

for a “more harmonized approach” with “clear exceptions to avoid potential abuse” (p. 829).

The concluding Chapter 14 addresses the right to “an effective remedy” for defendants denied a fair trial, including release, pardons, retrial, sentence reduction, and monetary compensation, among others (such as orders to investigate and prosecute those responsible for the violations in appropriate cases) (pp. 848–49). They note that “[u]ltimately, the right to a fair trial does not mean much without the ability to secure a remedy when it is violated” (p. 900).

In the authors’ view, “[t]he right to a fair trial belongs to every defendant charged with a criminal offence, every person who faces a deprivation of liberty and, in some cases, execution if convicted at trial” (p. 33). While their focus is on the components of the right in the criminal context, they acknowledge that “the boundary between the right to a fair trial in civil and criminal proceedings is not a bright line” (p. 26). They contend that fair trial rights apply broadly, even during times of armed conflict and public emergency, while acknowledging that in some situations the right to a public trial can be limited on grounds of national security (pp. 170–74).

While granting that the “legal landscape of international bodies engaged with the right to a fair trial can lead to component fair trial rights being interpreted differently according to international and regional sources” and that “[t]here is no single principle for resolving conflicts of interpretation,” the authors contend that “in reality there is more convergence than divergence to efforts to harmonize on the meaning of fair trial rights” (p. 60). Indeed they conclude that “there is evidence that the right to a fair trial is not only a customary norm, but one that has achieved the status of a *jus cogens* norm, meaning that it is ‘accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted . . .’” (p. 16).

Whether one accepts that conclusion or not, it is difficult to argue against their assertion that “the right to a competent, independent and impartial tribunal established by law is the essence of the rule of law and crucial to the fairness of any trial—indeed, that it is absolute and

non-derogable . . . and a necessary precondition for the legitimacy of the judicial function in any state” (p. 67).

The volume rests on an extraordinary body of research and reflects impressive analytical effort. As a result, it makes a substantial contribution to the field of international criminal law and will clearly become an essential reference for practitioners (prosecutors and defense counsel alike), professors, and students. The book has justifiably been awarded a 2022 Certificate of Merit by the American Society of International Law for its “high technical craftsmanship and utility to lawyers and scholars.”⁹

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Of the Board of Editors

The Grip of Sexual Violence in Conflict: Feminist Interventions in International Law. By Karen Engle. Stanford, CA: Stanford University Press, 2020. Pp. xiii, 286. Index.
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In recent years, sexual violence in armed conflict has drawn increased attention in international law and politics. In her new book *The Grip of Sexual Violence in Conflict: Feminist Interventions in International Law*, Karen Engle, law professor at the University of Texas School of Law, describes this “grip,” how it came about, and why. She argues that the emphasis on this kind of violence, pushed by “structural-bias feminists” who view the law as fundamentally masculine and based on the gendered structural division of public and private spheres, has come at the expense of attention to other critical issues and perspectives. Rather than covering international law more broadly, the book focuses on international criminal law and UN Security

⁹ ASIL 2022 Book Awards, at <https://www.asil.org/about/honors-and-awards#:~:text=2022%20Certificate%20of%20Merit%20winners%3A&text=Certificate%20of%20Merit%20in%20a,Foreign%20Relations%20Law%3A%20Paul%20B.>

Council resolutions with little reference to international human rights or humanitarian law.

Engle begins by setting out the concept of the “common-sense narrative” surrounding sexual violence in conflict. This concept is made up of five propositions: (1) rape and sexual violence are the worst crimes that are committed during conflict; (2) the main harm from sexual violence stems from shame inflicted on individuals and communities; (3) perpetrators of sexual violence are “individual male monsters” (p. 2); (4) innocent women, girls, men, and boys, but primarily women and girls, are the victims; and (5) the best way to address the issue, and to promote peace, is through criminal law.

To illustrate these points, Engle refers to a video used by the UK Foreign and Commonwealth Office in 2014 ahead of the Global Summit on Sexual Violence in Conflict. The introduction goes into more detail on each of the propositions of the common-sense narrative, arguing that this approach oversimplifies the causes and effective responses to the issue. She notes that

the book is less about the victims and the nature of sexual violence in conflict than it is about the ways in which particular imaginaries about them have gripped international legal and political discourse—on gender, sex, sexuality, and ethnicity on the one hand, and on militarism, criminal law, and international peace and security on the other. (P. 17.)

In other words, the focus is on discursive representations which have real effects rather than the material realities of conflict-related sexual violence.

Chapter One of the book describes the development of women’s human rights advocacy, focusing on the UN World Conference on Human Rights in Vienna 1993, and Engle argues how this laid the foundation for the military intervention and international criminal law approaches that followed. The 1993 Vienna conference also laid the foundation for the recognition of different types of violence that disproportionately affect women and girls with

the concept of “violence against women.” This recognition led to the 1993 UN Declaration on Violence against Women and the adoption of General Recommendation 19 to the Convention on the Elimination of All Forms of Discrimination against Women requiring states to address impunity and report on their measures to prevent and end this violence. Engle further argues in Chapter One that “Third World” and “sex-positive” feminism were side-lined in this norm-setting process. She notes here that “Third World feminism” was well-positioned in the early to mid-1990s to prevail, but that by the end of the Cold War, there was a compromise in favor of “culturally sensitive universalism” that “functioned to subdue much of the Third World feminist critique, especially its material dimensions” (p. 20). However, this attribution of “Third World feminism” appears universalistic and homogenizing of women in the Global South and does not reflect the diversity of movements that fought for the recognition of specific types of violence against women in Vienna, including military-forced prostitution, early and forced marriage, honor killings, and female genital cutting, to name a few.

Engle continues by outlining the different feminist approaches in international law that were taken during this period. The first of these is liberal inclusion, with the aim of bringing women into existing institutions and assimilating their concerns within existing human rights agendas. The second approach Engle discusses relates to structural bias critiques, which argue that “human rights law—and international law more broadly—was constructed by and for men, with structural features that prevented its application to women” (p. 24). Here she outlines the public/private distinction drawing on Catherine MacKinnon’s argument about the “sexual” or “intimate” as private matters. She also challenges the assumption made by structural-bias feminists that First and Third World feminists share a common goal.

Engle then describes the third approach: Third World feminist critiques. She notes that “women from the Third World often saw those from the First World, including feminists, as

implicated in the economic and other forms of exploitation faced by those in the Third World” (p. 26). Third World feminists argued that the structural-bias feminist approach took away the agency of women in the Third World. Even when efforts by First World feminists aimed to address economic issues, it was argued that they did not consider the source of the problems, going beyond patriarchal norms to examine capitalism and exploitation. While Engle discusses a variety of feminist approaches, she does not go into the detail of each. Consequently, her use of “Third World Feminism” could be critiqued for both the outdated terminology used (post-colonial feminism is the contemporary term) and for homogenizing women in the Global South without reflecting the diversity of feminist movements in existence during the early to mid-1990s.

Following this overview, Engle describes the process ahead of, during, and following the 1993 Vienna Conference. She details the “Women’s Rights Are Human Rights” campaigning and the disagreement between different feminist approaches and its impact on how conflict-related sexual violence came to be considered. She examines how sexual violence in conflict began as a compelling example of violence against women (VAW) but soon became the dominant issue, noting also that “this near-singular attention to sexual violence in the context of women and armed conflict further submerged the Third World feminist critique of economic distribution” (p. 39). She highlights how the focus shifted to the sexual subordination aspect of the violence and the armed conflict settings in which it occurred as “that context puts sexual violence more clearly in the public sphere than many other forms of gender-based violence” (p. 43).

Engle links this mainstreaming to the turn to criminal law, which is detailed in subsequent chapters, and reinforces her point that the success of structural-bias feminism has had unintended long-term consequences. She states that

structural-bias feminism has, through acquiescence and sometimes encouragement, supported military, carceral, and security

regimes. Not only have these regimes failed to ameliorate, and even arguably have exacerbated, the maldistribution of global power and resources that many Third World feminists had long decried, but they have reinforced negative images of sex and sexuality—primarily, but not only, for women—as well as reductive and damaging understandings of gender and ethnicity. (P. 49.)

In Chapter Two, Engle focuses on the conflict in the former Yugoslavia and the arguments for intervention based on genocidal rape. She examines the “genocidal rape” versus “rape on all sides” debate that took place among feminist legal scholars and activists in particular. She details the views put forward by Catherine MacKinnon that rapes committed by Serbs were genocidal and that this finding of genocide had legal and military consequences. This was in contrast to those, such as Rhonda Copelon, who argued that focusing on genocidal rape risks rendering rape invisible again. The point here was not that rape should not be prosecuted as an act of genocide, but rather that focusing on genocidal rape risks downplaying the experience of all women raped in, and outside of, war. It should be recognized however, that these feminist debates were not definitive in the NATO intervention that came very late in the war, but added to the voice in Europe and the United States calling attention to ethnic cleansing in the former Yugoslavia, and the particular targeting of ethnic minority women.

Engle covers how rape was assessed as genocidal, including forced pregnancies. She touches on two points that come up in later chapters: the development of the law with regard to consensual interethnic sex; and the use of the argument that shame, particularly in certain communities (in this case, Muslim), ostracizes victims of sexual violence, and sometimes their families. This point around shame is one of the central pillars of the book, linked to the second proposition of the common-sense narrative. Engle concludes the chapter with the case of Libya to look at how rape has been used as justification for military intervention, including by feminists

themselves. She focuses here largely on the reliability of the initial claims of widespread rape.

In Chapter Three, Engle looks at the development of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the way it gave attention to rape and other forms of sexual violence. She looks at the way in which international law feminists engaged with the ICTY (and later the International Criminal Tribunal for Rwanda (ICTR)) and the focus on international criminal law to address rape and sexual violence. This encompasses the inclusion of rape as an act that could constitute a crime against humanity, and the criticism of the failure to list rape as a war crime. The chapter details the extensive lobbying to prosecute rape as part of the conflict and the establishment of the role of legal advisor for gender-related crimes, occupied by Patricia Viseur Sellers. Engle then examines Rule 96 of the ICTY's Rules of Procedure and Evidence, which reduced the need for corroboration of a victim's testimony and limited the extent to which consent could be used as a defense. This point on consent saw that consensual sexual relations between combatants and civilians of opposing ethnic groups would be nearly impossible, thereby denying the sexual agency of both women and combatants.¹

Through examples of prosecution of certain cases, such as *Kunarac*,² and the convictions that resulted, Engle shows how the law was read to convict for rape and other acts of sexual violence. She links the elevation of the seriousness of rape within the spectrum of criminal conduct to how sexual violence was later included in the International Criminal Court Rome Statute. Engle touches on the expansion of victims of sexual violence to include men and the key role that the ICTY played in this. As examples, she notes the request from the Office of the Prosecutor to replace "she" with "the victim" in Rule 96 and proposing a gender-neutral definition of rape in

the *Furundžija* case even when the case included only one victim, a woman.³

Continuing in chronological order, in Chapter Four, Engle analyzes the role of the ICTR in the development of international criminal jurisprudence on rape and sexual violence. While the ICTY did not convict for rape as genocide, the ICTR did. Engle looks at the *Akayesu* case, the first international criminal judgment to pronounce that acts of rape constitute genocide, before discussing subsequent ICTR cases and their low conviction rate. In doing so, she critiques the way in which shame was used to further the argument of rape as genocide. In particular, she examines the way in which the Trial Chamber in *Akayesu* found that humiliation of the individual women was insufficient for the statute's requirements for rape as genocide, but a finding that the entire community experienced humiliation, and therefore fit within the "intent to destroy" component of genocide, allowed for such a conviction.⁴ Engle interrogates the way this was interpreted by feminists: as a victory by some; and as perpetuating the view of women as cultural objects or objects of only reproductive value by others. It is a fascinating insight into how international law has viewed women as a group that is not fully, sufficiently, or universally human.

Engle looks at shame, not only as part of the genocidal argument, but also in relation to how it was used to account for the hesitancy of victims to testify. She also covers the argument put forward that shame should be shifted from the victim to the perpetrators, the idea being that doing so would relieve shame from the victims, as if shame is finite and transferable. From this discussion, Engle encourages the reader to question their own views regarding the efficacy of sexual violence as a weapon of war and the dominant position that this conduct is necessarily stigmatizing for victims and targeted communities.

In the fifth and penultimate chapter, Engle considers the development of the women,

¹ Olivera Simic, *Rethinking "Sexual Exploitation" in UN Peacekeeping Operations*, 32 *WOMEN'S STUD. INT'L F.* 288 (2009).

² Prosecutor v. Kunarac, IT-96-23/1, Appeals Chamber Judgment (June 12, 2002).

³ Prosecutor v. Furundžija, IT-95-17/1-T, Trial Judgment (Dec. 10, 1998).

⁴ Prosecutor v. Akayesu, ICTR-96-4-T, Trial Judgment (Sept. 2, 1998).

peace, and security (WPS) agenda, starting with the establishment of the NGO Working Group and the passing of Resolution 1325 of the UN Security Council in October 2000. She charts the progress of resolutions on women's participation in peacebuilding and those on sexual violence, describing how efforts for the former continued while the latter grew significantly. She covers the creation of UN Action Against Sexual Violence in Conflict and the establishment of the special representative to the secretary-general on sexual violence in conflict. Engle refers back to the common-sense narrative, highlighting how the WPS resolutions treat sexual violence as "one of the worst injuries that can occur during armed conflict" and that they attribute a large amount of this harm to the shame inflicted on individuals and communities (pp. 123–24).

Engle examines the debates around gender specificity versus gender neutrality and gender-based violence versus conflict-related sexual violence, which are also a feature of feminist international relations studies of the continuum or broader political economy of violence.⁵ For the former, she tracks the introduction of gender-neutral language to account for the victimization of men and boys and the hierarchical recognition that sexual violence in conflict disproportionately affects women and girls. For the latter, she notes that resolutions initially looking at sexual and gender-based violence became increasingly focused on sexual violence, and then again on sexual violence related to conflict.

From this framing, Engle sets out the increasing focus on criminal law as the appropriate response to sexual violence in conflict, despite studies showing that women in affected settings often favor interventions focused more on women's empowerment than those targeting existing or potential perpetrators.⁶ The argument of

deterrence by addressing impunity comes up again as part of the common-sense assumption. She argues that despite significant resources put into these efforts, sexual violence has in fact increased over time. Engle concludes this chapter by raising the development of sexual violence as an argument for the use of counterterrorism measures, such as sanctions. She notes the somewhat contradictory result, which is that feminist engagement in Security Council and other debates has in some ways actually increased militarization in the name of protecting women.

Engle concludes the book by reinforcing her point that the dominant approach toward sexual violence in conflict has resulted in a number of negative effects, including failing to reduce sexual violence and shifting attention away from imperialism, economic distribution, the causes of armed conflicts, and gender inequality more broadly.

To counter the assumptions that make up the common-sense narrative used as her lens throughout the book, Engle draws from three literary sources: Ernest Hemingway's 1940 novel *For Whom the Bell Tolls*, a German diary entitled *A Woman in Berlin: Eight Weeks in the Conquered City*, and Nadia Murad's memoir *The Last Girl: My Story of Captivity, and My Fight Against the Islamic State*. One of the points for which Engle draws upon these three sources relates to the participation of women in conflict. While the use of the novel, and to a lesser extent the diary, are sometimes less clear in their support for Engle's points, Murad's memoir is much stronger. Engle revisits the question of shame, and the frequent assumption that this is something felt by all victims, as part of the "fate worse than death" argument. She refers to Nadia Murad's testimony here, highlighting that Murad's account is "strikingly short on internalized shame" (p. 166). Engle also shows how Murad contradicts the assumption of women as solely victims by detailing the role women played in ISIS, not as rare or pathological one-off cases, but as unexceptional.⁷

⁵ JACQUI TRUE, *THE POLITICAL ECONOMY OF VIOLENCE AGAINST WOMEN* (2012); SARA MEGER, *RAPE LOOT PILLAGE: THE POLITICAL ECONOMY OF SEXUAL VIOLENCE IN ARMED CONFLICT* (2016).

⁶ See, e.g., TRUE, *supra* note 5; Sahla Aroussi, *Women, Peace and Security and the DRC: Time to Rethink Wartime Sexual Violence as Gender-Based Violence?*, 13 *POL. & GENDER* 488 (2017).

⁷ See also Sara E. Brown, *Female Perpetrators of the Rwandan Genocide*, 16 *INT'L FEMINIST J. POL.* 448 (2014).

Engle's "common sense" approach might be a helpful way to identify key assumptions about sexual violence in conflict and then critique them. However, in doing so, Engle risks oversimplification. In many situations, it is not an either/or situation: focusing on women as victims does not necessarily preclude attention to women as agents in conflict, nor is highlighting the severity of this kind of violence always about saying it is "the worst." Along the same lines, while it supports her points well, the use of a video of a little over one minute in the introduction seems almost too easy a ground upon which to stake her claims. Can this really be considered a representation of the international community and the ongoing, more nuanced debates surrounding sexual violence in conflict?

Readers might also be left wondering about the alternatives to what Engle critiques. Regarding the ICTR, for example, the negative points in the *Akayesu* genocide ruling are well-articulated. Yet, what would be a better alternative? No such ruling? A similar question could be asked regarding application of Rule 96, which denies women (and combatants) sexual agency. The trade-off would presumably be removing it, thereby creating the possibility for the defense to use consent as a justification. Future analysis by Engle detailing her views on such areas, including whether the potential harm caused by such legal developments outweighs the potential progress, would be of interest to the reader.

Finally, Engle ends Chapter Five with the assertion that "[w]omen's peace advocates have indeed succeeded in obtaining recognition for the need to bring women to the table. But they have done little to change what is being served at that table" (p. 150). This is a bold statement and one that raises many questions. Which table is she referring to? There are many. Is progress in one area always at the expense of another? What would the alternative be? We consider this statement to be one that minimizes the progress made by many diverse feminist activists, including feminists from the Global South, over recent decades.

The strongest arguments covered in the book deconstruct the second and fifth components of her "common sense" approach. The second proposition is that a large part of the harm that comes from sexual violence is due to the shame linked to it. Engle questions this throughout the book, giving examples and citing scholars and practitioners who report otherwise, as well as survivors, including Murad. In short, she asks how can we, as scholars and practitioners, be conscious of and avoid reifying this shame? This is clearly an important point for Engle. She writes:

By encouraging advocates, prosecutors, and judges to question their assumptions about the necessarily destructive effects of rape, my aim in part is to reduce the real and perceived efficacy of rape as a tool of war. In my mind, were targeted communities not to shame or stigmatize victims of sexual violence, or were victims of sexual violence otherwise not to feel completely destroyed by it, that would be a significant gain. (P. 121.)

The fifth proposition deconstructed by Engle is that criminal law is the answer to ending sexual violence in conflict. Despite being widely supported, the assumption that criminal prosecution deters future perpetration is underpinned by little evidence. Carmody and Carrington, for instance, believe that the hope placed in legislative reform is "misplaced" and argue that it has "virtually negligible preventative value as it represents an intervention after, not before the incident."⁸ Rather than detailing the failures of the criminal law approach to prevent sexual violence, however, Engle highlights how it is rarely a priority for survivors. She also focuses on how the use of criminal law can in fact reinforce harmful assumptions. For example, Engle draws attention to the *Akayesu* case and the way in which conviction of rape as genocide was considered a victory by many, but could in fact be perpetuating negative views of women as objects of cultural or

⁸ Moira Carmody & Kerry Carrington, *Preventing Sexual Violence?*, 33 AUSTRALIAN & NEW ZEALAND J. CRIMINOLOGY 341, 344 (2000).

reproductive value. This is interwoven with the previous point on shame. Through this point Engle underlines ways in which the legal community can and has reinforced the idea of shame on survivors.

Overall, the book provides a compelling, critical interrogation of the developments in international law related to sexual violence in conflict. What makes the book distinct is that it covers not only the law itself, but the processes behind it, as well as the connections to normative policy developments in the UN Security Council and feminist movements more broadly. It goads the reader to question a number of dominant assumptions in WPS and international law communities. The book should be of interest to feminist international law scholars and practitioners as well as to peace and security scholars. International criminal lawyers should find the analysis of the development of the law, as well as the potential negative repercussions of decisions frequently lauded as progress, to be particularly insightful. The attention given to the UN Security Council and the WPS agenda make it also pertinent to those working in these areas.

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International Law and Transitional Governance.

Critical Perspectives. By Emmanuel H. D. De Groof and Micha Wiebusch. Abingdon, UK; New York: Routledge, 2020. Pp. xx, 186. Index.
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Transitional contexts are often a messy affair and a sensitive period of great uncertainty. Much is at stake during transitions—politically, socially, economically, and militarily. It is no wonder that transitions often draw deep interest from regional and international actors, as they do for domestic parties. The edited volume by Emmanuel De Groof, diplomat for the Belgian Ministry of Foreign Affairs, and Micha Wiebusch, senior legal officer at the

African Court on Human and Peoples' Rights, *International Law and Transitional Governance*, offers wide-ranging and critical perspectives on the role of such actors during, as well as the complexities of managing, these periods of flux. Eleven contributing authors—academics and practitioners—probe five overarching themes related to transitional governance: (1) its temporariness; (2) its internationalization; (3) its legality and legitimacy; (4) its constitutional and supra-constitutional dilemmas; and (5) the parameters of its framework and objectives. Rather than present a series of case studies, each chapter in this compendium helpfully delves into one or more such challenges of transitional governance.

The authors make lucid suggestions, some much more challenging to implement than others. De Groof and Wiebusch make an appeal to international lawyers to “remain alert to a practice which is likely to remain a tool of choice to transform conflict,” especially given the growing number of what they describe as supra-constitutionally regulated transitions (at least thirty since the Cold War) (p.16). What, however, is transitional governance? No two transitions are the same, and the processes that unfold following a rupture or other type of transition can vary significantly. It is unsurprising, then, that transitional governance is a phenomenon whose meaning cannot be neatly summed up in one concise definition.

Nevertheless, in this volume, De Groof and Wiebusch present a definition where transitional governance is “understood . . . as public power exercised by interim governments or other forms of transitional authority governed by transitional legal regulations . . . in the context of conflict or large-scale political unrest” (p. 1). They point to the objective of transitional governance as being the overhaul of institutions and constitutions within states, without affecting their territorial integrity (*id.*). It is unclear, however, whether transitional governance is understood to play a role in peacebuilding or if it has the humbler, although also challenging, task of conflict management. The various takes in this volume tend to oscillate between both goals.