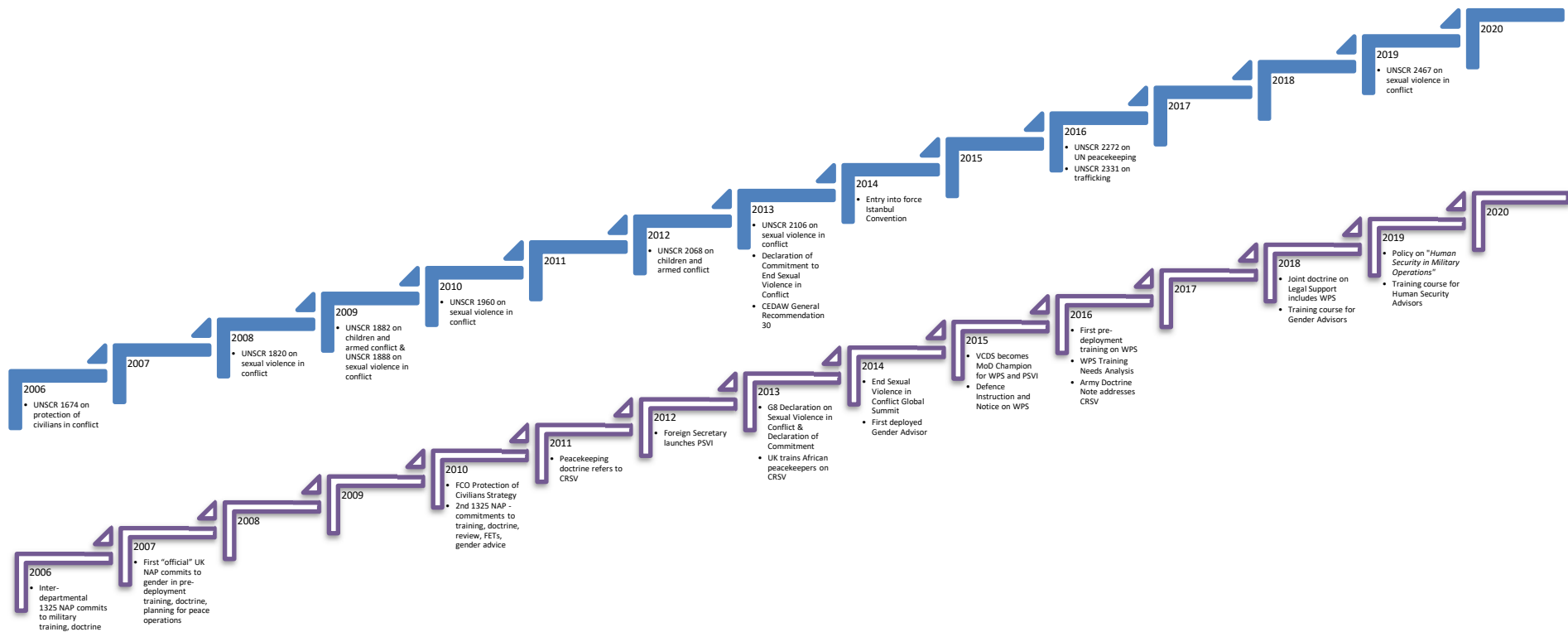
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<sup>540</sup> 'UNSCR1325 – United Kingdom High Level National Action Plan' (2006); A. Long, 'UNSCR 1325 – UK Presentation on National Action Plan' (Warsaw: OSCE, 2007).

<sup>541</sup> *Updates to the UK National Action Plan to Implement UNSCR 1325* (2007) p. 7.

Chapter 7  
The British Armed Forces' responses to CRSV

Figure 4: Key milestones in UN and British Armed Forces policy, directives, doctrine and institutional structures related to CRSV, 2006-2020



Even with a 1325 NAP in place, when the UK issued a new National Security Strategy in 2008, there was but fleeting reference to the WPS Agenda (“promoting the role of women in building peace and reconciliation (including through UN Security Council Resolution 1325”)).<sup>542</sup> The Strategy recognises inequality as fuelling conflict but omits any recognition of gender inequality as either a form of insecurity or a contributing factor. When the National Security Strategy was updated in 2009 and 2010, even this sole reference to 1325 was lost.<sup>543</sup>

By 2010, CRSV had become a more prominent issue for the British Government, which was closely involved in the adoption of UNSCR 1960 (2010) on sexual violence in armed conflict. A cross-Government *Protection of Civilians Strategy* referred to the importance of militaries being responsive to gender-based and sexual violence.<sup>544</sup> An updated 1325 NAP had a stronger emphasis on SGBV, and more extensive commitments by (or directives to) the MoD. The Development Concepts and Doctrine Centre (DCDC) was to review all doctrine to ensure UNSCR 1325 was referenced where appropriate and the principles of WPS “covered”; pre-deployment training and exercises were to include scenarios related to UNSCR 1325; FETs were to be developed, with a particular view to improving military engagement with Afghan women; and a commitment to using “cultural/gender advisors” was made for the first time.<sup>545</sup> Whilst the foregoing might suggest a high level of engagement by the MoD, of the fifty-four country-level actions outlined in the NAP (many in Afghanistan, where British military forces were deployed in large numbers) and fifteen multilateral activities, *none* were to be led by defence.<sup>546</sup> The subsequent *British Defence Doctrine*, the highest level doctrinal guidance for UK forces, mentioned attention to women

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<sup>542</sup> *The National Security Strategy of the United Kingdom: Security in an interdependent world* (2008) p. 34.

<sup>543</sup> *The National Security Strategy of the United Kingdom: Update 2009 - Security for the Next Generation* (2009) p. 73.

<sup>544</sup> *UK Government Strategy on the Protection of Civilians in Armed Conflict*, p. 1.

<sup>545</sup> *UK Government National Action Plan on UNSCR 1325 Women, Peace and Security* (2010) pp. 13–14. Female Engagement Teams were discussed in text at Ch. 6, n 421.

<sup>546</sup> *UK Government National Action Plan on UNSCR 1325 Women, Peace and Security*, p. 43.



as a “vulnerable group” but in the context of “respect for local traditions, customs and practices” - perceptions of which could mitigate against confronting GBV.<sup>547</sup>

The Armed Forces did deploy FETs in Afghanistan from October 2010,<sup>548</sup> but they were not expected to contribute to women’s protection from any kind of violence; their tasking was more aligned with psychological operations than civilian protection.<sup>549</sup> FETs struggled with lack of female linguists, lack of applicable doctrine, insufficient training, difficulties accessing local women and cynical male colleagues. The Army’s internal analysis of FETs’ impact was largely very negative and in 2013 the Armed Forces would move away from using them.<sup>550</sup> The British FET experience for some coloured attitudes to engaging with CRSV and WPS.

### 2012 – 2014: Britain puts CRSV at the forefront of foreign policy

In May 2012, the British Government launched the PSVI (described in Chapter 3), which would come to catalyse a leap forward in defence engagement with CRSV. The PSVI was initially framed in terms of supporting survivors and tackling impunity, rather than prevention and protection,<sup>551</sup> but drew attention to possible roles for militaries concerning CRSV. The *G8 Declaration on Sexual Violence in Conflict, Declaration of Commitment to End Sexual Violence* and Chair’s Summary of the Global Summit would make a range of commitments as concerns military doctrine and training.<sup>552</sup>

Training of British military personnel on gender and CRSV began in 2013 in an *ad hoc* manner, prompted by a training request from Uganda. A one-day “Gender Deep Dive” was delivered to prepare some thirty-five “stabilisation operators” to deliver gender training to

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<sup>547</sup> DCDC, *British Defence Doctrine* (2011) paras 169–170.

<sup>548</sup> Land Warfare Development Centre, British Army, *Female Engagement in Afghanistan* (2011) para. 1; Army Secretariat, ‘Response to FOI request concerning Female Engagement Teams’ (2017) p. 18.

<sup>549</sup> Land Warfare Development Centre, British Army, *Female Engagement in Afghanistan* (2011), para. 18.

<sup>550</sup> Azarbaijani-Moghaddam, *Seeking out their Afghan sisters*, pp. 25, 46; Army Secretariat, ‘Response to FOI request concerning Female Engagement Teams’, pp. 37–38; *United Kingdom National Action Plan on Women, Peace and Security: Final Annual Review* (2013) p. 19,30.

<sup>551</sup> W. Hague, ‘Foreign Secretary launches new Government initiative to prevent sexual violence in conflict’ (2012).

<sup>552</sup> See Ch. 3, text at ns 142-145.

foreign forces.<sup>553</sup> With this foundation, a British Army unit delivered a four-day training-of-trainers for Kenyan military police on female engagement and investigation of sexual offences, and a week-long gender training for Ugandan Army peacekeepers,<sup>554</sup> and subsequently, training at Bosnia Herzegovina's Peace Support Operations Training Centre, and to other African peacekeepers.<sup>555</sup> As there were no systematised British military gender training materials, trainers adopted those developed by other Government agencies, NCGP, NCGM, GAPS UK, civilian advisors and other organisations.<sup>556</sup> Much of this training initially relied upon a single female reservist Army officer plus a handful of civilian consultants.

Through this period, responsibility within MoD Headquarters for WPS sat with a small team that was also tasked with conventional weapons, nuclear proliferation, and the MoD's engagement with the UN, OSCE, NATO and Europe. Staff had no prior experience working on WPS. In early 2014, what was variously called a "Working Group on 1325" or "Defence Gender Community" was initiated, bringing together staff across the three services responsible for human resources, recruitment, equality and diversity. However, the structure was never formalised and was not sustained. Likewise, in 2014 a Defence Implementation Plan on Women, Peace and Security was drafted but never adopted. During the Global Summit in mid-2014, the British Defence Secretary chaired a session, but there was minimal visible participation of British military personnel.

The UK's third WPS NAP, for 2014-2017, was for the MoD more ambitious and better aligned with NATO's approaches. CRSV was now a stand-alone priority, with the MoD committed to design and deliver "projects" on preventing sexual violence.<sup>557</sup> The NAP also re-committed to using GENADs, and an officer deployed with the UN mission in the DRC

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<sup>553</sup> L. C. K. Knell, M. R. Grimes, and M. K. McCourt, 'Gender in the military - locating the "G" spot' (2014) 22 *Gender & Development* 173–77.

<sup>554</sup> *Ibid.*

<sup>555</sup> *United Kingdom National Action Plan on Women, Peace and Security: Final Annual Review*, p. 34; *Evaluation of the National Action Plan on Women, Peace and Security: Baseline Study* (2015) p. 35; *United Kingdom National Action Plan on Women, Peace and Security, 2014–2017: Report to Parliament* (2015) p. 56, WPS Agenda in the British Armed Forces, Knowledge Exchange Workshop, 22 May 2017, MoD Headquarters, London.

<sup>556</sup> Knell, Grimes, and McCourt, 'Locating the 'G' spot', 175.

<sup>557</sup> *United Kingdom National Action Plan on women, peace and security, 2014–2017* (2014) p. 13.

was nominated Gender Field Advisor. Still, when the overarching *British Defence Doctrine* was re-issued in November 2014, it referred to the WPS NAP merely in a footnote and repeated its questionable linking of women as a “vulnerable group” and “respect for local traditions, customs and practices”.<sup>558</sup>

A WPS NAP assessment was conducted in the first months of 2015 found that the MoD still had no standalone gender or WPS guidelines or strategies. It questioned the effectiveness and coherence of the overseas training being delivered on gender issues, observing the lack of training on WPS in mainstream military curricula. In Afghanistan, Britain’s most significant military training mission, there appeared to be no institutionalised training or capacity development on CRSV.<sup>559</sup>

### 2015 – 2018: Leadership and gradual progress

In April 2015, a stronger leadership structure for WPS was put in place with the establishment of a senior-level defence Steering Group on WPS, to meet bi-annually.<sup>560</sup> It was chaired by Lt. General Gordon Messenger, Vice Chief of Defence Staff, the second-most senior individual in the Armed Forces. General Messenger took up the role of MoD Champion for WPS and the PSVI. This, finally, triggered a seismic shift in the profile of WPS within the MoD and Armed Forces. During the UN High-Level Review of SCR 1325 in October 2015, General Messenger committed that within one year all UK troops to deploy on overseas missions would receive training on WPS and preventing sexual violence; all future relevant military doctrines would be “gender-sensitive (where appropriate and applicable)”; to “grow and strengthen the pool of gender advisors within the MoD” and to strengthen UK overseas training of foreign troops.<sup>561</sup> The Chief of the Defence Staff issued a

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<sup>558</sup> *British Defence Doctrine* (2014) p. 48.

<sup>559</sup> *Evaluation of the National Action Plan on Women, Peace and Security: Baseline Study*, pp. 15, 21, 35.

<sup>560</sup> *United Kingdom National Action Plan on Women, Peace and Security, 2014–2017: Report to Parliament*, p. 5.

<sup>561</sup> NATO, *Summary of the National Reports of NATO Member and Partner Nations to the NATO Committee on Gender Perspectives 2015*, p. 171.

Defence Instruction and Notice on WPS.<sup>562</sup> The UK's 2015 National Security Strategy included new sections dedicated to WPS and the PSVI, and linked women's rights and stability:

... equality of opportunity, including the empowerment of women and girls, are the building blocks of successful societies. They are part of the golden thread of conditions that lead to security and prosperity. Their absence limits opportunities for the individual and drives resentment, political instability and conflict. Ensuring that rights are protected and respected is essential in order to tackle the root causes of conflict and to promote better governance.<sup>563</sup>

Although these references in the National Security Strategy are brief, they had a significant impact, "cascading down to National Security Council strategies" and therefore programmes and funding mechanisms for international work.<sup>564</sup>

Still, day-to-day MoD responsibility for WPS remained until 2018 with a small, overstretched and at times sceptical team.<sup>565</sup> Take-up of WPS or CRSV initiatives was perceived as "reliant on goodwill and personal perspectives".<sup>566</sup> Even with such limited headquarters resources, there were steps forward in developing GENADs and in education and training, outlined below.

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<sup>562</sup> Not publicly available but noted in *Report Endline Evaluation: The UK National Action Plan on Women, Peace and Security 2014-2017* (2017) p. 28.

<sup>563</sup> *National Security Strategy and Strategic Defence and Security Review 2015: A Secure and Prosperous United Kingdom* (2015) para. 1.6, see also paras. 5.106, 5.112-5.115..

<sup>564</sup> *Report Endline Evaluation: The UK National Action Plan on Women, Peace and Security 2014-2017*, p. 5.

<sup>565</sup> The team's leader admitted the MoD had been "sceptical" about funding WPS training for its own forces: Defence Gender Training of Trainers course, Worthy Down Barracks, Hampshire, 25-28 January 2016. Fresh impetus was given in 2018 when leadership of the WPS team was reclassified from a civilian to a military post. The new incumbent was the Army officer who had in 2014 worked as a Gender Field Advisor, then with the UN.

<sup>566</sup> WPS Agenda in the British Armed Forces, Knowledge Exchange Workshop, 22 May 2017, MoD Headquarters, London.

### *GENADs*

Commitments to develop and use GENADs had been made in 2010, 2014 and 2015, and in 2016 the MoD committed to using GENADs on *all* UK missions overseas.<sup>567</sup> In mid-2016, a WPS Training Needs Analysis (TNA) was published - the first substantial piece of documentation the MoD produced on WPS. It emphasized the need for capability to recognise and respond to CRSV; for example, training for all personnel on indicators of CRSV and integrating gender perspectives into patrol and deterrent tasks; training exercises to simulate scenarios where opposing forces use CRSV as a battlefield tactic.<sup>568</sup> The TNA estimated that the Armed Forces needed 50 GENADs and 221 Gender Focal Points,<sup>569</sup> and recommended GENADs be trained to mitigate SGBV through prevention, protection and reporting.<sup>570</sup>

The GENAD role was only slowly developed; by 2018, there were still fewer than ten.<sup>571</sup> Some contingents, including that deployed to South Sudan, did appoint a Gender Focal Point.<sup>572</sup> In others, at times this was perceived to be at the cost of another necessary function. As one officer said, "So hang on, I've now got a Focal Point or Advisor in the company, yeah, but that means someone else has got to go ... the person who's qualified in driving a truck, or qualified in using this weapon system or is my French speaker."<sup>573</sup> One GENAD who had deployed with units going to West Africa, East Africa and Ukraine described how she supported the forces to understand the UK's strategic framework around human rights and gender and helped them conduct human rights assessment of the mission area.<sup>574</sup>

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<sup>567</sup> Secretary of State for Foreign and Commonwealth Affairs, *Government Response to the Report of the House of Lords Sexual Violence in Conflict Committee* (2016) p. 41.

<sup>568</sup> Ministry of Defence, *Women, Peace and Security Training Needs Analysis* (2016) p. E3\_6 - E4\_2, F\_1.

<sup>569</sup> *Ibid.*, p. iv.

<sup>570</sup> *Ibid.*, p. E-1-11.

<sup>571</sup> NATO IMS, *National Reports to NCGP, 2017*, p. 253.

<sup>572</sup> UK National Action Plan on Women, Peace and Security, 2018-2022: *Annual Report to Parliament 2018* (2018) pp. 9, 28.

<sup>573</sup> Interview with Army doctrine writer, 26 June 2017.

<sup>574</sup> Interview with GENAD, 26 June 2018.

GENAD and Focal Point training remained *ad hoc* until a course for “Gender and Protection Advisors and Focal Points” was launched at the end of 2018. This course was designed to be offered to overseas as well as British personnel, and in its first run, there were thirty British and twelve international students.<sup>575</sup> It framed gender – using the NATO concept of “integration of a gender perspective” and NATO definition of “gender analysis” - as a unifying concept for focusing upon the participation of women and CRSV, as well as child protection, human trafficking, refugees, and protection of civilians more broadly. CRSV was a key topic, covered on the second day through a combination of lecture and small group work.<sup>576</sup>

### *Education and training*

Although progress was initially sluggish, training of British and foreign troops on CRSV would come to be seen as the primary defence contribution to the PSVI.<sup>577</sup> The following reviews integration of CRSV and WPS in pre-deployment, across-the-board and overseas training.

#### Pre-deployment training

In advance of the focus that the PSVI brought, CRSV was apparently touched upon in some pre-deployment training. In the wake of media attention to *bacha bazi*, some - although not all - soldiers deploying to Afghanistan received training on obligations under IHRL.<sup>578</sup> General Messenger's commitment that the PSVI would be part of pre-deployment training by November 2016 put the Army's Mission Training and Mobilisation Centre (MTMC) in a difficult position. It needed to develop training on CRSV quickly, but without a formal command to do so, nor the usual defence systems approach to training processes being

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<sup>575</sup> *UK National Action Plan on Women, Peace and Security, 2018-2022: Annual Report to Parliament 2018*, pp. 2, 17.

<sup>576</sup> PowerPoint “Day 1 Overview and Human Terrain Terms and Definitions” (on file with author).

<sup>577</sup> *The UK's Preventing Sexual Violence in Conflict Initiative: Joint Review (2020)* p. 12.

<sup>578</sup> Observation of Defence Gender Training of Trainers course, Worthy Down Barracks. Soldiers I spoke with in November 2016 who had previously deployed to Afghanistan said CRSV had never before been directly addressed in their training (see n 580). *Bacha bazi* was explained: see Ch.5 n 339.

followed.<sup>579</sup> MTMC's session on "Gender, Sexual Violence and Exploitation (GSVE) on Operations" was first delivered in March 2016 for a contingent about to deploy to South Sudan - the UK military's first institutionalised training on CRSV and WPS. It was a forty-five minute scripted series of PowerPoint slides, to which were added practical serials within mission rehearsal exercises.<sup>580</sup> The presentation emphasised, first, the high political profile of CRSV, signified by an image of Angelina Jolie and William Hague. Second, the risk of reputational damage: "The importance of the subject is to avoid international/UK headlines blaming UK soldiers for failing to adhere to the relevant guidelines and failing to act." Trainees were given a pocket-sized booklet with references to the UN and NATO frameworks, checklists for analysis and planning, and a template for reporting incidents. Both the PowerPoint session and the booklet presented "5 Rs" to guide response to CRSV, extracted in Table 2 on page 165.<sup>581</sup> This was a proactive positioning concerning CRSV, clearly envisioning the potential for offensive UK action against perpetrators, direct engagement with (even transport of) victims, and documenting the scene (presumably for future investigation). These messages were emphasised by the trainer, who referred, for example, to providing first aid, food, water and clothing to victims of sexual violence and taking photographs or videos as evidence.

It is difficult to assess how consistently and well this pre-deployment training was delivered, and what impact it had. Discouragingly, in mid-2018, a GENAD commented:

... when I deploy on the ground, I do not meet British soldiers who actually really get this [WPS] yet ... it's a PowerPoint presentation on day three of five days of PowerPoint presentations. When I speak to people, they're like, "I think I heard something about that at MTMC" ... It's not actually good enough for people to really understand it.<sup>582</sup>

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<sup>579</sup> Interview with developer of pre-deployment training, 1 November 2016.

<sup>580</sup> I observed this mission-specific pre-deployment training of an Army contingent soon to deploy to Afghanistan at Napier Barracks, Kent, 2 November 2016. I conducted interviews with five of the trainers and a focus group with nine trainees.

<sup>581</sup> PowerPoint presentation "Gender, Sexual Violence and Exploitation (GSVE) on Operations," Napier Barracks, Kent, 2 November 2016.

<sup>582</sup> Interview with GENAD, 26 June 2018.

### Across the board training and education

In terms of understanding how core training requirements are set, and where WPS needs to be inserted for it to become integrated, I was consistently referred to the Military Annual Training Test (MATT) on Operational Law. This is the Armed Forces' core training on the law of armed conflict (LOAC). It must be completed yearly by all deployable personnel and includes modules on investigations and accountability, captured persons and use of force.<sup>583</sup> The WPS TNA had in 2016 identified the need for new content to be added to the

**Table 2: The British Armed Forces' 5 Rs to guide response to CRSV**

<p><b>REFRAIN</b></p> <p>Follow the rules on Sexual Exploitation &amp; Abuse and refrain from acts that may do harm – buying sex is prohibited. Respect the rights of other genders.</p>
<p><b>REACT</b></p> <p>React by intervening and deterring if safe to do so. Deter future crimes with your responses by active patrolling such as patrolling market places, water/firewood collection points and other places frequented by women ...</p> <p>Including female peacekeepers.</p> <p>Bring the survivor of the crime of sexual violence to safety and inform of referral system and assistance.</p>
<p><b>REPORT</b></p> <p>Report immediately to your chain of command to allow swift reporting however maintain confidentiality as best as possible.</p> <p>Start documenting the event and if possible take photographs/videos but not of the victims.</p> <p>It is important to know who to speak to beyond your own immediate chain of command ... NGOs, DfID ...</p>
<p><b>REFER</b></p> <p>Develop a referral network of trusted organisations ... Ensure support is victim centered and confidential.</p>
<p><b>RESPOND</b></p> <p>Mount operational response – offensive or defensive reaction as required or directed by higher. Will require SA [coordination] and assistance of key actors.</p>

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<sup>583</sup> S. Doughty, *Written Question to Parliament - International Law: Training* (2016).



MATTs on gender perspectives. As of January 2019, although there were apparently plans to include CRSV in the MATT on Operational Law, and SEA in the MATT on values and standards, this still had not happened.<sup>584</sup> (The British Armed Forces' approach to SEA will be discussed in more detail in Chapter 8.)

To integrate WPS and CRSV into military education, a key site is the Defence Academy, which delivers postgraduate courses as well as extended training for more senior officers and leaders. In 2015, with the WPS TNA underway, course directors were tasked to incorporate WPS into their teaching.<sup>585</sup> However, "resource constraints" and "competing requirements" set plans back, such that the direction became "just including WPS 'as and when'".<sup>586</sup> With staff already feeling that their courses were "overloaded", adding WPS was resisted by some.<sup>587</sup> The result is usually just one gender lecture or workshop in a course, as well as one course offering an elective non-assessed gender module.<sup>588</sup> At Sandhurst, which trains Army officers, scenarios were developed for cadets around "increase[ing] the participation between civilian women and military personnel."<sup>589</sup> It has not been possible to review the materials for all of this training. However, Army Learning Development Officers, whose role it is to introduce WPS into the education and training of soldiers, have said that they themselves did not understand WPS, nor the rationale nor context for training on it, and this made it difficult to "sell" to soldiers.<sup>590</sup>

### Overseas training

Despite the paucity of the UK's own WPS education and training offer, from 2015 it ramped up the focus on CRSV in its overseas training. Training on gender, protection of civilians and PSVI-related issues was delivered by British military "gender experts" to Kurdish Security

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<sup>584</sup> Observation of Officer Tutors' training on gender and WPS, 14 January 2019.

<sup>585</sup> Interview with staff member of military college, 2 August 2018.

<sup>586</sup> WPS Agenda in the British Armed Forces, Knowledge Exchange Workshop, 22 May 2017, MoD Headquarters, London.

<sup>587</sup> *Ibid.*

<sup>588</sup> Interview with staff member of military college, 12 June 2018; interview with staff member of military college, 2 August 2018.

<sup>589</sup> *UK National Action Plan on Women, Peace and Security, 2018-2022: Annual Report to Parliament 2018*, p. 29.

<sup>590</sup> Observation of Officer Tutors' training on gender and WPS, 14 January 2019.

Forces (Peshmerga) and coalition partners in Iraq to increase understanding of how to respond to civilians and CRSV in the battle against Daesh. After an initial pilot phase, all British trainers deployed to Iraq were trained to deliver these modules and gender/protection/the PSVI was adopted as a core training objective for Kurdish infantry training courses.<sup>591</sup> In Afghanistan, British mentors now delivered or supported training on “PSVI ... women’s rights in the context of international law, Islamic attitudes, including towards women and the rights of the family, and the role and equality of women in contemporary Afghan society”.<sup>592</sup> In Africa, Britain provided gender and/or SGBV training to personnel from a range of African countries contributing troops to AU and UN missions.<sup>593</sup> By the end of 2016, the British Armed Forces had provided some sort of training on sexual violence to over 10,000 African peacekeeping military and police personnel.<sup>594</sup>

Much of this international training was developed by individual trainers with little oversight from MoD. A civilian working with one of the British military training bodies highlighted serious problems with the CRSV/WPS training being delivered: lack of assessment of training needs, poor pedagogy (“classroom rote-type learning”), variable content and quality, lack of reference to the international legal framework, lack of expertise within the military to deliver the training (trainers having themselves often had no training on human rights, protection of civilians, gender or CRSV), lack of understanding of the contexts they were training for, and failure to evaluate the training’s impact - even whether the trainees ever deploy. Although CRSV/WPS training was paid for and reported as if delivered by

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<sup>591</sup> *United Kingdom National Action Plan on Women, Peace and Security, 2014–2017: Report to Parliament* (2015) p. 16-17.

<sup>592</sup> House of Lords Select Committee on Sexual Violence in Conflict, *Written and oral evidence*, p. 512.

<sup>593</sup> *United Kingdom National Action Plan on Women, Peace and Security, 2014–2017: Report to Parliament*, p. 54; *United Kingdom National Action Plan on Women, Peace and Security, 2014–2017: Report to Parliament* (2016) p. 8; *UK National Action Plan on Women, Peace and Security, 2014–2017: Report to Parliament* (2017) pp. 9, 11.

<sup>594</sup> *United Kingdom National Action Plan on Women, Peace and Security, 2014–2017: Report to Parliament*, p. 10.

British personnel, it was often developed and delivered by local partner military personnel with the UK having limited influence over quality.<sup>595</sup>

### *Operational directives and orders*

It is evident from the foregoing that under General Messenger's leadership, significant milestones were reached in building UK military capacity on CRSV: pre-deployment training was in place, WPS was being addressed in mainstream education and training (albeit to variable quality), training on CRSV was being offered to foreign militaries and a course for GENADs had commenced. Each of these achievements was hard-won. Still, there remains a question mark over the impact that this had on operations. At the end of 2018, a GENAD told me, "I am very sceptical about the high-level vocalisation of what the military is doing, and actually what is happening on the ground ... I don't think the military is doing anything to prevent sexual violence in conflict."<sup>596</sup> Another that "people won't take it up seriously until it's clearly in orders."<sup>597</sup>

Several interviewees pointed to the importance of each operation or mission's directive or orders, which determine its objectives and tasks.<sup>598</sup> Operational orders are classified so could not be directly reviewed. Interviewees' views on whether CRSV is referenced in them were contradictory. A DCDC staff member claimed that mission and operational directives *do* now include CRSV and WPS: "... if the mission is to support training in Africa ... WPS issues will be pretty central to it. If it's counter-piracy missions ... you will see guidance on dealing with children or dealing with women."<sup>599</sup> Conversely, in 2017 an Army trainer said that because gender was not written into mission objectives, there were no mechanisms to measure the effect of any gender training done.<sup>600</sup> The following year, a GENAD said that

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<sup>595</sup> WPS Agenda in the British Armed Forces, Knowledge Exchange Workshop, 22 May 2017; interview civilian advisor to British international training centre, 5 June 2017.

<sup>596</sup> Interview with GENAD, 28 November 2018

<sup>597</sup> Interview with GENAD, 26 June 2018.

<sup>598</sup> The NATO case study noted that a "gender annex" to an operational order as a significant tool in ensuring planners and those in the mission consider gender. See Ch. 6, text at n 493.

<sup>599</sup> Interview with Legal Advisor at doctrine writing centre, 12 June 2018.

<sup>600</sup> WPS Agenda in the British Armed Forces, Knowledge Exchange Workshop, 22 May 2017, MoD Headquarters, London.

whether and how to include gender in operational orders was still “under discussion” at senior levels.<sup>601</sup> Another GENAD told me:

... sometimes the military piggy-backs off what the other two departments [DfID and FCO] are doing without necessarily tangibly enacting anything themselves. I'd be really interested to know how many military orders have been delivered with a conflict-related sexual violence factor in the planning. I think the answer is none.<sup>602</sup>

If this is the case, it suggests a serious gap between the training on CRSV being delivered to British personnel, and what they are tasked to do when deployed.

### 2019: Dawn of a human security approach

At the opening of 2019, the British Armed Forces' structures for engagement with WPS and CRSV were transformed. A WPS “statement of policy” was finally released in the form of an 84-page Joint Service Publication titled *Human Security in Military Operations*. *Human Security in Military Operations* is “not doctrine” but seen as something that “might lead to doctrine in future”.<sup>603</sup> Part 1 of the document is labelled “policy”, Part 2 “guidance”. WPS, CRSV children and armed conflict, and trafficking and slavery, are the policy references for its new “human security” approach, which is intended to be applied at every level in any military operation.<sup>604</sup> GENADs are replaced with “Human Security Advisors”, the first training for whom was delivered in June 2019.<sup>605</sup>

*Human Security in Military Operations* explains what human security means for the military as protection from physical violence but also wider issues: “how the military can contribute to the empowerment and access to equal rights for women and girls; the prevention of conflict and human rights violations”.<sup>606</sup> It describes the protection of civilians as an expectation in *all* operations, including during armed conflict, failure of which will

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<sup>601</sup> Interview with GENAD, 26 June 2018.

<sup>602</sup> Interview with GENAD, 28 November 2018

<sup>603</sup> Observation of Officer Tutors' training on gender and WPS, 14 January 2019.

<sup>604</sup> Ibid.

<sup>605</sup> Ministry of Defence, *JSP 1325 Pt 2 (2019)*, pp. 36–38.

<sup>606</sup> Ministry of Defence, *Human Security in Military Operations, Part 1: Directive (2019)* p. 2.

undermine other objectives.<sup>607</sup> After this strong conceptual opening, the document has surprisingly little content on *how* the military should provide protection. It identifies a wide range of issues as important to consider and encourages analysis through, for example, needs assessment and participatory data collection; but it largely fails to then connect the issues to military/security tasks. For example, *Human Security in Military Operations* has a long section on best practice in managing IDP camps, but nothing on providing security for them. It lists the UNSCRs on children and armed conflict but does not unpack what it means to say that militaries should “respond to girls and boys affected by armed conflict”.<sup>608</sup>

CRSV is presented as one of the issues the policy on human security is built around. It recognises that addressing sexual violence is a departure from traditional military roles:

From Nigeria to Syria we see how the bodies of women and girls through kidnapping and rape have become an extension of the battlefield ... Although now a familiar aspect of conflict, considering and responding to sexual violence and the impact of conflict on children is not traditionally viewed as military business, even though the military are often the first international actors on the ground.<sup>609</sup>

But, comparing *Human Security in Military Operations* with the 2016 pre-deployment training and Army doctrine from that period, references to tactical interventions to prevent CRSV or to reporting CRSV have dropped away. In the “guidance” half of the policy, there is no section on CRSV. CRSV is placed under a heading “protection through participation”, wherein strengthening protection refers not only to women and girls’ physical security but to their mental security, human rights and dignity. Indeed, the paragraph on CRSV ends on a note that might deter action: “The range and complexity of underlying causes and the many resulting consequences of sexual violence make it a difficult issue to address.”<sup>610</sup>

Britain’s new human security framing is a clear departure from the established NATO approach to WPS; that shared by close allies such as Australia and Canada; and approaches

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<sup>607</sup> *Ibid.*, p. i.

<sup>608</sup> *Ibid.*, p. 39.

<sup>609</sup> *Ibid.*, p. i.

<sup>610</sup> *Ibid.*, p. 16.

within UN and EU Missions, all of which have institutionalised GENADs. It is also a departure from approaches to CRSV and GBV in other UK departments working on these issues internationally, which are said to “take issue with the MOD’s use of ‘human security’ as masking the gendered nature of sexual violence”.<sup>611</sup> British GENADs describe the shift from WPS to human security as an effort to overcome the difficulty of gender and WPS language for British military audiences. “Gender” is perceived as too confusing in part because it may be conflated with accommodating people of different gender identities in the military.<sup>612</sup> A WPS framing is perceived as attracting too much resistance as a feminist agenda. As a trainer explained:

“Next period is on Women, Peace and Security” - I believe they would be lost already. They would just switch off. They would perceive that ... as some sort of feminist agenda and questioning what is the relevance, as opposed to seeing it as a military capability that needs to be embraced.<sup>613</sup>

Whilst these are negative reasons for moving away from WPS and CRSV as a policy focus, there was also a more constructive rationale. One GENAD explained that engagement with the issues of WPS and CRSV has helped defence to realise that it needs doctrine and training not only on those issues but on the protection of civilians, child protection, child soldiers, human trafficking and modern slavery. It is perceived that terminology around human security will both resonate better with a British military audience and conceptually be a more coherent framing for wider issues that defence wants to address.<sup>614</sup> In terms of challenging militaries to think more deeply about conflict and their role, this shift toward articulating a human security approach for the Armed Forces might be a transformative opportunity. Yet, as highlighted above, at present what it means in terms of military tasking (and thus doctrine and training also) remains cloudy. Moreover, the overarching challenges

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<sup>611</sup> *The UK’s Preventing Sexual Violence in Conflict Initiative: Joint Review*, p. 15.

<sup>612</sup> E.g., Interview with GENAD, 28 November 2018; Interview with GENAD, 3 September 2018.

<sup>613</sup> Interview with developer of pre-deployment training, 1 November 2016.

<sup>614</sup> Interview with GENAD, 28 November 2018.

to firm action on WPS and CRSV, described below, might well hold back progress on implementing a human security approach.

### 7.3 Key constraints and shortcomings

Analysis of British Armed Forces' engagement with the issue of CRSV over the last fifteen years reveals two challenges and two persistent shortcomings: confusion and resistance concerning the foundational values and concepts; complacency; weak integration of WPS and CRSV in doctrine; and the long delay in establishing mechanisms of institutionalisation. These are explored in more detail below.

#### Conceptual confusion and contestation

A range of conceptual clashes has followed the British Armed Forces' engagement with the WPS Agenda, which has, in turn, weakened its substantive focus on CRSV. First, there is a persistent, although quietly spoken, perceived conflict between gender mainstreaming and cultural sensitivity. The idea of deploying cultural knowledge in military operations came to the fore in the wars in Afghanistan and Iraq.<sup>615</sup> British Defence Doctrine argues: "Force used in another country needs to reflect the highest morals and ethics of the culture to which it is being applied if campaign authority is to be maintained. This implies respect for local traditions, customs and practices ..."<sup>616</sup> WPS in military operations was early framed as one aspect of cultural understanding.<sup>617</sup> This shaped a non-intervention stance as regards violation of women's rights and confronting GBV. FETs' guiding doctrine, for example, emphasised, "we should never seek to influence the values of the indigenous culture and their attitudes towards the rights of women".<sup>618</sup>

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<sup>615</sup> M. McFate, *Military Anthropology: Soldiers, Scholars and Subjects at the Margins of Empire*, 1 edition ed. (Oxford University Press, 2018); N. Manchanda, 'Queering the Pashtun: Afghan sexuality in the homo-nationalist imaginary' (2015) 36 *Third World Quarterly* 130–46.

<sup>616</sup> *British Defence Doctrine*, paras 169–170, with the language on "respect for local traditions, customs and practices and appropriate attention to the needs of ... vulnerable groups, such as women" unchanged in the 2014 version.

<sup>617</sup> *UK Government National Action Plan on UNSCR 1325 Women, Peace and Security* (2012) p. 11.

<sup>618</sup> Land Warfare Development Centre, British Army, *Female Engagement in Afghanistan* (2011), para. 1.

Contestation between deference to local practice and challenging CRSV was evident in reactions to pre-deployment training of a group about to deploy to Afghanistan.<sup>619</sup> The soldiers were extremely sensitive to the difficulty of proactive response to CRSV where Afghan military or police personnel were involved, and the risk of friction with the host nation. One said, "There, it's an eye for an eye. If you report someone, you could end up with a bullet in your head." Some described having seen "chai boys"<sup>620</sup> standing by the road, and having been told not to respond, to keep going, as it would cause too much conflict with locals if one confronted the boy or told locals that what they were doing was wrong. The soldiers saw contradictions between being told to build up trust and respect local culture and being told to intervene on CRSV. One asked, "What's the borderline with culture? For example, if girls are getting married to old men at 13 years old? What do we enforce?" Another said, "We are not going to Afghanistan to stop sexual exploitation. We've got our own job to do. If it's not your business don't make it your business."

A second area of conceptual confusion (and as highlighted above, part of the rationale for the shift to "human security") was between the "external" dimensions of incorporating WPS commitments in operations (such as tactics to prevent CRSV) and issues "internal" to the British forces, such as gender equality, sexual assault and rights of transgender personnel. Efforts to secure MoD policy on WPS coincided with the decision to lift the ban on women serving in ground close combat roles.<sup>621</sup> At times gender perspective was misconstrued as relating to this or implying quotas for female personnel.<sup>622</sup> An external evaluation of the WPS NAP noted that senior officers could not distinguish between work on WPS and work on workforce diversity.<sup>623</sup> Those working on WPS at times saw any focus on personnel dimensions as risking progress on operational dimensions. The individual who led the development of CRSV pre-deployment training described making WPS "... as distinct

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<sup>619</sup> I observed this mission-specific pre-deployment training in November 2016: see n 580. Quotes are from notes of the focus group held afterwards.

<sup>620</sup> See Ch.5 n 339.

<sup>621</sup> Ministry of Defence UK, 'Ban on women in ground close combat roles lifted' (July 2016); *National Security Strategy and Strategic Defence and Security Review 2015: First Annual Report* (2016).

<sup>622</sup> Draft Learning Specifications for Senior Non Commissioned Officers, 2018 (on file with author).

<sup>623</sup> *Report Endline Evaluation: The UK National Action Plan on Women, Peace and Security 2014-2017*, p. 29.



as possible, otherwise people will just associate it with more G1 equality nonsense that we've got to jump through."<sup>624</sup> Still, it is clear that omitting discussion of the relationships between women's participation and WPS capabilities did not forestall confusion and resistance, and a clear leadership narrative on this was lacking.

### Complacency and over-confidence

The British Armed Forces engagement with WPS has been hampered, secondly, by a robust sense of "nothing needed". As a GENAD described:

... people think that we're already doing it, but they don't know what it is that we're doing, but they think we've been doing it well ... we're the dog's bollocks at this. But, then, yet if you were to say to them, "Well, what are we really good at?" they'd probably scratch their heads and say, "Oh, I don't know, I just feel like we're doing some good."<sup>625</sup>

Even back in 2007, a defence training audit concluded that nothing further was required on WPS or SEA; that "the UK Armed Forces were fully compliant through existing training provisions, as well as with the UK's own values and standards"<sup>626</sup> (As will be discussed in Chapter 8, this confidence that British values and standards are sufficient to guard against sexual misconduct persists.)

The British Armed Forces have projected this posture of confidence and innate capability on WPS internationally. This is evidenced in their willingness, as early as 2013, to train a range of African as well as Kurdish forces in WPS, CRSV, SEA, whilst having no, or extremely *ad hoc*, training of their own forces. Some Gender Focal Points apparently had as little as half a day's training on gender/WPS themselves before delivering training for foreign peacekeepers.<sup>627</sup> It is evidenced by Britain deploying GENADs in advance of any formal structure for their role or training. In 2017, General Messenger asserted Britain's leadership

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<sup>624</sup> Interview with developer of pre-deployment training, 1 November 2016.

<sup>625</sup> Interview with GENAD, 3 September 2018.

<sup>626</sup> *Updates to the UK National Action Plan to Implement UNSCR 1325*.

<sup>627</sup> Interview with civilian advisor to British international training centre, 26 October 2017.

on the global stage, launching a "WPS Chiefs of Defence Staff Network".<sup>628</sup> As will be highlighted below, at this point the Britain Armed Forces had no policy or strategy for WPS.

### Uneven integration of CRSV into doctrine

As with NATO, doctrine development seems to be one of the processes most resistant to WPS and CRSV, despite as far back as 2006 being identified as a priority. Even in mid-2018 DCDC staff claimed not have received "any formal tasking as such" to take account of CRSV and the WPS Agenda in doctrine.<sup>629</sup> "Doctrine" has the same meaning in the British as the NATO context: "... fundamental principles by which military forces guide their actions ... conduct themselves on operations."<sup>630</sup> The content of doctrine should shape the syllabus in staff courses, and cascade down through planning, exercises and operations.<sup>631</sup> Doctrine that applies to all services – the Army, Air Force and Navy ("joint doctrine") is developed by DCDC, "the MoD's think tank".<sup>632</sup> Doctrine is also developed within each of the Army, Air Force and Navy. Importantly, as the UK is part of NATO, all NATO doctrine also applies to the UK, with DCDC staff involved in drafting and approving it.<sup>633</sup>

In 2011 small references to CRSV and WPS began to appear in British doctrine. A Doctrine Note on peacekeeping referred to UNSCRs 1325 and 1888. It highlighted CRSV as a protection of civilians issue, but the reference was confusing, seeming to equate SEA with sexual violence by warring parties.<sup>634</sup> Over 2016-2018, doctrine began to engage in more detail with gender, CRSV and WPS. Some good language was developed, but CRSV is integrated piecemeal and often mentioned but not connected with military activities.

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<sup>628</sup> *UK National Action Plan on Women, Peace and Security, 2014–2017: Report to Parliament*, p. 1. See: UK Ministry of Defence, 'Women, Peace and Security CHODS Network' (2020).

<sup>629</sup> Interview with Legal Advisor at doctrine writing centre, 12 June 2018.

<sup>630</sup> DCDC, *Developing Joint Doctrine Handbook* (2013) para. 101.

<sup>631</sup> Interview with legal advisor at doctrine writing centre, 12 June 2018.

<sup>632</sup> *Ibid.*

<sup>633</sup> Although it was only from mid-2012 that a clear directive was issued that UK should use NATO doctrine to the extent possible and ensure that UK doctrine was coherent with it.

<sup>634</sup> DCDC, *Peacekeeping: An Evolving Role for Military Forces* (2011) para. 413.

An Army Doctrine Note entitled *Human Security - The Military Contribution* emphasised that “human security factors must be considered across all types of operation”.<sup>635</sup> It outlined protection of civilians, WPS, CRSV, SGBV, SEA, gender perspective, children in armed conflict and human trafficking, using some of the language of NATO *Bi-Strategic Command Directive 40-1*.<sup>636</sup> CRSV is presented as often used strategically, against men and boys as well as women and girls. The Doctrine Note describes the roles of the military as “disrupting” SGBV, suggesting tactical responses such as consulting women’s organisations when planning patrol routes, and monitoring and reporting on CRSV. The author of the Doctrine Note explained that the phrase “disrupting” was consciously chosen over “preventing” because the military are short-term “tactical deliverers,” as in, “on patrols, you know, you’re deterring, you’re recording, you’re challenging would-be assailants,” whereas “prevention” suggests a “longer term developmental aspect”.<sup>637</sup> Like the authors of MTMC’s gender pre-deployment training, working in parallel, they described it being “cart before horse,” written in the absence of top-down direction as to intent and context that would normally come through the defence “lines of development” process. Key parts of the matrix of equipment, personnel, organisational structures, logistics, infrastructure, information and resourcing needed to support the development of WPS as a new capability were missing.<sup>638</sup>

This Human Security Doctrine Note was written as a vehicle for further discussion, to have a “shelf-life” of just a year. Its CRSV/WPS content survived almost complete into the subsequent more long-lasting *Army Field Manual on Tactics for Stability Operations* - but there merely in annexes. So, while the tactics manual does have strong content on CRSV it is not referenced in the core chapters on, for instance, the operating environment or stability activities.<sup>639</sup> The tactics manual lists of different types of advisors and experts

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<sup>635</sup> Land Warfare Development Centre, British Army, *Human Security: The Military Contribution* (2016) pp. i, vi.

<sup>636</sup> See text at Ch. 6 n 423.

<sup>637</sup> Interview with Army doctrine writer, 26 June 2017.

<sup>638</sup> *Ibid.*

<sup>639</sup> *Tactics for Stability Operations* (2017).

available for operations, but omits GENADs. Neither women nor gendered needs are not mentioned under the discussion of human security.

This siloed treatment of CRSV and WPS appears also in joint doctrine on stabilisation. It has a paragraph on "gender perspectives," reference to the PSVI and acknowledgement of the need to address women's possible vulnerability to abuse.<sup>640</sup> However, these references are not followed through in subsequent sections on ends/ways/means or operations, such that "understanding" gender or CRSV is not translated into any military response.

Far more significant Army doctrine in this period was 2017's *Land Operations*, "the British Army's core doctrine".<sup>641</sup> In *Land Operations* local populations seem invisible, abstracted only as enemies and adversaries. Most of the images are of explosions and tanks, and the vignettes and quotes predominately from the Second World War era and earlier. There is a brief reference to providing security for the population and protection of civilians, but the latter framed *only in terms of sustaining one's own force*. Likewise, "keystone" doctrine for operations on land issued in 2017 refers to providing "security and protection to both people and places" but does not mention women or CRSV.<sup>642</sup>

In contrast, there is gender mainstreaming in 2018's doctrine on *Legal Support to Joint Operations*: a section on WPS (the first time featured in British doctrinal materials relating to law in operations) that outlines key messages of UNSCRs 1325 and 1820.<sup>643</sup> It directs Legal Advisors as well as GENADs to "... advise the commander during the planning and execution of operations to ensure that ...investigations and documentation of sexual violence in conflict are improved; and greater support and assistance is provided to survivors, particularly children."<sup>644</sup>

This illustrates how over 2016-2018, both in Army doctrine and doctrine for all three forces, WPS and CRSV began to be included, but often without any clear connection to military

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<sup>640</sup> DCDC, *Shaping a Stable World: The Military Contribution* (2016).

<sup>641</sup> Land Warfare Development Centre, British Army, *Land Operations* (2017) p. i.

<sup>642</sup> DCDC, *UK Land Power* (2017) p. 4.

<sup>643</sup> DCDC, *Legal Support to Joint Operations* (2018).

<sup>644</sup> *Ibid.*, p.70.

action or as an add-on. Additionally, there were no references to WPS and CRSV in higher-level Army doctrine.

### Lack of policy, institutional architecture and resourcing

Many of my interviewees identified General Messenger's leadership from 2015 (for some, combined with the profile that Angelina Jolie lent the PSVI) as setting the ball rolling in terms of WPS. Nonetheless, despite commitments in the WPS NAP and such international gestures, there remained no formal defence policy on WPS until 2019. In early 2016, the MoD had developed a WPS strategy around three objectives - gender mainstreaming, improving the participation of women in the British Armed Forces and overseas training.<sup>645</sup> However, this was never formally approved amidst "organisational questioning on resources and priorities".<sup>646</sup> WPS was thus through crucial years an issue without a formal "proponent" or "capability sponsor", "passed around like a hot potato".<sup>647</sup> There was no authority to set training requirements or ensure resources, no budget for hiring people into new WPS or gender positions.<sup>648</sup> Staff trying to develop work on WPS at times felt a preoccupation with gender and countering violent extremism was "subsuming" all other aspects,<sup>649</sup> or that strategic space for WPS was shrinking with a reorientation toward "'metal on metal' fighting".<sup>650</sup> A senior GENAD said in late 2018, "... women, peace and security, it's almost invisible, unfortunately" with one of "the biggest challenges" as the lack of WPS "architecture".<sup>651</sup>

The adoption, finally, of *Human Security in Military Operations* in early 2019 did enable progress as concerns training development, including the transformation of the GENAD

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<sup>645</sup> *Report Endline Evaluation: The UK National Action Plan on Women, Peace and Security 2014-2017*, p. 28.

<sup>646</sup> WPS Agenda in the British Armed Forces, Knowledge Exchange Workshop, 22 May 2017.

<sup>647</sup> Participant in the Defence Gender Training of Trainers course, Worthy Down Barracks, Hampshire, 25-28 January 2016.

<sup>648</sup> WPS Agenda in the British Armed Forces, Knowledge Exchange Workshop, 22 May 2017.

<sup>649</sup> Interview civilian advisor to British international training centre, 26 October 2017.

<sup>650</sup> WPS Agenda in the British Armed Forces, Knowledge Exchange Workshop, 22 May 2017.

<sup>651</sup> Interview with GENAD, 3 September 2018.

course into a course for Human Security Advisors. Some had a sense that the tide of resistance had turned:

I think that in the next year or two years we're going to see action. But it's as if you've had to do all this talking and prevaricating to get to the point, which is weird for a military organisation .... because normally ... if you want to do something and a more senior officer says we're going to do it, it gets done ....<sup>652</sup>

It is early to say whether this optimism will be realised. The British military's structures around CRSV, WPS and now "human security" capability are in their infancy. There are indications, moreover, of waning interest. Work on WPS since 2013 relied heavily on the sustained engagement of a handful of highly committed women, most of whom have left the military over the last two years. General Messenger retired in May 2019, with no new WPS Champion announced. In April 2019, the Defence Secretary announced that the UK would establish a "Centre of Excellence for Human Security" with some two million pounds annual funding.<sup>653</sup> As at the time of writing, the "Centre of Excellence" concept has morphed into a "virtual" centre of excellence, apparently comprised of the many excellent people in the British Armed Forces who know about human security - and as such requiring no additional resourcing.<sup>654</sup> The momentum and opportunity generated through the PSVI and the 2014 Global Summit, which within NATO generated key implementing actions such as the *Military Guidelines on Conflict-Related SGBV*, was in the British context lost. This loss of momentum is not limited to defence: a recent evaluation of the PSVI attests to waning interest and resourcing across departments since the 2014 Global Summit.<sup>655</sup>

## Conclusions

Comparing British engagement with CRSV to NATO's: within NATO, WPS policy was adopted in 2007. Operational guidance on CRSV followed, developing from the first version of *Bi-Strategic Command Directive 40-1* in 2009. GENAD positions, training infrastructure,

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<sup>652</sup> Ibid.

<sup>653</sup> 'MOD to establish Centre of Excellence for Human Security' (April 2019).

<sup>654</sup> Informal conversation with Army informant, January 2020.

<sup>655</sup> *The UK's Preventing Sexual Violence in Conflict Initiative: Joint Review*, p. ii.

coordination structures, planning guides and standard operating procedures likewise followed driven by successive policies, actions plans and directives. These elements were the hallmarks and drivers of institutionalisation of approaches to gender mainstreaming and WPS within NATO. Although NATO's implementation of commitments concerning CRSV and WPS remains incomplete and perhaps – as discussed in Chapter 6 – essentially flawed by subordinating gender mainstreaming and WPS to operational effectiveness, in NATO WPS structures, process and expectations have been established that one would expect will endure.

In the British Armed Forces, this process was in many ways inverted. Training, gender advisory positions and doctrine were generated without a clear policy framework or coordination. As one interviewee summed up:

... it's the *ad hoc*-ery which has been the theme of the last few years ... there is no integrated approach to the whole thing, which means that it's not entirely clear which messages are being disseminated and to what overarching, umbrella conceptual thinking/policy this might link.<sup>656</sup>

Without a clear policy narrative, leadership and institutional structures, the British Armed Forces' approaches to CRSV have been mired in confusion, scepticism, resistance, and under-resourcing. With the shift to a human security approach, defeat has seemingly been conceded as regards establishing a discrete commitment to the WPS Agenda.

It is yet too early to draw firm conclusions as to whether the British Armed Forces' reframing of WPS and CRSV within a concept of human security will lead more easily to changes in operational practices so to protect individuals from CRSV, support victims or counter impunity. The deeply held assumptions about what the military can and should do that underlie these struggles and shifts, and how they also shape and are shaped by understandings of legal obligations in military operations, will be explored further in the chapters to follow.

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<sup>656</sup> Interview with staff member of military college, 12 June 2018.

## Chapter 8

### Understandings of legal obligations

Some [Human Rights] provisions, such as ... Article 3 ICCPR (equal treatment of men and women) ... state obligations slightly — “unreasonable” in times of war or armed conflict, but do not show a corresponding LOAC provision which would then apply as *lex specialis*.

NATO Legal Deskbook, 2nd Edition (2010) p. 305.

The foregoing chapters drew on a range of previously unexamined doctrinal sources, interviews and observation to map the trajectory of NATO and the British Armed Forces’ engagement with CRSV since 2005. As Chapter 2 demonstrated, advocacy for recognition of CRSV in international law and legal articulation of sexual violence in conflict has been a key feminist strategy. This builds upon and contributes to a wider feminist critique of law in armed conflict, which suggest that the laws of war fail to adequately prevent and punish violence against women; rather, (re)produce a hierarchy wherein civilian lives are valued less than military lives. Chinkin and Kaldor argue that while retaining the safeguards for persons developed through IHL, we must see war through fresh eyes, as “... a violation of human rights, in which case human rights law should be the predominant legal regime”.<sup>657</sup> This would redouble the emphasis on IHRL as governing armed forces when they are active outside of conduct of hostilities and where IHRL fills gaps in IHL’s protections. It would place IHRL in sharper view as the predominant standards for a wide range of contemporary military operations.

This chapter, therefore, enquires into what I have described as the first theme of this project: what roles *understandings of the law* play in NATO and British military responses to CRSV. It first gives an overview of NATO and British approaches, respectively, to IHL and IHRL in armed conflict, because how IHRL standards are understood to apply is an important dimension of analysis. Section 8.2 examines understandings of obligations where

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<sup>657</sup> Chinkin and Kaldor, *International Law and New Wars*, pp. 230, 282.



CRSV is committed by other state forces or armed groups. Section 8.3 examines how obligations concerning CRSV by one's own personnel are understood. Chapter 10 will go on to consider more closely how its findings speak to feminist legal activism and critique.

## 8.1 Application of IHL and IHRL in operations and missions

### NATO's application of IHL and IHRL in operations and missions

To situate this analysis of how NATO understands its legal obligations as concerns CRSV, it is necessary to outline in general terms the legal bases for NATO operations and NATO's approach to IHL and IHRL. A NATO collective defence operation rests upon the assertion of a state's inherent right to self-defence. For other types of operations, the legal basis for NATO action can be either: a) the request of a state for NATO support; b) a UNSCR mandating action (as in the cases of ISAF and Libya); or c) a regional mandate from an international organisation based on principles of the UN Charter.<sup>658</sup> At times NATO acts independently, at times in support of a mission under the auspices of another organisation, such as the UN. In both circumstances, NATO's North Atlantic Council retains the direction and authority for deployment of NATO forces.

Because only states may become 'High Contracting Parties,' NATO is not directly or formally bound by IHL or IHRL conventions. Amongst the thirty NATO members, all are states parties to the GCs, but not all (significantly, the United States) to its Additional Protocols. Twenty-eight NATO members are party to the ECHR. There is no overarching NATO doctrine on the interrelationship between IHL and IHRL.<sup>659</sup> Whether NATO has international legal personality such that it could potentially be held responsible for violations of IHL or IHRL is a complex question, which for the purposes of this project can be left to one side.<sup>660</sup> NATO's

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<sup>658</sup> Ochmannova, 'NATO: Evolution and Legal Framework for the Conduct of Operations', 122–23.

<sup>659</sup> K. Abbott, 'A brief overview of legal interoperability challenges for NATO arising from the interrelationship between IHL and IHRL in light of the European Convention on Human Rights' (2014) 96 *International Review of the Red Cross* 107–37 at 108, 122.

<sup>660</sup> For discussion: N. Rosen, 'How are Multinational NATO Operations Responsible for International Humanitarian Law Violations' (2013) 37 *Fletcher Forum of World Affairs* 163; P. Olson, 'Immunities of International Organizations: A NATO View' (2014) 10 *International Organizations Law Review* 419–33.

approach is, first, to apply IHL rules to any military operation, “irrespective of there being an armed conflict according to the definition in the Geneva Conventions”.<sup>661</sup> Beyond this, the law applicable to an operation is a “pragmatic” blend of the individual legal commitments of all of the participating nations, and nations’ understandings of them.<sup>662</sup> This pragmatism is asserted through the process whereby all Allies agree by consensus the operational plan and associated rules of engagement for any operation, this then constituting the legal framework for that operation. As a Legal Advisor interviewed put it, NATO “come[s] to a happy medium that satisfies all nations.”<sup>663</sup> Accounts by former NATO Legal Advisors confirm that this “happy medium” is based on IHL: that NATO rules of engagement and targeting doctrines display “a very traditional IHL, ‘*lex specialis*’ approach”;<sup>664</sup> and that the protection of civilians elements of an operational plan and rules of engagement are drafted on the basis of IHL.<sup>665</sup> Differences between nations’ IHRL obligations are left to be addressed at the level of operational implementation. Nations “caveat out” of tasks that are problematic for them from a national (legal and/or political) perspective.<sup>666</sup> The result for a NATO multilateral venture is not necessarily straightforward, such that a former NATO Legal Advisor argues that ECHR obligations pose serious challenges to NATO missions’ legal interoperability.<sup>667</sup>

### The British Armed Forces’ application of IHL and IHRL in operations and missions

Britain has ratified all of the major IHL and IHRL treaties most relevant to CRSV; namely, the ICCPR, the GCs and their Additional Protocols, the CRC, CEDAW and the Rome Statute. The UK has also ratified a range of IHRL treaties concluded within the Council of Europe, most significantly the ECHR, accepting the jurisdiction of the ECtHR.<sup>668</sup> All British personnel

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<sup>661</sup> *NATO Legal Deskbook, 2nd Edition* (2010) p. 268.

<sup>662</sup> P. M. Olson, ‘A NATO perspective’ in E. De Wet, J. K. Kleffner (eds.), *Convergence and Conflicts: Of Human Rights and International Humanitarian Law in Military Operations*, (Pretoria: PULP, 2014) pp. 233, 227.

<sup>663</sup> Interview with NATO Legal Advisor, May 2018.

<sup>664</sup> Abbott, ‘Legal interoperability challenges for NATO’, 110.

<sup>665</sup> Olson, ‘A NATO perspective’, p. 240.

<sup>666</sup> Interview with NATO Legal Advisor, May 2018; see also Olson, ‘A NATO perspective’, p. 235.

<sup>667</sup> Abbott, ‘Legal interoperability challenges for NATO’, 108, 122.

<sup>668</sup> As of 15 July 2020, the UK has signed but not ratified the Istanbul Convention.

serving abroad are subject to the criminal law of England and Wales, including the *Sexual Offences Act 2003*, by virtue of the *Armed Forces Act 2006*. Under the law of England and Wales, paying for sexual services is legal only so long as the prostitute is not subjected to force, threats or coercion.<sup>669</sup>

The UK as a matter of policy apparently chooses to apply the rules of the GCs to its engagement in all foreign armed conflicts, internal and international.<sup>670</sup> As regards applicability of IHRL obligations extraterritorially in armed conflict, the UK is subject to the jurisprudence of the ECtHR but has persistently resisted expansion of the application of IHRL. The MoD and the Parliamentary Defence Committee argue that “tension and overlap” between IHL and IHRL result in a lack of certainty and clarity.<sup>671</sup> Some Armed Forces personnel see the application of IHRL in military operations - the “extension of legal rules into the sphere of military autonomy and the increased density of these rules” - as a significant challenge requiring strategic efforts of reversal and mitigation.<sup>672</sup> The UK Government announced in 2016 that it would introduce a presumption to derogate from the ECHR in future conflicts, to protect the armed forces from “persistent legal claims”.<sup>673</sup> Whether Britain could do so and with what legal effect is debated. Kemp argues that in certain of the contexts in which the UK deploys overseas, including UN peacekeeping, derogation would be impermissible, as not in a “time of war or other public emergency threatening the life of the nation”.<sup>674</sup> Even were the UK to attempt such a derogation, some ECHR obligations relating to CRSV concern prevention and response to torture or inhumane treatment, and as such are presumably non-derogable.

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<sup>669</sup> R. Campbell, P. Hubbard, and T. Sanders, ‘England and Wales’ Assessing Prostitution Policies in Europe, (Abingdon: Routledge, 2019), p. 31.

<sup>670</sup> McEvoy, ‘Law at the operational level’, p. 128.

<sup>671</sup> S. Tudor, *Armed Forces: Legal Challenges and Derogation from the European Convention on Human Rights* (2016) p. 4.

<sup>672</sup> N. Quenivet and A. Sari, *Human Rights and Military Operations: Confronting the Challenges* (2015) p. 15.

<sup>673</sup> ‘Government to protect Armed Forces from persistent legal claims in future overseas operations’.

<sup>674</sup> S. L. Kemp, *British justice, war crimes and human rights violations* (Palgrave Macmillan, 2019) p. 81.

## 8.2 CRSV committed by others

A 2009 study of ISAF's implementation of UNSCR 1325 asked, "What right or obligation do soldiers have to intervene in situations of gender-based violence?"<sup>675</sup> Chapter 5 argued that when militaries exercise authority or control over territory or persons, they have a positive obligation to exercise due diligence and do what would reasonably be expected to prevent CRSV, as a violation of peremptory norms, treaty-protected rights and/or of IHL. Where forces are in a position of influence over or offering support to a force perpetrating abuses, there is an even clearer positive obligation to act. But, do NATO or the British Armed Forces understand their obligations in this manner?

NATO: aspiration rather than obligation

During the open session of the 2013 Annual Conference of the NCGP, NATO's second-most-senior military leader, the (British) Deputy Supreme Allied Commander Europe, clearly framed NATO's obligations to prevent SGBV and to support prosecution in legal terms:

... the first reason for action is not only moral and ethical. It is legal; we are legally bound to take action ... The International Criminal Court is absolutely clear on the responsibility of commanders in preventing sexual violence. it [*sic*] is a war crime and a crime against humanity. This means that we in the military have a responsibility to provide support for those who search for, prosecute and hand over for trial, anyone accused of these crimes, regardless of nationality ... We need to ensure that our tactics, techniques and procedures focus upon identifying situations where conflict related sexual violence could occur and allow us to take action to preventing it from happening. Our commanders ... must ensure that every officer and soldier knows how to address and respond to conflict-related sexual violence, including how to assist the victims, and how to deal with the perpetrators.<sup>676</sup>

But, whilst there seemed then to be leadership acceptance of the legal dimensions of NATO's roles, NATO's "Legal Deskbook", a resource for NATO Legal Advisors on NATO

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<sup>675</sup> Operational Effectiveness and UN Resolution 1325 - Practices and Lessons from Afghanistan, p. 2.

<sup>676</sup> NATO, 'Report of the 2013 Open Conference of the NCGP' (2013) para. 6.

practices and policies, makes no reference to CRSV.<sup>677</sup> It describes the equal treatment of men and women as an example of an IHRL obligation that is “slightly ‘unreasonable’ in times of war or armed conflict” (citing no authority for this extraordinary claim).<sup>678</sup> Until work on the *Military Guidelines on Conflict-Related SGBV* commenced in 2014, it appears there was little attention to CRSV from a legal perspective within NATO. In 2013, a NATO Standard for training of armed forces in the law of armed conflict was issued. Its sole references to CRSV are to reiterate GC IV, Article 27(2) and note that female prisoners of war must “be specially protected against rape and other sexual assaults”.<sup>679</sup> The document omits *inter alia* to identify other forms of sexual violence - by 2013, well established in international jurisprudence and national legal systems, as discussed in Chapter 2. It does not refer to sexual violence in the enumeration of grave breaches of the GCs; nor recognise the possibility of male victims of sexual violence. This suggests that NATO Legal Advisors were not attending to the inclusive understandings of CRSV articulated in international legal fora. In NATO operations in Afghanistan, as was highlighted in Chapter 6, neither Legal Advisors nor GENADs regarded reacting to human rights abuses as within their responsibilities.

### *Obligations to protect civilians from CRSV*

It has been understood that NATO regards the protection of civilians as an aspect of counter-insurgency, or to minimise the negative implications of collateral damage, not an operational objective for NATO in itself.<sup>680</sup> But, over the period of this research, NATO’s language around the protection of civilians, including prevention of CRSV, became more proactive. NATO’s 2014 doctrine for peace operations described force used to protect civilians as a last resort, “predominantly reactive rather than pre-emptive”.<sup>681</sup> In the 2015 *Military Guidelines on Conflict-Related SGBV*, it is apparent that the limits of legal authority

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<sup>677</sup> NATO Legal Deskbook, 2nd Edition.

<sup>678</sup> Ibid., p. 305.

<sup>679</sup> NATO Standardization Office, *Training in the Law of Armed Conflict* (2013) p. F-47.

<sup>680</sup> Kjeksrud, Ravndal, Stensland, de Coning, and Lotze, ‘Protecting Civilians: Comparing Organizational Approaches’, pp. 93, 94.

<sup>681</sup> NATO Standardization Office, *Military contribution to peace support (2014)*, paras 0231–0233.

were a point of discussion, with the Guidelines stating, “The understanding of mandates, international law and self-defence will be interpreted in favour of action and intervention, whenever possible ...”<sup>682</sup> The Guidelines do not commit to *prevent* or *protect* individuals from CRSV, but direct NATO forces to “reduce the risk of conflict-related SGBV and improve responsive measures that take protection needs into consideration”.<sup>683</sup>

NATO’s 2016 *Protection of Civilians Policy* strikes a new direction. As well as IHL aspects of protection of civilians (“efforts taken to avoid, minimize and mitigate the negative effects that might arise from NATO and NATO-led military operations on the civilian population”) it commits NATO “when applicable, to protect civilians from conflict-related physical violence or threats of physical violence by other actors”.<sup>684</sup> “[A]ctivities up to and including the use of force” are foreseen “to prevent, deter, pre-empt, and respond to situations in which civilians suffer physical violence or are under threat of physical violence”.<sup>685</sup> At a policy level, NATO’s *Protection of Civilians Policy* also for the first time affirms the applicability of IHRL to NATO operations: “All NATO and NATO-led operations, missions and other Council-mandated activities are conducted in accordance with applicable international law, *which may include international human rights law*”.<sup>686</sup> Some GENADs began to frame CRSV within this protection of civilians policy framework to more squarely link CRSV to NATO’s mission mandates (for example a mandate to establish a “safe and secure environment”), and so to make CRSV more “relevant” to NATO.<sup>687</sup> Conversely, another told me, “Protection of civilians is a UN doctrine ... I would not incorporate protection of civilians as part of our doctrinal framework for planning because NATO has no doctrine on protection of civilians.”<sup>688</sup> A NATO Legal Advisor explained that NATO still interprets protection of

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<sup>682</sup> North Atlantic Military Committee, *Military Guidelines on the Prevention of, and Response to, Conflict Related Sexual and Gender-Based Violence* (2015) para. 10.

<sup>683</sup> *Ibid.*, para. 8.

<sup>684</sup> *Policy for the Protection of Civilians*, para. 9.

<sup>685</sup> *Ibid.*, para. 11.

<sup>686</sup> Emphasis added, *Ibid.*, para. 5. Potential application of IHRL in NATO operations was already recognised in NATO *doctrine* from at least 2013, which refers to legal review of any military response option against “the law in terms of Law of Armed Conflict or the European Human Rights Act”: DCDC, *Allied Joint Doctrine for Operational-level Planning* (2013) pp. 3–17.

<sup>687</sup> Interview with NATO GENAD, 29 May 2018.

<sup>688</sup> Interview with NATO GENAD, June 2016.

civilians through IHL: "... protection of civilians is something we always take into account ... before even the policy came out. ... But, I mean, our obligations are, we understand our obligations under IHL."<sup>689</sup> In no NATO materials is there any consideration of specific obligations implied by applying IHRL standards in relation to protection of civilians or CRSV; for example, of any action required by a real and immediate risk of CRSV to identified persons, or whether there might ever be a responsibility to pre-emptively detain.

There are questions as to whether a NATO operation would even have the *authority* to use force to protect civilians in the manner that might be required to prevent an act of CRSV. Authorisation to do so depends upon the higher-level orders governing the operation. Rules of engagement have been noted by NATO insiders as limiting action on CRSV.<sup>690</sup> NATO's compendium of rules of engagement does not include any rule explicit to protecting civilians from third party attack. The most relevant rule authorises the use of force "to prevent commission of [designated] crimes that are occurring or are about to occur in [designated] circumstances".<sup>691</sup> Even if this were to be used with CRSV as a designated crime, according to NATO training standards, "some nations' laws or policies on self-defence may not include the use of force to protect persons not belonging to NATO/NATO-led forces (e.g. civilian population)."<sup>692</sup> A NATO GENAD explained that if, in a mission, information about CRSV was received, for forces to be able to act pre-emptively to prevent it, more "aggressive," more "offensive" rules of engagement than the "default set" would need to be in place; describing the pre-emptive response to CRSV as "push[ing] the envelope" for NATO.<sup>693</sup> In summary: NATO training materials, trainers and GENADs acknowledge that rules of engagement might not allow action in relation to CRSV. This is a

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<sup>689</sup> Interview with NATO Legal Advisor, 30 May 2018.

<sup>690</sup> NCGM, *Final Report Expert Meeting on Training Military to Combat Conflict-related Sexual Violence* (2014) p. 3. The same point is made in NCGM training materials used in Gender Training of Trainers course, Worthy Down Barracks, Hampshire, UK, January 2016.

<sup>691</sup> *NATO Rules of Engagement* (2003) p. A-3. This is identified as the relevant rule of engagement as regards use of force to defend designated persons in NATO Standardization Office, *Training in Rules of Engagement (ROE)* (2015) p. B-21.

<sup>692</sup> NATO Standardization Office, *Training in RoE* (2015), p. B-21.

<sup>693</sup> Interview with NATO GENAD, 29 May 2018.

strong indication that NATO institutionally does not regard forces as having a positive obligation to protect civilians from third party attack, including CRSV.

The above might be inferred also from NATO's very terminology concerning CRSV, which, as described in Chapter 6, includes the slippery concept of GBV within a broad notion of "conflict-related SGBV". Likewise, when NATO talks about "gender" it highlights a broad, human rights-based legal framework, emphasizing not only physical risks but issues such as access to justice, land rights, informal justice systems, labour rights, and reproductive rights.<sup>694</sup> While this might be welcomed as a holistic recognition of gendered needs, NATO's discourse omits exploration of what standards under IHL or IHRL should be met in its operations. This was also my observation of NATO training on CRSV: references were made to IHRL, IHL, international criminal law, UNSCRs on WPS, mandates for the protection of civilians in UN peacekeeping, and the domestic law of the host nation, but none in a systematic or detailed manner, linked to specific obligations. Rather than being grounded in legal obligation, the rationale for addressing CRSV was linked to, on the one hand, ethics, values and standards, and on the other, the sustainability of mission achievements. Dealing with SGBV was described as "fundamental to operational success"; for example, suggesting that CRSV contributes to radicalisation.<sup>695</sup> The idea that NATO is legally bound to take action by virtue of obligations in international criminal law (articulated in 2013 by the Deputy Supreme Allied Commander Europe, cited above) has seemingly sunk without trace. This strongly characterises NATO's commitment to prevent and respond to CRSV as aspirational and essentially political, rather than grounded in acceptance of legal obligations.

#### *Obligations to support the prosecution of third party perpetrators of CRSV*

NATO's Secretary General has described NATO as having a role in "reporting crimes and supporting work to bring perpetrators to justice".<sup>696</sup> Doctrine directs NATO forces engaged

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<sup>694</sup> E.g., NCGM training materials used in Gender Training of Trainers course, Worthy Down Barracks, UK, January 2016.

<sup>695</sup> Observation of seminar on SGBV, 28 April 2016, NATO Allied Rapid Reaction Corps.

<sup>696</sup> Stoltenberg and Jolie, 'Why Nato must defend women's rights'.



in peacekeeping to systematically and accurately record all evidence relating to human rights abuses and war crimes for future investigations and envisions NATO forces assisting in apprehending war criminals<sup>697</sup> and conducting investigations.<sup>698</sup> But, neither successive WPS policies nor the 2015 *Military Guidelines on Conflict-Related SGBV* refer to NATO forces supporting investigations or justice processes regarding CRSV; nor do they make recognition of any legal obligation to do so.

Chapter 6 described the resistance from nations even to share reports of CRSV outside of their command structure, due to concerns about negative ramifications for their own forces. In a training observed, NATO Military Police discussed (where their mandate permitted) reporting and recording sexual violence offences, collecting evidence, taking witness statements, providing security to investigation teams and training local police on sexual violence investigations. However, a commander present offered a “real word of caution,” that Military Police must be careful to have the support of their chain of command for any investigation, and that investigations do not interfere with any subsequent alliances and deals the military might want to make. He said, Military Police “must be realistic” and “not ruin the ground for our masters ... If you report something it can impact upon your ability to work in a situation.”<sup>699</sup>

The omission from WPS policy and CRSV guidelines of investigation of allegations of CRSV, and the caution and resistance associated with even reporting CRSV, suggest that NATO recognises no legal obligation to support prosecutions, and moreover is unwilling to play this role.

### British Armed Forces: outside the scope of the manual

For the British Armed Forces, guidance from a legal perspective on obligations concerning CRSV is scant. Apparently Legal Advisors were not consulted or involved in discussions

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<sup>697</sup> NATO, *Peace Support Operations* (2001) para. 0625(e), 0634.

<sup>698</sup> *Allied Joint Doctrine for Military Police* (2009), with similar references in NATO Standardization Office, *Military contribution to peace support (2014)*.

<sup>699</sup> Observation of seminar on SGBV, 28 April 2016, NATO Allied Rapid Reaction Corps.

around integrating gender perspectives.<sup>700</sup> In my own association with the British Armed Forces over the last seven years, there was never a Legal Advisor present in WPS training or meetings, neither as presenter nor trainee.

### *Obligations to protect civilians from CRSV*

The key reference for operational law in the British Armed Forces is the 2004 *Joint service manual of the law of armed conflict*.<sup>701</sup> The manual's language closely follows that of the GCs and its APs, with no additions recognising any growing awareness, since 1949, of the prevalence of CRSV. For example, there is no inclusion of the broad definitions of sexual violence developed through international criminal jurisprudence and incorporated into the Rome Statute;<sup>702</sup> no reference to the possibility of male victims of CRSV, nor the particular vulnerability of children. The section on grave breaches, likewise, confines itself to 1949 language, not mentioning that a serious act of sexual violence would be considered a grave breach. The section outlining the prohibitions on certain types of attacks does not refer to sexual attacks, nor make clear that sexual violence is a prohibited act. The manual includes more detail on the management of canteens in internment camps than on CRSV.

Considering the protection of civilians, the text focuses on "sparing the civilian population" rather than protecting them. In summary, the key reference for the law of armed conflict for the UK military in no way suggests any positive legal obligation to prevent or respond to CRSV by third parties. The other key legal reference is the doctrine on *Legal Support to Joint Operations* issued in 2018. But, in setting out the rationale for the UK forces' role in preventing and responding to CRSV, the doctrine argues not in legal terms, but merely that "UK Armed Forces have a unique role in providing security and stability."<sup>703</sup>

IHL and IHRL obligations are mentioned in British training sessions. The Armed Forces claim, for example, that in pre-deployment training for Afghanistan:

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<sup>700</sup> Interview with GENAD, 28 November 2018

<sup>701</sup> British Ministry of Defence, 'The Joint Service Manual of the Law of Armed Conflict' (2004) to which amendments are intermittently issued.

<sup>702</sup> Although later doctrine on captured persons would use ICC Act definitions of sexual violence: DCDC, *Campaigning* (2008).

<sup>703</sup> DCDC, *Legal Support to Joint Operations* (2018), p. 70.

... all UK troops received extensive training in the Laws of Armed Conflict (LOAC) and the need to protect civilians from all kinds of violence – including sexual violence. After the abuse came to light, troops were also briefed on the issue of ‘bacha-bazi’; they were made aware of their obligations under International Human Rights Law ... that such abuse violates International Law and that UK forces on operation are required to intervene.<sup>704</sup>

Observing mission-specific pre-deployment training, indeed, CRSV was framed as a violation of IHL and IHRL as well as host national law. It was broadly defined to include domestic violence, female genital mutilation, early and forced marriage, and honour killing.

Emphasised *over* IHL or IHRL, however, were the UNSCRs on WPS, the UK 1325 NAP and host nations’ 1325 NAPs, and the ‘political agenda,’ in the sense of CRSV being an issue of high-level political prominence and interest to the Chief of Defence Staff. Sexual violence response was described as ‘mandatory’.<sup>705</sup> Trainers described presenting a more nuanced approach in other training sessions: that personnel were taught that intervening to stop a sexual assault was subject to protecting their own safety. Moreover, it was explained to me that the UK’s national rules of engagement would authorise intervention where a person was being raped, as this is perceived as a threat to a person’s life, but not where other types of GBV, such as domestic violence or early marriage are concerned.<sup>706</sup>

But, as described in Chapter 7, as engagement with CRSV matured, there was seemingly a retreat from tactical interventions to prevent or even report it. In *Human Security in Military Operations*, protection of civilians is referred to diffusely, as “a moral, political, legal, and strategic priority.”<sup>707</sup> The “guidance” part of the document (as Table 3 on page 212 illustrates) makes no meaningful distinction between CRSV (or torture) as an international crime or violation of IHL or IHRL and less serious acts such as name-calling military recruits. Gender-related abuses by third parties and gender aspects related to the

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<sup>704</sup> House of Lords Select Committee on Sexual Violence in Conflict, *Written and oral evidence*, p. 511.

<sup>705</sup> Observation of 45 minute pre-deployment training briefing on “Gender and sexual violence and exploitation,” Napier Barracks, Kent, 2 November 2016.

<sup>706</sup> Interviews with British military trainers, Napier Barracks, Kent, 2 November 2016.

<sup>707</sup> Ministry of Defence, *JSP 1325 Pt 2 (2019)*, p. 2.

British forces' own discipline are conflated. Platoon commanders are described as "having a responsibility for preventing and responding to sexual and gender-based violence due to the national and international legal frameworks" but seemingly only where their own troops are "perpetrating or complicit."<sup>708</sup> Rather, this new British approach to human security approach deploys some of NATO's instrumentalising of WPS, stating: "beyond our obligation to protect civilians, the implementation of UNSCR 1325 will spark deeper analysis, broader plans and more effective operations."<sup>709</sup> One GENAD resisted this emphasising the absence of the appropriate legal framing:

I disagree with the way that the military is framing gender perspective will achieve operational effectiveness. That's not why we should do this ... We should do it because it's the right thing to do under international humanitarian or international human rights law. It has been mis-framed. One, because I don't think it will necessarily achieve operational effectiveness. And two, because they've hijacked the whole agenda for a military gain, which is not where it should be.<sup>710</sup>

From a critical perspective on militarism, this question of whether it is appropriate to frame gender mainstreaming as promoting operational effectiveness, or prevention and response to CRSV as an aspect of operational effectiveness, depends upon the dominant objective of the mission. For example, is it orientated toward combat or toward human security? I will return to this point in the chapter to follow.

The *Joint service manual of the law of armed conflict* does not attempt to grapple with IHRL standards in terms of protection of civilians, unhelpfully noting: "civilians will be entitled to protection under applicable human rights law. However, this topic falls outside the scope of this Manual."<sup>711</sup> Nonetheless, subsequent doctrine does anticipate IHRL applying to

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<sup>708</sup> Ministry of Defence, *JSP 1325 Pt 2 (2019)*, p. 9.

<sup>709</sup> Ministry of Defence, *JSP 1325 Pt 1 (2019)*, p. i.

<sup>710</sup> Interview with Gender Advisor, 28 November 2018.

<sup>711</sup> *The Joint Service Manual of the Law of Armed Conflict*, para. 1.9.2. The 2010 amendment to the manual notes "the development of human rights law and its relationship with the law of armed conflict" but does not give any guidance. This is surprising given that, already by 2008, military doctrine (e.g. *Campaigning*) was acknowledging that IHRL applied, at least in some way, to military campaigns.

operations,<sup>712</sup> and military lawyers consider that IHRL in a European context “is moving in th[e] direction of positive obligations” to protect civilians.<sup>713</sup> One Legal Advisor observed:

If you’re in occupation, you’re responsible for peace, security, law and order, and human rights apply, then I think the responsibilities for sexual violence would also be expected to apply ... it is a high standard.

... the nature of the missions that we’ve been asked to do, whether it’s Iraq, Afghanistan, Libya, Syria are not straightforward. And the legal frameworks are not straightforward, the legal frameworks are evolving. If you’d have said twenty years ago that human rights will apply to a situation when special forces are helping the Kurds in Syria, everyone would have thought you were mad. But actually, that’s the position we’ve got to.<sup>714</sup>

Ultimately though, this Legal Advisor framed whether IHRL even applies and what it might require as a question of *practicability*:

... we recognise that not all [IHRL] obligations can apply all the time, but which ones can apply? ... Now if you’re in a position to do something about sexual violence and we say that human rights law applies, then you should do something about sexual violence. But if it’s just a situation where human rights law might apply but you can’t do anything about it, then our position, the Government position would probably be if you can’t do something about it then you don’t have a legal obligation to do something about it.<sup>715</sup>

For UK forces, as in a broader NATO context, there remain questions as to whether rules of engagement even authorise the use of force to prevent or disrupt CRSV. Peacekeeping doctrine clearly anticipates the possibility of British forces taking casualties to protect civilians.<sup>716</sup> But, in general, rules of engagement authorise the use of force where it is

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<sup>712</sup> E.g. DCDC, *Campaigning (2008)*; DCDC, *ADP Operations (2010)*; DCDC, *UK Joint Operations Doctrine (2014)*; DCDC, *Shaping a Stable World (2016)*; Land Warfare Development Centre, British Army, *Human Security: The Military Contribution (2016)*; Land Warfare Development Centre, British Army, *Land Operations (2017)*; DCDC, *Legal Support to Joint Operations (2018)*.

<sup>713</sup> Interview with Legal Advisor at doctrine writing centre, 12 June 2018.

<sup>714</sup> *Ibid.*

<sup>715</sup> *Ibid.*

<sup>716</sup> DCDC, *Peacekeeping (2011)*, para. 424.

proportionate and necessary to prevent imminent loss of life or serious loss of limb to individuals under the individual's control. This is perceived as a difficult operational judgement in relation to CRSV:

... If you're protecting civilians, you as an individual would have to be able to justify why you use lethal force to protect a civilian. Now in the case of an armed insurgent group driving through a camp shooting people, that's really easy. In terms of someone maybe being taken [for sexual exploitation] ... it's a really difficult issue because I may have one view, you may have a different view and a good barrister in a court room might have a very different view ...<sup>717</sup>

A GENAD argued, moreover, that soldiers are not taught how to apply IHL standards and rules of engagement to CRSV:

... it's really hard for people to figure out, well, how does sexual violence fit within our international humanitarian law obligations, so proportionality, necessity? ... at which point is it a life-threatening issue that they can respond to? ... We don't do anything like that that helps them understand, is this an environment in which I can or can't respond to the sexual violence?<sup>718</sup>

They bemoaned that Army training remains focused on IHL, self-defence and rules of engagement, omitting protecting the human rights of local populations as either a strategic objective or an obligation, making it difficult to communicate to soldiers how CRSV fits within their mission responsibilities. Conversely, a Legal Advisor pointed to "the sensitivity surrounding human rights" itself as limiting how forces can intervene to stop CRSV. They described a new reluctance for British forces to detain people, because after Afghanistan and Iraq "the whole detention thing is so political, it's so sensationalised," going on to say:

... it's not just the resources, training and capacity. It's the human rights issues ... The standards get higher and higher and higher and it just makes everything very, very difficult .... And don't get me wrong, people

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<sup>717</sup> Interview with Royal Military Police officer, 28 June 2017. The Army doctrine writer, interviewed 26 June 2017, also noted the difficulty of operational judgements around protection, force protection and other operational objectives.

<sup>718</sup> Interview with British GENAD, 26 June 2018.

are desperate to do the right thing and to comply with human rights, it's just very, very difficult.<sup>719</sup>

Thus, a pessimism that applying IHRL standards to detention and co-culpability for partner armed forces' human rights failures has had a dampening effect on stopping CRSV. This is pertinent also to the discussion below concerning investigation and prosecution of CRSV.

### *Obligations to support the prosecution of third party perpetrators of CRSV*

Investigation and prosecution of CRSV was a priority of the PSVI from 2012,<sup>720</sup> but without any focus on a role for British forces. As in NATO, British doctrine for peace operations suggests that military peacekeepers might monitor and report human rights abuses; record evidence and arrest war criminals.<sup>721</sup> Moreover, doctrine pertaining to a wider sphere of operations refers to Legal Advisors engaging with police concerning investigation and prosecution of CRSV<sup>722</sup> and improving investigation and documentation of CRSV<sup>723</sup> and implies that an individual might be detained for a sexual offence.<sup>724</sup> When pre-deployment training on CRSV began in March 2016, personnel were directed to document any instance ("if possible take photographs/videos"<sup>725</sup>) for future investigation. Likewise, the Royal Military Police began to incorporate SGBV into their training, exercise scenarios and pre-deployment training.<sup>726</sup> But, Military Police explained the difficulty of training their personnel generically on the potential investigation of CRSV offences, as their roles in this

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<sup>719</sup> Interview with Army Legal Advisor, 7 August 2018. None of my interviewees conveyed the much-discussed perception that the British military is under "legal siege" from claims based in IHRL: D. Whetham, 'Killing Within the Rules' (2007) 18 *Small Wars & Insurgencies* 721–33; R. Kerr, 'A Force for Good? War, Crime and Legitimacy: The British Army in Iraq' (2008) 24 *Defense & Security Analysis* 401–19; Quenivet and Sari, *Human Rights and Military Operations*.

<sup>720</sup> Evidenced by the successive versions of Ferro Ribeiro and van der Straten Ponthoz, *International Protocol* and activities to promote and support its use.

<sup>721</sup> Joint Doctrine & Concepts Centre, *The Military Contribution to Peace Support Operations* (2004).

<sup>722</sup> Land Warfare Development Centre, British Army, *Human Security: The Military Contribution* (2016), pp. 3–15.

<sup>723</sup> DCDC, *Legal Support to Joint Operations* (2018), p. 70., p.70.

<sup>724</sup> DCDC, *Captured persons* (2011).

<sup>725</sup> PowerPoint presentation "Gender, Sexual Violence and Exploitation (GSVE) on Operations," Napier Barracks, Kent, 2 November 2016.

<sup>726</sup> Interview with Royal Military Police officer, 28 June 2017.

regard depended upon the mandate of any specific mission.<sup>727</sup> Some soldiers who received the November 2016 pre-deployment training raised the contradictions between their mandate and what they were being told as regards CRSV, questioning what procedure would follow a report of sexual violence or sexual exploitation and where the local police fit in where – in Afghanistan, as in most places Britain deploys – British forces have no powers of detention. The trainees expressed bewilderment and frustration: “Britain says ‘yes’ to everything – it will do everything – but it is confusing” and “It blew my head off. It doesn’t make sense”.<sup>728</sup>

Both these troops deploying to Afghanistan and the Military Police officers interviewed expressed clear caution, moreover, as regards the risks of going beyond “report and record” of allegations of CRSV by third parties or getting involved in investigations. On the one hand, there was a concern to do no harm, and an awareness of the potential danger for a victim in bringing forward a complaint on their behalf. Bluntly, if you reported a child being abused, the “boy might end up with a bullet in the head.”<sup>729</sup> On the other hand, there was awareness of the political sensitivity of “stepping into” other nations’ jurisdiction.<sup>730</sup> Even merely recording an incident of CRSV was perceived as difficult and potentially dangerous:

... people, they’re still sceptical of it ... It’s really, really difficult, depending again on the security situation, how benign or otherwise the situation is, you often just, you can’t, it’s impossible to record to the level you’re required to record it to, whether for investigation then, or for retrospective scrutiny of allegations when allegations are made.<sup>731</sup>

As a soldier put it, “We are not going to have an effect on [sexual exploitation], as Kabul would turn into a warzone between us and the ANA [Afghan National Army]”.<sup>732</sup> There was seemingly, even within the Military Police, no consideration of how international standards,

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<sup>727</sup> WPS Agenda in the British Armed Forces, Knowledge Exchange Workshop, 22 May 2017.

<sup>728</sup> Focus group held at Napier Barracks, Kent, 2 November 2016.

<sup>729</sup> Ibid.

<sup>730</sup> Interview with Royal Military Police lead on WPS, 11 June 2018; also Interview with Royal Military Police officer, 28 June 2017.

<sup>731</sup> Interview with Royal Military Police lead on WPS, 11 June 2018.

<sup>732</sup> Focus group held at Napier Barracks, Kent, 2 November 2016.



IHL or IHRL, might require or inform the investigation of CRSV.<sup>733</sup> Rather, the senior commander was encouraging training on CRSV “because he feels it is morally right, but in a vacuum,” without higher-level strategic direction.”<sup>734</sup>

### 8.3 CRSV by their own forces

There are clear obligations in customary international law, IHL and IHRL to prohibit, prevent and punish rape and other forms of sexual violence by one’s armed forces, as Chapter 5 discussed. As concerns SEA, these prohibitions would cover acts of sexual abuse, but not necessarily sexual exploitation – depending upon the circumstances. The following discussion focuses primarily on this legal grey area as concerns how legal obligations are applied.

#### NATO’s “boys will be boys”

NATO’s documents and training offer little acknowledgement of NATO forces as potential perpetrators of CRSV. Where they do, it is through the lens of SEA. The issue seems shrouded in silence - surprisingly, given the extensive media coverage of allegations of sexual abuse of young children made against France’s military peacekeepers in the Central African Republic in 2015.<sup>735</sup> In 2017, an allegation of child rape was substantiated against a member of Romania’s military.<sup>736</sup> Sexual abuse is clearly a problem that applies to NATO forces.

In the 2015 *Military Guidelines on Conflict-Related SGBV* nations obliquely agreed that NATO would develop Codes of Conduct and mechanisms to ensure allegations of CRSV

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<sup>733</sup> Interview with Royal Military Police officer on WPS, 11 June 2018

<sup>734</sup> WPS Agenda in the British Armed Forces, Knowledge Exchange Workshop, 22 May 2017, Ministry of Defence Headquarters, London.

<sup>735</sup> See Ch. 6, n 463.

<sup>736</sup> ‘UN peacekeeper “had child with minor”’ (2017); United Nations, ‘Data on Allegations: UN System-wide’ (2018); United Nations, ‘Sexual exploitation and abuse’ (2020). Soldiers from Georgia, a significant troop-contributor to NATO operations, were also accused of SEA in the Central African Republic.

were investigated and appropriate disciplinary or legal proceedings followed.<sup>737</sup> Years later though, operational reporting tools still did not include any mechanism to report allegations of SEA (or other forms of CRSV), with nations resistant to compromising their exclusive disciplinary control over their own personnel. A GENAD explained:

We don't have anything that tells a commander what exactly his response should be in that scenario ... So, it really becomes an uncomfortable discussion within NATO almost immediately, because first you have to get over the "Yes, it can be your troops ..." And then you have to get into the "What is the nation willing to give up to the NATO commander in order for him to address sexual exploitation and abuse within the contingent that he's working?"<sup>738</sup>

According to this informant, likewise, while human trafficking was referred to in certain NATO operational plans, it was not reported on by missions, nor was reporting even requested by headquarters.

It would not be until 2020 that a NATO policy on SEA was agreed.<sup>739</sup> This makes a key advance in asserting that NATO personnel are prohibited to pay for sex, and committing national authorities to vetting, training, prevention strategies, investigation and punishment. With the negotiation of the policy coming only after fieldwork was complete, this research is unable to probe the extent to which understandings of international criminal law, the CRC, CEDAW and Istanbul Convention obligations, for example, were invoked in the negotiation of the policy. The text itself states that "NATO is committed to the principles of ... human rights and the rule of law" and that SEA "runs counter to NATO's principles and core values, and undermines the effectiveness and credibility of the Alliance and risk [sic] mission success."<sup>740</sup> This is an ambivalent framing in legal terms, avoiding any statement of SEA as a violation of law. Moreover, it is unclear what effect the policy will have, given that it affirms that the jurisdiction of NATO members over their own forces is

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<sup>737</sup> *Women, Peace and Security Action Plan*, p. 5; NATO, 'Military guidelines on the prevention of, and response to, conflict-related sexual and gender-based violence', para. 17(b).

<sup>738</sup> Interview with NATO GENAD, 29 May 2018.

<sup>739</sup> *Policy on Preventing and Responding to Sexual Exploitation and Abuse* (2020).

<sup>740</sup> *Ibid.*, paras 1, 3.

not compromised.<sup>741</sup> As a Legal Advisor explained, any NATO SEA policy is “just to influence the nations, for lack of a better word, to do the right thing. Because at the end of the day ... nation X soldier is doing some heinous crime in Kosovo ... it’s up to nation X to discipline that person under their law.”<sup>742</sup>

Why, when policy and guidelines on human trafficking had been in place since 2004, was progress so slow around SEA? Three themes emerged in interviews. First, NATO informants describe SEA as an issue upon which nations are very sensitive to any infringement upon their jurisdiction over their own forces. This is familiar territory from the challenges of addressing SEA in UN missions.<sup>743</sup> Second, conversations about SEA seem to treat visiting brothels (vs. sexual abuse) as the problem being considered. This being an act in a grey zone in terms of international criminality, there is no clear set of standards within IHL or IHRL to be invoked. Third, according to a NATO GENAD: “... you’re always going to be fighting the boys will be boys mentality ... if not a spoken part of the discussion, an unspoken part ...”<sup>744</sup> Another NATO staff member expressed their view that “Sex is a basic need. Brothel, it’s like a shop” and while coerced sex and trafficking were problematic, that soldiers “need it, you know ... We have to be reasonable.”<sup>745</sup> These comments, read in light of the resistance within NATO to implementing the trafficking policy and the long delay in agreeing a policy on SEA, suggest that ideas about men’s sexual needs and entitlements constrain NATO’s approach to SEA: because of attitudes that NATO national representatives hold, attitudes assumed by NATO staff, and even the attitudes prevalent amongst NATO staff themselves. This theme of the relationship between gender dynamics, legal norms and response to CRSV will be returned to Chapter 10.

### British soldiers “do it anyway”

Compared with NATO, SEA has been a more visible priority in British engagement with CRSV, although predominantly framed as an issue upon which Britain can teach the world

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<sup>741</sup> Ibid., paras 16, 17.

<sup>742</sup> Interview with NATO Legal Advisor, May 2018.

<sup>743</sup> See Ch. 3, n 154.

<sup>744</sup> Interview with NATO GENAD, 29 May 2018.

<sup>745</sup> Interview with NATO Advisor, 30 May 2018.

by delivering training for foreign forces. There has been scant recognition of the need to strengthen the British Forces' own legal or doctrinal framework or sanctions procedures. As a GENAD observed of training foreign troops on SEA, "I find that slightly arrogant ... because we don't do anything like that to our own soldiers ...."<sup>746</sup>

According to Michael Noone, since at least 1914 the British military has had some prohibitions on prostitution where girls under 16 are involved or where women are coerced.<sup>747</sup> Neither these, nor any other legal standards, are explicitly referred to in British policy or doctrine related to SEA, nor did any of my interviewees (some of whom are Military Police and Legal Officers) refer to any prohibition in such terms. The gender pre-deployment training which commenced in 2016 refers to "the rules on Sexual Exploitation & Abuse ... buying sex is prohibited." An annex to the 2017 *Army Field Manual Tactics for Stability Operations* likewise describes "using prostitutes" as forbidden in all multinational operations.<sup>748</sup> Interviewees explained that this, however, is not a formal policy. Indeed, after the pre-deployment training observed, one soldier questioned the stern prohibition of going to a brothel in Cyprus (where the UK is part of a UN Mission) while in Germany personnel are known to visit brothels frequently.<sup>749</sup> According to a Military Police officer, forces deployed to countries where prostitution is illegal are prohibited from engaging in it; outside of this, whether deployed personnel may visit brothels or otherwise pay for sex is at the discretion of the mission's commander.<sup>750</sup> A GENAD set out an even less restrictive approach:

... we're not actually even saying you can't sleep with prostitutes, although we discourage it from a health perspective because people can pick up STDs. Soldiers do it anyway ... what we're saying is we need to get our troops to understand, how do they make a decision as to whether a prostitute is vulnerable or not? So, hiring a prostitute in Kiev or in Nairobi is probably not a problem, hiring a prostitute next to an IDP

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<sup>746</sup> Interview with British GENAD, 3 September 2018.

<sup>747</sup> M. Noone, 'The U.S. Approach to Combating Trafficking in Women: Prosecuting Military Customers. Could it Be Exported?' (2005) 4 *Connections: The Quarterly Journal* 81–89 at 84–85.

<sup>748</sup> Land Warfare Development Centre, British Army, *Tactics for Stability Operations (2017)*, pp. 10A – 13.

<sup>749</sup> Focus group held at Napier Barracks, Kent, 2 November 2016.

<sup>750</sup> Interview with Royal Military Police Officer, 28 June 2017.

camp probably is. ... So, tell them don't sleep with prostitutes – they will  
...<sup>751</sup>

This GENAD said that an annex to a recent operational order for East Africa included “a little bit on sexual exploitation.”<sup>752</sup> They seemed unaware that prostitution is illegal in Nairobi, and in Kiev too.<sup>753</sup> The 2019 policy *Human Security in Military Operations* only *implies* that prostitution and visiting brothels should be prohibited during operations. It sets no standards beyond “uphold[ing] the values and standards of the UK Armed Forces”.<sup>754</sup> Its example of training standards on SEA is that senior non-commissioned officers should “avoid sanctioning” having female prostitutes *within the camp*.<sup>755</sup> There seems a creeping awareness that SEA might infer IHRL obligations, *Human Security in Military Operations* cryptically noting: “While it is agreed that SEA must be viewed through a human rights lens, the UN is in the process of determining under what criteria SEA rises to the level of a human rights violation or conflict-related sexual violence.”<sup>756</sup> So, even in 2019, the British Armed Forces were unwilling to replicate the UN’s clear prohibitions on SEA, nor acknowledge the possibility of their own personnel committing sexual abuse. As recently as March 2020, media reports described over 100 British personnel having sex with prostitutes who had “set up temporary brothels next to the British Army Training Unit Headquarters” in Kenya, prompting local disapprobation.<sup>757</sup>

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<sup>751</sup> Interview with British GENAD, 26 June 2018.

<sup>752</sup> *Ibid.*

<sup>753</sup> NSW, ‘Nairobi County Assembly Bans Sex Work in the City’ (2017); P. Kurmaiev, ‘Global Market of Sexual Nature Services. Case for Ukraine’ (2020) 9(26) *Amazonia investiga* 19–27.

<sup>754</sup> Ministry of Defence, *JSP 1325 Pt 2 (2019)*, p. 14, 21. Part 2, p. 14, 21

<sup>755</sup> *Ibid.*, p. 7.

<sup>756</sup> *Ibid.*, p. 21

<sup>757</sup> J. Wanjohi, ‘British Soldiers in Lockdown After Night of Unprotected Sex with Kenyan Sex Workers’ (2020). Reported in the British press: M. Nicol, ‘Army lockdown British soldiers in barracks over HIV fears’ (2020). This follows many years of local debate concerning British soldiers’ involvement with prostitution: K. Sengupta, ‘Two British soldiers suspected of murdering Kenyan woman’ (2012).

## Conclusions

Chapter 2 described how developing the prohibition of CRSV in international law has been an important feminist strategy. Chapter 5 argued that armed forces in some circumstances have a legal obligation, by virtue of IHL, peremptory norms and/or IHRL, to exercise due diligence to prevent and respond to CRSV. The law requires that IHRL standards in relation to violence against women should be applied as far as is reasonable. Visions of human-security orientated armed forces emphasise their compliance with IHL and IHRL as a key characteristic. Chinkin and Kaldor's strategy for "second-generation human security" goes further: arguing for IHRL to be the framework for any humanitarian or defensive military intervention in conflict.

This chapter demonstrates that in both NATO and British military spaces, narratives regarding CRSV do consistently invoke both IHL and IHRL, but loosely. The law is referred to, but not at the level of detail where due diligence obligations are discussed, complicity considered, nor particular customary nor treaty obligations worked through. Military training addresses the applicable legal norms in a cursory and chaotic manner. Both NATO and the British Armed Forces see the law applicable to military operations primarily as IHL. While their doctrine does reference IHRL, formal legal references largely ignore it. There is no engagement with what contemporary understandings of IHRL and more specific obligations in relation to preventing violence against women might demand. Neither NATO nor the British Armed Forces acknowledge that SEA implies obligations under IHRL - even potentially under IHL – where their personnel commit acts of sexual violence.

In both NATO and the British Armed Forces, efforts to address CRSV have been tied to and communicated with reference to the WPS Agenda. There are good reasons for this – such as recognising the importance of consulting women to protect them effectively. But packaging CRSV (including SEA) within this broader agenda risks obscuring that CRSV demands specific military tasks and capabilities. In interviews with British Military Legal Advisors and Military Police, when CRSV was discussed as a form of violence, they were able to be more clear and directive about how rules of engagement might authorise

intervention to protect, and the processes that a commander would go through in deciding what action to take.

Interviewees within NATO Headquarters emphasised that perceptions of NATO *values* and bolstering NATO legitimacy rather than NATO legal obligation were steering commitment to sexual violence response. One advisor said, “we have to do it because this is actually our own, our purpose. This is core values. I never heard that this is because of IHL.”<sup>758</sup> When I raised ambiguities around legal requirements with senior training personnel in the British Armed Forces, I was told ambiguities were addressed with the advice, “If it doesn’t feel right, report it up the chain of command.”<sup>759</sup> This reliance on soldiers’ subjective “feeling” frames CRSV as an issue of “values and standards” rather than legal obligation, in the context of an assumed convergence between “moral integrity” and legal requirement. The assumption is, “Most Servicemen and women have an intuitive feel for what is right and good and can be relied upon to deplore what is either illegal or unethical.”<sup>760</sup>

The Chapter 10 will return to these findings in considering their implications for theorising around the legal characteristics of norms related to military response to CRSV, the promise of applying IHRL as the predominant legal framework in military operations, and feminist strategy. Before, however, Chapter 9 will return to gender: the potential for militaries to be effective in combating CRSV in light of their profoundly gendered institutional culture.

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<sup>758</sup> Interview with NATO Advisor, 30 May 2018.

<sup>759</sup> Interview with British military trainer, 2 November 2016.

<sup>760</sup> DCDC, *British Defence Doctrine (2011)*, para. 414.

## Chapter 9

### Gendered institutional and strategic culture

For the unravelling of hegemonic masculinity, men must be encouraged not so much to change their ways as to change the way in which they negotiate their identities in relation to others. Rather than forge their identities through relations of opposition or domination, men and subjects in general need to construct their identities through recognition of similarity, respect, interdependence, empathy, and equality with others.

C. Duncanson, 'Hegemonic Masculinity and the Possibility of Change in Gender Relations' (2015) 18 *Men and Masculinities* 231–248 at 233.

The foregoing chapter traced how legal obligations are invoked and understood with regard to CRSV in NATO and the British Armed Forces. It looked for how the nuances of legal obligation, developed through feminist legal advocacy and the expansion of IHRL norms into armed conflict, are reflected. It concluded that military policies, directives and training regarding CRSV only inconsistently invoke IHL and IHRL and in generalised terms, making weak connections to concrete positive legal obligations.

This chapter analyses NATO and British Armed Forces' response to CRSV from the perspective of theorisation of military "regendering" and shift toward "cosmopolitanism": a vision of militaries emphasising care and protection over dominance and killing. As discussed in Chapter 3, theorising around regendered militaries emerged as an attempt to move forward feminist critiques of militaries and peacekeeping which appeared over-deterministic and too pessimistic,<sup>761</sup> and to take seriously calls from women in conflict-affected contexts for military protection. This chapter considers how engagement with CRSV might disrupt the gendered assumptions which shape how militaries engage with communities and reshape gendered dynamics within militaries. It examines whether the call to prevent CRSV shifts the gendered hierarchies of protection that feminists have

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<sup>761</sup> Duncanson and Woodward, 'Regendering the military'.



mapped within IHL and, as such, militaries' strategic approaches to protection. This analysis brings together institutions' structural discourses (as expressed in policy and doctrine) with how personnel articulate their understandings of these discourses. In so doing, it explores what I have described as the first and second themes of this project: the potential for militaries to be effective in combating CRSV in light of, on one hand, their problematically gendered institutional cultures and, on the other, the gendered operation of law in war.

## 9.1 Unravelling the gendered binaries of CRSV?

Duncanson theorises the possibility of progressive change in military masculinities (and as such, militarism) to be richest where relations between military actors and others are constructed in ways that overcoming "radical othering," that break down hierarchies of "us" and "them"<sup>762</sup> – as described in the quote opening this chapter. She finds examples of this in British soldiers in Bosnia "taking women's groups seriously as political actors, subverting the positioning of women as passive victims in warzones, and of British soldiers in Iraq and Afghanistan building relations of empathy and mutual respect with local people and the soldiers of the local security forces".<sup>763</sup> Indeed, responding to sexual violence is cited as one area which might build militaries' capacity for empathy and recognition of similarity.<sup>764</sup> Bergmann and Kronsell likewise identify ethics of care and "empathetic cooperation" with local populations as central to achieving a cosmopolitan military.<sup>765</sup> Woodward and Duncanson additionally emphasise the importance of overcoming or displacing binaries: "challenging the systems which categorise people or activities as masculine and feminine".<sup>766</sup> In this, their scholarship shares a key theme with the feminist critique outlined in Chapter 2, which problematises the binary ways in which CRSV is understood, the gendered binaries that flow through IHL, and the overarching binaries of the male/masculine protector and the feminised victim. The following examines this, with

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<sup>762</sup> Duncanson, 'Hegemonic Masculinity and the Possibility of Change in Gender Relations', 242.

<sup>763</sup> Ibid.

<sup>764</sup> Ibid., p 244.

<sup>765</sup> Bergman Rosamond and Kronsell, 'Cosmopolitan militaries and dialogic peacekeeping', 175. adapting the term "empathetic cooperation" from Laura Sjoberg's work.

<sup>766</sup> Duncanson and Woodward, 'Regendering the military', 7.

regard to discourse around perpetrators and victims of CRSV, local women, and understandings of CRSV.

### Perpetrators

After watching a film about CRSV against men in the DRC, a (middle-aged) British male soldier said: “I don’t know whether I’m more ashamed to be a human being or a man”.<sup>767</sup> Willingness to relate one’s own masculinity to the masculinity of perpetrators of CRSV was not often voiced in British or NATO training spaces, but CRSV did open discussion of violence against women in their own communities and – as will be discussed in the following section – violence against women within the armed forces. A NATO training observed included a substantive component on the trafficking of persons for forced labour as a gendered security issue at home.<sup>768</sup> British pre-deployment training opened with images of British newspapers highlighting child sexual abuse within the UK, to support a narrative, “We don’t tolerate this at home, why would we in [...]?”<sup>769</sup> In this way, there was some recognition of similarities between different cultures, and connections made between male violence in both war and peace. This could be read as engagement with the issue of CRSV chipping away at the warrior’s “proud vision of male identity,”<sup>770</sup> breaking down us/them binaries and processes of “radical othering”.

These observations are, of course, in tension with the institutionally inadequate response to SEA detailed in the previous chapter. In NATO, there is silence around grave allegations of sexual violence by NATO forces and partners, citing this as “cultural” and “sensitive”. In the British Armed Forces, SEA is framed as a problem of forces with inferior values, which could perhaps be taught how to behave properly, whilst British soldiers exercise good judgment in choosing prostitutes sensibly. In both NATO and British contexts, interviewees referred to a subtext belief that their male personnel could not reasonably be constrained

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<sup>767</sup> Defence Gender Training of Trainers course, Worthy Down Barracks, Hampshire, 25-28 January 2016, after watching Otim Patrick’s 2011 documentary, “They Slept with Me”

<sup>768</sup> Observation of daylong seminar on SGBV, 28 April 2016, NATO Allied Rapid Reaction Corps.

<sup>769</sup> PowerPoint presentation “Gender, Sexual Violence and Exploitation (GSVE) on Operations,” Napier Barracks, Kent, 2 November 2016.

<sup>770</sup> Ignatieff (1998) cited in Kinsella, *The Image before the Weapon*, p. 123.

from having sex whilst deployed. Their own victims are not victims in the manner that others' victims are victims, and their acts do not render them perpetrators, as African and other non-Western soldiers who commit SEA are. This reads as a neo-colonial racialized othering, reproducing the narrative that Gayatri Spivak famously described as "white men saving brown women from brown men,"<sup>771</sup> where the white soldier is represented as an emblem of civilisation and modernity. Within NATO, the racialised aspects are not so straightforwardly, insider/outsider. There is an additional internal binary because some NATO members' "culture" is regarded as problematic.

### Victims

Advocates of the WPS Agenda maintain the importance of challenging stereotypes of women's victimhood: that CRSV discourse obscures the holistic experiences of women in conflict-affected countries; disconnects CRSV from pervasive structural patterns of patriarchal domination; and reproduces stereotypes of women's passive victimhood and subordination. These too reproduce gendered binaries. The construction of a weak, innocent victim is apparent in both NATO and British policy, directives and training around CRSV. Women are frequently grouped with children (sometimes also with refugees and internally displaced persons) as a "vulnerable group".<sup>772</sup> In training materials, in observed training and interviews, the trope of a woman apparently raped at random by strangers springing from the undergrowth is common. Female victims are never framed as women who might hold power, as when sexual violence targets a woman to deter her from political activism or joining security forces or to capture her financial resources.<sup>773</sup>

The second recurring victim trope in both British and NATO discourse is boys abused through *bacha bazi*; male victims innocent by virtue of their boyhood and position of

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<sup>771</sup> G. C. Spivak, 'Can the Subaltern Speak?' in C. Nelson, L. Gross (eds.), *Marxism and the Interpretation of Culture*, (London: Macmillan, 1988) p. 92.

<sup>772</sup> E.g., in NATO: *Allied Joint Doctrine* (2010); in the British Armed Forces: *UK Government Strategy on the Protection of Civilians in Armed Conflict*; DCDC, *British Defence Doctrine* (2011); Land Warfare Development Centre, British Army, *Human Security: The Military Contribution* (2016).

<sup>773</sup> These types of motivations have long been documented: e.g. C. O. N. Moser and F. C. Clark (eds.), *Victims, perpetrators or actors? gender, armed conflict and political violence* (Zed Books, 2001); Q. Lawrence, 'For Afghan Policewomen, Sex Abuse Is A Job Hazard' (March 2012).

servitude, and as such presented in a feminised manner. In a NATO context, male victims are only partially visible: mentioned in operational directives and training materials, but not in WPS policies and action plans.<sup>774</sup> British policy and doctrine do more consistently recognise men and boys.<sup>775</sup> The 2019 policy on *Human Security in Military Operations* specifically identifies the exclusion of men's victimisation within the WPS framework as one of the rationales for framing policy instead around "human security".<sup>776</sup> On two occasions in observed British training, a male participant shared an anecdote of male-on-male rape of another soldier. That such military victims are missing in NATO and British CRSV materials, hints at discomfort with the feminisation-through-rape of the male soldier. In British and NATO contexts, there is moreover no recognition or analysis of CRSV (or other types of discrimination or violence) targeting LGBTIQ individuals, reproducing the privileging of the heterosexual.

This signals the needs for a fresh appraisal of arguments that men and boy are invisible victims of CRSV, although it would be inferring too much to argue that reproductions of feminised vulnerability and innocence are displaced, given that the emphasis is on *boy* victims. CRSV is acting as a means within NATO and the British military to surface both female perpetration of violence and male victimisation, disrupting pre-existing gender binaries. Yet, CRSV remains a symbolically feminised issue. A British GENAD captured this perfectly:

... for years what's happened to the sexual gender based violence is that it's gone into the gender bin with everything else [*laughs*] and it's on the side-lines. And you hand it over to the Gender Advisor who then has hankies and cups of tea for people who can come and cry and tell her all about it. It's not discussed as a strategic issue, it's not discussed as a security issue, so it's not discussed even as an early warning signal. It's not discussed in military man terms. It becomes a woman's thing.<sup>777</sup>

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<sup>774</sup> NCGM and NATO ACT, *NATO gender education and training package*, 'Pre-deployment training lecture 1'. Also: NATO ACO ACT, *Bi-St. Dir. 40-1 Rev. 1* (2012).

<sup>775</sup> E.g. *United Kingdom National Action Plan on women, peace and security, 2014–2017*; *UK National Action Plan on Women, Peace and Security, 2018-2022* (2018) pp. 2018–22

<sup>776</sup> *Human Security in Military Operations, Part 1: Directive*.

<sup>777</sup> Interview with NATO Advisor, 25 May 2018.

## Women's agency

Beyond a focus only on the protection of women and girls, a WPS perspective on conflict centres women's knowledge and potential agency. This is what feminist critique sees as particularly threatened by the political focus on victimhood through CRSV. In new visions for both regendered and cosmopolitan militaries, building relationships and collaboration with local populations is considered an important trait. Duncanson considers it an aspect of breaking down "hierarchies between self and Other" in favour of "ideals and practices of manliness created through relations of equality, empathy and respect."<sup>778</sup> A GENAD described enabling response to CRSV as requiring exactly such a change in institutional culture: "... rather than .. creating special initiatives and it becoming a new military task ... actually what you need to do is change the culture, so it thinks differently .... what we need to do is create a sensitive, empathetic armed force ..."<sup>779</sup>

In NATO's WPS discourse women are framed as knowledgeable about their security environment, not only as victims:

Local consultations with women can also help address specific protection concerns for women and girls, such as vulnerability to sexual violence and trafficking in human beings ... Such consultation is crucial, as measures taken to protect women and girls without consultation often result in ineffective or counterproductive effects.<sup>780</sup>

NATO's GENAD guide suggests "liaison and links as early as possible with organisations that respond to conflict-related SGBV, women's security, safety and human rights also social, political and economic development".<sup>781</sup> Likewise, the British Armed Forces' *Human Security in Military Operations* embeds CRSV under a subheading "protection through participation" and advocates involving women and women's groups in conflict early warning and prevention processes.<sup>782</sup>

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<sup>778</sup> Duncanson, 'Hegemonic Masculinity and the Possibility of Change in Gender Relations', 242.

<sup>779</sup> Interview with British GENAD, 28 November 2018.

<sup>780</sup> NATO ACO ACT, *Bi-St. Dir. 40-1 Rev. 1 (2012)*, paras 3–6.

<sup>781</sup> NATO ACO, 'Gender Functional Planning Guide', pp. C–5.

<sup>782</sup> Ministry of Defence, *JSP 1325 Pt 1 (2019)*, p. 16.

But, acknowledgement on paper of women's potential does not in isolation enable engagement, empowerment or collaboration. Moreover, engagement activities can be meaningless where not grounded in the necessary knowledge of the context.<sup>783</sup> Meaningful consultation requires investment in mechanisms for organisation, dialogue, trust-building and feedback. Neither NATO nor the British Armed Forces have produced any concrete guidance on *how* to consult with local women's groups or representatives. Rather, British guidance on engaging local civil society refers only to London-based processes, as if civil society engagement is not something for the operational level.<sup>784</sup> In training, when civil society consultation was referred to, participants invariably cited Amnesty International and comparable international – not local - organisations. Other scholarship on NATO FETs and GENADs testifies to their difficulties in engaging with local women: lack of resources, linguistic and cultural barriers, and the danger in which it can put “engaged with” individuals and communities.<sup>785</sup> GENADS have underscored that in the short deployments that characterise military action, there is little scope to build meaningful relationships. For NATO, the picture is not universally poor: in Kosovo, there has been some collaboration between NATO and local women's organisations;<sup>786</sup> in Afghanistan, less so. The Afghan Women's Network has described since 2015 having almost no direct contact with the staff of the NATO Mission and NATO's Civil Society Panel on WPS has highlighted lack of mechanisms for communication with local communities.<sup>787</sup> As regards the British Forces, I uncovered no examples of military engagement in any operational context with local women's civil society organisations.

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<sup>783</sup> As demonstrated with regard to some of ISAF's attempts at engaging Afghan women: Azarbaijani-Moghaddam, *Seeking out their Afghan sisters*.

<sup>784</sup> Ministry of Defence, *JSP 1325 Pt 2 (2019)*, pp. 16, 22.

<sup>785</sup> Bastick and Duncanson, 'Agents of Change?'. See text to Ch. 6 n 422 and Ch. 7 ns 548 - 550 in relation to FETs.

<sup>786</sup> J. Rošul-Gajić, 'Women's Advocacy in Postwar Bosnia and Herzegovina. Implementation of UNSCR 1325 on Women, Peace and Security' (2016) 17 *Journal of International Women's Studies* 143.

<sup>787</sup> DCAF/NATO CSAP, *Report and recommendations of the Second CSAP Annual Meeting*.

Breadth and continuum of violence

A fourth important theme in feminist engagement with CRSV is that CRSV should be understood as part of a continuum of violence suffered by women and girls, rooted in structural relations of power and domination. Recall that NATO adopted broad terminology in relation to CRSV: “conflict-related sexual and gender-based violence”, and that CRSV is “part of the wide continuum of violence” became an explicit part of its discourse. In training observed, CRSV was presented as including, for example, SEA, female genital mutilation and forced marriage, and situating these within gendered patterns of exploitation and violence. British Armed Forces’ training and doctrine likewise highlight diverse forms of GBV, including *bacha bazi*, forced marriage, domestic violence, trafficking for sexual exploitation and female genital mutilation. In *Human Security in Military Operations*, CRSV is situated alongside SEA and GBV more generally, as well as a variety of other forms of violence, harassment and sexism – as the extract of its early warning indicators in Table 3 illustrates.

**Table 3: Extract of British Armed Forces’ military/security "Early Warning Indicators Related to Human Rights Violations," *Human Security in Military Operations, Part 2, p. 4***

Are members of armed groups/armed forces implicated in sexual exploitation or GBV? ....
Is CRSV being used as a strategy of warfare, a strategy within armed groups or as a result of a breakdown of public order? ....
Does military training inculcate violence and aggression an equate this with masculinity? Are recruits to military training ill-treated, called by derogatory names of a sexual and racist nature?
Are there frequent relationships between men and women in the same command structure?
Are forces allowed to visit brothels and use prostitutes or has this been placed out of bounds?

That NATO and British policy, doctrine and operational tools look beyond rape used as a “weapon of war” and beyond CRSV to broader forms of gendered violence and insecurity should, scholarship suggests, facilitate mechanisms of protection and accountability that better address the full range of gendered harms.<sup>788</sup> This shift, from a focus on CRSV used strategically to a holistic approach to human security, could be read as a progressive response to the feminist critique of CRSV discourse presented in Chapter 2. One might argue it is so: in Afghanistan, mission planning considered targeting of girls' schools and

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<sup>788</sup> See Ch. 2, ns 73-79.

acid throwing as forms of conflict-related SGBV.<sup>789</sup> NATO constructed Family Response Units where mostly female police officers support victims of domestic violence, sexual abuse, child marriage and other harms.<sup>790</sup> In Kosovo, the NATO mission has supported shelters for victims of domestic violence.<sup>791</sup> But, a NATO GENAD explained that NATO's conflict-related SGBV terminology was "challenging" because it refers to both sexual and *gender-based* violence, and in doing so asks forces to respond to situations "beyond the rule of engagement ... beyond the use of force, so there's no use of force procedure in place."<sup>792</sup> This shows that there are apparent costs to NATO's broad approach to conflict-related SGBV in terms of setting out any clear directions about using force to deter and protect.

This illustrates a point made in Chapter 8 and a key dilemma in framing the role of armed forces in relation to CRSV. On one hand – concordant with feminist critique – one would want armed forces to understand the dynamics of GBV in a broad sense. On the other, one would want armed forces to recognise that a narrower subset of acts of GBV – violations of IHL, of peremptory norms, CRSV as torture – *oblige* all reasonable efforts to prevent them. The conundrum is that by using inclusive concepts of GBV, over a narrow focus on CRSV as a violation of international law, both NATO and the British Armed Forces have orientated themselves closer to human security in a broad sense. In so doing, they have also placed CRSV in this legally and strategically indeterminate space, such that missions do not recognise any positive obligations. I will return to this dilemma in Chapter 10.

## 9.2 Disrupting militaries' internal gender order

To be a cosmopolitan military is theorised to require not only external strategic realignment but *internal* transformation. The cosmopolitan soldier would be motivated by humanitarian rather than national ideals, committed to the importance of individual human life and

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<sup>789</sup> Interview with NATO GENAD, 24 June 2016.

<sup>790</sup> NATO Resolute Support, 'Afghan police provide shelter for domestic crime victims' (June 2017).

<sup>791</sup> Col. Andreas Pichert, KFOR GENAD, open (to public) session of the annual conference of NCGP, 4 June 2019.

<sup>792</sup> Interview with NATO GENAD, June 2016.



human rights, and willing to risk their life for a person regardless of their country.<sup>793</sup> The changes in how militaries think about CRSV, how they relate to local organisations, how they reflect upon their own behaviour as potential perpetrators, discussed above, could be seen as aspects of this transformation. More specifically, Kronsell suggests that one aspect of cosmopolitanism would be being a “gender-aware military,” in the sense of having the ambition to rethink masculinity within the forces (which Kronsell links to the concept of being a more “democratic” military).<sup>794</sup> This suggests the importance of inquiring as to whether engagement with CRSV prompts militaries to reflect upon their own internal gender dynamics.

Within NATO, there has long been a discourse that women were understood to have distinct yet unspecified effects on “readiness and multinational interoperability”<sup>795</sup> and “improving performance”.<sup>796</sup> NATO doctrine claims that female soldiers are: “... often perceived as a lesser threat than their male counterparts ... able to meet and talk with a much broader range of actors, including men, women and children ... [have] potential to act as role models, inspiring local men, women and girls to improve women’s rights ...”<sup>797</sup> In British doctrine and training, female personnel are systematically presented as a particular asset in sexual violence response because local cultures are assumed to problematise male soldiers speaking with local women.

Looking beyond how female personnel are seen, with NATO and the British military the WPS Agenda has prompted differing degrees of engagement with the gendered dynamics of their own organisations. NATO’s successive WPS Action Plans have included a focus on women’s leadership and working conditions within NATO. For example, the 2014 plan included managers be appraised on their ability to “promote improved gender balance and

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<sup>793</sup> Elliott, ‘Cosmopolitan ethics’, pp. 27–28; Kaldor, *New and old wars*, p. 139; Kronsell, *Gender, Sex, and the Postnational Defense*, chap. 3.

<sup>794</sup> Kronsell, *Gender, Sex, and the Postnational Defense*, pp. 70, 90.

<sup>795</sup> Office on Women in the NATO Forces Terms of Reference, 10 July 2000, para. 5(b), in *Committee on Women in the NATO Forces Handbook*.

<sup>796</sup> *Policy for the implementation of UNSCR 1325 on Women, Peace and Security and related resolutions*, para. 22.

<sup>797</sup> NATO Standardization Office, *Military contribution to peace support (2014)*, para. 0340; also NATO Standardization Office, *Counterinsurgency (COIN) (2016)* para. 0442.

a respectful and safe working environment”.<sup>798</sup> As described in Chapter 7, NATO directives have come to appropriate feminist language: “... men, women, boys and girls are components of a gendered system ... notions equated with traditional masculinity and femininity that underpin organisations, societies and communities”.<sup>799</sup> Still, when it comes to implementation of WPS commitments, NATO gender staff have been frank about “resistance to change at the organizational as well as individual levels”.<sup>800</sup> A NATO Advisor’s comments attest to a dichotomy in thinking and messaging around CRSV and organisational culture:

I am not talking about women, I am talking about SGBV ... this is not some “rights for some women that want something,” feminist, crazy, whatever, to be equal, hello! ... It’s rape. ... if you are normal, normal in a most basic way, you will understand it as injustice, as against humanity. You will not understand inequality among men and women as inhuman ....<sup>801</sup>

This conforms to my earlier analysis, that because NATO’s WPS narrative is grounded in operational effectiveness and the “relevance” of WPS, it is ill-suited to prompt critical self-reflection.

In the British Armed Forces, while the focus of WPS policy (in the form of *Human Security in Military Operations*) is entirely external, in training that I observed older female trainees often spoke out about sexual harassment, even rape, within the forces. Male trainees at times drew attention to gendered hierarchies of prestige between different types of functions (for example, “teeth arms” as compared to the Education and Training Service). Training on gender and WPS gave some trainees a safe space and a new vocabulary in which they could situate their own and other’s experiences of injustice in their military careers. An educator told me that as WPS became established as part of the course she delivered, female students became increasingly willing to speak openly about sexual

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<sup>798</sup> *Women, Peace and Security Action Plan*, Action 11.1.

<sup>799</sup> NATO ACO ACT, *Bi-St. Dir. 40-1 Rev. 2 (2017)*, paras 1–3.

<sup>800</sup> Isaksson, ‘Fighting for Gender Equality’, 62.

<sup>801</sup> Interview with NATO Advisor, 30 May 2018.

harassment in the military.<sup>802</sup> Another British trainer saw strong potential for training on CRSV to shepherd self-reflection, transformation, and so a change in operations:

... suddenly you can see pennies dropping when they realise what it means to be a man in this society ... introducing sexual violence unwraps so many different sorts of layers of that onion and gets really quite deep inside a soldier's psyche. ... I think one of the positive consequences probably will be the fact that there will perhaps be a less masculine response on operations ...<sup>803</sup>

However, my impression is that in more mainstream WPS training, where gender content was not delivered by individuals with gender expertise, internal gender issues were less likely to surface, and this type of reflective process was less likely to occur. A staff member of one of the British training centres in Africa said of its organisational culture:

... it's highly biased, shall we say, in terms of gender. It's very male focused. ... ingrained in their psyche and the way they behave with women ... they don't see where they are in themselves in terms of their own gendered or ungendered organisational culture, and they don't connect that with the training that they're delivering.<sup>804</sup>

The British pre-deployment training that I observed did not touch upon internal gender culture; indeed, as described in Chapter 8, the trainers took care to steer clear of "equality nonsense" and any "feminist agenda".<sup>805</sup>

Perhaps more tellingly, in both NATO and the British Armed Forces, preventing and responding to CRSV are consistently articulated as "in line with" values, rather than requiring *modification* of existing values and organisational structures pertaining to either gender relations or combat. Where modification is required, as concerns SEA (as established in Chapter 8), there is deep resistance to confronting attitudes toward male sexuality.

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<sup>802</sup> Interview with educator at British military college, 2 August 2018.

<sup>803</sup> Interview with British military trainer, 27 June 2017.

<sup>804</sup> interview civilian advisor to British international training centre, 26 October 2017.

<sup>805</sup> See also text at Ch. 7, n 624.

### 9.3 Locating CRSV within militaries' strategic culture

If the *internal* ideational changes of a cosmopolitan military include challenging military masculinities, discussed above, the *external* ideational change envisioned is a shift from a strategic focus on combat to protection. Here we see clearly how a military commitment to prevent and respond to CRSV is a testing ground for a military's cosmopolitan values. Running through the commitments made concerning CRSV is the projection of the willingness to use force, where necessary, to stop or deter CRSV. Were militaries to use force to protect civilians from CRSV, this would challenge the critique – made within the feminist analysis of IHL and elsewhere - that militaries prioritise their own lives over all others'. It would affirm the possibility of cosmopolitan militaries or human-security forces, willing to lay down their lives for the people of foreign lands. To what extent do we see this in NATO or the British Armed Forces?

#### Protection of civilians vs. force protection

NATO policy states that militaries might use force to protect civilians.<sup>806</sup> Delivering protection of civilians from CRSV requires more than policy; one would expect to see tactical-level guidance documents being trained on and practised in exercises. The review of operational directives and guidance outlined in Chapters 6 and 7, the trainings observed and my interviews indicate that neither NATO nor the British Armed Forces have developed or are implementing tactics or procedures designed to protect women, men, boys or girls from CRSV. As is particularly apparent in the NATO context, there remain still no agreed common mechanism even to report CRSV. Peacekeeping doctrine says that forces should “expect to inflict and suffer casualties”, but references to protection of civilians invariably emphasise finite resources, and managing expectations of what a force “can and cannot do”.<sup>807</sup> A British trainer explicitly said that CRSV response is predicated on the primacy of

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<sup>806</sup> *Policy for the Protection of Civilians*.

<sup>807</sup> NATO Standardization Office, *Military contribution to peace support (2014)*, paras 0115, 0335. See also DCDC, *Peacekeeping (2011)*, para. 409; Land Warfare Development Centre, British Army, *Human Security: The Military Contribution (2016)*.

one's own and one's force's safety.<sup>808</sup> As described in Chapters 6 and 7, discussions around even reporting CRSV showed that many nations see it as presenting security risks to their forces that they are unwilling to accept. Several interviewees spoke frankly of the public and political unwillingness to sacrifice soldiers to save civilians in other countries:

... the public reaction to coffins coming back and the public's desire to support missions. So, I think there's a choice here because if too many, if Brits are killed on operations and people say, 'Well, the protection of civilians camp set-up, that's pretty intractable really, isn't it? Well, why are our people dying for this?' So, there's a balance to be struck, they can't have it both ways.<sup>809</sup>

NATO doctrine describes the acceptable risk of casualties to one's own forces as "a measure of the political importance of the campaign, proportional to the threat to the member nations or national interests."<sup>810</sup> The measures of political will is manifest in a mission's operational orders and rules of engagement. As the discussion concerning rules of engagement in Chapter 8 established, the "default" NATO rules will not permit pre-emptive force to prevent CRSV and some NATO forces will *not be authorised* to use force to protect civilians. British rules of engagement are not necessarily so restrictive. Still, interviewees explained that CRSV is still not meaningfully incorporated in operational orders or training on rules of engagement, and that it is difficult to relate CRSV response to the rules of engagement currently used. Unwillingness and indeed inability to respond to CRSV with force could be said to be hardwired into NATO and British operations at the political/strategic level.

#### Risk, *raison d'être* and reasonableness

British – and, to a lesser degree, NATO - trainees and interviewees seemed to be personally very engaged and motivated by the new attention to WPS and CRSV. For many, training on WPS was eye- and mind-opening. Some described feeling reinvigorated, with a new sense of purpose and passion. But they frequently voiced experience or expectation of resistance

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<sup>808</sup> Interview with military trainer, 2 November 2016.

<sup>809</sup> Interview with Army doctrine writer, 26 June 2017.

<sup>810</sup> NATO Standardization Agency, *Allied Joint Operations* (2007) para. 0135.

to action around WPS from colleagues or, in a NATO context, also from nations contributing personnel to missions. Two strong and interrelated themes are conceptions of *risk* to the mission and a military's *raison d'être*, the latter being closely related to what is perceived as *reasonable*.

As the “bullet in the head” comment in the preceding chapter shows, occasionally discussions around CRSV touch upon a fear that military intervention exacerbates risks to victims. A NATO GENAD shared a possibly apocryphal story of an Afghan woman asking for help, being taken into a NATO base, then being sent home – and there facing increased risk through questioning as to why she had been at the camp.<sup>811</sup> In a British gender training, an officer with a background working with the UN argued that patrolling to deter CRSV can frighten women and put civilians at risk of reprisals from rebels; and that female engagement initiatives can put women in greater danger. However, risk to victims is a muted undercurrent in NATO or British discourse. More prominent is the idea that prevention and response to CRSV risk other aspects of the mission. Most obviously, in a NATO context, political risks to the partnership aspects of a mission – understandable given the difficulties that *bacha bazi* allegations presented for relations with Afghan national forces, and “green on blue” attacks.<sup>812</sup> My fieldwork with the British Armed Forces observed a more nuanced discourse around the risks of focusing on CRSV. There were frequent references to not “doing nothing” in the face of CRSV but being mindful of the overall “effect” the mission wants to achieve. A British Army officer explained, “the consequence of getting involved [in CRSV] may be something that is quite damaging in terms of reputation, in terms of impartiality, in terms of our ability to do other things.”<sup>813</sup>

These articulations of risk slide into ideas about what the role and purpose of the military are. Soldiers saw contradictions between being a combat-ready and CRSV-ready force:

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<sup>811</sup> Interview with NATO GENAD, 7 October 2017.

<sup>812</sup> N. Shortland, E. Nader, H. Sari, M. Palasinski, and C. Hilland, ‘Murder on Maneuver: Exploring Green-on-Blue Attacks in Afghanistan’ (2019) 45 *Armed Forces & Society* 368–388.

<sup>813</sup> Interview with Army doctrine writer, 26 June 2017; with similar discussion during the Defence Gender Training of Trainers course, Worthy Down Barracks, Hampshire, 25–28 January 2016.

... we see ourselves generally as an enabling element, so we're providing the security for the humanitarian actors to go about their business. And to provide that level of security means particular military skills in terms of an ability to conduct offensive activities or give a sense of a threat to would-be adversaries and enemies. And if you're going to concentrate on that, it's going to be to the detriment potentially of the 'softly softly' element required potentially of dealing with victims of sexual violence.  
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Most of my British interviewees did not argue against engagement with CRSV, but for a modest and moderated response within an overarching aim to create a secure environment for civilian humanitarian actors. This shines a light on a subtle but important struggle in the British context over the appropriateness of military tactical measures to prevent and deter CRSV. Prevention and deterrence were, as Chapter 3 highlighted, prominent in early political commitments around military engagement. NATO materials have adopted from UN peacekeeping sources suggestions of, for example, proactive patrolling. In Britain, however, an Army doctrine writer described how negative feedback on the first doctrine note on human security led to a refocusing of messaging - away from monitoring, disrupting and deterring CRSV, to reporting CRSV "when they're seeing it" and referring to civilian agencies, to "recognise the limits of our ability to actually get involved and make a difference".<sup>815</sup> This still requires new training: "just having an awareness it's a thing, it's a thing you need to be able to see, because otherwise you look right past it".<sup>816</sup> But, it is more passive; it is training to report and refer, not prevent and deter. As Chapter 7 described, in the new British "human security approach", references to tactical interventions to prevent CRSV - and even to report CRSV - have dropped away, with the protection of civilians referred to less as tactical than as "a moral, political, legal, and strategic priority."<sup>817</sup>

Again and again, interviewees conveyed the idea that dealing with CRSV and protecting civilians more generally is "niche," not "the main bit"<sup>818</sup> of what NATO or the British Armed

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<sup>814</sup> Interview with Army doctrine writer, 26 June 2017.

<sup>815</sup> Ibid.

<sup>816</sup> Interview with British GENAD, 26 June 2018.

<sup>817</sup> Ministry of Defence, *JSP 1325 Pt 1 (2019)*, p. 2.

<sup>818</sup> House of Lords Select Committee on Sexual Violence in Conflict, *Written and oral evidence*, p. 450.

Forces do or are for. NATO doctrine states, “The ability to fight – to bring violence, or the threat of violence, to the operating space – remains NATO’s *raison d’être* and is critical to success wherever there is the possibility of hostile opposition.”<sup>819</sup> A Legal Advisor described the rationale for NATO’s interest in CRSV as an aspect of “Projecting Stability,”<sup>820</sup> - which aims to provide a security buffer for NATO nations, rather than global humanitarian principles. British interviewees, in discussing CRSV, frequently juxtaposed it with “hard military activity.”<sup>821</sup> A British Army officer described using a “functionalist approach” when training foreign forces to handle victims of CRSV: “This is what you do, so that you can move these civilians out as quickly as possible, and get on with your kinetic operation.”<sup>822</sup> That is, the kinetic operation is the key activity, handling CRSV secondary. These comments frame armed forces’ essential role, their *raison d’être*, as combat. But, such informants often reflected thoughtfully on the lessons of Iraq and Afghanistan as that a military cannot win peace, but can only create a secure environment in which a political process can take place; and made reference to debates between military, humanitarian and development actors around the appropriate limits of military action. From this perspective, dealing with CRSV is best done by civilian agencies. GENADS, whilst likewise emphasising the importance of political processes to resolve conflict, saw a more active role for the military in it, referring to newer strategic narratives of “defence engagement” and “political effect”.<sup>823</sup> For them, dealing with CRSV is part of the military’s role. CRSV surfaces a critical and complex debate as to proper use of military force, which speaks to willingness to embrace human rights in operations, and the forces’ approach to human security narratives. The implications of these debates will be considered further in Chapter 11.

It should also be acknowledged that several British interviewees argued that slow progress in implementing WPS commitments was less because of a resistance to the subject matter than pressures associated with the massive staff cuts between 2006 and 2015, which were

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<sup>819</sup> NATO Standardization Office, *Allied Joint Doctrine (2010)*, para. 0217.

<sup>820</sup> Interview with NATO Legal Advisor, 30 May 2018.

<sup>821</sup> Interview with British GENAD, 26 June 2018.

<sup>822</sup> Observation of Officer Tutors' training on gender and WPS, 14 January 2019.

<sup>823</sup> Interviews with British GENADS 26 June 2018 and 3 September 2018.



highlighted in the opening of Chapter 7. As has been observed in connection with resistance to gender training, it can be “triggered by a feeling of incapacity (due to insufficient resources, time, knowledge, and so on) rather than any resistance to the very goal of gender equality”.<sup>824</sup> But lack of resourcing and resistance to the agenda are entwined. A British GENAD described a typical reaction to asking soldiers to consider gender and human rights: “All I want to do is teach these people to run and shoot, and now you’re telling me I need to do all of this not military stuff in a way I don’t understand with time I don’t have”.<sup>825</sup>

For individuals involved in promoting WPS in the British military, these challenges translated into a sense that asking too much concerning CRSV was *unreasonable* and reflected poorly on one’s credibility. It is important to note this because, as Chapters 5 and 8 explained, what is reasonable for militaries to do defines under a due diligence obligation what they are legally required to do. A British doctrine writer observed:

So my point about the gender perspective has always been, if you want to implement it you have to do it in such a way that it’s not deemed as unreasonable by practitioners ... because otherwise people will just say ‘I like your idea and I sympathise, but you’re out of touch with our reality on the ground which has many, many competing demands’. And those who come across as reasonable and situationally aware tend to be heard ...<sup>826</sup>

When the CRSV session was introduced to pre-deployment training, trainers were apparently reticent to deliver it because it was perceived as “not a very sexy sort of subject” and “outside of their comfort zone.”<sup>827</sup> One explained frankly that within an institutional environment (the Army) in which individuals constantly jockey to align themselves with frontline fighting, talking about CRSV was at odds with “people’s

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<sup>824</sup> E. Lombardo and L. Mergaert, ‘Gender Mainstreaming and Resistance to Gender Training: A Framework for Studying Implementation’ (2013) 21 *NORA - Nordic Journal of Feminist and Gender Research* 296–311 at 307.

<sup>825</sup> Interview with GENAD, 26 June 2018.

<sup>826</sup> Interview with Army doctrine writer, 26 June 2017.

<sup>827</sup> Interview with developer of pre-deployment training, 1 November 2016.

preconceived ideas of conflict and soldiering”.<sup>828</sup> This illustrates feminist insights into how ideals of combat and masculinity are mutually constitutive. A GENAD reflected wryly on how championing WPS impacted how she was perceived: “I can see them all groaning when I walk up to them. But I don’t know, I’m like a dog without a bone, and I don’t care, I think there’s something bigger to be achieved than making friends.”<sup>829</sup>

These debates did not come to the fore so strongly in my NATO interviews and observations. I believe that this is, first, because CRSV response is in NATO embedded within the narrative of gender perspective being a means to increase NATO’s operational effectiveness. There is less scope for apparent contradiction between response to CRSV and achieving the mission because response to CRSV is instrumentalized as something that helps achieve the mission. NATO nations apparently see little contradiction between their commitment to gender mainstreaming (an “enabler”) and unwillingness to share reports of SEA or CRSV in their operational environment. Secondly, NATO has more consistently maintained that it “has a limited role, mandate and capacity” concerning CRSV.<sup>830</sup> This is more natural for NATO, wherein protection of civilians is a recent concept; compared to the British Forces that have UN and EU peacekeeping within their portfolio of operations.

## Conclusions

This chapter has laid bare the contradictions that run through NATO and the British Armed Forces’ engagement with CRSV. Feminist analysis of CRSV and of militaries centres gender discourses: how militaries represent women, how they represent themselves. Doing so, one *can* trace an evolution in gendered narratives within both NATO and the British Armed Forces’ policy, doctrine and training: disruption of passive, infantilised constructions of women; incorporation of the WPS Agenda’s proposition that women have distinctive knowledge and potential; recognition of men and boys as possible victims of CRSV. Through

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<sup>828</sup> Ibid.

<sup>829</sup> Interview with GENAD, 3 September 2018.

<sup>830</sup> NCGM training materials used in Gender Training of Trainers course, Worthy Down Barracks, Hampshire, UK, January 2016.

engagement with CRSV, shifts in what Cavaghan describes as “gender knowledge”<sup>831</sup> do appear to be occurring. Engagement with CRSV has likewise, at least in a British context, helped to open discussions around sexism with the forces, and GBV within the community.

However, a focus only on how WPS and CRSV are discussed, on gender discourse, on subjectivities or constructions of masculinity and femininity, risks failing to see the persistence of combat in military identities and strategy. NATO and (to a lesser extent) the British Forces articulate a pro-active commitment to prevention and response to CRSV, but the understanding that combat is the *raison d'être* of militaries and aversion to loss of military life to protect civilians remain. Entrenched ideas about the proper scope of militaries' tasks, what is reasonable and appropriate, run deep at institutional and personal levels. As others have found, alternative military identities associated with protection- and engagement-orientated practices do not successfully displace identifies constructed around the hegemony of combat.

The relationship of CRSV with any transition towards being a force orientated toward human security, however, is complex. For some individuals, thinking about CRSV reinforced their perception of the *inadequacy* of military force to create human security. It underscored the complexities between social, security and economic factors; that there are many forms of violence which militaries are ill-equipped to address. Their response was less a sense that the military should transform to be more oriented toward protection of civilians, than an assertion of the limits of the appropriate roles of armed forces, in favour of space for humanitarian actors and diplomatic initiatives. Nonetheless, as earlier chapters demonstrated, at a strategic level engagement with CRSV and WPS more broadly has helped bring into existence new policy commitments to human security and protection of civilians. These being so recent, it is premature to draw definitive conclusions as to how NATO's *Military Guidelines on Conflict-Related SGBV and Protection of Civilians Policy* and Britain's policy on *Human Security in Military Operations* are being and will be implemented in operations. These new policies and associated doctrine represent a potential for the

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<sup>831</sup> Cavaghan, *Making Gender Equality Happen*.

ideational and operational shifts associated with cosmopolitan and human security forces to evolve.

Accepting this project's uncertainty as to the future of NATO and British military responses to CRSV, it nonetheless offers a range of contributions to understandings how international law is applied, in particular by militaries, and how militaries' transformation might be moved along. These are explored in the final part of this thesis.

Chapter 9  
Gendered institutional and strategic culture

## PART III: ANALYSIS AND CONCLUSIONS

### Chapter 10

#### Moving beyond reasonable law for a reasonable war

If the law does not serve the purpose of human survival and flourishing, then the law must be changed. If the law violates our high values, then the law must be changed. If the law does not serve the common good, then the law must be changed. If public power, under the spurious authority of law, causes human suffering, then the law must be changed.

P. Allott, *Eutopia: New Philosophy and New Law for a Troubled World* (Edward Elgar Publishing, 2016) p. 232.

This thesis opened by highlighting how feminist legal activism has helped to strengthen and expand the recognition of CRSV in international law, and how feminist scholarship has highlighted the gender biases implicit in IHL. The inadequacies of IHL from a gender perspective form part of the argument for convergence between IHL and IHRL in armed conflict or even, as Kaldor and Chinkin propose, framing IHRL as the *predominant* legal regime for understanding war and by which to govern humanitarian intervention.<sup>832</sup> High-level commitments for militaries to prevent and respond to CRSV made since 2005, and in particular since 2013, present a concrete issue upon which military engagement with the convergence of IHL and IHRL can be explored, in a manner which takes account of the rich feminist engagement with CRSV.

This chapter starts by synthesising this project's findings, developed through Chapters 6 to 9. It reflects upon how and why they diverge from comparable work on NATO, and the methodological, conceptual, and strategic implications of this. It then returns to how international law obligations (under both IHL and IHRL) related to CRSV are understood in militaries and draws out the contribution this project makes to understandings of

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<sup>832</sup> Chinkin and Kaldor, *International Law and New Wars*, pp. 222, 284.

international law, gender and power, and the processes through which international law is created. This leads to reflections upon two aspects of feminist engagement: the pivot towards emphasising a continuum of violence within women's lives, and the focus on the Security Council. It draws out the need for new types of feminist engagement with law, war and CRSV.

### **10.1 Rhetoric and reality in military responses to CRSV**

This project explores a straightforward empirical question, "What initiatives have NATO and the British Armed Forces developed to prevent and respond to CRSV?" Its findings are not, however, simple to interpret. In drawing my conclusions, I struggle for a fair balance between optimism and pessimism, hope and cynicism.

There are many marks of progress in both NATO and the British Armed Forces' engagement with CRSV. I am keenly conscious that each is testament to committed work by women and men who have championed the WPS Agenda within their institution, faced resistance, risked ridicule, often put their careers on the line to work for WPS. A GENAD role, for example, is perceived by many as a "pink ghetto" and gender work as a distraction from a person's "real career".<sup>833</sup> Compared to 2006, when this project's analysis began, huge strides have been made in integrating CRSV and WPS within NATO and British Armed Forces policy. Moreover, the language used is not only a focus on protection but on gender equality and women's participation and empowerment. Likewise, there have been significant achievements in developing institutional structures to work on WPS. These include positions with responsibility for WPS, training requirements and training courses and – to some extent – operational guidelines and doctrine. NATO has come much further than the British Armed Forces in terms of institutionalising GENADs and Gender Focal Points throughout their structures, developing and promoting gender training, and in developing operating procedures and directives on gender. In the British Armed Forces,

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<sup>833</sup> Deputy Chair NCGP, open (to public) session of the annual conference of NCGP, 31 May 2016. Claire Duncanson and I discussed these challenges in: Bastick and Duncanson, 'Agents of Change?'. Matthew Hurley too explores the difficulties of being a gender advocate within NATO: Hurley, 'The 'genderman''.

progress towards policy and institutionalising GENADs and training has been painfully slow. Nevertheless, there has been scope for individuals and units to take initiative to implement WPS initiatives, such as training of the Iraqi Peshmerga. Moreover, the British Armed Forces have had deeper conversations about the implications of a shift toward WPS and 2019's adoption of a policy on human security could be a foundation for more far-reaching change.

These are some of the achievements that have been celebrated by others who have studied gender and NATO.<sup>834</sup> By deploying a wider lens, however, to analyse how WPS texts are (not) reflected in mainstream doctrine, how operational directives and rules of engagement (do not) address CRSV, how difficult questions are answered in training, this study identifies profound disconnects between both NATO and the British Armed Forces' commitments and directives as concerns CRSV and WPS and their implementation. This is a form of listening to silences. Some of these gaps are failures of political will: failure to appropriately resource GENAD positions and gender training, unwillingness to surrender exclusive disciplinary authority over one's forces as regards SEA, unwillingness to take the step of banning the use of prostitutes. Some of these gaps are failures of understanding: failure to recognise that work on WPS requires specific knowledge and skills, unwillingness to confront internal gender dynamics. Some are deeper conceptual and strategic tensions: instrumentalisation of gender mainstreaming for ends such as counter-terrorism and intelligence, not necessarily aligned with promoting the vision of WPS. As concerns both NATO and the British Armed Forces, it is difficult to find substance in their engagement with CRSV: examples of any potential victims protected, victims assisted or referred, reports logged and passed to authorities for investigation or evidence collected. Neither NATO nor the British Armed Forces have developed the equivalent of the UN's *Analytical Inventory* of practices to address CRSV.<sup>835</sup> Direction as to operational and tactical engagement with CRSV remains poorly articulated and in the British context, has become even more diffuse since 2016.

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<sup>834</sup> See Chapter 6, n. 374.

<sup>835</sup> See Chapter 3, text at n 128.



Certain of the questions that this project raised remain unanswered. Chapter 3 noted Henry's questions to the Norwegian military as to whether victimised communities would trust militaries to protect them, how short deployments might mitigate against effectiveness, how military involvement might impact civilian humanitarian work. Assisting victims of CRSV is a sensitive and difficult task; civilian agencies work with a range of guidelines to avoid doing harm.<sup>836</sup> How could militaries mitigate the risks that their intervention might bring unintended further harm? Is suggesting militaries might, for example, provide emergency health care to victims of CRSV a good idea? Neither NATO nor the British Armed Forces have engaged in any depth with the challenging practicalities of how they would implement the tasks to which they have so visibly committed. As such, we just do not know enough to answer these questions.

Although adopting the language of WPS, militaries continue to see CRSV and WPS as an add-on to some other "real mission". This means that they prioritise their own force protection above protecting people from CRSV and prioritise their good relations with partners above confronting partners' commission of sexual abuse or sexual exploitation. Understandings of legal obligations in relation to CRSV both affirm and contribute to this: prevention and response to CRSV is understood as a dimension of the WPS Agenda, which is, in turn, understood as political and values-oriented, but not an articulation of obligations under IHL and IHRL.

These gaps between rhetoric and reality, I argue, are not reasons to dismiss the possibility that militaries can meaningfully integrate principles of protection and participation of women into their culture and practices. Rather, they suggest the importance of scholarship and of advocacy that reaches behind the curtain of policy and public statements to internal processes and accountability structures. It speaks to a place for research conducted in collaboration with insiders, to permit this. It signals the need for work that engages with local communities to trace the impact between what is said in Brussels and London, and

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<sup>836</sup> E.g. *IASC Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action* (2015); *Care and Support of Male Survivors of Conflict-Related Sexual Violence* (2016).

what is done in Mosul, Kabul, Bamako and beyond. Ways to move forward will be discussed further through this and the following chapters.

## 10.2 CRSV and international law: an unfinished project

This project is grounded in the belief, which underpins feminist engagement with international law, that the content and interpretation of legal rules do matter. One sees this belief manifest in the advocacy concerning CRSV described in Chapter 2. In Megan Pearce's words, "The deconstruction and reconstruction of the rules of international law would not be a central concern of feminist international lawyers unless the idea of 'law as powerful' did not underpin the feminist conception of international law".<sup>837</sup>

Feminist legal advocacy and scholarship on CRSV have been rich and powerful, as described in Chapter 2. Feminist work on IHL has drawn attention to the limited ways in which women are portrayed and protected, and the overarching hierarchies of protection that prioritise military over civilian lives. However, feminist legal advocacy in international criminal law has faced a sort of backlash, where many have said there has been too much focus on CRSV, and even too much focus on international law. The following sets out why, conversely, I argue that feminist legal projects concerning CRSV must be recognised as incomplete.

### Indeterminacy of obligations to prevent and respond to CRSV

Chapter 5 explored state responsibilities in relation to prevention and response to CRSV, drawing linkages between protection, justice, IHL, IHRL and due diligence. It argued that obligations of due diligence to prevent CRSV are located not only in IHRL and the laws of occupation, but by virtue of Article 1 of the GCs and peremptory norms. Stronger positive obligations arise where forces could be held complicit in abuse by partners and, of course, where their own forces are abusing. However, there remains a paucity of interpretation of what legal standards related to protection, violence against women and responsibility for

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<sup>837</sup> Pearce, 'Gendering the Compliance Agenda', 441. Discussed also in O'Rourke, *Gender Politics in Transitional Justice*, pp. 25–30.

one's own forces require in relation to CRSV. The picture this study paints is one of immense challenge and complexity when it comes to applying IHRL standards and the standard of due diligence to military operations.

In Thomas Franck's classic articulation of "legitimacy" in international law, one of the key characteristics of a rule's "compliance pull" is its determinacy, being the clarity and transparency of the commitment.<sup>838</sup> There are differing theorisations of the relationship between a rule's determinacy and compliance with it, but they share, as Kinsella describes it, "a common presumption that compliance and indeterminacy are inversely correlated".<sup>839</sup> An armed forces' obligations to prevent and respond to CRSV in overseas operations are indeterminate at many levels. Part of this indeterminacy sits with the lack of clarity as to what is required by virtue of a due diligence obligation. There has been some, but still little, judicial interpretation of what is reasonably expected of a state to *prevent* violence against women. Then, amidst the contestation as to when IHRL applies to armed forces operating overseas, neither international organisations, scholars nor – it seems - armed forces' legal advisors have given due attention to what IHRL obligations around women's and children's rights, human trafficking, violence against women, or protection more generally require. This is just one aspect of how, according to Modirzadeh, even legal scholars have confined discussion of militaries and IHRL to a handful of specific issues governed by IHL (such as detention), allowing the values of IHRL to be shrunk to fit the spaces between warfighting.<sup>840</sup>

My case studies demonstrate how this indeterminacy surrounding human rights obligations and civilian protection is manifested and sustained within militaries. In both NATO and the British Armed Forces, policy, doctrine and training address legal norms related to civilian protection in a cursory and fragmented manner. Militaries continue to see the law as primarily IHL. IHRL is given but passing attention in NATO and British legal manuals, and

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<sup>838</sup> Franck (1988) cited in K. Raustiala and A.-M. Slaughter, 'International Law, International Relations and Compliance' Handbook of International Relations, (London: SAGE Publications Ltd, 2002), pp. 538–58 p. 541.

<sup>839</sup> Kinsella, *The Image before the Weapon*, p. 189.

<sup>840</sup> Modirzadeh, *Dark Sides*, pp. 369–70.

policy and doctrine offer no guidance as to its interpretation as regards civilian protection. Whilst courts have said militaries must apply IHRL, militaries resist, they read down, they apply it in small areas of their activities, exceptionally. British sources described how Britain draws back from activities, such as detaining perpetrators of crimes, where it perceives a risk of being held accountable to IHRL standards. References to CRSV recognise it as a violation of the law, but neglect to recognise how the obligations of a state concerning grave breaches of the GCs, torture and inhumane treatment apply to sexual violence. The last fifteen years' jurisprudence concerning the applicability of IHRL to militaries operating overseas, and the development of due diligence obligations has had little impact upon military doctrine and - concerning the protection of civilians - seems to have had little impact upon practice. Feminist developments in international jurisprudence concerning due diligence and violence against women are not translated into military doctrine, training, or thinking.

#### Determinacy, gender and power

I use the word "sustained" to describe the indeterminacy of military obligations as concerns CRSV. This indeterminacy can be interpreted as an expression – as regards IHRL an extension - of a perennial instability and continued iteration, what Kinsella describes as the "productive process," of IHL, wherein the "porosity" of the law both aids and hinders compliance.<sup>841</sup> Law in war certainly needs some degree of fluidity to retain the capacity to adapt to changing technologies and needs. But here, what one observes concerning the law's requirements in terms of prevention and response to violence against women and CRSV in situations of armed conflict is less that the law remains fluid, but that it remains largely *unimagined*. Kinsella's work emphasises that determinacy is not an intrinsic quality of legal norms but "is an outcome of the process of definition, debate, and disagreement occurring in an already extant world among preconstituted actors".<sup>842</sup> It is important not

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<sup>841</sup> Kinsella, *The Image before the Weapon*, p. 189. Rebecca Sutton's work on how the principle of distinction is practised in contemporary contexts likewise demonstrates that it is contingent, fluid and dynamic: Sutton, 'Enacting the 'civilian plus'', 30.

<sup>842</sup> Kinsella, *The Image before the Weapon*, p. 190.

only to observe “indeterminacy” as to what international law requires, but to recognise the political nature of the processes that sustain it, and their gendered dimensions.

Positive obligations to protect civilians in armed conflict and positive obligations to support justice for victims appear indeterminate because militaries and their states choose not to invest resources in processes to build determinacy: for example, updating manuals, drafting directives concerning the application of IHRL, convening meetings to develop shared guidelines between nations. Regarding the application of Franck’s concept of a rule’s “legitimacy” to sexual violence against women, Catharine MacKinnon said:

... as to gender crimes, men behaving in their gendered roles tend to reflexively create, obey, and enforce on other men those rules that respect and enhance their power as men, according to norms that, because they preserve male dominance over women and other men, are seen as being in their interest ... Rules that serve this end, they will obey and see to be legitimate. ... Translated in a gendered perspective, legitimacy is a flag flown for those conditions under which men think it is right to accede to other men's power.<sup>843</sup>

The point that MacKinnon makes is that the grant and acceptance of legitimacy is a function of power, which in all societies is profoundly gendered as *male* power. Franck argues that compliance with a rule is increased when it accords with the moral values of the “community in which the legal system operates”.<sup>844</sup> The lack of tactical initiatives to protect, the widespread impunity for sexual violence committed in conflict, the “boys will be boys” attitude to SEA, can be read as communicating moral values tolerant of pervasive violence against women. More profoundly, the sense that protecting civilians is not feasible and not what militaries’ (immense) resources are for is an expression of the acceptance of civilian death and injury in war that characterises militarism. These values and beliefs are not confined to militaries and military organisations. A state military’s strategic priorities are determined to variable degrees by its civilian political leaders and bureaucrats alongside uniformed leaders, and NATO’s highest leadership is civilian.

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<sup>843</sup> MacKinnon, ‘Creating International Law’, 116.

<sup>844</sup> Franck (1995) cited in Pearce, ‘Gendering the Compliance Agenda’, 420.

We cannot see and understand this without, in Rhonda Copelon's words, "surfacing gender."<sup>845</sup> We must be alert to how gendered power, and other forms of power (such as class, ethnicity and race), inform any challenge and failure to challenge the normative *status quo*. Thinking about determinacy as *constructed*, and indeterminacy as *sustained* through processes at different levels suggests ways in which the law's determinacy might be strengthened and the law progressively developed. I shall come back to this below.

### Changing constructions of women and victims in IHL

In articulating a vision for ongoing feminist legal activism around IHL and CRSV, one must ask if international law continues to construct women in limited ways and to ignore certain types of victims. This project has traced how, through the impact of the WPS Agenda, women are now presented as knowledgeable about their security environment, as potential leaders and peacemakers in military policy, doctrine and training. This can be seen as a significant achievement of WPS: women are invoked not only as victims. However, where CRSV is considered, this breadth of understanding of women is absent. To the extent that armed forces consider strategies for protection from CRSV, they revolve around patrolling, imagining potential rapists lurking in the undergrowth. Approaches to prevention fail to consider strategies to protect women who might be targeted because they are politically active, or control resources, or join the police, for example.

Male victims of CRSV are now at least partially recognised in military doctrine and training, with emphasis on boy victims in NATO and British Armed Forces' discourse. But, again, recognition of male victims has not been translated into military protection strategies focused on the particular vulnerabilities of boys and men. Vulnerability connected to actual or perceived sexual orientation and gender expression continues to be ignored. These problems could be interpreted as demonstrating the need for new legal standards, as some have argued.<sup>846</sup> In advance or in parallel, the progress that has been made on drawing male victims from the shadows demonstrates that less formal processes can shape policies,

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<sup>845</sup> R. Copelon, 'Surfacing Gender: Re-Engraving Crimes against Women in Humanitarian Law Rape as a Weapon of War in the Former Yugoslavia' (1994) 5 *Hastings Women's Law Journal* 243–66.

<sup>846</sup> See Ch. 2 n 65.

doctrine and operational guidelines in ways that raise awareness of communities whose vulnerabilities have been long overlooked.

### The gendered logic of warfare and persistence of gendered hierarchies of protection

A second theme of the feminist critique of IHL discussed in Chapter 2 is how IHL (re)produces hierarchies between military and civilian lives that are in tension with norms concerning the protection of civilians. The protection needs of women, girls and marginalised men are accorded less weight than the needs of the military.<sup>847</sup> Kinsella argues that among combatants, respect derives from a sense of collective recognition and honour, of being a network of equals. She cites David Forsythe to argue that the “civilian is frequently viewed as nothing: weak ... old ... female ... there is nothing to command respect” and that, because they do not respect civilians, combatants have less reason to strive to protect them.<sup>848</sup> This has been part of the impetus for feminist (and other) lawyers to advocate convergence between IHL and IHRL, theorising that accountability under IHRL will demand more caution as regards civilian casualties.

Although never explicitly stated in doctrine, interviewees consistently told me that any action to prevent or respond to CRSV was subject to the security of their own force. Thus, IHL’s hierarchy of protecting military over civilian lives is not displaced, even by an express mandate to protect civilians. In determining what steps are required by virtue of an obligation of due diligence, jurisprudence falls back to notions of what can *reasonably be expected*. The ECtHR has qualified this as not “an impossible or disproportionate burden on the authorities.”<sup>849</sup> The self-referential nature of this logic was demonstrated by a British Legal Advisor who summarised the application of IHRL as: “If you can’t do anything about it then you don’t have a legal obligation to do something about it”.<sup>850</sup> Within NATO, there

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<sup>847</sup> See Ch.2, text at n 100.

<sup>848</sup> P. D. P. Forsythe (1977) cited in H. M. Kinsella, ‘The image before the weapon: A genealogy of the “civilian” in international law and politics’ Ph.D., University of Minnesota 2004 p. 123.

<sup>849</sup> *Case of Osman v. The United Kingdom (Judgment)*, para. 116.

<sup>850</sup> Interview with Legal Advisor at doctrine writing centre, 12 June 2018.

seems no explicit consideration of what IHRL standards require as regards CRSV. Again and again in my fieldwork, military personnel invoked forces' capacities and "reality" as a limit on what militaries could be expected to achieve regarding CRSV. However, this research demonstrates that whether a force "can" do something about CRSV is a question of its operational orders, rules of engagement, resources and training – a cocktail of capability and political will. To date, we see that militaries habitually operate under rules of engagement that do not permit them to assertively protect civilians, but it should not follow that we cannot *expect* them to. To date, we see that militaries have weak capacity to respond to CRSV, but it should not follow that we thus cannot expect them to improve.

Critical work on IHL, discussed in Chapter 2, argues that IHL works to lend legitimacy to customary military practices, rather than restraining them, permitting civilian injury and death where militaries consider this proportional to their need.<sup>851</sup> This critique has not yet been levelled at IHRL; rather, the operation of IHRL in armed conflict has been framed as a progressive restraint upon militaries. When one drills down into how due diligence obligations are expressed in jurisprudence, however, one can see that discourse around human rights obligations in armed conflict is being shaped, unconsciously and explicitly, at military but also at political and academic levels, around existing ideas of the possible and *reasonable* in war. The gender biases inherent in standards of "reasonableness" in law have been soundly mapped in feminist legal work; the "reasonable person" standard is premised on the behaviour of the "reasonable man".<sup>852</sup> These gendered constructions of reasonableness are enmeshed with the perceived legitimacy of legal standards, in the terms used by Franck and others, discussed above. Where human rights norms would appear to demand the impossible as regards issues such as sexual violence, their legitimacy will be weak; the content of the law is constrained by acceptance of existing gender order. "Surfacing gender" in examining how militaries integrate IHL and IHRL, here focusing on

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<sup>851</sup> In particular: Jochnick and Normand, 'The Legitimation of Violence'; Kennedy, 'Lawfare and warfare'; Stephens, 'Behaviour in war'; Chinkin and Kaldor, *International Law and New Wars*.

<sup>852</sup> A summary of this body of work is Edwards, *VAW under IHRL*, p. 176.



CRSV, reveals what is unspoken, unexamined, deprioritised. Surfacing gender shows how the interpretation and application of IHRL, like IHL, is being shaped by military priorities.

What does this mean for hopes of regendered, cosmopolitan militaries? Theorisation of cosmopolitan militaries emphasises the importance of them complying with the laws of war, framing this as part of both the “ends” and the “means” of a military mission being moral.<sup>853</sup> Assumed convergence between legal and moral requirements is, of course, robustly challenged by the critical work on IHL referred to above. This is part of the rationale for Chinkin and Kaldor’s vision of forces willing and able to deliver human security setting IHRL as the standard for any humanitarian intervention or defensive operation. They propose hybrid military/civilian human security forces be held to IHRL’s higher standards in terms of *inter alia* avoiding civilian casualties, but retaining IHL’s special protections.<sup>854</sup> I do not reject Chinkin and Kaldor’s agenda: if states and international organisations made an explicit commitment that their forces would meet IHRL standards, this might help them to better meet the ideals of human security and human rights. But this project shows that striving toward IHRL compliance, *in and of itself*, will not transform how militaries act. Jurisprudence demonstrates that not only IHL, but IHRL is being understood through the lens of military priorities. Absent transforming militaries’ expectations of what they are for and can do, absent transforming notions of a state’s obligations to keep individuals safe, the transformative promise of asserting IHRL obligations in armed conflict is frustrated. I will return to this issue of strategic transformation in the next chapter.

### 10.3 Reassessing feminist engagement with the law

This chapter has built an argument for seeing feminist work concerning CRSV, IHL and IHRL as incompletely realised. The jurisprudential recognition of CRSV as a crime has not trickled down to practices of protection or justice. However, this project suggests a tension between the work still needed to achieve this, and recent feminist framings of sexual violence and WPS strategy.

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<sup>853</sup> Elliott and Cheeseman, *Forces for Good*, p. 5.

<sup>854</sup> Chinkin and Kaldor, *International Law and New Wars*, pp. 230, 282.

### A continuum of violence, continued inaction

Chapter 2 explained how the need to understand CRSV as part of a continuum of violence and harm that women suffer, not only during conflict but in pre- and post-conflict phases and peacetime, has become a prominent theme in feminist work. It is grounded in the diverse lived experiences of women and girls experiencing conflict, and recognition of structural gender inequality as a root cause of sexual violence. Recognising what O'Rourke terms a "web of gender-based harms" has particular importance for transitional justice processes, which aim to acknowledge the fullness of victims' experiences, shape reparations in a manner that might address the underlying causes of violence, and lay a strong foundation for institutional and legal reform.<sup>855</sup> It is also important in offering healthcare and other services to victims and communities, where it is problematic to privilege victims of CRSV. However, complex understandings of CRSV are "a difficult-to-manage policy agenda", because they seem to demand addressing an enormous diversity of complex social, political and economic issues.<sup>856</sup> This is a dilemma for feminists – scholars and activists – working to eradicate GBV in all contexts; but it has particular dimensions in the context of international law obligations.

Chapter 9 outlined how in both NATO and the British Armed Forces discourse on sexual violence in conflict has evolved from the language of the UNSCRs to more inclusive concepts of GBV and structural violence. NATO's 2015 operational guidance concerning CRSV is directed also at GBV, and NATO discourse in recent years has used feminist language around the sexual violence as part of a continuum of violence. The British Armed Forces have moved from emphasising rape as a "weapon of war" to asking its soldiers to consider GBV more generally, including harassment and sexism. In terms of policy that unravels binaries between conflict-related and non-conflict-related violence, recognises relationships between sexualised microaggressions within institutions, exploitation within workplace relationships and human rights, the British Armed Forces' early warning

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<sup>855</sup> O'Rourke, *Gender Politics in Transitional Justice*, pt. VI; Ní Aoláin, O'Rourke, and Swaine, 'Transforming Reparations for Conflict-Related Sexual Violence: Principles and Practice'.

<sup>856</sup> J. Boesten, 'Of exceptions and continuities: theory and methodology in research on conflict-related sexual violence' (2017) 19 *International Feminist Journal of Politics* 506–19 at 515.

indicators (extracted on page 212) could be read as a model. However, any distinct framing of CRSV as a violation of IHL, international criminal law or IHRL is lost. The narrative that framed sexual violence atop a hierarchy of atrocity has been displaced by narratives that place it on the same level as name-calling in military boot camp. Early language around CRSV as an international crime has morphed into diffuse language around GBV and structural violence – but without militaries having yet taken steps to meet the obligations attendant on recognising CRSV as an international crime. In a comparable manner, as discussed in Chapter 8, SEA is “read down” in military spaces as a conversation about paying for sex with prostitutes – but without militaries having yet taken steps to effectively prohibit and punish sexual abuse.

The “rape as a weapon of war” narrative is, I agree, too blinkered a lens in most policy and research contexts. Nonetheless, “exceptionalising” CRSV as a war crime, crime against humanity or violation of peremptory norms, for example, invokes the positive obligations of bystander states under international law. Militaries simply do not hold comparable obligations in relation to structural violence, sexual exploitation and pervasive GBV in society. Discussing continuum vs. exceptionalist framings of CRSV, Jelke Boesten likewise makes the point that *using international law* to regulate and punish CRSV, “relies on the idea of rape in war as exceptional, as a political act rather than a private act, as an intentional and condoned, or even ordered, act of violence”.<sup>857</sup> This in no way suggests, as some infer, that criminal law is “the utmost solution” to CRSV,<sup>858</sup> but that both approaches, continuum and exceptionalist, are needed.

This continuum of violence is important to keep in view, as without a gender analysis, one might only address the immediate, not the structural, causes of such violence. This does not mean that sexual violence in conflict should always be analyzed along a continuum—on the contrary, highlighting the exceptional nature of any experience of

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<sup>857</sup> Ibid., 515-166.

<sup>858</sup> A. B. Houge and K. Lohne, ‘End impunity! Reducing conflict-related sexual violence to a problem of law’ (2017) 51 *Law & Society Review* 755–89 at 756.

sexual violence, including those perpetrated in war, is essential to criminal accountability.<sup>859</sup>

I contend that, in a corresponding manner, highlighting CRSV as an act distinct from other forms of gendered harm associated with conflict and a violation of international law is essential to military response. Militaries may need access to guidance from civilian experts on the complexities and subtleties of the CRSV they might encounter. Militaries should be aware of the structural factors underlying CRSV. But, the continuum of violence narrative, emphasising nuances and complexities, risks compounding the indeterminacy of legal obligations and detracting from accountability for fulfilling them. For military audiences, it is necessary to return to a more explicit emphasis on the exceptional forms that CRSV takes, CRSV as standing out from a continuum of structural and physical violence, CRSV as a violation of international law, and accordingly, states' associated obligations.

In this context of military operations, strategic selection between continuum and exceptionalist narratives around CRSV can also be approached by thinking about military mandates and capabilities. The rationale for framing CRSV within a continuum of violence is *inter alia* to lay bare its root causes, to repair the harms of war more holistically and to shape long term social transformation. But these are not tasks that we would generally ask of a military deployment: by its nature, limited in time, without a sophisticated understanding of the cultural context, with no mandate or legitimacy to pursue social transformation - especially if we aim to constrain the role of military in society rather than expand it (this to be discussed in Chapter 11). As one of my interviewees said, "the military is the military, and they're actually only the military, ... they're not running civil affairs or human rights ... Why are we trying to get soldiers to pretend to be political scientists?"<sup>860</sup>

### Strategic sites for feminist legal activism

Intersecting with feminist concerns around focusing so strongly on the issue of CRSV, is concern about the risks and unintended consequences of feminist engagement with the

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<sup>859</sup> Boesten, 'Of exceptions and continuities', 517.

<sup>860</sup> Interview civilian advisor to British international training centre, 26 October 2017.

Security Council and the Council's resolutions on CRSV – which are a key normative reference point for both NATO and Britain's engagement with CRSV. It may be that the fragmentation of norm creation represented by the WPS Agenda weakens structures that include more robust monitoring and accountability mechanisms, such as the human rights treaty bodies.<sup>861</sup> As O'Rourke underlines, the WPS Agenda offers the "allure, but not the effect, of robust legal status".<sup>862</sup> She and Swaine observe that the Security Council has not set up accountability mechanisms to monitor WPS implementation (as it has for children and armed conflict), nor pressured states to use the UN's global WPS indicators.<sup>863</sup> It should not be overlooked, however, that in relation to CRSV the Security Council *has* set up a monitoring and sanctions regime for situations on its agenda.<sup>864</sup> This suggests a recognition within the Security Council that *some* aspects of the WPS Agenda – including CRSV – deal with matters of binding legal obligation, even if most of the Agenda is not seen as having robust legal status. But, in NATO and the British Armed Forces this recognition is absent. Their commitments as regard CRSV and the UNSCRs on WPS are framed and treated as (merely) political, issues of values, obfuscating that they speak in certain respects to binding treaty obligations. Within these military structures, the WPS Agenda catalyses action on political terms, but not a re-evaluation of legal obligations, nor engagement with processes of accountability under IHL and IHRL.

Scholarship on feminist WPS strategy has tended to contrast the Security Council as a site of normative power with CEDAW or the UN General Assembly. The hegemony of the Security Council over CRSV since 2008 has also, I argue, perpetrated a sleight of hand as regards the international criminal law regime: states' responsibilities *inter alia* under the Rome Statute to ensure accountability for CRSV as a war crime, crime against humanity or act of genocide. As my study of NATO records, in 2013 the Deputy Supreme Allied

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<sup>861</sup> F. Ní Aoláin, 'International law, gender regimes and fragmentation: 1325 and beyond' in C. M. Bailliet (ed.), *Non-State Actors, Soft Law and Protective Regimes: From the Margins*, (Cambridge: Cambridge University Press, 2012), pp. 53–68.

<sup>862</sup> O'Rourke, 'Feminist Strategy in International Law', 1027.

<sup>863</sup> C. O'Rourke and A. Swaine, 'CEDAW and the Security Council: Enhancing Women's Rights in Conflict' (2018) 67 *International and Comparative Law Quarterly* 167–99 at 186–87.

<sup>864</sup> *Ibid.*, 189.

Commander Europe asserted NATO's *legal* responsibility by virtue of state responsibilities under the Rome Statute to prevent CRSV and support prosecution. This narrative seemingly withered on the vine. Since the high point of feminist international criminal law advocacy at the beginning of this century, feminist transnational advocacy has in large part turned from IHL, international criminal law and the International Criminal Court to WPS and the Security Council.<sup>865</sup> Yet, the immense achievement of establishing recognition of CRSV as a grave breach of the GCs, as torture, has not been followed through with sustained advocacy for recognition of responsibilities for bystander states and their militaries.

There is likewise a relative dearth of feminist legal engagement with questions of the content and limits of state responsibility for violations of IHL and IHRL in armed conflict, including articulation of due diligence. Some of this work has proceeded through CEDAW and is evidenced in General Recommendation No. 30. But, as this study shows, state militaries do not look to the CEDAW Committee for legal guidance; they primarily look to IHL forums, so different work needs to be done to create linkages. Suggestions for feminist engagement in other spaces are explored further below.

#### **10.4 Raising reasonable expectations of militaries**

In this chapter, I am arguing that it is important not to abandon legal advocacy around CRSV, and to push this advocacy further in spheres which influence how military operations handle it. My findings as regards NATO and the British Armed Forces' engagement with CRSV suggests the importance of, on one hand, strengthening the *determinacy* of militaries' legal obligations related to CRSV; and, on the other, challenging the prevailing *low expectations* of militaries in relation to preventing and responding to CRSV (while reinforcing the appropriate boundaries between policing and military roles - to be discussed further in the following chapter). Processes of implementation of WPS and CRSV

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<sup>865</sup> Although there has been sustained feminist academic attention upon international criminal law: such as the *International Feminist Journal of Politics* Special Issue and Louise Chappell's associated work: L. Chappell and A. Durbach (eds.), 'The International Criminal Court: A Site of Gender Justice' (2014) 16 *International Feminist Journal of Politics*; and E. Dowds, *Feminist Engagement with International Criminal Law: Norm Transfer, Complementarity, Rape and Consent* (Bloomsbury Publishing, 2020).

norms within NATO and the British Armed Forces since 2005 suggest three potential strategies for feminist legal advocacy: joining communities of practice around human rights obligations in armed conflict; engaging with military lawyers; and fostering feminist agents of change within militaries.

### Joining communities of practice concerning human rights obligations in armed conflict

The processes through which human rights norms are constructed and through which their rules attain clarity and acceptance at domestic and transnational levels have been theorised in myriad ways, many of which emphasise persuasion and interaction between states.<sup>866</sup> Jutta Brunnée and Stephen Toope's "interactional account" of international law is distinctive in emphasising the importance of "communities of practice" in shaping and sustaining international law through ongoing, productive processes of engagement. Exchange between staff of governments and international organisations, scholars, independent experts, NGOs, think tanks and the like constantly maintains or expands shared understandings of what international law requires.<sup>867</sup> Through the operation of such communities of practice, "norms may become richer and more demanding".<sup>868</sup> This account maps well onto the processes of engagement between NATO staff, gender experts, NGOs, national representatives and the like which I have observed through this project (and in a more sustained way through my IGO work).

There are many examples of substantive and productive collaboration between military lawyers, scholars and ICRC which enunciate and develop thinking about human rights

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<sup>866</sup> Key accounts include: Franck, 'Legitimacy in the International System'; A. Chayes and A. H. Chayes, *The New Sovereignty* (Harvard University Press, 1998); Finnemore and Sikkink, 'International Norm Dynamics and Political Change'; O. A. Hathaway and H. H. Koh, *Foundations of International Law and Politics* (Foundation Press: Thomson West, 2005); K. Sikkink, T. Risse, and S. C. Ropp, *The Persistent Power of Human Rights: from Commitment to Compliance* (Cambridge University Press, 2013).

<sup>867</sup> Brunnée and Toope, *Legitimacy and Legality in International Law*, pp. 62–64, 352.

<sup>868</sup> *Ibid.*, at pp. 356–7.

obligations and protection of civilians in armed conflict.<sup>869</sup> Government lawyers develop shared understandings of state and armed forces' responsibilities in forums such as the International Law Commission,<sup>870</sup> Red Cross Red Crescent Conferences, and through proceedings before the ICJ, the Human Rights Committee, the ECtHR, and other regional equivalents. Some feminist lawyers are already making important contributions in these spheres, but few when one considers the great wealth of expertise on WPS and CRSV (and recalling Bennoune's observation that scholarship on women, armed conflict and IHL is little cited in mainstream IHL references). There is a need for voices there that assert militaries' obligations as concerns CRSV and protection of civilians and that articulate what these obligations might mean in practical terms. This would help counter the prevailing indeterminacy around obligations to protect civilians, obligations to support prosecution, IHRL obligations in armed conflict, due diligence obligations, and the like, and to counter the logics of inevitability and irresponsibility that permit militaries to get away with doing so little to prevent and respond to CRSV.

### Influencing military lawyers

This project has mapped profound differences between the understandings of IHRL in jurisprudence and the understandings in military doctrine and training and as expressed by Legal Advisors. For norms requiring militaries to prevent and respond to CRSV to be meaningfully operationalised, there needs to be better vertical translation of these norms within militaries. But, militaries' understandings of the law tend to be constructed in relatively closed spheres.<sup>871</sup> Gardam observes women's absence:

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<sup>869</sup> E.g. the projects that resulted in: Elliott and Cheeseman, *Forces for Good*; Quenivet and Sari, *Human Rights and Military Operations*; Lubell, Pejic, and Simmons, *Guidelines on investigating violations of IHL*.

<sup>870</sup> Noting the International Law Commission's work on draft articles on crimes against humanity and debate on peremptory norms touch upon these issues, but so far seem to have little developed prevention obligations: S. D. Murphy, *Fourth report on crimes against humanity* (2019); D. Tladi, *Fourth report on peremptory norms of general international law (jus cogens)* (2019).

<sup>871</sup> D. Luban, 'Military Necessity and the Cultures of Military Law' (2013) 26 *Leiden Journal of International Law* 315–49; Clapham, 'The Complex Relationship between the 1949 Geneva Conventions and International Human Rights Law', para. 3; Modirzadeh, *Dark Sides*, p. 380.



LOAC deals with the conduct of war, and women's voices are particularly muted in the intensely masculine environment that surrounds decision-making about such issues as national security and the resort to force. Women may have found a provisional place at the peace-building and post-conflict reconstruction table, but any meaningful participation in debates centering on the strategic and tactical issues of the conduct of hostilities continues to elude them.<sup>872</sup>

Likewise, this research has observed that while senior military leaders and GENADs actively discuss and compare approaches to WPS with outside experts (such as counterparts in the UN, practitioners and academics),<sup>873</sup> military lawyers are absent from these conversations. "Gender expertise" in militaries is framed as dislocated from legal expertise, despite the rationale for and content of gender mainstreaming being grounded in IHRL norms. A NATO civilian advisor on WPS spoke publicly about the need to educate military Legal Advisors on the protection of civilians.<sup>874</sup> Likewise, a British Legal Advisor suggested that the complexity of the application of IHRL in operations "puts more onus on Governments and on the militaries to invest in trying to a) make the law simpler, b) teach people what the law is and what their responsibilities are."<sup>875</sup>

This lack of military engagement in WPS processes belies the tendency to portray legal communities as globalised; with civil society playing a key role in shaping and cascading human rights norms. Institutional barriers act to largely exclude civil society organisations from influencing processes of norm internalisation within militaries. As feminists, we should look for ways to bring together military lawyers and experts on CEDAW, IHRL more generally and WPS, whether this is through engagement in "military spaces" such as the International Society for Military Law and the Law of War and its national counterparts,

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<sup>872</sup> Gardam, 'Silences in the Rules'.

<sup>873</sup> In a NATO context, this documented also J. Wittwer, 'Mainstreaming WPS in the Armed Forces: The Case of Australia' and S. von Hlatky, 'WPS and the North Atlantic Treaty Organization' in S. E. Davies, J. True (eds.), *The Oxford Handbook of Women, Peace, and Security*, (Oxford University Press, 2019).

<sup>874</sup> Observation of NATO session during public seminar on "Conflict related sexual violence and Military Leadership in UN and NATO Operations", 6 December 2017, Norwegian Defence University College, Oslo.

<sup>875</sup> Interview with British doctrine writer, 12 June 2018.

through brokers such as ICRC, or by actively inviting military lawyers into feminist conversations. In such engagement, we should recognise and promote expertise in ways that overcome its tendency to be closed, elite, and exclusive.<sup>876</sup> For example, by creating space for women and men from communities affected by CRSV to articulate what might have been done to better protect them, as well as what they want and need, military assumptions and uncertainties about what they should and must reasonably do in terms of CRSV might be shifted.

### Fostering feminist agents of change

Alongside the institutional, personal influencing can be effective. It became apparent through my research that although less visible, a handful of women and men within each of NATO and the British Armed Forces has played a critical role in driving forward work on WPS, acting as “feminist bureaucrats”.<sup>877</sup> Some described being influenced and supported at critical junctures by feminist scholars and practitioners outside their organisation. My research suggests that these feminist bureaucrats were unable to act as “WPS envoys” to the closed spaces wherein military interpretations of law are shaped. For example, in the British Armed Forces, there seemed to be no direct engagement between military lawyers and GENADs on legal norms associated with CRSV or WPS, and integration of WPS issues into LOAC training remained a long outstanding task. While NATO GENADS are tasked in relation to CRSV (including SEA) they do not necessarily have knowledge or training on relevant legal frameworks to empower them to advocate on the basis of legal standards with Legal Advisors and others.

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<sup>876</sup> Discussed in: G. Heathcote, ‘From “people with projects” to “encountering expertise”: a feminist reading of Kennedy’s “A World of Struggle”’ (2016) 4 *London Review of International Law* 467–76.

<sup>877</sup> The working and influence of such “femocrats” is explored in: G. Caglar, E. Prügl, and S. Zwingel, *Feminist Strategies in International Governance* (Routledge, 2013); R. Eyben and L. Turquet (eds.), *Feminists in Development Organizations: Change from the Margins* (Practical Action Publishing, 2014). The working of “gender experts” as influencers is considered in: Holvikivi, ‘Gender experts and critical friends’; R. Kunz and E. Prügl, ‘Introduction: gender experts and gender expertise’ (2019) 2 *European Journal of Politics and Gender* 3–21. Examining feminists in the US military, and their relations with feminists outside of it: M. F. Katzenstein, *Faithful and fearless: moving feminist protest inside the church and military* (Princeton University Press, 1999).

As feminist lawyers, we might look for ways to support feminist bureaucrats within militaries to build a more robust institutional approach to CRSV - albeit in a manner that reflects the sensitivity of preventing and responding to CRSV, such that generally the appropriate military role will be highly circumscribed. We could be offering mentoring, briefings and training on gender and human rights, introducing them to grassroots feminist activists, suggesting new ways to think and speak about what militaries could and should “reasonably be expected” to do concerning CRSV - and human security more broadly.

## Conclusions

This chapter has drawn together two of the three themes running through this study: the legacy of feminist legal strategies concerning CRSV, and how militaries understand their legal obligations in relation to CRSV. These are considered against the backdrop of rather widespread rejection of CRSV as a distinct focus for feminist advocacy. My research leads me to argue that feminist work around CRSV as a violation of international law remains manifestly unfinished. Military efforts to protect communities from sexual violence remain seen as a corollary to, if not distraction from, the real military mission. There is inadequate recognition within militaries of CRSV as a violation of international law that they may be *obliged* to prevent, and inadequate clarity within broader legal discourse as to what any such obligations require. Within this partial and unsatisfactory military recognition of CRSV, feminist scholarship is playing an uncomfortable role. Narratives that blur the lines between CRSV as an international crime and “everyday” violence seem to make it less likely militaries acknowledge positive obligations. For IHL and IHRL standards to “do their work” we must use them as a language against which to demand accountability.

Some feminists working around IHL and international criminal law have invested hope that if militaries are additionally held accountable to IHRL standards in conflict, some of the deeply problematic connections between IHL and military priorities might be mitigated. However, viewed through the lens of CRSV, the reliance of IHRL upon notions of reasonable expectations suggests that IHRL is tainted by the same stain as IHL: of being interpreted in a manner that legitimises the military’s own *raison d’être* and practices. If IHRL is to act as the

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regulatory framework for Kaldor's "new type of hero with a mandate to help humanity"<sup>878</sup> and other re-rendered, cosmopolitan models, what we expect of militaries and what they expect of themselves needs to radically improve. The following chapter focus on this wider strategic picture: what examining CRSV reveals about militaries' culture and how it might be transformed.

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<sup>878</sup> Beebe and Kaldor, *The Ultimate Weapon is No Weapon* (Kindle location 1854).

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## Chapter 11

### Moving to – and beyond – cosmopolitan militaries

Military actors like NATO subsequently need to begin addressing SGBV as they do traditional modern security threats such as terrorism, piracy, weapons proliferation, or cyber warfare.

C. Isaksson, 'Fighting for Gender Equality: Why Security Sector Actors Must Combat Sexual and Gender-Based Violence' (2014) 38 *Fletcher F. World Aff.* 49 at 50.

Alongside its focus on feminist engagements with international law concerning CRSV, this project brings into dialogue international law scholarship and critical scholarship concerning militaries and militarism. Critical scholarship on IHL problematises how the laws of war are understood in ways that legitimate hierarchies of lives and hierarchies of protection. This is just one aspect of the contradiction of relying upon militaries to protect women (and others) in conflict when militaries are so deeply implicated in the practices of violence, colonialism, exploitation and patriarchy that are root causes of conflict. Still, feminist scholarship around "regendering" theorises ways by which relations of dominance within and by militaries might be transformed, and visions of cosmopolitan militaries imagine a new strategic focus on human security. Both models imagine militaries orientated toward protection of and collaboration with local populations, rather than orientated to combat.

This chapter reflects upon how this project's findings concerning NATO and the British Armed Forces' engagement with CRSV speak to hopes of regendering of militaries and militaries' transformation toward cosmopolitanism. It emphasizes how understandings of military roles and legal obligations are mutually constitutive. On this basis, it considers the risks of endorsing militaries' narratives around WPS and protection of civilians and advocates a *decentring* of militaries in feminist discourse around international intervention. It nonetheless continues to argue for constructive, critical engagement with militaries.

## 11.1 The pervasiveness of combat in militaries' strategic culture and its relationship with the law

Chapter 9 explored how NATO and the British Armed Forces' engagement with the issue of CRSV informed theorisations of militaries better suited to protect communities, to cooperate with local communities and to promote human security. As the demands of military operations have changed, including for peacekeeping, counterinsurgency and stabilisation tasks, new qualities have come to be expected of soldiers - such as "empathetic cooperation" with local populations.<sup>879</sup> Duncanson and Woodward see in these shifts possibilities for disrupting the problematic gender binaries that are constitutive of hegemonic masculinity and wider practices of war, and as such theorise them as "regendering".<sup>880</sup> This includes disruption of binaries that construct women as weak/victims, and men as fighters/protectors, as well as hierarchies of "us" and "them" between militaries and local women and men, saviours and perpetrators. This work, coming from feminist security studies, dovetails with a body of work theorising "cosmopolitan militaries" or "human security-oriented forces," which likewise identifies the potential for ideational change within militaries toward a human security orientation.<sup>881</sup> In these new models, militaries would see peacekeeping and law enforcement tasks as "core business".<sup>882</sup> That militaries value their own lives over the lives of civilians – critiqued also in feminist work on IHL – is emblematic of the changes seen as needed.<sup>883</sup> Elliott and Cheeseman imagine that for a cosmopolitan military: "Mission success is measured in lives saved and individuals protected rather than enemies killed or 'force protection', the minimisation of casualties among one's own troops."<sup>884</sup>

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<sup>879</sup> See Ch 3, ns 187-188.

<sup>880</sup> Duncanson and Woodward, 'Regendering the military'.

<sup>881</sup> Elliott and Cheeseman, *Forces for Good*; Beebe and Kaldor, *The Ultimate Weapon is No Weapon*; Kaldor, *New and old wars*.

<sup>882</sup> Elliott, 'Cosmopolitan ethics', p. 27.

<sup>883</sup> Elliott and Cheeseman, *Forces for Good*; Kaldor, *New and old wars*. Shaw argues that willingness to incur casualties is a critical question for the broader utility and ethics of military force: M. Shaw, *The New Western Way of War: Risk-Transfer War and Its Crisis in Iraq* (Polity, 2005).

<sup>884</sup> Elliott and Cheeseman, *Cosmopolitan theory, militaries and the deployment of force*, p. 42.

This project's inquiry into CRSV demonstrates but modest progress toward these visions of transformation. It did observe that WPS discourse within NATO and the British Armed Forces brought acknowledgement of women's potential for leadership and influence, alongside their potential vulnerability to sexual violence. It brought acknowledgement and even direction to consult with local women and men about their security concerns. It brought acknowledgement that men and boys, as well as women and girls, might be victims of sexual violence, disrupting gender binaries of victimhood. However, when one delved below the level of political statement, policy and directives, practices of consultation and cooperation with local women and communities more broadly remain scant and (as demonstrated by the difficulties experienced by FETs in Afghanistan) often unsuccessful. SEA remains only weakly prohibited or prevented, sustaining racialized binaries around who is seen as a perpetrator of CRSV. Practices of protection of local women and communities remained undeveloped and even resisted. Commitments to CRSV have not yet altered the perceived political unwillingness for militaries to risk their own forces to protect foreign civilians. I find little to counter Elliott's analysis of NATO forces, that "neither militaries nor governments are yet prepared to sacrifice their soldiers' lives to protect strangers. War and the deployment of force are increasingly risk-averse."<sup>885</sup> As regards the British Army, I come to a similar conclusion as Duncanson (and others): that it resists replacement of the hegemonic ideal of the infantry combat soldier with "softer" skills associated with the practices of peace operations and response to CRSV.<sup>886</sup> The objections framed around the risks to a mission and the reasonableness of what they could do as concerns CRSV (evident primarily in my fieldwork with the British Armed Forces) illustrates the tensions in military culture between the primacy of high-intensity war-fighting and contemporary military tasks

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<sup>885</sup> L. Elliott, 'Cosmopolitan Militaries and Cosmopolitan Force' in H. Charlesworth, J. Coicaud (eds.), *Fault Lines of International Legitimacy*, (Cambridge: Cambridge University Press, 2010), pp. 279–302 p. 300.

<sup>886</sup> C. Duncanson, 'Forces for Good? Narratives of Military Masculinity in Peacekeeping Operations' (2009) 11 *International Feminist Journal of Politics* 63–80; C. Duncanson and H. Cornish, 'A Feminist Approach to British Counterinsurgency' in P. Dixon (ed.), *The British Approach to Counterinsurgency: From Malaya and Northern Ireland to Iraq and Afghanistan*, (London: Palgrave Macmillan UK, 2012), pp. 147–72; Dyvik, 'Performing gender in the 'theatre of war''; Greenwood, 'Chameleon masculinity'; Dorman, 'Forces for Good: The UK', p. 243.



requiring more restrained use of force, collaboration with humanitarian agencies and community engagement.<sup>887</sup> Militaries conceive combat as their *raison d'être*, and the call to prevent and respond to CRSV has challenged but not displaced this.

Scrutinising CRSV through the lens of military understandings of the law reveals that contest over military “mandate” and *raison d'être* is located not only in discourses of military identity and strategy but in discourses of legal authority and legal culpability. Inability to protect civilians is framed not only in strategic and tactical terms but in terms of what is (not) allowed by rules of engagement. A British informant feared that because rules of engagement authorise the use of force only where proportionate and necessary to prevent imminent loss of life or limb, acting to prevent other forms of CRSV might expose a soldier to prosecution. Militaries continue to understand their legal obligations almost exclusively in terms of IHL, rather than IHRL. The manner in which IHL’s ethos prioritises the demands of “military necessity” leads militaries to subjugate action associated with CRSV to the demands of the mission and to weight military over civilian lives. It leads them to see preventing human rights abuses as outside their scope. Looking at law allows one to better understand how deeply ingrained the legitimisation of combat practices is, and how comparatively new practices oriented towards human security are.

In considering the legal frameworks under which cosmopolitan forces might operate, this project problematises a particular aspect of formulations of new types of human security-promoting forces. Kaldor and colleagues suggest military and civilian personnel working in an integrated manner, such that the force retains capabilities for combat, while predominantly doing more policing-type tasks. The military component is seen as essential to create and protect space where humanitarian work and political processes can occur, as well as offer protection to the population.<sup>888</sup> At times human security forces might need to capture or defeat an enemy, although ideally arresting rather than killing them. Compared

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<sup>887</sup> As discussed also by e.g. C. Dandeker and J. Gow, ‘Military culture and strategic peacekeeping’ (1999) 10 *Small Wars & Insurgencies* 58–79; K. Michael and E. Ben-Ari, ‘Contemporary Peace Support Operations: The Primacy of the Military and Internal Contradictions’ (2011) 37 *Armed Forces & Society* 657–79.

<sup>888</sup> Beebe and Kaldor, *The Ultimate Weapon is No Weapon*, chap. 6.

to current forces, they may in fact require *greater* readiness to use force to protect people.<sup>889</sup> Chinkin and Kaldor consider a model that is roughly two-thirds military, one-third civilian.<sup>890</sup> As emphasised, a critical part of these visions of human security forces is that they work under a predominantly IHRL framework, with a human rights mindset. How could this be achieved? This is little considered in either cosmopolitan or human security force literature, although Kaldor and Beebe propose that hybrid military/civilian forces can be created through joint military-civilian training and exercises that emphasise human dignity and respect for local populations.<sup>891</sup> This study suggests that such proposals vastly underestimate the difficulty of the change in military culture and practices that would be required for militaries to work predominately to human rights standards. It illuminates the discord between existing military-strategic culture and identity, resolutely shaped around capacities for combat, and an institutional culture focused upon law enforcement and collaboration with communities. To achieve militaries that are willing and able to operationalise a human-rights led approach to operations will require sustained and far-reaching processes of institutional transformation, that would no doubt face strong resistance.

## 11.2 Reassessing feminist engagement with militaries

Chapter 10 considered feminist strategy concerning legal advocacy around CRSV. This chapter considers how this project's findings speak to debates within feminist scholarship and activism around the risks and rewards of engaging with militaries and military organisations.

### (Inevitable) risks

In broad terms, this project adds some validation to the long-held feminist scepticism toward militaries as a force for good. WPS policies have catalysed attention to gender in

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<sup>889</sup> Chinkin and Kaldor, *International Law and New Wars*, pp. 491–92, 521.

<sup>890</sup> *Ibid.*, p. 522.

<sup>891</sup> Beebe and Kaldor, *The Ultimate Weapon is No Weapon*, chap. 6.

operations, but so far largely absorbing it into existing military practice, rather than transforming the nature of military force.

Lack of implementation of gender equality commitments is a familiar theme in feminist work. However, feminist scholarship around gender and the ethics of war problematises *in distinct ways* allowing militaries to claim that they protect women when they do not. As discussed in Chapter 2, it argues that tropes of the Just Warrior (the soldier protecting the woman from sexual violence) and Beautiful Soul (the female victim) provide a justificatory logic for waging war and massive military spending.<sup>892</sup> More specifically, Peet and Sjoberg argue that narratives around civilian protection paint women (and various feminised “others”) as ideal targets during war, the ideal of civilian immunity itself becoming an “active cause of the harming of women in war and conflict”.<sup>893</sup> Cockburn, Otto, Engle and others have written about the risks of lending feminist/gender legitimacy to the hegemonic power of the UN Security Council.<sup>894</sup> One might present a corresponding argument as regards feminist engagement with NATO and with state militaries, and the risk that feminist concepts and advocacy are co-opted in the service of militarism. Some argue for instead remaining “at arm’s length from hegemonic power” so to maintain the ideological integrity of resistance and critique from the outside.<sup>895</sup> This has become part of a vigorous and sometimes divisive debate amongst feminist scholars and activists around the achievements of the WPS Agenda, and the paradoxes, perils and possibilities of *critical* feminist engagement.<sup>896</sup>

These debates often frame engagement within institutions of power, I contend, in insufficiently nuanced terms. The UNSCRs on sexual violence in conflict were the result of

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<sup>892</sup> J.B. Elshtain (1987) cited in Sjoberg, ‘Witnessing the protection racket’, 366.

<sup>893</sup> Peet and Sjoberg, *Gender and Civilian Victimization*, p. 144.

<sup>894</sup> Otto, ‘The exile of inclusion: reflections on gender issues in international law over the last decade’; Cockburn, ‘Snagged on the Contradiction’; Engle, ‘The Grip of Sexual Violence: Reading UN Security Council Resolutions on Human Security’.

<sup>895</sup> Otto, ‘Remapping crisis through a feminist lens’, p. 89

<sup>896</sup> Good overviews are: Cohn, ‘Mainstreaming Gender in UN Security Policy: A Path to Political Transformation?’; D. Otto, ‘Beyond Stories of Victory and Danger: Resisting Feminism’s Amenability to Serving Security Council Politics’ in G. Heathcote, D. Otto (eds.), *Rethinking Peacekeeping, Gender Equality and Collective Security*, (London: Palgrave Macmillan, 2014), pp. 157–72.

feminist groups lobbying the Council to address sexual violence in the context of conflict in a more focused way.<sup>897</sup> To read these resolutions as reducing women to victims itself obviates this agency. Ongoing engagement with Security Council members by advocates such as the NGO Working Group on WPS is far from silent on the need for disarmament, inclusive decision making, justice and accountability. Feminists addressing NATO have used their voices to call out the shortcomings of NATO's engagement in their countries and faulty implementation of WPS. I agree, there *are* risks of strategic error.<sup>898</sup> Nonetheless, the risks demonstrate the need not to *disengage*, but to engage in more savvy and collaborative ways, in dialogue not only with the "WPS community" but a much broader community of advocates for peace, good governance and human rights.

Moreover, this project demonstrates how institutional capture of feminist ideas within NATO and militaries is not complete nor is it necessarily irrevocable. As the foregoing chapters have argued, there are marks of progress in both NATO and the British Armed Forces' engagement with CRSV. NATO's policy framework has positively evolved in recent years from framing gender mainstreaming as a tool to make NATO operations more effective – largely a co-option of feminist ideas - to a commitment to gender equality and forward movement on SEA. Likewise, there has been slow but positive progress within the British Armed Forces wherein WPS has paved the way for policy on human security, and in the minds of many prompted reflections about gender inequality, at home and in places where they deploy.

Feminist work on militaries and militarism should, I contend, be attentive to lessons of feminist change within international development organisations and other bureaucracies: that change can happen incrementally, and through a combination of insider and outsider strategies.<sup>899</sup> As such, I argue for constructive, if vigilant, feminist engagement with

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<sup>897</sup> See 'PeaceWomen' (September 2018).

<sup>898</sup> Otto, for instance, suggests that feminists urging the Security Council to consider the "continuum of violence" against women overlooked how this argument plays into efforts to expand the jurisdiction of the Security Council: Otto, 'Beyond Stories', p. 160.

<sup>899</sup> Caglar, Prügl, and Zwingel, *Feminist Strategies in International Governance*; Eyben and Turquet, *Feminists in Development Organizations*.

militaries and with military organisations. The following section will propose three principles which might guide critical efforts to reorient militaries from combat to a feminist vision of human security, to progress toward visions of regendered, cosmopolitan militaries. Such engagement, however, should not be commenced without first questioning assumptions about why and when militaries are needed, which I discuss below.

### Advocating alternatives to military protection

Returning to Cockburn and Hubic, who proposed “regendered” militaries: they reported that Bosnian women wanted the NATO-led mission to be friendlier, more respectful of the local population and more accessible, but simultaneously “pursue, even more energetically, its military work of pacification, demilitarisation, weapons collection, landmine clearance and protection ... arrest of war criminals.”<sup>900</sup> It was on this basis that they articulated the need for a new kind of soldier, and other feminist scholars took up the concept, theorising it further. But, security governance scholarship examining Bosnia and Herzegovina during this period critiques the “militarisation of law enforcement” that occurred in the NATO mission, wherein militaries were used to perform a wide range of policing tasks (in part to ward off soldiers’ boredom). Using police for crowd and riot control, arrest of suspected war criminals, to fight organized crime gangs and for counter-terrorism has, it is argued, become “a major feature of post-cold war international security,” including peacekeeping.<sup>901</sup>

There are normative reasons why a clear distinction should be maintained between the roles of police forces – civilian, subject to civilian control, trained to apply minimum force - and the roles of militaries. As this research illustrates, militaries bring not only culture and ethos but legal norms referent to conduct of hostilities and are widely observed to be ill-suited in training and experience for law enforcement. As such, in a conflict-affected context, while militaries should be used to ensure the necessary security for peacebuilding and reconstruction, as soon as possible law enforcement should be taken over by police.

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<sup>900</sup> Cockburn and Hubic, ‘Gender and the peacekeeping military’, p. 114.

<sup>901</sup> Friesendorf and Penksa, ‘Militarized Law Enforcement in Peace Operations’, 677, 684.

Militaries tend to agree: “Afraid of ‘mission creep’, military forces often exclude law enforcement when interpreting mandates.”<sup>902</sup> The “security gaps” which result might include, one imagines, prevention and response to CRSV. The security governance critique of using militaries for law enforcement is part of a broader call for approaches to peacekeeping and other forms of international intervention to be more dominantly policing orientated.<sup>903</sup>

Considering this, one might suggest that the women with whom Cockburn and Hubic spoke in Bosnia were implicitly asking *not* for a new kind of military, but stronger policing capacity in the mission. Feminist engagement with militaries (often focused on their role in peacekeeping, stabilisation or counterinsurgency) generally argues that militaries should change to be less combat-oriented and more orientated towards the diverse security needs of local communities. But, a security governance perspective questions why one would ask militaries, rather than police, to do essentially civilian law enforcement roles. Cheeseman and Elliot’s suggestions that militaries do “global policing rather than war-fighting”<sup>904</sup> and Kaldor and colleagues’ suggestions of blended civilian/military intervention forces likewise fail to ground their proposals in analysis of appropriate lines between police and military roles in international interventions.

International policing has been a neglected dimension in advocacy and policy concerning CRSV and WPS. To illustrate: the influential UN “Global Study on the implementation of Security Council Resolution 1325” presents a robust critique of militarism; nonetheless, its chapter on peacekeeping has five pages on military peacekeeping and armed forces and just one page on policing in peacekeeping.<sup>905</sup> Likewise, there is scant feminist analysis of the deployment of *gendarmes* (paramilitary police) as an alternative to military units. There is

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<sup>902</sup> Ibid., 680.

<sup>903</sup> Friesendorf and Penksa, ‘Militarized Law Enforcement in Peace Operations’; B. K. Agordzo, ‘Filling the “Security Gap” in Post-conflict Situations: Could Formed Police Units Make a Difference?’ (2009) 16 *International Peacekeeping* 287–94; T. Weiss, ‘The blurring border between the police and the military: A debate without foundations’ (2011) 46 *Cooperation and Conflict* 396–405; F. Heiduk, ‘Rethinking “policebuilding”’ (2015) 50 *Cooperation and Conflict* 69–86.

<sup>904</sup> Elliott and Cheeseman, *Cosmopolitan theory, militaries and the deployment of force*, p. 42.

<sup>905</sup> United Nations, *Preventing conflict, transforming justice, securing the peace: A Global Study on the Implementation of Security Council Resolution 1325* (2015) pp. 137–43.

an evidence base on policing-led approaches to protection that could be brought more clearly into both policy and scholarly narratives. Charlotte Anderholt's work on Formed Police Units (FPUs) in peacekeeping questions the accepted wisdom that soldiers are needed for protection tasks. She underscores that FPUs have this capacity, are already protecting UN personnel and conducting patrols, high-risk arrests and hostage negotiations. In doing so, in contrast to militaries, FPUs maintain "a strict code of respect for human rights law".<sup>906</sup> Jennifer Klot likewise argues for greater attention to how civilian police and FPUs protect women in peacekeeping, acknowledging feminists' "moral and ethical dilemma regarding the use of military force".<sup>907</sup> Specialised police teams could also play a larger role in CRSV prevention and response, as illustrated by the successful deployment of a Norwegian team of police specialised in SGBV to the UN mission in Haiti.<sup>908</sup> Further consideration should also be given to unarmed civilian protection. There is evidence from South Sudan that it can be effective in preventing sexual violence and harassment.<sup>909</sup> In thinking through what militaries should and shouldn't be used for, a security sector governance lens can help to overcome binary conceptualisations of pessimism/optimism, idealism/pragmatism.

### 11.3 Reshaping militaries

The search for nonviolent alternatives, even amidst conflict, is central to the feminist anti-war tradition.<sup>910</sup> As feminists, we might seek to "demilitarise" discourse around the protection of civilians, including protection from CRSV. As discussed above, one strategy is

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<sup>906</sup> Anderholt, *Female Participation in Formed Police Units*, p. 3.

<sup>907</sup> J. F. Klot, 'The United Nations Security Council's agenda on "Women, Peace and Security": bureaucratic pathologies and unrealised potential' Ph.D., London School of Economics 2015 p. 203. Pruitt has discussed all-female FPUs deployed to peacekeeping missions from the perspective of how they speak to gender and peacebuilding discourses: L. J. Pruitt, 'All-Female Police Contingents: Feminism and the Discourse of Armed Protection' (2013) 20 *International Peacekeeping* 67–79.

<sup>908</sup> M. L. Caparini and K. M. Osland, 'SGBV Capacity-building in Peace Operations: Specialized Police Teams' (2016).

<sup>909</sup> Nonviolent Peaceforce (2016) cited in O. Plesz, 'Unarmed Civilian Peacekeeping As An Appropriate Institutionalised Answer to Conflict-Related Sexual Violence' (2017) 2 *The Responsibility to Protect Student Journal* at 42.

<sup>910</sup> E.g. Cohn and Ruddick, 'A Feminist Ethical Perspective on Weapons of Mass Destruction', p. 407.

exploring credible alternatives to relying upon armed forces, such as FPU, as part of more broadly advancing the primacy of *civilian* approaches to international intervention.

I do appreciate that working directly with militaries is anathema to some. I am not suggesting that continuing to challenge militarism and militaries is not vital *parallel* feminist work. Meaningful engagement with militaries on law, CRSV and protection, nonetheless, offers potential to change minds and actions that cannot be achieved only by, in Charlesworth's words, "talking to ourselves".<sup>911</sup> As in the previous chapter, I suggest three potential strategies for feminist advocacy: here, with militaries and military organisations such as NATO, the military staff of the UN Department of Peace Operations, and equivalents in the EU and AU.

#### Seek to influence overarching military strategy

One of the risks of feminist engagement with militaries is that by celebrating the small wins we see (for example, the introduction of gender training), we become complicit in rhetorical WPS performances that mask lack of meaningful transformation. We need deeper thinking around how institutions might shift from the traditional combat mindset to the skills and values associated with promoting human rights. This project is testament to how legal frameworks and high-level strategy – national security strategies and defence reviews, high-level defence doctrine *et cetera* – shape a strategic environment that either constrains or enables progress on CRSV and WPS. This is thus an endorsement of the type of feminist activism that dares to infiltrate mainstream security debate and policymaking and can articulate its goals in those terms.

#### Make space for engagement between militaries and local communities

Breaking down hierarchies of "us" and "them" and enabling "empathetic cooperation" with local populations have been identified as having the potential to transform the way militaries work and think and disrupt practices of hegemonic masculinity.<sup>912</sup> To foster values

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<sup>911</sup> Charlesworth, 'Talking to ourselves?', pp. 17–19.

<sup>912</sup> Duncanson, 'Hegemonic Masculinity'; Bergman Rosamond and Kronsell, 'Cosmopolitan militaries and dialogic peacekeeping'.



and practices of respect and empathy between militaries and the communities they deploy to, one of the most important things that feminist scholars and advocates can do is support processes of meaningful and *consequential* engagement. Experiences in supporting consultation processes around WPS NAPs and peace agreements and in ensuring safety for human rights defenders<sup>913</sup> could be applied in helping militaries and communities come together.

### Centre the voices of communities affected by conflict

Feminist ethics of engagement imply prioritising the voices of those most affected by military actions. The WPS Agenda has magnified this idea by emphasising women’s full and meaningful participation. O’Rourke articulates its ideal as “participation as deliberation,” wherein “Through involvement and debate with those most affected by conflict and insecurity, resultant decision-making will arrive at thoughtful and reflective outcomes that will respect the manifold and evolving concerns of women.”<sup>914</sup> This means creating spaces for involvement and debate between representatives of marginalised communities and invisible victims of conflict, women and men, and military and civilian leaders. This means also, as scholars, seeking out, listening to, and amplifying diverse local perspectives. This is not to assert any unity or “purity” of local narratives, nor to ignore the marginalisation that these, too, can perpetrate.<sup>915</sup> We should seek women and men with a connection to grassroots communities, and be mindful of the vested interests of elites. This is a

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<sup>913</sup> The many resources on this include: I. Barcia, ‘Our Right to Safety: Women Human Rights Defenders’ Holistic Approach to Protection’ (2014); *Guidance on Gender and Inclusive Mediation Strategies* (2017); *Beyond Consultations* (2019).

<sup>914</sup> C. O’Rourke, “‘Walk(ing) the halls of power’? Understanding women’s participation in international peace and security’ (2014) 15 *Melbourne Journal of International Law* 128–54 at 141.

<sup>915</sup> Bell and O’Rourke, ‘Does Feminism Need a Theory of Transitional Justice? An Introductory Essay’, 28. Sanam Naraghi Anderlini observed that not all women at a peacetable “necessarily work in the interest of women”: cited in S. L. Gibbings, ‘No Angry Women at the United Nations: Political Dreams and the Cultural Politics of United Nations Security Council Resolution 1325’ (2011) 13 *International Feminist Journal of Politics* 522–538 at 530; K. Bennoune, ‘Productive tensions: women’s rights NGOs, the “mainstream” human rights movement, and international lawmaking’ in C. M. Bailliet (ed.), *Non-State Actors, Soft Law and Protective Regimes: From the Margins*, (Cambridge: Cambridge University Press, 2012), pp. 125–50.

prerequisite for activism and ultimately policy and practice grounded in context and complexity, that empowers other women rather than speaks for them.

## **Conclusions**

This chapter has drawn out the connections between how militaries understand their obligations under international law and the centrality of combat in their self-understanding and strategy. In so doing, it adds new dimensions to critical scholarship concerning militaries and militarism. Where Chapter 10 reflected upon feminist engagement with CRSV and international law, this chapter focused on feminist engagements with militaries and military organisations.

Introducing WPS into NATO and the British Armed Forces has elevated ideas about women, both in the military and in communities where they deploy. Attention to CRSV has helped them to contextualise their activities with reference to human security, and to recognise the vulnerability of men as well as women. Focus on WPS and CRSV has contributed to a recognition in policy of the values of gender equality, human rights and human security, and steps to operationalise these principles. While these developments have disrupted militaries' hegemonic masculinities and strategic culture of combat in but limited ways, they demonstrate capacity for change. Such advances should - with due vigilance - be amplified and encouraged, rather than dismissed. To this end, I proposed three strategies by which feminist scholars and activists might deepen their engagement in changing militaries, whilst advocating attention to the appropriate limits of military roles.

Chapter 11  
Moving to – and beyond – cosmopolitan militaries

## Chapter 12

### Conclusion

As feminist antimilitarist women, do we need to step up more boldly and make ourselves heard raising tough questions about the part played by gender power relations in militarism, militarisation, foreign and military policy and war fighting, including the way an institution like NATO functions? Should we grasp the political responsibilities that come with 'participation' in 'women, peace and security'? If so, how and where?

Cockburn, 'Snagged on the Contradiction: NATO, Resolution 1325, and Feminist Responses', 56.

This thesis began and ends with thinking about feminist engagement with militaries. For me, the project has been a journey toward understanding how best to approach feminist practice, seeking to navigate by constellations of international law and feminist security studies. If theory is the sky above, our landscape is the individuals and communities who have suffered, do suffer, or may suffer the pains of sexual violence during conflict. This is not a study that relates their experiences, but it holds their voices in mind. It is grounded in a hope that international law holds power to strengthen their protection, and to grant the consolations of justice.

This final chapter recaps the questions that shaped this research, its key findings and theoretical contribution, and its overarching recommendations.

#### **12.1 Feminist challenges to the international legal and military order**

CRSV has been both a galvanising and divisive issue for feminist advocacy and scholarship. It has been used to demonstrate how existing structures of legal and political action and accountability neglect the experiences of women and girls. This meshes with a broader critical scholarship on IHL, which demonstrates how IHL is predicated upon military rather than humanitarian priorities. It reproduces narrow understandings of women and gendered

hierarchies of protection, within which CRSV and protection of civilians more generally are neglected. At the same time, feminists have problematised the focus on CRSV as a limited and limiting representation of the harms that women experience in and from war. A focus on CRSV is frequently understood as problematic not only in denying women agency but in reproducing tropes of protection and victimisation that provide a justificatory logic for waging war and massive military spending.

A range of strategies has been articulated to address these dilemmas. Feminist legal scholars have argued for justice and reparations that recognise the nuance and complexity of sexual violence and other harms in conflict. Feminist security scholars have examined new forms of military masculinities and developed a narrative of how militaries might be “regendered” such that binary relationships of dominance are transformed into relationships of empathy, respect, and collaboration. Visions of cosmopolitan militaries and hybrid military/civilian human security forces have likewise emphasised less martial modes of international intervention. Chinkin and Kaldor’s examination of how international law can better regulate political violence argues that IHRL should be the legal framework for humanitarian interventions as well as actions predicated upon a right of self-defence.<sup>916</sup> This builds upon the convergence of IHL and IHRL obligations in armed conflict over the last fifteen years.

Behind and amidst these debates, from 2005 the UN Security Council has developed language around peace operations preventing sexual violence against civilians. A series of resolutions, the first adopted in 2008, is specifically directed at sexual violence in conflict. In 2013, CRSV was propelled into the international limelight through Britain’s PSVI, with a procession of political and military leaders promising to do more to prevent CRSV and overcome impunity. Since, NATO and several state militaries have adopted commitments and measures toward prevention and response, both as regards CRSV by third parties and the potential for SEA committed by their own forces. This study sought to trace how these commitments were fortified by recognition of obligations under IHL and IHRL, and how

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<sup>916</sup> Chinkin and Kaldor, *International Law and New Wars*.

militaries' institutional and strategic cultures enabled or prevented action on the commitments.

## 12.2 Military responses to CRSV

I adopted NATO and the British Armed Forces as my case studies for this project based on indications that there was in each an active engagement with CRSV, and because each exerts a strong international influence. NATO acts as a “teaching machine” for its members and partners.<sup>917</sup> Britain has been a global leader on the issue of CRSV and is highly influential in the Security Council around the protection of civilians and WPS.<sup>918</sup> Inevitably, a two-case model limits this research's focus. For example, a comparison of approaches between state militaries might allow for greater comparison of factors driving and inhibiting change; different findings might be expected in researching states more prominently aligned to UN peacekeeping. However, I am confident that the substantive findings of this research, in terms of approaches to the protection of civilians, IHL and IHRL and the *raison d'être* of militaries, have longevity and relevance beyond its institutional boundaries.

Chapters 6 and 7 traced how NATO and the British Armed Forces have engaged with the issue of CRSV since 2005, drawing out key milestones, progress and constraints. In both NATO and the British Armed Forces there remain shortcomings in terms of essential organisational structures to prevent and respond to CRSV. WPS and CRSV are weakly integrated in doctrine. There is a lack of tactical guidance to prevent and respond to CRSV. There are no proper mechanisms by which to report CRSV. There is inadequate support to and resourcing of GENADs, and Legal Advisors lack detailed understanding of the international law dimensions of CRSV and WPS. Perhaps most importantly, operational directives and rules of engagement are not sufficiently orientated to CRSV prevention and response.

The nature of the constraints in NATO and the British Forces are different. NATO has made greater progress on the institutionalisation of training, expertise and guidelines concerning

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<sup>917</sup> Wright, 'NATO'S adoption of UNSCR 1325 on Women, Peace and Security', 352.

<sup>918</sup> See Ch. 4 n 235.

gender mainstreaming, but has relied upon narratives of this increasing NATO's "operational effectiveness". Gender mainstreaming is framed to make NATO more effective at what NATO already does – for example, contributing to NATO's intelligence-gathering or own force protection. Unless NATO action is strongly aligned toward gender equality goals – the protection and empowerment of women and girls – this divorces the *process* of gender mainstreaming from the *aim* of gender equality. This dislocation is demonstrated by NATO members refusing to implement WPS commitments where they perceive them as compromising a mission's goals, such as reporting allegations of CRSV against partner nations. Unwillingness to transform in the manner that WPS commitments demand is demonstrated by the long inaction on SEA. Yet, in just the last few years NATO has adopted new policy commitments to the protection of civilians, gender equality and SEA, and begun to use the language of human security. These developments might open space for a deeper examination within NATO of how it can align with human security goals and approaches, such that "operational effectiveness" could more meaningfully serve gender equality and the WPS Agenda.

The British Armed Forces have more frankly understood a focus on CRSV as a challenge to "business as usual". Those championing training and resources on WPS have faced incomprehension and resistance: simultaneously a narrative that "this is not what the Armed Forces are for" and an assertion that it is already being done. The institutionalisation of GENADs and gender training remains piecemeal. The difficulties in moving forward with WPS have led to a repackaging of the agenda in 2019 as "human security". There are worrying signals that there is little resourcing through which to implement this new perspective on the role of the British military. Nonetheless, as with NATO, this new language of human security represents the potential for new conversations and for strategic change.

Other literature on NATO has recognised some of these challenges; I believe this is the first piece of substantial research on the British Armed Forces' engagement with WPS.<sup>919</sup> However, this project's analysis, in Chapter 8, of how *international law obligations* are manifested in military policy, doctrine and training, and how they are articulated by insiders, contributes an original and significantly different perspective. It illustrates how in both NATO and the British Armed Forces, CRSV is framed through WPS, as a policy/political rather than IHL/IHRL issue; consideration of military obligations in respect of human rights and IHL is minimal. While there is an acknowledgement of the potential applicability of IHRL standards, NATO and the British Armed Forces fail to engage with what contemporary understandings of IHRL might demand concerning CRSV. In both, the legal indeterminacy of the concepts of SEA and GBV mediate against CRSV obligations being framed in international law terms. Importantly, in both NATO and the British Armed Forces, operational orders and rules of engagement are not yet aligned to the political commitments made for forces to proactively protect civilians.

A golden thread through feminist legal scholarship is to scrutinise how gender discourse shapes understanding and application of the law. This thesis demonstrates that feminist critical military scholarship can offer much in understanding how military institutional culture mediates the application of the law. Applying Duncanson's theorisation of overcoming or displacing gendered binaries to achieve regendering and shifts in institutional culture,<sup>920</sup> Chapter 9 traced NATO and British Armed Forces' conceptualisations of the perpetrators and victims of CRSV, of women, and of the nature of CRSV. A picture emerges wherein women begin to be recognised as influential in their communities, men and boys as vulnerable to CRSV, and CRSV as part of a continuum of violence, but without translating this to strategies for engagement or protection. The issue of CRSV creates space on interpersonal levels and (in NATO) in policy to acknowledge

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<sup>919</sup> Although commentary has been made by a trio of female officers (Knell, Grimes, and McCourt, 'Locating the 'G' spot'), and there are a number of Masters theses by military personnel touching on WPS.

<sup>920</sup> Duncanson, 'Hegemonic Masculinity'.



aspects of sexism within armed forces, but resistance to doing so runs deep, and there remains a disturbing tolerance of SEA.

Burrowing beneath the surface of NATO and the British Armed Forces' policy reveals the difficulties of fitting response to CRSV within military-strategic culture. My interviews surfaced the perceived political unwillingness to lose lives to protect civilians; perceived risks attendant on reporting CRSV, in particular to achieving higher-level mission objectives; and persistently, the belief that preventing and responding to CRSV is not what militaries are for. In the British context, it was clear that the latter is a site of contestation and debate: some see the *Armed Forces' raison d'être* as combat, others advocate for embracing a human security approach, including as regards CRSV. In NATO actively protecting civilians – of which CRSV is a dimension – is a new topic of discussion, and still perceived as predominately a UN approach. The possibilities for transforming armed forces such that preventing and responding to CRSV becomes a serious priority thus remain contingent upon *inter alia* competing narratives around whether forces should focus on combat or human security capabilities.

### **12.3 CRSV and the law through a military lens**

As highlighted in the Introduction, feminist critical work on IHL has focused primarily upon IHL texts and jurisprudence. This research answers the call to engage more closely with militaries to understand how IHL is internalised and implemented. It makes an original methodological contribution in comprehensively exploring civilian protection through a review of military doctrine - an important although neglected source - as well as other key documentary sources, interviews and observation of training. I offer the key theoretical contributions of this project to international law scholarship as identifying lacunae in how state obligations to prevent and respond to CRSV are articulated and integrated; problematising the concept of “reasonable expectation” as a standard for military action; and accordingly, bringing into question arguments that applying an IHRL framework to international interventions will transform the gendered logics of war. For feminist work, this study highlights risks attendant upon emphasizing continua of violence. It calls for continuing to advocate around CRSV as torture, a grave breach of the GCs, a crime against

humanity and genocide – at least when engaging with institutions where there is as yet weak recognition of responsibilities to act concerning CRSV.

Chapter 5 interrogated IHL and IHRL standards relating to situations when CRSV is committed by third parties in contexts where an armed force exercises some measure of influence over the abuses or personal or spatial jurisdiction. It breaks new ground in exploring the nature of a military's obligations concerning CRSV arising by virtue of Article 1 of the GCs, peremptory norms, and IHRL due diligence obligations. It concludes that the application of a standard of due diligence in armed conflict remains indeterminate: there has simply been not enough examination of what might be "reasonably expected" of militaries where abuses are committed by third parties. I propose five "minimum standards" for militaries as demanded by the co-applicability of IHRL and IHL in armed conflict, addressing: expertise and advice, assessment, education and training, doctrine and accountability.<sup>921</sup> Applying principles articulated in jurisprudence concerning state obligations relating to violence against women and sexual violence, I argue that where a commitment is made to prevent and respond to CRSV, due diligence to do so requires a systematic approach. At a minimum: an overarching strategy relating to CRSV; CRSV risk assessment; operational planning for prevention and response to CRSV; protection plans at local and general levels; mechanisms to respond to identified threats or risks of CRSV; documentation, review and analysis of actions; and mechanisms to consult and refer to women's civil society organisations.<sup>922</sup>

These observations illuminate how the indeterminacy of international law norms is *sustained* through neglect and resistance at different levels. Not only are IHRL obligations in armed conflict weakly articulated in scholarship as well as in jurisprudence, they remain referent to notions of what can be "reasonably expected" of militaries. The notion of "reasonableness" defining how due diligence is applied means that obligations are filtered through gendered and militarised assumptions regarding the proper role of militaries, and the apparent inevitability of CRSV. Gendered power informs any challenge, and failure to

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<sup>921</sup> See Ch. 5, text to ns 300-301300.

<sup>922</sup> See Ch. 5, text to n 369.

challenge, the normative *status quo*. This means that asserting IHRL as the legal framework for humanitarian and other forms of international intervention (as do Chinkin and Kaldor) will be, in itself, insufficient to achieve a cosmopolitan vision of militaries that proactively protect civilians. IHRL at present is not transforming the “*ideational* structures of military forces”.<sup>923</sup> Associated processes are needed to reshape militaries’ strategic cultures and to build the processes, capabilities and mindsets to prevent the commission of CRSV, to sensitively assist and refer victims, to collaborate on a basis of respect with local women’s services, to support investigations, and so on. A reshaping of military culture is needed such that it is no longer considered unreasonable to prohibit deployed personnel from paying for sex.

For feminist scholarship and advocacy, this research adds a note of caution as regards the deconstruction of the “rape as a weapon of war” narrative. Whilst agreeing that it is problematically partial, when one looks at the still very recent engagement of militaries in the issue of CRSV, as a strategic narrative its work is not yet done. The feminist activism of the 1990s around CRSV as an international crime sought to ensure (amongst other things) accountability for prevention. This has not been achieved in NATO missions nor the operations of the British Armed Forces. Yet, these institutions have moved in recent years to adopt the language of a continuum of violence and structural violence. I argue that this risks displacing an understanding that CRSV is an international crime and as such implies positive obligations under the Rome Statute and GCs, to the space of mere political agenda - worthy of understanding but obliging no clear response.

#### **12.4 CRSV and militaries through a legal lens**

This project adds an international law dimension to scholarship on gender and militaries. In particular, it explores the concept of regendered militaries: a simultaneously radical and pragmatic imagining of how hegemonic military masculinity might be transformed. It draws parallels between this and theorisation of cosmopolitan militaries and human security response forces. All share a vision of militaries working more closely with communities,

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<sup>923</sup> Elliott and Cheeseman, *Cosmopolitan theory, militaries and the deployment of force*, p. 51.

more focused on law enforcement tasks and civilian protection, maintaining some capacity for combat operations but no longer building their core identity around combat.

Feminist lawyers have demonstrated that understanding how the law works can help understand the interplay of formal and informal gender rules within institutions.<sup>924</sup> This project provides a further demonstration of this: that asking questions around IHL and IHRL enables a depth of analysis that is missed if one asks only about gender, WPS or CRSV. This study of NATO and the British Armed Forces suggests that although militaries' internal "rules" around preventing and responding to CRSV have changed since 2005, militaries' understanding of the legal rules in which CRSV is embedded has changed little.<sup>925</sup> Militaries do not understand IHL or IHRL as requiring them to act to prevent or respond to CRSV by others. Militaries understand international law as deferential to what it, the military, understands as its needs and objectives. In this manner, international law and military-strategic culture shape each other. This demonstrates that any feminist transformation of militaries will need to engage with militaries' understanding and integration of international law.

At the same time, there is a risk that feminist advocates of military regendering (and likewise of cosmopolitan militaries) uncritically advocate for an expanded role for militaries, one which militarises law enforcement still further in (especially) post-conflict contexts. This is problematic from the perspective of democratic governance of the security sector, as well as from a human rights perspective. This project has illuminated how far militaries are from integrating human rights into their practices and mind-set; how far from being credibly able to tailor their approaches between the conduct of hostilities and law enforcement, applying an IHRL ethos and approach to the latter. There are contexts where (I believe) the extremity of violence does require military protection and military capabilities to secure space for humanitarian, political and judicial work. But this project urges engagement with normative approaches to security sector governance which

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<sup>924</sup> C. O'Rourke, 'Feminist Legal Method and the Study of Institutions' (2014) 10 *Politics & Gender* 691–97.

<sup>925</sup> *Ibid.*, 696.

circumscribe the role of militaries, and to explore more actively alternatives to using militaries to protect civilians.

## 12.5 Moving beyond rhetoric to better confront CRSV

This project closes with many questions unanswered. In August 2014, the British Armed Forces were to help evacuate Yazidis from Mount Sinjar but called the rescue off after “special forces on the ground found their condition was better than expected.”<sup>926</sup> Who made this assessment and how? What steps were taken to assess CRSV and assist victims? This research is able only partially to identify what it is that NATO and the British Armed Forces have done to prevent and respond to CRSV since 2005. Collaborative research with communities impacted by NATO and British military operations is needed to explore more deeply what militaries are doing, the impacts, and what communities would see as useful. It would be useful to extend the scope of organisations and forces examined: for example, to compare approaches within NATO to the UN, AU and EU, and to compare approaches between militaries with strategic frameworks more or less aligned with cosmopolitan values. It could be important to understand how feminist foreign policy<sup>927</sup> influences state militaries’ engagement with WPS.

The shortcomings in military responses to CRSV imply the need for many things to be done better: better doctrine, training and education; new processes for planning, assessment and monitoring that are sensitive to CRSV and other gendered security needs; a renewed strategic vision aligned with human security; integration of a holistic understanding of IHRL. The preceding chapters have mapped out these recommendations. The overarching call that this project makes is for engagement: for feminists to bring their radical, transformative visions into militarized spaces, and help to ensure that those who are most affected by conflict and militarism are heard. This project suggests three strategies by

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<sup>926</sup> ‘Iraq crisis: US and Britain call off rescue of Yazidis on Mount Sinjar’ (August 2014).

<sup>927</sup> At time of writing, declared by Sweden, Canada, Mexico, France, and pledged by Luxembourg, Malaysia, and Spain (R. Vogelstein, J. Bigio, and R. Turkington, ‘The Best Foreign Policy Puts Women at the Center’ (2020)).

which to strengthen the potential for militaries to play a more effective role in preventing and responding to CRSV, in protecting communities and supporting justice.

1. **Raise the bar in terms of what the law expects of militaries.** There needs to be more detailed articulation of military obligations with respect to violations of IHL and IHRL (including with respect to violence against women) in conflict. This should consider the range of potential modes of liability, and range of potential institutional actors (including UN, NATO and other multilateral missions). It should develop a more complete and coherent articulation of due diligence obligations, including in armed conflict. Standards could be developed through the ICRC or UN mechanisms, as well as through the ongoing work of the ICJ, the Human Rights Committee, the ECtHR and other regional human rights courts. This work needs to include a focus on diverse forms of CRSV as a violation of international law, and recognise vulnerability associated with intersectional identities, including sexual orientation and gender identity.
2. **Raise the bar in terms of what militaries expect of themselves.** There needs to be a more sophisticated engagement by militaries in their IHRL obligations, including standards concerning violence against women. Legal Advisors and Military Police should become expert in applying human rights standards in complex contexts. IHRL standards should be implemented comprehensively through doctrine, education and training, including the induction of recruits, with a view to building a new ethos and culture around human rights in militaries. High-level policy and strategy, operational orders and directives should be developed with reference to human rights obligations and political commitments to human security. Militaries need to systematise meaningful and consequential consultation with communities to learn from them how they can better protect them and increase their security.
3. **Raise feminist and women's voices in military and security spaces.** Feminists committed to WPS should seek to influence militaries and military organisations such as NATO – such as through supporting feminists within militaries and NATO and engaging with military lawyers. We should engage in the processes where security policy and

strategy are shaped, claiming a place in those conversations, not only where the topic is women or gender. Feminists should create and demand ways for communities affected by militaries' actions to be listened to, in ways that ensure that the different and diverse experiences of women are heard. Discourse around continua of violence should be invoked with caution in the context of military obligations, recognising the tensions between nuance and clarity.

From such processes we might expect that militaries' limited thinking around IHRL obligations and the reasonable scope of their action to protect human rights is challenged. We might expect this to translate into richer and more demanding legal guidance as to obligations to exercise diligence to prevent CRSV and to support justice. We might hope that militaries' understandings of CRSV and how to prevent and respond to it become more substantial and better meet communities' needs. We might hope that this is part of an overarching process of transforming militaries and military action toward a primary focus on protecting people and supporting human security for all.

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Policy on Preventing and Responding to Sexual Exploitation and Abuse, 2020. NATO, Brussels.

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## Appendices

### Annex 1: Summary of what armed forces are being asked to do in relation to CRSV

APPLIES TO	COMMITMENT
UN peacekeepers	<ul style="list-style-type: none"> <li>• be trained in the gender-related provisions of international humanitarian and human rights law (<i>Resolution 1265</i> (1999) preamble; <i>Resolution 1325</i> (2000) para. 6)</li> <li>• employ “all feasible measures” to prevent sexual violence against civilians and to address its impact (<i>Resolution 1674</i> (2006) para. 19)</li> <li>• 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” <i>Resolution 1820</i> (2008) para. 8)</li> <li>• be trained to prevent, recognize and respond to sexual violence and gender-based violence (<i>Resolution 1820</i> (2008), para. 6, 8; <i>Resolution 1960</i> (2010) para. 15; <i>Resolution 2467</i> (2019) para. 24)</li> <li>• encourage integration of this competence into the performance and operational readiness standards against which troops and police are assessed; be trained on responding to trafficking in persons in the context of armed conflict, gender expertise, SEA prevention and assessing sexual violence in conflict, and these be integrated into the performance and operational readiness standards against which troops are assessed (<i>Resolution 2331</i> (2016) para. 19; <i>Resolution 2467</i> (2019), para. 24)</li> </ul> <p>As regards SEA:</p> <ul style="list-style-type: none"> <li>• take preventative action, including robust pre-deployment and in-theater awareness training, and vetting of peacekeeping personnel (<i>Resolution 2106</i> (2013) para. 8; <i>Resolution 2272</i> (2016) para. 10)</li> </ul>

	<ul style="list-style-type: none"> <li>• ensure full accountability, including through swift and thorough investigations and, if appropriate, prosecutions, informing the United Nations in a timely manner of the status and outcome of investigations (<i>Resolution 2106</i> (2013), para. 10; <i>Resolution 2272</i> (2016) para. 11)</li> <li>• repatriate units when there is credible evidence of widespread or systemic SEA by those units (<i>Resolution 2106</i> (2013), para. 8)</li> </ul>
Armed forces party to an armed conflict	<ul style="list-style-type: none"> <li>• protect children, in particular girls, from rape and other forms of sexual and gender-based violence (<i>Resolution 1261</i> (1999) para. 10)</li> <li>• put an end to rape and other sexual violence against children and take special measures to protect children (<i>Resolution 2068</i> (2012) para. 2)</li> <li>• listed parties to prepare concrete timebound action plans to halt violations and abuses, including rape and other sexual violence against children and undertake specific commitments and measures (<i>Resolution 1882</i> (2009) para. 5)</li> <li>• take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse (<i>Resolution 1325</i> (2000) para. 10)</li> <li>• train troops on the categorical prohibition of all forms of sexual violence against civilians (<i>Resolution 1820</i> (2008) para. 3; <i>Resolution 1888</i> (2009) para. 7) and to « debunk[...] myths that fuel sexual violence » (<i>Resolution 1820</i> (2008) para. 3)</li> <li>• vet armed and security forces to take into account past actions of rape and other forms of sexual violence” (<i>Resolution 1820</i> (2008) para. 3; <i>Resolution 1888</i> (2009), para. 7)</li> <li>• where reports of sexual violence by one’s own forces are received, ensure thorough and timely investigation and accountability <i>Resolution 1888</i> (2009), para. 7; <i>Resolution 1960</i> (2010), para. 5), enforce appropriate military disciplinary measures and uphold the principle of command responsibility (<i>Resolution 1820</i> (2008) para. 3; <i>Resolution 1888</i> (2009), para. 3)</li> <li>• make and implement specific and time-bound commitments to combat sexual violence, which should</li> </ul>

	<p>include, <i>inter alia</i>: issuance of clear orders through chains of command prohibiting sexual violence and accountability for breaching these orders, the prohibition of sexual violence in Codes of Conduct, military field manuals, or equivalent (<i>Resolution 2106 (2010)</i>, para. 5, 10; <i>Resolution 2467 (2019)</i> para. 1)</p> <ul style="list-style-type: none"> <li>• encourages designation of high-level ... military ... focal points ... who will be responsible for the implementation of [time-bound commitments and implementation plans by all parties to conflict to prevent and address all acts and forms of sexual violence in conflict and post-conflict situations] (<i>Resolution 2467 (2019)</i> para. 2)</li> </ul>
Member states	<ul style="list-style-type: none"> <li>• all non-United Nations forces authorised under a Security Council mandate to take adequate measures to prevent and combat impunity for sexual exploitation and abuse by their personnel, and appropriate steps to investigate allegations of sexual exploitation and abuse, hold perpetrators accountable and repatriate units when there is credible evidence of widespread or systemic sexual exploitation or abuse by those units (<i>Resolution 2272 (2016)</i> para. 7, 8)</li> <li>• take concrete steps aimed at preventing and combating impunity for sexual exploitation and abuse by members of United Nations peace operations (<i>Resolution 2272 (2016)</i> para. 9)</li> <li>• support countries to address sexual violence in conflict and post-conflict situations ... including to enhance the capacity of military structures to address and prevent sexual violence related crimes (<i>Resolution 2467 (2019)</i> para. 26)</li> </ul>
155 states that endorsed "A Declaration of Commitment to End Sexual Violence in Conflict" 2013	<ul style="list-style-type: none"> <li>• Ensure military doctrine and training is aligned with international law so as to enable more effective prevention and response to sexual violence in conflict</li> </ul>

## Annex 2 NATO materials reviewed and fieldwork conducted

### 1. Political guidance, policy

Year of Issue, Document Title
(2004) NATO Policy on combating trafficking in human beings
(2004) Guidelines for NATO staff on preventing the promotion and facilitation of trafficking in human beings
(2004) Guidelines on combating trafficking in human beings for military forces and civilian personnel deployed in NATO-led operations
(2005) Committee on Women in the NATO Forces (CWINF) Handbook
(2006) Riga Summit Declaration
(2007 December) EAPC Framework Document on implementing UNSCR 1325 on WPS
(2008) Bucharest Summit Declaration
(2009) Strasbourg / Kehl Summit Declaration
(2010 Nov) Active Engagement, Modern Defence - Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organisation
(2010 November) Lisbon Summit Declaration
(2011 June) Revised EAPC Policy for implementing UNSCR 1325 on Women, Peace and Security, and related Resolutions
(2012) Chicago Summit Declaration
(2014 April) Revised EAPC Policy for the implementation of UNSCR 1325 on Women, Peace and Security and related Resolutions
(2014) Revised EAPC Action Plan for the implementation of the NATO EAPC policy
(2014) Wales Summit Declaration issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Wales
(2016 July) Warsaw Summit Communiqué
(2016 July) NATO Policy for the Protection of Civilians
(2016) NATO EAPC Action Plan on implementing UNSCR 1325
(2018 July) Brussels Summit Declaration

(2018-2020) Revised EAPC Policy for the implementation of UNSCR 1325 on Women, Peace and Security and related Resolutions

(2018-2020) Revised EAPC Action Plan for the implementation of the NATO EAPC policy on WPS

(2020 January) Gender Education and Training Package for Nations NATO Policy on Preventing and Responding to Sexual Exploitation and Abuse

## 2. Reports

<b>Year of issue, document title</b>
(2005) CWINF meeting record
(2009) Operational Effectiveness and UN Resolution 1325 - Practices and Lessons from Afghanistan
(2009) Policy Recommendations: Operational Effectiveness and UN Resolution 1325 - Practices and Lessons from Afghanistan
(2010 November) Comprehensive report on the NATO-EAPC policy on the implementation of UNSCR 1325 on women, peace and security and related resolutions
(2011 Aug) Gender Integration, An Afghan Priority
(2011 November) NATO Secretary General's report on implementing UNSCR 1325 on women, peace and security, and related resolutions
(2013) NATO Secretary General's second annual public report on implementing UNSCR 1325
(2013 May) Review of the Practical Implications of UNSCR 1325 for the Conduct of NATO-led Operations and Missions
(2013 May) Report of the 2013 NCGP Open Conference
(2014 Jan) NATO Secretary General's third annual public report on implementing UNSCR 1325 on women, peace and security, and related resolutions
(2014 September) Progress report on the implementation of the NATO~EAPC Policy and Action Plan on Women, Peace and Security - Report to the Heads of State and Government
(2014 November) Report Expert Meeting on Training Military to Combat Conflict-related Sexual Violence
(2016) 2015 Secretary General Annual Report

(2016 July) Factsheet on NATO policy on protection of civilians
(2016) Workshop on military guidelines food for thought
(2016) Workshop on military guidelines outcomes
(2016-2018) The NATO EAPC WPS Agenda Policy, Action Plan and Strategic Report
(2017) 2016 Secretary General Annual Report
(2017) Fact Sheet - Protection of Civilians
(2017 December) #BeBoldforChange
(2018) NATO Annual Report 2017
(2018) Fact Sheet – Inclusive Security Conflict-Related Sexual and Gender-Based Violence

### 3. Doctrine and standards

#### *High level NATO doctrine*

<b>Year of issue, document number, document title</b>
(2002) AJP-3 Allied Joint Operations
(2007 March) AJP-01 Edition C Allied Joint Operations
(2010) AJP-01 Edition D Allied Joint Doctrine
(2011 March) AJP-3 Edition B Allied Joint Doctrine for the Conduct of Operations
(2013 June) AJP-5 Operational Level-Planning (with UK elements)
(2016 March) AJP 3.2 Land Operations
(2017 Feb) AJP-01 Edition E V1 E Allied Joint Doctrine

#### *Most relevant doctrine*

<b>Year of issue, document number, document title</b>
(2001) AJP 3.4.1 Peace Support Operations
(2009) AJP-3.2.3.3 Allied Joint Doctrine for Military Police
(2011) AJP 3.4.4 COIN
(2013 Feb) AJP 3.4.9 EdA v1 CIMIC

(2014 December) AJP 3.4.1 Military contribution to peace support
(2015 April) AMedP-8.9 EDA V1 E Minimum requirements medical care women
(2015 May) AJP 4.10 Medical Support (with UK elements)
(2015 Oct) AJP 3.4.3 Military contribution to humanitarian assistance
(2015 December) AJP 3.4.5 Military contribution to stabilization and reconstruction
(2016 May) AJP 3.16 Security Force Assistance
(2016 July) AJP 3.4.4 Ed 2 COIN
(2016 August) AJP 3.22 Stability Policing
(2018 November) AJP 3-19 Civil Military Cooperation

#### 4. Military directives, guidelines, procedures

<b>Year of issue, document title</b>
(2003) MC 362 Rules of Engagement
(2005) CWINF Handbook
(2005) CWINF Meeting record
(2007) CWINF Guidance for NATO gender mainstreaming
(2008) CWINF gender balance best practices
(2009) NCGP Terms of Reference
(2009) Bi-SC 40-1
(2009) NCGP Recommendations on implementation of UNSCR 1325
(2010) NATO Legal Deskbook
(2011 May) Presentation on ISAF Operations Plan Annex X on Gender
(2011) How can gender make a difference to security
(2011) Indicators
(2012) Bi-SC 40-1 REV 1
(2013 May) NCGP conference syndicate 1 presentation
(2013 May) NCGP conference syndicate 2 presentation

(2013 May) NCGP conference syndicate 3 presentation
(2013 May) NCGP conference syndicate findings
(2014) NCGP Terms of Reference
(2015) Excerpt from Annex WW to the SACEUR OPLAN 10312 for Resolute Support in Afghanistan
(2015 June) Military Guidelines on the Prevention of and Response to Conflict-Related SGBV
(2015 July) NATO ACO Gender Functional Planning Guide
(2016) Joint Force Command Brunssum GENAD Action Plan 2016-17
(2016) Joint Headquarters SOP106 Gender Advisor's Functions in JFC & JTF Headquarters
(2017 October) Bi-SC 40-01 REV 2

## 5. Education and training standards and materials

<b>Year of issue, document title</b>
(2010) NCGP template for pre-deployment gender training
(2013 March) STANAG 2449 Training in LOAC 2nd ed
(2013 March) ATrainP-2, Edition A – Training in the Law of Armed Conflict
(2015 February) Guidance note Integrating Gender in Military Exercises
(2015) Sample soldiers' card
(2015) Whose security? booklet
(2015 May) STANAG 2597 ED 1 Training in Rules of Engagement
(2015 May) ATrainP-4 EDA V1 E Training in Rules of Engagement
(2015) NATO ACT Gender Education & Training Package for Nations (9 lesson plans, 9 lectures, scenarios on CRSV)
(2016 November) ATrainP-1 EDC V1 E Training and education for peace support operations
(2017) ATP-99 EDA V1 E Urban tactics
(undated) NCGM Case studies on conflict-related sexual and gender-based violence
(2017) NATO ACT Gender in Terrorism Education and Training Package for Nations



## 6. Interviews

	Function	Date of interview
1	GENAD	24 June 2016
2	GENAD	4 October 2017
3	GENAD	26 April 2018
4	Independent advisor	25 May 2018
5	GENAD	29 May 2018
6	Advisor	30 May 2018
7	Legal Advisor	30 May 2018

## 7. Observation of training, workshops and public events

	Date	Place	Participants/Event
1	25-28 January 2016	Worthy Down Barracks, Hampshire	[Participant] Observation of NATO trainers, as part of British Defence Gender Training of Trainers course
2	28 April 2016	NATO Allied Rapid Reaction Corps, Imjin Barracks, Gloucestershire	Day-long seminar on sexual and gender-based violence
3	31 May 2016	NATO Headquarters	Open session of the Annual Conference of the NATO Committee on Gender Perspectives
4	6 December 2017	Norwegian Defence University College, Oslo	NATO session during seminar on “Conflict related sexual violence and military leadership in UN and NATO operations”
5	29 May 2018	NATO Headquarters	Open session of the Annual Conference of the NATO Committee on Gender Perspectives

<b>6</b>	4 June 2019	NATO Headquarters	Open session of the Annual Conference of the NATO Committee on Gender Perspectives
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## Annex 3 British materials reviewed and fieldwork conducted

### 1. Political guidance, policy

#### *Cross-Government policy*

<b>Year of issue, document title</b>
(2006) 1325 Low Level NAP
(2006 March) 1325 High Level NAP
(2008) National Security Strategy
(2009) National Security Strategy Update
(2010 March) UK Government Strategy on the Protection of Civilians in Armed Conflict
(2010 October) Second 1325 NAP
(2010) National Security Strategy
(2012 February) Revised Second 1325 NAP
(2012 May) Foreign Secretary launches new Government initiative to prevent sexual violence in conflict (statement)
(April 2013) G8 Declaration on Sexual Violence in Conflict
(September 2013) Declaration of Commitment to End Sexual Violence
(June 2014) Third 1325 NAP
(2014 June) Chair's Summary - Global Summit to End Sexual Violence in Conflict
(2014 June) Global Summit to End Sexual Violence Statement of Action
(2014 June) International Protocol on the Documentation and Investigation of Sexual Violence in Conflict
(December 2014) 1325 NAP Country Level Implementation Plan
(2015) National Security Strategy and Strategic Defence and Security Review
(2016 September) UN Peacekeeping Defence Ministerial London Communiqué
(2017) UK's International Defence Engagement Strategy
(2018 January) 1325 NAP

## *Defence policy*

<b>Year of issue, document title</b>
(2004) JSP 383 Joint service manual of the law of armed conflict
(2010) Amendment 3 to JSP 383
(2010) JSP381 <i>Aide memoire</i> on the law of armed conflict
(2013 May) Amendment 7 to JSP 383
(2013) International Defence Engagement Strategy
(2015) MoD International Defence Engagement Strategy
(2019 January) JSP 1325 Human Security in Military Operations Part 1
(2019 January) JSP 1325 Human Security in Military Operations Part 2

## 2. Reports

### *Parliamentary and Government reports on key policies*

<b>Year of issue, document title</b>
(2007) Report on implementation of the 1325 NAP
(2011) National Security Strategy First Annual Report
(2011) Protection of Civilians Strategy Annual Report
(2011) 1325 NAP Annual Review
(2012 December) Protection of Civilians Strategy Annual Report
(October 2013) 1325 NAP Annual Review
(2015 August) NAP Baseline Evaluation Report
(2015 December) WPS NAP report to Parliament
(2016 April) NAP Midline Evaluation Report
(2016 April) House of Lords Select Committee Report on Sexual Violence in Conflict
(2016 June) Government Response to the House of Lords Select Committee Report on Sexual Violence in Conflict
(2016 September) Report on Defence Ministerial Meeting on UN Peacekeeping
(2016 December) WPS NAP Report to Parliament

(2016 December) National Security Strategy Annual Report
(2017) 1325 NAP Endline Report
(2017) WPS NAP Report to Parliament
(2018) WPS NAP Report to Parliament
(2020) The UK's Preventing Sexual Violence in Conflict Initiative: Joint Review
(2020) HMG Response to the Independent Commission for Aid Impact recommendations on the UK's Preventing Sexual Violence in Conflict Initiative

### *Annual reports to the NATO Committee on Gender Perspectives*

<b>Year of issue, document title</b>
(2008) CWINF UK National Report
(2009) CWINF UK National Report
(2010) NCGP UK National Report
(2011) NCGP UK National Report
(2012) NCGP UK National Report
(2013) NCGP UK National Report
(2014) NCGP UK National Report
(2015) NCGP UK National Report from Summary
(2016) NCGP UK National Report from Summary
(2017) NCGP UK National Report from Summary

### 3. Doctrine

#### *NATO doctrine with notable British additions*

Doctrine publications common to NATO and identified as highly relevant for Britain are listed in Section 3 of Annex 2. Those listed again below have notable British additions.

<b>Year of issue, document number, document title</b>
(2013 June) AJP-5 Operational Level-Planning (with UK elements)
(2015 May) AJP 4.10 Medical Support (with UK elements)

### *UK-specific high-level doctrine*

<b>Year of issue, document number, document title</b>
(2008) JDP 01 2nd ed Campaigning
(2010 November) ADP Operations
(2011 November) Fourth British Defence Doctrine
(2014 November) JDP 0-01 5th British Defence Doctrine
(2014 November) JDP 01 UK Joint Operations Doctrine
(2017 March) ADP Land Operations
(2017 June) JDP 0-20 UK Land Power

### *UK-specific most relevant doctrine*

<b>Year of issue, document number, document title</b>
(2004) JWP 3-50 The Military Contribution to Peace Support Operations (2nd Edition)
(2006) CIMIC
(2009 November) JDP 3-40 Security and Stabilisation: The Military Contribution
(2010 November) JDN 6-10 Security transitions
(2010) JDP 3-46 Legal Support to Joint Operations (2nd Edition)
(2011 July) JDN 5-11 Peacekeeping
(2011) DN 11-08 Female engagement in Afghanistan
(2011 October) JDP 1-10 2nd Captured persons
(2013) Developing Joint Doctrine Handbook (Fourth edition)
(2014 June) JDN 3.14 Military Medical Contribution to Security and Stabilisation
(2015 January) JDP 1-10 3rd Captured persons
(2016 March) JDP 05 Shaping a Stable World: The Military Contribution
(2016 June) Army Doctrine Note 16.02 - Human Security: The Military Contribution

(2018 June) JDP 3-46 Legal Support to Joint Operations (3rd Edition)

#### 4. Military directives, guidelines, procedures

Year of issue, document number, document title
(2008) Values and Standards of the British Army
(2016 July) MoD WPS Training Needs Analysis
(2017) Army Field Manual Tactics for Stability Operations

#### 5. Interviews

	Function	Date of interview
1	Military trainer	1 November 2016
2	Military trainer	2 November 2016
3	Military trainer	2 November 2016
4	Military trainer	2 November 2016
5	9 pre-deployment trainees, junior ranks (private to colour sergeant) (focus group)	2 November 2016
6	Civilian advisor	5 June 2017, 26 October 2017 & 30 April 2018
7	Doctrine writer	26 June 2017
8	Military trainer	27 June 2017
9	Royal Military Police Officer	28 June 2017
10	Royal Military Police Officer	11 June 2018
11	Staff member of military college	12 June 2018
12	Doctrine writer (legal)	12 June 2018
13	Doctrine writer	12 June 2018
14	GENAD	26 June 2018

15	Staff member of military college	2 August 2018
16	Army Legal Advisor	7 August 2018
17	GENAD	3 September 2018
18	GENAD	28 November 2018

## 6. Observation of training and workshops

	Date	Place	Participants/Event
1	25-28 January 2016	Worthy Down Barracks, Hampshire	[Participant] Observation of Defence Gender Training of Trainers course, 36 participants and 17 visitors
2	02 November 2016	Napier Barracks, Folkestone, Kent	Observation of 45 minute pre-deployment training briefing on "Gender and sexual violence and exploitation," approximately 95 participants
3	22 May 2017	Ministry of Defence Headquarters, London	[Participant] Observation of Women, Peace and Security Agenda in the British Armed Forces, Knowledge Exchange Workshop, 31 participants
4	14-15 January 2019	Officers' Study Centre, Edinburgh Garrison	[Participant] Observation of Officer Tutors' training on gender and WPS, 16 participants



## Annex 4 Sample schedule for interviews (June 2018)

### INTRODUCTION

- introduce research
- get informed consent:
  - To be interviewed
  - For me to use the interview in my research, including potentially as basis for publications
- confirm anonymity unless explicit consent to be identified
- explain data storage, retention etc.

### DEVELOPMENT OF RESPONSES TO SEXUAL VIOLENCE

- What task were you given as regards developing responses to sexual violence? When and by whom?
- Why? (E.g. have understandings of IHL/IHRL obligations shifted, or more politically led agenda?)
- To what extent were sexual violence in conflict issues (ie not by or against UK personnel) already included in your work – what were the gaps?
- What was the process by which you developed your responses – e. g. Who (else) was involved, and what materials and/or training did you draw from?
  - Legal advisors?
  - Cultural advisors?
  - Gender advisors?
  - Civilian officials e.g. FCO, SU
  - others outside the military (e.g. academics, NGOs)?

### WHAT?

What is anticipated approach - e.g. when would you and what would you do - re:

- proactive monitoring and reporting
  - referring allegations to host nation security services
  - investigating allegations. taking or security evidence. Arrests. protection of victims / witnesses?
  - Tactical deterrence
  - Intervention to halt
- Can you provide any examples from recent or current operations?
  - How do you deal with IHL and IHRL obligations?
    - Are there any points of dispute or ambiguity, in your opinion?
    - Does uncertainty as to applicable legal frameworks matter for the effectiveness of sexual violence response?

- How are armed forces to make operational judgments between other operational objectives and protection of civilians from sexual violence?
- In your opinion, is sexual violence response primarily directed by law or politics, and why?
- In your own opinion, what are the main challenges in the field to effective military response to sexual violence? E.g.
  - Mandate
  - Resources, skills, systems
  - Cultural – culture within military, local cultures, gender stereotypes and attitudes
  - Other?
- In your opinion, how have views on what UK military needs to do / not do re sexual violence in conflict changed over the last 10 years (since around 2008, when UN's strong focus on it began), e.g. in
  - changing attitudes within armed forces as to their role, purpose?
  - a change in the nature of UK operations? in armed forces?
  - thinking about a relationship between responses to sexual violence by others, and sexual harassment, abuse etc. by UK personnel?
- Do armed forces' new responses to sexual violence reinforce their existing internal gender regime; or evidence "re-gendering"?

#### **GENDER CULTURE**

- How would you describe the institutional culture within UK military re gender? e.g. Equality of participation and opportunity between men and women, how men and women contributions are seen?

#### **BACKGROUND & ROLE**

- background working with UK military or in related roles– e.g. length of service, where, types of roles and responsibilities
- own professional background re sexual violence, IHL

#### **CONCLUSION**

- Further people I should be in contact with?
- Could you share any of your guidelines or training material?

check:

- Ask if I can get back to them with follow up questions
- THANKS! Commitment to share work when finished



## Military responses to sexual violence in armed conflict

### The research

Sexual violence in armed conflict is high on the international political agenda, the subject of a series of UN Security Council resolutions and a British-led global campaign. Attention has been focused on what more armed forces can do -- to prevent sexual violence, to protect civilians from sexual violence and to assist survivors.

This research seeks to understand how militaries are developing responses to sexual violence in conflict, looking at doctrinal, training and operational developments. The research will focus on developments within NATO missions and the British Armed Forces. It is my doctoral project, based in the School of Law at the University of Edinburgh.

The research aims both to contribute to academic knowledge, and to strengthen policymaking by governments and others tasked with developing responses to sexual violence in conflict, including through defence, foreign affairs and peacekeeping strategy.

### Your participation

The research includes interviews with military and other personnel responsible for developing doctrine, education and training to respond to sexual violence in armed conflict, and observation of military training relevant to the topic.

Participation is **voluntary**: you can opt out of participating or withdraw at any time simply by telling me. If you do so, nothing you do or say will be recorded as part of the research.

Your participation is **anonymous**: you will not be identified by name or position in the research unless you *explicitly* agree to be. For example, the research might say "a trainer in the British military said ..." Moreover, it is not anticipated to publish the results of the research until approximately 2019 (when the PhD is finished!) Records of interviews and observations will be kept confidential and held securely.

Please feel free to ask me any questions about the research, and indeed to offer suggestions and advice.

Thank you very much for your participation.

Megan Bastick  
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University of Edinburgh

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