

Lost in translation: UN responses to sexual violence against men and boys in situations of armed conflict

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Abstract

This article considers the UN responses to sexual violence against men and boys in armed conflict – in particular, steps taken towards understanding this problem, measures of prevention and protection, and consequences for accused perpetrators. In so doing, the article assesses the state of knowledge and work in the field of male sexual violence and notes that although there have been many positive developments, the issue is not always moving in the right direction.

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In recent years, the attention paid to sexual violence in armed conflict has reached unprecedented levels. Barely a week goes by without a story in the news media or a report of a non-governmental organization documenting the problem. The subject has also pervaded all areas of the UN, from the work of the Security Council to the Special Representatives of the Secretary-General and from the World Health Organization to the *ad hoc* international criminal tribunals. Such is the impact of the problem on the mandates of various UN entities that an inter-agency initiative,

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‘Stop Rape Now: UN Action Against Sexual Violence in Conflict’, has been established to, *inter alia*, co-ordinate UN responses to the problem.¹

The most high-profile of recent UN advances in the area was the passage of Security Council Resolution 1820 (SC Res 1820).² In that resolution the Security Council ‘demand[ed] the immediate and complete cessation by all parties to armed conflict of all acts of sexual violence against civilians with immediate effect’ and ‘request[ed] the Secretary-General to submit a report to the Council ... on the implementation of this resolution in the context of situations which are on the agenda of the Council’.³ It also gave the imprimatur of the Security Council to tackling the problem.

That men and boys may be victims of sexual violence in times of armed conflict (as well as in times of peace) is increasingly recognized.⁴ A front-page New York Times article on male rape in the armed conflict in the Democratic Republic of the Congo was widely read;⁵ the infamous Abu Ghraib photos have entered popular culture. UN reports on sexual violence in armed conflict are now attuned to the problem and sometimes carry a sentence along the lines that ‘men and boys are also subject to sexual violence’.⁶ However, such a sentence, if indeed present, is usually the sole reference to men and boys in any report. Accordingly, this brief recognition has not translated into concrete efforts on behalf of male victims, be they mechanisms for raising awareness of the problem, focused research agendas on the issue, or strategies for prevention.

In its concept paper circulated in preparation for the Security Council debate that gave rise to SC Res 1820, the United States set out three principal themes for discussion: first, understanding the problem of sexual violence in situations of armed conflict; second, measures of prevention and protection; and third, consequences for accused perpetrators.⁷ This article considers these themes in the particular context of sexual violence against men and boys in armed conflicts. In so doing, the article assesses the state of knowledge and work in the field of

- 1 The initiative comprises twelve UN entities: DPA, DPKO, OCHA, OHCHR, UNAIDS, UNDP, UNFPA, UNHCR, UNICEF, UNIFEM, WFP and WHO, see www.stoprapenow.org (last consultation 15 January 2010).
- 2 The UN Secretary-General has described the Resolution as setting an ‘important precedent by recognizing the links between sexual violence and sustainable peace and security’, S/PV.6195, 30 September 2009, p. 5, see <http://www.undemocracy.com/S-PV-6195.pdf> (last consultation 15 January 2010). The Permanent Representative of the UK to the UN has described it as ‘a landmark step forward’: S/PV.6195, p. 9.
- 3 S/RES/1820, 2008, paras 2 and 15, see <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/391/44/PDF/N0839144.pdf?OpenElement> (last consultation 15 January 2010).
- 4 That children may be subjected to sexual violence is well-known. On the children/boys distinction, see paragraph ‘What of boys?’, below.
- 5 Jeffrey Gettleman, ‘Symbol of Unhealed Congo: Male Rape Victims’, in *New York Times*, 5 August 2009.
- 6 See e.g. *Women, Peace and Security: Study submitted by the Secretary-General pursuant to Security Council Resolution 1325 (2000)*, United Nations, 2002, p. 16, para. 59, see <http://www.un.org/womenwatch/daw/public/eWPS.pdf> (last consultation 15 January 2010).
- 7 Annex to the letter dated 4 June 2008 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General, S/2008/364, 4 June 2008, pp. 3–4.

male sexual violence and notes that although there have been many positive developments, the issue is not always moving in the right direction.

Understanding

Understanding that there is a problem

For so long, sexual violence against men and boys in times of armed conflict has been a neglected area. Only in the last decade or so has any considered scholarly attention been paid to the subject.⁸ Although the conflict in the former Yugoslavia, which gave rise to renewed attention to female sexual violence, was also the scene of so much sexual violence against men and boys, the attention paid to male sexual violence still languishes behind.

In a conference paper of 2002, Augusta DelZotto and Adam Jones noted that of 4076 non-governmental organizations that worked in the area of 'war rape and other forms of political sexual violence', a mere 3% mentioned sexual violence against men and boys 'in their programs and informational literature'.⁹ Writing one year earlier, Dubravka Zarkov noted of the conflict in the former Yugoslavia that:

The international media, so fervent in reporting rapes of women, shied away from the topic of sexually assaulted men. Pictures of the starved bodies of Muslim men from the camps run by Bosnian Serb forces were on the front pages of international magazines, as were photos of tearful, raped women. But nobody published a photo of a raped man. The national press within former Yugoslavia offered a similar picture. Rapes of women were newsworthy; rapes of men were not.¹⁰

8 Sporadic references may be found in earlier work; however, detailed, focused, analyses only began to emerge in the 2000s. See Dubravka Zarkov, 'The Body of the Other Man: Sexual Violence and the Construction of Masculinity, Sexuality and Ethnicity in Croatian Media', in Moser and Clark (eds), *Victims, Perpetrators or Actors? Gender, Armed Conflict and Political Violence*, 2001, p. 72; Augusta DelZotto and Adam Jones, 'Male-on-Male Sexual Violence in Wartime: Human Rights' Last Taboo?', Paper presented to the Annual Convention of the International Studies Association, 23–27 March 2002, available at <http://adamjones.freeservers.com/malerape.htm> (last consultation 15 January 2010); Sandesh Sivakumaran, 'Male/Male Rape and the "Taint" of Homosexuality', in *Human Rights Quarterly* 1274, 2005, vol. 27; R. Charli Carpenter, 'Recognizing Gender-Based Violence Against Civilian Men and Boys in Conflict Situations', in *Security Dialogue*, 2006, Vol. 37, No. 1, pp. 83–103; S. Sivakumaran, 'Sexual Violence against Men in Armed Conflict', 2007, Vol. 18, No. 2, in *European Journal of International Law*, pp. 253–276; Wynne Russell, 'Sexual violence against men and boys', in *Forced Migration Review*, 2007, No. 27, pp. 22–23; Dustin A. Lewis, 'Unrecognized Victims: Sexual Violence against Men in Conflict Settings under International Law', in *Wisconsin Journal of International Law*, 2009, Vol. 27, No. 1, pp. 1–49. For an early account, see Adam Jones, 'Gender and Ethnic Conflict in ex-Yugoslavia', in *Ethnic and Racial Studies*, 1994, Vol. 17, No. 1, pp. 115–134.

9 A. DelZotto and A. Jones, *ibid.*

10 D. Zarkov, above note 8.

It is of even more recent vintage that the problem of male sexual violence has been taken up in various UN fora. However, today, its existence has been recognized at the highest of levels, with discussion of male sexual violence entering the corridors, meeting rooms, and chambers of the UN. To take some examples:

- 1 In the Security Council debate giving rise to SC Res 1820, the Permanent Representative of Slovenia to the United Nations, speaking on behalf of the European Union, stated that '[s]exual and gender-based violence is an area of particular concern to women and girls in armed conflict situations, although we know now that also boys and men may be subjected to such violence and to sexual torture.'¹¹
- 2 One year later, during the debate at which the Report of the Secretary-General pursuant to SC Res 1820 was being considered, the delegate of Mexico spoke of 'even seeing a trend towards the use of sexual violence against men.'¹²
- 3 In a General Assembly debate on humanitarian assistance, the delegate of Norway expressed her country's concern 'about the sexual and gender-based violence that each year destroys the lives of thousands of women and girls, as well as men and boys.'¹³
- 4 At a similar debate before the Economic and Social Council, the Assistant High Commissioner of UNHCR commented upon the reports of sexual violence against men and boys but noted that these 'were rarer [than those of women and girls] because of shame or fear of stigmatization.'¹⁴
- 5 The inter-agency initiative 'Stop Rape Now' has noted that '[t]hough women and girls are the primary targets of rape, men and boys may also be targeted'.¹⁵
- 6 For its part, the World Health Organisation has noted that insufficient attention is paid to male on male violence.¹⁶
- 7 In 2008, the UN Office for the Co-ordination of Humanitarian Affairs (OCHA) convened an expert group meeting on assessing the nature, scope, and motivation for sexual violence against men and boys in armed conflict. This was considered one of 'two priority topics for research regarding gender-based violence in conflict settings'.¹⁷

There is, then, some understanding at the level of the UN that sexual violence against men and boys in times of armed conflict is a problem. What of the understanding of the problem itself?

11 Security Council, 5916th Meeting, 19 June 2008, S/PV.5916, p. 33 (Ms Stiglic, Slovenia).

12 Security Council, 6180th Meeting, 7 August 2009, S/PV.6180, p. 14 (Mr Heller, Mexico).

13 General Assembly, Official Records, 19 November 2007, A/62/PV.53, p. 24 (Mrs Juul, Norway).

14 Economic and Social Council, Substantive Session of 2006, Humanitarian Affairs Segment, 17 July 2006, E/2006/SR.28, p. 3 (Ms Feller).

15 Stop Rape Now: UN Action Against Sexual Violence in Conflict.

16 WHO, *Preventing violence and reducing its impact: How development agencies can help*, WHO, Geneva, 2008, p. 21.

17 Report of the Secretary-General, 'Intensification of efforts to eliminate all forms of violence against women', A/64/151, 17 July 2009, para. 38.

Understanding of the problem

As with sexual violence in armed conflict more broadly, much about male sexual violence remains unknown. As Elisabeth Wood has observed in the context of sexual violence generally, '[s]ome simple hypotheses do not explain the puzzling variation in the extent and form of sexual violence in war: sexual violence varies in prevalence and form across civil wars as well as inter-state wars, across ethnic wars as well as non-ethnic, and across secessionist conflicts. The variation has not been adequately explained in the literature'.¹⁸ This is no less true of male sexual violence.

Data

Numbers are always problematic. Often sought – for example SC Res 1820 calls on the Secretary-General to provide an 'analysis of the prevalence and trends of sexual violence in situations of armed conflict'¹⁹ – they are extremely difficult to gauge, not least due to underreporting. Given the disruption caused by armed conflict, it may be particularly difficult to ascertain precise figures.²⁰ Accordingly, much of the available data tends to be anecdotal in nature. For example, recent reports from the Democratic Republic of the Congo suggest that men and boys comprise some 4–10% of the total number of victims of sexual violence who seek medical treatment.²¹ In the Central African Republic, the non-governmental organization 'L'Organisation pour la Compassion et le Développement des Familles en Détresse' documented 800 cases of female rape and 140 cases of male rape.²²

Prevalence studies are occasionally conducted. In the armed conflict in the former Yugoslavia, it has been reported that, '[o]f 6000 concentration camp victims in the Sarajevo Canton, 5000 were men and 80% of them had reportedly been raped.'²³ In Liberia, a survey of 1666 adults found that 32.6% of male combatants (118 of 367) experienced sexual violence while 16.5% (57 of 360) were forced to be sexual servants.²⁴

Even when we are in possession of figures, caution should be taken. Methodologies may be unknown, or may vary between studies, thus decreasing

18 Elisabeth Jean Wood, 'Variation in Sexual Violence during War', in *Politics and Society*, 2006, Vol. 34, No. 3, pp. 307–341.

19 SC Res 1820, operative para. 15, above note 3.

20 E. J. Wood, above note 18, pp. 318–320.

21 Chris McGreal, 'Hundreds of thousands of women raped for being on the wrong side', in *The Guardian*, 12 November 2007 (4%); Médecins Sans Frontières, *Shattered Lives: Immediate medical care vital for sexual violence victims*, March 2009, p. 11 (6%); J. Gettleman, above note 5 (10%).

22 IRIN News, 'Central African Republic: Unending Misery of Rape Victims', Bangui, 19 August 2005.

23 Željka Mudrovčić, 'Sexual and Gender-Based Violence in Post-Conflict Regions: The Bosnia and Herzegovina Case' in *The Impact of Armed Conflict on Women and Girls: A Consultative Meeting on Mainstreaming Gender in Areas of Conflict and Reconstruction*, UNFPA, 2001, pp. 60–76 (see p. 64).

24 Kirsten Johnson *et al.*, 'Association of Combatant Status and Sexual Violence with Health and Mental Health Outcomes in Postconflict Liberia', in *Journal of the American Medical Association*, 2008, Vol. 300, No. 6, pp. 676–690.

the potential for comparison. Studies may be selective, whether consciously or unconsciously. They may have been carried out at a period in time too close to the armed conflict such that victims may be reluctant to come forward, or too far removed such that affected persons are no longer around to tell their story. Bearing in mind all the caveats that have to be entered in relation to figures, numbers nevertheless give a sense of the scale of the issue.

A recent issue?

The passages from the delegates' speeches quoted above may be read as suggesting that the practice of male sexual violence is something new. Thus the representative of Slovenia spoke of knowing *now* of male sexual violence, while the representative of Mexico talked of witnessing a trend.²⁵ If the passages are read in this manner, the suggestion is that the speakers understood the subject to be new and unusual. Yet this could not be further from the truth.

The practice has been documented as dating back from almost time immemorial. Male sexual violence, in the form of castration, was carried out by 'Chinese, Persian, Amalekite, Egyptian, and Norse armies'.²⁶ Sexual violence was committed during the Spanish civil war and during the 'rape of Nanking'.²⁷ A background report of OCHA lists some 25 conflicts in the last decade alone, in which male sexual violence has been documented as taking place.²⁸

What is true is that, today, greater attention is being paid to the subject. For example, stories of male sexual violence increasingly appear in the news media. To take the period 2007–9 alone, there have been reports of male sexual violence, primarily rape and sexual mutilation, in the armed conflicts in the Central African Republic,²⁹ Chechnya,³⁰ Democratic Republic of the Congo,³¹ Iraq³² and Sri Lanka³³;

25 See above notes 11 and 12.

26 Joshua S. Goldstein, *War and Gender: How Gender Shapes the War System and Vice Versa*, Cambridge University Press, 2001, 357 pp.

27 Thomas and Thomas in Richard A. Falk (eds), *The International Law of Civil War*, 1971, p. 124; Iris Chang, *The Rape of Nanking*, Basic Books, 1997, pp. 88–89, 95.

28 'The Nature, Scope and Motivation for Sexual Violence Against Men and Boys in Armed Conflict', Use of Sexual Violence in Armed Conflict: Identifying Gaps in Research to Inform More Effective Interventions, UN OCHA Research Meeting, 26 June 2008, p. 1.

29 International Criminal Court, Office of the Prosecutor, *Background: Situation in the Central African Republic*, 22 May 2007, ICC-OTP-BN-20070522-220-A_EN. See also IRIN News, 'Central African Republic: Unending Misery of Rape Victims', Bangui, 19 August 2005.

30 Mark Franchetti, 'Russian Death Squads "Pulverise" Chechens', in *The Sunday Times*, 26 April 2009.

31 Chris McGreal, 'Hundreds of thousands of women raped for being on the wrong side', in *The Guardian*, 12 November 2007; J. Gettleman, above note 5.

32 Richard Norton-Taylor and Audrey Gillan, 'MoD faces legal action after teenage Iraqi claims sexual humiliation by soldiers', in *The Guardian*, 14 July 2008; R. Norton-Taylor, 'Lawyers take MoD to court over Iraqi mutilation claims', in *The Guardian*, 18 October 2007.

33 Somini Sengupta, 'Sri Lanka's Scars Trace Lines of War Without End', in *New York Times*, 15 June 2007.

in events relating to the ‘war on terror’³⁴; and in post-election violence in Iran³⁵ and Kenya.³⁶

The OCHA meeting referred to above concluded *inter alia* that ‘shining a light on the issues of sexual violence against men and boys was crucial and timely’ and that ‘the research gaps on the issue are extensive’.³⁷ It proposed a number of research questions and drew together key research priorities.³⁸

Prevention and protection

Despite the widespread recognition that male sexual violence is a problem and despite the acknowledgement that little is being done, these sentiments have not translated into any practical initiatives. Rather, the principal recent initiative – SC Res 1820 and its follow-up procedure – has had the impact of contributing to the relative silence through the exclusion of male victims from its framework.

Exclusive focus on women and girls

Whither the men?

It would seem that there is some scepticism in certain quarters that tackling the problem of male sexual violence will take attention and valuable resources away from addressing female sexual violence. For example, an important meeting at Wilton Park brought together high-level UN officials, governmental representatives, and force commanders of peacekeeping missions, amongst others, to discuss responses of military peacekeepers to sexual violence against women and girls in times of armed conflict. The conference acknowledged that ‘women are not the only civilians to be targeted for sexual violence’ and that ‘children and also men, particularly captive male combatants, are also subjected to sexual torture and terror’.³⁹ However, the focus of the meeting was squarely on women and girls, primarily because it was felt that women and girls comprised the ‘majority of civilians targeted for this particular form of atrocity ... their reproductive capacities are ruined by gang-rape and brutality’ and because ‘[v]iolent sexual attacks on women and girls in fact pose special challenges for peacekeepers – challenges that differ even from cases when men are the targets of sexual

34 ‘Egypt torture centre, report says’, in *BBC News online*, 11 April 2007.

35 Alan Cowell, ‘Rapes are Alleged in Iranian Prison’, in *New York Times*, 11 August 2009.

36 Commission of Inquiry into Post-Election Violence, final Report, chapter 6, see http://www.communication.go.ke/Documents/CIPEV_FINAL_REPORT.pdf (last consultation 15 January 2010).

37 Meeting Report, OCHA – Policy Development and Studies Branch, ‘Use of Sexual Violence in Conflict: Identifying Research Priorities to Inform More Effective Interventions’, 26 June 2008, p. 5. The author was one of the experts.

38 *Ibid.*, p. 6.

39 Anne-Marie Goetz, ‘Introduction’, in *Women Targeted or Affected by Armed Conflict: What Role for Military Peacekeepers?* Wilton Park, 27–29 May 2008, p. 3.

attack.⁴⁰ These challenges were considered to include the lack of reporting on the part of female victims and the social stigma associated with the sexual violence.⁴¹

Yet many, if not all of these points, actually apply to male sexual violence as well. Just as with women and girls, men and boys may lose their reproductive capability either as a result of the physical abuse inflicted upon them – through castration, genital mutilation, and the like – or as a psychological consequence of the violence. Indeed, only now are the mental health consequences starting to be understood. Anecdotal evidence from the DRC, for example, suggests that male rape victims are more likely to commit suicide, with the rates even higher if castration or mutilation is involved.⁴² Again, similar to women and girls, there is vast underreporting in the case of male victims of sexual violence for similar stigma exists;⁴³ and male victims, too, may be rejected by their families and their communities.⁴⁴ For example, a male victim of sexual violence in the DRC has said: ‘I’m laughed at ... The people in my village say: “You’re no longer a man. Those men in the bush made you their wife.”’⁴⁵

Despite these criticisms, at least the Wilton Park meeting acknowledged that sexual violence is committed against women and men, girls and boys, as the debate is sometimes framed as an issue solely involving women and girls. Take SC Res 1820 as an example. In many places, the Security Council does address the issue of sexual violence in situations of armed conflict at a general level. The first two operative paragraphs are demonstrative of this general concern:

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;

Demands the immediate and complete cessation by all parties to armed conflict of all acts of sexual violence against civilians with immediate effect;⁴⁶

In other parts of the Resolution, the focus is on sexual violence, against, ‘in particular women and girls’, or the protection of civilians ‘including women and girls’. For example, the Security Council ‘[d]emands that all parties to armed

40 *Ibid.*, p. 4 (emphases removed).

41 *Ibid.*

42 I am grateful to Jocelyn Kelly for this information.

43 S. Sivakumaran, Sexual Violence, above note 8, pp. 255–256.

44 *Ibid.*, p. 271; ‘Kivu Sexual Violence: Against Women and Men’, in *PeaceWomen*, available at <http://www.peacewomen.org/news/DRC/July04/kivu.html> (last consultation 18 January 2010).

45 J. Gittleman, above note 5.

46 See also operative paras 6, 7, 13.

conflict immediately take appropriate measures to protect civilians, including women and girls, from all forms of sexual violence',⁴⁷ and '*calls upon* Member States ... to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice'.⁴⁸

These approaches are useful.⁴⁹ They understand that sexual violence may be committed against anyone but that, in practice, women and girls have been, and remain, particularly susceptible. The Parliamentary Assembly of the Council of Europe, on the other hand, in its resolution on point, notes that '[s]exual violence against women in armed conflict is a crime against humanity, a war crime, and an absolutely unacceptable weapon of war', but says nothing about sexual violence against men and boys, and very little about girls.⁵⁰

However, in the course of SC Res 1820, there is a transformation in the approach from one of 'sexual violence in particular against women and girls', to one of 'sexual violence against women and girls'. For example, the Security Council:

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;⁵¹

Of particular interest are the precise places in which the language of the Resolution is inclusive and when it becomes exclusory. An analysis of the Resolution indicates that when it seeks to describe the problem of sexual violence and on the occasions in which it adopts general measures, the language is inclusive. However, when the Resolution comes to specifying concrete, detailed measures of implementation or enforcement, the language becomes exclusory. This is best demonstrated through consideration of passages in which both the descriptive and the implementation measures are considered together, or when both the general measures and the specific measures are dealt with together. The Security Council:

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 ...;⁵²

47 *Ibid.*, para. 3.

48 *Ibid.*, para. 4.

49 Leaving aside, for the moment, issues such as 'helpless and sexualised representations of women', on which see Diane Otto, 'The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade' (2009), in *Melbourne Journal of International Law*, Vol. 11, No. 1, p. 25.

50 'Sexual violence against women in armed conflict', Resolution 1670 and Recommendation 1873, texts adopted by the Standing Committee, acting on behalf of the Assembly, on 29 May 2009.

51 Operative para. 5.

52 *Ibid.*, para. 8.

When it is at the level of heightening awareness and responsiveness, the language is inclusive – all civilians, including women and children. However, as the provision goes on, and when the matter shifts to the more onerous prevention of sexual violence, the objects of protection are exclusively women and girls.

This is not a one-off, a mere slip of the drafting pen. To take another example, the Security Council:

Requests the Secretary-General to develop effective guidelines and strategies to enhance the ability of relevant UN peacekeeping operations, consistent with their mandates, to protect civilians, including women and girls, from all forms of sexual violence and to systematically include in his written reports to the Council on conflict situations his observations concerning the protection of women and girls and recommendations in this regard;⁵³

Again, when the question is the rather broader one of development of guidelines and strategies, the subject of protection is ‘civilians, including women and girls’. However, the moment a more concrete measure is contemplated, in this case the systematic inclusion of observations and recommendations in the reports of the Secretary-General to the Security Council, the measure is framed in respect of ‘women and girls’ alone.

In one of the more curious passages of the Resolution, the Security Council:

Demands that all parties to armed conflict immediately take appropriate measures to protect civilians, including women and girls, from all forms of sexual violence, which could include, inter alia, enforcing appropriate military disciplinary measure and upholding the principle of command responsibility, training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, vetting armed and security forces to take into account past actions of rape and other forms of sexual violence, and evacuation of women and children under imminent threat of sexual violence to safety ...⁵⁴

Again, in so far as training, vetting, and enforcement of discipline are concerned, the subject at issue is the civilian. However, when it comes to evacuation of individuals under imminent threat of sexual violence, the concern is towards ‘women and children’ alone. This is odd but it is not the strangest part of the provision. As Dianne Otto has asked, ‘what about the woman facing imminent death from a non-sexual armed attack, or the man who is at risk of sexual violence, or the child who cannot be given the emergency medical treatment they need because the hospital has been destroyed? Where should they be placed in the evacuation queue?’⁵⁵

53 *Ibid.*, para. 9.

54 *Ibid.*, para. 3.

55 D. Otto, above note 49. To this could be added, what of the specific international humanitarian law provisions on evacuation?

What of boys?

In addition to the elision from civilians to women is the related slide from ‘children’ to ‘girls’. By and large, the language of the preamble is one of ‘women and children’.⁵⁶ However, the body of the Resolution, with one exception, uses the phrase ‘women and girls’.⁵⁷ This is true not just of SC Res 1820 but related Security Council resolutions as well.⁵⁸ The question then becomes where boys fit in all of this.

At present, sexual violence against boys in situations of armed conflict is an overlooked category. This has recently been acknowledged, as has the existence of the problem.⁵⁹ The Secretary-General, for example, has noted in his report on children and armed conflict in Afghanistan that, ‘[t]here are a number of substantive reports of children, especially boys, being sexually abused and exploited by members of the armed forces and armed groups.’⁶⁰ The language of ‘especially boys’ is interesting, for it is a reversal of the usual formulation of ‘in particular women and children’. The Secretary-General goes on to document the practice of ‘*bacha baazi* (boy-play)’ which ‘consists of boys kept cloistered and used for sexual and harmful social entertainment by warlords and other armed group leaders.’⁶¹ Accordingly, the Secretary-General recommends that the Government of Afghanistan ‘implement more fully laws and programmes to prevent and punish sexual violence and to support victims, monitor grave sexual violations against boys as well as girls’.⁶² Again the ordering of boys and girls is instructive.

One reason that goes some way towards explaining the lack of consideration of the practice is the difficulty of fitting sexual violence against boys into any of the existing categories. By their very language, the rubric of ‘sexual violence against women’, or ‘sexual violence against women and girls’, rules out consideration of boy victims. Even the category of ‘sexual violence against women and children’ is not a natural fit, as the interchange between ‘women and children’ and ‘women and girls’ has often led to children being taken as shorthand for girls. In any event, it is not clear that ‘women and children’, read as including boys, *should* be the appropriate categorization. The category of ‘womenandchildren’⁶³ emerges, infantilizing women, placing them alongside children as vulnerable and in need of protection; and if boys are sometimes subjected to sexual violence in situations of armed conflict because they are men-in-waiting,⁶⁴ that would suggest that they

56 Preambular paras 7 and 8.

57 The exception is contained in operative para. 3.

58 See D. A. Lewis, above note 8, p. 19, fn 94.

59 See e.g. OCHA Meeting Report, above note 37, p. 5; Report of the Special Representative of the Secretary-General for Children and Armed Conflict, A/64/254, 6 August 2009, para. 17.

60 Report of the Secretary-General on children and armed conflict in Afghanistan, S/2008/695, 10 November 2008, para. 48.

61 *Ibid.*, para. 50.

62 *Ibid.*, para. 74.

63 D. Otto, above note 49.

64 The point was made by Wynne Russell at the OCHA meeting.

should be grouped with sexual violence against men, or treated as a separate category in their own right.

It is likely that with the increased attention to be paid to sexual violence against children by the Security Council, and with the work of the Special Representative of the Secretary-General for Children and Armed Conflict on sexual violence, the problem will start to be addressed.⁶⁵

Exclusive focus on civilians

Even if the focus of UN measures were on all civilians – women and girls, men and boys – it would still be to neglect a sizeable proportion of sexual violence committed against, in particular, men and boys in times of armed conflict.

In times of armed conflict, men and boys are at their most vulnerable in situations of detention. Much of the male sexual violence is committed against people held captive or in detention; numerous reports attest to the practice.⁶⁶ Such people may well be civilian internees, but they may also be prisoners of war or members of the armed forces or armed group who for whatever reason do not benefit from prisoner of war status.

Boys are also particularly vulnerable to sexual violence when they are conscripted or abducted into armed forces.⁶⁷ The abuse that they face may well be from people on their ‘own side’. Yet the presumption is that it is girls who are abducted or conscripted who will end up as sex slaves. Even definitions that are intended to be inclusive fall into this trap. For example, the Cape Town Principles and Best Practices (1997) adopted a broad definition of a ‘child soldier’, expressly not limiting the definition to ‘a child who is carrying or has carried arms’. Rather, it included but was not limited to ‘cooks, porters, [and] messengers’ and ‘include[d] girls recruited for sexual purposes and forced marriage.’⁶⁸ Inclusive on the one hand, the definition was exclusive on the other, limiting itself to sexual violence against girls alone. This was corrected in the Paris Principles (2007) to include ‘children, boys, and girls used as fighters, cooks, porters, messengers, spies or for sexual purposes’.⁶⁹ However, the need to include child victims of sexual violence, both boys and girls, in the definition of a child soldier reveals that combatants and

65 See S/Res/1882, adopted by the Security Council at its 6176th meeting, 4 August 2009; Report of the Special Representative of the Secretary-General for Children and Armed Conflict, above note 59, para. 17.

66 See e.g. M. Peel *et al.*, ‘The Sexual Abuse of Men in Detention in Sri Lanka’, in *The Lancet*, 2000, vol. 355, issue 9220, p. 2069; *Prosecutor v. Blagoje Simić, Miroslav Tadić and Siom Zarić*, 2003, Trial Judgement, IT-95-9-T, para. 728; the ‘Taguba Report’ on Treatment of *Abu Ghraib* Prisoners in Iraq, available at: <http://news.findlaw.com/hdocs/docs/iraq/tagubarpt.html> (last consultation 18 January 2010).

67 W. Russell, above note 8, p. 22; Report of the Special Representative of the Secretary-General for Children and Armed Conflict, above note 59, para. 17.

68 *Cape Town Principles and Best Practices*, adopted at the UNICEF Symposium on the Prevention of Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa, Cape Town, South Africa, 27–30 April 1997 (emphasis added).

69 The Paris Principles: The Principles and Guidelines on Children Associated With Armed Forces of Armed Groups, 2007, para. 2.1 (emphasis added).

people taking an active part in hostilities are in need of protection from sexual violence just as much as civilians.

Thus although the instinctive link may be between sexual violence and civilians, these assumptions need to be re-thought. This is evidenced from a recent study on sexual violence in the Liberian conflict, which revealed that 32.6% of a sample of male combatants experienced sexual violence.⁷⁰ Even with due regard to the unreliability of statistics, this is revealing. Sexual violence is committed against civilians but not against civilians alone. Much of the sexual violence that takes place against men and boys is carried out in situations of detention, against prisoners of war and members of the armed forces or armed group. It is also carried out against 'child soldiers', both boys and girls. Yet none of these forms of sexual violence is covered by SC Res 1820 with its exclusive focus on civilians. With the increasing numbers of female combatants and females taking a direct part in hostilities, the Resolution's focus on civilians alone also limits the scope of protection for women.

Follow-up to SC Res 1820

SC Res 1820 was adopted during a debate on 'women and peace and security: sexual violence in situations of armed conflict', a debate which was itself a follow-up to SC Res 1325 on women and peace and security. As such, it may not be entirely fair to criticize the Resolution for focusing on civilians and failing to take into account the position of men and boys. However, despite its origins, SC Res 1820 has become the centre-piece of UN efforts on sexual violence. As such, its limits become troubling, in particular its transformation of a subset of violations, albeit a primary one, into the sole one of concern.

Fortunately, the follow-up to the Resolution has been more satisfactory in so far as men and boys are concerned. In the Report of the Secretary-General pursuant to SC Res 1820, it is noted that 'sexual violence has been used against civilians, particularly women and girls, in many conflicts throughout history' and that '[w]hile women and girls are particular targets and are the majority of the victims of sexual violence, the case-law of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the Special Court for Sierra Leone (SCSL) also bears testimony to the use of sexual violence against men.'⁷¹ Also, the report itself is written in largely gender neutral terms.

Even more sensitive is SC Res 1888. That resolution, which builds on resolutions 1325 and 1820, is far more careful in its terminology. The vast majority of its paragraphs are carefully phrased so as to be inclusive of all victims of sexual violence (though still limited to civilians). This includes, crucially, the paragraphs that envisage the creation of a post of Special Representative to address the issue of sexual violence in armed conflict, the deployment of teams of experts to situations

70 K. Johnson *et al.*, above note 24, p. 676.

71 Report of the Secretary-General pursuant to Security Council resolution 1820 (2008), S/2009/362, paras 3 and 6.

of concern, and the adoption of sanctions.⁷² Only the odd paragraph is worded in a manner specific to women and children.⁷³ After the disappointment of SC Res 1820, its follow-up has been less disconcerting.

However, not everything is promising. Aspects of the follow-up are specific to women and girls. For example, the report of the Secretary-General on children and armed conflict in Afghanistan details development of a national database of cases of violence against women which, in the words of the Secretary-General, ‘unfortunately does not include abuses against boys’.⁷⁴

Consequences for accused perpetrators

Peacetime sexual violence is notorious for its lack of prosecution and low conviction rates. The situation is even more severe in times of armed conflict. As is by now well known, it was only with the advent of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda that sexual violence in times of armed conflict began to be prosecuted as a matter of course. However, the records of those two Tribunals as well as that of the Special Court for Sierra Leone in their prosecutions and convictions for sexual violence have been the brunt of considerable criticism due to the *ad hoc*, and lack of systematic, prosecution and the way in which victims of sexual violence are treated while giving evidence.⁷⁵

In so far as sexual violence against men and boys is concerned, matters are even less advanced. Various forms of sexual violence were committed against men and boys in the conflicts in the former Yugoslavia, Rwanda, and Sierra Leone; the atrocities have been documented extensively.⁷⁶ Yet their appearance in the jurisprudence of the Tribunals is limited; much of the time, male sexual violence is simply not prosecuted before the international criminal tribunals. Although this is, to some extent, also the case with sexual violence against women and girls, when male sexual violence is prosecuted, it is often not prosecuted *as* sexual violence. An analysis of the instances in which accounts of male sexual violence do appear in the jurisprudence of the UN international criminal tribunals proves instructive. The documentation of male sexual violence may be grouped into three

72 S/Res/1888, adopted by the Security Council at its 6195th meeting, 2009, operative paras 4, 8 and 10, respectively.

73 *Ibid.*, operative paras 12 and 26.

74 Report of the Secretary-General on children and armed conflict in Afghanistan, above note 60, para. 63.

75 See e.g. Binaifeer Nowrojee, *Your Justice is Too Slow: Will the ICTR Fail Rwanda's Rape Victims?* UNRISD, 2005; Michelle S. Kelsall and Shanee Stepakoff, ‘“When We Wanted to Talk about Rape”: Silencing Sexual Violence at the Special Court for Sierra Leone’, in *International Journal of Transitional Justice*, 2007, Vol. 1, pp. 355–374.

76 See e.g. Final Report of the United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), S/1994/674/Add.2, Annex IX (former Yugoslavia); Anne-Marie de Brouwer and Sandra Ka Hon Chu (eds), *The Men Who Killed Me – Rwanda Survivors of Sexual Violence*, 2009, p. 91; ‘“We’ll Kill You if You Cry”: Sexual Violence in the Sierra Leone Conflict’, in *Human Rights Watch*, 2003, Vol. 15, No. 1, p. 42.

categories: mentioned but not characterized as sexual violence; mentioned and characterized appropriately but without any consequences attaching; or characterized as sexual violence with consequences arising therefrom.

Mentioned but not characterized as sexual violence

Often, sexual violence against men and boys in armed conflict is not characterized as such, but is considered under the rubric of torture, beatings, and the like.⁷⁷ Particularly true in the case of UN reports, it is no less true of international criminal jurisprudence. So, for example, in the *Blagoje Simić et al.* case, an ICTY trial chamber noted that '[s]everal Prosecution witnesses gave evidence that detainees were subjected to sexual assaults. One incident involved ramming a police truncheon in the anus of a detainee. Other incidents involved forcing male prisoners to perform oral sex on each other and on Stevan Todorović, sometimes in front of other prisoners.'⁷⁸ Yet the finding appeared in a section entitled '[e]vidence relevant to other acts' and although described by the Trial Chamber as sexual assaults, it was characterized in its findings as torture and no more.⁷⁹

Although these acts are indeed torture, care has to be taken such that when men are subjected to sexual violence, the abuse is seen as sexual and recorded under appropriate, sometimes multiple, headings. The failure to do so can have far-reaching consequences. The Peruvian Truth and Reconciliation Commission, for example, found that 2% of victims of sexual violence were male. However, a recent study suggests that the figure was, in fact, closer to 22% and puts the discrepancy down to a focus of the Commission on rape to the exclusion of other forms of sexual violence and the recording of these other abuses as torture.⁸⁰ The danger of characterizing sexual violence against men and boys only under the rubric of torture is that men and boys will continue to be seen as unsusceptible to sexual violence, reinforcing the view that sexual violence is a problem for women and girls alone.

Mentioned but without any consequences

On other occasions, male sexual violence is depicted as having taken place but, for various reasons, no consequences result for the accused from the depiction. In some cases, this is because instances of male sexual violence were laid out only to set the scene. For example, in the *Bagosora* trial judgement, the Trial Chamber recalled the testimony of several witnesses:

The bodies of the dead were frequently piled near the roadblocks and at times were collected by local officials. Female victims were left lying on their back[s]

77 S. Sivakumaran, 'Sexual Violence against Men in Armed Conflict', above note 8, p. 256.

78 *Simić* Trial Judgement, above note 66, para. 728.

79 *Ibid.*, subheading on page 205 and para. 772.

80 Michele Leiby, 'Digging in the Archives: The Promise and Perils of Primary Documents', in *Politics and Society*, Vol. 37, 2009, pp. 82–83.

with their legs spread and stained with semen. Dallaire saw objects crushed or implanted in vaginas, breasts cut off, stomachs opened and the mutilated genitals of men.⁸¹

This account merely formed part of the background of the case and accordingly no consequences arose from the descriptions of male sexual violence.

Another approach has been to note that sexual violence against men and boys was carried out but that it had not been charged by the Prosecution in the particular case at hand. In the *RUF* trial judgement, for example, a Trial Chamber of the Special Court for Sierra Leone documented practice of male sexual violence. The Trial Chamber found the record to demonstrate instances of enforced rape and sexual mutilations of male and female victims.⁸² The Trial Chamber also noted that the definition of rape ‘is broad enough to be gender neutral’ and noted further that ‘both men and women can be victims of rape’.⁸³ However, the Trial Chamber observed that the Prosecution ‘restricted its pleadings on sexual violence in the Indictment to crimes committed against “women and girls,” thereby excluding male victims of sexual violence.’⁸⁴ Accordingly, no convictions could be entered in respect of the male sexual violence that was found to have taken place.

A third approach of the international criminal tribunals has been to acknowledge, occasionally in some detail, the practice of male sexual violence but then to ignore them when moving on to the legal consequences that attach to these findings. Thus in *Muhimana*, a Trial Chamber of the ICTR recalled that several witnesses had seen that a certain Kabanda’s ‘private parts had been severed’ and that his genitals had been hung on a spike.⁸⁵ However, in its findings, the Trial Chamber simply referred to the killing of Kabanda and no more.⁸⁶ Similarly, in *Bagosora*, the Trial Chamber found Bagosora guilty of other inhumane acts in respect of *inter alia* ‘the stripping of female refugees at the Saint Josephite Centre’.⁸⁷ Yet the summary of the relevant witness’ anticipated testimony annexed to the Prosecution’s Pre-Trial Brief, and reproduced in the Trial Judgement, specifically states that ‘[s]ome of the victims were naked, men and women.’⁸⁸

Accordingly, the observation that male victims of sexual violence ‘are hard to see as victims of the genocide’ in Rwanda,⁸⁹ could be extended to most armed conflicts past and present.

81 *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, 18 December 2008, Judgement, para. 1908.

82 *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-T, Judgement, 2 March 2009, paras 1205, 1207–8.

83 *Ibid.*, para. 146.

84 *Ibid.*, paras 1303 and 1308.

85 *Prosecutor v. Muhimana*, Case No. ICTR-95-1-T, Judgement, 28 April 2005, paras 441–4.

86 *Ibid.*, paras 448–50.

87 *Bagosora* Trial Judgement, above note 81, para. 2224.

88 *Ibid.*, para. 2220, fn 2374.

89 Doris E. Buss, ‘Rethinking “Rape as a Weapon of War”’, in *Feminist Legal Studies*, Vol. 17, No. 2, 2009, pp. 145 and 159.

Mentioned and characterized as sexual violence

Fortunately, other cases have been more inclusive in their approach. Ironically, in respect of the very same incident involving Kabanda, the *Niyitegeka* Trial Chamber found the accused guilty of an inhumane act. The *Niyitegeka* Trial Chamber considered the inhumane act to be in respect of the accused's 'act of encouragement during the killing, decapitation and castration of Kabanda, and the piercing of his skull, and his association with the attackers who carried out these acts'.⁹⁰

In the *Todorovic* Sentencing Judgement, the events in question were characterized as sexual assaults;⁹¹ in the *Stakić* Trial Judgement, the events at issue were viewed as both sexual assaults and as torture.⁹² In the *Češić* Sentencing Judgement, in respect of Češić's admission that 'he intentionally forced, at gun-point, two Muslim brothers detained at Luka Camp to perform fellatio on each other in the presence of others',⁹³ the Trial Chamber characterized the acts as sexual assault.⁹⁴

A more inclusive approach?

The jurisprudence of the ICTY, ICTR and SCSL suggests that no single judicial philosophy exists. Rather, individual judges and chambers will adopt their own approach to the subject. It is to be hoped that the International Criminal Court (ICC) will take an altogether more inclusive approach to the question of sexual violence, with the Office of the Prosecutor (OTP) bringing charges against individuals and Chambers adjudicating the matters using appropriate language.

There are hopeful signs in this respect. In its background note on the Situation in the Central African Republic, the OTP observed that, '[c]redible reports indicate that rape has been committed against civilians, including instances of rape of elderly women, young girls and men.'⁹⁵ In its charges against Jean-Pierre Bemba, the OTP allege that the accused committed crimes against humanity and war crimes 'through acts of rape upon civilian men, women and children' and 'by inflicting severe physical or mental pain or suffering through acts of rape or other forms of sexual violence, upon civilian men, women and children'.⁹⁶ The statement of facts in support of the charges allege that '[m]en, women and children were raped by multiple MLC perpetrators in their homes, raped in front of family

90 *Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-T, 16 May 2003, paras 462–466, 467.

91 *Prosecutor v. Todorovic*, Case No. IT-95-9/1-S, Sentencing Judgement, 31 July 2001, subheading at page 13.

92 *Prosecutor v. Stakić*, Case No. IT-97-24-T, Judgement, 31 July 2003, paras 241, 780, 806.

93 *Prosecutor v. Češić*, Case No. IT-95-10/1-S, Sentencing Judgement, 11 March 2004, para. 13.

94 *Ibid.*, subheading on page 4; see also paras 33, 35, 52.

95 Office of the Prosecutor, Background: Situation in the Central African Republic, ICC-OTP-BN-20070522-220-A_EN, 22 May 2007.

96 Situation in the Central African Republic: In the Case of the Prosecutor v. Jean-Pierre Bemba Gombo, Public Redacted Version of the Amended Document containing the charges filed on 30 March 2009, ICC-01/05-01/08, Counts 1 and 2, and 3 and 4, respectively.

members, forced to watch rapes of family members, and raped in public locations including streets, fields and farms’;⁹⁷ and that ‘[m]en were also raped as a deliberate tactic to humiliate civilian men, and demonstrate their powerlessness to protect their families.’⁹⁸

For its part, the Trust Fund for Victims, in its Donor Appeal to assist victims of sexual violence, has gone out of its way to draw attention to sexual violence against men and boys, observing that although ‘it is well known that armed conflict and sexual violence against women and girls often go hand in hand’, ‘[w]hat is less widely recognised is that armed conflict and its aftermath also bring sexual danger for men and boys.’⁹⁹ The Trust Fund also highlights the dangers faced by men and boys in times of armed conflict and some of the motivations behind the sexual abuse to which they may be subjected.¹⁰⁰

Conclusion: where to from here?

There are clearly avenues for further analysis and discussion.¹⁰¹ Empirics are in need of further research; more can be done in terms of raising awareness of the issue; the relationship between male sexual violence and female sexual violence has not been considered; sexual violence against boys is far from being understood; the situation of the male victim and the female perpetrator – despite the events at Abu Ghraib – is often overlooked.

There is also the difficult question of, and at times tension between, addressing sexual violence against men and boys and combating sexual violence against women and girls. There may be real reason to focus on one particular aspect of the problem. At a practical level, resources may be limited and to consider one may be to take away from the other. At a political level, proposals to widen the focus away from women and girls may be seen as a bad faith attempt to hijack the debate. At a theoretical level, as a former Special Rapporteur on violence against women has put it, if it ‘is not used with precision, the term GBV [gender-based violence] may obscure rather than reveal the distinguishing features of diverse experiences of gendered violence.’¹⁰²

These are legitimate debates to be held; but they must be held. The current disconnect between the grand pronouncements on the problem of male sexual violence in armed conflict and the lack of measures taken to address it cannot continue. A 2005 report of the World Bank on ‘Gender, Conflict, and

97 *Ibid.*, Charges, para. 39.

98 *Ibid.*, para. 41.

99 The Trust Fund for Victims Board of Directors Donor Appeal, ‘Rehabilitating and Supporting Survivors of Sexual Violence’, 10 September 2008.

100 *Ibid.*

101 See also the research agenda in OCHA Meeting Report, above note 37.

102 Statement by Yakin Ertürk at the SIDA Conference on Gender-Based Violence, 12 September 2008, Stockholm.

Development' observed that '[w]hile it is increasingly recognized that men are also GBV [gender-based violence] survivors in conflict-affected areas, this acknowledgement has not been translated into policies to address male victims.¹⁰³ Despite the increased attention of all areas of the UN, this remains true today. Somewhere down the line, something has been lost in translation.

103 T. Bouta, G. Frerks and I. Bannon, *Gender, Conflict, and Development* (World Bank, Washington DC, 2005), p. 47.