
End Impunity! Reducing Conflict-Related Sexual Violence to a Problem of Law

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Whilst sexual violence has been an offence associated both with war- and peacetime throughout history, its rise to the tables where international peace and security are negotiated, represents a significant shift. This article continues the scholarly conversation about conflict-related sexual violence and its emergence as a “hot topic” on academic, political, and activist agendas. Specifically, we ask how and why criminal law constitutes the ultimately meaningful response to such violence. Building on frame analysis, we address how the fight against conflict-related sexual violence has become the fight against impunity. We examine what imageries of victims and perpetrators, causes and consequences key actors within interstate diplomacy and human rights advocacy evoke to drive this development. We argue that these narratives shape the political discourse on conflict-related sexual violence, which may in turn influence the perceived political maneuverability in the face of such harms.

[After conflict-related sexual violence,] the anger and shame left behind can tear communities apart and make wars last longer—especially when the monsters who do it are allowed to get away with it... But it doesn't have to be this way. Rape and sexual violence are the worst crimes you can imagine, but they are not an inevitable part of war. It's time to act, to end sexual violence in conflict. Time to act, to bring those responsible to justice (Foreign and Commonwealth Office 2014a).

In June 2014, the UK government hosted the high-level *Global Summit to End Sexual Violence in Conflict*, reported as “the

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largest gathering ever brought together on the subject.”¹ It culminated in unanimous agreement among state delegates to “tackle impunity for the use of rape as a weapon of war,” (Gov.uk 2014) and a best practices protocol on how to document and investigate sexual violence in conflict-situations to promote accountability (Foreign and Commonwealth Office 2014b). The quote that introduces this article is from the voiceover of a campaign video released by the UK Foreign and Commonwealth Office as part of that summit. Over the screams of women and roars of animated monsters/brutes/men, the female voice talks about the wide-ranging and devastating consequences of “the worst crimes you can imagine”—before she presents what needs to be done to end conflict-related sexual violence: End impunity. In many ways, this campaign video epitomizes the subject matter of this article: Through political, activist, and legal campaigning during the last two decades, the fight against conflict-related sexual violence has become the fight against impunity. That is not a small change. Until fairly recently, criminal prosecution of conflict-related sexual violence was practically unheard of. Today, criminal prosecution has become the framework within which all matters to do with conflict-related sexual violence are dealt with. As the current UN Secretary General’s Special Representative on Sexual Violence in Conflict, Zainab Bangura (2013), has emphasized, “[t]here’s no way to end sexual violence unless you end impunity.” From being silenced in hard politics circles, rendered unavoidable, and seen as a natural side effect of war through most of history, conflict-related sexual violence has reached the highest echelons of international attention in recent years.

Whereas much has been written about the development of an international legal doctrine on conflict-related sexual violence (Copelon 2000; de Brouwer 2005; Halley 2008), critical approaches to international criminal law generally (Drumbl 2007; Tallgren 2002) have yet to merge with thematic scholarship on conflict-related sexual violence. As a result, and albeit criticisms of case law development and prosecutorial strategies exist (Bergsmo 2012; Henry 2011), there have been few attempts to analytically reflect on the recent rise of criminal law as the utmost solution to the challenge that conflict-related sexual violence is. As Engle (2005: 784) commented more than a decade ago, “as criminalization of wartime rape marches forward ... there has been little reflection ... on whether more criminalization is necessarily better than less.”

¹ The summit attracted worldwide media attention and participants from 123 countries amounting to 1700 delegates, including 79 Ministers, 900 experts, NGOs, survivors, faith leaders, and international organizations.

This article continues the scholarly conversation about conflict-related sexual violence and its emergence as a “hot topic” on academic, legal, political, and activist agendas (Grewal 2015; Henry 2014). In so doing, it connects with constructivist approaches in international relations theory that stress the constitutive role of human rights norms (Adler 1997; Risse, Sikink, and Ropp 2013; Wendt 1999). Much of this research has been concerned with the emergence, diffusion, and internalization of norms, including the role of nongovernmental organizations (NGOs) in the development of the “justice cascade”—that is the “shift in the *legitimacy of the norm* of individual criminal accountability for human rights violations and an increase in criminal prosecutions on behalf of that norm” (Sikink 2011: 5; see also Glasius 2006; Haddad 2011; Lohne forthcoming). Here, our focus is on the narrative authority of the end impunity mantra, which we understand as already an internalized norm in debates about, policies on and responses to conflict-related sexual violence. Mindful of this “‘taken-for-granted’ quality that makes conformance with the norm almost automatic” (Finnemore and Sikink 1998: 904), we ask how and why criminal law continues to constitute the ultimately meaningful response to conflict-related sexual violence (paraphrasing Felman 2002: 3). Building on insights from frame analysis, we examine what imageries of victims and perpetrators, causes and consequences, key actors within interstate diplomacy and human rights advocacy evoke to promote criminal law responses to this particular type of violence. We show how these narratives shape the political discourse on conflict-related sexual violence, which we in turn argue affects the perceived political maneuverability in the face of such harms.

The article proceeds by situating the analysis within the ongoing scholarly conversation about conflict-related sexual violence and its intersection with international criminal law. Then follows an account of how we engage framing theory in the analysis. By identifying victim and perpetrator imageries and representations of causes and consequences in UN Security Council resolutions and reports from Human Rights Watch (HRW), the subsequent analysis shows how and discusses why legal mobilization takes hold of different key actors simultaneously, constituting the fight against impunity as a “rhetoric of change” (Gamson and Meyer 1996 in Sandberg 2006), and the end of impunity as a panacea for conflict-related sexual violence. Ultimately, we ask what the implications are of this global force and consolidation of conflict-related sexual violence as first and foremost a matter to be addressed—and solved—through criminal law.

Current Debates

Feminist Mobilization

The unprecedented media coverage of sex crimes committed during the wars in the former Yugoslavia marked an important turning point in the meager history of international criminal prosecution of conflict-related sexual violence. As journalists began featuring stories of widespread rape in 1992–1993, the conflict gained the attention of the general public in ways that previous reports had not (Harbour 2016: 20; Mertus 2008: 1297). Coinciding with an ongoing rights mobilization in the international women's movement and a series of world conferences in the preceding decade that made violence against women the "centerpiece of women's human rights" (Merry 2006: 2), the media coverage resonated with an international feminist community increasingly ready to mobilize, strategize, and lobby to secure prosecution of and accountability for gender-based violence (Harbour 2016: 21; Mertus 2008). Until the establishment of the ad hoc criminal tribunals for the former Yugoslavia and Rwanda in the 1990s, conflict-related sexual violence had been mostly absent from both international and national criminal prosecutions of war-related offenses (de Brouwer 2005; Haddad 2011). When these tribunals began prosecuting conflict-related sexual violence, it was in large part the result of feminist, concerted "[t]ransnational advocacy [that] helped generate the necessary political will to adopt and implement legal norms regarding crimes of sexual violence" (Haddad 2011; see also Copelon 2000; Halley 2008). The inclusion of conflict-related sexual violence in the statutes and case law of international tribunals and subsequently the International Criminal Court is an important breakthrough of such international mobilization efforts.

Two decades later, this article acknowledges these victories, yet raises concern about the rapid and exhaustive naturalization of criminal prosecution not only as *a* means by which conflict-related sexual violence can be addressed, but as the *primary* means through which such violence is to be prevented. Building on scholarship that shows how NGOs built the necessary political momentum to see these judicial changes through in the 1990s, this paper addresses how criminal law is continuously cemented as key by political and advocacy actors in the new millennium. Although scholarly publications have been critical of *how* international criminal law institutions include/exclude conflict-related sexual violence and how victim witnesses are treated in proceedings (see below), there has, as Engle (2005) contends, been little reflection on the rise and role of criminal law itself in the fight against conflict-related sexual violence. In domestic debates on

criminal prosecution of sexual violence, critique of so-called carceral feminism is more prominent, including voices that challenge the procedural practices of legal institutions (e.g., Matoesian 1995; Temkin et al. 2016), but also their dominance and existence as such. Critical to how criminal law is considered “one of feminism’s greatest successes” (Gruber 2009: 583) and the new tough-on-crime frame feminist advocacy has contributed to, scholars warn about feminist scholarship and advocacy’s “political investment in the contemporary security state” (Bernstein 2012: 254). Moreover, they express concern about the costs of a punitive focus in terms of women’s perceived and real agency (Gruber 2009). Overall, critical scholars see the focus on carceral measures as a neoliberal project, challenge the idea of criminal punishment as the scale by which victims’ dignity and value can be measured (Houge et al. 2015), and “note the many tensions between criminalization strategies and feminism’s general goals of ending women’s subordination, dismantling hierarchy, and seeking distributive fairness” (Gruber 2009: 603). From this perspective, the extreme focus on criminal law is seen as a distraction from the broader efforts needed to fundamentally address the challenge of sexual and gender based violence. To some extent, thus, we echo debates on criminal prosecution of violence against women in domestic justice systems.

Causes and Consequences

Reviews of the contemporary knowledge base concerning the causes of conflict-related sexual violence often highlight two prevailing “knowledge camps”: one that understands rape and sexual violence as sexual opportunism, and another that explains conflict-related sexual violence as a weapon of war (Houge 2015; Meger 2016). According to Meger (2016: 150), scholars in the opportunism camp suggest that soldiers rape because war provides them with ample opportunity to do so, as if there is something inherent in either men *qua* men, or in the conditioning of men into soldiers, that make them rape unless it is prevented. These approaches are best understood along a continuum and take in various degrees of inherent, situational, and/or societal or structural factors that condition and encourage soldiers to rape for the purpose of self-gratification (Houge 2015). These understandings emphasize the opportunities created by the chaos of war, which suggest that “preventing conflict-related sexual violence requires stricter enforcement policies, norms, and codes of conduct to curtail this behavior” (Meger 2016). That is, the command lines must be clarified, and leaders need to sanction subordinates that do not follow established codes of conduct. When that does not happen, criminal law ideally sets in. This is *the*

rationale behind a primary focus on superior responsibility in international criminal law: If leaders are held accountable for the behavior of their troops, they will make sure that their troops will not put them at risk of prosecution (Cronin-Furman 2013).

The second dominant causal narrative has less to do with individual soldiers' perception of opportunity and more to do with what serves the goals of the conflict. This narrative understands sexual violence as strategic, as a deliberate weapon of war. It has become so dominant the last decade that "to claim that rape is a strategy or tactic of war is seemingly to state the obvious" (Baaz and Stern 2013: 42; see also Crawford 2013). According to Meger (2016) this narrative emerges particularly from advocacy work, but it also relates to feminist research on high profile conflict cases, such as the wars in the former Yugoslavia and the genocide in Rwanda in the 1990s. In contrast to earlier feminist analyses, however, the current weapon of war-narrative separates conflict-related sexual violence from the continuum of gender-based violence that springs out of gender inequality and permeates both war and peace. Additionally, it separates conflict-related sexual violence from the continuum relating it to the overall war violence, creating a double hierarchy of crimes according to which conflict-related sexual violence is both worse than other forms of sexual violence and worse than other forms of conflict-related violence. According to this weapon of war-narrative, rape is used as a calculated tool against civilians to weaken and demoralize enemies and disperse their populations. Sexual violence is presented as not "just" a crime against the victim, but also a deliberate attack against the community of which the victim is part, as it evokes and attacks central gendered structures and norms in society, and by that invades and tears up the glue of the community's social relations.

The division of the contemporary knowledge base into two separate, exclusive strands of approaches is somewhat artificial and does not account for the variance of research on conflict-related sexual violence during the past decade or for the nuances much research account for. These nuances in research have, however, not penetrated the policy discourse, where the sexual opportunism and weapon of war-narratives are more strongly and purely propagated. Whereas the former narrative suggests perpetrators hold back when opportunity is limited or risks are high, the latter assumes that sexual violence is chosen deliberately as a way to achieve military/territorial/political goals. Despite different emphases, both narratives assume that perpetrators make cost/benefit analyses before they decide to engage in this particular form of sex/violence/warfare, and that commanders do the same prior to making a decision of whether or not to incite or respond to its occurrence (Baaz and Stern 2013). According to

both narratives, then, conflict-related sexual violence can be prevented through increasing the costs of rape, which aligns nicely with the deterrent rationale of criminal punishment whereby rational would-be-perpetrators—be they directly involved or in superior command—will refrain from engaging in sexual violence if the risk of criminal prosecution is elevated.

This article reflects on what we see as the dominance of liberal legalism in the international order, “which refers to the legal principles and values that privilege individual autonomy, [and] individuate responsibility” (Fletcher 2004: 1031). Expressed through criminal law, liberal legalism separates the subjects of adjudication into mutually exclusive categories of autonomous, culpable perpetrators and innocent victims. Yet, commentators have noted how the liberal legalist approach—with its inherent individualization of responsibility—critically misses the collective engagement and societal complicity of mass violence (Drumbl 2007; Fletcher and Weinstein 2002). As the court constructs evil perpetrators (Houge 2016; Mohamed 2015) and helpless victims (Henry 2011), it further presents an etiology of conflict-related sexual violence that suits individual criminal prosecution and feeds into the two dominant causal “camps.”

Turning from causes to consequences, the first generation of academic research on conflict-related sexual violence dealt extensively with descriptions of the violence victims suffered, and focused on the socio-psycho-medical needs survivors experienced. The past decade, a second generation of victim-oriented scholarship has emerged in tandem with the growth of critical humanitarianism studies, giving emphasis to the continuities of the postcolonial imagination of the liberal will-to-care (e.g., Barnett 2011; Reid-Henry 2013). These scholars react to the means of disclosure that the former generation of scholars employed to make many women’s wartime experiences visible—producing “ideal victims” as “broken” or “damaged,” in short, as passive women in need of rescue (Baaz and Stern 2013; Engle 2005; Henry 2014: 103–4). Contemporary research focuses more on victims’ multifaceted and heterogeneous experiences and lives, including critical research on victims as witnesses in criminal courts (Henry 2011). At the national level, the role of the victim of crime has become a dominant reference point in Western discourses on crime and justice as such (Walklate 2007), and at the international level, “victims’ justice” is regularly invoked as the *raison d’être* of international criminal justice generally (Kendall and Nouwen 2014). In this article, we show how the combination of a victim-oriented justification for international justice and the reproduction of a graphic focus on the violence victims suffer, similar to much of the first generation scholarship on conflict-

related sexual violence, are central in the advocacy and policy field that responds to widespread reports of conflict-related sexual violence.

To show how these imageries of causes and perpetrators, suffering and victims feed off each other in a way that incrementally frames the fight against impunity as key to end conflict-related sexual violence, we draw on the analytical tools provided by framing theory in research on social movements.

Frame Analysis

Framing theory identifies how actors “package and frame policy ideas to convince each other as well as the general public that certain policy proposals constitute plausible and acceptable solutions to pressing problems” (Campbell 1998: 380). In social movement literature, its focus is on how movements work to “frame’ grievances and mobilize support” for a particular cause (Davis 2002: 7). Frames focus attention, prioritize certain stories over others and make connections between different objects and people. As such, social movements’ framing efforts offer “ways of understanding” that “inspire and legitimate” movement activity, both in terms of the need for such activity and the desirability of undertaking it” (Davis 2002: 7, paraphrasing Snow et al. 1986). Criminalization narratives are not the only frames used by actors advocating measures to prevent or alleviate conflict-related sexual violence: Actors across the field emphasize for example the importance of psychosocial responses and medical needs of victims (see Autesserre 2012). While recognizing alternative frames in the discourse on conflict-related sexual violence, this article takes as a starting point that the fight against impunity is already the dominant frame within which conflict-related sexual violence is addressed, as a result of complex, coordinated, and cross-sectorial framing efforts. It has become the “collective action frame” (Benford and Snow 2000: 613) that actors across the legal, advocacy and policy spectrum resort to in order to mobilize support for their efforts to address conflict-related sexual violence. According to Benford and Snow (2000: 614) collective action frames “[simplify and condense] aspects of the ‘world out there,’ ... in ways that are ‘intended to mobilize potential adherents and constituents, to garner bystander support, and to demobilize antagonists.’” Our concern is with the narratives that the successful collective framing process of the fight against conflict-related sexual violence as the fight against impunity has cemented, and which contribute to a continuous framing of conflict-related sexual violence as primarily a problem of—and to be solved by—criminal law.

Below we identify and problematize the diagnostic, prognostic, and motivational framing of conflict-related sexual violence that lead to a collective emphasis on criminal law solutions. In a framing process, “[d]iagnostic framing is concerned with problem identification (who is to blame?), and prognostic framing with problem resolution (what can be done about it?)” (Sandberg 2006: 211). The motivational frame “provides a ‘call to arms’ or rationale for engaging in ... collective action” (Benford and Snow 2000: 617) and “some articulation of a motive” (Sandberg 2006: 211). These three levels of collective action framing are, as all policy-making processes, “steeped in narrative” (Keeton 2015: 129). Paraphrasing Keeton (2015: 129), the narratives that support certain frames and not others, serve as interpretive frameworks “through which policymakers interpret past events, establish causality, assign blame, predict future outcomes, judge the legitimacy of a proposed policy, and square the debate with dominant moral standards.” Importantly, narratives about the origin of a social problem and the justification for addressing it that actors employ “constrain the range of possible ‘reasonable solutions’ and strategies advocated” (Benford and Snow 2000: 616). That is, they seem to “naturally” lead to a given prognostic frame or solution to the identified problem. Which frames resonate where and when depends on the political opportunity structure frame setters operate within (see, e.g., Benford and Snow 2000: 619; Joachim 2003: 249). The political opportunity structure—including the cultural resonance of a particular frame—depends, *inter alia*, on the credibility and authority of the frame articulator (Benford and Snow 2000: 618–21). In the analysis we focus on two central frame articulators within interstate diplomacy and human rights advocacy: the UN Security Council and HRW. The UN Security Council, expressing the formal will of the UN, is among the most central political authorities on issues to do with conflict and justice in the world, whereas HRW is among the most vocal and respected human rights organizations and holds high moral authority in this field (see, e.g., de Waal 2003). They are, thus, both relevant actors to scrutinize for their framing efforts.²

The conceptual tools (i.e., the different frames) provided by framing theory are helpful in making sense of why state actors and human rights advocacy organizations turn to criminal law as a panacea for conflict-related sexual violence. In the analysis we demonstrate how their explicit narrative construction of victims

² There is a plethora of other NGOs concerned with conflict-related sexual violence, among them Amnesty International, Womens' Initiative for Gender Justice, Enough, the International Committee for the Red Cross, Women's Rights International, and Peace-Women (WILPF).

in need of rescue and the more subtle construction of perpetrators' individual autonomy constrain the prognostic frames available, leading "naturally" to an emphasis on criminal law.

Frame Articulators, Method and Material

We analyze and illustrate below how central actors in the fight against conflict-related sexual violence, the UN Security Council and HRW, identify, interpret and invoke grievances and causality to promote and cement the fight against impunity. In particular, our focus is on how they narrate conflict-related sexual violence in written materials in order to champion criminal prosecutions.

The UN Security Council has as its primary responsibility to maintain international peace and security. Resolutions by the Security Council are not only "formal expressions of the opinion or will of United Nations organs," (UN Security Council n.d.) they are also legally binding upon member states and arguably comprise the highest level of international political authority. When the UN Security Council adopted Resolution 1325 (UNSCR 1325) in 2000, this marked a "milestone" as it was the "first time that the UN had fully identified women as constructive agents of peace, security and post-conflict reconstruction" (Willett 2010: 142). The resolution stresses the importance of women's equal participation in conflict prevention, conflict resolution, peace-building, and peacekeeping, and urges member states to increase the participation of women and incorporate a gender perspective in all matters to do with conflict negotiation and peace building. The resolution is used as a central policy and advocacy tool nationally and internationally to secure and promote "gender equity in demobilization, disarmament and reintegration programs and peacekeeping operations" (Shepherd 2008: 384, see also Heathcote 2011). With the adoption of UNSCR 1325, the Security Council acknowledged that women's experiences and knowledge are important, and insisted that women's security and participation is critical to achieve and maintain international peace and security as such. The resolution is widely endorsed as an achievement brought forth "not only [by] member states, but, just as important, [by] networks of nongovernmental organizations" (Tryggestad 2009: 539). The Women, Peace and Security-agenda (WPS) that Resolution 1325 set out for the UN and its member states is founded on five pillars: protection, prevention, participation, relief, and recovery (Kirby and Shepherd 2016). Later, the UN Security Council has adopted seven additional resolutions under this agenda. However, as Kirby and Shepherd (2016: 379–80) underline, in "the WPS policy architecture ... there has been a narrowing of the agenda

around the issue of prevention of, and protection from, violence” (see also Engle 2014; Kirby 2015). It is pertinent to add that it is not violence as such that is the primary concern in the WPS agenda of the UN Security Council, but conflict-related *sexual violence*, illustrated by the simple fact that a majority of the subsequent WPS-resolutions are dedicated in full to addressing this issue.³ The first UN Security Council resolution to deal exclusively with conflict-related sexual violence was resolution 1820, adopted in 2008, followed by UNSCR 1888 in 2009, 1960 in 2010 and 2106 in 2013.

The second primary frame articulator in our analysis is HRW, a well-renowned, nonprofit, nongovernmental human rights organization. HRW “considers international justice—accountability for genocide, war crimes, and crimes against humanity—to be an essential element of building respect for human rights” and aim to “shape investigations, bring about arrest and cooperations, and advocate for effective justice mechanisms” in the face of such crimes (HRW n.d.). HRW’s advocacy in relation to conflict-related sexual violence forms part of these measures. Along with Amnesty International, HRW has advocated internationally for women’s human rights in general and for victims’ justice following mass sexual violence in various conflicts in particular, especially since the early 1990s. HRW was one of the first international NGOs to call for international criminal prosecutions in the midst of the conflict in the former Yugoslavia. Moreover, when official agencies failed to do so, the organization took measures to document widespread rape occurring in the Rwanda genocide, and put together an international coalition to push for criminal investigation of gender crimes when the Prosecutor at the international ad hoc tribunal for Rwanda did not include sex crimes charges in the opening case (see, e.g., Copelon 2000: 224–5). HRW, thus, has a particular place both in the history of the establishment of international criminal justice institutions, and, importantly, in the history—and continued consolidation—of international criminal prosecution of sex crimes (Glasius 2006; Haddad 2011; see also Copelon 2000; Joachim 2007). This role, in combination with HRW’s thorough field reports and method statements, entailing detailed documentation of human rights violations, makes the organization a particularly appropriate frame articulator to examine for this study.

³ The UN Security Council has adopted three broader resolutions within its WPS-agenda since 1325: 1889 (2009), 2122 (2013) and 2242 (2015), where sexual violence is referred to, but where the issues addressed are not restricted exclusively to sexual violence. In addition, UNSCR 2272 (2016) concerns “sexual abuse and exploitation” committed by UN Peacekeepers. The Security Council lists it under its Peacekeeping operations resolutions, and not as part of its WPS agenda.

Searching through HRW's online archive, we get 300 report hits for "sexual violence' AND conflict." For the purpose of this analysis, we understand sexual violence as conflict-related when committed in an armed conflict-setting by members of armed forces, police, rebels, or militias. After screening the reports, we found that 78 reports either have conflict-related sexual violence as their primary focus (16 reports), share a main focus on conflict-related sexual violence with other specified crimes and harms (12 reports), or include conflict-related sexual violence as one of its elaborated subject matters yet have a main emphasis on another topic (50 reports). These 78 reports form the basis of our analysis of HRW reporting on conflict-related sexual violence. The sexual violence reported includes forced nudity, rape, fellatio, forced marriages, sexual torture and mutilation, and forced pregnancies. Sixty of the 78 reports pertain to sub-Saharan African countries. The remaining reports either do not concern conflict-related sexual violence, or only mention sexual violence in its listing of crimes without catering to sexual violence elsewhere in the report.⁴ The earliest relevant report identified by our search was published in 2000,⁵ concerning ethnic cleansing in Kosovo. Combined, the reports add up to 6115 pages.⁶ The average page number of a report is 80 pages, with the shortest report at 20 pages, and the longest amounting to 191 pages.

We approached and coded all documents the same way. First, each author read the texts separately, each highlighting various sections, paragraphs, and testimonies according to coding categories focused on re-presentations of the violence, its victims, perpetrators, causes, and consequences as well as suggested solutions for different stakeholders. Next, we jointly and carefully re-read the highlighted parts of the documents, and extracted quotes and sections that illustrated what we found to be recurring themes and dominant re-presentations in the different categories across reports and resolutions for the analysis.

Both UN Security Council resolutions and human rights reports are instrumental documents; their purpose is a call for action. They also carry their distinct literary form. UN Security Council resolutions begin with a preamble that sets out the framework on which the resolution is based—including

⁴ The search was conducted on October 1, 2016.

⁵ Two of the 300 reports were published in 1999 but did not concern conflict-related sexual violence as here defined. All other reports were published from year 2000 onwards. Note that the older the reports, the less accurate the search engine. It is, however, the reports published from 2000 onwards that correspond to our focus on the cementing of criminal law as a key measure against conflict-related sexual violence in the first decades of the new millennium.

⁶ Excluding two short reports available only in unpaginated html format.

references to previous resolutions of the council. The main body of the text consists of numbered, operative phrases that decide the course of action the UN will take on the issues addressed as well as recommendations directed at member states and relevant actors. UN Security Council resolutions emphasize diagnostic and, especially, prognostic frames above motivational frames: As soft law instruments, they confer authority through legalism. Human rights organizations tend to rely more heavily on their moral authority (see Lohne 2017). To support their demands for particular responses to social harms and human rights violations, they prioritize the construction of mobilization frames. However, this distinction is one of emphasis and not exclusion; indeed, our analysis sheds light on the intersection of law and morality in global governance. The human rights report is an important element in how human rights NGOs engage in both information and accountability politics by generating credible and politically usable information to relevant stakeholders, and holding actors (usually states) accountable to previously stated policies and (human rights) commitments (Keck and Sikkink 1998). They are circulated in humanitarian, journalistic, and political contexts through press releases, social media, and personal networks with policy-makers on the assumption that such circulation induces change, by being put to use in direct pressure against states, or more subtly through fostering public awareness and consciousness-raising (Bake and Zöhrer 2017). Generally, HRW reports open with a summary of the report's findings and a set of recommendations directed at different political actors and stakeholders at the local, national, and international levels. Then follows a methodology section detailing terminology, number of interviews, sites of data collection, languages used, and terms under which the interviewees participated. A background section then summarizes the specific conflict in question. The substantial findings of the reports are then documented, often divided thematically in chapters, before a conclusion and a note of acknowledgements. In the latter section, the investigators involved in the data collection and in authoring the report are named together with reviewers in the organization and their position. The summary and main chapters rely extensively on personal testimony both to illustrate individual suffering and to represent broader claims concerning the specific nature, prevalence and/or brutality of human rights abuses (see also Dudai 2006: 783). In what follows, we approach these testimonies as data on how humanitarian politics and practice frame injustice and mobilize support for criminal justice resolutions to conflict-related sexual violence (see Fassin 2008). In doing so, we understand these texts as constitutive not only of knowledge, but

of the production of meaning more generally (Hall 1994 in Bake and Zöhrer 2017: 82).

End Impunity! How Conflict-Related Sexual Violence is Reduced to a Problem of Law

The analysis below is organized along the diagnostic, prognostic, and motivational frames employed by the UN Security Council through its resolutions and by HRW in its reports. By identifying the three levels of framing these actors employ, we seek to illustrate the fight impunity narrative at work and in construction, and the narrowing down of complexity that this framing process results in. As international authorities in the policy and advocacy fields that engage with and respond to conflict-related sexual violence, the UN Security Council and HRW are particularly relevant frame articulators to examine for this purpose.

Diagnosis: Unrestrained Opportunists and Tactical Commanders

In a collective framing process, any call for action “is contingent on identification of the source(s) of causality, blame, and/or culpable agents” (Benford and Snow 2000: 616). This is the diagnostic frame. We have noted how conflict-related sexual violence is usually understood as caused by opportunism, and/or committed because it is used as a weapon of war. In human rights reporting, these narratives are reflected first in portrayals of perpetrators through victims’ testimonies as “savages” (e.g., Mutua 2001)—as rebel soldiers who commit sexual violence because they can, and second, through the summaries that accompany the reports, where sexual violence is often described as a strategy or tactic of war. Consider for example the following excerpt from a HRW report on sexual violence in the Democratic Republic of the Congo. The excerpt is drawn from the testimony of a woman who was raped by a man she knew:

...he came in and asked me to help him make the bed. Then he closed the door and caught me. Then other soldiers came behind to shut the door so he could finish his business. That was the first and only time. He didn’t say anything to me after it happened. Before this time the commander had always said he would marry me after the training. I had told him he would have to give a dowry to my family ... he took me by force because he realized we would be leaving soon (HRW 2005b: 12).

Here we can see the opportunism narrative at work in the victim’s testimony: The perpetrator had been attracted to the victim for a period of time, but she set a costly condition for his interest. Thus, when he gets the opportunity to “take what he

wants,” that is what he does. War releases him from the norms and obligations he is otherwise bound by; the victim is raped because it carries no risk for the perpetrator to do so.

The above extract from a victim’s testimony is selected from numerous such accounts that are listed in every HRW report that deals with sexual violence. These victim testimonies portray perpetrators who take advantage of the lack of law and order, and who exploit the power their armed position provides them with. Often, the perpetrators ask for sex first, and then force themselves upon the victims when they do not comply. For the purpose of illustrating the opportunism narrative at work, we have chosen a quote in which the graphical details do not overshadow the causal narrative at work. Most accounts are, however, much more graphically detailed, which is an issue we return to when we identify and discuss the motivational framing below.

The sheer numbers of victim testimonies that give rise to portrayals of “savages” also illustrate the prevalence of conflict-related sexual violence in the conflict addressed. This frequency is then used to support the higher level narrative of rape as a weapon of war. When the Annual World Report of HRW was published in January 2016, the organization published a statement on Darfur by its Africa Director, which illustrates this point:

Sudan’s forces have frequently raped and terrorised civilians with impunity... The pattern, scale, and frequency of rape suggests that Sudan’s security forces have adopted this sickeningly cruel practice as a weapon of war (HRW 2016d).

In another report, this time accounting for sexual violence in the Sierra Leone conflict, HRW is both explicit and elaborate as to what strategic purpose sexual violence serves for the perpetrating parties:

Rape in wartime is an act of violence that targets sexuality. Moreover, conflict-related sexual violence serves a military and political strategy. The humiliation, pain, and fear inflicted by the perpetrators serve to dominate and degrade not only the individual victim but also her community. Combatants who rape in war often explicitly link their acts of sexual violence to this broader social degradation. The armed conflict in Sierra Leone was no exception. The rebels sought to dominate women and their communities by deliberately undermining cultural values and community relationships, destroying the ties that hold society together. Child combatants raped women who were old enough to be their grandmothers, rebels raped pregnant and breastfeeding mothers, and fathers were forced to watch their daughters being raped (HRW 2003:4).

It is through such descriptions of their violence that perpetrators are present in human rights reporting, either as barbaric foot soldiers or, by implication, as tactical commanders. This way of portraying perpetrators restrains perpetrators' imagined agency in two ways: First, the opportunity narrative is illustrated in victim quotes and exposes the perpetrating men's "true" nature, released because of the absence or breakdown of social order—they rape because they can. It is a narrative that implies a deterministic causal path facilitated by the chaos of war. The opportunism narrative is then subsumed under the overarching weapon of war-narrative in the HRW reports. Whereas the victim accounts suggest the perpetrators attacked them because they could, and for sexual self-gratification, HRW suggests that perpetrators had rational, conflict-related motives to do so—ignoring the sexual component of victim narratives for the benefit of tactical rationales. The crimes are emphasized as collective, which may imply limited agency on behalf of individual direct perpetrators. The latter extract referring to child soldiers' sexual violence also carries implications for the perceived responsibility of individual perpetrators.

On face value, the identification of direct perpetrators as lacking in personal agency might seem incompatible with a fight against impunity centered on individual criminal accountability. And in some respects, there is a tension there, which will be further elaborated in the final part of this article. However, in human rights reports' framing of what *causes* sexual war violence perpetration, it is the lack or failure of law and legal order itself—the culture of impunity—that is the source of the 'evil,' acted out by both "Soldiers Who Rape, [and] Commanders Who Condone" (HRW 2009b). It is the very lack of social structures and legal order which makes sexual violence a risk-free offence, which unleashes or creates its perpetrators.

The UN Security Council Resolutions offer a similar diagnostic frame, albeit in a less affective language. Illustrating the securitization of conflict-related sexual violence that made conflict-related sexual violence a subject of the Security Council in the first place, Resolution 1820 (2008) recognizes "the impact that sexual violence in conflict has on the maintenance of peace and security," and, moreover, consolidates the narrative of sexual violence as a "tactic of war." According to the preamble of 1820, sexual violence is used "as a tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group."

In the four Security Council Resolutions that deal exclusively with the issue there is a strong undertone that conflict-related sexual violence constitutes a threat to security, exacerbates conflict,

and impedes peace *if and when* it is used deliberately by conflict parties as a weapon. To illustrate, the first lines of the first operative paragraph in each of these four resolutions (UNSCR 1820 (2008), 1888 (2009), 1960 (2010), 2106 (2013)) read the same:

Stresses/Reaffirms 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/emphasizes* 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.

The term “deliberately” is removed from UNSC Resolutions 1960 and 2106. It is, however, noteworthy how the tactical or systematic use of sexual violence—that is, its use as a weapon—is elevated from sexual violence as an act per se. Also the phrase “widespread attack against civilian populations” implies a deliberate or military purpose. It is, thus, sexual violence *used as a weapon* that exacerbates conflict and hinders peace and security; it is sexual violence *used as a weapon* that needs to be responded to in order to maintain security. Sexual violence that does not serve an explicit tactical purpose is apparently less of a security threat.

Combined, HRW and the UN Security Council put both the opportunism narrative and the weapon of war-narrative to work in their problem definition. Having identified the “problem,” i.e., the diagnosis, as the lack of legal order and credible risks for both opportunists and superior strategists, the next framing task “involves the articulation of a proposed solution to the problem, or at least a plan of attack, and the strategies for carrying out the plan,” that is, a prognosis (Benford and Snow 2000: 616).

Prognosis: End Impunity!

Both HRW and the UN Security Council situate the problem—conflict-related sexual violence—as a problem emanating from the lack of criminal accountability. It is illustrated in this extract by HRW, presenting the organization’s take on sexual violence in Eastern DRC: “As long as the climate of impunity persists in eastern Congo, women and girls will continue to be targeted in the war within a war” (HRW 2002: 13). Throughout reports and resolutions the fight against conflict-related sexual violence is first and foremost framed as a fight against impunity, and increasingly so through the UN Security Council Resolutions. It is clear from both frame articulators that the fight against

impunity must be **fought** by a variety of stakeholders and governance actors at international, national and local levels. This way, the fight against impunity also becomes a vehicle for developing a global social order governed by the international rule of law (see Lake et al. 2016: 552; Lohne forthcoming). For example, almost all of the reports by HRW include recommendations detailing how different stakeholders can contribute to ensure perpetrators are brought to justice, in accordance with international legal standards. While the organization also emphasizes humanitarian assistance and additional transitional justice mechanism, the clearly prioritized measure is to strengthen the legal response to conflict-related sexual violence, breaking down their call for legal reform to the various stakeholders they deem responsible. In this manner, the “climate” (e.g., HRW 2008: 2; HRW 2016b: 28), “culture” (e.g., HRW 2010: 1; HRW 2016c: 3), “environment” (e.g., HRW 2016a: 42), or “entrenchment” (e.g., HRW 2005a; HRW 2016a: 1; HRW 2016b: 67) of impunity will start to untangle, thereby achieving justice for and ending conflict-related sexual violence. Throughout, criminal accountability is portrayed as serving several justice purposes: punishing those responsible, deterring potential perpetrators, and, not least, bringing redress to victims, as here, in a report on Cote D’Ivoire:

History has shown that chronic impunity has fed repeated episodes of violence in Côte d’Ivoire, underscoring that justice, in addition to giving victims the redress they deserve, is critical to achieving durable stability (HRW 2016c: 14).

A question may be asked about the extent to which the prognostic frame—to end impunity—becomes an end itself, rather than a means to an end. Consider for instance the way that victims’ needs are conceptualized in the following passage:

Victims of crimes of sexual violence have enormous needs for medical, psychological and social support; unless such needs are met, they have difficulty beginning and persevering in efforts to bring the perpetrators of the crimes to justice (HRW 2005a: 1).

In the excerpt, victims’ needs appear ancillary to bringing “perpetrators to justice.” The safeguarding of “enormous needs for medical, psychological, and social support” for victims of conflict-related sexual violence are not ends in and by themselves but rather instrumentalized in favor of a prosecutorial rationale.

UN Security Council Resolutions also situate the fight against impunity at the core of the fight against conflict-related sexual

violence. While emphasizing the need to “put an end to impunity” in the blueprint UNSCR 1325, the wording becomes increasingly forceful in the later and more specific resolutions. Concerning sexual violence, UNSCR 1325 “calls on all parties to take special measures to protect women and girls,” and emphasizes that states must “put an end to impunity and prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls.” Finally, the mother resolution, UNSCR 1325 (2000), “stresses the need to exclude these crimes where feasible from amnesty provisions.”

Resolution 1820 (2008) reaffirms earlier commitments to “eliminate all forms of violence against women and girls, including by ending impunity,” and addresses the fight against impunity in greater depth. In doing so, the Security Council specifically:

stresses the need for the exclusion of sexual 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 seeing sustainable peace, justice, truth, and national reconciliation.

No longer shall sexual violence “only” be excluded from amnesty provisions “where feasible.” It needs to be excluded *in order* to see sustainable peace, justice, truth, and national reconciliation (reiterated in UNSCR 2106 [2013]). As there is no direct prohibition of the use of amnesties in international law (McEvoy and Mallinder 2012), the exemption of “sexual crimes from amnesty provisions” is noteworthy. We take this to indicate the specific force that the fight against impunity has become for conflict-related sexual violence in particular.

The following year, the preamble of UNSCR 1888 (2009) notes “with concern that only limited numbers of perpetrators have been brought to justice” and further states that “ending impunity is essential if a society in conflict or recovering from conflict is to come to terms with past abuses committed against civilians affected by armed conflict and to prevent future such abuses.” Accordingly, it calls for “states to undertake comprehensive legal and judicial reforms, as appropriate, in conformity with international law, without delay and with a view to bringing perpetrators of sexual violence in conflicts to justice.”

In UNSCR 2106 (2013), the Security Council spends several operative phrases on commending the work and role of various

stakeholders, and in particular “notes that the fight against impunity for the most serious crimes of international concern committed against women and girls has been strengthened through the work of the ICC, ad hoc and mixed tribunals, as well as specialized chambers in national tribunals.” It is further recognized that “consistent and rigorous prosecution...are central to deterrence and prevention as is challenging the myths that sexual violence in armed conflict is a cultural phenomenon or an inevitable consequence of war or a lesser crime.” Again, the Security Council “stresses the need for the exclusion of sexual violence crimes from amnesty provisions” and reiterates

the need for civilian and military leaders, consistent with the principle of command responsibility, to demonstrate commitment and political will to prevent sexual violence and to combat impunity and enforce accountability, and that inaction can send a message that the incidence of sexual violence in conflicts is tolerated.

What we see is an incremental concern with the need to end impunity for conflict-related sexual violence at the international policy level, positing criminal law as the solution to what the UNSC now repeatedly has condemned as widespread and systematic sexual violence and as a tactic of war. The resolutions also reinforce the narrative of conflict-related sexual violence as a result of opportunism in the absence of “proper” social and legal norms. They do this, for example, through demanding that parties to armed conflict enforce “appropriate military disciplinary measures,” “[uphold] the principle of command responsibility,” and “[train] troops on the categorical prohibition of all forms of sexual violence” (UNSCR 1820 [2008]).

Having identified the solution, i.e., the prognosis, as binding and civilizing direct perpetrators through discipline and law, and posing a credible threat of prosecution for commanders who instigate or condone their troops’ violence in both UNSC Resolutions and HRW reports, the final frame—the motivational frame—presents the rationale, or motive, for engaging in collective action to secure that this solution is realized (Benford and Snow 2000: 617).

Motivation: The Politics of Pity

The motivational frame is the call for action, the construction of a worthy cause to mobilize for. This call “is contingent on identification of the source(s) of causality, blame, and/or culpable agents” (Benford and Snow 2000: 616). The figure of the victim,

whose intimate testimony of violence and suffering signifies the genre of human rights reporting, takes center stage in this part of the framing process. Whereas the consequences for victims are generically and implicitly included in UNSC Resolutions, in statements demanding, e.g., that victims are “treated with dignity throughout the justice process and are protected and receive redress for their suffering” (UNSCR 1888 [2009]), they are explicitly detailed in the HRW reports. This indicates the different emphasis among the frame articulators: here, how the motivational frame is primarily contingent on the efforts of advocacy actors such as HRW. The plights of victims are tied directly to the absence of criminal justice, as illustrated in the title of a HRW report: “Afraid and Forgotten—Lawlessness, Rape, and Impunity in Western Cote d’Ivoire” (HRW 2010). The title refers to an imagery of helpless victims on the one hand—and the cause of and solution to their misery on the other, reiterating the diagnostic frame’s emphasis on the lack of legal order. There is a wealth of studies on how social movements identify and construct the victims of a given injustice and convert their victimization into a call for action (e.g., Lemaitre and Sandvik 2015; Seoighe 2016). This humanitarian mobilization frame is based on the assumption that *knowing* about suffering induces action (Wilson and Brown 2009). Here, we argue that HRW’s motivational frame for the fight against impunity for conflict-related sexual violence creates and evokes particular imageries of victims and suffering that tend to reduce victims to a spectacle of suffering. Building on critical insights from humanitarianism studies, how is this “politics of pity” (Boltanski 1999:7) put to work by HRW in their work against conflict-related sexual violence?

To illustrate how HRW contributes to a particular diagnostic framing, we used victim testimonies in the organization’s reports where the graphical details of the violence did not overshadow the opportunism narrative at work. It is a reflection not only of the violence suffered, but also of the genre, that among all the testimonies on sexual violence, testimonies that do not account for the violence in excruciating detail are few and far between. The testimonies used in these reports tend to be so explicit and graphical in their description of violence that the opportunism narrative almost drowns. Opportunism is still very much present, also through the violence described, as the materiality of the violence tells a particular story of sadistic opportunism.⁷ To avoid reproducing the very victim imageries we find problematic, we

⁷ Compared to the re-presentation of rape as a weapon of war, as a deliberate tactic, the opportunism narrative remains still a subordinated conceptualization of conflict-related sexual violence in the reports as HRW emphasizes a deliberate *use* of sexual violence for greater, conflict-related gains, beyond individual perpetrators’ sexual gratification.

have chosen not to illustrate by the use of examples what this spectacle of suffering looks like. However, the examples are not hard to find.⁸ The reports follow the same script, moving from general claims about how widespread the sexual violence is or how many victims are expectedly targeted—to testimonies that in abundance illustrate the violence and the victims' suffering both during the offence and afterwards. These testimonies involve detailed descriptions of, e.g., multiple perpetrator rapes, of daughters being sexually molested, of blood, urine, and feces, of how objects are forced into victims' vaginas, and limbs cut off. The testimonies are listed and detailed on page after page in reports drawing their titles from the same testimonies, such as "My heart is cut" (HRW 2007) and "I just sit and wait to die" (HRW 2016b). In order to produce outrage, there has emerged a discourse on "war/rape/porn" (Sjöberg 2015) where activists try "to outdo each other with the most barbaric gang-rape scenario" (Stearns 2009). Survivor testimonies of this kind have been characterized as constituting pornography of violence (Hunt 2008 in Baaz and Stern 2013). Through a dual representation of "otherness"—of perpetrators as violent subjectivities rendered barbarian, bizarre, and inexplicable (Baaz and Stern 2013), and of victims as broken, passive embodiments of someone else's inhumanity, as bodies in need of rescue—the reader, i.e., the witness, of such suffering becomes a moral observer, compelled to action. While we recognize the growing impatience with the continuation of conflict-related sexual violence in many conflicts and the "need to do something," our emphasis is on how the framing of human suffering produces particular subjectivities of criminality and victimhood, and which are easily inscribed in colonial logics of barbarism and helplessness.

As evidenced by the mobilization to fight impunity, spectacular testimonies have been highly successful. Critical humanitarian scholars have, however, pointed to how these imageries of violence and suffering are anchored on a tripolar metaphor of "savages-victims-saviors" (Mutua 2001). They hold the process of "consuming" distant suffering to confirm our own humanitarian character through a relationship fundamentally characterized by distance and dependency (Boltanski 1999; Chouliaraki 2013; Fassin 2012). The competition for attention among actors within and across different "noble causes" continuously pushes the boundaries for what kinds of stories it is necessary to tell to move

⁸ For interested readers, HRW (2003:28-49; 2007:21-51, 61-73, 76-100; 2009a; 2014; 2016b) provides examples of the kind of testimonies we address in this section. Any report on the topic of sexual violence will include numerous testimonies of the kind here addressed.

people from the couch to the challenge. In HRW reports, these survivor testimonies, filled with despair and hopelessness, are followed by the prognosis—that is, the organization’s calls to end impunity for these forms of violence, to alleviate victims’ sufferings, and to, presumably, bring some sort of catharsis through the criminal legal system and reparations.

In the framing process, the UN Security Council Resolutions diagnose and define the problem (its cause) and focus on what are the necessary solutions to address conflict-related sexual violence as it has been defined. HRW reports are more focused on and detailed in their re-presentations of the violence, its victims and their sufferings, and give much attention to victims’ accounts as part of their problem formulation, followed by demands for justice. Thus, HRW reports emphasize the construction of a strong motivational frame. In combination, the frame articulators complement each other’s emphases and together construct a strong, simple, and coherent narrative about conflict-related sexual violence, bringing the framing process full circle: each frame continuously reinforces the next. The three-pronged framing process is not, however, as streamlined or chronologically ordered as the above analysis suggest, and we recognize the irony in “simplifying” reality in parallel ways to that which we critique in this article. Importantly, the motivational frame is not simply added in the end, with frame articulators inventing the victims in order to pursue their prognostic goal. Quite the contrary, human suffering is what drives the moral imperative to intervene in the first place for both organizations. The frames work in parallel and mutually reinforcing ways, building on each other and the frame articulators’ respective authorities, incrementally reinforcing one another.

In the discussion that follows, we discuss how this framing process—and its preference for and elevation of criminal law solutions—imbues criminal prosecutions with expectations and capacities that are beyond the scope of criminal law.

Discussion: A Troublesome Panacea

The fight against impunity for conflict-related sexual violence has taken hold of powerful actors in the international community. Throughout the past few decades, the approach has harnessed significant discursive and material power. Although HRW and the UN Security Council have different agendas and motivations, their diagnosis and prognosis of the issues at stake overlap to the extent that they reinforce and consolidate the end impunity-approach as *the* solution to the problem of conflict-related sexual

violence. In this framing process, these entities are dependent on the construction of simple narratives to get their message and call for action across to wider audiences and constituencies (see Autesserre 2012). When these narratives involve bodily harm to individuals deemed particularly vulnerable, and responsibility can be invoked through a clear and short causal chain, the narratives seem to be especially effective (Keck and Sikkink 1998). The narrowing down of complexity thus serves important purposes, in that it brings with it opportunities for action in a field within which “the urge to do something” has gained a particular stronghold. The analysis illustrates how the diagnostic, prognostic and motivational framing of conflict-related sexual violence constructs and reinforces criminal law as its proper response. The diagnostic framing emphasizes the tactical use of sexual violence as an illegitimate form of warfare, as well as the opportunities provided by war for individual perpetrators. Both of these diagnoses are presented as emanating from a lack of legal order and law enforcement. The prognosis is further accentuated by the motivational framing that re-presents victims and suffering as in need of—foremost—legal redress and criminal justice. This strong emphasis on criminal law solutions arguably constructs criminal prosecutions as a “master frame,” i.e., as a cognitive structure “limiting framing activity because they have constructed a language and a repertoire of action that movements must relate to whether they want to or not” (Sandberg 2006: 212). This means that its authority not only enables political and legal action, but may also, in turn, restrain perceived political maneuverability. Overall, we hold the force of the fight impunity-approach to be reflective of liberal legalism, and of a strong faith in the ability of law in general—and criminal law in particular—to transform people and societies. In the following we take issue with the deterrence rationale embedded in much of this thinking. Moreover, we look at how legalism expressed through criminal law and the fight against impunity “juridify” our understanding of the complexity that conflict-related sexual violence is.

Deterrent Convictions

In the framing process analyzed above, criminal law is constructed as a means both to deter potential perpetrators and to provide justice for victims. That is, the “need to do something” is catered to by mobilization for criminal prosecutions contingent on promises of criminal law’s ability both to end sexual violence and alleviate the suffering of those subjected to it. Such campaigning, we hold, requires its ideal victims and perpetrators, which frame articulators evoke to push their solution to the

horror they respond to. As regards the Rape as a weapon of war-narrative, Baaz and Stern (2013: 56) claim that this conceptualization of sexual violence in conflict is made comprehensible through criminal law by identifying a “culpable, punishable subject.” Instead of addressing root causes of war/violence/rape, criminal law is offered as a solution that will ensure that victims’ “plight will be heard and their attackers punished [and that] future rapes can be heeded” (Baaz and Stern 2013: 59). The rape as opportunism-narrative similarly supports criminal prosecution because it sees the law as disciplining. Indeed, as the diagnostic framing elucidates, it is the *absence* of criminal accountability—impunity—that in-and-by-itself explains the occurrence of conflict-related sexual violence, either by not punishing rational commanders or by unleashing perpetrators’ violent “true self.” Reflecting zero/sum-game thinking, the mere *presence* of criminal accountability for conflict-related sexual violence will accordingly achieve its avoidance. Criminal law’s constitutive project is thus to tame and civilize both “idle” and “instrumental” evil—both soldiers who rape, and commanders who condone or order such offenses by their troops.

This framing process relies on a deterrence rationale for ending impunity. That is, a consequentialist argument for criminal prosecution that suggests potential perpetrators will refrain from engaging in sexual violence because of the risk of penal sanctions. While we recognize the role of other justifications and rationalities embedded in prosecuting conflict-related sexual violence, especially retribution, but also “truth-finding”, and expressivism (Halley 2008; Kirby 2015), what we take issue with here is how the deterrent justification is premised on the politically popular assumption that deterrence actually works (see also Hoover-Green 2014). Deterrent rationalities, whether applied on domestic crimes or international crimes, presume rational actors that calculate risks of detection and/or prosecution against the benefits of crime (Drumbl 2007). Yet in relation to chaotic war situations and collective offenses, no matter how institutionalized and organized the violence, to what extent is it possible to speak of individual, let alone calculated, rational—and moral—agency on the ground? Micro-sociological, criminological, and social-psychological research into war crimes and excessive violence emphasize situational influences—including peer pressures, orders, existential fears, extensive dehumanization processes, fatigue, widespread propaganda and/or intoxication—in order to explain this human potential for violent profusion in conflict situations (e.g., Browning 1998; Smeulers 2008). Collins (2008), for example, uses the concept of “forward panic” to describe an emotional state that sustains a frenzy of excessive and non-utilitarian violence—an altered state of consciousness that can make ordinary people “go crazy” under

the extreme conditions that war is. The point here is to emphasize the complexity of (il)logics and (ir)rationalities that can transcribe into violence and which are not fully captured by the two dominant causal narratives that fuel the fight against impunity. The lived reality of war may be far from the deliberative, disciplined and strategic representations of military institutions which the weapon of war-narrative presupposes. Not only do the “messy realities of [war] trouble notions of rape in war as a strategic weapon by attending to the workings of cycles of violence” (Baaz and Stern 2013: 64), but they fundamentally unsettle the logic of violence in war as subject to an external and formal rationality of cost–benefit analysis. As for commanders, they may prioritize winning the war over evading the risk of prosecution. If sexual violence is perceived as tactically, ideologically, or politically smart, the threat of prosecution may be perceived as a risk worth taking because greater issues are at stake (see, e.g., Cronin-Furman 2013). Applying a theory of rational choice in support of the deterrent effects of punishment is questionable even for ordinary crimes. It does not become less so for collective, international crimes, for which the situational pressures to participate may be much stronger and, indeed, existential. As Kirby (2015: 458) comments, “the primary aim of ending impunity fails to fully reckon with the lack of evidence for strong deterrence effects.” Without undermining the important effects that prosecutions can provide, it should at least give pause for thought that a theory that carries such limited empirical weight has induced so much political attention and mobilized such vast resources.

Juridified Complexities

The strong footing of deterrence as justification and rationale for criminal prosecutions of conflict-related sexual violence can partly be explained by the more general embrace of liberal legalism as ideology and practice in international policy after the end of the Cold War. It is a world view that not only hold “moral conduct to be a matter of rule following, and moral relationships to consist of duties and rights determined by rules,” (Shklar 1964:1) but that also substantially privileges individual autonomy—and responsibility (Fletcher 2004:1031). This means that the individual has increasingly become a subject of international law, with corresponding individual rights and responsibilities. It has also substantially juridified our understanding of social phenomena: law (particularly rights-claiming) has become the preferred interpretative tool through which to frame global grievances. As concerns conflict-related sexual violence, what has materialized is a message that to fight sexual violence we *must* fight impunity, to

the extent that it is *only* through ending impunity we can address sexual violence. Prevention has become prosecution; fighting conflict-related sexual violence has become fighting impunity.

By framing conflict-related sexual violence as first and foremost a criminal—and individualized—act, the multilayered, complex, social, and collective phenomenon of harm that it also is, is increasingly peeled away from understandings of the problem. This narrative, or frame, about conflict-related sexual violence and its solution resonates and gains support *because* of its simplicity. It reduces sexual violence into clear-cut categories of rational, individual and evil perpetrators and powerless, broken victims—ideal causality on the one hand, massive suffering in need of legal catharsis on the other; in short, to a problem against which something can be done. The cost of that reduction is that the phenomenological understanding is largely separated from its enabling social structures, including the collective out of which the phenomenon arises (see also Engle 2015; Grewal 2015: 159). The emphasis of the Security Council on conflict-related sexual violence similarly reduces the wider participatory purposes of the WPS agenda to a question of women’s victimization that is primarily to be solved through criminal law (see also Lemaitre and Sandvik 2014). The holistic approach of the other resolutions—addressing structural and participatory inequality—may in the long term have greater impact on women’s lives and risks of being subjected to conflict-related sexual violence than do criminal prosecution (see also Kirby and Shepherd 2016).

Yet, some frames are more easily communicated than are others. As observed by Keck and Sikkink (1998: 27), “problems whose causes can be assigned to the deliberate (intentional) actions of identifiable individuals are amenable to advocacy network strategies in ways that problems whose causes are irredeemably structural are not.” This can explain why the UNHCR Special Envoy Angelina Jolie, who hosted the Global summit in 2014, reiterated her focus on criminal prosecution in a speech in March 2017:

... of course education is essential, raising awareness is important, and building respect for women across our societies is long overdue. But sadly none of these things alone can really protect a woman from rape in a warzone today. *Only the law can*. Only properly trained armed forces can. Only the credible prospect that those who rape will face justice can deter those who commit or commission these brutal crimes as part of a war strategy (Jolie 2017).

Rather than understanding and addressing conflict-related sexual violence as a complex phenomenon with its root causes

both in the frenzy of war and in structural inequalities related to governance, economic, gendered and global inequalities, the phenomenon is reduced to a matter that law alone will solve. Criminal prosecution is no longer presented as part of a preventive measures toolbox, but as the toolbox in and of itself. This particular manifestation of liberal legalism provides a structuring of how we understand complex social phenomena; it is a way to categorize life and lived experiences. Yet we risk forgetting that this structuring of reality *is not* reality, it is only a perspective through which we grasp and address it. Reality—complex, contradictory, nuanced—cannot be captured by law (McEvoy 2007).

Conclusion

In the closing statement following the *Global Summit to End Sexual Violence in Conflict*, the Chair stated that it is time to “shatter the culture of impunity,” and signaled a joint global message “that the era of impunity for wartime sexual violence was over, sending fear into the hearts of would-be perpetrators” (Hague and Jolie 2014). It is an epitomizing example both of the discourse in the field and of how political and advocacy actors jointly cement criminal law as a panacea to conflict-related sexual violence. Our article should be read as an interpretation of this self-energizing process. Through the example of two central frame articulators, the foregoing analysis has unpacked the narrative authority of the end impunity mantra that has become a trademark in international policy on conflict-related sexual violence.

When we take issue with this response to conflict-related sexual violence, it is because we want to stimulate critical reflection on the complexity that is conflict-related sexual violence—factually, politically, and legally. The emphasis on ending impunity makes it possible for politicians and governments to show their vigor, to count their efforts and check boxes for each successful prosecution. Politicians, lawyers and NGOs act *as if* international criminal law can fulfill the expectations its proponents claim it to have, *as if* it is a solution, *as if* it deters future crime, and *as if* it is a necessary precondition for peace, justice, and reconciliation. Our project has been to recognize and foster awareness about this reduction produced in and by the fight against impunity, a reduction that is incrementally cultivated by its success. We have sought to do so by analyzing key documents produced by the UN Security Council and HRW—two central frame articulators—identifying herein the diagnostic, motivational and prognostic framing and the necessarily simplifying framing process that

these actors take part in to put weight behind demands for criminal prosecutions.

It is not our intention to question the unsilencing and recognition of sexual violence that international criminal law and its campaigners have contributed to. As noted by others before us, “‘letting go’ of legalism” does not entail discarding its advantages, nor its achievements (McEvoy 2007: 440). What we ask for, is a more precise recognition of what criminal law can and cannot do with conflict-related sexual violence. The problem with the narrative authority of the end impunity mantra is not that ending impunity is irrelevant, but that it is not the solution its proponents claim it to be. The construction of criminal law as a panacea for conflict-related sexual violence overestimates criminal law’s ability to transform individuals and societies, and distracts attention away from broader social and structural conditions that foster and allow for sexual violence to take place. Paralleling criticism of domestic carceral feminism, we see a need for greater attention to the political, economic and gendered inequalities and structures within which sexual violence take place. Conflict-related sexual violence is indeed part of a repertoire of illegitimate warfare, *and* a reaction to the chaotic, desperate and demoralizing experiences that war brings with it, but it is also the result of gendered hierarchies, subordination, and poverty, and a continuum of violence that transgresses war and peace. No matter the intention to make the incredible credible through law, the narrative authority of ending impunity for conflict-related sexual violence has made a master frame out of criminal law that constrain our understanding of the phenomena in question. It is important to recognize the narrative processes at work that keep favoring criminal law—not because criminal law is inherently bad—but because conflict-related sexual violence is not a problem that can be solved as such in the court room.

Moreover, at a time when international criminal justice arguably faces growing challenges to its legitimacy, the continued force of the fight against impunity for conflict-related sexual violence points to an interesting paradox. Whilst a setback to the international criminal justice project can provide an opportunity to advocate and implement alternative measures and responses to complex social problems, it also carries the risk that these same problems are pushed back into silence for the lack of simple and communicable diagnostic and prognostic frames.

This article identifies and problematizes the frames that construct the fight against conflict-related sexual violence as a fight against impunity. In doing so, our aim is to provoke further research about the purposes, meanings, and effects of current and future responses to conflict-related sexual violence, and,

particularly, the role of criminal law herein. For example, while we have unpacked how conflict-related sexual violence is reduced to a *problem of law* through a framing process that presents criminal law as its primary solution, we also recognize the particular instrumental capacities of conflict-related sexual violence representations as a *tool for law*. The fight against impunity for conflict-related sexual violence has produced particularly apt imageries of victims and perpetrators that may serve the international criminal justice project itself, in part contributing to legitimate its current institutions and practices. In light of the critical concerns we have raised in this article about the promises and realities of international criminal law as a response to conflict-related sexual violence, we believe this raises difficult questions about what are the means and what are the ends in the continuous fight against impunity for conflict-related sexual violence. If ending impunity prevails and perseveres as the ultimately meaningful response to conflict-related sexual violence despite criminal law's limited merits as a preventive tool, it is pertinent to ask if the primary aim of this fight is to prevent conflict-related sexual violence, or rather, to strengthen the moral legitimacy of international criminal justice.

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