

Ending sexual violence in conflict: the Preventing Sexual Violence Initiative and its critics

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In June 2014, representatives of more than 120 nation-states gathered in London for a summit aimed at ending sexual violence in conflict. Although there were no treaties under discussion, and no new agencies were created, the event was nevertheless billed as the most significant gathering of its kind ever, drawing together activists, doctors, youth delegates, humanitarians, lawyers, military officers and ministers (of defence and foreign affairs, not just gender and development). The proceedings were widely discussed beyond the conference hall, thanks mainly to the presence of UN special envoy and sometime film star Angelina Jolie-Pitt, who co-chaired the summit with the UK's then Foreign Secretary William Hague. In the same week, the British government announced expanded military cooperation with Nigeria and others in the conflict with Boko Haram, a deal explicitly linked to ending sexual violence in conflict.¹ By the summit's close, most of the governments represented had endorsed a statement of action 'to end one of the greatest injustices of our time'.²

This diplomatic gathering was in truth only the most visible manifestation of a strategy inaugurated in May 2012 as the Preventing Sexual Violence Initiative (PSVI). Ambitious in mission and scope, the initiative has sought to improve investigation and documentation of sexual violence in conflict; to provide greater support and assistance to survivors, including children; to ensure a standard of 'gender equality' in responses, including in security and justice reform; and to improve on international coordination, in large measure through the UN.³ The United Kingdom expended political capital to secure declarations in the highest of forums, most prominently from the G8 in April 2013, via the unanimous passage of UN Security Council Resolution 2106 in June 2013, and through a UN General

* This article has been some time in the making. Thanks to Elisabeth Jean Wood, Laura McLeod and Jan Selby for comments on previous drafts, and to the United States Institute of Peace Young Scholars Network, which provided such a fertile forum for thinking through the nexus of research, policy and activism.

¹ Foreign and Commonwealth Office (FCO), 'London ministerial on security in Nigeria: communiqué', 12 June 2014, <https://www.gov.uk/government/publications/london-ministerial-on-security-in-nigeria-communiqué>, accessed 31 March 2015.

² See their collective 'Statement of action—global summit to end sexual violence in conflict', 13 June 2014, <https://www.gov.uk/government/publications/statement-of-action-global-summit-to-end-sexual-violence-in-conflict>, accessed 31 March 2015.

³ See House of Commons (HC) International Development Committee, *Violence against women and girls*, 2nd Report of Session 2013–14 (London: The Stationery Office, 2013), Ev78.

Assembly statement in September 2013 endorsed by 155 governments.⁴ At a more technical level, the PSVI has compiled a standard of best practice, launched as the *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*.⁵ And in response to specific conflict situations, the PSVI currently maintains a roster of more than 60 deployable experts, part of a wider pool of initiative activities costing over £7 million.⁶ To date teams have been sent to Bosnia and Herzegovina, Kosovo, the Democratic Republic of Congo (DRC), Libya, Mali, Iraq and the Syrian borders, with support also provided to NGO work elsewhere.⁷

How should these efforts be judged? The PSVI might be read as signalling a new front in ethical foreign policy, and another success story in feminist activism around sexual violence.⁸ The role of the UK as a diplomatic and political presence becomes more important still against the background of rising attention to gender in global policy discourse in recent decades.⁹ Alternatively, the PSVI might be understood as a cause without demonstrable success, already fading from the scene along with Hague, its main advocate.

This article argues that despite its promise, the initiative has thus far achieved little on its own technical terms, and moreover that its underlying approach to gender violence in conflict is in important senses limited. To make this case, I explore three aspects of the initiative as distinctive elements that face particular challenges. Each aspect has been emphasised by the PSVI itself, and so can be read as an FCO policy aim and situated relative to wider problems of understanding and prevention. First, the initiative's focus on military perpetrators is likely to exclude much of the sexual violence that occurs in conflict situations. Under the influence of the 'weapon of war' narrative, it offers an unduly simplistic account of where and why such violence happens. Second, the primary aim of ending impunity fails to fully reckon with the lack of evidence for strong deterrence effects, and the significant resource challenges involved in supporting local and national justice programmes. Ending impunity may serve other ends, but the benefits of these other justice responses are unexamined. Third, the PSVI's recognition of sexual and gender-based violence against men and boys serves as an important advance on existing policy, and promises to open up the implementation of programmes

⁴ See FCO, *G8 declaration on preventing sexual violence in conflict*, 11 April 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/185008/G8_PSVI_Declaration_-_FINAL.pdf, accessed 31 March 2015; UN Security Council, Resolution 2106, 24 June 2013; FCO, *United Kingdom national action plan on women, peace and security, 2014–2017* (London, 2014), p. 5. The figure for government endorsements is accurate as of March 2015.

⁵ FCO, *International protocol on the documentation and investigation of sexual violence in conflict: basic standards of best practice on the documentation of sexual violence as a crime under international law* (London, 2014).

⁶ This includes deployments of experts as well as funding to related PSVI activities, and is in addition to the £6 million spent on the 'Ending sexual violence in conflict' summit, and the £6 million pledged by the UK for survivor support at the summit.

⁷ FCO, *Human rights and democracy: the 2013 FCO report* (London, 2014), p. 17.

⁸ See also Paul Kirby, 'Acting time; or, the abolitionist and the feminist', *International Feminist Journal of Politics* 17: 3, forthcoming 2015.

⁹ See Susanne Zwingel, 'How do norms travel? Theorizing international women's rights in transnational perspective', *International Studies Quarterly* 56: 1, 2012, pp. 115–29; Laura J. Shepherd and Jacqui True, 'The women, peace and security agenda and Australian leadership in the world: from rhetoric to commitment', *Australian Journal of International Affairs* 68: 3, 2014, pp. 257–84.

on gender violence in the coming years. There nevertheless remain important ambiguities over 'gender neutrality' in practice, and a risk that global cooperation might suffer from disputes over resources.

Resolution 1325 and its aftermath

Concerted global political attention to wartime sexual violence is conventionally traced to UN Security Council Resolution 1325, which established what is now known as the 'Women, Peace and Security' (WPS) agenda. Its unanimous passage through the Council in October 2000 articulated and formalized the view of sexual violence as a legitimate international peace and security issue.¹⁰ The centrality of genocidal rape to the Bosnian and Rwandan wars only a few years earlier had provoked states into action, and made it politically impossible for others to suppress discussion. Resolution 1325 reminded states of their obligations under international law, and further sought special measures to protect women and girls from sexual violence, including by ending impunity for grave crimes. The Security Council gradually extended this reach in successive resolutions, adding consideration of sexual violence to sanctions decisions, creating a Special Representative of the Secretary General (SRSG) on Sexual Violence in Conflict, seeking national security and justice reforms, mandating the inclusion of further gender expertise and equality provisions in peacekeeping missions, and elaborating mechanisms to monitor the agenda's implementation.¹¹ Multi-agency initiatives such as UN Action Against Sexual Violence in Conflict emerged alongside greater emphasis on sexual violence in prosecutions at the International Criminal Court (ICC) and ad hoc tribunals for the former Yugoslavia and Rwanda.

Taken together, these resolutions and agencies provide the basic infrastructure of global policy on sexual violence in conflict. And yet the response of most states has been lacklustre. Although the Resolution 1325 programme recommended that states draft national action plans, currently only 36 countries have done so.¹² Of those plans that do exist, not all are the outlines for action they purport to be.¹³ While the UN has increasingly attended to violence against women since the end of the Cold War, it does so ever more through concern with the management of 'failed states'.¹⁴ The role of gender advisers has expanded within peacekeeping missions, but concerns remain that this progress has been slow and insufficient.

¹⁰ See UN Security Council Resolution 1325, 31 Oct. 2000. The link between violence against women and international peace and security has a longer heritage, and can be found in prior international agendas such as the Beijing Platform for Action agreed at the United Nations World Conference on Women in 1995, as well as long-running arguments by feminist social movements.

¹¹ Respectively, UN Security Council Resolutions 1820, 19 June 2008; 1888, 30 Sept. 2009; 1889, 5 Oct. 2009; 1960, 16 Dec. 2010.

¹² Resolution 1325 did not itself mandate national action plans, which became the currency of the WPS agenda a few years later. See 'Statement by the President of the Security Council', 28 Oct. 2004, <http://www.un.org/womenwatch/ods/S-PRST-2004-40-E.pdf>, accessed 9 April 2015.

¹³ For example, it is only in its latest version that the UK national action plan sets benchmarks for progress. See FCO, *UK national action plan*, p. 1.

¹⁴ Carol Harrington, 'Resolution 1325 and post-Cold War feminist politics', *International Feminist Journal of Politics* 13: 4, 2011, pp. 557–75.

The product of this activity is a great deal of commitment to ending sexual violence in principle, and what has been called ‘a devastating implementation gap’ in practice.¹⁵

The entry of the PSVI onto this scene was unexpected. The Conservative manifesto for the 2010 general election made no mention of wartime sexual atrocity, and was utterly conventional in its references to human rights. UK support for Security Council resolutions aside, activities on sexual violence have historically come from the Department for International Development (DFID). With the exception of the attention generated during the London summit, the UK government has not made much of the initiative in its public relations since.¹⁶ The PSVI is thus heavily identified with William Hague personally, and can be traced to his epiphany over the role of genocidal rape in Bosnia.¹⁷ Hague, who is also the biographer of William Wilberforce, has framed war rape as similar to slavery in its immorality and argued for the role of the UK as an abolitionist force, repurposing standard diplomatic practice to progressive ends.¹⁸ This is to seek nothing less than ‘the eradication of rape as a weapon of war, through a global campaign to end impunity for perpetrators, to deter and prevent sexual violence, to support and recognise survivors, and to change global attitudes that fuel these crimes’.¹⁹

As a contribution to the WPS agenda, the UK initiative has also inherited its constitutive tensions. In truth, sexual violence was not the sole concern of Resolution 1325, which also included an emphasis on gender equality and political participation in all societies (‘women’), the inclusion of women in negotiations and post-conflict processes (‘peace’) and action against wartime gender violence (‘security’). While compatible in principle, in practice these elements have diverged, with more conservative states seeking to confine the agenda to traditional security concerns and to avoid a more systematic politics of gender equality. It is the peacetime and broadly *political* dimensions of 1325 that make it such an unusual resolution, and have led to its celebration among activists.²⁰ While the UK has stressed

¹⁵ Shepherd and True, ‘The women, peace and security agenda’, p. 263.

¹⁶ Although at the time of the London summit Hague was challenged that the initiative was a distraction from other foreign policy issues such as the rise of ISIS in Iraq and Syria, few political obituaries made reference to the PSVI when Philip Hammond took up the post of foreign secretary in July 2014. One recent assessment does not even mention PSVI, instead seeing Hague as the example of more conventional statecraft. See Jonathan Gilmore, ‘The uncertain merger of values and interests in UK foreign policy’, *International Affairs* 90: 3, May 2014, pp. 546–50.

¹⁷ Hague himself attributed his concern to the experiences of a close adviser and to the effect of watching *In the land of blood and honey*, the film directed by Angelina Jolie about sexual violence in Bosnia. One indication of Hague’s personal association with PSVI was his receipt of the Hillary Clinton Award for Advancing Women, Peace and Security in 2013.

¹⁸ See William Hague, *William Wilberforce: the life of the great anti-slave trade campaigner* (London: HarperPerennial, 2008).

¹⁹ William Hague, ‘Preventing sexual violence in conflict: next steps’, 14 July 2014, <https://www.gov.uk/government/speeches/preventing-sexual-violence-in-conflict-next-steps>, accessed 31 March 2015.

²⁰ See esp. Felicity Hill, Mikele Aboitiz and Sara Poehlman-Doumbouya, ‘Nongovernmental organizations’ role in the buildup and implementation of Security Council resolution 1325’, *Signs: Journal of Women in Culture and Society* 28: 4, 2003, pp. 1255–69; Carol Cohn, Helen Kinsella and Sheri Gibbins, ‘Women, peace and security Resolution 1325’, *International Feminist Journal of Politics* 6: 1, 2004, pp. 130–40; also Shepherd and True, ‘The women, peace and security agenda’, pp. 272–3. On the reception of Resolution 1325 and some complexities in its treatment of gender, see Laura J. Shepherd, ‘Sex, security and superhero(in)es: from 1325 to 1820 and beyond’, *International Feminist Journal of Politics* 13: 4, 2011, pp. 504–21.

its appreciation of the totality of WPS commitments (a point discussed in more detail below), PSVI activities have also been seen as limiting in their approach to 'security'. Several civil society engagements with the PSVI have indeed stressed this point.²¹ A further indication of tensions around the WPS concept was the rapid passage of a second Security Council resolution in 2013, this time more explicitly stressing participation and equality.²² Given both past arguments over the meaning of 1325 and more immediate responses, the PSVI approach is best characterized as a relatively conservative rendition of WPS, with the partial exception of the stress on men and boys (on which more below). These conflicts over the meaning and future of the WPS agenda turn on differing visions of who perpetrates sexual violence and why, who experiences it, and how to respond to it.

Whose weapons of war?

State interest in sexual violence has depended on its association with international peace and security, and more specifically the idea that rape is put to use as a *weapon of war*. On this account, perpetrators choose sexual violence as an efficient tactic of terror in the pursuit of wider aims, usually economic or political.²³ The 'weapon of war' claim is a recurrent strand in PSVI declarations, reflecting its more general hegemony in policy discourse.²⁴ The language of strategy and calculation foregrounds military hierarchy, and thus also emphasizes the legal obligations of states and armies. In this sense, PSVI diplomacy has brought attention to bear on national militaries and their actions, rather than, for example, addressing gender only in relation to UN peacekeeping mandates. So US Secretary of State John Kerry argued in his speech closing the London summit that the effective outlawing of war rape was within reach, while military delegates committed themselves to security sector reform and to fully implementing the WPS resolutions on gender equality.²⁵ In parallel, PSVI gender experts were seconded to the EU's multi-year programme to train the Malian armed forces, underscoring the potential for a military-to-military training agenda.²⁶

Yet this stress on military command structures is more repetition than innovation. While public reaffirmation demonstrates a degree of political commitment,

²¹ See the discussion in HC International Development Committee, *Violence against women and girls*, pp. 34–5. Several of these interventions do not exist in a public form. For example, 58 civil society groups sent a letter to the US Mission to the UN (which leads on WPS issues) in mid-2013 seeking expansion of the resolution beyond the focus on sexual violence. For some further detail, see Kirby, 'Acting time'.

²² UN Security Council Resolution 2122, 18 Oct. 2013.

²³ For a more wide-ranging discussion on this claim and its critics, see Paul Kirby, 'How is rape a weapon of war? Feminist International Relations, modes of critical explanation and the study of wartime sexual violence', *European Journal of International Relations* 19: 4, 2013, pp. 797–821.

²⁴ William Hague, 'Global action to end warzone sexual violence', 23 Sept. 2013, <https://www.gov.uk/government/speeches/global-action-to-end-warzone-sexual-violence>, accessed 31 March 2015; Hague, 'Preventing sexual violence in conflict: next steps'. See also Kerry Crawford, 'From spoils to weapons: framing wartime sexual violence', *Gender and Development* 21: 3, 2013, pp. 505–17.

²⁵ John Kerry, 'Remarks at the global summit to end sexual violence in conflict', 13 June 2014, <http://www.state.gov/secretary/remarks/2014/06/227553.htm>; FCO, *Chair's summary—global summit to end sexual violence in conflict*, 13 June 2014, <https://www.gov.uk/government/publications/chairs-summary-global-summit-to-end-sexual-violence-in-conflict>, both accessed 31 March 2015.

²⁶ FCO, *UK national action plan*, p. 6.

it does not in itself establish new policy. In fact, the prohibition on war rape is traceable to at least the 1863 Lieber code, although the many statements of its illegality then and since have hardly led to consistent application.²⁷ So it is in the realm of *enforcement*, and not in that of legal responsibility, that governments have thus far failed. Moreover, following important innovations at the ad hoc tribunals and through the Rome Statute, it is now no longer controversial to say that wartime sexual violence is among the most serious of crimes.²⁸ The WPS resolutions similarly reaffirm the importance of command responsibility and the binding character of international humanitarian law. These obligations are more fundamental and far-reaching than any single dedicated government initiative. It is therefore unclear how further pronouncements can speed the end of sexual violence in conflict where previous promises have failed.

More fundamentally, an exclusive focus on military actors has as its corollary the neglect of high levels of civilian and intimate partner violence in conflict settings. Although data are often selective, prone to error and sometimes distorted by advocacy, it is clear that rape in conflict settings is not practised exclusively, perhaps not even principally, by armed groups.²⁹ Human rights reporting in the aftermath of violent clashes systematically overstates the role of militaries and militias, and dangerous conditions deter researchers from robust, nationally representative surveys. Where comprehensive studies have been carried out, they reveal a more complex assembly of perpetrators than the 'weapon of war' narrative allows. For example, in the eastern DRC, household survey data reveal extremely high levels of *intimate partner* sexual violence, despite the general fixation on atrocities by armed groups. In the Kivu regions, the total estimate for lifetime intimate partner violence surpasses 400,000 incidents.³⁰ It has been argued that this shows it to be the most prevalent form of sexual violence even in conflict zones.³¹ Certainly, rates of intimate partner violence are high in many cases of conflict.³² Dissenting studies, also based on population surveys, identify militaries as the major perpetrators of sexual violence, but nevertheless indicate that roughly a third of all attacks in eastern Congo are not carried out by combatants.³³

²⁷ Theodor Meron, 'Rape as a crime under international humanitarian law', *American Journal of International Law* 87: 3, 1993, pp. 424–8.

²⁸ David S. Mitchell, 'The prohibition of rape in international humanitarian law as a norm of *jus cogens*: clarifying the doctrine', *Duke Journal of Comparative and International Law* 15: 2, 2005, pp. 219–57; Kelly D. Askin, 'Prosecuting wartime rape and other gender-related crimes under international law: extraordinary advances, enduring obstacles', *Berkeley Journal of International Law* 21: 2, 2003, pp. 288–349.

²⁹ On issues of data and evidence, see Tia Palermo and Amber Peterman, 'Undercounting, overcounting and the longevity of flawed estimates: statistics on sexual violence in conflict', *Bulletin of the World Health Organization*, no. 89, 2011, pp. 924–5; Dara Kay Cohen and Amelia Hoover Green, 'Dueling incentives: sexual violence in Liberia and the politics of human rights advocacy', *Journal of Peace Research* 49: 3, 2012, pp. 445–58.

³⁰ Amber Peterman, Tia Palermo and Caryn Bredekamp, 'Estimates and determinants of sexual violence against women in the Democratic Republic of Congo', *American Journal of Public Health* 101: 6, 2011, p. 1064.

³¹ This was also the argument of Harvard Humanitarian Initiative and Oxfam International, '*Now, the world is without me*: an investigation of sexual violence in the eastern Democratic Republic of Congo' (Cambridge, MA: Harvard Humanitarian Initiative, 2010).

³² See Lindsay Stark and Alastair Ager, 'A systematic review of prevalence studies of gender-based violence in complex emergencies', *Trauma, Violence, and Abuse* 12: 3, 2011, pp. 127–34.

³³ Kirsten Johnson, Jennifer Scott, Bigy Rughita, Michael Kisielewski, Jana Asher, Ricardo Ong and Lynn Lawry, 'Association of sexual violence and human rights violations with physical and mental health in territories of the eastern Democratic Republic of Congo', *Journal of the American Medical Association* 304: 5, 2010, pp. 553–62.

Moreover, the emphasis in military hierarchy implicit in the 'weapon of war' narrative oversimplifies the causes and dynamics of sexual violence—in terms of both the chain of command and the foregrounding of organized violence itself. On the question of whether soldiers are instructed to commit sexual violence by their superiors, the evidence is decidedly mixed. Most notoriously, Serbian psychological operations units concluded that acts of rape (including against children) would have a deleterious effect on enemy morale during the Bosnian war, and adopted a rape policy accordingly.³⁴ But in other contexts, military planning is a retrospective explanation, unproven by documentation or testimony. Combatants themselves offer a range of explanations for sexual violence, often removed from strategic or tactical considerations.³⁵ Even where combatants are clearly implicated, their actions may just as easily be the consequence of a *break-down* in hierarchy as its enforcement.³⁶

Where the continuum of gender violence is reduced to strategic military rape alone, many (perhaps most) incidents will fall outside the purview of public policy. To be sure, the fact that interstate diplomacy cannot end all gender violence should not mean that it tackles none. But a fixation on rape as a weapon of war nevertheless perpetuates a certain narrow interpretation of gender violence—as exceptional, extreme and largely conflict-specific—against alternatives.³⁷ That is, a political project to foreground sexual violence mainly when it is perpetrated by certain kinds of people must, if successful, have the corresponding political effect of directing material resources to those acts. This, as many have rightly warned, is to establish a hierarchy of harm both *within* gender-based violence, and *between* gender-based violence and other human rights abuses.³⁸ In the former case, military rape is given most attention, and in the latter, acts of sexual violence come to matter more than the violence of torture, displacement, expropriation or death. Foreign Office initiatives will reinforce the hierarchy of harms so long as 'international peace and security' is interpreted narrowly in weapon of war terms.

More troubling still, the idea that national governments are acting in good faith to reform their armies is directly undermined by the weapon of war thesis, which posits that some of the same authorities engage in sexual violence systematically, for political gain, and with malice aforethought. If commanders perceive there to be a benefit in the targeting of civilians, this is unlikely to change because of

³⁴ See Todd A. Salzman, 'Rape camps as a means of ethnic cleansing: religious, cultural, and ethical responses to rape victims in the former Yugoslavia', *Human Rights Quarterly* 20: 2, 1998, p. 356.

³⁵ See e.g. Maria Eriksson Baaz and Maria Stern, 'Why do soldiers rape? Masculinity, violence and sexuality in the armed forces in the Congo (DRC)', *International Studies Quarterly* 53: 2, 2009, pp. 495–518.

³⁶ Maria Eriksson Baaz and Maria Stern, *Sexual violence as a weapon of war? Perceptions, prescriptions, problems in the Congo and beyond* (London: Zed, 2013), p. 5.

³⁷ This was in part the subject of criticism by the International Development Committee. See HC International Development Committee, *Violence against women and girls*, and the official government response to it, available at <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmintdev/624/62404.htm>, accessed 9 April 2015.

³⁸ Nicola Henry, 'The fixation on wartime rape: feminist critique and international criminal law', *Social and Legal Studies* 23: 1, 2014, pp. 93–111 at p. 97–8; Liz Kelly, 'The everyday/everynightness of rape: is it different in war?', in Laura Sjoberg and Sandra Via, eds, *Gender, war, and militarism: feminist perspectives* (Santa Barbara, CA: Praeger, 2010); Éric Fassin, 'Sexual violence at the border', *Differences: A Journal of Feminist Cultural Studies* 18: 2, 2007, pp. 1–23.

additional training in either concepts of gender or international humanitarian law. The language of cooperation and military assistance is diplomatically palatable, but remains untested as a means of reducing sexual violence in conflict settings. For similar reasons, it has also been easier to focus on rebel groups as the principal source of violence, in spite of evidence that state forces are more often responsible for rape.³⁹ Although occasionally nuanced, PSVI rhetoric has then largely reproduced the narrow and distorting idea of sexual violence as primarily a problem of military rationality.

Impunity, deterrence and the ends of justice

The foundational premise of PSVI discourse to date is that conflict-related sexual violence flourishes where there is impunity, and that ending impunity will therefore radically alter the war zone calculus for perpetrators.⁴⁰ The mass rapes of the Bosnian war figure strongly in this rationale, and a major PSVI goal is therefore to improve conviction rates for historic crimes. There is general consensus that survivors deserve legal remedy, and impunity can thus seem an obvious and appropriate priority. However, the principal impunity hypothesis—that increasing prosecution will deter future atrocity—faces considerable challenge on grounds of efficacy, cost and clarity of purpose.

The logic of deterrence is straightforward: potential aggressors are less likely to commit atrocities where there are clear and effective mechanisms for the investigation and punishment of crimes. As rational actors, they will consider how such actions have been treated in the past, and respond to a consistent signal that such crimes will not be tolerated by the powers that be (whether social groups, state prosecutors, postwar tribunals or the international community at large). Protagonists are brought to the negotiating table by fear of prosecution, or are marginalized relative to other actors by their indictment.⁴¹ As one critic of deterrence logic has put it, ‘the more gas we give to the punishing machine, the less criminality we will end up with’.⁴² Conversely, where reliable systems of prosecution do not exist, sexual violence will increase in proportion with the perception that it will not be seriously addressed by local, national or international justice systems.⁴³

The evidence for a deterrent effect in cases of mass atrocity, including for conflict-related sexual violence, is weak. This in part reflects a conceptual problem: how can we prove that events which would otherwise have occurred were prevented, and moreover prevented by a specific deterrent signal? The

³⁹ Dara Kay Cohen and Ragnhild Nordås, ‘Sexual violence in armed conflict: introducing the SVAC dataset, 1989–2009’, *Journal of Peace Research* 51: 3, 2014, pp. 418–28.

⁴⁰ MPs have also expressed anxiety that the PSVI is more concerned with prosecution than with prevention. See HC International Development Committee, *Violence against women and girls*, p. 34.

⁴¹ Leslie Vinjamuri, ‘Deterrence, democracy, and the pursuit of international justice’, *Ethics and International Affairs* 24: 2, 2010, pp. 194–6.

⁴² Immi Tallgren, cited in Jan Klabbers, ‘Just revenge: the deterrence argument in international criminal law’, *Finnish Yearbook of International Law*, vol. 12, 2001, p. 253.

⁴³ For a summary of the underlying assumptions of deterrence, see Kate Cronin-Furman, ‘Managing expectations: international criminal trials and the prospects for deterrence of mass atrocity’, *International Journal of Transitional Justice* 7: 3, 2013, pp. 439–43.

paucity of data also illustrates the gap between assumptions of successful deterrence and the actual conditions in conflict and post-conflict spaces.⁴⁴ For all the progress in prosecuting sexual violence as a grave crime, the chances of perpetrators appearing before an international tribunal remain slight. As a way to influence behaviour, deterrence relies on the example of regular domestic processes that produce clear expectations for would-be criminals. As Mark Drumbl has argued, this gives rise to something of a paradox in the application of international law to atrocities, since the response to extraordinary crimes conforms to the same general mode of punishment and model of evidence and sentencing that applies to ordinary crimes.⁴⁵ The marked difference between the conditions for those crimes and the character of legal responses to them can lead to significant disappointment for advocates of legal remedy when sentences are eventually handed down.⁴⁶

Where the stakes are high and the motivation is political or ideological—as is the case in many situations of conflict—perpetrators are also unlikely to be deterred by the chance of future prosecutions. On the one hand, the distant prospect of a trial in The Hague is easily outweighed by immediate military concerns. Where sexual violence can be said to be a tactical choice, this will by definition be in a situation perceived to require it. The prospect of prosecution may figure in such a calculus, but will be heavily discounted in favour of immediate success, and in the hope that military triumph will itself dispel legal/political threats.⁴⁷ For victors and the vanquished are not equal before the law. On the other hand, it is not settled that the commission of atrocity flows from a balancing of probabilities in the way suggested by deterrence theory. Instead, as distinctly *political* violence, rape is ordered on the basis of ideological assessments, not merely the cost–benefit ratio of self-interest. That is, those who command grave political crimes do not recognize their actions as morally prohibited, and are unlikely to respond to legal instruction to the contrary. They are more likely to see their violence as necessary, existentially so, and thus above considerations of formal rules.⁴⁸

Since Resolution 1325, there has been a presumption against granting amnesties for sexual crimes where they are part of the gravest offences (war crimes, genocide and crimes against humanity) and ‘where feasible’.⁴⁹ By 2013 and the passage of Resolution 2106, that preference had hardened into ‘*the need for the exclusion of sexual violence crimes from amnesty provisions in ... conflict resolution processes*’, now without qualification.⁵⁰ Both the weak and the strong rejections of amnesty

⁴⁴ Cronin-Furman, ‘Managing expectations’, p. 443.

⁴⁵ Mark A. Drumbl, *Atrocity, punishment and international law* (Cambridge: Cambridge University Press, 2007), p. 6.

⁴⁶ See the figures on average sentence length at the ICTR and ICTY in Drumbl, *Atrocity, punishment and international law*, pp. 56–8.

⁴⁷ Cronin-Furman, ‘Managing expectations’.

⁴⁸ In the same way, individualized criminal responsibility falls short of grasping the character of extreme collective violence. See Klabbers, ‘Just revenge’, pp. 261–7; Martti Koskeniemi, ‘Between impunity and show trials’, *Max Planck Yearbook of United Nations Law*, vol. 6, 2002, pp. 1–35; Paul Kirby, ‘Refusing to be a man? Men’s responsibility for war rape and the problem of social structures in feminist and gender theory’, *Men and Masculinities* 16: 1, 2013, pp. 93–114.

⁴⁹ Resolution 1325, p. 3.

⁵⁰ Resolution 2106, p. 4, emphasis in original.

are wholly compatible with deterrence logic, but threaten to clash with political reality. Where multiple protagonists have records of condoning or commissioning sexual violence, how is conflict to end? If the goal is general deterrence, rather than merely a ban on amnesties for particularly egregious violators of human rights, it will have to cover state parties as well as rebel leaders. Where the weapon of war thesis is interpreted strongly (placing fuller responsibility on senior figures in armed groups), why would the removal of amnesties be more likely to compel them to negotiate than to provoke them into spoiling any agreement? One answer is that the amnesty ban would be interpreted very loosely in practice, but this only returns us to the original problem: if amnesties promote impunity, their existence is incompatible with ending a culture of impunity. A different answer would be not to depend on deterrence through legal process, but to turn instead to less subtle inducements, such as the threat of force.⁵¹ This would, however, be a very different approach to ending sexual violence in conflict, and one that is not yet openly argued for.

The legal precursor to expected deterrence is also expensive. Ad hoc tribunals and the ICC have established important precedents on sexual violence through major trials.⁵² The price tag varies by case, but the International Criminal Tribunal for Rwanda (ICTR) averaged \$39 million *per conviction*, and the International Criminal Tribunal for the Former Yugoslavia (ICTY) \$35 million.⁵³ Trials are also achingly slow. The ICTY began its work in 1993 and is not expected to conclude it until 2017. The extent of both time and cost is best explained by the gravity of the charges. The ICTY has indeed been described as ‘the most complex set of related criminal cases that has ever been tried by any court anywhere’, outstripping even the Nuremberg Tribunal.⁵⁴ The financial burden of justice is not, in other words, a question of inefficient process (even if greater efficiencies are possible), but a question of the nature of grave international crimes themselves.

If such trials are to be the model for successful deterrence, great investment will be needed for a small number of likely convictions. It is not clear that competent national trials for charges of similar gravity—in which sexual violence is counted as a crime against humanity, an act of genocide or a war crime—could achieve greater efficiency, at least not if they followed the criminal law model.⁵⁵ Given the low prosecution rates for rape in the former Yugoslavia, which were given particular emphasis in Hague’s speeches, the costs would be much higher if an

⁵¹ Kenneth A. Rodman, ‘Darfur and the limits of legal deterrence’, *Human Rights Quarterly* 30: 3, 2008, pp. 529–60.

⁵² For a critical view of the work of ad hoc tribunals on sexual and gender-based violence, see Chiseche Salome Mibenge, *Sex and international tribunals: the erasure of gender from the war narrative* (Philadelphia: University of Pennsylvania Press, 2013).

⁵³ Figures calculated from Leitner Center for International Law and Justice, *International criminal tribunals: a visual overview* (New York: Fordham Law School, 2013). Mark Drumbl previously put the figure for the ICTR at \$30 million *per verdict*. See Drumbl, *Atrocity, punishment and international law*, p. 131.

⁵⁴ Stuart Ford, ‘Complexity and efficiency at international criminal courts’, *Emory International Law Review* 29: 1, 2014, p. 6.

⁵⁵ This is not to say that national trials are bound to fall short. For a discussion, see Milli Lake, ‘Ending impunity for sexual and gender-based crimes: the International Criminal Court and complementarity in the Democratic Republic of Congo’, *African Conflict and Peacebuilding Review* 1: 4, 2014, pp. 1–32.

increase in the tempo of conviction were to be pursued as a means to greater deterrence. Nor can much-delayed justice in contexts such as Bosnia be expected to exert much influence on contemporary conflicts. Thus, even if the logic of deterrence holds, the costs of ending impunity in post-conflict settings might be several magnitudes greater than expenditure to date.

It is partly in response to the problems of international criminal justice, including but not limited to the perception that the ICC has been overly political in its decisions to investigate, that the PSVI has come to stress national agency.⁵⁶ The ICC remains an explicit model in the *definition* of crimes, but has not been promoted as the *venue* of choice for the legal response. Instead, efforts are under way to expand security and justice capacity in post-conflict spaces. This emphasis is in line with the court's own recent stress on 'positive complementarity', the doctrine that the ICC not only should refrain from action where sufficient national capacity exists to try serious crimes, but should further actively assist states, contributing in turn to a multidimensional system of global justice. Thus PSVI experts in Bosnia have been seconded to assist judges and prosecutors, support has been provided for the documentation of sexual crimes in Syria, and the UK is funding medical and police experts in eastern DRC to improve integration between health, legal and police services.⁵⁷ This is in addition to complementary spending through DFID to improve access to justice for an estimated 10 million women.⁵⁸

The challenge is at once logistical and contextual. Logistical because 'capacity building' can mean the construction (or wholesale reform) of systems of policing, justice and victim support able to adequately process cases of sexual violence at scale. For example, EU justice support to the DRC has to date totalled some €17 million, with limited success.⁵⁹ Contextual because greatly expanding national justice mechanisms may depend on *not* following the criminal law model favoured by the western legal tradition. Instead, a system like the *gacaca* courts of Rwanda has been able to process tens of thousands of suspected *génocidaires* on a model of negotiated apology and reparations quite different from the formal criminal procedure and sentencing guidelines associated with the ICC and ad hoc tribunals.⁶⁰

The past decade has seen a range of innovations in local and transitional justice mechanisms, but their record is not encouraging. In May 2014, the DRC held its largest ever rape trial, with 39 defendants from the Congolese armed forces accused of raping 130 women. The proceedings invoked the Rome Statute, and

⁵⁶ For an account of ICC politics in relation to charges in the Great Lakes region of Africa, see Phil Clark, 'Law, politics and pragmatism: the ICC and case selection in Uganda and the Democratic Republic of Congo', in Nicholas Waddell and Phil Clark, eds, *Courting conflict?: justice, peace and the ICC in Africa* (London: Royal African Society, 2008), pp. 37–46.

⁵⁷ These commitments are also part of a longer-term narrative of UK government efforts. See FCO, *UK national action plan*, p. 13.

⁵⁸ FCO, *UK national action plan*, p. 15.

⁵⁹ European Court of Auditors, *EU support for governance in the Democratic Republic of Congo*, special report no. 9 (Luxembourg, 2013), pp. 21–2.

⁶⁰ Drumbl, *Atrocity, punishment and international law*, pp. 63–94. Drumbl is also clear that the character of *gacaca* courts has changed over time, reacting to both domestic and international pressures, so such mechanisms should not be treated as unchanging 'traditional' practices.

reflected years of work with local prosecutors, but were able to produce only two convictions for rape.⁶¹ The gap between the promise and the reality of law is not only a feature of failed institutions, but is to be found in the highest of forums. Most recently, the ICC case against Germain Katanga did not produce a conviction on charges of sexual violence. Outcomes of this sort are particularly troubling in relation to impunity and deterrence, since the assumption that justice is neutral during conflicts comes up against the wish that it be put to use in making an example of those actors judged in advance to be the source of the problem.⁶²

As Martti Koskeniemi has convincingly argued, trials of the most serious crimes are often expected to fulfil a number of functions which are poorly distinguished from one another.⁶³ Perhaps most classically, the desire might be for *retribution*, to inflict a punishment appropriate to the character of the crime. Alternatively, the purpose of punishment might be directly *consequentialist* regarding behaviours to be produced, as in the logic of deterrence. Similarly, it may be expected to promote *the rule of law* itself. Finally, the purpose might be to tell, or construct, *a truth*. In that case, the trial is a way to write the historical record, and to gain recognition that crimes took place. These four rationales (moral–retributive; instrumentalist; expressive; and didactic) pull in different directions, and the fight against impunity might be undertaken with any of them as reasons.⁶⁴ To expect courts to furnish a set narrative for a given conflict, or to assess their judgments not by the rules of procedure but by their subsequent effects, is to see them in part as the setting for show trials;⁶⁵ in which case the accused might also be expected to play for political truth and the judgement of history.⁶⁶ These purposes have long stood in tension with each other, and the PSVI confronts them as much as any other enterprise would. Yet contrasting modes of justice have to date not nuanced the question of deterrence in UK government policy. And if the case for deterrence is less robust than currently assumed, privileging it, and legal redress in general, in dealing with sexual violence in conflict will have major consequences.

Surfacing men and boys

The focus on military rape and ending impunity lies at the core of the PSVI programme, but does not exhaust it. The Hague–Jolie project has also been an innovator in attention to sexual and gender-based violence against men and boys. From his earliest speeches on the theme, Hague emphasized that male adults and

⁶¹ Another 24 individuals were convicted on other charges related to looting and violating orders. See Millie Lake, 'After Minova: can war crimes trials overcome violence in the DRC?', *African Arguments*, 8 May 2014, <http://africanarguments.org/2014/05/08/after-minova-can-war-crimes-trials-overcome-violence-in-the-drc-by-millie-lake/>, accessed 31 March 2015.

⁶² Vinjamuri, 'Deterrence, democracy, and the pursuit of international justice', p. 203.

⁶³ Koskeniemi, 'Between impunity and show trials'.

⁶⁴ These distinctions draw on Koskeniemi, 'Between impunity and show trials', and also on the discussion in Drumbl, *Atrocity, punishment and international law*.

⁶⁵ On rape trials as a way of writing history, see Nicola Henry, *War and rape: law, memory and justice* (London: Routledge, 2011).

⁶⁶ Koskeniemi, 'Between impunity and show trials', pp. 25–32.

children could also be targets for rape and sexual torture. At the London summit and in other PSVI events, men and boys have been explicitly mentioned as in need of recognition as survivors in policy and practice. When viewed as a political project, the PSVI has thus expanded the visibility of men as also subject to gender violence. In this sense, it has somewhat inverted the usual relationship between evidence and policy. The evidence base on conflict-related sexual violence against men and boys is suggestive but nascent, and there is not yet any general consensus on incidence, specific risk factors or appropriate explanation. The PSVI's attention to the issue might then be read as a case of political pressure *opening up* the space for further research, rather than merely responding to (or ignoring) a pre-existing field of scholarship.

It is common to hear that women and girls are 'overwhelmingly' the victims of sexual violence, but this view is increasingly coming under challenge. While evidence on the scale of sexual violence against men remains uneven, there are plausible reasons to see it as widespread in situations of recruitment, military socialization and political torture. Unlike gender-based violence against women and girls, which occurs in multiple settings during war and peace, it is within these specific sites that men and boys appear to become particularly vulnerable. In Liberia, a household survey found that a third of male ex-combatants had experienced sexual violence over the last two decades. This was compared to 7.4 per cent among male *non*-combatants.⁶⁷ A parallel study in the DRC reported that 24 per cent of men interviewed had experienced sexual violence, a majority (80 per cent) of whom had experienced it during conflict.⁶⁸ Reviews suggest that these conflicts are not unique.⁶⁹ But where war rape is understood as something done by men to women, and as therefore parasitic on heterosexual dynamics (or violent parodies thereof), male victims appear anomalous. It is plausibly this gendering of victimhood which motivates male rape in the first place, since making another man occupy the role usually reserved for women is what achieves the 'contamination' of an enemy by homosexuality.⁷⁰

In the field of policy, the assumptions underlying discussion of sexual violence have frequently excluded men by definitional fiat. It is only in recent years that many countries have codified rape in 'gender-neutral' terms—as something that can happen to men at all—and so begun to make male survivors *legally* visible. Where legal systems prohibit sodomy, announcing oneself the survivor of rape is to invite *de facto* criminalization. Although technical definitions adopted by international bodies such as the ICC tend to state clearly that men can experience rape, the general rhetoric has exhibited, and paradoxically reinforced, a binary

⁶⁷ Kirsten Johnson, Jana Asher, Stephanie Rosborough, Amisha Raja, Rajesh Panjabi, Charles Beadling and Lynn Lawry, 'Association of combatant status and sexual violence with health and mental health outcomes in postconflict Liberia', *Journal of the American Medical Association* 300: 6, 2008, pp. 676–90.

⁶⁸ Johnson et al., 'Association of sexual violence and human rights violations'.

⁶⁹ Sandesh Sivakumaran, 'Sexual violence against men in armed conflict', *European Journal of International Law* 18: 2, 2007, pp. 253–76; Sarah Solangon and Preeti Patel, 'Sexual violence against men in countries affected by armed conflict', *Conflict, Security and Development* 12: 4, 2012, pp. 417–42.

⁷⁰ See the discussion in Sandesh Sivakumaran, 'Male/male rape and the "taint" of homosexuality', *Human Rights Quarterly* 27: 4, 2005, pp. 1274–306.

portrayal of men as secure from gender violence and women and girls as perpetual victims.⁷¹ Where UN resolutions have previously acknowledged men and boys, they have slipped out of view in operative paragraphs which mention programming for 'women and girls' or name experts deployed to peacekeeping missions as 'women protection advisers'.⁷² Thus can we track the shifts in emphasis across resolutions from those stressing the need for women-focused expertise in Resolutions 1888 and 1960 to both women protection and gender advisers in Resolution 2106 to simply 'gender advisers' by the time of Resolution 2122.

One indicator of innovation in the PSVI is that the UK-sponsored Resolution 2106 was the first explicitly to mention men and boys as survivors. This achievement has been somewhat overplayed, since previous texts had not erased male rape entirely, but merely spoken of 'sexual and other forms of violence committed against civilians in armed conflict, *in particular* women and children'.⁷³ Nevertheless, extant global policy has been perfunctory in its treatment of male survivors, and has not taken the crucial further step of acknowledging that men also *experience* sexual violence differently from women, and so require different kinds of services in response to it.

The movement between recognition and invisibility is in part a reflection of a political contestation behind the scenes, involving the compromise that results from negotiation over the texts of resolutions among states and UN agencies, each channelling different cultural, civil-social and political conceptions of gender and appropriate gender policy. For example, despite the headline success, Resolution 2106 still specifies that 'sexual violence in armed conflict and post-conflict situations disproportionately affects women and girls'.⁷⁴ The UK's recent national action plan is similarly conflicted, mentioning men and boys but not incorporating them as part of a measurable target, presumably because the framework and its outputs are set in relation to Resolution 1325 and therefore tied to a certain interpretation of *women*, peace and security.

The diplomatic capital expended in recognizing men and boys as victims of sexual violence has produced resistance, but it is too simple to interpret this as a counter-pressure from those preferring to work only with female survivors, or otherwise ideologically unwilling to define men as potential victims. The notion that feminist analysis is condemned to ignore male suffering is similarly overplayed, given that much feminist scholarship has emphasized the complexity of gender relations. Rather, it is institutional inertia that slows shifts in the language of recognition. The codification of 'violence against *women*' in global policy has its roots in the original political argument for a WPS agenda, and funding follows the bureaucratic logic put in place around it.

⁷¹ This point is put starkly in Chris Dolan, 'Has patriarchy been stealing the feminists' clothes? Conflict-related sexual violence and UN Security Council resolutions', *IDS Bulletin* 45: 1, 2014, pp. 80–84. See also Nadine Puechguirbal, 'Discourses on gender, patriarchy and Resolution 1325: a textual analysis of UN documents', *International Peacekeeping* 17: 2, 2010, pp. 172–87.

⁷² Sandesh Sivakumaran, 'Lost in translation: UN responses to sexual violence against men and boys in situations of armed conflict', *International Review of the Red Cross* 92: 877, 2010, pp. 259–77.

⁷³ This example is from the preamble to UN Security Council Resolution 1820, emphasis added.

⁷⁴ Resolution 2106, p. 2.

Against this background, the language of ‘gender neutrality’ is importantly ambiguous. If it is interpreted to mean only that men and boys can experience sexual violence, and that this should be admitted in law and policy (and provided for in dedicated services), recognition is unlikely to meet much serious opposition. However, ‘gender neutrality’ can also be taken to imply both a depoliticization of the WPS agenda and an additional pressure on resources. In the first case, when neutrality assumes not just definitional reform but a stronger claim of actual *parity* in gender suffering, the implication is that the UN and contributing states will now be less forceful in diagnosing and responding to patriarchal power relations and hierarchical gender orders. In the second, where a concern with men and boys results not in the provision of new funds but in the expectation that existing programmes halve (or significantly decrease) the resources devoted to women and girls, the practical effect of the recognition is likely to be seen as regressive. Thus, the PSVI has expanded policy conceptions of gender and victimhood, without yet having been able to resolve this recognition into a clear and legitimate architecture for bringing men and boys within its purview.

Rhetoric, politics and promise

The future course of the PSVI is undecided. At the time of writing, William Hague retains a role as the Prime Minister’s Special Representative on Preventing Sexual Violence in Conflict, but is no longer foreign secretary. Nor is it clear whether the role he currently exercises will survive the 2015 election. The completion of the UK’s national action plan, and its endorsement by the FCO, DFID and Ministry of Defence at the London summit, signals a certain institutionalization of the initiative across government, and a consequent longevity to PSVI themes, even if they come to be pursued under a different name.⁷⁵ There is the potential for the focus to become embedded, and even celebrated, as an aspect of the UK’s normative power, perhaps in a similar way to the (currently unfashionable) discussion of an ‘ethical dimension’ to foreign policy. Such a wholehearted embrace would carry its own risks, in so far as it might tempt future governments into a more partisan role in documenting sexual violence, one that emphasized the crimes of armed groups out of favour with the UK’s overarching foreign policy disposition, while not applying the same scrutiny to the acts of official friends.

By contrast, the impact on global policy will further depend on what resources the government devotes to it in future, and how closely UK policy cleaves to the tendencies analysed above. The prospects for producing a major shift in state action on sexual violence in conflict are not promising. The commitments declared at the London summit were largely rhetorical or repetitions of existing obligations.⁷⁶ Signatories agreed to strengthen national accountability and justice (but without

⁷⁵ Not coincidentally, ‘gender’ figures as the second core theme of the Ministry of Defence’s latest *Global Strategic Trends—out to 2045*, 5th edn (Swindon: Development, Concepts and Doctrine Centre, 2014).

⁷⁶ The following list reflects FCO, *Chair’s summary*.

new resources⁷⁷), to ensure holistic services to survivors (but without timelines for implementation), to take responsibility for preventing sexual violence by their armed forces (a responsibility they already had) and to pursue greater international cooperation (it is hard to imagine how they could conclude otherwise).

Despite the cajoling of the UK, these are more performative statements of concern than active efforts to unite against gendered violence. They track the early objectives of the initiative, but offer only weak mandates for action. At the summit and in other diplomatic spaces governments have offered recognition, acknowledgement and sympathy, but have been much less forthcoming in deciding, creating or enforcing. In each area of PSVI emphasis, UK foreign policy has furthered the case for action on sexual violence in conflict, but in ways that promise mixed fruit. The normative example of leadership, although surely appealing in its own way, must be judged against an analysis of just how gender and violence are being conceived. The narrow focus on individual criminal responsibility for crimes undertaken for military purposes so far in evidence comes at the expense of a more wide-ranging account of how rape works. It will take a markedly different orientation from the community of states for the end of sexual violence in conflict to move from promissory note to programme of action.

⁷⁷ New financial commitments were made by individual governments, but tended to focus on international agencies or funds, such as the UN Office of the SRSG or the ICC Trust Fund for Victims.