



Graduate School of Development Studies

**Representations as Interventions:
Framing HIV and Sexual and Gender-Based
Violence in Conflict**

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List of Acronyms

HIV – Human Immune-deficiency Virus
AIDS – Acquired Immunodeficiency Syndrome
SGBV – Sexual and Gender-Based Violence
ICTY – International Criminal Tribunal for the Former Yugoslavia
ICTR – International Criminal Tribunal for Rwanda
ICC – International Criminal Court
DRC – Democratic Republic of Congo
UNSG – United Nations Secretary-General
UNMS – United Nations Member States
UNSC – United Nations Security Council
UNGA – United Nations General Assembly
UNAIDS – The Joint United Nations Program on HIV/AIDS
Beijing DPA – Beijing Declaration and Platform for Action
CEDAW – Convention on the Elimination of all forms of Discrimination Against Women
VAW – Violence Against Women
PLWHIV – People Living With HIV
STI – Sexually Transmitted Infection

Abstract

This study takes as the focus of its analysis the disconnection between representations of HIV and Sexual and Gender-Based Violence (SGBV) in conflict discourses. This analysis draws on intersectionality and gender theories of identity and power to analyze the relationship between HIV and SGBV as it is framed in conflict discourses, specifically looking at three UN Security Council Resolutions (1308, 1325 and 1820), as well as relevant international and national legal texts from the ICTY, ICTR and ICC. This paper challenges *the* ways, i.e. securitization and criminalization, that the issues of SGBV and HIV are addressed, arguing that the representations found in these texts help form the realities of which they describe. More than this, the representations act as a form of intervention, because of the way the texts discursively frame –and subsequently categorize, value and create hierarchies of realities of HIV and SGBV in conflict. While many would not argue against the securitization and protection against sexual violence in conflict, or the prosecution of war criminals for mass rape, however both securitization and the law are used in relation to conflict to denote which subjects should be securitized and protected, and which subjects require retributive justice and punishment. This paper challenges the prioritization and categorization of realities over others, and the ways in which these processes in themselves are harmful in actually addressing the root problems of the issues they represent. By mapping the way that HIV and SGBV are represented as connected and disconnect, this paper engages in questioning how, when and why particular issues were securitized and criminalized to understand when they became significant and for whom, and for what purpose, in order to understand whom and what is still disregarded, still not fully reached, and perhaps even threatened, by current interventions. The findings suggest that the way the selected UN and other legal texts speak about HIV and SGBV in relation to conflict can be viewed as essential to justifying interventions and making particular realities more salient, while silencing others.

Relevance to Development Studies

This research is related to the field of development studies because it takes the normalization of human security as its contextual basis for analyzing three issues related, that arguably are a part to development studies – gender equality (violence against women, rape) and HIV. Framing development-related issues as “new” threats to international peace and security is part of the analysis of this paper – arguing that the way in which HIV and SGBV are securitized is making visible specific realities of HIV and SGBV in conflict which obfuscate other realities – prioritizing and making visible what is ‘important’. Furthermore, these dominant representations form the basis of material interventions.

In short, if we understand that enmeshing development and security has allowed for new security threats to be constructed, and subsequently new interventions to prevent and respond to these threats, then discourses of human security produced from global governance structures are worthy of analysis. Further, if we understand that discourses surrounding conflict serve to ‘refigure old ways of being and doing by creating new subjects, new practices and policies, and new cultural formations and modes of power’ (Hawkesworth 2008:6), then it is important to analyse the nurturing and sustaining of these new ways that can result in reinforcing normalized subjects and practices for new purposes.

Keywords

Sexual and Gender-Based Violence, HIV, Conflict, Intersectionality, Framing, Discourse

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Chapter 1: Introduction

This study takes as the focus of its analysis the disconnection between representations of HIV and Sexual and Gender-Based Violence (SGBV) in conflict discourses. This analysis draws on intersectionality and gender theories of identity and power to analyze the relationship between HIV and SGBV as it is framed in conflict discourses, specifically looking at three UN Security Council Resolutions (1308, 1325 and 1820), as well as relevant international and national legal texts from the ICTY, ICTR and ICC. This paper challenges *the* ways, i.e. securitization and criminalization, that the issues of SGBV and HIV are addressed, arguing that the representations found in these texts help form the realities of which they describe. More than this, the representations act as a form of intervention, because of the way the texts discursively frame –and subsequently categorize, value and create hierarchies of realities of HIV and SGBV in conflict. While many would not argue against the securitization and protection against sexual violence in conflict, or the prosecution of war criminals for mass rape, however both securitization and the law are used in relation to conflict to denote which subjects should be securitized and protected, and which subjects require retributive justice and punishment. This paper challenges the prioritization and categorization of realities over others, and the ways in which these processes in themselves are harmful in actually addressing the root problems of the issues they represent. By mapping the way that HIV and SGBV are represented as connected and disconnect, this paper engages in questioning how, when and why particular issues were securitized and criminalized to understand when they became significant and for whom, and for what purpose, in order to understand whom and what is still disregarded, still not fully reached, and perhaps even threatened, by current interventions.

The centrality of security and legal discourses to this research stems from the rise of global discourses of human security, which have placed development issues at the centre of global peace and security. In so doing, security and development practices have become blurred, prioritizing issues that can pose a risk to global peace and security, including underdevelopment and impunity, as the basis for interventions. Taking the normalization of human security as its contextual basis, this research focuses on the construction of dominant representations of HIV and sexual and gender-based violence in conflict through the process of securitization, subsequent interventions through legal institutions. “The way that political and legal discourses and rhetoric ‘erase’ particular individuals and communities by highlighting or ‘favouring’ specific forms of subordination or discrimination at the expense of others’ (Crenshaw 1991 in De Nobrega 2009: 200) is deserving of analysis. In closing, this research will discuss some of the implications of reproducing certain representations in terms of providing adequate and specific responses and creating preventative strategies.

1.1 Motivation for the Research

Interests in the relationship between conflict, rape and HIV was triggered by two cases before the International Criminal Court ¹ (ICC); one that mentions the intentional infection of victim-

¹ See special witnesses Robert Garretton’s report in the *The Prosecutor v. Thomas Lubanga Dyilo* (WIGJ 2009:85) and the confirmation of charges hearing in *The Prosecutor v. Jean-Pierre Bemba* (WIGJ 2009:63).

witnesses through rape and sexual violence with the Human Immunodeficiency Virus² (HIV) and the second that discusses victim-witnesses who were subjected to sexual violence, including rape, and contracted HIV as a result. Using a disease as a weapon was initially shocking, and led me to consider the different effects of rape including HIV infection. The particular effect of HIV infection challenged how I had previously thought about rape in terms of its after-effects and its motivations. HIV infection in rape survivors compounds the stigma and discrimination that people living with HIV (PLWHIV) face with the stigma and re-victimization that rape victim-survivors face. I saw HIV infection due to rape and sexual violence as a specific effect, which challenged conceptions in my mind about rape not varied in its effects, not personal, but *RAPE* – violent; brutal; and a women’s worst fear.

Further interest followed the research by Ostergard et al. (2008) about failing outreach to men infected with HIV (in McInnis 2009:108). Ostergard et al. (2008) found a positive correlation between HIV prevalence and rape rates within South Africa, and that fatalism or hopelessness is the link between the two (ibid). Ellman et al. (2005) further expand this ‘fatalist’ mentality to times of conflict, alleging that HIV-positive combatants facing inaccessibility to health care and stigma may choose to exercise their power over victims of sexual violence (in McInnes 2009:108).

Both the cases in the ICC and the cited research address the possibility of HIV infections through sexual violence in conflict, the link between those three elements – the conflict, the rape and the HIV - was actually highly invisible in most of the academic work I have read, and in most of the legal cases in front of international war crimes tribunals. Interestingly, the United Nations Security Council (UNSC) has issued three different resolutions, each of them addressing one, or two elements in this triangle, but never all three: UNSCR 1308 addressing spread of HIV, 1325 dealing with women’s role in conflict and 1820 addressing sexual violence – and especially rape – against women in conflict. The issues each of those resolutions addresses have been framed in a very specific way: as threats to global security and peace.

1.2 Context: Human Security, Rights and Development

Historically ‘security’ has been ‘explicitly defined as national security or implicitly draws upon this connection with the state... the meaning of security is tied to historically specific forms of political community’ (Walker 1990 in Hansen 2006:34). Hansen explains that the nation-state has evolved and been at the centre of political discourses for over 400 years, it has achieved ‘a prerogative as the concept of security’ (ibid). Since the end of the cold war and the new millennium, the prerogative has shifted to the interconnectedness of states, to the global world and a new global order.

Realist conceptualization of security grounded in preoccupations with balance of power dynamics and national security issues, burdened with the task of bolstering militarism, respect for sovereignty and the protection of national boundaries (Willet, 2010:144), began to be challenged in policy circle within the UN in the 1970s but were not addressed *in* policies until after the end

² In the words of McInnes (2009), “this research uses terminology which differentiates between the human immune-deficiency virus (HIV), a virus which is transmitted by human to human contact, and Acquired Immunodeficiency Syndrome (AIDS), which is not a virus but a syndrome of infections and diseases which develops as the immune system is weakened by HIV” (McInnes 2009:fn1). Similarly, I am primarily concerned with the spread of the virus, HIV, but it is the syndromic condition AIDS that results in death. It is necessary to make a distinction between people living with HIV as they are not necessarily AIDS patients due to advancements in anti-retroviral therapy (ibid).

of the Cold war (Bosold 2011:4). Academics on security studies from the Copenhagen School (see Buzan et al. 1998; Hansen 2006) claimed ‘state interests could no longer adequately explain international politics’ (Chandler 2011:115-116). In other words, focusing on the formation of state interests at the domestic level changed to privileging their communicative interaction and formation of norms and values, that in turn helped to shape state identities and policy-making (ibid).

The United Nations Development Programme’s (UNDP) Human Development Report (1994) brought the idea of the human quality of security into discussion at a time when awareness of non-military threats grew in conjunction with dissatisfaction about the ‘achievements’ of the ‘narrow’ interpretation of security (Frerks and Goldwijk 2007:24). The human aspect of security necessitated development-oriented responses to the ‘new’ threats of poverty, hunger, and underdevelopment, stemming from the global to the local, fusing development and defence (Frerks 2007:48; Duffield 2001:126). The combination of security and development is most recognized since the UNDP 1994 report as ‘freedom from want, freedom from fear’ (Turner et al. 2011:84) which positions ‘underdevelopment’ as a threat to international peace and security (Duffield 2001:113). The language of interconnectedness of the global system and the rise of human security as a global phenomenon thus requires multiple actors and multi-level responses, based on ‘liberal principles of cooperation and partnership’ (ibid) to achieve both stability and development, as they are both necessary for global security (Duffield 2001:16).

Both those that believe in human security’s emancipatory potential and those that see it as a reproduction of power relations have cited that human security constitutes ‘a new globalized international order’, which speaks to its normalization and acceptance (Hynek and Chandler 2011:7). As a discourse, human security’s indeterminate characteristic allows for global governance actors to define what to prevent and protect. Turner et al. (2011) discusses the dualistic nature of human security – the ‘broadening and narrowing of the application of human security’, idealizing what society *should* be like, and the narrowing its application to ‘statebuilding, security sector reform and the rule of law programs’ (2011:85), highlighting the dominance liberalism in global governance. The inconsistent prioritizing of the broad or the narrow can be further described as the ‘radical reframing of [security policy] despite the lack of clear change in practices’ (Chandler 2011:121). Whether the idealism or the realism should come first, the discursive interplay between these elements offers insight into the securitization of HIV and war rape of women.

This securitization is questioned in this study, both in terms of its hegemonic discursive power to define realities of HIV infections and realities of war rapes, as well as in terms of implications of those definitions for specific interventions. One of the intervening fields in which the definitions become significant is the field of international law and legal practices at the international courts such as International Criminal Tribunal for Former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR) and ICC. For that reason, this research will investigate both the discourses in the UN resolutions, and the ways those discourses impact legal interventions. Finally, academic research and literature will be used as a third field of inquiry to provide an overview of the contention that was the motivation of this research, with a specific focus on (the limits of) feminist critique of conflict, and how sexual violence, rape and HIV have been framed in the dominant global discourses and legal interventions.

1.3 Research Objectives and Questions

In conducting this research my objectives are as follows:

- To examine the representation of actors and problems that emerge in the texts of international legal and global security discourses and their replication in academic texts;

- To explore how institutionalized representations help constitute disciplinary discourses and modes of intervention in conflict and post-conflict contexts.

The principal objective of this study is:

- To understand what are the dominant representations in discourses of HIV and SGBV surrounding conflict, and subsequently, to understand who and what issues exist at the margins/intersections of these representations in an attempt to map how HIV and sexual violence are presented as connected and disconnected.

The focus in all the chapters is on analysing discourses as forms of intervention regarding the inter-connections of HIV and SGBV in the context of conflict. I take as my focus security discourses, particularly the securitization of HIV, women and rape in the UNSCR 1308, 1325 and 1820. In terms of legal discourses I focus on international law on rape and sexual violence as it evolved in the last century through the International Criminal Tribunals for Yugoslavia and Rwanda, and the International Criminal Court, and the more recent push to criminalize the transmission of HIV in national laws.

In attempting to address these objectives, the driving question for this research is:

How securitization and criminalization construct the connections (and disconnections) between HIV, SGBV and violent conflict through their representations?

In addition, specific parts of the study deal with the following sub-questions:

1. What does current academic literature frame as the connections or disconnections between HIV and SGBV within and outside of conflict? (Chapter 2).
2. How has the politicization of HIV and SGBV in security discourses framed the global responses to these problems, actors and interventions? (Chapter 3)
3. What are the narratives of HIV and SGBV in legal discourses that support how these issues are framed in the law? (Chapter 4)

1.4 Limitations and Scope

The aim of this research is to reflect on the representations of HIV and SGBV in conflict, it does not wish to expose the diversity of individual experience and therefore is not limited by a lack of fieldwork to secondary sources. Primarily this research is *focused on* those secondary sources and not representations found in qualitative data of individual experiences. Specifically the scope of this research departs from the disconnection between the epidemiological study of HIV in conflict and the plethora of work on rape in conflict. This *disconnect* will be investigated through two main discourses – that of security (the protection) and the law (the remedy). I attempt to look beyond individual behaviours to the social relations that shape them, and beyond social relations to the underlying representations of the realities of SGBV and HIV in conflict and discuss how these are politically constructed and maintained and reproduced in the processes of securitization and criminalization. I acknowledge that this research may be limited by its lack of case study to poignantly discuss the issues introduced here. Due to a lack of specific data on intentional infection of HIV and the consequences of HIV infection due to sexual (mis)conduct and violence in conflict, this research instead aims to map where these issues are connected or disconnected, thus provides a theoretical basis for further research and discussion.

1.5 Methodology

For this research I adopt a post-structuralist interpretation of discourse for this research – what Foucault, Derrida, Laclau and Mouffe examine and analyse as the ‘historical and political construction and functioning’ of language and the centrality of human participation in explaining the world (Howarth 2000:5).

Firstly, I outline certain assumptions about the ‘constructive effects of language’ (Phillips and Hardy 2002:4). The constructivist approach³ to language outlined by Hall (2007), which I adopt, states that meanings are produced through a process where individuals make sense of the world around them in order to communicate about it (Hall 1997 in Donzelli 2009:11). This process of making meaning is mediated by interaction within society, so that repetition of the meaning – in other discourses, texts, institutions, constructs a ‘phenomena’ –constructs *the* way reality is thought about and talked about.

Foucault’s concept of power-knowledge is also important for this research, and focuses on the rules which govern our sets of language about reality and the way *some* discourses are circulated widely and others not (Mills 2003:55). Therefore ‘the regularities which we perceive in reality should be seen as the result of the anonymous regularities of discourse which we impose on reality’ (ibid). In other words, instead of thinking of discourses as sets of coherent language, we should consider the practices that keep them in and out of circulation (Mills 2003:54). Differences in power between groups and institutions is most evident in discourses that are produced by particular institutions or individual experts *about* the other, whereby the ‘knower’ produces a representation of the other which plays a role in maintaining both the author and the other in their positions (Mills 2003:70). For the purpose of this paper, this power is seen most clearly through intertextuality, whereby newer text draw on the location and standing of older text. Statements that are perceived to be true will be circulated throughout society or an epistemic community, ‘commented on, described, and evaluated by others in books and articles’ (Mills 2003:74). Commentary plays a dual role: commentary by the new author validates her/his ability (and status) as an author, to refine and express clearly the ideas about what is known as true, and having commented or referenced the truth re-validates the text and keeps it in circulation as ‘truth’ (Mills 2003:58).

Like other post-structuralist scholars, I see the relevance of doing discourse analysis to examine and espouse the relationship between power, knowledge and representations. This paper will examine security discourses (Chapter 3) and legal discourses (Chapter 4) on HIV and sexual violence, beginning with a current overview of academic literature (Chapter 2).

First, as Gasper and Apthorpe (1996) note, discourse analysis requires a ‘disciplined examination of *both* text and context’ (1996:5, emphasis original), therefore I discuss the authority of the institutions that produce/reproduce meanings and the context of this authority.

Second, as Phillips and Hardy (2002) explain, the methodology of discourse analysis ‘tries to explore how the socially produced ideas and objects that populate the world were created in the first place and how they are maintained and held in place over time’ (2002:6). For the purpose of this paper, I am interested in examining in the selected texts, how representations of men and women are constructed, how the discourse makes certain practices (im)possible, how they (dis)empower different actors or institutions, and how different actors or institutions draw on discourses to legitimate their positions and actions (intertextuality) (ibid). To discuss the actors,

³ This approach consists of different streams. One of these streams –the Foucauldian, is connected to post-structuralism, the perspective I adopt for this research.

structures and story presented and produced through policies and the law on the subjects of HIV and SGBV in the context of conflict I will use both narrative analysis (NA) and frame analysis (FA). This is especially important because how actors and problems are framed, and by whom, determines the prescriptive intervention.

1.5.1 Narrative Analysis

NA aims to uncover the coherence of a story, the integration of ‘evidence and arguments’ into a plausible causal plot (Gasper and Apthorpe 1996:8). I intend to use NA to examine the stories present in security discourses – the problem encountered, the heroes who overcome and restore peace and justice. NA can help uncover the how and why certain actors and events relate, through discussions of the meta-narratives employed in the story – the assumptions made about characters, the views they espouse, the battles that are fought against the ‘other’. Meta-narratives are often replicated in many other debates or stories, and ‘are tied to overarching epistemologies in society’ such as modernist, orientalist, colonialist, etc, views. (Schon and Rein 1994:34)⁴.

1.5.2 Frame Analysis

FA looks at who, and what, are included and excluded in a particular text. Using an analogy of a *picture frame*, framing highlights or focuses the viewer’s attention on what falls inside the frame, and diminish what is outside (Yanow, 2006). Framing works in tandem with meta-narratives in that how and what is framed and what is not, is informed by a specific epistemological view. Laws and Rein (2011) offer insight into the use of frame analysis:

[F]rames [are used] to note a special type of story that focuses attention and provides stability and structure by narrating a problem-centered discourse as it evolved over time. Actors express beliefs through these normative-perspective stories that interpret an uncertain, problematic or controversial situation into a policy problem that names the phenomenon and implies a course of action. ...[these] stories wed fact and value into belief about how to act (Laws and Rein 2011: 174).

Particularly important for this research is what Wood finds as the ‘over-determinate’ and ‘under-descriptive’ way subjects and objects are framed in policy, particularly found in UNSC resolutions, presenting issues in terms of ‘black’ and ‘white’ in an attempt to persuade the audience (Wood 1985 in Gasper and Apthorpe 1994:7). The minutia of detail inscribed in a frame, on an event or an actor, makes FA useful for understanding what falls inside and outside the frame of the law – to decipher the values inscribed in the law, what elements are made useful, and thus powerful for determining what is deemed ‘evidence’ or ‘truth’ in the narratives of the courtroom.

1.5.3 Gender and Intersectional Analysis

I see gender and intersectional analysis as central to this paper because representations of what men and women *are* has historically been tied to which behaviours are normalized, which roles men and women are intended to play in society. Thus, what discourses espouse about men and women reinforces their roles and normalized behaviours.

I refer to gender as the qualities ascribed to men and women, namely their gendered identities: masculinity and femininity. Stets and Burke (1996) state the ‘shared cultural conceptions of what it means to be male or female in society’ are reproduced in institutions in societies, such as

⁴ Here I use the term meta-narrative while Schön and Rein uses the term meta-cultural frame. I find it confusing to use “frame” to also describe what I refer to as an epistemology or meta-narrative.

the family, education system, media, and the state (1996: 4). Sen et al. (2007) refer to gender as a 'social stratifier' to similarly describe the way in which social structures are 'layered' into hierarchies of power and control along gendered lines (Sen et al. 2007 in Luciano Ferdinand 2009:6-7). Thus gender, i.e. what it means to be a man and a woman, intersects with other structures, such as race, class, caste, age, legal status and sexuality. This stratifying effect, echoed by Cockburn (2001), differentiates between men and women within different structures and presents us with diverse understandings of men and women due to context, place or region, *but always in a gendered way* (2001:15, emphasis added). Thus, the normative function of gender – what it means to be masculine and feminine, is powerful because of the meanings ascribed to gender roles that are produced and reproduced in structures/institutions of society and are linked with who gets what, how and why (ibid). It is important to acknowledge the way meta-narratives of colonialism, racism, sexism, islamaphobia intersect with gendered identities to represent subjects and objects.

The intersections of sex and gender analysis expands upon the constructions of what it is to be male-female to expose their relational construction – the 'natural' or biological fit between males and females that organizes behaviour in a heterosexual way (Ingraham, 2006). The intersection of gender and sex naturalizes sexual behaviour to gender-sex binaries, where males are *naturally* dominant, rational, sexually overt while females are *naturally* vulnerable, emotional and sexually passive. The naturalization of sexual activity to the biological sex of a man or women disregards the role played by gendered identities. This study uses the acronym sexual and gender-based violence (SGBV) because I understand that violence is committed against both men and women for gendered reasons related to norms and power, which inform how they experience violence both in sexual and non-sexual ways (Cockburn 2001). For example, women are likely to experience violence that is sexual based upon sexualized and objectified depictions of women in society, while men are likely to experience violent deaths based upon hyper-masculinities which idealize dominance, force, and power (Cockburn 2001), or sexually in an attempt to feminize or de-masculinize through sex (Connell 1999).

Chapter 2: Academic Literature on HIV-SGBV and Conflict

The chapter outlines the relationship between the spread of HIV, violent conflict and war violence against women, and how the relationship between all three issues is viewed in current literature by academics, public health workers and NGOs. The chapter discusses the relationship between SGBV and HIV, specifically the epidemiological study of HIV in conflict, and on rape in conflict. This chapter argues that the set of literature dealing with HIV in conflict tends to exclude sex, while the literature on war sexual violence tends to exclude discussions on HIV. The chapter concludes by discussing some of implications of dominant representations of both HIV and sexual violence against women in conflict.

2.1 The Cyclical Relationship of SGBV-HIV

The epidemics of SGBV and HIV are intertwined if we understand that gender stratified societies promote inequality and power imbalances between sexes, which is the ‘driving force’ of the relationship between SGBV and HIV, that further perpetuates cycles of violence (see Kaye 2004; Garcia-Moreno et al. 2000; Dunkle et al. 2004). Gender and sexuality intersected with other social determinants can produce not one epidemic of HIV but many, and widespread forms of SGBV (Luciano Ferdinand 2009:7). The reinforcing way in which HIV and SGBV are related is determined by ‘overlapping systems of subordination’ (Crenshaw 1991:1265) which can result in direct violence (intimate partner or domestic violence) that is sexualized, increasing fluid exchange, which increases the risk of HIV transmission (Luciano 2009:14). The systems of subordination can also cause indirect violence – structural violence, discrimination and marginalization which limit services and criminalizes particular behaviours, men who have sex with men for example. The cyclical relationship between Sexual violence occurs when PLWHIV are often at risk of discrimination and violence due to the disclosure of their status, informed by their intersectional identities (see MacDonnell et al. 2000; Maman et al. 2002). Discrimination and marginalization by institutions and society is also linked to the increased susceptibility of groups to HIV exposure and the subsequent lack of treatment, care and protection – such as sex workers, intravenous drug users, prisoners, men who have sex with men, and women.

2.2 Conflict Studies on SGBV and HIV

Current literature on the relationship between HIV in conflict and SGBV in conflict are interestingly disconnected:

- 1) Literature that has examined the epidemiology of HIV in conflict has, for the most part, limited the gender-sex dynamic in its studies, therefore relegating changes in sexual behaviour ‘to one amongst other factors...’ prioritizing the ‘medical and epidemiological features of the virus’ over the social context in which it is transmitted (DeLargey and Klot 2007:23; El-Bushra 2008:2).
- 2) Contrasting this negation of gender-sexuality in epidemiological studies is a plethora of literature on the use of sexualized violence and rape in conflict as a ‘weapon of war’, which has arguably made rape more visible, yet ‘flattened reality’ (Copelon 1993 in Zarkov 2006). Rape as *the worst* weapon may also be limiting our analysis, negating the varied effects and impacts of sexual violence and rape compared to *the rape* itself.

This contrasting literature and disconnect leads me to question, what has changed from peace times where there exists a relationship between HIV-SGBV to conflict – where the spread

of HIV is seemingly disconnected from the overwhelming reality of rape and sexualized violence in conflict.

It is necessary to call for a better understanding of the relationship between the intersections of SGBV-HIV *and* conflict because of circumstances under which the SGBV-HIV relationship can be exacerbated: the production and exercise of the hetero-masculine institution of the military; increased levels of domestic violence and sexual violence (by combatants and non-combatants); displacement and isolation from support systems; increased subsistence responsibilities shifted onto women (leading to transactional sex or prostitution); and a diversion of funds away from health and social welfare systems (Hawkesworth 2008). To understand some of the connections between HIV and conflict, and SGBV and conflict, I will briefly recount the two focuses – on epidemiological studies of HIV in conflict and the use of rape and sexual violence in conflict.

2.2.1 Emerging Themes in Epidemiology

In 2004, Mock et al. (2004) recognized the serious gap in reporting about the intersectional relationships between conflict and HIV and stated that this was crucial for developing efficient strategies to populations at risk (2004:2). This gap was recognized after HIV had already been put on the security table as an issue that ‘could create conditions conducive to violent conflict’ because of its ‘destabilizing force’ by the US Institute for Peace, (and through UNSC resolution 1308). This gap was corroborated by Spiegel and Le (2006), who reviewed behaviour surveillance surveys and found that specific conflict setting variables were lacking, rendering the data irreproducible and therefore not qualified as sound epidemiological data (Spiegel and Le 2006). Mills et al. (2006) reiterated this by criticized UNAIDS for their lacking surveillance in conflict-affected countries and lack of data on sexual violence. That same year, Spiegel et al. (2006) conducted a detailed review of literature and studies from seven sub-Saharan African countries⁵ (SSA) to assess the link between mass rape and HIV prevalence. Despite high prevalence of HIV and mass rapes, Spiegel et al. (2006) found no link between rape and increased prevalence of HIV (Supervie et al. 2010:2).

In 2008, Spiegel and Mills, along with others (henceforth Anema et al. 2008) substantiated the findings by Spiegel by conducting a risk equation model on the relationship between HIV and mass rape at a population level in the same seven SSA countries. Their risk modelling found again that the impact of mass rape on increased HIV prevalence was negligible (at a population level). The study assumes that women are primary targets of sexual violence, takes military prevalence rates as the basis for their data on armed combatants, and focuses on heterosexual transmission (Anema et al. 2008:2). The study is limited by failing to account for male sexual violence and the sexual violence that is committed by non-combatants. Spiegel purports that the risk of HIV infection stemming from mass rape was overestimated by the international community, and re-states in 2008 that the results [produced in his study] provide a rational basis for interpreting the ‘actual risk’ of direct HIV transmission from widespread rape in conflict affected SSA countries, which is negligible (Anema et al. 2008:7). McInnes (2009) reproduced Spiegel’s (2006) analysis, relegating changes in sexual behaviour to ‘*one of many*’ factors linking conflict to the increased spread of HIV (2009:106).

In the studies by Anema et al. (2008) Spiegel et al. (2006) and McInnes (2009), one might be inclined to ask – where is gender-sexuality that influence the primary method and relations of

⁵ Democratic Republic of Congo, south Sudan, Rwanda, Uganda, Sierra Leone, Somalia and Burundi.

contracting the diseases - *sex*? This question has been reiterated by Supervie et al. (2010), De Largey and Klot (2007) and El-Bushra (2008), who see that HIV and sexual violence policy has tended to focus on the macro population level, and forget the context in which individuals are engaging in sex, especially in conflict.

Supervie et al. (2010) reformulated the Anema et al. (2008) risk model to look instead at HIV incidence (individual infection) rather than prevalence (macro population level) –the likelihood of increased risk to exposure which includes factors such as HIV prevalence amongst the perpetrator, force and consent, and transmission rates (which are unknown but more likely in situations of forced sex or violence). Their study found that the probability that ‘a women raped during conflict would become infected with HIV could be fairly high’ (2010:2), for instance 1120 new infections in the Democratic Republic of Congo (DRC) and 2172 in Uganda in a year due to mass rape during armed conflict (see Fig. 1, Supervie et al. 2010:4).

Jewkes (2007) and El-Bushra (2008) critique the ‘macro policy climate’ of HIV and sexual violence, and call for the need for a broader approach to the interpersonal, social and political context that can condition the interaction of individuals (Jewkes 2007 in El-Bushra 2008:18). Specifically, diverse interpretations of sexual violence are needed in the context of violent conflict, for example examining sexual violence as sexual slavery (prolonged exposure), gang rape (multiple partners), and rape with objects (increased damage and exposure to the virus if further rapes take place) to explore the increased risk of HIV exposure. This call has been echoed by Pam DeLargey and Jennifer Klot (2007) who first critiqued the ‘relatively small body of literature linking conflict with HIV’ that identified sexual violence as ‘one among a broad range of factors that could increase the likelihood of HIV infection in conflict’ (2007:23). DeLargey and Klot (2007) importantly advocate for a distinction between drivers and risk factors in HIV transmission, a model that brings the power structures of sexuality and gender into the discussion of how HIV is transmitted within conflict by considering risk factors as the method of transmission, which during conflict can be predominantly sexual contact that is violent, forced or exploitive (2007:23-34).

Surveying the current literature has identified factors that could both increase and reduce HIV infection, with all mentioning sexual violence but necessarily taking the relationship between HIV and rape as the basis for study. Albeit calls for better survey methods and data to back these factors, epidemiology remains limited by a lack of ‘sound’ data provided by NGOs (Spiegel and Le 2006) and macro-level analysis, seen in Supervie et al. (2010). Secondly, it should be re-emphasized that the study of HIV on an individual level, where sexual relationships come back into the frame, is also limited by data collection due to stigma, violence and re-victimization, and overall, epidemiology remains informed by dominant understandings of men as perpetrators and women as victims of sexual violence.

2.2.2 Rape as a Weapon of War

The concept of ‘rape as a weapon of war’ can be traced back to feminist mobilization during the Yugoslav wars, where rape is described as having a function – an instrument of war, engine of war, a tactic, etc, and an orchestrated aspect – systemized, strategic, etc. (Buss 2009:5). Doris Buss (2009) has stated that this marked a shift in thinking about rape, from ‘incidental’ to ‘instrumental’ which proved beneficial in raising awareness about the mass rapes in conflict that led to criminalizing this behaviour in international law, and securitizing it. However, mainstream discourses of rape also tend to use ‘the power of sensationalism’ to attract attention from the media and donors agencies, in the processes reinforcing gender norms that make rape a powerful tool, such as ‘raping the nation’ or ‘raping our greatest resources’ the popular slogan for Eve Ensler’s V-Day campaign to end rape in the DRC (Cook 2009:129).

Concurrent with the use of rape in conflict, feminist scholars have critiqued the ‘exceptionality’ of rape, the understanding of rape as ‘the ultimate control of women by men’ (Zarkov, 2006:219), or the worst offence done to a woman, ‘flattens reality’ by making rape ‘exceptional’ and yet homogenized, unquestionably violent and damaging, and renders survivors as victim. Rhonda Copelon (1993) discusses how neglecting to differentiate the motivations, forms and contexts under which rape occurs and the varied impacts it has on its survivors ‘demeans’ the experience of rape survivors (1993:213 in Zarkov 2006:218). Furthermore, differentiating does not imply creating hierarchies (ibid). This sentiment is reinforced by Judy El-Bushra (2008) study of sexual violence and conflict in the Great Lakes Region. She argues that although ‘firm statistics’ about sexual violence are difficult to track, we cannot assume that the perpetrators of sexual violence are always militants who are men, that sexual violence is always used as a tactic in conflict, and lastly, that sexual violence stops when the conflict and fighting stop (El-Bushra 2008:1). Lastly, I refer to Zarkov (2006) who demonstrates through a historical overview of discourses of sexual violence in war that gender-based violence has been reduced to sexual violence and has ‘position[ed] women as sexual victims rather than agentic and empowered’ (2006:218), which has also reinforced the sentiment that rape is a unifying characteristic of femininity (the ‘global sisterhood of rape’) and the propensity to rape as a ‘prerogative’ of male-ness (ibid).

El-Bushra (2008) and Buss (2009) questions the mainstream discourse in policy of the ‘man with gun, vulnerable women’ picture as a ‘rigid and unidimensional’ frame (El-Bushra 2008:13-14), ‘paradoxical[ly] degendering sexual violence; treating it as detached from pre-conflict social and political relations’ (Buss 2009:abstract). They question the limitations this framing imposes in drafting responses, whether they be legal or programmatic.

As a specific, natural product of armed conflict, the archetypal violent aggressive male, encouraged by his participation in a predatory and uncontrolled military machine, seeks to destroy vulnerable womanhood as a key element in a strategy to bring down the enemy (El-Bushra 2008:8).

El-Bushra (2008) refers to Spike Peterson (2008) on the reduction of power relations to mere dualities – men/women, armed/unarmed. Peterson argues for a ‘teasing out’ of the hierarchies of power that allows particular groups of men to have power over others, and enables some women to have power over other women and over some men (in El-Bushra 2008:16). This is especially important when we consider the reasons for rape, and, in more recent literature, the intention or motivation to infect HIV through sexual violence. By designating men as perpetrators, women as victims, we miss the intricacies and intersectionality of the hierarchies of power that exist in societies, before and after conflict situations, that can provide a basis for preventative and responsive actions.

2.3 Preliminary Findings from the Literature

The literature review of the SGBV-HIV-Conflict intersections has shown that: (i) the mainstream use of epidemiology to study HIV has sidelined gender and sexuality from the focus and is still limited by a lack of data, and (ii) repetitive over-use of rape, reducing it to a simplified category, effectively reduces SGBV to rape and thus reinforces gender stereotypes. The literature thus fails to help understand the nuances of experiences of SGBV and HIV in conflict situations.

Why the relationship between HIV-SGBV and conflict remains disconnected directs us to analyze what Mary Hawkesworth (2008) calls: conflict as a mode of production and reproduction. The production/reproduction capability of discourses surrounding conflict serves to ‘refigure old ways of being and doing by creating new subjects, new practices and policies, and new cultural formations and modes of power’ (2008:6). This process includes focusing, nurturing and sustaining these new ways, which can often result in reinforcing normalized subjects and prac-

tices for new purposes. Hawkesworth (2008) uses the example of female sex slaves who became skilled killers and soldiers to protect themselves in the Revolutionary United Front (RUF) during the civil war in Sierra Leone. This dual identity did not 'tick the boxes' of many post-conflict programmes and processes to which other productions of 'violent women' or 'victim women' are served by. The 'sex slave/soldier' women do not fit within Disarmament, Demobilization and Reintegration (DDR) strategies aimed at men, nor international law concerning women as civilian refugees, nor did the girls' violent abduction and sexual slavery preclude them from being labelled prisoners of war, while their unclassifiable identity did exclude them from services and support from their communities. This example brings to light the way characters are framed within conflict and the effects these productions can have when adopted or excluded by institutions providing services, support, protection, justice or further research.

2.4 Conclusion

This chapter has discussed the relationship between SGBV and HIV as it is described in current literature from NGOs, development institutions and academics working on these issues outside of the context of conflict. Second, it has discussed current literature on HIV in conflict juxtaposed with literature on SGBV in conflict. Key findings present the established relationship between SGBV and HIV in times of peace seems to be lacking in literature in the context of conflict. This study moves forward by looking at how and why this disconnection arises, and how this affects intervention. It is hypothesized that this disconnection can be found again examining the security and legal discourses surrounding conflict situations. Thus, this paper continues with a gender framework of analysis to examine legal and global security discourses, to understand how particular institutions help construct, shape and maintain ideologies and hierarchies of power by producing and reproducing representations, and question if these representations continue to inform interventions and limit our ability to properly respond to and prevent sexual violence and its more nuanced effects, including HIV transmission.

Chapter 3: Global Discourses & Security

The following chapter will analyze the process of securitization for the selected texts, the United Nations Security Council Resolutions (UNSCR) 1308, 1325 and 1820. It will begin by contextualizing the location and power of the United Nations Security Council (UNSC) as authors and architects of the resolutions, followed by an analysis of the selected texts using framing and narrative analysis, and concluding with a discussion of common frames between the resolutions.

3.1 The Author-ity of the Security Council

The rise of human security and ‘new’ security challenges was concomitant with the new role of the UNSC in ‘humanitarian policy-making and in setting new precedents and parameters for intervention’ (Slim 1994:19). The UNSC is a United Nations body charged with the responsibility to ‘maintain international peace and security according to the principles of the UN Charter’ (UNSC website Sept. 10, 2010), structured so that five permanent members, France, China, United States of America, United Kingdom, and Russia have the ‘veto’ power.⁶ Ten rotating members are voted in to the UNSC for two-year terms by the General Assembly (UNGA) (UNSC website Sept. 10, 2010). On ‘substantive’ issues, i.e. all non-procedural issues, all five permanent members must vote in agreement otherwise the resolution does not pass. This accords them more direct influence over the ‘substantive’ issues passed and securitized (ibid). Furthermore:

...all Members of the United Nations agree to accept and carry out the decisions of the Security Council. While other organs of the United Nations make recommendations to Governments, the Council alone has the power to take decisions which Member States are obligated under the Charter to carry out (ibid).

Thus, decisions made in the UNSC –and through it the five ‘veto’ powers - have specific authority over specific global matters, that no other internationally recognized agency has. The starting point of this analysis is Bordieu’s statement that ‘the authority to speak always comes from outside’ and once the authority to speak has been granted and recognized, the spokesperson is allowed to name, produce or appropriate a certain vision of the world (Everett 2002:68). In other words, the UNSC –having authority over global matters, becomes an institution who names, produces, and appropriates specific visions on HIV, war violence and women in the world. The UNSC has used this authority to designate, label, categorize and frame those issues in terms of the threat they (apparently) pose to international peace and security. In other words, these issues have been securitized.

In the words of Buzan, Waever and de Wilde ‘to study securitization is to study the power politics of a concept’ (Buzan et al. 1998:32). Ole Waever (1998) defines what it means to *securitize* an issue: it is to prioritize it as an issue to be addressed to avoid fatal and specific consequences; it is highly politicized process that enables extraordinary or specific measures to be taken in order to preserve security (in Hansen, 2006:33). Examining the discourses using framing and narrative analysis means reflecting on: what specific agenda is addressed to particular characters,

⁶ The veto power refers to the power of their united vote. On procedural matters 9 out of 15 members must be in agreement. On “substantive matters” 9 out of 15 members must be in agreement, including all five of the permanent members (UNSC website, Sept. 10, 2010).

who has a particular role to play and who are outlined in the resolution's preamble (whose knowledge is drawn upon) and operatives (who will become active players). The appropriation of what is real, truthful and thus deserving of governing – in language, is important to identify:

In naming a certain development a security problem, the 'state' can claim a special right, one that will, in the final instance, always be defined by the state and its elites... By definition, something is a security problem when the elites declare it to be so (Ole Weaver, 1995:54 in Rushton, 2007:12).

Weaver (1995) highlights the mutually constituting elements of author-ship and author-ity in regards to security discourses, and how threats are framed in regards to what is seen to be important to the author (ibid). Hansen (2006) describes that the authority to frame security threats has a 'dual political dynamic': the discourses *enable* those who decide what is securitized to act with legitimate power, and *construct* these same actors with the responsibility for acting (Hansen 2006:35). This process will be the basis of discussing why the issues of HIV, women and rape were securitized and what interventions are served by their securitization.

The most important method of establishing the authority of its resolutions used by UNSC is intertextuality, i.e. reaffirmation of authority in reference to other UN documents.⁷ The UNSC makes its decisions and assessment of security issues from sources within the UN system, including the UNGA (which includes a minority of NGO monitoring groups), and via the UNSC members themselves (Cook 2009:134). If we examine the documents referenced in resolutions 1308, 1325 and 1820 (see Appendix A), most are references to other UN documents or actors. Such a closed discursive community is problematic because the resolutions themselves are discursive interventions, space legitimately accorded to the UNSC to define, categorize and frame actors and issues without having to defend why. Second, the resolutions are the basis upon which actual interventions are made. Third, any outside information becomes difficult to pass through the institutional threshold of the UN. For example, when NGOs and civil society workers were calling for a response to the increasing use of sexual violence in conflict in 2007, there were arguments from within the UNSC that there was not 'credible or reliable information or evidence of such violence occurring' (Cook 2009:133). The exclusivity of intertextuality highlights the importance given to the official knowledge of the UN system and its friends, and establishes a cohesive group whom are deemed important, those who matter.

On each resolution, the UNSC is presented as an ominous, homogenous and united group that has responded to the particular threat to 'global security and peace'. This authority is read in the UNSC's absence *in* the text; it speaks through reference to other UN groups (officiating the actors and knowledge) to construct a reality and establishing itself as the silent authority and knowledge-bearer of others' experiences. Introducing the structure of the UNSC is important to off-set the often cohesive way in which the UNSC is referred to in this paper and in the resolutions.

3.2 Framing the Threat – Securitization in UNSC Resolutions

The following section will introduce what is inside the frames of the UNSCR texts and then proceed to discuss the relationships between the frames, the interventions that these frames enable, and conclude by reflecting back on the context of the changing nature of security by reflecting what is outside these frames.

⁷ See Table 1 in the Appendix A

Resolutions 1308, 1325 and 1820 begin by stating who its authors are (the Security Council), as though they unanimously support and authorize the passage that follows. The preamble follows: a set of intertextual claims that frame the security concern and the focus areas. Lastly: are operatives or recommendations that outline the decisions made in the resolution, listed as the actions needing to be taken to prevent/respond to the threats.

3.2.1 UNSC Resolution 1308 – Securitizing HIV

The securitization of HIV coincided with the creation of the Millennium Development Goals (MDGs) and the promotion of development related issues under the guise of human security. As a resolution UNSC 1308 enables very little and defines the pandemic of HIV in both narrow and general terms, a possible reason for this stems from the contention between the members of the UNSC over whether HIV and a health-related issue fell within their jurisdiction (Rushton, 2007).⁸ Given this internal contention, securitizing HIV was limited by the scope of the definition of HIV as a security threat and the action required to combat this threat.

In the preamble, HIV is constructed as a problem with global impact –a ‘global pandemic’ that could ‘affect global stability’ and is ‘exacerbated by conditions of violence and instability’. This problem is located ‘globally’ but specifically in ‘Africa’ through reference (intertextuality) to previous meetings –‘10 January 2000 on the topic of Peace and Security in Africa’, conferences – ‘the successful 13th International AIDS Conference in Durban, South Africa’ and a particular reference to ‘*the crisis in Africa*’ (P1, P2, P19, Appendix B), emphasis added). Interestingly, those who are specified as most at risk are not African people despite the problem being located there, but UN peacekeeping forces and sectors of society. The preamble repeatedly describes the risk of HIV as having a ‘uniquely devastating impact on all sectors and levels of society’ (P11 Appendix B). Furthermore, reference to the meeting between Economic and Social council (EcoSoc) and the UNSC to discuss the impact of HIV on development is a very explicit reinforcement of human security’s two streams, development and defence. ‘[HIV’s] possible growing impact on social instability and emergency situations’ and its exacerbation ‘by conditions of violence and instability’ needs to be addressed because ‘if unchecked, may pose a risk to stability and security’ (P12, P13, P15 Appendix B). In this sense, HIV is not conceptualized in terms of its individual impacts, but on a macro-level; not people- but state-centred, and specific institutions-centred (UNGA, EcoSoc, UNAIDS and UN Department of Peacekeeping (DPKO) in fighting against HIV).

This is further reinforced in the celebration of the Durban AIDS Conference, which ‘brought together scientists and leaders’ to address the magnitude of the problem in Africa, how it spreads (epidemiology) and how much it would cost (P21, Appendix B). Secondary to the cost and its spread are access to care, mother-to-child transmission (MTCT) and vaccines, which are different or separate from addressing HIV, as they are mentioned secondarily. Interestingly, the UNSC closes the resolution by expressing interest in discussing HIV including with ‘industry and other relevant organizations’ on treatment, care and prevention (in that order) (O6, Appendix B), but does not specify to *whom*.

In the operative section that follows the preamble, the UN Secretary General (UNSG) is requested to encourage Member States (UNMS) to incorporate HIV prevention, voluntary and confidential testing, counselling and treatment into pre-field training for Peacekeepers in collabo-

⁸ Both China and the Russian Federation expressed concern over the expansion of security to include health issues, while France and other troop-contributing nations expressed concern for what UNSC 1308 would mandate and require in terms of resources (Rushton, 2007).

ration with UNAIDS. This is the main focus of action for operatives 1-6. Possible reasons for this focus can be drawn from the framing of HIV in the 'Freedom from Fear' section of the UNSG's report to the Millennium Assembly (2000) (P18, Appendix B) as a risk due to open borders and unprecedented mobility. Peacekeepers, being highly mobile and transitory, can be possible vector for the virus, both to and from Africa, yet the resolution frames the vector as stemming mainly from Africa by focusing actions on training and education for the peacekeepers, not African people. The securitization of HIV intersects with colonial discourses of Africa as instable. HIV is constructed as having the greatest potential to negatively impact places of instability and conflict, and Africa is constructed as such. Thus, the UN should protect 'its own' –i.e. peacekeepers that venture to the conflict-rife Africa on peacekeeping missions. Throughout the resolution it is evident that the main actors are UN peacekeeping personnel. Peacekeepers are first implicated as being at risk to HIV in the preamble when the report by the Special Committee on Peacekeeping Operation's (SCPO) is referenced (intertextuality). The report particularly identifies the new role of peacekeeping for the next millennium and new risks, including the 'implication' of and 'risk of transmission and contraction' of HIV for Peacekeepers (SCPO Report, 2000). Interestingly, the way in which HIV is transmitted is not mentioned, although it is inferred. Sex and sexual activity that occurs when international actors enter into conflict and post-conflict situations, in terms of forced sex, transactional sex, and prostitution, has been well documented even by the UNSC (see UNSC 5379th Meeting, 23/02/2006), and even resurface in resolution 1820. Thus, while not explicit, sexual (mis)conduct is central to this resolution.

3.2.2 UNSC Resolution 1325 – Securitizing Women

The context under which UNSC resolution 1325 arose followed two major international events – the Fourth World Conference on Women held in Beijing in 1995, and its Declaration and Platform for Action (Beijing DPA) and the 23rd Special Session of the General Assembly 'Women 2000: Gender Equality, Development and Peace for the 21st Century' (known as Beijing+5). Three groups of architects and lobbies were influential in the lead-up to resolution 1325: actors within and supporting the Commission on the Status of Women (co-organizers of Beijing DPA, Beijing +5); active member states such as Namibia, the UNSC President at the time of adoption; and, an NGO advocacy Network, led by the Women and Armed Conflict Caucus (Tryggestad 2009:546-547). These groups helped draft earlier forms of the resolution.

Three main themes are framed in the resolution that provides an outline of the 'problem' or security threat. Women are presented as i) targets (as civilians, internally displaced Persons or IDPs, refugees, etc) of violence during armed conflict; ii) absent from peace-keeping, peace-making, peace-building roles within national, regional and international bodies or institutions; and iii) synonymous with gender/gender perspectives, which are absent from international and peacekeeping institutions because *they* (women) are absent from these same institutions. The culmination of these three elements poses a risk to 'durable' and 'lasting peace and security' (P6 Annex C). Therefore, i) women need to be protected; ii) women need to be officially involved, and iii) there needs to be a better women-centred approach to protection, peacekeeping and peace building.

The representations of women in the resolution are two-fold: women as vulnerable, in need of protection, and women as agentic, in need of inclusion. The glue that binds these two representations is gender mainstreaming. The first, women as 'objects of protective action' (Willet 2010:144), is established in the preamble through reference to UNSC resolutions 1261, 1265, 1296, and 1314, which focuses on civilians and children in armed conflict, 'especially' recognizing 'women and children' and 'the girl child' as being impacted by armed conflict and the correlative affect this has on peace and security. Verbatim repetitions of this language are found in the preamble of resolution 1325 (P3, P5, P6, P9, P10, Appendix C). Framing the vulnerable is used as

the basis for action in the operatives (O6, O8, O10, O12, O14, Appendix C) where parties to armed conflict, member states and the UNSC are called upon to protect these groups. The introduction of the violent actors, parties to armed conflict and peacekeepers, are called on to be protectors. These actors are produced as masculine actors in the text due the representation of women as victims; calling upon patriarchal meta-narratives of the strong to protect the vulnerable.

Secondly, the resolution advocates for increased participation of women –in decision-making, in institutions, and during peace-making/peace-building. This is established through reference to the Beijing DPA and Beijing+5, which explicitly specify the need for greater participation and protection of women in armed conflict (see Beijing DPA, Strategic Objective C, D, E). Resolution 1325 re-produces the language used in the Beijing DPA and Beijing+5, ‘reaffirming the important role of women’ in conflict prevention, resolution and peacebuilding; acknowledging the need to increase women’s decision-making roles and recognize their equal participation (P7, P8, P9, Appendix C). Interestingly, the lack of women is the problem, not the male norm. This male norm resurfaces again in gender mainstreaming, where gender becomes synonymous with women (Puechguirbal, 2010).

Gender mainstreaming is presented in relation to ‘all other aspects concerning women and girls’ (O17, Appendix C), and constructed as a fraction of the whole. Gender is divided into parts –‘dimensions’ ‘considerations’ ‘perspectives’ and ‘components’ (O5, O8, O15, O16 Appendix C). If we consider that mainstreaming is the process of making what is abnormal (ideas, actions or values) accepted, or normal, then gender mainstreaming is presented as adding parts of gender (i.e. the woman part) to the norm. Not only does this assume a homogenous position of women, but frames gender as one-sided, subverting the normalized male point of reference in the celebration of including women. As Nadine Puechguirbal (2010) states, masculine norms of reference ‘are *legitimized by a process of institutionalization*’ (2010:182 emphasis added), which allows the male norm to be ‘regarded as general, rather than a gendered category’ while women are regarded as a ‘distinct and limited category, relegated to a specialized and marginalized sphere and regulated’ (Charlesworth 1994 in Puechguirbal 2010:182).

As stated earlier, these frames inform the operatives or focus for interventions, which include increasing women’s participation, protecting women and gender mainstreaming and further studies. The first four operatives focus on encouraging institutions to include women, while the rest of the 18 operatives work together to further portray women as in need of protection, both militarily and through the law. This includes more funding and support to train peacekeepers and civilian/military police on gender, i.e. ‘the women component’, to better understand how women are targets of violence so they and their missions can better protect women. Thus an underlying assumption appears that gender and women (in active, participator roles) are add-ons, streamlined into the already-functioning machinery of an institution. This is fitting if we understand that the women’s NGO and advocacy groups that helped frame this resolution relied on dominant ideology of women – as emancipated and vulnerable, equal but different. Crenshaw (1991) states that ‘demands for change that do not reflect dominant ideology will probably be ineffective (Crenshaw, 1991:fn4). Thus, the meta-narratives of vulnerable women serve to reinforce essentialized norms of women-victims, men-protectors/perpetrators, reinforcing the need for peacekeepers and increased militarism. Second, the meta-narrative of the emancipated woman reinforces the need for justice (the other arm of protection) by bolstering enforcement of international human rights law (O6, O9, O12, Appendix C) to end impunity, especially for sexual and violence committed against women and girls.

In closing, the UNSC re-affirms its role as authors of global peace and security by requesting data and reports on the impact of armed conflict on women and girls, the role of women in peace-building, the gender-dimensions of the peace process, gender mainstreaming in peacekeep-

ing and ‘all other aspects relating to women and girls’ (O16, O17, Appendix C). Through these discursive interventions, in ‘portraying the world as a dangerous place,’ the UNSC can further justify interventions on the basis of protecting women and children (Willet, 2010:147).

3.2.3 UNSC Resolution 1820 - Securitizing Rape

The use of systematic forms of sexual violence in conflict drew the attention of Secretary-General Ban Ki-moon in his address to the UNSC in 2007, however, an earlier version of resolution 1820 was struck down by Russia, China and South Africa because it was not a topic ‘under the purview of the Security Council’ (Goldenberg Goldstoff 2010:511). With the support of the Under Secretary for DPKO and the US UNSC Presidency at the time, resolution 1820 was ‘unanimously’ adopted one year later in June, 2008 (Goldenberg Goldstoff 2010:509). The resolution constructs sexual violence as a threat to international peace and security (Anderson 2010:244), and places it in a public space, which has been significant in terms of according it priority for policy-makers and critique from academics, advocates and UN personnel (Anderson 2010:257). Many have questioned – why focus *only* on sexual violence? (Cook 2009:fn13, emphasis added).

Resolution 1820 departs from 1325 by focusing on the problem of sexual violence in armed conflict (Cook 2009; Goldenberg Goldstoff 2010). The resolution first lists the ‘progress’ made since 1325, yearly UNSC presidential statements that are simply replications of the same text. The resolution then implicates the two arms of protection (armed force and the law) as necessary for ensuring protection for women and girls as ‘civilians’ and ending impunity, referencing these two issues explicitly in its reference to the 2005 World Summit Outcome document (P4, P5, Appendix D). The role of international law is further reinforced through reference to the obligation of states to uphold and to consider ratifying Conventions on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Rights of the Child (CRC), and recognizing the Beijing DPA, Beijing+5 –implicating impunity as a catalyst for international insecurity.

Second, a chain of effects implicates sexual violence as a threat to peace and security (P6-P8, Appendix D), reinforced by the first operative where the tactic of sexual violence, when ‘part of a systemic or widespread attack’ used to target civilians, specifically ‘women and girls’, ‘women and children’ or ‘women’, is explicitly stated as affecting the ‘restoration of international peace and security’ (O1, Appendix D). The intertextuality in 1820 is more transparent, providing insight into the way the resolution ‘draws together disparate documentation in an effort to provide a systematic overview of the issue’ (Shepherd 2008:109), which lays the foundations for actions and interventions.

The actors that need particular attention are women and children, who are framed as civilians, the ‘vast majority’ affected by conflict. Women and children are framed as being subject to sexual violence despite UNSC ‘calls’ and ‘condemnation’ of rape and sexual violence in conflict (P7, P8, Appendix D). Women are framed again as victims, caregivers, and mothers in need of protection – grouped along with girls and children. Women’s lacking participation is more nuanced in 1820, which condemns the structural factors that prevent women from participating in decision-making roles and highlights the missed opportunity post-conflict contexts provide for promoting equality (P10, P11, Appendix D), yet it still does not challenge the male norm of reference. The presentation of sexual violence and rape as the ultimate punishment of women – hierarchically more ‘brutal’ than ‘other violence’ (P7, P8, Appendix D), reinforces again the need to protect women, especially because violence erodes a women’s agency to act (P11, Appendix D).

The terms ‘sexual violence’ and ‘rape’ are used quite interchangeably in the resolution, however, ‘rape’ is explicitly distinguished from ‘sexual violence’, and ‘other violence’. Sexual violence

perpetrated in conflict is framed as being ‘committed against women and children’, as ‘continuous’, ‘widespread’, ‘systematic’ and ‘reaching appalling levels of brutality’ (P6-P9, Appendix D). Motivations for rape are framed as ‘a tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group’ (P6, Appendix D). The centrality of rape is represented at the end of the preamble, which congratulates the formulation of the ‘UN Action against Sexual Violence in Conflict’ aimed at raising awareness of the use of rape, calling for increased resources for prevention and ending impunity for their catchline ‘stop rape now!’ (UN Action website, accessed November 10, 2010).

Thus, the preamble departs from a particular normalized assumption about what women need and the types of violence they experience. This presents a very fixed picture about the motivations for rape that Buss (2009) critiques as being replicated in ICTR cases (discussed in Chp. 4).

The operative section follows from what is framed in the preamble, to both protect and prosecute as modes of action to prevent and respond to sexual violence. The measures on protection evolve from 1325’s focus on peacekeeping, to include measures for parties to armed conflict. These operatives address disciplinary action, prohibition of sexual violence, de-bunking myths surrounding sexual violence and rape, and acknowledging past violence (O2, O3, Appendix D). Secondly, measures are directed at enhancing the role of peacekeepers to protect women, children and girls from sexual violence, including by deploying and training more women peacekeepers, and by consulting local women to develop better methods for protection, including in IDP/UN-managed refugee camps, DDR and Security Sector Reform programs (O7, O8, O9, Appendix D). Specifically measures outline sexual violence and rape as war crimes through intertextuality, and obligate Members States to uphold and prosecute transgressions to foster sustainable truth, justice and national reconciliation (O4, Appendix D). The resolution progressively includes measures that address sexual exploitation by peacekeepers, and demands zero-tolerance and full-accountability on the matter (O6, Appendix D). Interestingly, a distinction is made peacekeepers who commit sexual exploitation and abuse, and armed combatants who commit sexual violence. This is witnessed in the distinct wording of zero-tolerance v. crime, and the demands of full-accountability v. prosecution of sexual violence in international law. While the impetus for prosecution differs between international and domestic courts, here the UN specifically makes a claim in the need for war-time tribunals, discussed further in the following chapter.

In peacebuilding and peace talks it is necessary for the UN peacebuilding commission and the Secretary-General’s Special Envoys to ‘invite’ and consult with women’s civil society groups ‘as part of its wider approach to gender’ (O10-11, Appendix D). Interestingly, there is a distinction between women participating for peace, recalling notions of women as peace-bearers (maternal figures) and the services *provided for* women, not *with* women, such as regional and national ‘policies, activities and advocacy’ for those affected by sexual violence (the victims) (O12-13, Appendix D). In terms of remedies, the resolution prescribes what women need in terms of support, specifically addressing justice and health, (O14, Appendix D), which is disconnect from how rape is framed as targeted towards civilians, communities etc., i.e. a tactic to break down the social fabric of a people.

3.3 Common Frames

In an effort to understand the how the politicization of HIV and SGBV in security discourses has helped frame global responses to these problems, implicating particular actors and interventions, three common frames are outlined between the resolutions, as well as what falls outside them.

The first relates to peacekeepers. Throughout all three resolutions, most specifically 1308, the role of peacekeepers and peacekeeping remains in-focus. Whether training, testing or treatment for HIV or the incorporation of measures to address sexual violence, peacekeepers are both the subjects of the resolution (1308) as well as the subjects of protection (1325, 1820). For Issues that are arguably more structural, systemic and transcend clearly defined time frames of conflict/post-conflict, peacekeeping presents itself as quite limited in its role to prevent and respond. A more cynical assumption would be that UNSC resolutions as policies have ‘distinct duality’ (Duffield 2001:109). This duality refers to the shaping of outward-looking ‘modes of coordination and intervention’, and an inward-looking eye on ‘organizational requirements and strategic agendas’ that defines problems in such a way so as to ‘maintain and defend’ the involvement and influence of the UNSC (ibid). This is further emphasized in resolutions 1325 and 1820 when peacekeepers are differentiated from parties to armed conflict, protected by their institutions on matters of sexual exploitation, while the former should be prosecuted under international law. The incorporation of different agenda items such as sexual violence, HIV and the vulnerability of women to the peacekeeping agenda further constitute the need for peacekeepers. Focusing on peacekeeping as the means for prevention and protection will, as Willet (2010), Enloe (2002) point out, increase militarism and patriarchal institutions that hold women and men in marginalized positions prior to and post conflict.

The second frame relates the first, in that gendered subjects are called upon to fulfil the need of peacekeeping, and be incorporated in the institution. Both resolutions 1325 and 1820 advocate for the inclusion of women and a women-perspective (gender) to peacekeeping mandates, to peace-talks, in decision-making roles, and in conjunction with local women’s networks/civil society groups. As commented on earlier, these representations of women as agentic are framed alongside the woman victim that serves to reinforce the need for peacekeepers. Agentic women are framed as ‘friends’ of the intervening international community, who ‘form alliances... to understand their *real* frustrations’ (Duffield 2001:109 emphasis added). Duffield states ‘development discourse has empowered the poor as the natural allies of global liberal governance in its pursuit of stability’, which remains relevant to the discussion of women constructed as the natural, maternal bearers of peace, engaged in peace negotiations, and invited to decision-making circles during post-conflict reconciliation and reconstruction efforts. These roles are *officially* recognized by the UNSC by way of their inclusion in the text; what remains outside are the localized processes of reconciliation and reconstruction that women are already engaged in and which intervention can disrupt. Thus, it should be highlighted that the official roles of empowered women recall western notions of emancipation –equality with the male norm – most evident in *the need* for women to become peacekeepers to help prevent against sexual violence. Interestingly, this male point of reference is never challenged throughout the resolutions, evidenced by the way gender and women are *mainstreamed*, i.e. made normal, in the processes of peacekeeping and post-conflict reforms.

As the objects of protection, women and violence against women (sexual violence and rape) remain in focus, while those suffering from HIV are superseded by the risk posed to peacekeepers in Africa. One could postulate that peacekeepers are not in Africa to protect those at risk in conflict situations to the exposure of HIV, but to protect the regional stability, the sectors of society that are threatened by HIV. Thus, those who are actually infected with AIDS or at risk of HIV exposure are never presented as friends of the international agencies; instead this friendship is established between the governmental, financial and multinational sectors that are threatened by instability in Africa.

The previous two points have clarified the third on compartmentalized and reproduced gendered subjects. These UNSCR, through their representations, have made it possible to define and necessitate points of intervention. The victim woman, the liberal peacekeeper, the colonial

cite of risk, Africa – all play a role in tangling together institutions and agencies for response. In the case of three UNSC resolutions, the main actors are international actors –UNMS, the UNSG, troop contributing countries (those with professional militaries), UN agencies, international financial institutions, etc. Indeed, it is difficult to postulate exactly why the issues of HIV, women and rape were securitized, but it is clear that their securitization plays a role in justifying interventions, in constituting the need for security forces, governed through new and old language about gendered subjects.

The struggle between different interest groups ‘for influence and resources’ occur between international institutions but also within, amongst the stakeholders that compose them (Duffield 2001:109). For example, dissect the securitization of HIV by contrasting its biggest promoter, the US, and their role in the UNSC meetings prior to 1308, with the establishment of the Millennium Development Goals, The Clinton Foundation’s contributions to fighting HIV/AIDS in Africa, the US Presidents Emergency Plan for AIDS Relief (PEPFAR) – the competition for claiming a stake in the HIV/AIDS world. Neglecting the competition within institutions misses the introspective organizational sphere that allow for issues to be compartmentalized. For example, the successful lobbying for including women into the ‘armed conflict agenda’ proved more successful than including armed conflict to the ‘women’s agenda’, resulting in lobbying the UNSC for resolution 1325 (Tryggstad 2009:548). The differentiation of agenda’s, the rise of gender experts v. conflict experts, must be set against the rise of multi-level, multi-actor responses in discourses of human security that in practice can lack cohesion or shared strategies.

Lastly, it is important to discuss the compartmentalizing of gendered subjects in an effort to explain how different causes of conflict, reproduce them. As was discussed earlier, people living with HIV in Africa remain completely relegated, as are men who are subjected to sexual violence in conflict, while rape and raped women as civilians, and peacekeepers as hero’s, reign supreme in dominating international attention, support and funding. As was argued in Chapter 1, the introspectiveness and reproduction can be linked to the categorizing or promotion of certain realities of conflict over others, which, arguably is limiting conflict policy, and shifting attention away from structural conditions that inform epidemics of HIV and widespread SGBV before, during and after conflict. More nuanced and intersectional analysis needs to address the overlapping ways in which individuals are experiencing violence, subordination and marginalization in conflict *and* in conflict prevention strategies and responses that de-link this intersectionality.

3.4 Conclusion

This chapter has introduced the UNSC as the authority of international peace and security. It has examined the selected texts, resolutions 1308, 1325 and 1820, using frame analysis, and identified common frames between the resolutions. These frames will be discussed in relation to their role in the narratives found in legal texts in the following chapter and further, culminate in the conclusion.

Chapter 4: Legal Discourses

The following chapter will discuss legal discourses from the ICTY, ICTR and ICC⁹ on rape, sexual violence and HIV. This section will first contextualize the creation of the ICTY/R and international criminal law, followed by an analysis of the criminalization of rape and sexual violence in international law, and lastly the criminalization of HIV. The focus of analysis, again, is on the way the acts of violence – rape and HIV infection, have been framed in the law and how rape, sexual violence, and HIV are made visible or invisible in specific legal cases.

4.1 Context: The Rise of International Criminal Law

International criminal court systems that are based upon the law, i.e. legal discourses, have drawn attention from feminist and legal scholars, critiquing classic perceptions of international law as rules that are ‘neutral’, ‘applied’ rather than ‘made’ by an ‘objective’ judiciary (McWhinney 1984:23 in Scott 1994:320). To take the law as a ‘body of timeless absolutes... postulated *a priori* of actual problem situations (McWhinney 1984:23 in Scott 1994:320), disregards the way in which the ideology of international law is norm-laden, and that its rules and negotiated positions are presented as outside of non-legal political positions (Scott 1994:320).

The non-legal political positions behind the creation of the ICC and ICTY/ICTR are, unsurprisingly, related to the UN and UNSC. William Schabas, a noted international legal scholar, traces the rise of international criminal law back to the International Law Commission (The Commission) (2004:8), a ‘body of experts named by the United Nations General Assembly charged with the codification and progressive development of international law’ (ibid). Just prior to the completion of The Commission’s draft statute for the international criminal court in 1996, two ad hoc courts for Former Yugoslavia¹⁰ and Rwanda¹¹ were created and legitimized by UNSC resolutions 780 (1993) and 955 (1994). A clear link is evident in UNSCRs 1308, 1325 and 1820 between the two arms of protection stemming from the UNSC – for justice and for peacekeeping interventions. The UNSCRs give authority to international legal texts, and therefore legitimize legal processes and institutions. If we contextualize the proliferation of the tribunals with the rise of human rights conventions in international law and the dominate discourse of human security, interestingly, parallels arise between human security and human rights in the contentions of idealism v. realism of security, the theory v. practice of rights and the law.

The starting point of this analysis is on David Luban’s presentation on ‘Folktales of International Justice’ focusing on narratives of justice that reflect the moral institutions that help form

⁹ Analysis prior to the creation of the ICTY is beyond the scope of this research and has been done extensively by Kelly Askin (1997), Ni Aolian (1997) among others. Collective narratives found in alternative justice processes such as in truth commissions or local courts have had similar effects as *supra* and international courts (Mibenge, 2005; Krog, 2001 in Zarkov, 1999:177; Ni Aolain and Turner, 2007 and Ross, 2003), thus I restrict my focus to ICTY/R and ICC.

¹⁰ UNS Resolution 780 on the Establishment of The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

¹¹ UNSC Resolution 955 on the Establishment of The International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994.

the basis, or *need*, for the legal institutions (Luban, 2004:183-184). Luban recounts the story of Tehlirian, an Armenian genocide survivor who gunned down one of the genocides main organizers. The Allied powers at the time remained sceptical of whether perpetrators of the genocide could be put on trial. Luban frames the need or motivation for justice on the basis that it cannot be left to vigilantism; second, its absence can cause endless vendettas, and third, justice is selective, as it failed to materialize for Armenian genocide survivors (ibid). These sentiments are present in discourse today that intersect with human security and rights practices and the development of

The proliferation of discourses that speak about justice, concomitant with the rise of international legal bodies – ad hoc, hybrid tribunals, or transitional justice processes for truth and reconciliation, requires a more detailed examination of the production and reproduction of representations stemming from these bodies and a questioning of transitional justice mechanisms.

4.2 Framing Rape in International Law

This section examines the framing of rape and sexualized crimes in the cases before the ICTY/ICTR. Three main issues will be discussed: i) the gendered definition of the crime of rape; ii) the invisibility of rape as ‘other’ crimes; and iii) the hyper-visibility of rape. As gender-based and sexualized crimes become more public, and thus, more politicized, understanding how they are framed becomes more important. As Doris Buss (2009) discusses:

While the post-conflict process is often heralded as a richly transformative time in which social and political relations can be reconstituted, the nascent literature has begun mapping the ways in which gender identity and relations are often reiterated in conservative ways, particularly through the assessment of gender and sexualized harm (Buss, 2009:3).

The history of criminalization of rape in international law has battled with the gendered nature of rape and sexual violence. The social constructions of gender that ‘ascribe certain attributes to men and women respectively’ have generated ‘gendered ideologies governing behaviours’ (Carpenter, 2002:79-80 in de Vos, 2010:8-9) influencing the way in which women and men experience violence, and gendered narratives influencing how gendered violence is criminalized. This is evident in rape not been recognized as a crime (officially); instead women, framed as the site of family honour, were either the prizes for the victors of war and the objects of a man’s protection (Brownmiller 1975 in de Brouwer, 2005; Askin 1997 in de Vos 2010). The struggle for the criminalization of rape in international law, dominated by male-norms of reference, speaks to the power dynamics present in the pursuit of post-conflict justice.

4.2.1 Defining Rape in the ICTY and ICTR

While many celebrate the prosecutions of rape as genocide, a war crime and crime against humanity¹² and the explicit inclusion of rape in the statutes of the ICTY/R, constructing a definition of rape proved to be precarious. Due to reliance on national case law (intertextuality), arguably highly gender-biased, finding an accepted definition of the term ‘rape’ in international law was rather ad hoc and undermined the witnesses whom came forward to testify (de Brower, 2006). This analysis will begin with the *Prosecutor v. Akayesu* (ICTR) moving to *Prosecutor v. Kunarac, Kovac and Vukovic* (Kunarac et al) and *Prosecutor v. Furundzija* (Furundzija) to discuss the construction and framing of rape.

¹² See Chart on Sentencing Cases of Sexual Violence (de Brouwer, 2005:336-337).

The ICTR Trial Chamber in *Akayesu* first surveyed national laws to find a common definition. The result was a more conceptual definition, ‘not limited to conventional notions of rape requiring penetration, nor... require[ing] ‘lack of consent’ found in ‘certain national jurisdictions’ (de Brouwer 2005:107). The broad definition moved away from focusing on the act of penetration to focus on the victim, who is invaded not only in the bodily sense (ibid). The *Akayesu* definition was further states that ‘...the essence of rape is not the particular details of the body parts and objects involved, but rather the aggression that is expressed in a sexual manner under conditions of coercion’ (de Brouwer 2005:107-109).

Shortly after the *Akayesu* Judgement in the ICTY, the *Furundžija* and *Kunarac et al* Trial Chambers found the *Akayesu* definition too broad and proceeded to re-define rape reverting back to a more narrow definition focusing on the mechanical acts of rape and the coercive element of non-consent. In *Furundžija*, the Trial Chamber noted that (again) international jurisprudence was not ‘sufficiently specific’ and thus (again) the Chamber resorted back to a similar mechanical definition of rape found in national law, after scrutinizing the criminality of each particular act and penetration (de Brouwer, 2005). Detailing the mechanical penetrations has framed the basis of the crimes quite heteronormatively, focusing on the ‘parts which fit’ rather than on the invasion of the person, sexually and non-sexually. For example, this definition excludes the most common form of male sexual violence, i.e. performing fellatio, which is not defined as part of rape (de Brouwer, 2005:115).

Regarding the context under which rape occurs, the Trial Chamber in *Furundžija* found it must be by ‘coercion or force or threat of force against the victim or a third person’. In *Kunarac et al* the Trial Chamber –for the third time, surveyed national law and then further defined the context as:

...without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim’s free will, assessed in the context of the surrounding circumstances (*Kunarac et al* Judgement, para. 458 in de Brouwer, 2005:118).

Defining rape in international law has been important, however it has also impacted the victims and witnesses who participated in this process. For example, detailing *in court* the mechanical details of the rape can re-victimize the witness. Second, the occurrence of rape and sexual violence in the context of war and violent conflict make the factor of consent irrelevant and its inclusion humiliating to the victim. This is particularly evident by Witness 95’s participation in *Kunarac et al*, who, after testifying to being raped over 150 times in 40 days of captivity, had a ‘violent outburst’ when the Prosecutor had to routinely ask whether these instances were against her will (*Kunarac et al* transcript, 25 April 2000 in de Brouwer, 2005:122). These impacts are not restricted to only this instance, as the mechanical definition was further used in *Kvočka et al* (2001), *Semanza* (2003), *Kajelijeli* (2003) and *Kamuhanda* (2004) (de Brouwer, 2005:124).

4.2.2 Making Rape Invisible: ‘Flattening Reality’ and ‘Other’ Crimes

Patricia Viseur-Sellers, noted feminist legal scholar, stated that rape and sexual violence were charged explicitly and implicitly as rape and sexual violence throughout the proceeding of the ICTY/ICTR due to the working definition of what constituted rape at the time, which left out many other forms of sexual violence (Viseur Sellers and Okuizumi, 1997:57 in de Brouwer, 2005:18). Rather than prosecuting rape and sexual violence under ‘other’ non-sexual crimes, de Brouwer argues for defining in international law what these ‘other’ crimes are, not under rape, but naming the diversity of the experiences and crimes (de Brouwer, 2005:105). Doris Buss (2009) who surveyed the ICTR’s record of genocidal rape, noted how ‘narratives shape and constrain what can be known about sexualized violence, its origins in and relationship to conflict more

generally' (2009:4). Thus this analysis will focus on sexual violence framed within the charge of enslavement in the *Kunarac et al* case to express that, without more nuanced understandings of the crime of rape and sexual violence, encapsulating sexual violence under rape, or rape and sexual violence within 'other' non-sexual crimes relegates the sexualized and gender-based nature of the crime to *one among other factors*.

In *Kunarac et al*, the Trial Chamber's reliance (intertextuality) on the 1926 Slavery Convention prioritized the establishment of ownership over other factors, as the definition of rape did not include nuances to specific experiences such as sexual slavery. The crime of enslavement considered sexual violence 'as one of the factors in the determination of enslavement' (de Brouwer, 2009:92), resulting in the definition as follows:

The exercise of any or all of the powers attaching to the right of ownership over a person. The *mens rea*¹³ of the violation consists in the intentional exercise of such powers (de Brouwer, 2009:91).

The Trial Chamber further lists 'elements of control and ownership', restriction of movement, absence of 'free will or consent', 'exploitation', 'forced or compulsory labour or service' involving physical hardship; sex; prostitution; and 'human trafficking' as among indications of enslavement (ibid).

This definition framed which evidence and acts that the Chamber examined in *Kunarac et al*. The case focuses on women who were taken from the KP Dom prison by Kunarac and Kovac and held in private apartments, from weeks to months, subjected to rape (almost on a daily basis), forced prostitution, physical abuse and forced into conducting household chores, cooking and cleaning (*Kunarac et al* Judgement paras. 749-752, 754, 756 in de Brouwer, 2005:92). Interestingly, the Trial Chamber concluded that these acts constituted enslavement on the basis of: i) de facto ownership, possession as property and control over the victims, ii) the establishment of intentional ownership, iii) conduct causing humiliation and abuse, iv) detention for an extensive period of time, v) trafficking or selling the women to other officers, and vi) denial of their control or freedom (de Brouwer, 2005:93). To echo de Brouwer (2005), what is lacking is a clear *emphasis on the purpose* of the enslavement, which was to rape and 'not to have them perform household chores' (ibid).

4.2.3 Making Rape Hyper-visible

Narratives of hyper-visibility of 'rape as a weapon of war' in the Akayesu case will be discussed to contrast how this process also broadly misses nuances in motivations for rapes and sexual violence occur, and their diverse effects. Hyper-visibility of rape in the ICTR as discussed by Doris Buss (2009) is achieved by i) the ICTR's willingness to recognize the extent to which rape and sexual violence were perpetrated in the genocide, constructing it as a 'fact', and ii) constructing the rapes in 'apocalyptic terms' and characterizing rape as 'uniformly catastrophic' (2009:12). She argues that focusing on rape as an instrument of the genocide has 'substantially' limited the experiences of sexual violence and rape to motivations based upon ethnicity and perpetrated against women only. Buss (2009) uncovered motivations based upon individual circumstances such as class, instances of violence perpetrated against men and accounts of rape that were subsequently dismissed due to a lack 'genocidal intent' (ibid). The hyper-visibility of rape and sexual violence can be understood as detrimental and harmful in the sense that it is tokenistic: persis-

¹³ *Mens rea* is legal terminology used to differentiate the motivation or intent (to kill) from the *actus reus*, the act (of killing itself).

tently repeated as widespread, as overtly visible in court records, and yet under-prosecuted as such, perpetuating impunity (Buss, 2009:9).

The 'rape as a weapon of war' narrative frames rape as homogenized, and detached from peacetime relations of power that, intersectioned with other societal identities, play a role in the motivation to rape. Buss (2009) notes:

Violence is not simply a product of an aberrational period, detached from the political structures that pre date the conflict, and rape is not merely instrumental in the context of the genocide. Rape scripts are connected to, even if writing anew, existing gender, racial, regional and other relations of power (Buss, 2009:23).

Furthermore, dominant and indeterminate frames of rape constrains the type of sexual violence the tribunal looks for and finds (Buss, 2009:21) and de-legitimizes experience. Possible explanations for this hypervisibility is the sensationalizing of rape and violence against women to promote the rights of women in the late 1980s-early 1990s, which used gendered representations of men and women (Miller, 2004). Alice Miller argues that representations of violence in the Former Yugoslavia and Rwanda 'amplified' women's claims for rights in the following years in the World Conferences on Human Rights (Vienna, 1993) and Women (Beijing, 1995) (2004:21), which were reflected in the statutes of both the ICTY/R.

4.3 Framing HIV in International Law

While the infection of HIV is visible in two cases before the ICC, and was visible in the ICTR, HIV infection has yet to be criminalized in international law. This section will discuss the impact of the (in)visibility of HIV in international law, and draw on how HIV is framed and criminalization in national law.

4.3.1 Making HIV Hyper-visible and Invisible

The visibility of HIV was first seen in the ICTR, albeit not in the courtroom and not a part of the crimes. During the proceedings at the ICTR, HIV was framed as a serious and specific effect of sexual violence and rape during the genocide, particularly to women survivors of the genocide in the countryside (see Organization of African Unity, 2000; Jones, 2002; Landesman, 2002; UN Economic and Social Council Report on the Situation in Rwanda, 1998). This is the first instance where HIV and SGBV are mentioned as related in international law. This is evidenced by the courts acknowledgement of HIV as a problem affecting both victims and witnesses, and its provisions for HIV and AIDS Anti-Retroviral Treatment (ART). Interestingly, the ICTR did not establish the impetus for prosecuting, investigating or documenting the relationship between HIV and SGBV (de Brower, 2006). From 1995-2003 the Tribunal offered ARTs to HIV-positive perpetrators during their detention and not to witnesses, because it was not considered an 'opportunistic disease' to war and violent conflict (de Brouwer, 2005:402). While visible surrounding the court's work, HIV was invisible in the courtroom, where HIV infection was not listed as part of the crimes of genocidal rape despite HIV being acknowledged as a specific effect of sexual violence and rape during the genocide.

The particular effect of HIV transmission due to SGBV is again noticeable in both *Prosecutor v. Thomas Lubanga Dyilo* (Lubanga) and *Prosecutor v. Jean-Pierre Bemba Gombo* (Bemba). In short, *Lubanga* is being charged with inscription of child soldiers in the DRC, despite significant evidence presented of recruiting girl soldiers 'for the purpose of sex and forced marriage' (WIGJ, 2009:51,70). *Bemba* is being charged for his leadership as the President and Commander-in-Chief of the Mouvement de liberation du Congo (MLC) in an attack in Central African Republic 'to suppress an attempted coup' that resulted in mass rapes outnumbering the killings (WIGJ, 2009:63).

In the *Lubanga* proceedings there are several references to sexually transmitted infections, venereal diseases and HIV. Surveying witness applications shows the diversity of harm suffered from rape, including the contraction of ‘venereal diseases’ (ICC Pre-Trial transcript, 2006). Second, during the trial proceedings Witness 0031, questioned about the situation of girls demobilized from camps, noted:

They were raped – in fact, most of the girls were raped. ...some girls returned with diseases, they returned with sexually transmittable infections. Every time we did medical tests we found girls with sexually transmittable infections [STI]. And so it was difficult, it was difficult for these girls to be easily reintegrated into the community and they continue to face these constraints up to today (ICC Trial Chamber I transcript, 2009:10-11 in WIGJ, 2009:81).

A third mention presents itself in the testimony of Expert Witness Robert Garreton, who, during his work as Special Rapporteur for UNHCR in DRC, reported that he had received ‘reports of Uganda knowingly sending soldiers infected with AIDS to the Congo in order to spread AIDS among Congolese women’ (ICC Trial Chamber I transcript, 2009:76-77 in WIGJ, 2009:85). While unfounded in the case itself, it is interesting that such a claim would be made despite it not being asked by the Prosecutor.

Despite these instances, the differentiation in naming venereal disease, sexually transmitted infection (STI) and HIV as such, resulted in a lack of clarification or follow-up. This is significantly different from the explicit citation in *Bemba*.

In the *Bemba* Pre-Trial Confirmation of Charges hearing¹⁴, it was evident that HIV was considered a permanent injury suffered by the 54 victims, among them ‘women and girls who were raped, including some who were infected with HIV and other sexually transmitted diseases’ (WIGJ, 2009:63). In the confirmation of Charges court document, the Prosecutor discusses the rape and sexual violence committed in seven cases of which he mentions that ‘as a result’ three witnesses (witnesses 68, 22 and 29) have contracted HIV (ICC Pre-Trial Transcript, 2009). HIV is mentioned in relation to the effects of rape, described in relation to the stigma that accompanies rape victims and their psychological and physical destruction.

Rape victims, however, have been abandoned by their husbands, rejected by society, stigmatised, suffer trauma day and night to this day. Others can no longer conceive. Others are a laughing-stock. They have been scarred by the atrocities, which they have lived through. Many suffer -- are HIV positive or suffering from AIDS and are condemned to death when they cannot get access to tried therapy. Some are dead. Underage children have been abandoned in the streets. It's misery, your Honours (ICC Pre-Trial Transcript, 13 January 2009).

HIV is framed as part of the prosecutorial rhetoric to win the audience by further victimizing raped women. Interestingly in *Bemba*, the prosecutor even goes so far as to elaborate on the implications of being infected with HIV – a likely reality resulting in death due to a lack of therapy (alluding to ART), framing HIV as a real death sentence for raped women.

To contrast how HIV is inconsistently represented in *Lubanga* (as venereal disease, STI and HIV) with how explicitly it is in *Bemba* as a ‘death sentence’ is evidence that the sexual nature of the *Bemba* crimes calls on particular gendered notions of victim women – making it public makes it political. In *Lubanga* sexual violence remains silenced along with its diverse effects, including HIV infection. Interestingly, the official narrative from the ICC will include instances of HIV infection, but no legal or material interventions will stem from this; while in the ICTR, HIV was also not apart of the official court narrative, but non-legal material interventions were inconsistently provided. One contention that this invisibility-visibility poses is to erase part of the reality

¹⁴ The confirmation of charges hearing is where the crimes allegedly committed by the perpetrator, upon which he/she is indicted/arrested, are re-affirmed or dismissed.

that victim-survivors face in the court, and recognized by the law as something that individuals need protection and services from, and further marginalizing PLWHIV, including ‘perpetrators’.

4.3.2 Criminalizing HIV

Given the impetus for judges to survey national laws in order to inform their judgements at the international level, and the fact that persons live healthy lives with HIV/AIDS if they have proper access to treatment, care and are not legislatively limited by their HIV status, the criminalization of HIV at the international level should proceed with caution. National legislation on HIV infection is being adopted in Africa, Asia, Latin America and the Caribbean¹⁵ as a tool to both provide PLWHIV with rights, and to protect against further spread of HIV (IPPF, 2010). At the 2010 International Aids Conference in Vienna, Austria, the criminalization of HIV was a main focus¹⁶, discussing how HIV legislation is further discriminating against persons it aims to protect, and further intersects with racists, classist and homophobic discourses that intersectionally increases stigma of marginalized groups living with HIV and their behaviour. For example, marginalized groups, such as African-American communities in the United States and homosexual’s in Egypt, now living with HIV are negatively impacted by HIV-specific laws (IPPF, 2010:16). Framing PLWHIV and their sex as constituting a weapon, further marginalizes them and reinforces the notion that HIV and AIDS are a ‘death sentence’ (IPPF, 2010).

The IPPF, Canadian HIV/AIDS Legal Network, and UNAIDS discuss the need to distinguish between the ‘malicious’ intention of HIV transmission and ‘reckless’ transmission, due to non-disclosure or safe sex practices. Re-focusing on the counter-narratives of ‘maliciousness’ can help highlight the context and situations of persons who intend to use HIV as a weapon. Given the gendered norm of men as perpetrators, it is questionable if criminalization could continue to frame HIV as a death sentence, and negate broader discussions of the serious need for (and lack of) access, treatment and preventative programming to PLWHIV, especially in areas of high sero-prevalence. Thus, legal interventions made on the basis of HIV as a death sentence serves to reinforce this frame, rather than protect against it – helping to constitute the reality of which it speaks.

4.4 Common Frames

This chapter focused on the way acts of violence, rape and HIV infection, have been framed in the law. One commonality between legal interventions on the basis of HIV infection and rape was that criminalization has had harmful impacts amongst its ‘successes’. For example, laws drafted to protect against and prosecute rape have often not been in the interest of women affected by rape, evident in the ways the laws have framed those that need protection – as honour, as property; and establishing normalized processes for justice – establishing non-consent, causing re-victimization, and concomitantly prosecuting a limited number of cases. In a similar vein, legislation drafted to protect individuals from HIV exposure have reinforced frames of HIV as a death sentence, keeping out of focus the reasons *why* HIV is considered a death sentence – lack of services, treatment, prevention strategies. Furthermore, laws that criminalize HIV negligent exposure and transmission, further put marginalized groups at risk of discrimination, when their needs are unknown and arguably, not met.

¹⁵ National legislation and jurisprudence exists already in Europe and North America (Athena Network, 2009:3).

Second, the gendered nature of sexualized violence influencing the definition of rape remains imminent (sidelining male sexual violence, women as perpetrators). Challenges posed to cases dealing with sexual and gender based violence continue to be challenged, which rarely happens for other crimes. For example discussing in detail and surveying national law over three times to decide what constitutes the crime of rape is not happening in crimes of murder, torture, etc. (Askin, 2010:GJD). Furthermore, sexualized diseases, such as HIV, are being added to sensationalized narratives of rape as ‘a horror that [can] not be ignored’ intersecting with ‘stories of the victim subject’ that frames women in conflict countries as ‘without power and in need of protection’ (C. Bunch and R. Kapur in Miller, 2004:21). Interestingly, HIV and rape combine in narratives at the ICC to further sensationalize the victimization of women, creating new fears and the space for new interventions. Furthermore, combined with the negative impact of criminalization on PLWHIV, if perpetrators are framed mainly as men, in relations to the victimization of women, then proceeding to criminalize HIV in international law may be the most harmful solution yet, as male sexuality and sexual services, are usually found wanting.

4.5 Conclusion

This chapter discussed the creation of the ICTY, ICTR and ICC, contextualizing the rise of international law with narratives of the need for justice. This was followed by an analysis of the criminalization of rape and sexual violence in international law and its invisibility-visibility-hyper-visibility. Similarly, an analysis of HIV was completed to contrast the frames of rape and HIV and international law, focusing on the invisibility-visibility of HIV in international law. The connections between rape and HIV infection, as they have been framed in the law, was discussed in relation to their common frames.

Chapter 6: Conclusion

This main question of this paper focuses on how the securitization and criminalization construct the (dis)connections between HIV, SGBV and violent conflict through their representations. In response, it can be argued that securitization and criminalization work in tandem as discourses that prioritize particular realities over others, discursively creating hierarchies through categorization. Thus, it was discussed that, particularly gendered subjects central to both processes criminalizing and securitizing HIV and rape, have helped to limit the connections between the two issues.

Securitization was contextualized in the introduction as a dominant ideology in global politics, and following this, the analysis section aimed to highlight how securitization of HIV and SGBV, as an intervention and informing interventions, denotes which subjects should be securitized and protected. It was found in all three resolutions that the 'dual' (Duffield, 2001) role that the politicization of these issues fills is to help fight 'instability' wherever it may be geopolitically, as HIV and gender inequality are issues that are constructed as posing a threat to international peace and security. Second, these issues fulfil the role of the UNSC in maintaining its position as an authority of global peace and security. Arguably, framing *the need* for more peacekeepers stakes a claim into the security world, but also the gender equality and HIV world. This comes to the second point that framing these issues as threats to global peace and security gives them priority over other issues. Thus, institutions, and actors within, can compete to have a piece of this, especially if the UNSCR call on UNMS to support financially specific issues (over others). Interestingly, the solution of more peacekeepers is never framed as harmful or unnecessary. Instead, it is framed as the norm into which HIV and gender mainstreaming policy are submerged, helping to explain the compartmentalizing of these issues. For example, all three resolutions are related to sexuality, yet only when this sex is violent and perpetrated towards women is it public and politicized. The private sexual mis(conduct) of UN peacekeepers is kept out of sight out of mind. Thus, sidelining sexuality, means further disconnecting the issues.

It was argued that the representations in security and legal discourses act as a form of intervention, because of the way the texts discursively frame –and subsequently categorize, value and create hierarchies of realities of HIV and SGBV in conflict. As was discussed in the analysis of legal discourses, the categorized subjects that require retributive justice and punishment, drawing on meta-narratives of gendered subjects as victims and perpetrators, can be quite harmful. For example, defining rape firstly categorized the types of sex that were harmful, casting all other forms of penetration and sexual invasion as less important which is harmful in the hierarchy of crimes it creates, as it can negate types which are not heteronormative. Second, the process of developing a definition drawing from a prerogative of justice for mankind, and not for the individual witnesses, can be harmful, as was described by the outburst of the witness in *Kumarac et al.* Third, the normalcy of essentialized gendered subjects in discussing HIV and rape, separately and together, makes more salient these subjects in the process of criminalization, drawing on and reinforcing narratives of rape as a weapon of war and HIV as a death sentence.

The centrality of gender and intersectional analysis have helped to expose and discuss the prioritization and categorization of realities, and the ways in which these processes in themselves are harmful in actually addressing the root problems of the issues they represent. Specifically, both the processes of securitization and criminalization draw on gendered subjects to legitimize their need – for peacekeepers and for justice. And while gender justice does deserve attention, as does punishment for grave crimes, the fixity of subjects and particular realities to these processes and their institutions becomes problematic in terms of interventions. If perpetrators are *normally* men, then we miss the nuances of experience and the overlapping ways in which groups and in-

dividuals experience discrimination and violence, which in turn has an impact on the way material and discursive interventions are framed. This is evident how the current academic literature frames HIV and SGBV. The analysis of epidemiological studies and feminist literature about rape that HIV and SGBV disconnect in the way sexuality is addressed in the literature. Mainstream use of epidemiology to study HIV has sidelined gender and sexuality from the focus and is still limited by a lack of data, and while feminist literature on rape has repeatedly over-stated rape, reducing it to a simplified category, and effectively reducing SGBV to rape.

The greatest relationship between the texts, in general, is a need for more contextualized experiences of SGBV and HIV in conflict situations, which at present are not found in security, legal nor academia. Furthermore, there is a need for a greater critique, which goes beyond the scope of this paper, that addresses the processes of securitization and criminalization which prioritizing particular realities over others, and subsequently relegate and detach groups from common struggles and common ways in which they experience discrimination and violence. This paper advocates for a different type of coherence between the discourses, which includes incorporating an intersectional and gender-based approach to looking at HIV and SGBV in conflict. This paper, as a purely discursive approach to these issues, cannot make specific policy recommendations, as it remains highly theoretical, detached from a particular case study. However, it could be argued that this entire paper is a policy recommendation for more contextualized, critical and reflexive approaches, and a call for further research on the (dis)connections between HIV and SGBV in conflict.

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Appendix A: UNSC Intertextuality Table

Text	UNSC Resolution 1308	UNSC Resolution 1325	UNSC Resolution 1820
UNSC Resolutions/ Meetings	- Meeting "The situation in Africa: the impact of AIDS on peace and security in Africa" January 10, 2000.	- 1208 (1998); 1261 (1999) twice; 1265 (1999); 1296 (2000); 1314 (2000)	- 1325 (2000); 1612 (2005); 1674 (2006);
UNSC Presidential Statements/ Letters	- Letter addressed to the President of the General Assembly (31 January, 2000) (S/2000/75)	- Statements to the Press on UN Day for Women's Rights and International Peace (mentioned twice)	- 31 October 2001 (Security Council/PRST/2001/32) - 31 October 2002 (Security Council/PRST/2002/31) - 28 October 2004 (Security Council/PRST/2004/40) - 27 October 2005 (Security Council/PRST/2006/52) - 8 November 2006 (Security Council/PRST/2006/42) - 7 March 2007 (Security Council/PRST/2007/5) - 24 October 2007 (Security Council/PRST/2007/40)
UN Secretary-General Reports/ Statements/ Letters	- Report to the <u>Millennium Assembly</u> (A/54/2000)	- Secretary-General's Strategic Plan of Action (A/49/587) for women's participation in peacemaking/peacekeeping	
Documents from UN General Assemblies/ Meetings	- 54 th Session, "Review of the problem of HIV/AIDS in all its aspects"	- Beijing Declaration and Platform for Action (A/52/231) - 23 rd Special Session "Women 2000: Gender Equality, Development and Peace for the Twenty-First Century (A/S-23/10/Rev.1) - Windhoek Declaration and Namibia Plan of Action on Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations (S/2000/693)	- 2005 World Summit Outcome Document, to eliminate all forms of violence against women and girls. - Beijing Declaration and Platform for Action (A/52/231) - 23 rd Special Session "Women 2000: Gender Equality, Development and Peace for the Twenty-First Century" (A/S-23/10/Rev.1)
UN Charter /UN Agency Documents	- UN Special Peacekeeping Operations report (A/54/839) on the "need" for HIV awareness/training and "efforts" already made on awareness/training	- "Recognizing the purposes and principles" of the UN Charter and the responsibility of the UNSC - Specifically Art. 41	- "Guided by the purposes and principles" of the UN charter
International Law		- The Geneva Conventions and Additional Protocols (1949,1977) - The Refugee Convention and Additional Protocol (1951, 1967) - CEDAW and Optional Protocol (1979, 1999) - UN Convention on the Rights of the Child and Optional protocols (1989, 2000) - Rome Statute of the ICC (1998)	- CEDAW and Optional Protocol (1979, 1999) - Convention on the Rights of the Child and Optional Protocols (1989, 2000) - Reference to the inclusion of sexual violence charges in the Rome Statute of the International Criminal Court (1998) and ad hoc International Criminal Tribunals

Appendix B: UNSC Resolution 1308

TEXT
Adopted by the Security Council at its 4172 nd meeting, on 17 July 2000
INTRODUCTION: The Security Council,
P1. <i>Deeply concerned</i> by the extent of the HIV/AIDS pandemic worldwide, and the severity of the crisis in Africa in particular,
P2. <i>Recalling</i> its meeting of 10 January 2000, on ‘The situation in Africa: the impact of AIDS on peace and security in Africa’,
P3. <i>taking note</i> of the 5 July 2000 report from UNAIDS (s/2000/657) which summarized follow-up actions taken to date;
P4. and <i>recalling further</i> the letter of its President dated 31 January 2000 addressed to the President of the General Assembly (s/2000/75),
P5. <i>Emphasizing</i> the important roles of the General Assembly and the Economic and Social Council in addressing HIV/AIDS,
P6. <i>Stressing</i> the need for coordinated efforts of all relevant United Nations organizations to address the HIV/AIDS pandemic in line with their respective mandates and to assist, wherever possible, in the global efforts against the pandemic,
P7. <i>Commending</i> the efforts by UNAIDS to coordinate and intensify efforts to address HIV/AIDS in all appropriate forums,
P8. <i>Recalling also</i> the 28 February 2000 special meeting on the Economic and Social Council, held in partnership with the President of the Security Council, on the development aspects of the HIV/AIDS pandemic,
P9. <i>Welcoming</i> the decision by the General Assembly to include in the agenda of its fifty-fourth session an additional item of an urgent and important character entitled ‘Review of the problem of HIV/AIDS in all its aspects’,
P10. and encouraging further action to address the problem of HIV/AIDS,
P11. <i>Recognizing</i> that the spread of HIV/AIDS can have a uniquely devastating impact on all sectors and levels of society,
P12. <i>Reaffirming</i> the importance of a coordinated international response to the HIV/AIDS pandemic, given its possible growing impact on social instability and emergency situations,
P13. <i>Further recognizing</i> that the HIV/AIDS pandemic is also exacerbated by conditions of violence and instability,
P14. which increase the risk of exposure to the disease through large movements of people, widespread uncertainty over conditions and reduced access to medical care,
P15. <i>Stressing</i> that the HIV/AIDS pandemic, if unchecked, may pose a risk to stability and security,
P16. <i>Recognizing</i> the need to incorporate HIV/AIDS prevention awareness skills and advice in aspect of the United Nations Department of

Peacekeeping operations' training for peacekeeping personnel,
P17. <i>And welcoming</i> the 20 March 2000 report of the UN Special Committee on Peacekeeping Operations (a/54/839) which affirmed this need and the efforts already made by the UN Secretariat in this regard,
P18. <i>Taking note</i> of the call of the Secretary-General in his report to the Millennium Assembly (A/54/2000) for coordinated and intensified international action to reduce the HIV infection rates in persons 15 to 24 years of age by 25 per cent by the year 2010,
P19. <i>Noting with satisfaction</i> the 13 th International AIDS Conference, held from 9 to 14 July 2000 in Durban, South Africa,
P20. which was the first conference of this type to be held in a developing country and which drew significant attention to the magnitude of the HIV/AIDS pandemic in sub-Saharan Africa,
P21. <i>And further noting</i> that this Conference was an important opportunity for leaders and scientists to discuss the epidemiology of HIV/AIDS and estimates of resources needed to address HIV/AIDS,
P22. as well as issues related to access to care, mother to child transmission, prevention and development of vaccines,
P23. <i>Bearing in mind</i> the Council's primary responsibility for the maintenance of international peace and security,
1. Expresses concern at the potential damaging impact of HIV/AIDS on the health of international peacekeeping personnel, including support personnel;
2. Recognizes the efforts of those Member States which have acknowledged the problems of HIV/AIDS and, where applicable, have developed national programmes,
and encourages all interested Member States which have not already done so to consider developing, in cooperation with the international community and UNAIDS, where appropriate, effective and long-term strategies for HIV/AIDS education, prevention, voluntary and confidential testing and counseling, and treatment of their personnel,
as an important part of their preparation for their participation in peacekeeping operations;
3. Requests the Secretary-General to take further steps towards the provision of training for peacekeeping personnel on the issues related to preventing the spread of HIV/AIDS
and to continue the further development of pre-deployment orientation and on-going training for all peacekeeping personnel on these issues;
4. Encourages interested Member States to increase international cooperation among their relevant national bodies to assist with the creation and execution of policies for HIV/AIDS prevention, voluntary and confidential testing and counseling,
and treatment for personnel to be deployed in international peacekeeping operations; what about general population?
5. Encourages, in this context, UNAIDS to continue to strengthen its cooperation with interested Member States to further develop its country profiles in order to reflect best practices and countries' policies on HIV/AIDS prevention, education, testing, counseling and treatment;

here it is more open to the general population, but this is not explicitly stated! So we can assume that coop and best practices refer to the peace-keepers.

6. Expresses keen interest in additional discussion among relevant UN bodies, Member States, industry and other relevant organizations to make progress, inter alia, on the question of access to treatment and care, and on prevention.

Appendix C: UNSC Resolution 1325

TEXT
Adopted by the SC at its 4213 th meeting, on 31 October 2000
The Security Council,
P1. Recalling its resolutions 1261 (1999) 25 August 1999,
Resolution 1265 (1999) of 17 September 1999,
Resolution 1296 (2000) of 19 April 2000 and,
Resolution 1314 (2000) of 11 August 2000,
As well as relevant statements of its President,
P2. And recalling also the statement of its President to the press on the occasion of the UN Day for women's rights and international peace (int'l women's day) of 8 March 2000 (SC/6818).
P3. Recalling also the commitments of the Beijing Declaration and Platform for Action (A/52/231) as well as those contained in the outcome document of the twenty-third Special Session of the UN General Assembly entitled "Women 2000: Gender, Equality, Development and Peace for the Twenty-First Century" (A/S-23/10/Rev.1) in particular those concerning women and armed conflict,
P4. Bearing in mind the purpose and principles of the Charter of the UN and the primary responsibility of the SC under the Charter for the maintenance of international peace and security,
P5. Expressing concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons,
P6. And increasingly are targeted by combatants and armed elements, and recognizing the consequent impact this has on durable peace and reconciliation.
P7. Reaffirming the important role of women in the prevention and resolution of conflicts and in peace-building, and
P8. Stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution.
P9. Reaffirming also the need to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts,
P10. Emphasizing the need for all parties to ensure that mine clearance and mine awareness programmes take into account the special needs of women and girls,
P11. Recognizing the urgent need to mainstream a gender perspective into peacekeeping operations, and in this regard noting the Windhoek

Declaration and the Namibia Plan of Action on Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations (2/2000/693)
P12. Recognizing also the importance of the recommendation contained in the statement of its President to the press of 8 March 2000 for specialized training for all peacekeeping personnel on the protection, special needs and human rights of women and children in conflict situations,
P13. Recognizing that an understanding of the impact of armed conflict on women and girls, effective institutional arrangements to guarantee their protection and full participation in the peace process can significantly contribute to the maintenance and promotion of international peace and security
P14. Noting the need to consolidate data on the impact of armed conflict on women and girls.
O1. Urges Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management and resolution of conflict;
O2. Encourages the Secretary-General to implement his strategic plan of action (A/49/587) calling for an increase in the participation of women at decision-making levels in conflict resolution and peace processes;
O3. Urges the Secretary-General to appoint more women as special representatives and envoys to pursue good offices on his behalf, and in this regard calls on Member States to provide candidates to the Secretary-General for inclusion in a regularly updated centralized roster;
O4. Further urges the SG to seek to expand the role and contribution of women in the UN field-based operations, and especially among military observers, civilian police, human rights and humanitarian personnel;
O5. Expresses its willingness to incorporate a gender perspective into peacekeeping operations, and urges the SG to ensure that, where appropriate, field operations include a gender component;
O6. Requests the SG to provide to Member States training guidelines and materials on the protection, rights and the particular needs of women, as well as on the importance of involving women in all peacekeeping and peacebuilding measures,
Invites Members States to incorporate these elements as well as HIV/AIDS awareness training into their national training programmes for military and civilian police personnel in preparation for deployment, and
Further requests the SG to ensure that civilian personnel of peacekeeping operations receive similar training;
O7. Urges Member States to increase their voluntary financial, technical and logistical support for gender-sensitive training efforts, including those undertaken by relevant funds and programmes, inter alia, the UNIFEM and UNICEF, and by the office of the UNHCR and other relevant bodies;
O8. Calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia:
a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction;
b) Measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the

implementation mechanisms of the peace agreements;
c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary;
O9. Calls upon all parties to armed conflict to respect fully international law applicable to the rights and protection of women and girls, especially civilians, in particular the obligations applicable to them under:
a) The Geneva Conventions of 1949 and AP of 1977,
b) The Refugee Convention of 1951 and the Protocol thereto of 1967,
c) The CEDAW of 1979 and the Optional Protocol thereto of 1999,
d) and the UN Convention on the Rights of the Child of 1989 and the two Optional Protocols thereto of 25 May 2000,
e) and to bear in mind the relevant provision of the Rome Statute of the ICC.
O10. Calls on all parties to armed conflict to take special measure to protect women and girls from GBV, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict.
O11. Emphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, CAH and WC including those relating to sexual and other violence against women and girls, and in this regard stresses the need to exclude these crimes, where feasible from amnesty provisions;
O12. Calls upon all parties to armed conflict to respect the civilian and humanitarian character of refugee camps and settlements, and to take into account the particular needs of women and girls, including in their design, and recalls its resolutions:
1208 (1998) of 19 November 1998
And 1296 (2000) of 19 April 2000 ¹⁷

¹⁷ “*reaffirming* its concern at the hardships borne by civilians during armed conflict, in particular as a result of acts of violence directed against them, especially women, children and other vulnerable groups, including refugees and internally displaced persons, and recognizing the consequent impact this has on durable peace, reconciliation and development” (preamble, UNSC resolution 1296). “the importance of safe and unimpeded access of humanitarian personnel to civilians in armed conflicts, *calls upon* all parties concerned, including neighbouring States, to cooperate fully with the United Nations Humanitarian Coordinator and United Nations agencies in providing such access” (Operative 8).

O13. Encourages all those involved in the planning for disarmament, demobilization and reintegration to consider the different needs of female and male ex-combatants and to take into account the needs of their dependants;
O14. Reaffirms its readiness, whenever measures are adopted under Art. 41 of the Charter of the UN, to give consideration to their potential impact on the civilian population, bearing in mind the special needs of women and girls, in order to consider appropriate humanitarian exemptions;
O15. Expresses its willingness to ensure that SC missions take into account gender considerations and the rights of women, including through consultation with local and international women's groups;
O16. Invites the SG to carry out a study on the impact of armed conflict on women and girls, the role of women in peace-building and the gender dimensions of peace processes and conflict resolution, and
Further invites him to submit a report to the SC on the results of this study and to make this available to the Member States of the UN
O17. Requests the SG, where appropriate, to include in his reporting to the SC progress on gender mainstreaming throughout peacekeeping missions and all other aspects relating to women and girls;
O18. Decides to remain actively seized of the matter.

Appendix D: UNSC Resolution 1820

TEXT
Adopted by the Security Council at its 5916 th meeting, on 19 June 2008
The Security Council,
P1. Reaffirming its commitment to the continuing and full implementation of
Resolution 1325 (2000)
Resolution 1674 (2006)
And recalling the Statements of its president of 31 October 2001 (Security Council/PRST/2001/31),
(statements) 31 October 2002 (Security Council/PRST/2002/32),
(statements) 28 October 2004 (Security Council/PRST/2004/40),
(statements) 27 October 2005 (Security Council/PRST/2005/52),
(statements) 8 November 2006 (Security Council/PRST/2006/42)
(statements) 7 March 2007 (Security Council/PRST/2007/5), and
(statements) 24 October 2007 (Security Council/PRST/2007/40)
P2. Guided by the purposes and principles of the Charter of the UN,
P3. Reaffirming also the resolve expressed in the 2005 World Summit Outcome Document to eliminate all forms of violence against women and girls, including by ending impunity and by ensuring the protection of civilians, in particular women and girls, during and after armed conflicts
In accordance with the obligations States have undertaken under international humanitarian law and international human rights law;
P4. Recalling the commitments of the Beijing Declaration and Platform for Action (A/52/231)
As well as those contained in the outcome document of the twenty-third Special Session of the United Nations General Assembly entitled “Women 2000: Gender Equality, Development and Peace for the Twenty-first Century” (A/S-23/10/Rev.1), in particular those concerning sexual violence and women in situations of armed conflict,
P5. Reaffirming also the obligations of States Parties to the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol thereto
The Convention on the Rights of the Child and the Optional protocol thereto,
And urging states that have not yet done so to consider ratifying or acceding to them,
P6. Noting that civilians account for the vast majority of those adversely affected by armed conflict;
That women and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instill fear in, dis-

perse and/or forcibly relocate civilian members of a community or ethnic group;
And that sexual violence perpetrated in this manner may in some instance persist after the cessation of hostilities;
P7. Recalling its condemnation in the strongest terms of all sexual and other forms of violence committed against civilians in armed conflict, in particular women and children,
P8. Reiterating deep concern that, despite its repeated condemnation of violence against women and children in situations of armed conflict, including sexual violence in situations of armed conflict,
And despite its calls addressed to all parties to armed conflict for the cessation of such acts with immediate effect, such acts continue to occur,
And in some situations have become systematic and widespread reaching appalling levels of brutality,
P9. Recalling the inclusion of a range of sexual violence offences in the Rome Statute of the ICC and the statutes of the ad hoc international criminal tribunals,
P10. Reaffirming the important role of women in the prevention and resolution of conflicts and in peacebuilding,
And stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security,
And the need to increase their role in decision-making with regards to conflict prevention and resolution,
P11. Deeply concerned also about the persistent obstacles and challenges to women's participation and full involvement in the prevention and resolution of conflicts as a result of violence, intimidation, and discrimination, which erode women's capacity and legitimacy to participate in post-conflict public life,
And acknowledging the negative impact this has on durable peace, security and reconciliation, including post-conflict peacebuilding.
P12. Recognizing that States bear primary responsibility to respect and ensure the human rights of their citizens, as well as all individuals within their territory as provided for by relevant international law,
P13. Reaffirming that parties to armed conflict bear the primary responsibility to take all feasible steps to ensure the protection or affected civilians,
P14. Welcoming the ongoing coordination of efforts within the UN system, marked by the inter-agency initiative "UN Action against Sexual Violence in Conflict", to create awareness about sexual violence in armed conflicts and post-conflict situations and, ultimately, to put an end to it,
1. Stresses that sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security,
Affirms in this regard that effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security,
And expresses its readiness when considering situations on the agenda of the Council, to, where necessary, adopt appropriate steps to address

widespread or systematic sexual violence;
2. Demands the immediate and complete cessation by all parties to armed conflict of all acts of sexual violence against civilians with immediate effect;
3. Demands that all parties to armed conflict immediately take appropriate measures to protect civilians, including women and girls, from all forms of sexual violence, Which could include, inter alia,
a) Enforcing appropriate military disciplinary measures and upholding the principle of command responsibility,
b) training troops on the categorical prohibition of all forms of sexual violence against civilians,
c) debunking myths that fuel sexual violence
d) vetting armed and security forces to take into account past actions of rape and other forms of sexual violence,
e) and evacuation of women and children under imminent threat of sexual violence to safety;
And requests the Secretary-General, where appropriate, to encourage dialogue to address this issue in the context of broader discussions of conflict resolution between appropriate UN officials and the parties to the conflict, taking into account, inter alia, the views expressed by women of affected local communities;
4. Notes that rape and other forms of sexual violence can constitute a war crime, a CAH, or a constitutive act with respect to genocide,
Stresses the need for the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes,
And calls upon Member States to comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice,
And stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation,
5. Affirms its intention, when establishing and renewing state-specific sanctions regimes, to take into consideration the appropriateness of targeted and graduated measures against parties to situations of armed conflict who commit rape and other forms of sexual violence against women and girls in situations of armed conflict;
6. Requests the Secretary-General to continue and strengthen efforts to implement the policy of zero tolerance of sexual exploitation and abuse in UN peacekeeping operations,
And urges troop and police contributing countries to take appropriate preventative action, including pre-deployment and in-theater awareness training, and other actions to ensure full accountability in cases of such conduct involving their personnel
7. Encourages troop and police contributing countries, in consultation with the Secretary-General, to consider steps they could take to heighten awareness and the responsiveness of their personnel participating in UN peacekeeping operations to protect civilians, including women and children,
And prevent sexual violence against women and girls in conflict and post-conflict situations, including wherever possible the deployment of a higher percentage of women peacekeepers or police;

8. Requests the Secretary-General to develop effective guidelines and strategies to enhance the ability of relevant UN Peacekeeping operations, consistent with their mandate, to protect civilians, including women and girls, from all forms of sexual violence and to systematically include in his written reports to the Council on conflict situations his observations concerning the protection of women and girls and recommendations in this regard,
9. Requests the Secretary-General and relevant UN agencies, inter alia, through consultation with women and women-led organizations as appropriate, to develop effective mechanisms for providing protection from violence, including in particular sexual violence, to women and girls in and around UN-managed refugee and IDP camps, as well as in all disarmament, demobilization and reintegration processes, and in justice and security sector reform efforts assisted by the UN
10. Stresses the important role of the Peacebuilding commission by including in its advice and recommendations for post-conflict peacebuilding strategies, where appropriate, ways to address sexual violence committed during and in the aftermath of armed conflict,
And in ensuring consultation and effective representation of women's civil society in its country-specific configurations, as part of its wider approach to gender issues;
11. Urges the Secretary-General and his Special Envoys to invite women to participate in discussions pertinent to the prevention and resolution of conflict, the maintenance of peace and security, and post-conflict peacebuilding, and encourages all parties to such talks to facilitate the equal and full participation of women at decision-making levels.
12. Urges all parties concerned, including Member States, UN entities and financial institutions, to support the development and strengthening of the capacities of national institutions, in particular of judicial and health systems, and of local civil society networks in order to provide sustainable assistance to victims of sexual violence in armed conflict and post-conflict situations,
13. Urges appropriate regional and sub-regional bodies in particular to consider developing and implementing policies, activities and advocacy for the benefit of women and girls affected by sexual violence in armed conflict,
14. Also requests the Secretary-General to submit a report to the Council by 30 June 2009 on the implementation of this resolution in the context of situations which are on the agenda of the Council, utilizing information from available UN sources, including country teams, peacekeeping operations, and other UN personnel, which would include, inter alia
a) information on situations of armed conflict in which sexual violence has been widely or systematically employed against civilians;
b) analysis of the prevalence and trends of sexual violence in situations of armed conflict;
c) proposals for strategies to minimize the susceptibility of women and girls to such violence;
d) benchmarks for measuring progress in preventing and addressing sexual violence;
e) appropriate input from UN Implementing partners in the field;
d) information on his plans for facilitating the collection of timely, objective, accurate and reliable information on the use of sexual violence in situations of armed conflict, including through the improved coordination of UN activities on the ground and at Headquarters;
e) and improved information on actions taken by parties to armed conflict to implement their responsibilities as described in this resolution, in

particular by immediately and completely ceasing all acts of sexual violence and in taking appropriate measures to protect women and girls from all forms of sexual violence;

15. Decides to remain actively seized of the matter.
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