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**DISSERTATION**

**SCHOOL OF LAW**

**LLM/MA IN: International Humanitarian Law**

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**DISSERTATION TITLE**

**Gender-based Violence in armed conflict: International law, motives and current states' practices and recommendation in regard to gender advisors' role and military manuals**

**COMMENTS: (PLEASE WRITE BELOW YOUR COMMENTS)**

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## Dedication

To my Mother, Sister and my Brother

To all the victims of Gender-Based Violence

To all of those who refuse subordination to oppression, and hegemonic masculinity in any possible form.

### Acronyms

IHL	International Humanitarian Law also known as Law of Armed Conflict (LOAC)
IHRL	International Human Rights Law
IL	International Law
GBV	Gender-Based Violence
SGBV	Sexual and Gender-Based Violence
UN	United Nations
UN Women	United Nations Women
UNHCR	United Nations High Commissioner for Refugees
UNSC	United Nations Security Council
UNSC Res	United Nations Security Council Resolution
UNPKO	United Nations Peace-Keeping Operations
OHCHR	Office of the United Nations High Commissioner for Human Rights
WPS	Women, Peace and Security
ICC	International Criminal Court
HRW	Human Rights Watch
NATO	North Atlantic Treaty Organization
WPS	Women, peace and Security
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CEDAW Committee	Committee on the Elimination of all Forms of Discrimination Against Women
UDHR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of all forms of racial discrimination
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment
ICTY	International Criminal Tribunal for the Form Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
NATO	The North Atlantic Treaty Organization
EAPC	Euro-Atlantic Partnership Council
HRW	Human Rights Watch
GCs	Geneva Conventions of 1949
GC(I)	Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
GC (II)	Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
GC (III)	Convention (III) relative to the Treatment of Prisoners of War
GC (IV)	Convention (IV) relative to the Protection of Civilian Persons in Time of War
AP (I)	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977
AP (II)	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.
ICRC	International Committee of the Red Cross
POW	Prisoners of war
U.S.	United States
U.K.	United Kingdom

## Introductory Remarks

I shall begin this project with a brief introduction on how I came to write about gender, gender-based violence, hegemonic masculinity and armed conflicts. For the past five years, I had the honour to work with asylum seekers in Africa and the Middle East. My main role was to interview them and grant refugee status if well-founded fear is established. As a humanitarian worker, subjects like rape, torture, ill and inhumane treatment became the norm rather than the extreme. Yet, I have always questioned how perpetrators can neglect their basic human and compassionate nature to commit such a crime? Why military commanders decide to direct their soldiers to rape and humiliate women? I did, however, reject the consistent urge to write on Gender-Based Violence (GBV) against women due to my gender identity and sexual orientation as a heterosexual man. My desire to write was always limited by a belief that men should not write on women issues or enacts laws that organize women's life. As La Barre says, "Everything that has been written by men about women should be viewed with suspicion, because they are both judge and party".<sup>1</sup>

Through time, I encountered the first homosexual asylum seeker man who was raped due to his sexual orientation. This encounter shaken me up and left me speechless. All of the sudden my belief and social upbringing pattern that only women can be raped started to fall apart. As a Moslem, Middle Eastern and African man, I was only aware of GBV against women, but men can protect themselves. So how come a man can be raped? How can a man rape another man? However, my findings did not end there. I remembered the photos of Abu Gharib Scandal in 2003 when men and women U.S. soldiers committed GBV acts against Iraqi heterosexual men. I conducted more interviews with asylum seekers coming from different countries and the end result did not change; heterosexual and homosexual women and men are raped and subjected to different forms of GBV. Women are telling me their stories with broken hearts and violent angry emotional waves. Men are bleeding from their anus because someone decided to violate it with a rod. These interviews did not only leave me with a deep knowledge on the subject at hand, it also left me broken, afraid and traumatized. Hence, I decided to transform these feelings into words and write about GBV committed against civilians and prisoners of war during

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<sup>1</sup> Cited at: Simone de Beauvoir, *The Second Sex* (Penguin Books 1949)

armed conflicts; only eager that this modest contribution can lead to a slide change in the lives of millions of people who are affected by the brutality and cruelty of armed conflicts.<sup>2</sup>

In 1995 Sociologist Raewyn Connell wrote about Hegemonic Masculinity. She defines it “as the configuration of gender practice which embodies the currently accepted answer to the problem of the legitimacy of patriarchy, which guarantees (or is taken to guarantee) the dominant position of men and the subordination of women”.<sup>3</sup> Connell amazingly did not stop there. She further explains that Hegemony relates to culture and social dominance in each society. Hegemonic Masculinity ensures the dominance of a certain group of men over women. Further, Connell adds that *Subordination* and *dominance* is also found among groups of men.<sup>4</sup> This analysis borrows these concepts in order to gain a deeper understanding of the way Hegemonic Masculinity played a central role in defining the reality behind GBV. The issue at hand is not contemporary, rather it has been coming to the surface in the last decade. In this landmark piece titled Masculinity and War – Let’s talk about it, Hugo Slim that head of policy at the ICRC wrote that Why the silence? Why aren’t men and masculinity called out much more as the main causes of the terrible abuses and tragedy of armed conflicts—its indiscriminate attacks, inhumane detention and sexual violence?”<sup>5</sup> Thus, this analysis is an invitation to deeper exploration of the Hegemonic Masculinity in relation to GBV during armed conflicts. In doing so, we propose a much richer content of the interplay between the concept of Hegemonic Masculinity from one hand and the motives behind GBV, and the legal prohibition on the other hand. We argue that Hegemonic Masculinity frames the reality of GBV, the laws and current states practices.

This analysis is divided into three Chapters. Chapter one tries to understand the fundamental definitions of Gender, and GBV. The chapter also explains the reason behind excluding important terms like ‘sex’ and ‘sexual-based violence’ and use the term ‘gender’ instead. Finally, the chapter highlights some of current realities and forms of GBV. The analysis uses victims’ statements in order to show deeper and first-hand experiences. Chapter two engages in a debate regarding the motives behind

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<sup>2</sup> GBV is also committed among members of armed forces. For details check: Cheryl Hendricks and Lauren Hutton, “Defence reform” in Megan Bastick and Kristin Valasek (eds), *Gender and SSR Tool kit* (DCAF 2008); Stella Cernak, ‘Sexual Assault and Rape in the Military: The Invisible Victims of International Gender Crimes at the Front Lines’ (2015) 22 *Mich. J. Gender & L.* 207

<sup>3</sup> R.W. Connell, *Masculinities* (1st edn, Polity 1995) 77-81

<sup>4</sup> *Ibid*

<sup>5</sup> Hugo Slim, ‘Masculinity and war – Let’s talk about it’, (ICRC Blog 2018) < <https://blogs.icrc.org/law-and-policy/2018/03/15/masculinity-and-war-let-s-talk-about-it-more/>> accessed on 10/09/2019

GBV. In doing so, the analysis will provide a literature review of the academic writings about GBV. The chapter introduces a new lens to understand GBV through Weaponizing Hegemonic Masculinity during armed conflicts in order to incite the commission of GBV against people subordinated gender identities and people who have different sexual orientations. The Yogyakarta Principles define gender identity 'is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms'. The same Principles define sexual orientation 'is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender'.<sup>6</sup> Hence, this analysis uses gender identity and its interplay with sexual orientation in order to understand the way both terms play in placing homosexual and heterosexual men and women, transgender people and people who do not confirm to any gender in the gender hierarchy.

Chapter three, the analysis will navigate the legal prohibition of the different forms of GBV under international law. The chapter also highlights states' obligations to apply the law without any adverse distinction based on gender or sexual orientation. The chapter emphasizes that hegemonic men created gendered-biased laws that only protect their interests. Hence, the current laws do not reflect the issues of women, homosexual and heterosexual men, transgender persons and people who do not confirm to any gender.

Chapter four navigates the UNSC resolutions regarding the Women, Peace and Security agenda in order to gain an understanding of the current practices of international organizations and states. The chapter also navigates several military manuals. This is in order to understand the reflection of gender in those manuals. Finally, the chapter will dedicate a part to understand trainings of armed forces and the role of gender advisors.

Finally, the analysis will conclude the analysis with several recommendations to combat GBV during conflicts. We argue that the incorporation of important concepts of gender mainstreaming, gender

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<sup>6</sup> Sonia Onufer Corrêa and Vitit Muntarbhom, 'Introduction to the Yogyakarta Principles' (The Yogyakarta Principles) <<https://yogyakartaprinciples.org/introduction/>> accessed 4 September 2019

hierarchy and hegemonic masculinity into military training, operations and to empower the role of gender advisors during conflicts in order to limit and combat GBV.

## Chapter One: Gender-Based Violence; concepts, theories and forms

Whilst there is an immense academic work on the issue of GBV in armed conflicts, yet, there is no consistent understanding of the issue at hand. Many academics, conferences, initiatives and UNSC resolutions dealt with the issue. However, a fundamental and stable comprehension of the main reasons behind such horrific violence is missing. Hence, GBV is looming in each conflict around the globe leaving victims with a life-long social, economic and psychological traumatic consequences and damage. Before proposing any solutions to the problem, one needs to understand the roots and motives behind such phenomena. This chapter will, first, propose an understanding of gender and GBV. Second, the chapter will navigate the possible forms of GBV using victims' statements.<sup>7</sup> The chapter will then offer a new lens into the roots of this issue. The reasons why perpetrators of GBV tend to commit actions that are likely going to destroys their victims' life, soul and drive them to a trauma that possibly going to destroy their sense of being human.

### 1.1 Understanding Gender:

Gender is defined by Connell as a social practice that constantly refers to bodies and what bodies do.<sup>8</sup> This definition has been also adopted by psychologists as they referred to sex as a biological construct, while gender as a culturally derived on the myriad ways that gender socialization regulates conduct.<sup>9</sup> Connell confirms that gender survives to the extent that sex does not determine the social behaviour. On the other hand, essentialists are persistently attempting to abolish gender. This is by simply and wrongfully ignoring social constructs and trying to prove that human social arrangements are a natural reaction of evolutionary imperatives.<sup>10</sup> Moreover, the UN Secretary-General's report on WPS in 2002 defines Gender as “the socially constructed roles as ascribed to women and men, as opposed to biological and physical characteristics. Gender roles vary according to socio-economic, political and cultural contexts, and are affected by other factors, including age, race, class and ethnicity. Gender roles are learned and are changeable.”<sup>11</sup> This definition is partially accurate. Nevertheless, the

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<sup>7</sup> Warning, this part contains graphic content.

<sup>8</sup> Ibid (n3) [71]

<sup>9</sup> Gary R. Brooks and William B. Elder, 'History and Future of the Psychology of Men and Masculinities' in Y. Joel Wong and Stephen R. Wester (eds), *APA Handbook of Men and Masculinities* (American Psychological Association 2016)

<sup>10</sup> Ibid (n3) [72]

<sup>11</sup> UN Secretary-General, *Women, Peace and Security*, Study submitted by the Secretary-General pursuant to Security Council resolution 1325 (2000) (United Nations 2002)

definition fails to consider fundamental factors like sexual orientation, gender expression and gender identity. Greenblatt affirms that gender expression is “how people communicate their gender identity” whilst gender identity is “how people self-identify their gender”. She proposes that people might self-identify themselves as “male, female, transgender, genderqueer, androgynous”.<sup>12</sup> Hence, the definition adopted by the UN Secretary-General ignores how persons might identify and express their gender based on their sexual orientation.

Similarly, Article 7(3) of the Rome Statute of the ICC states that “it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above”. The court explains that this definition acknowledges the social construction of gender, and the accompanying roles, behaviours, activities and attributes assigned to women and men, and to girls and boys.<sup>13</sup> The main weakness with this definition is that it draws back to the biological difference between the different genders. In fact, Chinkin states that this definition “refers primarily to the biological differences between women and men rather than an understanding of gender as the ascribed, social and cultural nature of distinctions between men and women, which in return “has the effect of excluding issues of sexuality from the definition “. <sup>14</sup>

Additionally, a core factor to notice is gender cannot be unified as one set of definition among different societies and cultures. Gender definition refers to “Social Constructs”. This referral to societal constructions opens the door to social understanding of gender, masculinity and femininity. These concepts are interchangeable depending on several social and religious variations. Hollway emphasizes that gender identities are indeed fractured and shifting.<sup>15</sup> That being said; such different variations that play a role in further defining gender relations do not deem the understanding of gender as unworthy. It rather strengthened the concept of gender as a socially constructed. Unfortunately, military manuals around the globe still use the terms male and female to refer to specific protection issues. For instance, the UK Joint Service Manual of the Law of Armed Conflict refers only to male and female. This referral is disappointingly limited and neglects persons who do not fill this identification. On

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<sup>12</sup> Ellen Greenblatt, Selective Glossary of LGBTIQ terms in Ellen Greenblatt (ed), *Serving LGBTIQ Library and Archives Users* (Shutterstock 2011)

<sup>13</sup> ICC, Policy Paper on Sexual and Gender-Based Crimes (2014)

<sup>14</sup> Christine Chinkin, ‘Gender-Based Crimes’ in Rudiger Wolfrun (ed), *Max Planck Encyclopedia of Public International Law* (Oxford 2008)

<sup>15</sup> Wendy Hollway, ‘Gender Difference and the Production of subjectivity’ in J. Henriques et al. (ed), *Changing the subject* (Methuen 1984) 227-63

the other hand, essentialists are persistently attempting to abolish gender. This is by simply and wrongfully ignoring social constructs and trying to prove that human social arrangements are a natural reaction of evolutionary imperatives.<sup>16</sup>

Hence, understanding gender is important to widen the scope of gender identities and move forward towards a more inclusive understanding of the law of armed conflicts. Hence, this paper adopts the above-mentioned definition proposed by UN Secretary-General. However, the paper will adopt a more inclusive approach to include factors of sexual orientation and gender identification and expression.

## 1.2 Understanding Gender-based Violence

There is not definition of Gender-based violence or sexual-based violence in international law. Different stakeholders employ various definitions of the terms “sexual violence” and “gender-based violence”. For instance, UNHCR uses the term sexual and gender-based violence (SGBV) to refer to “any act that is perpetrated against a person’s will and is based on gender norms and unequal power relations. It encompasses threats of violence and coercion. It can be physical, emotional, psychological, or sexual in nature, and can take the form of a denial of recourses or access to services”.<sup>17</sup> The ICRC uses two terms “sexual violence” and “gender-based violence”. Similar to UNHCR, the ICRC defines sexual violence as “acts of sexual nature committed against any person by force, threat of force or coercion. Sexual violence also comprises acts of a sexual nature committed by taking advantage of a coercive environment or a person’s incapacity to give genuine consent”.<sup>18</sup>

The Inter-Agency Committee defines GBV as “an umbrella term for any harmful act that is perpetrated against a person’s will, and that is based on socially ascribed (gender) difference between males and females”.<sup>19</sup> Similarly, The ICRC defines GBV as “An umbrella term for any harmful act that results in, or is likely to result in, physical, sexual or psychological harm or suffering to a woman, man, girl or boy on the basis of their gender. GBV is a result of gender inequality and abuse of power. GBV

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<sup>16</sup> Ibid (n3) [72]

<sup>17</sup> UNHCR, 'Sexual and Gender Based Violence ' <<https://www.unhcr.org/uk/sexual-and-gender-based-violence.html>> accessed on 27/07/2019

<sup>18</sup> ICRC and International Federation of Red Cross and Red Crescent Societies, 32nd International Conference of the Red Cross and the Red Crescent, Sexual and gender-based violence: joint action on prevention and response Background report (2015)

<sup>19</sup> Inter-Agency Standing Committee, Guidelines for Gender-based Violence Interventions in Humanitarian Settings Focusing on Prevention of and Response to Sexual Violence in Emergencies (2005) p. 7

includes but is not limited to sexual violence, domestic violence, trafficking, forced or early marriage, forced prostitution and sexual exploitation and abuse". Moreover, OHCHR defines gender-based violence as any harmful act directed against individuals or groups of individuals on the basis of their gender. It may include sexual violence, domestic violence, trafficking, force/early marriage and harmful traditional practices.<sup>20</sup>

Perhaps the most serious drawback of these definitions is using the term "sexual". This term indicates that perpetrators acted based on their sexual desire. Paglia wrongfully argues that the primary driving force for rape is sexual and due to men's desire to rape. She states that "the world becomes a projected psyche, played upon by amoral vagaries of sexual desire".<sup>21</sup> However, the author disagrees with this indication as it is an oversimplification of the motives behind the crimes as will be explained below. In the words of Seifert "rape is not an aggressive expression of sexuality, but a sexual expression of aggression."<sup>22</sup> Ironically, Baaz and Stern conducted interviews with soldiers who committed GBV in the Democratic Republic of Congo. The soldiers identified lust and desire behind their rape.<sup>23</sup> The main issue with this argument is that it is very unlikely that soldiers who commit rape would use any other explanation. As have been seen in the domestic and international jurisprudence, perpetrators always justify rape with illogical and unsound argument like lust or consent. Moreover, indeed as Jarvis confirms classifying GBV as a purely sexual matter, rather than a violent physical assault is more likely to be dismissed as an opportunistic or personally motivated act that is "qualitatively" different from other violent acts committed during armed conflicts.<sup>24</sup> We do acknowledge that the most immediate and dangerous types of GBV have a perceived sexual nature. Yet, we believe that the main force behind such actions are due to the control and dominance over subordinated gender identities as will be explained below.

However, a thoughtful advantage is using the term gender. Kapur notes, the usage of gender will create "the potential for a more inclusive politics, opening up a space for subjects who have remained

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<sup>20</sup> OHCHR, *Sexual and gender-based violence in the context of transitional justice* (2014)

<sup>21</sup> Camille Paglia, *Sexual Personae: Art and Decadence from Nefertiti to Emily Dickinson* (Yala University Press 1990), p.34

<sup>22</sup>Ruth Seifert, 'War and Rape. Analytical Approaches ' (1992) Women's International League for Peace and Freedom

<sup>23</sup> Maria Eriksson Baaz and Maria Stern, "Why do soldiers rape: Gender, Violence and Sexuality in the DRC Army (University of Gothenburg)

<sup>24</sup> Michelle Jarvis, 'Prosecuting conflict-related sexual violence crimes: how far have we progressed and where do we go from here? Some thoughts based on ICTY experience (2016) University of Adelaide Press 105

unaddressed”.<sup>25</sup> Similarly, Scott confirms that the use of gender denotes the scholarly graveness of a work due to the neutrality and objectivity of the term gender than does the term “women”. Scott, further, emphasizes the important factor that gender is used to designate social relations between the sexes. Using gender, also, rejects biological explanations and reaffirms the social constructs of gender as it becomes a way of “denoting cultural constructions”.<sup>26</sup> As Barrow appropriately states gender analyses of conflicts have widely focused on sexual violence and rape against women while ignoring gender norms and roles.<sup>27 28</sup>

Hence, this paper defines GBV as “an umbrella term for any harmful act that results in, or is likely to result in, physical, sexual or psychological harm or suffering to any person on the basis of their gender social construct, identity, expression and/or sexual orientation. Gender-based violence is a result of gender inequality and abuse of power and control”.

### 1.3 Forms and Current realities of Gender-Based Violence

There is no exhaustive list of the different forms of GBV. The Inter-Agency Committee confirms that GBV can be exercised in many forms and shapes.<sup>29</sup> Similarly, the UN Secretary-General report to the UNSC states that “conflict-related sexual violence refers to rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is linked, directly or indirectly (temporally, geographically or causally) to a conflict”.<sup>30</sup> The definition, justly, refers to any other forms of sexual violence. Thus, the definition leaves the stage open to different forms of GBV. In addition to that, GBV takes various forms during armed conflicts. like domestic violence, pornography, genital mutilation and

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<sup>25</sup> Ratna Kapur, “The Tragedy of victimization rhetoric: resurrecting the “Native” subject in international/ Post-Colonial Feminist Legal Politics, 15 Harvard. Human Rights Journal. J. 1, 29 (2002)

<sup>26</sup> Joan W. Scott, “Gender: A useful category of historical analysis”, The American Historical Review, Vol 91, No. 5 (Dec. 1986), pp. 1053-1074

<sup>27</sup> Amy Barrow, 'UN Security Council Resolutions 1325 and 1829: constructing gender in armed conflict and international humanitarian law ' (2010) 92 International Review of the Red Cross 222

<sup>28</sup> Moreover, using gender has many advantages outside the scope of this paper. For instance it will push the agenda to recognize gender as one of the grounds of persecution under the crimes against humanity as indicated in article 4 of the Rome Statute and will facilitate the recognition of gender-related persecution to asylum seekers; for more info see: UNHCR, 'UNHCR Position Paper, Gender-related persecution ' (2000)

<sup>29</sup> Ibid (n20)

<sup>30</sup> UN Secretary-General, Conflict related sexual violence Report of the Secretary General (UN Secretariat, 2015), para 2

prostitution.<sup>31</sup> Torturers are creative. They manage to develop new techniques and skills to establish their dominance over their victims. Hence, justice will not be served in case this analysis focus on developing an exhaustive list. The analysis will use a new approach to give a basic understanding of the different forms of GBV; victims-oriented approach. Usually academics refrain themselves from restating victims' stories to avoid re-traumatization and victimization of certain identities. The author disagrees with this approach. Most victims of GBV do not have their voices heard. They are trapped between fear of stigmatization from one hand, and international and domestic legal systems that failed to serve justice and prosecute the perpetrators on the other hand. As Watson frames the issue "all victims of sexual violence face significant barriers to reporting, ranging from not being believed to a fear of re-victimization by the person they report to".<sup>32</sup> For these reasons, this paper will present victims statements that show some of the above mentioned forms.<sup>33</sup> Moreover, the following reports have been carefully chosen to present several gender identities and sexual orientations.

The most traditional forms of GBV in armed conflicts is rape. A woman reported to HRW her sister's experience with rape during the conflict in Kosovo, she states the following;

"After they burned my father's house, my father and the family took shelter in my building. [One paramilitary] told my father to give all our jewellery or "I'll take your daughter." They took my sister into another room because my father said he had no money. They took her in another room in the flat, locked the door, and told her to take off her clothes. She was seventeen. My sister took off her tee-shirt, but they told her, "No, not that part, take off the lower part." She took off her pants and her panties. She was having her period. I heard everything through the wall, and my sister told me what happened afterwards. The walls are very thin. I heard my sister begging them, "Please in the name of God, if you have a sister or a wife, don't touch me." I got close to the door and I heard him say, "You have your period so you are worth nothing." She looked like she had come back from the dead. She was gone for ten minutes, but it felt like days. Other than my sister, five other girls were abused [in our building], all of them very young".<sup>34</sup>

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<sup>31</sup> For more analysis see, Nancy Lombard (ed), *The Routledge Handbook of Gender and Violence* (Routledge Handbooks 2018)

<sup>32</sup> Callum Watson, *Preventing and Responding to Sexual and Domestic Violence against Men* (DCAF a centre for security, development and the rule of law 2014)

<sup>33</sup> The below statements were chosen randomly to include as many groups as this analysis can. However, GBV has been happening in many conflicts and still taking place as we are writing this paper.

<sup>34</sup> HRW, *Kosovo: Rape as a weapon of "Ethnic Cleansing"* (2000)

In the conflict between Ivorian government and northern-based rebels groups, rape has been widely committed. In a victim testimony to the HRW, a woman recites the following;

“At the market of Tiapleuthy [the rebels] tried to force my brother to rape me and he refused and so they killed him. They took me and for a week they raped me all the time, they locked me in a home. We were about ten or fifteen girls there, being raped. They used to tie me up with my legs spread apart and arms tied behind me to rape me. They’d rape me three or four of them in the night, they would put their guns next to you and if you refuse they kill you. They killed one of my friends and made us bury her”.<sup>35</sup>

Equally, rape is being widely used against civilians in Myanmar. A woman confirms to HRW, “I was held down by six men and raped by men and raped by five of them. First, they [shot and] killed my brother... then they threw me to the side and one man tore my *lungi* [sarong], grabbed me by the mouth and held me still. He stuck a knife into my side and kept it there while the men were raping me. That was how they kept me in place. ... I was trying to move and [the wound] was bleeding more. They were threatening to shoot me”.<sup>36</sup>

Rape has been also committed against homosexual men. For instance, in a report issued by UNHCR the following was stated by a homosexual man from Syria,

“When I was in detention in Syria I was tortured in every possible way. We were 80 persons in one cell with no light for 30 days. We were all naked. At night, they hung us from our hands – they tortured us with electricity to the genitals. They put a stick inside of me... They would come into the cell to violate us, but it was dark – we couldn’t see them. All we could hear were people saying ‘Stop! Don’t My [anus] is bleeding’... I thought we would die”.<sup>37</sup>

Abu Gharib prison scandal in Iraq is a strong example of GBV against heterosexual men in the forms of forced nudity and enforced masturbation. Several U.S soldiers committed GBV acts against Iraqi detainees. In sworn statements given by a victim to military investigators looking into the abuses, Hussein Mohssein Mata Al-Zayadi confirms,

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<sup>35</sup> HRW, "My Heart is Cut" Sexual Violence by Rebels and Pro-Government Forces in Côte d'Ivoire (2007)

<sup>36</sup> HRW, "All of My Body was Pain" Sexual Violence Against Rohingya Women and Girls in Burma (2017)

<sup>37</sup> UNHCR, "We Keep it in Our Heart" - Sexual Violence Against Men and Boys in the Syria Crisis (2017)

“I was in the solitary confinement, me and my friends. We were treated badly. They took our clothes off, even the underwear and they beat us very hard, and they put a hood over my head. And when I told them I am sick they laughed at me and beat me. And one of them brought my friend and told him “stand here” and they brought me and had me kneel in front of my friend. They told my friend to masturbate and I was told to masturbate also, while they were taking pictures. After that they brought my friends, Haidar, Ahmed, Nouri, Ahzem, Hashiem, Mustafa and I, and they put us 2 on the bottom, 2 on top of them, and 2 on top of those and one on top. They took pictures of us and we were naked”.<sup>38</sup>

The Islamic State in Iraq and the Levant committed GBV against homosexual men. For instance, the state thrown homosexual men from the roof of a building in the Syrian City of Palmyra. Before throwing them from the building, a 21-year-old Mohammed Salameh pleaded for forgiveness and promising never to have sex with a man again. Moreover, a 32-year-old Hawas Mallah begged saying “I’d prefer if you shoot me in the head”.<sup>39</sup> Finally, GBV can also be verbal. For instance, an Islamic State Fighter said on homosexual men “who’s going to teach your children? It’s going to be a gay or a paedophile... it is very important for you to protect your children from these animals, from these dirty people”.<sup>40</sup> Similarly, Nakhla, a US civilian translator in Abu Gharib Prison, confirmed that the US soldiers called the heterosexual men detainees in Abu Gharib “all kind of names such as gays do they like to make love to guys”.<sup>41</sup>

In this chapter, it has been explained that gender is a social construct. It has been argued that this analysis will use the term ‘gender-based violence’, rather than the common term ‘sexual-based violence’. The chapter has demonstrated that GBV can be physical and verbal and there is no exhaustive list that covers all forms of GBV. The following chapter tackles the motives behind GBV.

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<sup>38</sup> The Washington Post, 'Sworn Statements by Abu Ghraib Detainees ' (2004) <<https://www.washingtonpost.com/wp-srv/world/iraq/abughraib/swornstatements042104.html?noredirect=on>> accessed 31/07/2019

<sup>39</sup> Bassem Mroue, 'Islamic State group targets gay men with brutal public killings' (*news.com.au*, 2015) <<https://www.news.com.au/world/islamic-state-group-targets-gays-with-brutal-public-killings/news-story/3b55d4e061e005aa8418ca2debc90e92>> accessed 13/08/2019

<sup>40</sup> Ishaan Tharoor, 'The Islamic State's shocking war on gays' (*The Washington Post*, 2016) <<https://www.washingtonpost.com/news/worldviews/wp/2016/06/13/the-islamic-states-shocking-war-on-homosexuals/?noredirect=on>> accessed 13/08/2019

<sup>41</sup> Antonio Taguba, US Army 15-6 Report of Abuse of Prisoners in Iraq (known as Taguba Report)2004)

## Chapter Two: Gender-based violence; understanding the motives

Different scholars and researchers employ various understandings of the motives behind GBV. After careful review of these understandings we can classify the arguments under two main categories. The first one is the essentialists understanding, while the second argument is using GBV as a tactic of war. Finally, this part will propose a new lens to understand GBV throughout the feminism understanding of GBV and the concept of weaponizing hegemonic militarized masculinity in order to demonstrate power and control over subordinated gender identities by exercising GBV.

### 1.1 Essentialists' myths of innate male aggression:

Essentialists believe that GBV during armed conflicts is a natural selection. GBV is the natural unfortunate results of war and no one can prevent it. For instance, Denson attributes violent behaviour to structural and functional brain differences between violent and non-violent people. These differences are based on 10%-14% deficit in prefrontal gray matter and low glucose metabolism that are widely found among men. Denson, further, affirms that impulse control problems which can sometimes take the forms of externalizing problems such as alcohol abuse and violent behaviour lead to activity alteration in parts of the prefrontal cortex. These impulse control problems are more common among men and hence men are more violent.<sup>42</sup> As a result, GBV committed by men is normal. Yet, the author is very sceptical regarding this theory. While biology and science do, indeed, provide a fundamental platform for better understanding to our world's issues. However, the rhetoric that men are violent because of their brain structural is oversimplification and does not address the roots of violence during peacetimes or armed conflicts. Straightforwardly, women and men are aggressors during armed conflicts and in peacetimes. This argument has been proved erroneous by the behaviour of the female soldiers in Abu Gharib and female political leaders like late Indian Prime Minister Indira Gandhi's policies in the Bangladesh Liberation War.<sup>43</sup>

Similarly, McCall and Singer examined the variation of hormones between male and female and emphasized on testosterone as an important factor behind male's violence. Hence, this explanation is adopted to explain GBV. McCall and Singer's research is influenced by examining the migrating birds

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<sup>42</sup>Thomas F. Denson, 'A social neuroscience perspective on the neurobiological bases of aggression' in P.R. Shaver & M. Mikulincer (eds), *Human aggression and violence: Causes, manifestations, and consequences* (APA 2011) pp. 105-120

<sup>43</sup> For more insights check: Zaglul Haider, 'A Revisit to the Indian Role in the Bangladesh Liberation War' (2009) 44 *Journal of Asian and African Studies*

matting patterns. During this examination, they found out that testosterone increases in times of mating to impose dominance in response to challenges from other males, hence increasing the chances for sexual access.<sup>44</sup> However, this theory does not hold its weight. For instance, further studies had suggested that testosterone is most likely to be associated with aggression when cortisol levels are low.<sup>45</sup> Hence, the role of testosterone in men's aggression does not provide a solid argument regarding GBV during conflicts. The author believes that this is a fundamental wrongdoing and over simplification of the issue at hand. In his piece Palmer, rightfully, emphasis that terms like rape have deep connotations that are not simply applicable to non-human species.<sup>46</sup> GBV leave victims with deep emotions and scars that cannot be simply applied to nonhumans. Moreover, civilized legal systems disagree on the definition of rape and forms of GBV, then what definition will be used to measure if nonhuman species are able to rape or not.

Feminists also disagree with this current explanation. As Brownmiller wrote in 1975, "No zoologist, as far as I know, has ever observed that animals rape in their natural habitat, the wild. Sex in the animal world, including those species that are our closest relations, the primates, is more properly called "matting", and it is cyclical activity set off by biological signals the female puts out".<sup>47</sup> Hence, the above-mentioned arguments adopted based on evolution and/or biological reasons do not provide a coherent explanation to the current issue.

## 1.2 The strategic use of GBV during armed conflicts:

Another argument is that GBV during armed conflicts is used as a "tactic of war". Believers of that argument claim that warring parties use GBV and rape as a tactic of war in order to defeat their enemies and achieve their military objectives. Many scholars claim that rape during conflicts is used strategically in order to achieve military objectives.<sup>48</sup> The same argument has been also adopted in the UK National

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<sup>44</sup> Cade McCall & Tania Singer, 'The animal and human neuroendocrinology of social cognition, motivation and behaviour' (2012) 15 *Nature Neuroscience*, p 681-688

<sup>45</sup> Richard Ronay Thomas F. Denson, William von Hippel & Mark M. Schira, 'Endogenous testosterone and cortisol modulate neutral responses during induced anger control' (2013) 8 *Social Neuroscience* p 165-155

<sup>46</sup> Craig T. Palmer, "Rape in Nonhuman Animals Species: Definitions, Evidence, and Implications", *The Journal of Sex Research*, Vol. 26, No. 3 (1989), pp. 355-374

<sup>47</sup> Susan Brownmiller, *Against our will, Men, Women and Rape* (1975, Bantam Book) p3.

<sup>48</sup> Christopher Horwood, 'Perpetrators and Motivation: Understanding Rape and Sexual Violence in War' in Lisa Ernst (ed), *The Shame of War Sexual Violence Against Women and Girls in Conflict* (The New Humanitarian (IRIN) 2007) P.37-57; Robert M. Last, 'An examination of the usage of systematic sexual violence as a weapon of warfare and tool of repression in non-international armed conflicts', Nottingham University 2000)

Action Plan on Women, Peace and security as it states that Sexual Violence is used as a tactic of war.<sup>49</sup> This argument has been also adopted by the UNSC resolution 1820 as it stresses that sexual violence is used as tactic of war in order to deliberately target civilians.<sup>50</sup> Further, Allen used a Serbian military document that states that rape is used in order to force Bosnian civilians to leave their areas of residence, hence to control those areas.<sup>51</sup> Similarly, Thomas and Regan reemphasises that GBV is used to drive a population from a certain territory.<sup>52</sup> This belief that rape is used as a tactic of war has been also reinforced by the first UN Secretary-General's representative on sexual violence in conflict Margot Wallstrom. Her five-point priority agenda is based on recognizing that rape is used as a tactic and consequence of conflict.<sup>53</sup> Similarly, the UN Human Rights Council confirms that sexual violence happening in the current conflict in Myanmar is used as a tactic of war.<sup>54</sup>

A serious weakness with this this argument is that it does not seek the core and fundamental reason behind this behaviour. Meaning, when it is argued that GBV seeks to force displaces civilians in order to acquire land or when it is used as a tactic of war to achieve military gains, it just looks at the end results. Hence and according to these arguments GBV is the mean to achieve some certain results. They do not explain the core reasons behind this historical phenomenon that basically existed throughout history. In fact, force displacement and military objectives can be achieved through other illegal means like sieges or starvation policies. Moreover, these military achievements can also be reached by seeking to target legitimate military targets according to the rules of IHL, but GBV is different and unique as its results are far graver than any military objective or strategic piece of land. Certainly, as Kirby confirms the fixation on rape as a weapon of war perpetuates a certain narrow interpretation of gender violence. Hence, we reject this argument.<sup>55</sup>

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<sup>49</sup> UK Government, UK National Action Plan on Women, Peace & Security 2018-2022, Department for International Development & Ministry of Defence Foreign & Commonwealth Office, 2018), p12

<sup>50</sup> UNSC Res 1820 (2008) S/RES/1820

<sup>51</sup> Beverly Allen, *Rape Warfare The Hidden Genocide in Bosnia-Herzegovina and Croatia* (Univeristy of Press 1996)

<sup>52</sup> E Dorothy Q. Thomas, Ralph Regan 'Rape in War: Challenging the Tradition of Impunity ' (1994) SAIS Review The Johns Hopkins University Press , p.82-99

<sup>53</sup> UN Secretary-General Report to the UNSC pursuant to resolution 1820 and 1888, A/65/592 – S/2010/604, para. 23

<sup>54</sup> UN Human Rights Council Report of the Independent International Fact-Finding Mission on Myanmar (2018) A/HRC/39/64

<sup>55</sup> Paul Kirby, 'Ending sexual violence in conflict: the preventing sexual violence initiative and its critics' (2015) International affairs 91

### 1.3 Understanding Gender-based-violence through the concept of Weaponization of hegemonic militarized masculinity (the shift of gender hierarchy during armed conflicts)

As explained above, Hegemonic Masculinity is the practice that legitimizes men's dominant position in society and justifies the subordination of the common male population and women, and other marginalized ways of being a man.<sup>56</sup> It is a way of living for some men how strive to overcome their fragile personalities and insecurities by projecting their dominance over subordinated gender identities. These identities are usually women, some men and transgender persons. Gender identities always intersect with sexual orientation, class, ethnicity, and religion. Brannon theorized mainstream masculinity in four conceptually distinct canons;

- i) No Sissy Stuff: boys and men ought to dodge feminine behaviour,
- ii) The Big Wheel: men and boys must seek respect and admiration in order to maintain a high level of respect among their circle,
- iii) The Sturdy Oak: in other words, "the strong silent type" that handles any difficult situations on their own,
- iv) Give 'Em Hell: this canon highlights the virtues of risk taking.

Further Roman defines the traditional characteristics of hegemonic masculinity as risk-taking, self-discipline, physical toughness, aggression, violence and over heterosexual desire. Hinojosa also explains that hegemonic masculinities are the settings of everyday gendered social practice that maintain the power over women and subordinated masculinities.<sup>57</sup> In order to be a hegemonic, a group of dominant men feel insecure. Hence, they project their insecurity on women, homosexual men, migrants, and poor men. Indeed, as Donaldson emphasizes that heterosexuality and homophobia are the bedrock of hegemonic masculinity.<sup>58</sup>

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<sup>56</sup> Ibid (n3)

<sup>57</sup> Ramon Hinojosa, 'Doing Hegemony: Military Men, and Constructing a Hegemonic Masculinity ' (2010) 18 The Journal of Men's Studies 179-194

<sup>58</sup> Mike Donaldson, 'What is Hegemonic Masculinity' (1993) 22(5) Theory and Society, Special Issue: Masculinities 643-657

In peace times, hegemonic masculinities exercise their power to maintain their economic, social and political control and dominance over subordinated identities. Meaning that subordinated masculinities and women are oppressed, exploited, and subjected to overt control. For instance, gay and immigrant masculinities and women tend always to have limited economic and social opportunities. Hence, hegemonic masculinity manages to control the gender hierarchy throughout domestic violence, rape, but also through verbal comments and state policies. A simple example is the US President's statement on women "grab them by the pussy... you can do anything"<sup>59</sup> and his policies regarding transgender health,<sup>60</sup> and reproductive rights.<sup>61</sup> <sup>62</sup> Here, the U.S. white president feels that he is entitled to grab women inappropriately. Similarly, the former president of Zimbabwe Robert Mugabe perceives that he is in control over homosexuals when he stated that homosexuals are "worse than pigs" and "less than human".<sup>63</sup>

By borrowing this understanding, hegemonic masculinity plays a fundamental factor in the commission of GBV during conflicts. In times of peace, dominant white<sup>64</sup> or Arab or Macho or Muslim<sup>65</sup> or African<sup>66</sup> men represent hegemonic masculinity and lead the gender hierarchy. They exercise their dominance and power over the subordinated gender identities. However, in times of conflicts soldiers and military commanders become on top of the hierarchy. In fact, MacKinnon in her landmark work "Turning Rape into Pornography" found a direct causal link between pornography in times of peace in

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<sup>59</sup> Ben Jacobs and Sabrina Siddiqui and Scott Bixby, "You can do anything': Trump brags on tape about using fame to get women' (*The Guardian* 2016) <<https://www.theguardian.com/us-news/2016/oct/07/donald-trump-leaked-recording-women>> accessed 13/08/2019

<sup>60</sup> Ryan Thoreson, 'Trump Administration Takes Aim at Transgender Healthcare' (*HRW*, 2019) <[hrw.org/news/2019/05/24/trump-administration-takes-aim-transgender-healthcare](http://hrw.org/news/2019/05/24/trump-administration-takes-aim-transgender-healthcare)> accessed 13/08/2019

<sup>61</sup> Sarah Boseley, 'Trump takes war on abortion worldwide as policy cuts off funds' (*The Guardian*, 2019) <<https://www.theguardian.com/world/2019/may/17/trump-takes-war-on-abortion-worldwide-as-policy-cuts-off-funds>> accessed 13/08/2019

<sup>62</sup> The Current American administration takes pride in defending homosexual rights. However, this policy has been under fire from different parties for details see; Toluse Olorunnipa, 'Trump, who cast himself as pro-LGBT, is now under fire from Democrats for rolling back protections' (*The Washington Post*, <[https://www.washingtonpost.com/politics/trump-who-cast-himself-as-pro-lgbt-now-under-fire-from-democrats-for-rolling-back-protections/2019/05/30/95c04e96-8306-11e9-95a9-e2c830afe24f\\_story.html](https://www.washingtonpost.com/politics/trump-who-cast-himself-as-pro-lgbt-now-under-fire-from-democrats-for-rolling-back-protections/2019/05/30/95c04e96-8306-11e9-95a9-e2c830afe24f_story.html)> accessed 13/08/2019. Moreover, Puar has discussed how nationalists like the current U.S. president associate themselves with homosexuality rights in order to justify their heterophobia, racist and xenophobic views against other identities; Jasbir Puar, *Terrorist Assemblages: Homonationalism in Queer Time* (Duke University Press 2007)

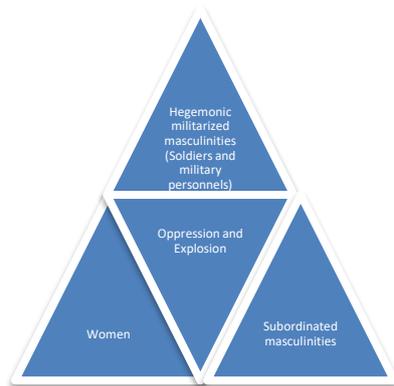
<sup>63</sup> Jeffrey Moyo, 'Worse than dogs and pigs: life as a gay man in Zimbabwe' (Reuters 2017) <<https://www.reuters.com/article/us-zimbabwe-rights-lgbt/worse-than-dogs-and-pigs-life-as-a-gay-man-in-zimbabwe-idUSKCN1BF03Z>> accessed on 19/08/2019

<sup>64</sup> Stefan Dudink, Karen Hagemann and John Tosh (ed), *Masculinities in Politics and War* (Manchester University Press 2004); John H. Arnold and Sean Brady, *What is Masculinity? Historical Dynamics from Antiquity to the Contemporary World* (Palgrave Macmillan 2011); Robert McGregor, 'The popular press and the creation of military masculinities in Georgian Britain' in Paul Higate (ed), *Military Masculinities* (Prager 2003)

<sup>65</sup> For in-depth analysis regarding Islamic Masculinity check: Maleeha Aslam, *Gender-Based Explosions* (United Nations University 2012), Amanullah De Sondi, *The Crisis of Islamic Masculinities* (Bloomsbury 2015)

<sup>66</sup> Jacobus Adriaan Du Piscani, 'Hegemonic masculinity in Afrikaner nationalist' in Stefan Dudink, Karen Hagemann and John Tosh (ed), *Masculinities in Politics and War* (Manchester University Press 2004)

former Yugoslavia and rape during the conflict.<sup>67</sup> The concept of hegemonic masculinity in peace times is similar to conflict times. Politicians and head of governments practise hegemonic masculinity during peacetimes, whereas military commanders and soldiers practise hegemonic masculinity during conflicts. Imagine a pyramid that presents the gender hierarchy. On the top of that pyramid rests hegemonic men who exercise their dominance of subordinated gender identities.



The end result is that hegemonic militarized personae create hierarchies that subordinate others while simultaneously placing their own perceived characteristics in positions of symbolic dominance. In order to do so, hegemonic militarized personae oppress, exploit, committed gender-based violence on subordinated identities.

This argument is also support by the feminism movement. The movement identifies masculine behaviour in order to understand GBV. For instance, Enloe outlined in her research that national security rape is used during armed conflicts to punish, humiliate, and torture women. The notion of national security rape is based on the presumption that humiliating women throughout rape will maintain the notion of femininity and masculinity in place. Enloe also rationalize rape to the theory of Systematic mass rape that is as an effective tool to humiliate or feminize enemy men by sullyng “their” women in order to prove that men are unable to protect their women.<sup>68</sup> Similarly, Chong presents women’s symbolic status as the bearers of honour within the community and hence rape is used to assert dominance over the enemy. Chong explains that men of the community are perceived to protect women’s sexuality. Hence, GBV is perceived as act of domination and power over the males of the communities.<sup>69</sup> Chong notes that in situations of armed conflict patriarchal and militaristic cultures become exaggerated, “The already present patriarchal hierarchies and values, intersect with those of

<sup>67</sup> Catharine A. MacKinnon, 'Turning Rape into Pornography: Postmodern Genocide ' in Alexandra Stiglmayer (ed), *Mass Rape The War against Women in Bosnia-Herzegovina* (University of Nebraska Press 1992)

<sup>68</sup> Cynthia Enloe, *Manoeuvres: The International Politics of Militarizing Women's Lives* (Brekeley: University of California Press 2000) p.111-127

<sup>69</sup> Sarah Chong, “Rape as a weapon of war”, (Association of Women’s Rights in Development (AWID), (December 2005)

militarisation which promotes the construction of gender relations that underlie war rape". Hence, women are viewed as the property of men which needs to be defended, whereby the chastity of women and paternity of children become the main driving points for the protection of women".<sup>70</sup> Enloe, further, notes that national security policy making is left to a largely masculinized policy elite; hence, rape becomes widely found.<sup>71</sup> Enloe, and Chong rightfully identify masculinity as the core reason behind GBV during conflict.

Men commit such atrocities in order to control and dominant women and due to their view that women are by nature an inferior identify in the pyramid of gender hierarchy. Controversially, yet rightfully and justly, in 1969 Brownmiller mentioned that "Man's discovery that his genitalia could serves as a weapon to generate fear must rank as one of the most important discoveries of prehistoric times, along with the use of fire and the first crude stone axe. From prehistoric times to the present, I believe, rape has played a critical function. It is not thing more or less than a conscious process of intimidation by which all men keep all women in a state of fear".<sup>72</sup> However, in order to gain a deeper understanding of the force behind GBV, the author of this analysis wishes to use this statement with a slide change in order to manifest the importance of the element of gender in the equation. Hence, the end of result of this change would be "It is nothing more or less that a conscious process of intimidation by which masculine hegemonic men keep all women and subordinated men in a state of fear".

A fundamental factor that shapes gender in different societies is other constructions of identities; obviously race, class, sexuality, religion, ethnicity and national identity. Gender studies over the past decade or so recognize that gender rarely stands along in the formation of human nature. On the contrary, gender is one set of cultural codes which usually interplay with other important aspects, like notions of race, ethnicity, religion, sexual orientation to name a few.<sup>73</sup> Thus, during conflicts men who are homosexual or belong to a certain nationality and/or religion become subject to GBV because of their gender identity, and the intersectional with sexual orientation or other ground of nationality and/or religion.<sup>74</sup>

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<sup>70</sup> Ibid

<sup>71</sup> Ibid (n68)

<sup>72</sup> Ibid (n47)

<sup>73</sup> John H. Arnold and Sean Brady, 'Introduction' in John H. Arnold and Sean Brady (eds), *What is masculinity? Historical Dynamics from Antiquity to the Contemporary World* (Palgrave Macmillan 2011) p. 4

<sup>74</sup> Intersectionality refers to the interconnected nature of social identities such as gender, sexual orientation, social class, ethnicity, nationality, age, among others, and how the intersection of these identities creates interdependent

When hegemonic militarized masculine soldiers and commanders perform GBV on subordinated identities, they do so in order to control the gender hierarchy and oppress and humiliate the subordinated identities. Misra confirms that the perpetrator of GBV on subordinated identities operates from a self-defined social order where the violated identity is placed in a hierarchy where he is considered as an inferior and thus “a legitimate object of humiliation and violence”.<sup>75</sup> Therefore, GBV becomes a unique tool to perform such hegemonic militarized masculinity and is framed in a manner that weaponize their masculine identity in order to stimulate the manhood militaristic masculinity personae on subordinated identities.<sup>76</sup> As Tetreault rightfully explains that the military is a “masculinity cult”, a place where masculine men seek gender identification and reaffirmation.<sup>77</sup> Indeed, hegemonic masculine men express their sexuality in the concept of control and conquest; hence, the ultimate sign of hegemonic masculinity is control and dominance.<sup>78</sup> Hinojosa, further, affirms that official military polices enable men to maintain position of dominance over men. As Hinojosa states that military systems (general to private) guards the current hierarchy system in order to maintain that some men maintain dominance over other men and women.<sup>79</sup> This system represents the inherit belief of superiority and inferiority.

In relation to GBV against men, in his significant work Sivakumaran identifies several important factors. He recognizes feminization and homosexualization as core reasons behind GBV towards men. He explains that the perpetrators exercise forms of GBV on men in order to feminize them; to make them be like women. Homosexualization is based on assumption that homosexual men are inferior to heterosexual men, hence heterosexual men are raped to look like homosexuals.<sup>80</sup> A clear example of such understanding is manifested by a woman who is married to a Uganda man. The man was raped by the rebels several times, once his wife became aware of this incident, she decided to leave him. Further, she explains that “They ask me: ‘so how am I going to live with him? As what? Is this still a

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systems of oppression and marginalisation. Intersectionality highlights how multiple forms of social inequality, such as sexism, racism, and homophobia, operate together and reinforce one another on a multidimensional basis. See Kimberle Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' (1991) *Stanford Law Review* 1241

<sup>75</sup> Amalendu Misra, *The landscape of silence Sexual Violence Against Men in War* (Hurst 2015), p.9

<sup>76</sup> Joshua A. Goldstein, *War and Gender: How Gender Shapes the War System and Vice Versa* (Cambridge 2001)

<sup>77</sup> Mary Ann Tetreault, 'Gender Belief Systems and the Intergration of Women in the U.S. Military ' (1988) 61 *MINERVA*

<sup>78</sup> Deborah Cameron and Elizabeth Frazer, *the lust to kill: A feminist investigation of sexual murder* (Polity 1987)

<sup>79</sup> *Ibid* (n57)

<sup>80</sup> Sandesh Sivakumaran, 'Sexual Violence Against Men in Armed Conflict ' (2007) 18 *EJIL*

husband? Is it a wife?' they ask, if he can be raped, who is protecting me?'"<sup>81</sup> Consequently, the innate conviction that women, homosexual men, transgender and men who are poor or belong to the enemy's religion, nationality or ethnicity are inferior. In order to control and humiliate them, hegemonic masculine soldiers violate them throughout GBV.

Thus far, this chapter diminishes the continuous arguments that GBV is a natural selection during conflicts due to the nature of men. The chapter also does not believe in the UNSC's argument that GBV is used a tactic of war. The chapter demonstrates that GBV is committed due to the weaponization of hegemonic militarized masculinity during conflicts and the level of control and dominance in the gender hierarchy.

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<sup>81</sup> Will Storr, 'The rape of men: the darkest secret of war' (*The Guardian* 2011) <[https://www.theguardian.com/society/2011/jul/17/the-rape-of-men?CMP=share\\_btn\\_fb&fbclid=IwAR0Gdsr5x1bN77-Ai8g-Qj7hAHfJkMV5ONQhQO3m-kSRJmNyJ-CBM8hRywl](https://www.theguardian.com/society/2011/jul/17/the-rape-of-men?CMP=share_btn_fb&fbclid=IwAR0Gdsr5x1bN77-Ai8g-Qj7hAHfJkMV5ONQhQO3m-kSRJmNyJ-CBM8hRywl)> accessed 14/08/2019

### Chapter Three: Gender-Based Violence under international law

Terms of 'gender-based violence' and/or 'sexual violence' are not found in any international treaties. As Sivakumaran demonstrates that there is no generally accepted definition of these terms in international law.<sup>82</sup> As explained, GBV has been taking place against men and women, however, it has disproportionality affecting more women than men. Hence, feminism critique of international law explains that the law is gendered-biased in order to favour men over women. For instance, Charlesworth, Chinkin and Wright explain that international law has for a long-time resisted feminism analysis. They define that international law ignored women accounts. This ignorance demonstrated itself through a systematic manifestation of gender free analysis regarding the different concerns of international law, e.g. sovereignty, territory, use of force and state responsibility.<sup>83</sup> This understanding is named by Chappell as "The Feminist International Law Project".<sup>84</sup>

Moreover, Charlesworth and Chinkin and Wright demonstrate the masculine nature of the international legal system. They argue that the structure of international law making and the content of the international law is male oriented. They privilege men and marginalize women. Respectively, MacKinnon demonstrates that "The state is male in the feminist sense. The law sees and treats women the way men see and treat women. The liberal state coercively and authoritatively constitutes the legal order in the interests of men as a gender, through its legitimizing norms, forms, relation to society, and substantive policies".<sup>85</sup> This is moderately true; unfortunately it missed the ultimate truth, *The State is Hegemonic Masculine. The law sees and treats subordinated gender identities the way hegemonic masculine men see and treat subordinated gender identities*. States are controlled by a group of hegemonic men who tend to exclude women and subordinated identities and masculinities. This chapter examines the rules of IHL and IHRL in order to demonstrate the ways hegemonic masculinity shaped the creation of these rules. Hegemonic masculine men created the law and as a result the legal prohibition of GBV against women did not materialize until the beginning of the 20<sup>th</sup> century. Moreover,

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<sup>82</sup> Ibid (n80)

<sup>83</sup>Christin Chinkin Hiliary Charlesworth, Shelley Wright 'Feminist Approach to International Law ' (1991) 85 The American Journal of International Law 613-945

<sup>84</sup> Louise Chappell, *The Politics of Gender Justice at the International Criminal Court* (Oxford 2016)

<sup>85</sup> Catharine A. MacKinnon, 'Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence ' (1983) 8 The University of Chicago Press , p635-658

the law does not explicitly prohibit GBV against men and all forms of GBV against men are always classified as torture.<sup>86</sup>

### 1.1. Gender-based violence under International Human Rights Law

Feminist scholars argue that IHRL is created by men and for the sake of men. Hence, the issues of human rights law is men centred, in the words of Charlesworth and Chinkin “in the major human rights treaties, rights are defined according to what men fear will happen to them”.<sup>87</sup> This is accurate. International law privilege men and severely silences women’s voice. That being said, the current forms of international law prevails only some men. Meaning, those hegemonic men in each state represented their country while conducting these treaties; these men are dominant white men in the west, macho men in Latin America and Muslim traditional men in the Moslem dominant countries. Thus, while the argument presented by the authors is accurate, it does, however, reflect exclusivity. The issue with the feminist critique of IHRL is that it views men and women as monolithic identity. However, this rhetoric is unfortunate and imposes holistic legal discrimination. Men and women should be seen as a polytechnic set of gender identities in order to consider intersectionality factors of sexual orientation, religion and ethnicity. The belief that all men are equal is fundamentally erroneous. Studies show that all-male environments are frequently characterized by extreme hierarchy well-documented to breed sexual abuse of men by men. Hence, violence against men stems from a sense of macho competition.<sup>88</sup>

#### a. Legal prohibition of GBV under IHRL

Forms of GBV can be classified under torture, cruel, inhuman or degrading treatment or punishment. The UDHR is the first human rights tool adopted by the UN. Whilst, it is not a binding document, however, it does reflect part of customary international law.<sup>89</sup> Article 5 of the UDHR prohibits

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<sup>86</sup> IHL is the applicable rule during armed conflicts. The ICTY defines IAC in the Tadić case as “an armed conflict exists whenever there is a resort to armed force between States”, while NIAC is a “protracted armed violence between governmental authorities and organized armed groups or between such groups within a State”. ICJ ruled the applicability of IHRL applicable during armed conflicts; ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory opinion, 8 July 1996, *ICJ Reports 1996*, para. 25.; *Decision of the Defense Motion for Interlocutory Appeal on Jurisdiction (Appeal Chamber), Prosecutor v Dusko Tadić* [1995] ICTY, 70 Case No IT-94-1

<sup>87</sup> Hilary Charlesworth and Christine Chinkin, 'The Gender of Jus Cogens' (1993) 15, No. 1 Human Rights Quarterly, pp. 63-76

<sup>88</sup> Catherine A. MacKinnon, 'Oncale v. Sundowner offshore Services, Inc.', 96-568, Amici Curiae Brief in support of Petitioner', (1997) UCLA Women's Law Journal 8(1)

<sup>89</sup> International Court of Justice (ICJ), *United States V. Iran*, 1980 ICJ, 3, 42, Judgment of 24 May; International Conference on Human Rights, “Declaration of Tehran”, 1968, UN Doc. A/CONF.32/41; Louis B. Sohn, “The Human Rights Law of the Charter”, 12 Texas International law Journal (1997) p.129

torture or cruel, inhuman or degrading treatment or punishment.<sup>90</sup> Article 7 of the ICCPR restates the prohibition on torture, cruel, inhuman or degrading treatment or punishment.<sup>91</sup> CAT also sexual orientation and human rights law prohibits torture and other cruel, inhuman or degrading treatment or punishment.<sup>92</sup> Even the CEDAW convention does not expressly mention the terms of GBV or any form of GBV.<sup>93</sup> That being said, the preamble of the convention does include the term gender in a very trivial manner “the convention is also concerned with... the impact of cultural factors on gender relations”. As Stemple affirms that nowhere in CEDAW is violence against women is mentioned.<sup>94</sup> Nonetheless, the CEDAW committee’s general comment 19 defines GBV as “Violence that is directed against women because she is a woman or that affects women disproportionality. It includes acts that inflict physical, mental or sexual harm of suffering, threats of such acts, coercion and other deprivations of liberty”.<sup>95</sup>

b. The principle of non-discrimination and gender

IHRL is based on the principle of non-discrimination regarding its application. Article 2 of the UDHR stipulates that “Everyone is entitled to all the rights and freedoms in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.<sup>96</sup> The issue with this article is that it does not contain gender as a ground of discrimination. Gender can be considered under the term ‘other status’. However, it is left to the discretion of states. As Namisnyk confirms UN conventions nominate specific heads of discrimination to be expressed along identity line, mainly disability and gender.<sup>97</sup> It can be argued that the term ‘sex’ in the above-mentioned articles is enough as it demonstrates males and females. However, and as explained above, the term ‘gender’ is more inclusive than ‘sex’ and it includes more gender identities that are not covered by the term ‘sex’. Stemple notes that the difference between sex and gender is terribly muddled in the human rights canon.<sup>98</sup> Moreover, these clauses disregard sexual orientation as a reason of discrimination.

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<sup>90</sup> UDHR (adopted 10 December 1948)

<sup>91</sup> ICCPR (adopted 16 December 1966, entered into force 23 March 1976)

<sup>92</sup> CAT (adopted 10 December 1984, entered into force 26 June 1987)

<sup>93</sup> CEDAW (adopted 18 December 1979, entered into force 3 September 1981)

<sup>94</sup> Lara Stemple, ‘Male Rape and Human Rights’ (2008) 60 HASTINGS LJ 605

<sup>95</sup> CEDAW Committee, CEDAW General Recommendation No. 19: Violence against women, (1992) para. 6

<sup>96</sup> Ibid (n90)

<sup>97</sup> Emma Buxton-Namisnyk, ‘Does an intersectional understanding of International Human Rights Law Represent the way forward in the prevention and redress of domestic violence against indigenous women in Australia?’ (2014/2015) 18 Australian Indigenous Law Review 1

<sup>98</sup> Ibid (n94)

c. Observations regarding IHRL and GBV

In that respect, feminist critique of IHRL points out the exclusion of women and the gendered-biased language of these treaties. Charlesworth explains that the drafters of UDHR used words that reinforce gender hierarchies. Holmes further explains that 'a man is sure that he is included; a woman is uncertain'.<sup>99</sup> Similarly, article 1 of the ICCPR<sup>100</sup> and article 2 of ICESCR adopt a similar approach disregarding gender as a solid ground for possible discrimination.<sup>101</sup> Shockingly, CAT does not contain a specific non-discriminatory application clause. Rather, the drafters decided to frame it within the definition of torture in article 1, 'for any reason based on discrimination of any kind'.<sup>102</sup> Likewise and surprisingly, ICERD also does not prohibit any discrimination based on gender.<sup>103</sup> In 2000, the ICERD committee recognized the gender aspect of racial discrimination during armed conflicts. The committee states "certain forms of racial discrimination may be directed towards women superficially because of their gender, such as sexual violence committed against women members of particular racial or ethnic groups in detention or during armed conflict... Women may also be further hindered by a lack of access to remedies and complaint mechanisms for racial discrimination because of gender-related impediments, such as gender bias in the legal system and discrimination against women in private spheres of life".<sup>104</sup> Whilst, the committee highlights the continuous discrimination that women face during armed conflicts, nevertheless, the comment fails to fully define gender from a holistic perspective to include different gender identities and sexual orientations.

Lewis recognizes that IHRL does not provide satisfactory legal protection for heterosexual and homosexual men victims of GBV. Similarly, Stemple affirms that the current human rights framework is inadequate for addressing GBV against heterosexual and homosexual men. This is because IHRL defines GBV in ways that often exclude men from the class of potential victims. In fact, IHRL presume women and children to be the only victims.<sup>105</sup> In the matter of fact, CEDAW committee in its general comment 19 defines GBV as "Violence that is directed against women because she is a woman or that

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<sup>99</sup> Helen Bequaert Holmes, 'A Feminist Analysis of the Universal Declaration of Human Rights ' in Carol C. Gould (ed), *Beyond Domination: New Perspectives on Women and Philosophy* (Institute of Women Today 1983)

<sup>100</sup> Ibid (n90)

<sup>101</sup> ICESCR (adopted on 16 December 1966, entered into force 3 January 1976)

<sup>102</sup> Ibid (n92)

<sup>103</sup> ICERD (adopted on 21 December 1965, entered into force 4 January 1969)

<sup>104</sup> UN Committee on THE Elimination of Racial Discrimination, 'General recommendation 25 on gender-related dimensions of racial discrimination' (2000)

<sup>105</sup> Dustin A. Lewis, 'Unrecognized Victims: Sexual Violence Against Men in Conflict Settings Under International Law' (2009) Vol. 27 Wisconsin International Law Journal 1-149

affects women disproportionality. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty".<sup>106</sup> This definition is misleading and proposes fundamental flaws. Firstly, the definition portrays women as the only victim of GBV, as explained above that is simply not true; with all respect to the fact that women are indeed disproportionality subject to GBV more than other gender identities. Secondly, it deepened the victimization of women and represented them as victims of GBV. Thus, it ignored the role of women as combatants and perpetrators of GBV in some occasions (Abu Gharib as an example). As Stemple reacts to the CEWAD's comment "no room is left for gendered violence that harms men, a glaring omission considering that male victims of sexual violence are routinely feminized".<sup>107</sup>

However, big achievement can be found in the general comment No.2 issued by the Committee against Torture. The comment refers that "states parties must ensure that, insofar as the obligations arising under the convention are concerned, their laws are in practice applied to all persons, regardless of race, colour ethnicity, religion belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, transgender identity".<sup>108</sup> That being said, CAT was issued in 1984, while this general comment was issued only in 2008. The main weakness of CAT is presented by Charlesworth and Chinkin as they rightfully demonstrate that a central feature of the international legal definition of torture is that it happens in the public realm by public authority. Hence, it disregards torture within the private sphere.<sup>109</sup>

Based on the above observations two conclusions can be reached. The first one is the feminist critique that recognizes, rightfully, the absence of women in the legal making process. The second one is this paper's view that hegemonic masculinity controlled the creation of IHRL. This hegemonic view does not acknowledge GBV against men and assumes that GBV only happens against women. Hence, men can be tortured but cannot be raped. The third view is victim-oriented approach. This one does not have any voice, thus far. Many gender identities are violated daily and their voices are not heard.

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<sup>106</sup> CEDAW, CEDAW General Recommendation No. 19: Violence against women 1992, para. 6

<sup>107</sup> Lara Stemple, 'Human Rights, Sex and Gender: Limits in Theory and Practice ' (2011) 31 Pace L Rev 824

<sup>108</sup> UN Committee Against Torture (CAT), General Comment No. 2 Implementation of article 2 by States Parties 2008)

<sup>109</sup> Ibid (n83)

## 1.2. Gender-based violence under international humanitarian law

As explained above, GBV against heterosexual and homosexual men and women, transgender persons and people who do not confirm to any gender identity have been taking place since the dawn of history. However, the legal prohibition against such types of crimes is only a century old. Historically, women have been seen as a part of men's property. Hence, GBV against women have been seen as an attack against her owner (father, husband, brother, etc.). Brownmiller confirms that women were perceived as spoils of war to the winner men.<sup>110</sup> Further, Hagay-Frey frames three historical eras that define the legal prohibition of GBV against women; era of silence, era of honour and the era of the current status quo.<sup>111</sup> The era of silence starts since the emergence of conflicts until the adoption of the GCs in 1948. During this era, GBV was permitted and perpetrators of those crimes were treated forgivingly. The end of this era witnessed several legal documents that tried to limit GBV.<sup>112</sup> The Hague Conventions of 1899 and 1907 did not prohibit plainly GBV. Nevertheless, they constructed an obligation toward "family honours" and "religious convictions and practice". Khushalanai asserts that these terms were used to grant protection to women from possible forms of GBV.<sup>113</sup> The second era witnessed the adoption of the GCs. Article 27 of GC (IV) prohibits any attack against women's "honour", the term, justifiably, created controversy among feminists legal scholars as explained below.<sup>114</sup> The third era commences in the 1990s with the creation of the ICTY, ICTR and ICC until the present.

However, the issue at hand is far more complex than only three periodical eras. The complexity and sensitivity of IL's prohibition of GBV stems from the centralized law-making process. This process has been shaped by a group of hegemonic masculine men that excluded women, common men and subordinated identities. Hence, they created legal regulations that were shaped by a narrow understanding of society and culture. As a result, they created gender biased treaties that only serve their interests. A notable example is framed by looking at the fact that while women can speak on three

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<sup>110</sup> Susan Brownmiller, *Femininity* (Open Road 1984), p 44-80

<sup>111</sup> Alona Hagay-Frey, *Sex and Gender Crimes in the New International Law* (M. Nijhoff 2011), pp.4,5

<sup>112</sup> Some of these documents are: Articles of War (1385) by King Richard II of England, Treaty of Amity and Commerce between the U.S. and Prussia in 1785, The Lieber Code of 1863.

<sup>113</sup> Yougindra Khushalanai, *Dignity and Honor of Women as Basic and Fundamental Human Rights* (M. Nijhoff 1982), p.145

<sup>114</sup> GC (IV) (adopted on 12 August 1949, entered into force 21 October 1950)

eras in relation to GBV from one hand, heterosexual, homosexual men and women, transgender and persons who do not confirm to any gender can speak about only one era. Obviously, this is the era of silence.

a. Legal prohibition and classification of GBV under IHL

Forms of GBV are prohibited by several international treaties. However, similar to IHRL, no international treaty contains a precise definition of the term 'gender-based violence' or even the most common forms of GBV like rape. Regarding IACs, Article 12 of GC (I) stipulates that the wounded or sick shall be respected and treated humanely.<sup>115</sup> Article 13 and 14 of the GC (III) affirms that POW shall be treated humanely.<sup>116</sup> Article 27 of the GC (IV) concludes that 'women shall be especially protected against any attack on their honour, in particular rape, enforced prostitution, or any form on indecent assault'.<sup>117</sup> In relation to NIACs, common article 3 of the GCs prohibits any violence towards persons taking no active part in the hostilities 'in particular murder of all kinds, mutilation, cruel treatment and torture'.<sup>118</sup> Article 75(2)(b) of AP1 reaffirms that prohibition of any 'outrage upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault'. Further, article 76(1) of the same protocol explicitly provides that "women shall be the object of special respect and shall be protected in particular against rape, force prostitution and any other form of indecent assault".<sup>119</sup> Moreover, Hilimi observes that the Islamic International Law forbids rape and sexual molestation.<sup>120</sup> It punishes the rapist with stoning to death or, to lashing according to his marital status single or married.<sup>121</sup>

b. The principle of non-discrimination under IHL:

Similar to IHRL, the GCs do contain non-discrimination clauses. Meaning that parties of conflict must at all times apply the rules of the conventions without any distinction based on sex, race, nationality, religion, political opinion, or any other similar criteria.<sup>122</sup> Similarly, article 9 of the AP(1) provides that

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<sup>115</sup> GC (I) (adopted on 12 August 1949, entered into force 21 October 1950)

<sup>116</sup> GV (III) (adopted on 12 August 1949, entered into force 21 October 1950)

<sup>117</sup> Ibid (n114)

<sup>118</sup> Ibid (n114, n115, n116)

<sup>119</sup> AP (I) (adopted on 8 August 1977, entered into force 7 December 1978)

<sup>120</sup> Hilmi M. Zawati, *Is Jihad a Just War? War, Peace, and human rights under Islamic and Public International Law* (Edwin Mellen Press 2001)

<sup>121</sup> The author does not endorse capital punishment or lashing punishments.

<sup>122</sup> Article 12 of the GC(I), article 12 of the GC(II), article 16 of GC(III), article 13 of the GC (IV)

the protocol shall be applied to everyone 'without any adverse distinction founded on race, colour, sex, language, religion, or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria'.<sup>123</sup> However, gender has not been included in these clauses. That being said, the ICRC commentary affirms that the list is not exhaustive.<sup>124</sup> The commentary further confirms that 'the open wording of the articles allow for the consideration of the additional criteria. Cameron, Demeyere and Henchaerts, La Haye and Lackner confirm that the recent revised ICRC commentaries include gender perspective.<sup>125</sup> Yet, the ICRC commentaries are not obligatory. Hence, states are not obliged to adhere to them.

c. Observations in regard to Gender and IHL:

On the one hand, feminist legal scholars demonstrate their frustration at the IHL's absence of analysis regarding the systematic gender inequalities. For instance, Gardam and Jarvis write 'IHL takes a particular male perspective on armed conflict, as a norm against which to measure equality. In a world where women are not equals of men, and armed conflict impacts upon men and women in a fundamentally different way, a general category of rules that is not inclusive of the reality for women cannot respond to their situation'.<sup>126</sup> On the other hand, Durham writes "feminist legal scholars have expressed frustrations at IHL's lack of analysis of matters such as systematic gender inequalities. They argue that this contributes to IHL's inability to move beyond a "male norm" when dealing with the impact of armed conflict upon women. Many of these criticisms highlight the tensions between the pragmatic and limited aims of IHL and the range of expectations placed upon this area of law... IHL does not attempt to place any regulations upon the basis of social structure before, or after, the conflict... its limited aim leaves no room... for deeper social analysis of inherent inequalities required by feminist legal theory".<sup>127</sup>

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<sup>123</sup> Ibid (n119)

<sup>124</sup> ICRC, Commentary of 2016, Article 12: Protection and care of the wounded and sick, <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=CECD58D1E2A2AF30C1257F15004A7CB9>> accessed on 18/08/2019

<sup>125</sup> Lindsey Cameron, Bruno Demeyere, Jean-Marie Henckaerts, Eve La Haye and Heike Neibergall-Lackner, 'The updated Commentary on the First Geneva Convention – a new tool for generating respect for international humanitarian law' (2015) 97 International Review of the Red Cross

<sup>126</sup> Judith Gardam and Michelle Jarvis, *Women, Armed Conflict and International Law* (2001 Springer) 93

<sup>127</sup> Helen Durham, 'International Humanitarian Law and the Protection of Women' in Helen Durham and Tracey Gurd (ed), *Listening to the Silences: Women and War*, (Martinus Nijhoff Publishers 2005) 97

The different understanding of the nature of IHL between Durham's view and other feminist academics represents some important outcomes. First, Durham is not an academic like Charlesworth, Chinkin, and Gardam. Rather she is the director of International Law and Policy at the ICRC. Moreover, she has a numerous field experiences that reflect on her practical understanding of IHL.<sup>128</sup> By contrast, feminism academics lack field experience that would allow them to have a different understanding of the pragmatic nature of IHL's legal rules and regulations. That being said, both opinions are important to understand the issue at hand. IHL is different from IHRL. The latter seeks to end inequalities between humans, while the former only seeks to protect civilians during armed conflicts. Durham affirms that IHL devotes itself to the reduction of the suffering during conflict throughout enhancing protection mechanisms. It is limited by nature and by time.<sup>129</sup> Yet, it is important to also understand the nature of IHL and the words of the GCs are gendered biased. What stands out in the above legal prohibition of GBV during armed conflicts is the general pattern of using terms like 'sex' and 'honour' to manifest women's protection. Indeed, as Durham states that IHL does not seek long term social equality. However, providing equal and impartial protection during conflicts is a core factor of IHL. Hence, equal protection disregard to sexual orientation or gender is fundamental in order to reduce suffering during conflicts.

At the same time, what is striking is the absence of any legal prohibition in relation to protecting other gender identities of GBV. Moreover, IHL does not understand the concept of gender as socially constructed factor that play a role in protecting persons from GBV. Hence, IHL only recognizes GBV against women and disregard that GBV can happen to other gender identities. Sivakumaran notes that as soon as men try to seek legal recourse, their experiences are often classified under rubric terms of 'abuse', 'torture', or 'mutilation'.<sup>130</sup> Similarly, Tienhoven affirms that GBV against male is always viewed as beatings or torture rather than sexual violence of GBV.<sup>131</sup> A clear example can be established by the prosecution of the Abu Gharaib perpetrators as they were accused of torture, war crimes, maltreatment of detainees, assault, and committing an indecent act. However, none of the perpetrators were accused

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<sup>128</sup> ICRC, 'Dr Helen Durham Director of International Law and Policy' <<https://www.icrc.org/en/author/helen-durham>> accessed on 18/08/2019

<sup>129</sup> Ibid (126) [95] [96]

<sup>130</sup> Ibid, (n80)

<sup>131</sup> Van Tienhoven, 'sexual torture of male victims' (1993) 3(4) Torture 133

of any crimes based on gender.<sup>132</sup> It has been argued that forms of GBV should be charged separately and not to be classified as torture.<sup>133</sup> For instance, the Centro de Estudios Legales y Sociales, a prominent human rights organization in Argentina argues that “our opinion is that rape should be differentiated from other criminal charges, regardless of their similarities. We believe it is a mistake to include these crimes with other unlawful conducts, as that would involve concealing them behind other crimes that are no more or less serious”.<sup>134</sup>

Nonetheless, an additional legal issue might face victims of GBV. This issue relates to the concept of ‘consent’. Once a victim is raped, they suffer not only long-lasting trauma but also legal stigmatization as in many legal systems the victim of rape might be considered as the one who ‘asked for it’. Wakelin and Long write that “it is not surprising that gay male or heterosexual female are seen as having more unconscious desire, given that stereotypes of rape victims portray heterosexual women as wanting rape and homosexual men as asking for rape”.<sup>135</sup> Sivakumaran notes that for women survivors of rape are confronted with the notion of chastity. Hence, women may be punished for fornication or adultery.<sup>136</sup> Furthermore, women can be disowned by her family in case of rape.<sup>137</sup> This is quite common in countries like Saudi Arabia as a court punished a woman for speaking out about her rape.<sup>138</sup> The victim advocated for her case on social media platforms. As a result, the court doubled the victim’s sentence to 200 lashers and six months in prison.<sup>139</sup> Hence, victims might face legal challenges if they decided to seek prosecution of perpetrators. Similarly, Mackinnon notes that “when conception

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<sup>132</sup> For example see: Trial International, ‘Charles Graner’ <<https://trialinternational.org/latest-post/charles-graner/>> accessed on 18/08/2019; Trial International, ‘Lynndie R. England’ <<https://trialinternational.org/latest-post/lyndie-r-england/>> accessed on 18/08/2019

<sup>133</sup> Prosecution of GBV is a very complex issue. This issue is not covered in this analysis. To gain a deeper understanding of prosecution of these crimes see: Sandesh Sivakumaran, ‘Prosecuting sexual violence against men and boys’ in Anne-Marie de Brouwer, Charlotte Ku, Renee Romkens and Larissa van den Herik (ed), *Sexual Violence as an International Crime: Interdisciplinary Approaches* (Intersentia 2013)

<sup>134</sup> Lorena Balardini, Ana Oberlin and Laura Sobredo, ‘Gender violence and sexual abuse in Clandestine Detention Centers’ in Center for Legal and Social Studies (ed), *Making Justice: Further discussions on the prosecution of crimes against humanity in Argentina* (2011)

<sup>135</sup> Anna Wakelin and Karen M. Long, ‘Effects of Victim Gender and Sexuality on Attributions of Blame to Rape Victim’ (2003) 49 *Sex Roles* 479, 485

<sup>136</sup> Sandesh Sivakumaran, ‘Male/Male Rape and the “Taint” of Homosexuality’, (2005) 27.4 *Human Rights Quarterly* John Hopkins University Press 1247-1306

<sup>137</sup> Amy E. Ray, ‘The Shame of it: Gender-based Terrorism in the Former Yugoslavia and the Failure of International Human Rights Law to Comprehend the Injuries’ (1997) 46 *AM.U.L. Rev* 793-804

<sup>138</sup> According to the Rule of law in armed conflicts project Saudi Arabia is involved in three armed conflicts; NIAC and IAC in Syria and NIAC in Yemen. This incident did not take place within the context of any of these conflicts. Hence, IHL rules do not apply and the Saudi State is responsible to adhere to the IHRL obligations.

Moreover, whilst this analysis is only concerned with GBV during armed conflicts; however, peace time GBV does also provide a deeper understanding of GBV in general.

<sup>139</sup> HRW, ‘Saudi Arabia: Rape Victim Punished for Speaking out’, (HRW 2007) <<https://www.hrw.org/news/2007/11/15/saudi-arabia-rape-victim-punished-speaking-out>> accessed 21/08/2019

results from rape or incest, it is a girl or a woman who was violated, shamed, and defiled in a way distinctively regarded as female".<sup>140</sup> Likewise, Sivakumaran explains that men victims of rape face the danger of facing victim blaming if they are raped and being accused of performing sexual act with the same sex. Hence, they might face prosecution as a criminal offence under the law of many states who prohibit same-sex activity.<sup>141</sup> He writes that "a further additional factor, an extra stigma, or an additional taboo that outweighs this must therefore be present. This factor is the view that there is a "taint" of homosexuality about the victim of a male/male rape".<sup>142</sup> Ottosson confirms that there around 86 countries that criminalise consensual adult same-sex sexual intercourse.<sup>143</sup>

Thus far, this chapter demonstrated some observations regarding the legal prohibition of GBV under the rule of IHL and IHRL. The chapter found that feminist critique of international law is exclusive and does not cover GBV against other gender identities and does not consider intersectionality with sexual orientation. The chapter concluded that neither women nor men should be viewed as a monolithic group. Rather, a deeper understanding of how hegemonic masculine men shaped international law is important. The chapter examined the ways IHL protects people during conflicts. It is believed that IHL does not tend to ensure long-term social equality. However, IHL ensures equal protection to all people regardless to gender. The next chapter will navigate state practices in regard to gender advisors' role and the training of armed forces.

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<sup>140</sup> Catherine MacKinnon, 'Reflections on Sex Equality under Law'(1991) 100 Yale L.J. 1281

<sup>141</sup> Ibid (n80)

<sup>142</sup> Ibid (n154)

<sup>143</sup> Daniel Ottosson, 'State-sponsored Homophobia' (ILGA 2010)

## Chapter Four: How to combat Gender-based violence? State Practices in regard to gender advisors' role and military trainings

In chapter two, we tried to understand the motives behind GBV. We concluded that hegemonic masculine soldiers and members of armed forces commit GBV to control subordinated identities. Further, in chapter three we realized that the international law was created by hegemonic men. Hence, they framed the laws and shaped the prohibition of GBV during conflicts. In chapter four, we will follow this theoretical frame work to navigate the way in which hegemonic masculine men frame the UNSC and the states practices in regard to GBV. Before we do that, we have to highlight the nature of militaries. Militaries are gendered by nature. Woodward and Duncanson properly state that gendering the military is not peripheral or additional, rather it is foundational.<sup>144</sup> This foundational is based on the classical definition of femininity and masculinity behaviours. Undeniably, Enloe demonstrates that masculinities and militaries have been tangled in the history of the nation-state.<sup>145</sup> As a result, militaries have influenced the formation of what it is to be a man? And what it is to be a hegemonic masculine man?<sup>146</sup> Similarly Connell write about military that “no other arena has been more important for the definition of hegemonic masculinity”.<sup>147</sup> This gendered nature of armed forces does not only shape the entry requirement of their members, but also achieving security. Armed forces' primary duty is to protect the nation's security. The UNSC affirms that GBV is a security problem.<sup>148</sup> Hence, security policies are extremely gendered and thus extremely masculine.<sup>149</sup> The perfect solution is to stop wars and conflicts and to abolish militaries. Ruddick, anti-militarists feminist, writes “we believe that the weapons or organized violence endanger both those whom they are intended to protect and, obviously, the internal and foreign “enemies” at whom they are aimed”.<sup>150</sup> We understand that this solution is impossible. Realistically, armed forces will always remain as states will never abandon these institutions. Hence, including gender perspectives and teach the concept of hegemonic masculinity and how it defines GBV

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<sup>144</sup> Rachel Woodward and Claire Duncanson, 'An Introduction to Gender and the Military' in Rachel Woodward and Claire Duncanson, *The Palgrave International Handbook of Gender and the Military* (Palgrave Macmillan 2017)

<sup>145</sup> Cynthia Enloe, *Bananas, Beaches and Bases* (Pandora Press 1989)

<sup>146</sup> Ibid (n144)

<sup>147</sup> Ibid (n32)

<sup>148</sup> Ibid (n30)

<sup>149</sup> Ibid (n144)

<sup>150</sup> Sara Ruddick, 'Pacifying the Forces: Drafting Women in the Interests of Peace' (1983) 8.3 Signs 471-489

is a fundamental step to combat GBV. This is in order to comprehend gender as a social construct and a social force in military forces, institutions, activities and operations.<sup>151</sup>

In order to do so, we conclude this analysis throughout several recommendations and observations in relation to introducing the concept of hegemonic masculinity and gender within the armed forces. We will examine some military manuals that were chosen based on their relevant progress in including gender perspectives. Further, the chapter will examine how the UNSC women, peace and security agenda frames the current state policies.<sup>152</sup> The chapter will end up with navigating the current training opportunities in relation to gender and GBV and the role of gender advisors.

### 1.1 Gender-based violence and military manuals

States' military manuals codify the LOAC or IHL rules and should be applied without any adverse distinction based on any criteria. Armed forces are concerned with writing up the manuals and applying it during conflicts. Hence, military manuals are to large extent the product of hegemonic masculine institution that does not consider gender dimensions. In this section we reviewed the military manuals of six countries; Canada, Denmark, Australia, Norway, New Zealand and the United Kingdom. We decided to only include these countries due to lack of words limit but also because not all countries have their manual published and easily accessible. In general, states have an obligation to publish their manuals and make them accessible to everyone. Article 83 of the AP(I) stipulates that states must disseminate the GCs and their APs. Gasser affirms that publishing national military manuals is a component of dissemination. Hence, states that need to confirm to their obligations to ensure transparency.

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<sup>151</sup> Ibid (n144)

<sup>152</sup> GBV is widely committed by armed groups. However, this analysis only focuses on states due to word and time limitations. Nevertheless, Geneva Call is an organization that works with armed group to improve their respect to IHL. The organization created what is called "Deed of commitment for the prohibition of sexual violence in situations of armed conflict and towards the elimination of gender discrimination", accessed on 18/07/2019 and available at: <https://www.genevacall.org/wp-content/uploads/2019/07/DoC-Prohibiting-sexual-violence-and-gender-discrimination.pdf>; for further information on armed groups obligation in regard human rights see: Daragh Murray, "Human Rights Obligations of Non-State Armed Groups (Hart), Daragh Murray "Non-state armed groups, Detention Authority in Non-international armed conflict and the Coherence of international law: Searching for a way forward (Leiden journal of international law), and Daragh Murray, "Engaging armed groups through the development of human rights obligations: Incorporating practice, motivation and ideology to promote compliance with international law" in Gill, TD., McCormack, T., Geib, R., Krieger, H. and Paulussen, C., T.M.C. *Yearbook of International Humanitarian Law*, (Asser 2016, Vol 19), Nadarajah Pushparajah, "Human rights obligations of armed non-state actors in non-international armed conflicts", (Wolf 2016)

a) Legal classification of GBV:<sup>153</sup>

The Canadian military manual prohibits some forms of GBV. For instance, the manual forbids rape and any other form of sexual assault.<sup>154</sup> Similarly, the UK military manual prohibits any rape, sexual violence and torture.<sup>155</sup> Additionally, the Australian military manual prohibit torture of all kinds, whether physical or mental against civilians and POWs.<sup>156</sup> Similarly, the Danish Ministry of Defence issued a military manual on international law relevant to Danish armed forces in international operations. The manual states that women should be protected from rape, sexual slavery, enforced prostitution and any other form of sexual violence.<sup>157</sup> A major drawback among these manuals is that they frame rape as a women issue. Thus, these manuals fail to a large extent to recognize that GBV is actually committed against other gender identity and due to sexual orientation. In contrast, the Norwegian and the New Zealand manuals do in fact provide a more inclusive protection in regard to GBV regardless to gender and/or sexual orientation. Perhaps the most serious improvement of the New Zealand military manual is that their members are required to take into consideration the persons' gender, his clothes and the way he is behaving.<sup>158</sup>

b) The application without discrimination:

In regard to the principle of non-distinction, as explained above, the GCs do not state gender or sexual orientation as a ground of discrimination. The ICRC commentary advises that states should apply the principle of non-discrimination in relation to gender.<sup>159</sup> However, few states oblige with this commentary. Unfortunately, the majority of the military manuals refer to sex as male and female. Hence, there is a complete lack of understanding to concepts of gender, gender identification, other gender identities or sexual orientation. In regard to states that recognize gender, the Danish manual in international operations states that a strong attention should be given to gender when depriving persons from their liberties.<sup>160</sup> Such understanding considers a modest improvement in the current international

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<sup>153</sup> As explained above, forms of GBV committed against men are always wrongfully classified as torture. Hence, we looked at some of the forms of GBV and torture in order to include the different legal classification of GBV.

<sup>154</sup> Canadian National Defence, Law of Armed Conflict at the operational and tactical levels (2001)

<sup>155</sup> UK Ministry of Defence, The Joint Service Manual of the Law of Armed Conflict (2004)

<sup>156</sup> Australian Department of Defence, Executive series Law of Armed Conflict (2006)

<sup>157</sup> Danish Defence, 'Military Manual on international law relevant to Danish armed forces in international operations' (2016)

<sup>158</sup> New Zealand Defence Force, Manual of Armed Forces Law (Volume 4)

<sup>159</sup> Ibid (n125)

<sup>160</sup> Ibid (n157)

operations as the Danish armed forces are involved in operations in Afghanistan, against ISIL, UN Military Observers and contribute also to counter-piracy missions.<sup>161</sup> However, a major drawback in the manual is framing GBV as an issue that only affect women, thus, excluding other gender identities.<sup>162</sup> Moreover, the British Army states in its values and standards that everyone must be treated fairly and with dignity and respect regardless of gender or sexual orientation.<sup>163</sup> However, the British military manual completely ignores gender.<sup>164</sup> Likewise, the Australian military manual ignores gender.<sup>165</sup> In contrast, the Norwegian military manual affirms that rape is punishable regardless of gender. The manual also provides special respect to gender in regard to search, interrogation and detention.<sup>166</sup> Similarly, Canada's military manual confirms "is to be applied without any adverse distinction found on... gender".<sup>167</sup>

Including gender in military manuals is a challenging step to achieve. This is because many states refuse to acknowledge the factor of gender. This is not surprising. States are reluctant to recognize gender in their military manuals. This is primary because the term gender considers a lightning rod for conservative concerns about sexuality. The only international legal instrument that includes the term "gender" is the Rome Statue. The term "gender" is mentioned nine times in the statute. However, it was not easy task to include it. This is because it could profoundly affect the legal construction of "gender" under international law. The debates and state negotiations were highly contentious. Moreover, conservative states have concerns in regard to gender and its interplay with sexuality. In her piece, Oostveldt deeply analysis the different debates surrounding the term gender.<sup>168</sup> Regarding states' reactions to gender, some states did not agree on the definition of gender in the Rome Statue. For instance, Azerbaijan feared that their nationals might be prosecuted based on traditional gender-based practices and criminalization of homosexuality. As explained above, many states prohibit same-sex relations. Hence, men who are subjected to rape during armed conflicts fear prosecution. Azerbaijan is a country that prohibits same-sex relations. Hence, the country fears that any conviction by a national

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<sup>161</sup> Danish Ministry of Defence, 'International Operations' (2017) <<https://www.fmn.dk/eng/allabout/Pages/Internationaloperations.aspx>> accessed on 22/08/2019

<sup>162</sup> Ibid [n123] (111) (207)

<sup>163</sup> UK Ministry of Defence, Values and Standards of the British Army

<sup>164</sup> Ibid (n155)

<sup>165</sup> Ibid (n156)

<sup>166</sup> Ibid (n158)

<sup>167</sup> Ibid (n155)

<sup>168</sup> Valerie Oosterveld, 'The Definition of "Gender" in the Rome Statue of the International Criminal Court: A step forward or back for International Criminal Justice?' (2005) Law Publications 93

court for homosexual acts might be regarded as persecution. Hence, many countries opposed the term gender in the Rome Statute. Similarly, the Holy See and some other conservative Arab States opposed the inclusion of the term gender in the Beijing World Conference on Women.<sup>169</sup>

Moreover, states have an obligation to include IHRL in their military manuals. As Doswald and Krähenmann affirm that it is necessary to incorporate IHRL into military manuals due to its applicability in all times. Whilst, IHRL is vague in the application of the term gender as a ground for no-discrimination, however, IHRL clarifies and complements IHL.<sup>170</sup> Hence, states including both IHRL and IHL rules in their military manuals will provide a more inclusive protection to civilians during conflicts.

## 1.2 Gender-based violence and United Nations Security Council's resolutions:

As explained above, hegemonic masculine men have shaped international law. The same hegemonic masculine states framed the formation of the UNSC and the UN Agencies. Hence, the UN response to GBV has been always late and inconsistent with the realities of GBV. The UN has established a comprehensive women, peace and security framework through the adoption of the UNSC resolutions 1325,<sup>171</sup> 1820,<sup>172</sup> 1888,<sup>173</sup> 1889,<sup>174</sup> 1960,<sup>175</sup> 2106,<sup>176</sup> 2122<sup>177</sup> and 2422.<sup>178</sup> These resolutions are referred to as the Women, Peace and Security Agenda (WPS). The resolutions do not identify the core reasons behind GBV. This is because resolution 1820 and 1888 state that sexual based violence is used as a tactic of war, hence, ignoring the gender roles, hierarchy, sexual orientation, and the interplay with notions of masculinity and femininity.<sup>179</sup>

Turning to gender identities and sexual orientation, the resolutions mostly focus on women and girls, whilst ignoring others. It is only in the resolution 1820 that the UNSC recognized that sexual violence is

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<sup>169</sup> Diane Otto, 'Lesbians? Not in My Country: Sexual Orientation and the Beijing World Conference on Women (1995) 20 *Alternative L.J.* 288

<sup>170</sup> Louise Doswald-Beck and Sandra Krähenmann, 'Incorporating International Human Rights Law' in Nobuo Hayashi (ed), *National Military Manuals on the Law of Armed Conflict* (Forum for International Criminal and Humanitarian Law 2010)

<sup>171</sup> UNSC Res 1325 (31 October 2000) UN Doc S/RES/1325

<sup>172</sup> *Ibid* (n51)

<sup>173</sup> UNSC Res 1888 (30 September 2009) UN Doc S/RES/1888

<sup>174</sup> UNSC Res 1889 (5 October 2009) UN Doc S/RES/1889

<sup>175</sup> UNSC Res 1960 (16 December 2010) UN Doc S/RES/1960

<sup>176</sup> UNSC Res 2106 (24 June 2013) UN Doc S/RES/2106

<sup>177</sup> UNSC Res 2122 (18 October 2013) UN Doc S/RES/2122

<sup>178</sup> UNSC Res 2422 (13 October 2015) UN Doc S/RES/2422

<sup>179</sup> *Ibid* (n50) (173)

committed against civilians in armed conflicts, opening the door for more inclusion of other gender identities.<sup>180</sup> However, as Sivakumaran states that “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.”<sup>181</sup> Nevertheless, resolution 2016 does recognize that sexual violence happens against men and boys.<sup>182</sup>

The main issue in relation to the recognition of GBV against heterosexual and homosexual men is the consistent resistance of states and governments to recognize the issue at hand. This is primary due to the traditional, conservative and hegemonic nature of governments. Hence, the international community’s reaction towards GBV has been fragile and as explained above misunderstood. The G8 Deceleration in 2013 highlights the importance of responding to the needs of men and boys who are victims of sexual violence during armed conflicts. In that matter of fact, the former British Foreign Secretary William Hague admired the courage of “any survivor, woman, man, girl, boy, who can talk about their experiences of rape”. However, Dolan explains that these statements were quickly diluted, though not lost entirely, by the same conservative UNSCR 2106.<sup>183</sup> Unfortunately, the resolution does not admit that men and boys are also victims of GBV.

In general, the resolutions call on all parties to conflict to take special measures to protect women and girls from GBV, particularly rape and other forms of sexual abuse. Further, the resolution calls on states and the UN to protect women and girls from gender-based violence. The resolutions do also call states to adopt gender perspective in negotiations, peace implementation and agreements. The UNSC resolution 1325 was a big achievement for the feminist international law agenda.<sup>184</sup> The resolutions demand that all parties of the conflict take appropriate measures to protect civilians from forms of sexual violence. These measures can be enforcing military disciplinary measures and upholding the principle of command responsibility and training troops on categorical prohibition of all forms of sexual violence against civilians. The UNSC resolution 1325 calls on states to increase their voluntary financial,

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<sup>180</sup> Ibid (n51)

<sup>181</sup> Sandesh Sivakumara, ‘Lost in translation: UN responses to sexual violence against men and boy in situations of armed conflict’ (2010) 92 Int’l Rec. Red Cross 259

<sup>182</sup> Ibid (n158)

<sup>183</sup> Chris Dolan, ‘Victims Who are Men’ in Fionnuala Ni Aolain, Naomi Cahn, Dina Francesca Haynes and Nahla Valji (eds), *The Oxford Handbook of Gender and Conflict* (Oxford 2018)

<sup>184</sup> Ibid (n171)

technical and logistical support for gender-sensitive training efforts. The resolution also expresses the UN's willingness to incorporate a gender perspective into peacekeeping operations.<sup>185</sup> The WPS agenda calls states to issue national plans to translate the resolutions in their policies. Moreover, The UN Secretary-General's called on parties of the conflict to include the prohibition on sexual violence in codes of conduct of their equivalent.<sup>186</sup>

Hence, around 36 countries issued national action plans on women, peace and security according to the above-mentioned resolutions.<sup>187</sup> For instance, the NATO, UK and Sweden issued their respective action plans in regard to include gender perspectives in the national polices. Yet, only the UK Action Plan recognizes that gender-based violence happens on men as well.<sup>188</sup> Most of the above tools and documents exclusively target women victims of GBV. However, the GBV against other gender identities and due to sexual orientation is rarely mentioned. Hence, there is a lack of research in that aspect. Likewise, the U.S. Strategy on women, peace and security does only recognize sexual violence and not GBV and only distinguishes it when it comes to women.<sup>189</sup> This absence is not only from legal perspective, but also health wise. As Wedi contributes by saying that "there is little formal public health and social science research that explicitly focuses on the realities and challenges of health and psyschosocial support for male victims of sex violence in the DRC".<sup>190 191</sup> Moreover, the main concern in regard to the UNSC 1325 is explained by Otto. She argues that the resolution limits itself to internal strategies. This is by working within main stream institutional structures, rather than the activism and more radical work conducted in the field.<sup>192</sup>

Regarding international initiatives to more inclusive protection, the UN started a lead called 'Stop Rape Now'. This campaign is an important tool that tackles the issues at hand. The campaign

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<sup>185</sup> Ibid (n171)

<sup>186</sup> UN Secretary-General Report to the UNSC pursuant to resolution 1820 and 1888, A/65/592 – S/2010/604, para. 46

<sup>187</sup> Ibid (n53)

<sup>188</sup> British Government, UK National Action Plan on Women, Peace & Security (January 2018)

<sup>189</sup> United States Strategy on Women, Peace, and Security (June 2019)

<sup>190</sup> Vanessa Okito Wedi, 'The invisible Man: the Shrouding of Ethical Issues related to sexual violence against men in the humanitarian response in the Democratic Republic of Congo', in Ayesha Ahmad and James Smith (eds) *Humanitarian Actions and Ethics* (Zed 2018)

<sup>191</sup> Considering gender should be applied not only when it comes to GBV against civilians, but also in many other aspects and fields; humanitarian workers deployments, disaster management and responses, and humanitarian assistance. For detailed analyses check: Hugo Slim, *Humanitarian Ethics A guide to the morality of aid in war and disaster* (Hurst 2015); Julia Steets and Daniel S. Hamilton (ed), *Humanitarian Assistance Improving U.S.-European Cooperation* (Center for Transatlantic Relations 2009); Elaine Enarson and Betty Hearn Morrow, 'The gendered terrain of disaster Through Women's Eyes' (Praeger 1998)

<sup>192</sup> Diane Otto, 'The exile of inclusion: reflections on gender issues in international law over the last decade', (2009) 1 Melbourne Journal of International law 10

recognizes that GBV against women and men. Also, landmark recognition of GBV against women and men is to be found in the Secretary General report on conflict-related sexual violence.<sup>193</sup> Further, in June 2014 the Global Summit to End Sexual Violence in Conflict recognised that men and boys are also victims of these crimes.<sup>194</sup> This considers an important move. Yet, the main issue we found with all of these efforts that they lack coherence and tackling the core factor of the issue, that is hegemonic militarize masculinity and weaponizing it to commit GBV during armed conflicts. In fact, one of the very few directives that address the concept of hegemonic masculinity is issued by the British Ministry of Defence and named “Human Security in Military Operations”.<sup>195</sup> The document adopts the definition of hegemonic masculinity laid down earlier in this analysis. The document uses the term in order to highlight the masculine and feminine social attributions and behaviour. The document, further, urges on creating gender analysis while considering these concepts. We believe that this document is fundamental in order to push our opinion. Masculinity and Femininity and what is accepted from persons during armed conflict is important. It does not only shape the commission of GBV, it also increases the suffering of the victims through the stigma surrounding it.

### **1.3 Enhancing military trainings as a tool to combat gender-based violence**

Education and training of armed forces is fundamental to combat GBV and to contribute to the effectiveness of military operations and responses to GBV. As explained above, the UNSC resolutions demonstrate the importance of providing trainings on gender and educating armed forces on gender related issues. Including the definitions of gender, gender mainstreaming, hegemonic masculinity, and gender identification is fundamentally important in order to enhance the protection of civilians during armed conflicts. Hence, GBV rates will be reduced and victims will receive better humanitarian and psychological assistance. As explained above, no one is violent by nature. Hence, over the history armed forces have been able to create machinery to transform how men think. Armed forces create an intense socialization process, involving identity transformation, in order to construct willing warriors out

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<sup>193</sup> UN Secretary General, ‘Report of the secretary-general on conflict-related sexual violence’, (2018) s/2018/250

<sup>194</sup> Foreign & Commonwealth Office and the RT Hon William Hague, ‘A declaration of commitment to end sexual violence in conflict’, (2013)

<sup>195</sup> U.K. Ministry of Defence, ‘JSP 1325 Human Security in Military Operations Part 1: Directive’ (2019)

of civilian men.<sup>196</sup> This intense process includes that glorifying the warrior image and excluding the symbolic feminine. The process also comprises of an appeal to men on the basis of gender identities to risk their health for the good of the collective or the nation.<sup>197</sup> Hence, armed forces create the heroic soldier as a national archetype and a symbol of masculinity, indeed a form of hegemonic masculinity.<sup>198</sup> As a result, it is important that we try to address how armed forces change their members to follow some sort of hegemonic masculinity that trigger the commission of GBV during conflicts. The UN states that “the most widely used mechanism for capacity-building is gender training”.<sup>199</sup> Moreover, UNSCR 1325 calls on member states and the Secretary-General to provide training guidelines and materials on issues of protection. Similarly, resolutions 1820, 2106, 2122, and 2242 call on state parties and the Secretary-General to develop and provide pre-deployment trainings to troops on sexual-based violence and exploitation. Similarly, the 4<sup>th</sup> World Conference on Women held in Beijing in 1995 (also known as Beijing Declaration and Platform for Action) calls on states and the UN to integrate gender perspective in different aspects of their actions. The declaration also calls states to address gender in their training to prosecutors, judges and other officials in handling cases involving rape and forced pregnancy committed in armed conflicts. The declaration calls government to take into account gender-sensitive concerns while developing training programmes provided to personnel involved in the UNPKO.<sup>200</sup>

Training should form part of a broader strategy, including incentive and accountability measures, clear guidelines and responsibilities, and follow-up to training, especially on-the-job application of acquired skills.<sup>201</sup> As a result, the Swedish Armed Forces created the Nordic Centre for Gender in Military Operations. The Centre introduced the ‘Gender Coash Programme’. This programme offers many courses in relation to gender during conflicts and peacetimes. The Centre provides three courses; commanding officer seminar on gender, NATO gender focal point course and NORDEFECO gender

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<sup>196</sup> Nina Rones and Kari Fasting, “Theorizing Military Masculinities and National Identities: The Norwegian Experience” in Rachel Woodward and Clair Duncanson (eds), *The Palgrave International Handbook of Gender and the Military* (Palgrave 2017)

<sup>197</sup> Jean Bethke Elshtain, *Women and war* (Chicago press 1995)

<sup>198</sup> Paul Higate and John Hopton, “War, Militarism, and masculinities” in Michael S. Kimmel, Jeff Hearn and Robert W. Connell (eds), *Handbook of studies on men and masculinities* (SAGE Publishing 2004)

<sup>199</sup> UN Report of the Secretary-General, ‘Mainstreaming the gender perspective into all policies and programmes in the United Nations’ (1997 E/1997/100)

<sup>200</sup> Beijing Declaration and Platform for Action (September 1995)

<sup>201</sup> Ibid (n200)

advisor course.<sup>202</sup> Similarly, the Geneva Centre for the Democratic Control of the Armed Forces (DCAF) created an extensive tool to use “Defense Reform and Gender Toolkit”.<sup>203</sup> The toolkit affirms that masculinities need to be taken into account to ensure men are supported to move from a warrior identity to a more appropriate role.<sup>204</sup> The success of these courses can be examined by looking at the entry requirement. These courses only allow participants who belong to member states of the NATO. Hence, such trainings are not provided to armed forces in many other countries. An effective way to widen the scope of the training is to create international training opportunities for participants from outside the NATO.<sup>205</sup> As explained above, members of armed forces are occasionally perpetrators of GBV. Moreover, as Cammaert observes military forces always need to respond to conflict related GBV and to deal with male and female survivors.<sup>206</sup> Hence, members of armed forces need to be trained to deal with survivors.

However, this is not sufficient. The problem with the above-mentioned programmes that it does not include the introduction of the definition of hegemonic masculinity and its role in the army. Changing how masculinity plays a role in the military will only come throughout introducing the masculinity, femininity and sexuality concepts in the training of armed forces. As explained above, members of armed forces are subject to intense socialization process. During this process, they become subjected to a radical transformation in order to digest the manhood warrior image. Hence, undoing such understanding requires more than this. It requires a deeper understanding of hegemonic masculine behaviour in order to eliminate the current toxic perceptions regarding masculinity and femininity. Indeed, the norms and stereotypes of masculinity and femininity remain the hidden curriculum.<sup>207</sup>

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<sup>202</sup> Swedish Armed Forces, ‘Courses and Seminars at NCGM’, (Swedish Armed Forces 2019) <<https://www.forsvarsmakten.se/en/swedint/nordic-centre-for-gender-in-military-operations/courses-at-ncgm-and-how-to-apply2/>> accessed on 22/08/2019

<sup>203</sup> Megan Bastick and Kristin Valasek, ‘Gender & Security Sector Reform Toolkit’ (DCAF) <<https://www.dcaf.ch/gender-security-sector-reform-toolkit>> accessed 25/08/2019

<sup>204</sup> Cheryl Hendricks and Lauren Hutton, ‘Tool 3 Defence Reform and Gender’ (DCAF 2008)

<sup>205</sup> Swedish Armed Forces, ‘NATO Gender Focal Point Course’ <<https://www.forsvarsmakten.se/en/swedint/nordic-centre-for-gender-in-military-operations/courses-at-ncgm-and-how-to-apply2/gfp/>> accessed on 27/08/2019

<sup>206</sup> Patrick Cammaert, “Protecting Civilians from conflict-related sexual violence” in National Defense University (eds), Women on the Frontlines of Peace and Security (Washington, DC: National Defense University Press 2015)

<sup>207</sup> DCAF, ‘Teaching Gender in the Military A Handbook’, (2016)

## 1.4 Gender advisors' roles as a tool to combat gender-based violence

As per the above rules laid down in the UNSC resolutions, states are obliged to appoint gender advisors. However, the resolutions do not define their roles; rather it was left to the discretion of the states. OHCHR describes gender advisors' functions to include the contribution of gender perspective and gender integration in regard to the relative institution's mandate. Moreover, the advisors have to conduct interviews with victims of GBV in order to adequately document and analyse sexual and gender-based violence against women and girls, as well as men and boys.<sup>208</sup> The UN peacekeeping missions have had gender advisors since 2000. In 2006 the European Union multinational operations appointed its first gender advisor, followed by the NATO in 2008. The NATO defines gender advisors' responsibility to provide advice on the UN's WPS agenda and the integration of gender perspective to operations, conflict analysis, concepts, doctrine, procedures and education and training. The advisors are also tasked to provide support for in-house education and training.<sup>209</sup> Similarly, Sweden has been leading the efforts to increase the number of gender advisors in their military operations.<sup>210</sup> In fact, the first NATO gender advisor was deployed by Sweden in 2008 and then by Norway in 2009.

In relation to the Gender Advisor's main role of gender integration and analysis, it was found that none of the resolutions define what is meant by Gender Integration. OHCHR defines gender mainstreaming (also known as gender integration) as "is the process of assessing the implications for women, men and other gender identities of any planned actions, including legislation, policies or programmes, in all areas and at all levels".<sup>211</sup> Technically right, the definition refers to 'other gender identities'. This is an important driving force to an inclusive political environment that accepts different gender identities. As OHCHR affirms that the integration of gender perspective implies an analysis of the gender dimensions that included everyone including LGBTI community.<sup>212</sup> The same document further explains Gender analysis as "a key to help recognize, understand and make visible the gendered nature of human rights

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<sup>208</sup> United Nations Human Rights Office of the High Commissioner, 'Integrating a gender perspective into human rights investigations Guidance and Practice' (2018)

<sup>209</sup> NATO, 'BI-strategic command directive 040-001 Integrating UNSR 1325 and Gender Perspective into the NATO Command Structure' (2017)

<sup>210</sup> The Local, 'Sweden appoint special military gender advisors' (2015) <<https://www.thelocal.se/20150220/swedish-army-appoints-gender-advisors>> accessed 26 August 2019

<sup>211</sup> Ibid (n208)

<sup>212</sup> Ibid (n208)

violations, including their specific and differential impact on women, men and others, as well as human rights violations based on gender that specifically target LGBTI".<sup>213</sup> Similarly, the government of Canada developed Gender Based Analysis in order to implement UNSC resolutions and Beijing Platform. A fundamental advantage of this tool is that the analysis takes into account not only gender – men, women, boys and girls – but also sexual orientation, education and socioeconomic status.<sup>214</sup> Indeed, as Cockburn observes that "more important than numbers in a gender analysis is uncovering the differentiation and asymmetry of masculine and feminine as governing principles, as idealized qualities, as practices, as symbols".<sup>215</sup>

The Gender Advisors role has been under constant developments. In 2009 the NATO issued its first directive in regard to gender perspectives in the NATO. Indeed, at the time the NATO emphasized only on sexual violence against women in conflicts. The directive does not include gender violence against women or gender violence against other gender identities.<sup>216</sup> However, by giving a look at the recent directive issues in 2017 we can find that the directive now developed the concept of conflict-related sexual and gender-based violence. The directive also recognizes that violence can be committed against an individual or group of individuals without limiting it to women and girls.<sup>217</sup> Moreover, a big improvement is seen throughout the Nordic Centre administered by the Swedish Armed Forces. The Centre provides training to gender advisors. The course provides participants with the necessary tools to conduct gender analysis during peacetime, acute crisis and conflicts. Further, the course provides training on addressing and identifying GBV while planning military operations.<sup>218</sup> At the same time, the course provides best practices in relation to responding to GBV.<sup>219</sup>

Yet, there are many limitations that face gender advisors. First, many states are still reluctant to introduce the concept of gender advisors in their armed forces. As been explained, it is only 74% of

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<sup>213</sup> Ibid (n208)

<sup>214</sup> Organization for Security and Co-operation in Europe, 'Interview with Major General Tammy L. Harris, Deputy Commander of the Canadian Air Force', (2017) <<https://www.osce.org/magazine/347006>> accessed on 10/09/2019

<sup>215</sup> Cynthia Cockburn, 'The gendered dynamics of armed conflict and political violence' in Caroline O.N Moser and Fiona C. Clark (eds), *Victims, Perpetrators or Actors: Gender, Armed Conflict and Political Violence* (Zed Book 2001)

<sup>216</sup> NATO, 'BI-SC Directive 40-1 Integrating UNSR 1325 and Gender Perspective in the NATO Command Structure Including Measures for Protection during Armed Conflicts' (2009)

<sup>217</sup> Ibid (directive 2018) page 6 , para e)

<sup>218</sup> NATO, 'Allied Command Operations, Gender Functional Planning Guide' (July 2015)

<sup>219</sup> NATO, 'Training Materials on Gender Perspective for NATO Allies and Partners'

NATO countries that have trained gender advisors and 42.3 % that have gender focal points in 2016.<sup>220</sup> Hence, basically the rest of the world is still far behind from appointing a gender advisor. Even, if they do, the fear that the recognition of GBV will only be directed against women. In addition to that, there are several limitations of the role of the Gender Advisor in the NATO. Truly as Bastick and Duncanson explain that gender advisors face a strong resistance within the militaries. Gender advisors are confronted with a deep lack of understanding of their roles and the importance of gender perspectives in the missions' activities. In that regard, a gender advisor confirms that she heard "we don't need to know about women and equality and stuff 'because we just go and kill people and we're only interested in traditional warfare". This statement represents the resistance that gender advisors face while trying to do their work.<sup>221</sup>

In addition to that, gender advisors face a key resource constraint as their positions remain unfilled. It was described by one gender advisor as illustrating the gap between real and stated political commitment.<sup>222</sup> In that regard, gender advisors also face budgetary and financial limitations to conduct projects relevant to gender and GBV in specific. Lackenbauer and Langlais affirms that there is continuing mismatch between the scope of gender advisor role as defined by NATO, and the commitment of financial and administrative resources to it.<sup>223</sup>

Another constraint that was identified by Bastick and Duncanson is the limited technical gender skills and lack of understanding of the local context. The authors provide an example of the gender advisors work in Afghanistan. In that regard, gender advisors face mobility restrictions in a country as big and underdeveloped as Afghanistan. They also face language barrier with the local community. Hence, their work becomes ineffective and limited. Indeed, Gender advisors perform their work remotely; hence, they lack the necessary skills to conduct gender analysis of the institutions they represent.<sup>224</sup>

Another limitation to the UNSC agenda is that it only targets states. However, GBV is widely committed by armed groups. For instance, the so-called "Islamic State in Iraq and the Levant" had

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<sup>220</sup> NATO, 'Annual Report on Gender Perspective in Allied Armed Forces: progress made in pre-deployment training and work-life balance' (2017)

<sup>221</sup> Megan Bastick and Claire Duncanson, 'Agents of Change? Gender Advisors in NATO Militaries' (2018) 25:4 International Peacekeeping 554-577

<sup>222</sup> Ibid

<sup>223</sup> Helene Lackenbauer, and Richard Langlais, 'Review of the practical implications of UNSCR 1325 for the conduct of NATO-Led operations and Missions' (2013) Swedish Defence Research Agency (FOI)

<sup>224</sup> Ibid (n221)

committed horrific GBV against civilians. Further, it was widely seen that the group schooled children to commit these crimes. In fact, the group tough children through hide-and-seek-exercise, in which children hunt and kill enemy prisoners in specially constructed mazes in order to school them on how to commit mass execution and decapitation of adult soldiers.<sup>225</sup>

Similarly, several organizations that have first-hand experience with victims have created focused units to deal with GBV. For instance, UNHCR field offices have units that specifically deal with victims of sexual and gender-based violence. These units, supposedly, equipped with caseworkers that deal with victims and provide them with the necessary psychological help in order to help them to overcome the trauma they faced. In the matter of fact, UNHCR, recently, hired consultant Dr. Sarah Chynoweth to conduct a research on sexual violence against men and boys. The final report recommended a fundamental change in the SGBV programming. The report identifies that SGBV programming is struggling dealing with SGBV against women and girls, while response efforts to deal with men and boys are limited.<sup>226</sup>

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<sup>225</sup> Ibid (n221)

<sup>226</sup> Ibid (n36)

## Conclusory Remarks and Recommendations

Thus far, this analysis has argued that hegemonic masculine behaviour shapes warfare and the commission of GBV during conflicts. In chapter one, we argued that it is about time to shift from a sex-based approach to a gender-based approach. This is in order to create a more inclusive space towards other gender identities and sexual orientations. Further, the chapter examined the importance behind using terms like gender-based violence instead of sexual based violence. Whilst, most actions of GBV are sexual in nature, however, the main force behind them are not lust, rather exercising control and dominance over women and subordinated gender identities. Chapter four refutes the arguments made by essentialists and UNSC. GBV is neither a natural selection, nor a tactic of war. Rather, GBV is committed by hegemonic masculine individuals in order to maintain their control and dominance.

The analysis turned to the legal prohibition of GBV in chapter three. It examined the creation of IHRL and IHL by hegemonic masculinities who only created laws to serve their interest while ignoring others. Hence, gender and sexual orientation aspects are almost absent from major international treaties. Moreover, there is no legal instrument that recognizes GBV against homosexual and heterosexual men, leaving men very vulnerable to GBV. The chapter also found that feminist international law project created an exclusive environment that excluded issues related to homosexual and heterosexual men. Regarding IHL, the law does only acknowledge GBV against women. In the matter of fact, IHL's nature is gendered-biased. Whilst, we fully understand that IHL does not tend to create the social equality that IHRL seeks, however, ensuring equal protection during conflicts is fundamental.

Moving to chapter four, the analysis examined military manuals. The chapter concluded that the majority of countries refrain from including grounds of gender and sexual orientation in their manuals. Moreover, the UNSC WPS agenda fundamentally failed in understanding the motives behind GBV during conflicts by simply and wrongfully denoting that sexual violence is used as a tactic of war. Thus, ignoring the dynamics of gender roles in different societies. The chapter also examined the role of gender advisors. This section demonstrated the limitations of the role of the gender advisors. In that regard, gender advisors face many challenges due to the inherent masculine culture that refuses to acknowledge and support their role. Moreover, most gender advisors perform remotely far from the

conflicts. Hence, they lack understanding of the cultural and social aspects that fundamentals influence their work. Finally, the chapter navigated the masculine nature of the current trainings of members of armed forces. It concluded that indeed some institutions offer trainings in regard to gender. However, the trainings do not include deep understanding of important notions of femininity and masculinity. Hence, the trainings are not sufficient and need to be improved.

Finally, we conclude this analysis by proposing the following recommendations:

- Armed forces should provide and secure more logistic and financial support to gender advisors. This is in order to gain better understanding of the local culture where conflicts are taking place. Thus, the advisors will be able to have better understanding of the social dynamics and advice accordingly.
- Armed forces are a gigantic masculinity cult. Trainings of armed forces are transformative. One can only say that during the trainings period a radical masculine process takes place. This radicalization converts men to be hegemonic masculine ready to kill in order to save the nation. In order to change this, trainings of armed forces need to be changed in order to include several concepts of femininity and masculinity. Armed forces need to change their training mechanisms. We propose to include the definitions of gender, sexual orientation, masculinity and gender identity. This way, soldiers and commanders will be able to gain a deeper understanding of the issue at hand.
- Regarding the international community, states should acknowledge the reasons behind GBV. The UNSC recognizes that GBV is a tactic of war. We propose that the council need to understand the gender inequality aspects of GBV in order to create the appropriate policies to combat GBV during conflicts. Moreover, states need to get rid of their hegemonic masculine nature to recognize the very basic fact that GBV is committed against men.
- Lastly, armed forces should also consider changing their military manuals to include important grounds of gender and sexual orientation.

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