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Listening Closer:

Evaluating the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict

Dissertation submitted by

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Abstract

This thesis critiques the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict developed in 2014 by the United Kingdom Foreign Commonwealth Office. I show the Protocol, despite being the largest effort at creating standards for investigating conflict related sexual violence (CRSV), to lack critical guidelines. These absences have manifest negative consequences for survivors of sexual violence and investigations. Through assessing over 120 similar guidance documents from around the world and interviewing CRSV experts, I find the Protocol to be deeply flawed. These shortcomings include: 1) An approach to documentation and investigation that is not survivor-centric in which only 7.5 pages of the 146 are dedicated to the needs of survivors/victims. 2) An absence of recommendations that take into account the effects of PTSD and trauma to both survivors and their testimonies. 3) A failure to include suggestions for how male and non-female victims/survivors might experience CRSV differently, and how to inclusively handle investigations. 4) An utter exclusion of CRSV forms not considered under current international law, such as intimate partner rape, or noncombatant perpetration. 5) An outlook that investigations will take place immediately during or after active violent conflict, which in turn excludes critical elements of temporality and memory issues. 6) No guidelines to mitigate conflicting testimonies that can hamper prosecutions and potentially retraumatize survivors. 7) A near-complete lack of tangible recommendations to minimize secondary traumatization of investigative staff and provide the psychosocial support necessary to prevent burnout. I explain these exclusions through public policy theories & literature, reinforced by my own qualitative interviews.

Keywords: violent conflict, sexual violence, conflict-related sexual violence, human rights, international law, public policy, peace studies

Dedication

When I lived in Bosnia-Herzegovina, I listened to hundreds of trauma stories. I read countless testimonies of heinous rape memorialized and preserved at the War Crimes Chamber. When I sat with survivors, I heard how they continued the slow process of healing. In the United States and other countries, the context of rape varies. The pain experienced by those who have survived the violence of rape, however, remains constant.

This thesis began as an attempt to discover some meaning in the violence. An attempt to understand and avoid what I saw go wrong in Bosnia. Building on my professional network, I set out to write a manual for investigations of sexual violence during war. The Protocol on the Documentation and Investigation of Sexual Violence was just being published. At first, I was excited. After reading it, I was concerned. Concerned not only for the quality of the investigations that would be run based on its recommendations but also for the victims and survivors who seemed nearly absent from its pages. Equally, I was worried for the future researchers and investigators who, like the ones I have met, would be traumatized again and again without sharing how important coping well is.

My thesis evolved into a critique. An effort to make amends with the Protocol and ameliorate some of its shortcomings. A call to make it better. To take the advice of what has been written and said before me.

My words are dedicated to all those who have been raped, who have been abused, and to their healing. Not only in violent times of war but in less violent times of peace. Not only to those whose bodies bear the scars but to the families and friends whose hearts remain wounded. Above all, I dedicate this to all those humans who walk the difficult path of healing themselves and this world.

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1 Introduction & Summary

“Despite the repeated pronouncements by international prosecutors expressing a commitment to prosecuting rape and the gains that have been made, the record unfortunately also includes the following: Squandered opportunities, periods of neglect, and repeated mistakes that have caused major setbacks to effective investigations and prosecutions ... International prosecutors should ask themselves instead: ‘The evidence is out there. Why don’t I have it? What did I do wrong? How can I fix it?’”

-ICTR Sexual Violence Expert Dr. Binaifer Nowrojee, 2004

Addressing conflict-related sexual violence depends upon a combination of innovative, sensitive policies, activism, and political will. The most prominent international attempt in recent years is the Preventing Sexual Violence in Conflict Initiative. Spearheaded by the former U.K. Foreign Minister William Hague and international superstar Angelina Jolie, it is the highest profile initiative of its kind in the world. Strongly influenced by the wartime experiences of sexual violence in Bosnia-Herzegovina and Rwanda, the U.K. Foreign & Commonwealth Office began in 2012 to shape foreign policy responses to deal with the matter (Marrs 2015). In broad strokes, the initiative seeks to eliminate rape as a weapon of war through four themes: tackling impunity for perpetrators of conflict-related sexual violence (CRSV), helping survivors, increasing convictions of perpetrators, and coordinating multilateral responses. The U.K. firmly backed the process from 2012 to 2014, resulting in the passage of UN Security Council Resolution 2106 denouncing violence against women, and a high-profile summit attended by 120 states that endorsed the elimination of CRSV. Despite expending considerable financial and political capital, the initiative has been criticized for failing to fulfill its own technical criteria while being too limited in its conceptualization of sexual violence (Kirby 2015; Townsend 2015).

Apart from creating high-level policy discourse and smaller initiatives including a deployable response group of CRSV experts, the most practical result of the Preventing Sexual Violence in Conflict Initiative (PSVI) has been an effort to improve the documentation and investigation of sexual violence in war. This endeavor, bringing together more than 200 experts, survivors, and organizations, created the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict (referred to throughout this thesis as the Protocol). Though previous best practices have been compiled by the likes of Amnesty International and the International Criminal Court, the Protocol is the largest undertaking of its kind (Amnesty International;

International Centre for Human Rights and Democratic Development 2001; Office of the Prosecutor of the International Criminal Tribunal for Rwanda 2014a). The step-by-step instructions inside the Protocol are geared towards organizations operating on the ground with survivors, including human rights and justice groups, as well as national entities. While non-binding, it represents an important step towards international standards for investigative efforts. Further, many in the field regard it as the most successful output of the PSVI project (Interviews #1, #6 2015; Interview #9 2016).

More than one year has passed since the launch of the Protocol at the Global Summit to End Sexual Violence in Conflict. Unlike most guides on CRSV, it has the potential to shape investigations like those currently ongoing in Syria. Working papers and policy briefs already cite the Protocol as a foundation for their recommendations (Abraham 2015; OSCE Mission to Bosnia and Herzegovina 2014). Future war crimes prosecutions, human rights campaigns, and historical narratives will be impacted by the quality of its recommendations. However, since its creation, the 140-page guide has not been systematically evaluated in a transparent manner.

In this thesis, I evaluate the quality of the Protocol recommendations and the drafting process. Two main research questions guide my work. First, I ask if the Protocol comprehensively incorporates existing global best practices for the investigation of conflict-related sexual violence. The Protocol has been billed as the biggest effort at developing international standards in the field and is the most visible attempt to do so. Still, many other in-depth guides for documenting and investigating sexual violence have been published by national and international courts, organizations, advocacy groups and academics (Organization for Security and Cooperation in Europe 2015; Office of the Prosecutor of the International Criminal Tribunal for Rwanda 2014; Amnesty International 2001; Women in the Law Project 1994; OSCE Mission to Bosnia and Herzegovina 2014; UN Department of Political Affairs 2012; International Criminal Tribunal of the Former Yugoslavia 2014; Sácouto and Cleary 2009). Many of those guides contain more nuanced, survivor sensitive approaches than what are given in the Protocol.

Significantly, several issues seen as critical throughout the literature on responding to CRSV are paid little attention or are completely ignored in the Protocol. These areas of divergence represent significant gaps in shaping sensitive global policy standards against CRSV.

Representation of the survivor or witness, as well as issues of post-traumatic stress and trauma are often ignored. So too are gender-specific risks and guidelines. Despite the insistence of many other manuals that “whatever happens, victims should never be left worse off,” the principle of non-harm is given little weight over technical considerations in the Protocol (Office of the

Prosecutor of the International Criminal Tribunal for Rwanda 2014a). Sections related to the ‘do no harm’ principle take up less than a page in the Protocol, while nearly ten are devoted to explaining international laws related to CRSV. This disturbing tendency inside the Protocol undermines the efficacy of investigations that, according to a senior CRSV investigator, depends on “victims’ readiness to tell their experiences...which necessitates building a personal connection” (Interview #6 2015).

For investigating organizations, accepted best interviewing practices that draw out psychosocial evidence critical for effective trials are not included or are only alluded to. Similarly, issues of survivor memory and temporal recollection are not addressed. Equally problematic, the Protocol fails to address the very real issue of secondary trauma for investigators. Internal guidelines at the International Tribunal for the Former Yugoslavia (ICTY) and other bodies increasingly emphasize the importance of psychologically supporting investigators to mitigate burnout risks. Nascent research, such as the Staff Well-Being and Mental Health study by the UNCHR, shows the very real impact of disregarding secondary trauma and “the importance of sustaining and further strengthening the measures in place for support to colleagues following traumatic events” (United Nations High Commissioner for Refugees 2016). These absences are worthy of further inquiry as they pose a challenge to the legitimacy and efficacy of the Protocol. I seek to problematize these gaps in the Protocol and advocate for the inclusion of such practices that help both survivors and investigations.

Secondly, after substantiating why the missing steps matter, I ask why the Protocol has not included such important and well-known best practices. Despite ample funding and the involvement of many highly knowledgeable experts, the Protocol seems incomplete. It is, as expressed in the text, a living document designed to be augmented, and local groups are developing complementary material for their own use (Interview #9 2016). Still, my comparison of the final product with earlier drafts, provided by policy makers, show several informative sections that were also cut from the final version. Notably, sections were struck that discussed nuances including “Misconceptions of Sexual Violence,” “Ethical Recommendations,” and special considerations for sexual violence committed against men (Protocol Draft, 2014). I show why these sections and topics present in other guides are not included in the Protocol. To answer this, I turn to theories of public policy formulation and interviews with stakeholders included in the drafting process. Three complementary hypotheses offer potential explanations for the lacking investigative and documentation practices.

h₁: External factors impacted the drafting process, such as political interference or time pressure. For example, preliminary interviews with individuals involved in the Protocol suggested that the final version was rushed to meet the deadline of the 2014 Global Summit set by William Hague.

h₂: Internal structural issues of a top-down development process undermined the drafting. Input from some of the 200+ experts involved in the drafting process might have been overridden or filtered out by senior authors, or collaborative issues could have resulted in valuable suggestions being excluded.

h₃: Internal, specific interpretations of sexual violence as an instrumental tool directed against women during conflicts caused a cognitive bias that filtered out certain inputs.

By evaluating the Protocol in the context of other guides for sexual violence investigations, I aim to see if the Protocol is a useful manual for future efforts. Far from attempting to hamper the Protocol, I hope to improve upon its valuable contributions by assessing areas of weakness. While a sincere and important effort at providing guidance for investigations, the current Protocol suffers from glaring omissions that could prove harmful to both survivors, legal efforts at accountability, and investigators themselves.

2 Theoretical Framework

I position my work inside a theoretical framework drawn from feminist international relations theory and security studies. Sexual violence cannot be accounted for only through realist or materialist lenses. The high variation in sexual violence from conflict to conflict precludes its inevitability. Indeed, fluidic gender roles, social norms, and cultural circumstances necessitate taking a broader perspective to explain CRSV. The long tradition of feminist scholars in analyzing sexual violence provides an ideal base to ground my assessment of the Protocol and the conceptualization of sexual violence used in the text. The social constructivist nature of critical feminism also allows me to take into account the highly political definition of gendered and sexual violence as a weapon of war. Drawing upon the explanations of CRSV shaped by Inger Skjelsbaek (2006) and the feminist reconceptualization of international security outlined by Laura Shepherd (2007), enables me to politicize the normative foundations of the Protocol.

I draw on the recent work of Paul Kirby (2011 & 2015), who contrasts modes of feminist thought and respective critical explanations of gendered violence that shaped the Protocol. Identifying the political and discursive processes through which the Protocol was developed allows me to better explain the missing portions of the work. Critically, “PSVI rhetoric

has...largely reproduced the narrow and distorting view of sexual violence as primarily a problem of military rationality” (Kirby 2015). This has a direct impact on the Protocol’s recommendations that could jeopardize investigations and exclude critical evidence.

By including public policy analytical tools such as multiple streams analysis from John Kingdon (1995), as well as norm life cycle theories from Finnemore & Sikkink (1998), I seek to better understand the Protocol drafting process and how vital sections were excluded from the final version (Kingdon 1995). Through this mix of theories, I hope to contribute to both the academic debate around sexual violence and the practical necessity of stopping sexual violence in conflict. The critical feminist orientation of theoretical framework allows me to assess the workings and mechanisms of sexual violence. Drawing on public policy literature enables me to justify my research into drafting process deficiencies. Further, the top-down approach sorted by Mazmanian & Sabatier (2000), allows an insight into the partial policy failures of the Protocol. These include the hierarchal policy approach by the F.C.O. and limitations created by viewing CRSV as an instrument of war. I conclude by looking at the work of Christina Badescu & Thomas Weiss (2010), who show that even misused applications of international norms like the Protocol can still have positive net effects for moving international norms into the cascade phase as discussed by Finnemore and Sikkink.

3 Methodology

In line with my theoretical framework, I use qualitative methods for my research. Firstly, to contextualize the text I unpack the understandings of rape and gendered violence used in the Protocol. Using interpretivist understandings of gender construction and explanations of sexual violence, I have conducted a comprehensive literature review of theories behind CRSV.

These are critical to understand because the Protocol and larger PSVI project take as granted the contested idea that rape and sexual violence function mainly as weapons of war (Kirby 2015). Such an understanding of sexual violence limits the applicability of the Protocol to its professed aims of halting CRSV. As Anne-Marie de Brouwer illustrates in *The Importance of Understanding Sexual Violence in Conflict for Investigation and Prosecution Purposes*, “before we can effectively improve the investigation and prosecution of sexual violence in conflict, we need to understand what we are discussing” (2015, p.1).

Building upon the initial theoretical literature review, I answer my first research question of whether the Protocol incorporates existing best practices. A comprehensive literature review of best-practices manuals and research into sexual violence investigations, both at domestic and

international levels, allows me to compare consistent recommendations with those created by the Protocol. Limited archival research that I undertook at the Open Society Archives in Budapest, Hungary, gave me access to the comprehensive European Commission investigations on war crimes in Bosnia-Herzegovina from the 1990s, as well as archives from the Bassiouni U.N. Expert Committee from the same conflict. Importantly, those works explicitly comment on issues encountered during their investigations into sexual violence in conflict. In total, I have reviewed more than 120 reports, books, and academic texts, including 10 projects that guide CRSV investigations, similar to the Protocol.

To affirm my initial findings from the textual analysis, I conducted a series of qualitative interviews in Sarajevo, Bosnia-Herzegovina, in June 2015. Former international war crimes prosecutors and sexual violence experts from the OSCE, National Court of Bosnia-Herzegovina, UN Women and several NGOs serving survivors of sexual violence were chosen.¹ The initial set of eight semi-structured interviews asked participants their impression of the Protocol recommendations, what they believed the most important components of sexual violence investigations to be, and what issues they had encountered in their previous investigations. I also consulted experts who contributed to early versions of the Protocol to inquire into the drafting process. These interviews affirmed the importance of the gaps of recommendations that I had uncovered, leading me to ask my second research question: why the Protocol fails fulfill the promises of the larger Preventing Sexual Violence Initiative and, secondly, if those promises actually serve to help victims and survivors of CRSV.

I use literature of international norm cycles and global policy networks to answer that. Theories of global policy networks explain the creation of the PSVI and Protocol (Reinicke 1998; 1999). Using the work of Finnemore & Sikkink, I see if the Protocol has been able to shape global norms against CRSV (1998). Lastly, through the multiple streams analysis of John Kingdon, I look at external political factors and internal policy factors that may support my hypotheses. Public policy literature mixes with my interpretivist understandings of sexual violence discourse. The two theoretical paradigms are reconcilable and previous authors on the subject have readily combined the two disciplines (Skjelsbaek 2006).

The final stage of my work includes secondary interviews and reviews of my written work to: a) validate or challenge the gaps I have identified in the Protocol; and, b) provide evidence for or

¹ See Annex One for interviews conducted.

against my policy formulation hypotheses. I conducted Skype and solicited draft feedback in April 2016 with 1) CRSV investigators and practitioners, and 2) academics and critics familiar with the Protocol.

After assembling and coding the interviews, I test the potentially overlapping hypothesis for best fit per the responses. This thesis is designed to include a list of recommended topics and guides to be incorporated into the Protocol. I plan to circulate my findings with the experts whom I have consulted during the course of my research. Bringing their comments into account, I will then submit a summary of my findings and suggestions for policy inclusions to the publishing body, the Foreign and Commonwealth Office of the U.K., in an effort to improve their work. In addition, I plan to pursue publication of my criticisms and, should they not be taken into account by the FCO, I will publish a separate, complementary set of survivor-oriented guidelines that frame justice in the eyes of high quality procedures oriented towards survivors during investigations.

4 Thinking Behind the Protocol

4.1 Critiquing the Instrumental Weapon of War Approach

The Preventing Sexual Violence Initiative is an important international recognition of the steps that can be taken in preventing and sensitively investigating the depravity of CRSV. The overall Initiative has, on the whole, espoused a nuanced understanding of sexual violence as a multi-faceted, complex phenomenon. However, the project has been critiqued as utilizing a limited conceptualization of sexual violence (Kirby 2015). The Protocol document reverts back to a narrow understanding of sexual violence viewed strictly in international legal terms, already limiting its scope and ability to adequately recommend investigative approaches that take into consideration other forms of sexual violence that take place during conflict situations (Foreign & Commonwealth Office 2014, p. 15-24). Further, the philosophical conceptualization of sexual violence inside the document emphasizes instrumental purposes, an understanding that has been broadly critiqued for years. The text explicitly looks at sexual violence “a strategy to advance military objectives...[that] can form part of a widespread or systematic attack directed against a civilian population” (ibid, p. 15). This approach also ignores the multi-faceted gendered dimensions that often make transgendered, men, and children the target of sexual violence as well, albeit for different rationales and with often different reactions (Skjelsbaek 2006; Organization for Security and Cooperation in Europe 2015). In short, the understanding used in

the Protocol of sexual violence as an instrumental force, a weapon of war, limits the scope and sets the background for excluding important elements from the text.

Charting all aspects of the substantial research and activism to-date on CRSV falls outside the capacity of this thesis, but framing the position that the Protocol takes is critical to advance a logic behind some of the work's shortcomings. A short historical background, followed by a recent delineation by Paul Kirby (2011) of the ways in which varying critical feminist accounts carry different implications for sexual violence prevention, sketches the political nature of such explanations. Through this, I situate the Protocol inside a particular, politicized, understanding of sexual violence that carries with it wide implications for survivors and investigations alike.

4.2 Historical Developments in Thinking about CRSV

Substantial historical documentation of wartime rape can be found as early as 1474, as well as in biblical texts, but its presence has become more documented in the past century, from the Rape of Nanking in World War II onward (Thomas 1994). Likewise, codification prohibiting rape in war in Europe can be traced back to 1863 and the Lieber code (Meron 1993). More recently, Article 27 of the 1949 Geneva Convention banned the act, stating that “women shall be protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.” Its purpose in conflicts is the subject of much debate, for which critical feminist theorists are responsible for furthering more than any other academic discipline. Sexual violence has been used by troops as a means of vengeance upon their enemy, such as the rape of between a jarring 20,000-900,000 women in Berlin after the end of WWII (Gottschall 2004; Halley 2008; Seifert 1996). Beyond a simple means of vengeance, rape, and sexual violence have also been used as a strategic assault on an enemy's nation and culture by targeting the fundamental social unit of society. These strategic purposes arise alongside increases in intimate partner violence during conflicts, as well as other, non-strategic forms of sexual violence. Transgendered, men and children are also victims of sexual violence in war, yet are even less likely to be afforded social or cultural space to voice their traumas (Human Security Report Project 2012b; Cohen et al. 2013). Despite the above, wartime rape is “neither ubiquitous nor inevitable,” and instances of sexual violence vary significantly across conflicts, cultures, and geographies (Cohen et al. 2013).

In feminist spheres of international relations, a new literature on sexual violence from the '90s onward has often centered on the use of sexual violence as a weapon of war, a strategic implement of often ethnically motivated conflicts (Snyder et al. 2006). This new narrative, distinct from previous theories, is not without its flaws. While framing rape as a weapon has

enhanced public understanding of gendered violence in conflict and facilitated the development of legal responses, it provides only a partial lens to analyze the various functions that wartime rape and gender-based violence serves in conflicts. Such a view blocks out other interpretations and critical divergences, including those grouped under the same general consensus.

The Protocol acknowledges the changing thinking around CRSV, but its recommendations veer abruptly in another direction. The text notes that understanding the impact of sexual violence on communities and individuals is critical to proper documentation and recovery (2014, p. 15).

However, the role that sexual violence serves in conflict is contested and not fully understood. Cultural stigmas against disclosure, attitudes that have dismissed it as an inevitable side effect of war, and traditional security paradigms that have ignored gendered violence all contribute to this lack of knowledge (Chun & Skjelsbæk 2010; Merry 2006; Hauser 2009; Seifert 1996). The widespread reporting on sexual violence during the genocidal conflicts in Rwanda and Bosnia spurred a rethinking of wartime sexual violence that continues to deeply influence the weapon of war thinking. This is unsurprising, given that the Preventing Sexual Violence Initiative has been influenced by Angelina Jolie's own engagement with the Bosnian conflict. In turn, many of the 200+ experts consulted on the Protocol have substantial experience based on the Bosnian and Rwandan conflicts, and the PSVI rollout was later piloted in both countries (Interviews #4 & #5 2015).

Examining the most prominent theories of conflict-related sexual violence offers a way to interpret the findings and shortcomings of the Protocol. The positions taken by the Protocol are alternately highly precise, especially with reference to specific international legal definitions, and painfully vague, such as when approaching survivor-centered investigative frameworks. Though under-researched when compared to other fields of conflict and security, policies responses for sexual violence have been researched at national levels for at least three decades.

Recent efforts internationally have also enlarged the amount of quantitative data on CRSV available considerably, yet extracting answers are very difficult due to data gathering issues. Because of the inaccuracy of data, much literature focuses on case studies or systemic social theories (Casey & Smith 2010; Brownmiller 1975). For example, Paul Kirby (2011) focuses on three modes of critical feminism and the varying results of their accounts:

- Instrumentality, or the use of war rape as a means to an end;
- Unreason, stressing how sexual violence is expressive and often illogical; and,
- Mythology, which examines discourses, beliefs, and socio-cultural boundaries that shape sexual violence.

By repurposing Kirby's framework, I place the Protocol clearly with the instrumentalist camp, detail the effects of such a paradigm, and look at competing frameworks that could make better the Protocol. I relabel these three accounts as falling under instrumental (or strategic) aims; individuality; and societal understandings.

4.2.1 Instrumentality (Strategic Rape)

The strategic rape hypothesis mostly developed from feminist explanations of wartime sexual violence that emphasize the rational aspects. Emerging out of reports from Bosnia and Rwanda of mass, pre-planned rapes, a specific discourse surfaced surrounding rape as a weapon of war. By destroying the family unit, terrorizing civilians, and humiliating other groups, rape was used to systematically cleanse and destroy ethnic groups in both conflicts. The application of sexual violence to achieve military objectives through "coherent, coordinated, logical, and brutally effective means" prompted an international outrage (Gottschall 2004; Stiglsmayer 1994). The extension of this logic to the Protocol is visible in its primary contextualization of sexual violence as being "often committed by members of armed groups against many individuals, including civilians: as a strategy to advance military objectives and can form part of a widespread or systematic attack directed against a civilian population" (Foreign & Commonwealth Office 2014). This definition is largely taken from the corpus of international law pertaining to crimes against humanity used to prosecute CRSV found inside the Rome Statute of the International Criminal Court, originally advanced through the International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR, respectively).

The Protocol focuses on international legal frameworks, specifically the Rome Statute and the cases of the ICTY, ICTR, and Special Court for Sierra Leone (SCSL). The work details the international legal situations when crimes of a sexual nature can be prosecuted under the Rome Statute, as well as case findings. Nearly a 10th of the entire Protocol is used to iterate specific international legal elements—a useful primer, though a questionable use of space given other absences. Many of the definitions listed were first utilized in the notable ICTR trial of Jean-Paul Akayesu. The first conviction of a person under the 1948 Genocide Convention to include rape as a crime against humanity, the ICTR grounded its prosecution of sexual violence by understanding it as an instrument of war. Likewise, the ICTY, in the Kunarac case of 2001 for the Foca rape camp in Bosnia-Herzegovina, also successfully prosecuted rape as a weapon of genocide. During the ICTY Trial of Radislav Krstić, the Trial Chamber asserted a linkage between ethnic cleansing and rape (Haddad 2011; Oosterveld 2005). Continued jurisprudence through prosecution efforts at the Tribunals, as well as at national courts in Bosnia-Herzegovina

and Rwanda, also informed the experts consulted for the Protocol (OSCE Mission to Bosnia and Herzegovina 2014; United Nations Department of Peacekeeping Operations 2009; Haddad 2011). Many of the verdicts at the courts were influenced by the work of amicus curiae briefs and feminist lawyers whose laudable advocacy efforts pushed rape to be constituted as a war crime and a crime against humanity (Buss 2009; Copelon 2000).

During the Bosnian conflict, which deeply informed the Protocol (Interviews #2 & #3 2015), widespread use of rape with specific intent was internationally documented by journalists like Roy Gutman in his *Witness to Genocide* (1993). Bosnian-Serb rape camps were utilized to further a genocidal campaign, designed to maximize psychological impact by inflicting not only sexual brutality, but also forced pregnancies. Designed to destroy ethnic identity, women were forced to “give birth to little Chetniks” in an apparent effort to systematically destroy Bosnian identity (Allen 1996). The women’s group ‘Tresnjevka’ estimated that some 35,000 women were held in rape camps, while other estimates, such as those from the U.N. Committee of Experts suggest that between 20,000-50,000 women were raped during the entire conflict (Women’s Group “Tresnjevka” 1992; Bassiouni et al 1994). Muslim men were also forced, although on a more limited scale, to perform sexual acts on each other while in captivity (Bassiouni et al 1994). Importantly, the Bosnian conflict was punctuated by deliberate acts of sexual violence by all sides, a fact often neglected by the dominant narrative of Serb aggression, as well as by the dominant explanation granted by the rape as a weapon of war thesis. For example, the first major European Commission fact-finding mission on sexual violence in 1993 commented that “the Mission considers it important to place on record its view that rape and sexual violence are restricted by neither nationality nor gender...[and] there are many and disturbing reports of rape of Croat and Serbian women and children, as well as sexual abuse of men in detention camps” (Womenaid International 1993).

Levels of intimate partner violence also increased during the conflict. Unfortunately, current international legal frameworks currently focus on CRSV only as a war crime in international or internal armed conflict; a crime against humanity; a tool for genocide; or an implement of torture. Legally-speaking, many other forms of CRSV fall outside of the scope employed by international law. Focusing on specific strategic actors in the instrumental frame oversimplifies the dynamics of violence. It also makes difficult accounting for reports like the above.

As useful as the discourse surrounding rape as a weapon of war has been in diverting global attention to the use of sexual violence in conflict, the instrumentalist understanding of rape creates other, problematic issues. This discourse, as critiqued by Doris Buss, reduces the

categories of victims and those harmed to a dichotomy between strategic, always male, perpetrator and a female victim (2009). In the case of Bosnia, Serb aggressors and Bosnian Muslim victims. In the case of Rwanda, Tutsi female victims.

In the Protocol this dichotomy manifests in the lack of gender-specific guidelines for non-female victims of sexual violence and the absence of investigative guides for other forms of sexual violence, such as partner or intimate rape. In short, while not inaccurate, such an explanation neglects many of the complex dynamics underneath CRSV. Per Buss, it renders analysis blind to the “social, political, and economic structures that determined why some women were particularly vulnerable to attack” (2009). The narrowness of such an approach as used by the Protocol risks only addressing military rape, ignoring other forms of gendered and sexual violence, and creating a “hierarchy of harms” that neglects other accompanying forms of violence (Kirby 2015, p. 463).

4.2.2 Individuality

Another understanding of rape that stands in general contrast to the instrumental account utilized in the Protocol focuses on the individual and, as termed by Paul Kirby, unreasoned motivations (Kirby 2011). Rape was assumed to be biologically or psychologically determined by early theorists (Snyder et al. 2006). Often military theorists espoused that rape may be the enviable result of perpetrators’ aggression. In this account, rape becomes a natural impulse, usually downplayed as a lamentable side-effect of war (Thomas & Ralph 1994). A pressure cooker analogy is often used to describe this theory: “men possess instincts for sexual aggression that are restrained under normal conditions but that, in the chaotic wartime milieu, spew forth like the vented gas of a pressure cooker” (Gottschall 2004). Sexual desire thus manifests itself as a release from the difficulties of war. Per Kirby, “for unreason, rape is a weapon of war because it is the result of desire and fear faced by perpetrators in brutalising situations of affect and trauma” (2011, p.19).

The emphasis in this account shifts to the individual—not the strategy or aims of rape during war. Psychological and biological accounts largely constitute explanations inside the individuality hypothesis. For example, desire and subjective attractiveness, rooted in the person, though influenced by societal factors, played a role in selecting victims in the rape camps of Bosnia, where the most beautiful women of child-bearing age were often selected first (Gutman 1993; Stiglmayer 1994). Later studies have found that such selections based on preference are not the norm (Gottschall 2004). Still, individual decisions, even if influenced by social factors, can be important instigators for rape during conflict. Catharine MacKinnon argued that social scripts

like pornography in the former Yugoslavia an act to perform by individuals, ultimately helping to produce sexual violence during the war (Mackinnon 1994). In this account, the question becomes what leads individuals to commit rape during war—how did they become so broken, coerced into grave transgressions against humanity. The Protocol avoids these questions entirely, choosing instead to focus on instrumentalist understandings. That, as I show in the next section, leads to problematic exclusions of various forms of CRSV.

4.2.3 Societal Accounts

The third broad mode of understanding is that of societal motivations, understood here to bound individuals' decisions and instrumentality within socio-cultural limits. This societal account incorporates questions of identity formation understanding that rapists are not purely self-interested, but instead “performers of socio-cultural ritual” (Kirby 2011, p.21). The continuation of sexual violence from peacetime into war illustrates the scripted, gendered nature of rape. Susan Brownmiller, whose 1975 study on rape set the stage for years of future theorists, iterates the connection between misogyny and rape during war as an extension of male domination during peacetime. The instrumental purposes of rape are secondary in this account, instead driven by gendered dominance and practices of socio-cultural outlash. Through this viewpoint, men are seen as societally conditioned in many circumstances to despise women. Wartime rape becomes a window of opportunity not readily available during peace through which men can “vent their contempt for women” (Brownmiller 1975). Brownmiller contends that this relationship is an extension of the male unconsciousness, societally derived, that shapes women to be “objects of fundamental hatred” (ibid p. 217). The patriarchal organization and misogyny of society is thus merely continued during war. Critically, this understanding recognizes that sexual violence occurs in domestic contexts during war, just as it does during peacetime.

Neglected in the Protocol are the societal differences in CRSV statistics across conflicts—rape does not happen on a widespread scale in every conflict—nor is it inevitable (Human Security Report Project 2012a). The societal mode of understanding allows that it is the socialization of men that matters most. Biological, strategic, or self-interested rationale are secondary. Greater nuance across contexts is possible by understanding the societal scripts influencing a given region.

Ruth Seifert offers an interpretation of this symbolism derived from the destruction of the female body as one which “embodies the nation as a whole and is depicted in so many works of art...the construction of the community being produced and made visible in her person, body, and life” (1996). Seifert proceeds to offer several hypotheses as to why sexual violence is so

prevalent in conflict. Firstly, she contends that sexual violence is an integral part of warfare throughout history. Secondly, that sexual violence is used symbolically to inflict humiliation on male opponents and reaffirm masculinity, namely of a heterosexual nature (Siefert as qtd. in Skjelsbaek 2001). Thirdly, that sexual violence can be used to destroy the culture of the opponent, such as in the ethnic cleansing observed in Bosnia. Lastly, like Brownmiller, Seifert concludes that the sexual violence observed in wartime is an ultimate outcome of the misogyny of peacetime (Skjelsbaek 2001).

This highly political conceptualization of sexual violence has been disputed by feminist scholars and conflict analysts alike as a simplistic view that obscures the complexity of CRSV (Buss 2009; Sudetic 2012; Akia 2011). It fails to account for the dynamics of sexual violence against men, not to mention other genders, as well as the role that CRSV plays in small group socialization and hierarchy for military groups. In particular, Inger Skjelsbaek takes such an account to task for focusing solely on gender as the key variable in explaining CRSV, which masks complex ethnic, religious, and power relations usually necessary to explain sexual violence (2001).

4.3 Implications of Understanding Used in the Protocol

On the surface, the philosophical understandings of sexual violence in conflict may seem unimportant for the discussion of a practical policy document such as the protocol. However, the exact understanding of CRSV used in the Protocol, largely drawn from an instrumentalist account, has severe policy implications for the recommendations set out in the text. Per Kirby: “understanding sexual violence in terms of one or other form of critical explanation will shape the priorities and forms of political intervention adopted” (2011, p.26). This is certainly true for the Protocol. Likewise, a set of pervasive biases towards CRSV discussed in the Human Security Report of 2012 indicate that an overemphasis on the weapon of war approach causes investigations to miss other forms of CRSV, such as domestic violence, which claims more victims during conflicts. Such biases often also neglect non-female victims and female perpetrators. The Protocol, significantly out of step with the more inclusive Preventing Sexual Violence Initiative, suffers from these shortcomings.

D.E. Buss’s *Rethinking ‘rape as a weapon of war’* offers an important insight into the effect such framing has. Her work takes into account the writings of Sharon Marcus, who argues that rape need not be an intrinsic part of women’s lives and that responses to rape often perpetuate issues rather than resolve them (2009). For Marcus, the discourse around rape forms scripts that comprise a “gendered grammar of violence, where grammar means the rules and structures

which assign people to positions within a script” (Marcus 1992, p.392 as qtd. in Buss 2009). In Buss’s analysis of the ICTR, she concludes that utilizing specific rape scripts:

- 1) Reduce rape and sexual violence to a male aggressor of a military group and a feminized victim, both of which are fixed identities; and,
- 2) Treat rape as “relatively uniform in practice and experience” (2009, p.155).

Such scripts are present throughout the Protocol. This account of CRSV, while not wholly inaccurate, only gives a partial picture.

The reduction of rape to a simple instrument of war ignores the social, political, and economic contexts that preempt wartime rape. While rape can be used as an active stratagem, pre-existing attitudes, biological urges, and cultural perceptions can prompt rape in the first place, and continue its perpetuation during war (Olujic 1998; Gottschall 2004). Further, conflicts exist devoid of, or with very little sexual violence: it is neither inevitable nor a constant of war (Human Security Report Project 2012b). What research has been completed so far shows that the majority of men do not, in fact, rape during wartime (Cohen, Green, and Wood 2013; Human Security Report Project 2012). Other sexual acts, including coerced homosexual violations by soldiers ordered by their commanders, cannot be easily explained through the instrumentalist framework. Such a limited understanding also struggles to account for the fact that women occasionally oversee and encourage conflict-related rape—and must be investigated as such. The case of Pauline Nyiramashuhuko, a Rwandan minister, is illustrative as a woman who, “not only ordered Hutu militias to rape Tutsi women before killing them but personally distributed captive women to soldiers as a reward” (Weitsman 2008 as qtd. in Sudetic 2013). The variation of sexual violence between conflicts and the oversimplification of the ‘rape as a weapon of war narrative’ neglects other factors and actors like the minister that contribute to CRSV (Buss 2009).

The Preventing Sexual Violence Initiative sought to emphasize that men and boys could be subject to rape and sexual violence during conflict, somewhat opening up space for further research on the subject (Kirby 2015, p 469). Unfortunately, the Protocol fails to pick up that mantle by neglecting to present context-specific guidelines for men and boys. The Protocol picks up on the commonsense statement that “women and girls are being disproportionately affected by sexual violence in conflict settings,” but fails to note that almost all research into CRSV has failed to assess non-females as possible victims and survivors (Foreign and Commonwealth Office 2012, p.15; Beerlie et al. 2015).

Gender alone cannot explain the role of rape. Masculinity and femininity, not bounded by gender, but rather by socio-cultural norms, overlap with multiple identities: religion, ethnic group, culture, class, and biology all factor into sexual violence. CRSV cannot be easily categorized, and efforts to do so often reduce the complex role that sexual violence plays in wartime. Focusing only on gender or strategic explanations “not only obscure the diversity of women’s experiences but also may hide the need to craft multifaceted policies that are responsive to gender and the many other multiple identities that intersect with it within the scope of complex cultural contexts” (Snyder et al. 2006). At worst, such a narrow-minded analysis can lead to the conclusion that rape is inevitable (Buss 2009). At best, it ignores other avenues of analysis and potential means to prevent conflict-related sexual violence. Such is the case with the Protocol. As shown in the following analysis, the narrow understanding utilized in the document has severe implications for victims, survivors, and investigative procedures.

5 Evaluating the Protocol

As alluded to previously, my analysis of the Protocol via comparison with existing guides and best practices spoken to in interviews with CRSV experts reveals a number of issues with the work. Broadly speaking, these can be broken into two categories:

- **Issues in the text that directly impact victims & survivors, and;**
- **Practical issues that undermine legal & investigative efforts addressing CRSV.**

In order of importance, the first category deserves particular attention. The operative question in any investigative effort ought to be for whom the investigation is being run, and to what end justice is being sought. An operation designed to achieve some measure of justice for survivors of CRSV or accountability of perpetrators should not come at the expense of the safety of survivors. This was one of the major rhetorical points throughout the broader PSVI, which emphasized engagement with survivors and upholding the Women, Peace and Security (WPS) agenda laid out by the UN Security Council Resolution 1325 (Kirby 2015).

5.1 Issues Impacting Victims & Survivors

The Protocol provides a clear legal basis for investigative efforts and admirably gives practical steps for gathering data and interviewing. That is useful for advancing the WPS agenda. Unfortunately, the Protocol fails to articulate several key issues that risk doubly harming those already affected by CRSV:

- **The Protocol lacks the victim/survivor-centric emphasis of other, similar documents. A lack of guidelines for intimate partner violence during conflict is also notable here.**
- **The recommendations fail to sensitively address Rape Trauma Syndrome or psychological effects such as Post Traumatic Stress Disorder (PTSD) that survivors/victims may be encountering.**
- **Retraumatization of victims/survivors is not addressed, which can both harm those who testify and potentially undermine the quality of interviewing data collected.**
- **Lastly, the Protocol lacks gender-specific guidelines. While hedged in gender-neutral language, changes between drafts of the document show that recommendations for non-female and underage victims were removed.**

I will address each of the above in turn.

5.1.1 Lack of a Victim-Centered Approach

Not placing the needs of victims at the center of the Protocol casts the greatest shadow over the document. As the U.N. Secretary General's report on Sexual Violence in Conflict concluded, "international justice is as much about the hope, dignity and restoration of victims as it is about the accountability of perpetrators... **A victim-centered approach is vital...** The implementation of this guidance in ways that specifically repair the immediate and longer-term harm experienced by victims of sexual violence in conflict is imperative in going forward" (United Nations Security Council 2013, p.25, emphasis added). Failing to do so risks harming both victims and the efficacy of investigative efforts. My review of 15 similar handbooks and guidelines on CRSV investigations all come to a similar conclusion (Amnesty International; International Centre for Human Rights and Democratic Development 2001; Sandick 2012; Women in the Law Project 1994; UN Department of Political Affairs 2012; Sácouto & Cleary 2009a; OSCE Mission to Bosnia and Herzegovina 2014; Strand n.d.; Organization for Security and Cooperation in Europe: Mission to Bosnia and Herzegovina 2015; Oosterveld 2005; Office of the Prosecutor of the International Criminal Tribunal for Rwanda 2014a; Nowrojee 2004; Callamard 1999).

As early as 1994, a documentation project in Bosnia-Herzegovina released a foundational series of recommendations for rape and gender-based violence investigations that put the psychological needs of victims/survivors at the forefront (Women in the Law Project 1994). The guidelines include that "interviews must be undertaken in a manner that is responsive to the particular emotional needs of rape survivors" and "only in a context where there exists a system that ensures appropriate follow-up" (1994, p.104). More recently, Philip Sandick concluded in a critique of the International Criminal Court that "victims are suffering as a result of the work of the Court...[and] intermediaries are also suffering because they do not know how to talk to victims" (2012, p.106). Victim-centered guidelines have since been introduced at both the ICTY and ICTR that include interviewing guidelines, along with psychological and medical follow-up requirements (International Criminal Tribunal of the Former Yugoslavia 2014; Office of the Prosecutor of the International Criminal Tribunal for Rwanda 2014a).

The latest set of best practices and trainings besides the Protocol include those issued by the ICTR (2014) and trainings for investigators and prosecutors developed by the OSCE in Bosnia-Herzegovina (2015). The former, a comprehensive Best Practices Manual for the Investigation and Prosecution of Sexual Violence Crimes in Post-Conflict Regions, includes sections on victim and witness safety, access to counseling and medical treatment, issues of retraumatization, and so-on. Nearly 20 pages of the 138-page document are dedicated to similar guidelines. In short, it

makes a clear effort to assure that “the dignity and safety of victims of sexual violence be prioritized at all stages of investigation and trial” (2014a, p.16).

The Wartime Sexual Violence Module from the OSCE in Bosnia-Herzegovina, provided to me by one of its authors, was developed in cooperation with the U.K.’s PSVI efforts in Bosnia (Interviews #1, #4, #6 2015). Designed for advocates, judges, prosecutors, and investigators in the country, the Module incorporates both international and local best practices. Notably, the 162-page text is centered around creating a ‘trauma informed investigation’ that includes “how to question traumatized victims so as to obtain the best evidence; how to make use of witness protection and witness support” and “how to avoid re- traumatization” (2015, p.5). 61 pages of the Module are concerned with teaching the psychological effects of rape and sexual violence to allow for more effective, informed investigations. A further 16 pages apply the psycho-social findings to create practical guidelines for the aforementioned trauma informed investigations. In sum, nearly ½ of the manual designed by leading CRSV experts and practitioners is dedicated to preserving the dignity of the victim/survivor.

How the Protocol manages to miss such a critical point raises significant doubts about the usefulness of the entire text. Part 2 of the work supposedly engrains the principle of ‘do no harm,’ yet manages only half a page on the subject. A coded analysis of the text shows that only 7.5 pages of the 146 in the document are dedicated to the needs of survivors/victims. Far more of the text is used to explain means of identifying legal culpability (49 pages), or documenting and securing physical evidence (23 pages). Interestingly, more sections addressing victims/survivors were present in the first draft of the Protocol, some 20 pages out of the 50-page draft. These were removed for the final Protocol copy (2013).

While certainly useful topics, the emphasis of the Protocol clearly falls on securing technical, empirical quality of information; not on protecting the dignity and safety of those who have suffered from sexual violence in conflict. This is an unusual divergence from

- 1) Best practices in the field found in other manuals;
- 2) The supposedly victim-centered emphasis of the PSVI; and,
- 3) The specialized guidelines found in the first draft of the Protocol.

5.1.2 Lack of Trauma-Related Guidelines

Post-traumatic stress disorder (PTSD) and the correlating Rape Trauma Syndrome describe symptoms following traumatic experiences. Both are also contested terms criticized for shaping political and social trauma into diseases, a trend which depoliticizes and pathologizes debates

around social causes that might otherwise take place. For refugee theorist Derek Summerfield, trauma is directly related to the social world, and PTSD is just one way of approaching traumatic events (Summerfield 1999; 2002). Judith Herman, likewise, looks at how trauma destroys entire systems and people from its intensity—and how the process of coping afterwards takes many forms (1992). This process of coping, medically termed in the much of the western world as PTSD, has been codified by the American Psychiatric Association from the Diagnostic Statistical Manual III onward to the current DSM-V (Murphy 2010). Psychological trauma is defined in the field as that which is “(1) sudden, unexpected, or non-normative, (2) exceeds the individual’s frame of reference to meets its demands, and (3) disrupts the individual’s frame of reference and other central psychological needs and related schemas” (McCann & Pearlman 1990, p.10). War incurs much trauma, from direct and secondary violence, and particularly from sexual violence. Impacts in the long-term for trauma survivors include flashbacks, recurrent thoughts, an inability to discuss the trauma, depression, anxiety, and memory issues such as dissociation (Murphy 2010). Rape, especially, carries with it the possibility to inflict lasting PTSD and other trauma coping mechanisms. A recent study of the disorder among so-called Korean comfort women who were forced into prostitution more than 60 years ago concluded that PTSD can surface at any point in life, isolate victims, and trigger avoidance symptoms that have strong implications for social life (Min et al. 2011). More recently, some 65% of Bosnian refugees in the U.S. were diagnosed with PTSD and 35% with major depressive disorder, often the result of wartime rape (Weine et al. 1998 in Murphy 2010, p.40). Critically, PTSD and trauma wounds create breaches in memory where “time, self, and space seem to collapse into a mental black hole and become unavailable”(Murphy 2010, p.14). Given the seriousness of PTSD, it is critical to develop support mechanisms and interviewing techniques that:

- 1. Recognize the impact of trauma on survivor’s lives;**
- 2. Account for how trauma can influence legal testimony; and**
- 3. Avoid re-traumatizing survivors.**

Each of my interviews with gender-based violence experts at UN Women, the OSCE, the National Court of BiH, and ICTY all emphasized the importance of addressing retraumatization, PTSD, and witness support (Interviews #1, #2, #3, #6, & #8 2015). Likewise, all other investigative manuals and texts I have reviewed from 1994 to last year carry reference to trauma, PTSD, or Rape Trauma Syndrome. Most include detailed guides to sensitive handling of traumatized individuals. The OSCE Wartime Sexual Violence Module, for example, draws heavily on the Forensic Experiential Trauma Interview model of Russell Strand that emphasizes how “victims should not be treated as witnesses to their own crime – they have an experience

that we have a duty to facilitate disclosure of, document and present in a three-dimensional manner (Strand n.d., p.9). Other models, like the spaced cognitive interview model (SCI), also take trauma narrative into account (Sandick 2012). These models acknowledge the fragmented nature of trauma narratives—something the interviewing annex of the Protocol fails to do. I address the legal and documenting problems of the interviewing model used in the Protocol in the second section of this critique.

The Protocol notes that organizations should “where possible, train staff in dealing with trauma” and assess retraumatization as a potential risk to survivors/witnesses (2014, p.29 & 33). It also suggests that organizations should attempt to put into place referral systems for survivor/witnesses to medical and psychosocial services (p.48). However, the text does not include specific guidelines for avoiding retraumatization. Nor does it, unlike the ICTR, OSCE, and Amnesty International guides, present specific points for recognizing and addressing the effects of trauma. The OSCE Module dedicates nearly half of the text to detailing a trauma-informed investigative approach (2015), while the other guides reviewed dedicate substantial effort to addressing issues around trauma.

Binaifer Nowrojee, in her rightly titled *We Can Do Better*, strongly advocates against negligent investigative work by investigators and for the inclusion of strong support and protection services for witnesses, survivors, and victims (2004). As Philip Sandick puts it, “some victims may even value proper treatment more than a guilty verdict” (2012, p.123). The Protocol rhetorically backs proper treatment and the ‘do no harm’ principle, yet does not give tangible ways to avoid harming victims/survivors. The Protocol, at 146-pages, is not constrained by length. The failure to include recommendations for addressing PTSD and preventing retraumatization is unjustifiable. Putting survivors and victims first, as the Preventing Sexual Violence Initiative claims to do, means including practical steps to enhance procedural justice. The Protocol, as it stands, fails at this.

5.1.3 Failing to Address Non-Female Victims & Other Types of Perpetrators

Another puzzling exclusion from the Protocol are gender-specific guidelines and language concerning male or non-female victims/survivors of CRSV. One of the main objectives of the PSVI was to open space and draw attention to gender-based violence against men and boys. Speeches by William Hague and Angelina Jolie rhetorically sought to widen the discussion of CRSV to include non-female victims. In reflections held at the Bled Forum one year after the London Summit, Dr. Chris Dolan, an expert involved in the Initiative, noted that there is a “serious implementation gap” in understanding gender issues for male survivors and a lack of

figures, without which there can be no accountability (Beerlie et al. 2015). Given that few studies have focused on sexual violence against men during wartime more research is needed, but clear cases of sexual violence against men have been recorded during the conflicts in Bosnia, Rwanda, and the DRC (Bassiouni et al 1994; Brouwer 2015; Human Security Report Project 2013).

Towards that end, the PSVI has generally opened space and funding for additional research into sexual and gender-based violence against men and boys (Interview #4, #7 2015).

Unfortunately, the Protocol document diverges from the PSVI and fails to address the difficulties of assessing CRSV against men and boys. Transgendered or individuals identifying otherwise are also completely ignored. While the document generally relies on gender-neutral language, it makes poorly-backed assertions that can be read as dampening investigations into CRSV against men (2014, p.15). More curiously, early drafts of the Protocol included sections on:

- **Common misconceptions and assumptions regarding sexual violence, including understanding that “sexual violence is [not] only a women’s issue” (2012, p. 10).**
- **Pages of specialized care guidelines for male survivors/victims that recognize investigating sexual violence against men and boys “requires a distinct and strategic methodology in order to identify survivors and witnesses” (2012, p. 26-28).**
- **Language that asserts to “ensure support and approach are age and gender appropriate” (2012, p. 24).**

Why those sections were removed during the drafting process likely has many explanations. Whether deemed politically necessary to emphasize the Women, Peace, and Security agenda, or simply because of an editor’s arbitrary decision, the effect has been a sanitizing of any gender-specific guidelines. Kirby, writing on the broader PSVI, summarizes this rather nicely: “It 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” (2015, p.471).

The Protocol also neglects other, non-combatant perpetrators of sexual and gender-based violence during conflict. By defining sexual violence only under international law, the Protocol limits itself to examining a war crime, a crime against humanity, and/or an act of genocide (2014, p.15). This ignores noncombatant rape during wartime. Such a limited definition obscures the fact that many victims of CRSV “report that the perpetrator was an intimate partner, acquaintance, or other noncombatant” (Cohen et al. 2013, p.6). Equally, the Protocol does not

spend any time orienting potential investigators to the fact that women also can, and do, perpetrate sexual violence during conflicts (Human Security Report Project 2013). Such exclusions are understandable through the limited definition of international law used in the Protocol. The Analytical Framing utilized by the UN working definition on CRSV creates similar limitations by requiring a causal link to conflict for sexual violence (Amneus 2014, p.39). Still, there is no reason why the purported audience for the Protocol of human rights and justice sector actors could not widen their remit to include documenting perpetrators beyond active combatants.

The two exclusions in this section, of non-female victims/survivors and non-male, non-combatant perpetrators, are explainable through the instrumental understanding of rape as a weapon of war. As I discussed in the previous theoretical section, that instrumentalist view obscures many forms that rape takes during conflict. Moreover, per Buss, it reduces the complexities of gendered violence to a binary male/perpetrator, female/victim script (2009). The implications of these exclusions are clear: were the Protocol followed to the letter, male or transgendered victims would be ignored or treated indifferently, and victims/survivors of rape by noncombatants would be effectively silenced.

5.2 Missing Practical Guidelines that Undermine Legal Efforts

The Protocol, though incomplete, does provide a solid basis of international legal definitions upon which investigators can identify evidentiary gaps and establish specific, contextual, and linkage elements to build cases upon. Several prosecutors to whom I spoke clearly identified the importance of obtaining higher quality wartime statements and interviews (Interviews #1 & #6 2015). The guidelines provided in the document are useful for this. However, several other issues raised by the investigators from Bosnia-Herzegovina are not addressed by the Protocol.

Firstly, the Protocol is written as though investigators will be present with survivors/victims immediately after a violation. The collection of physical evidence and the method of interviewing given in the annex are all best suited to an investigation run in a timely, almost instantaneous, manner. That is seldom the case. Many investigations are run months, or years, as in the case of Bosnia-Herzegovina, after the actual events have occurred. Amnesty International, for example, actively criticizes the ICTY and local prosecutions in Bosnia for failing to investigate timely and provide support for survivors (Amnesty International 2009).

The reality is that, even in the best run of processes, temporality factors into investigations. Other handbooks, like the best practices manual of the ICTR (2014), encourage investigators to “remind victims and witnesses that it is common for witnesses to not recall every particular detail

of an event, which may have occurred a long time ago” (p.43). Acknowledging that the passage of time can be a factor that impacts both memory and the collection of evidence, including cold case files, would have been a beneficial contribution to the Protocol.

Secondly, the problem of conflicting statements by witnesses and survivors is not sufficiently addressed in the Protocol. Multiple testimonies can create contradictory narratives and, though mentioned in Annex 3, are not elaborated on in-depth (2014, p.115). Support officers and prosecutors interviewed stated that cases frequently encountered conflicting statements by witnesses (Interview #1 2015). Multiple statements from women who came forward with their experiences were not always correlated to each other, a fact made more difficult by the number of different organizations and media groups that solicited statements from survivors. If mismanaged, these conflicting statements can undermine legal cases by calling into question the veracity of accounts, and raise the issue of fraudulent claims. In Bosnia-Herzegovina, purportedly fraudulent claims have been raised by a limited set of women’s rights groups that have, according to some interviewees, coerced women to come forward in the interests of gaining further funding from donors (Confidential interview 2015). Other times, media depictions of individual cases were inaccurate or poorly vetted, leading to both retraumatization of survivors and, later, contestation of their evidentiary accounts (Interviews #1, #6, #7 2015).

Addressing both the above issues can be attended to by providing better interviewing techniques. The Evidence Workbook provided in Annex 1 of the Protocol and interviewing principles set out in Annex 3 are mainly concerned with a rigid structure “mainly based on the definitions of crimes and the elements of the crimes, as set out in the Rome Statute and Elements of Crimes of the International Criminal Court (ICC)” (2014, p.76). The suggested questions such as “can you tell me what the perpetrator said, if anything, about what your relationship to him was?” insufficiently account for temporal distortions, trauma narrative changes, and the importance of building rapport with survivors/victims (2014, p.85). Open-ended interviews, on the other hand, have been shown to build relationships and improve interviewee recall (Holmber et al 2007 in Sandick 2012, p. 122-123). The same study also found that interviewers showing respect and compassion improves recollection outcomes. When asked what he found most important to an investigation, the former lead CRSV investigator from the National Court of Bosnia-Herzegovina told me that empowering victims is critical—including during interviews (Interview #6 2015).

Thus, it should come as no surprise that other handbooks incorporate a better understanding of trauma into interview guides. The OSCE Wartime Sexual Violence module, for example, dictates

that “flexibility in approach—where and how we start with each individual—is crucial to gaining the best evidence” (2015, p.124). The interviewing approach specified, based on the Forensic Experience Trauma Interview model, includes sensory events, open-ended narratives, and thought-process questions. The ICTR Best Practices Manual tells investigators to “take their time when interviewing victims and allow the story to unfold...unless victims introduce the topic themselves, investigators should therefore not ask questions immediately about the sexual violence” (2014, p.42). Philip Sandick, in his report recommending the ICC develop an interviewing best practice guide, also suggests the “spaced cognitive interview” model for traumatized individuals (2012, p.122). Inger Skjelsbaek, in her dissertation assessing the psychological aftermath of Bosnian war rapes, goes further and looks at the “way in which the interviews were carried out became as much a part of the analysis” as the content (2006, p.36). Her sensitive manner of dealing with interviewer/interpreter/interviewee relationship provides insight into how well-conducted interviews are imperative to minimize harm to traumatized individuals and provide solid evidence for all manner of research. The Protocol could well have included any of the above models and detailed interviewing techniques. Instead, it relies on a generic list of interviewing tips and questions in the Evidence Workbook that, if used directly, could distort testimony and retraumatize survivors.

5.3 Lack of Staff Support Guidelines

The final theme lacking in the Protocol is that of psychosocial support for staff. Handling emotionally-laden, deeply disturbing content like wartime rape and sexual violence on a consistent basis raises the likelihood of staff undergoing a number of negative effects. These include secondary trauma, vicarious trauma, and burnout. Vicarious trauma is defined as a “cognitive change through empathetic engagement with trauma survivors” (Pearlman 1999 in Newell & MacNeil 2010). This has been widely shown to impact interviewers and those who assist trauma survivors (McCann & Pearlman 1990 in Sandick 2012, p.119). Slightly different, secondary trauma stress disorder (STSD) is characterized as “a state of physical, emotional and mental exhaustion caused by long-term involvement in emotionally demanding situations” (Pines, Aronson, & Kafry 1981 as qtd. in UNHCR 2016, p.79). Coping mechanisms by those affected often include heightened alcohol consumption, tobacco use, eating disorders, and more. Later effects can manifest as depression, anxiety, complete burnout, or fully fledged PTSD. A recent UNHCR survey of staff well-being and mental health found that the risk of secondary trauma stress was found in 38% of individuals working directly with traumatized populations (2016, p.77). These effects spill over from the personal realm to directly impact investigations

and the outcomes of cases. Investigators cannot work effectively if suffering from burnout and secondary trauma, or are in a workspace that denies the psychological reality of those symptoms. Indeed, their negative coping could well cause harm and further injure those who they are seeking to support. Large caseloads and a lack of employee support have been shown to lead to lower compassion satisfaction levels, resulting in the so-called ‘compassion fatigue’ (Killian 2008; Newell & MacNeil 2010; Silver et al. 2004). Despite notable studies, significant research remains to be done on the subject.

Similar concerns have led to the creation of Staff Welfare offices at the ICTY and ICTR where counseling services are made available. The Best Practices of the Tribunal provides counseling and support services for staff. The UNHCR, having recognized the high proportion of its staff at risk, has implemented a new plan for increased mental health and psychosocial support (UNHCR 2016, p.7). Doctors Without Borders (MSF), similarly, has guidelines in place to provide its humanitarian personnel with psychosocial support (Doctors Without Borders 2011).

Even groups running grassroots investigations without substantial resources can use strategies to cope with primary and secondary trauma. The Protocol neglects this. Other groups, like the Mental Health and Psychosocial Network (MHPSS), provide a wide range of free policy guides and tools for assisting support of staff in the field. The head of Antares Foundation, a member of the MHPSS, begins its guide for humanitarian workers with a perfect summary:

Managing stress in the staff of humanitarian agencies is an essential part of enabling the organization to reach its field objectives, as well as being necessary to protecting the well-being of the individual staff members themselves. (2005, p.3)

Building a successful investigation depends on capable staff and strategies for coping with the risks accompanying high stress, trauma-filled environments. Multiple interviews confirmed this and emphasized that legal burnout risks both investigations and personnel (Interviews #2, #7, & #8 2015). The absence of even the most basic of suggestions for mitigating secondary trauma stress and burnout in the Protocol does a disservice to the guide and those who might use it.

6 Why is the Protocol Incomplete? A Public Policy Assessment

In this section, I explain the shortcomings and, ultimately, the usefulness of Protocol through the lens of public policy literature. To do so, I assess the Protocol in terms of its efficacy as an instrument to create global norms surrounding conflict-related sexual violence. Per the stated goals of the Protocol, it aims “to support efforts by national and international justice and human rights practitioners to effectively and protectively document sexual violence as a crime under international law” (Foreign and Commonwealth Office 2014, p.10). Beyond that, its place as the most prominent technical outcome of the PSVI project places it as a potential norm setting instrument in the international arena (Interview #9 2016).

I generally follow Sanjeev Khagram and Kathryn Sikkink’s definition of global norms in this section, meaning “the shared expectations or standards of appropriate behavior accepted by states and intergovernmental organizations that can be applied to states, intergovernmental organizations, and/or nonstate actors of various kinds” (Khagram, Riker, & Sikkink 1998, p.14). The Preventing Sexual Violence Initiative represents an effort at global agenda setting and norm formation. I contend that the best definition for the PSVI and the resulting Protocol is that of a global policy network. Such networks are defined by Wolfgang Reinicke as “loose alliances of government agencies, international organizations, corporations and elements of civil society such as NGOs, professional associations, or religious groups that join together to achieve what one cannot accomplish on its own” (1999, p.44). As Reinicke, Witte, and Benner elaborate, a major objective of these networks is to place new issues on a global agenda; facilitate the negotiation of global standards; gather and spread knowledge; and to act as innovative implementation mechanisms for treaties (2000, pp.181–183).

Accordingly, the PSVI acted as a global agenda-setting forum for which the U.K. expended substantial political capital to create (Kirby 2015). Multisector involvement was obtained for the initiative through civil society engagement, UN expert consultations, and state support via the G8 Declaration on Preventing Sexual Violence in Conflict in April 2013. The Protocol, meanwhile, explicitly seeks to set global standards for documenting and investigating sexual violence in conflict. Through the expert sessions held during the drafting process, it also acted as a transmission mechanism for global knowledge on the subject. Further, per the Reinicke definition above, it aimed to create a protocol—a term usually reserved for binding treaties or documents. It is indicative of the flawed nature of the Protocol that it became a non-binding

document, yet was still publically branded as a Protocol. However, as a non-binding instrument, it manages to avoid traditional questions of legitimacy that beset other global policy networks.

In the sections above, I have clearly set out a number of shortcomings that undermine the Protocol's usefulness as an implementation manual for investigations. I have explained that some stem from the limited instrumental understanding of CRSV: the rape as a weapon of war hypothesis. Other exclusions, like the lack of a survivor-centric approach and gender specific guidelines, are less explainable. I would like to better answer this question through a longer study with further interviews of drafters and consultants, but the limits of this thesis do not allow for such lengthy examinations.

From a public policy perspective, those exclusions can be examined through an assessment of typical challenges to policy implementation. Johanna Martinsson (2011) notes that global policy networks are often criticized for pursuing a top-down approach to policy development. While the Protocol drafting process included consultations with street level actors, including NGO consultations in Bosnia-Herzegovina, DRC, and Rwanda, the final drafting process was led by a small team in the Foreign and Commonwealth Office. It is possible that they circumvented the advice from some consultations. Several interviewees commented that the Protocol was rushed to meet the final deadline of the PSVI Summit in 2014, which could well be the case. In that scenario, the top-down drafting approach and political demands of the U.K. Government to finalize a document for the Summit are accountable for the absences in the final Protocol.

The complexity of the PSVI-led policy making process can also be assessed using the multiple streams framework. Originally theorized by John Kingdon (1995) and more recently expanded upon by Nikolaos Zahariadis (2007), the multiple streams framework examines the confluence of three tracks: problems, policies, and politics. In this conceptualization, the Protocol has been shaped by three factors:

- 1) The problem of CRSV pushed by feminist analysis and international activism;**
- 2) The subsequent policy definition of CRSV as a weapon of war through the global policy network of the PSVI; and,**
- 3) The movement onto the international agenda through the political stream pushed by William Hague.**

The so-called policy window opened by the confluence of these three streams allowed for the creation of the Protocol as a norm-shaping instrument (Zahariadis 2007). William Hague and Angelina Jolie can both be seen in this account as norm entrepreneurs who influenced the political and policy streams. Likewise, the rush to finalize the Protocol for the Summit and the

exclusion of important elements can be viewed as a necessity to advance the norm creation before the policy window closed.

So, if the global policy network approach of the PSVI moved conflict-related sexual violence onto the global agenda and pushed the adoption of norms aimed to prevent it, can the Protocol be seen as useful exercise despite its flaws? Finnemore and Sikkink (1998) outline the stages of norm influence in international policies as having three cycles: emergence, cascade, and internalization. The prevention of sexual violence in conflict has arguably been a norm in emergence since the conflicts of the mid and late 1990s. I suggest, along with Paul Kirby (2015), that the PSVI has generally helped to advance the debate towards a tipping point into the norm cascade phase, during which states and other actors seek to demonstrate that they have adopted the norm (David-Barrett & Okamura 2015).

The incomplete nature of the Protocol would conventionally be seen as an obstacle to facilitating the norm cascade phase of the policy life cycle. However, it is possible to see the Protocol, even if a failure as an implementable guide for investigations, as a valuable contribution to norm diffusion. Krook and True, for example, criticizes construing norms as constructed ‘things,’ as Finnemore and Sikkink do, instead view norms as ‘processes’ (Krook & True 2012, p.122).

This view maps well onto the research by Cristina Badescu and Thomas Weiss examining how norm-building can come about even through misuse and corresponding contestation (2010). Their work looks at how misrepresentation of the responsibility to protect (R2P) doctrine by state actors prompted contestation and further debate over the policy outcomes of R2P. The takeaway here is that the debate stemming from the misuse of R2P prompted a refinement of its scope and boundaries, and that “misrepresentations can also clarify the actors and means through which a new norm is to be implemented” (2010, p.368). The Protocol can be seen as a misapplication of the PSVI norm through the numerous shortcomings in implementation suggestions, as well as the politicized push to finalize the document. However, the implications of Badescu & Weiss are clearly translatable to the Protocol:

As expected during the early stages of a norm spiraling toward socialization, backlash, and contestation dominate much of public diplomacy, but backlash and contestation also can serve as boundary-defining exercises that clarify the actual meaning and limits of the norm (2010, p.369).

Operational challenges clearly remain and must be rectified in the Protocol to achieve its stated aims, just as the norm of preventing sexual violence in conflict must be clarified further to become effective. To reach a tipping point and enter into a norm cascade is a process, as

Badescu & Weiss show, not a predefined series of steps. Should critiques of the Protocol like mine prompt further debate and refinement of how a global norm of preventing sexual violence can be implemented, then the Protocol can perhaps operate as a catalyst for a normative cascade. If instead the Protocol languishes and fails to spark interest while the Prevent Sexual Violence Initiative fades from view, then it will remain a misapplication of the norm. A project that failed to move the global needle towards adoption the cessation of sexual violence in wartime.

The idea, regardless, remains of grave importance for those who have suffered from sexual violence during war—and even more so for those who might in the future. Even as a poorly implemented policy document, the Protocol serves to move forward the critical norm of preventing rape and sexual violence. My critique aims not to discredit the project, but to contest and improve the recommendations of the Protocol.

Annex One: Recommendations

In this thesis, I have worked to show the International Protocol on the Investigation and Documentation of Sexual Violence in Conflict as a useful, though incomplete and flawed, guide for assessing the most heinous of abuses. Through careful analysis of more than 120 books and reports on CRSV, including 15 similar guides to the Protocol, I have teased out the empirical shortcomings of the document. Interviews with CRSV experts, academics, and field investigators informed and reinforced my findings. My primary research question, if the Protocol comprehensively incorporates existing global best practices for the investigation of conflict-related sexual violence, has been answered with a resounding no.

If followed closely, even as a non-binding guide, the Protocol recommendations would risk both the integrity of survivors and the veracity of legal investigations. The Protocol does include an excellent overview of international legal principles, strong data handling guidelines, principles of informed consent, and useful annexes for running an active investigation. Still, the 146-page Protocol is incomplete. As I set out in Part II of this thesis, the Protocol lacks critical guidelines present in every other investigative manual. To reiterate, these issues in the Protocol include:

1. **An approach to documentation and investigation that is not survivor-centric.**
Only 7.5 pages of the 146 in the document are dedicated to the needs of survivors/victims.
2. **The absence of recommendations that take into account the effects of PTSD and trauma to both survivors and their testimonies.**
3. **A failure to include suggestions for how male and non-female victims/survivors might experience CRSV differently, and how to inclusively handle investigations.**
4. **An utter exclusion of CRSV forms not considered under current international law, such as intimate partner rape, or noncombatant perpetration.**
5. **An outlook that investigations will take place immediately during or after active violent conflict, which in turn excludes critical elements of temporality and memory issues.**
6. **No guidelines to mitigate conflicting testimonies that can hamper prosecutions and potentially retraumatize survivors.**
7. **A near-complete lack of tangible recommendations to minimize secondary traumatization of investigative staff and provide the psychosocial support necessary to prevent burnout.**

These elements, generally speaking, are all present in other, similar manuals for handling CRSV from 1994 to 2015 (Amnesty International; International Centre for Human Rights and Democratic Development 2001; Sandick 2012; Women in the Law Project 1994; UN Department of Political Affairs 2012; Sácouto & Cleary 2009a; OSCE Mission to Bosnia and Herzegovina 2014; Strand n.d.; Organization for Security and Cooperation in Europe: Mission to Bosnia and Herzegovina 2015; Oosterveld 2005; Office of the Prosecutor of the International Criminal Tribunal for Rwanda 2014a; Nowrojee 2004; Callamard 1999). Given the large number of well-informed experts consulted for the Protocol, it seems highly unlikely that the issues I raise were not covered during the consulting sessions. Indeed, the presence of gender-specific and survivor-centric language in the earlier Protocol drafts indicates that elements contributed were deliberately removed from the final version. These absences undermine the efficacy and legitimacy of the Protocol as a useful guide.

I have explained my second research question, why these absences exist, through two overlapping theories. Firstly, the instrumental ‘weapon of war’ understanding of CRSV that I show is used throughout the Protocol and much of the PSVI leads to some of the limitations (Kirby 2011; Buss 2009; Sácouto & Cleary 2009b). The narrow understanding used helps to explain why non-female victims are neglected, as well as why non-combatant forms of sexual violence are not taken into account.

The other issues I explain through the lens of public policy literature. The global policy network format of the PSVI is an inherently top-down approach led by the Foreign & Commonwealth office despite the inclusion of civil society actors (Martinsson 2011; Reinicke 1999). This is a problematic way of formulating policy—integrated approaches that include on-the-ground field work and deeper community engagement could offer far better avenues to sensitive policy formulation. Imagine if the Protocol had been shaped through field offices that instead emphasized the importance of cultural specificities and local survivors’ needs when responding to sexual violence? A very different document might have resulted—one more attenuated to the specificities of CRSV—like the ICTY or ICTR guidelines (Office of the Prosecutor of the International Criminal Tribunal for Rwanda 2014b; International Criminal Tribunal of the Former Yugoslavia 2014).

Critically, such an approach has deep implications for the potential implementation of the Protocol on the ground. According to the text, the Protocol targeted audiences of “human rights and justice actors, at national and international levels,” a broad group (2014, p.10). Such groups may well find the legal guidelines in the work useful. However, as many of my interviewees

stated, investigations must respond to local cultures and context specificities. The Protocol does not give space for how to determine or work towards these elements. Moreover, the lacking guidelines that I have illustrated in this thesis will impact investigations if fully neglected.

Ignoring gender-specific practices for non-female survivors and failing to understand local cultures around gender-based violence at best risks ignoring the stories of those affected and, at worst, risks subjecting survivors to renewed retraumatization and societal exclusion.

Investigators must understand local specificities in order to run successful investigations.

Likewise, implementing the Protocol in its current form risks ignoring decades of research on trauma and, however controversial, PTSD. By sidestepping the ways in which trauma changes narratives and impacts survivors' lives, a blind adherent to the Protocol could deeply harm those same survivors through insensitivity and a lack of support. The principle of 'do no harm' is little more than paid lip service without providing tangible ways to actualize the principle. The other guides I have assessed do much better.

Lastly, nascent work on secondary trauma and burnout among investigators and those who regularly work with violent conflict and trauma reveals a true necessity of caretaking the caretakers. Psychosocial support for investigators is granted at the ICC and ICTY, as well as inside numerous organizations providing medical documentation during conflict such as Doctors Without Borders and UNHCR. Failing to even briefly acknowledge the importance of caring for those working on war is deeply concerning and—as several I interviewed pointed out—runs the risk of silencing a real threat to the long-term integrity of investigations (Interviews #1, #3, & #6 2015).

The shortcomings that I have found are systematic and deeply troubling. Many of those involved in the focus groups during 2012 that contributed to the Protocol are aware of the issues I raise, and many have worked tirelessly to help ameliorate survivors' lives globally. Still, the drafting process resulted in the production of a flawed document that remains in need of significant amendments. In its current form, it is both incomplete and potentially very damaging to the ends espoused by the larger Preventing Sexual Violence Initiative.

Problematic as it is, I contend that the top-down approach taken has helped proliferate the global norm, per Finnemore & Sikkink (1998) of preventing sexual violence in conflict, but has contributed to undermining the efficacy of one initiative outcome: the Protocol. Further, from Kingdon's elemental multiple stream assessment of policy formation, I show that the policy window opening created during the PSVI by the policy entrepreneurs of William Hague and Angelina Jolie also led to a rushed final draft of the Protocol to present at the PSVI Summit in

2014. Policy entrepreneurs can be strong advocates for change, but also can nudge projects to be completed too swiftly, ignoring warning signs along the way. Such seems to have been the case with the Protocol.

Future efforts by global policy networks at shaping unified policy guidelines, be they binding or non-binding, should take these issues into account. Namely, top-down approaches at drafting will almost always run into implementation issues. Like the PSVI, these “loose alliances of government agencies, international organizations, corporations and elements of civil society such as NGOs” would do well to incorporate feedback from trialing policies into the policy formulation process (Reinicke 1999, p.44). Unfortunately, there is apparently not a current effort to shape a second draft of the Protocol that could do so (Interview #4 2015; #9 2016).

In the end, like Badescu & Weiss (2010) conclude for the misuse of the responsibility to protect principle, the flawed Protocol still helps to push the global norm of preventing sexual violence in conflict to a point of adoption worldwide—toward a so-called norm cascade. As such, it is a laudable initiative. Still, in its current form, the Protocol is nearly unusable on its own. It must be updated to incorporate the exclusions I have shown above. As the drafters note in the introduction to the Protocol:

In the future, we hope that the Protocol will act as a practical tool to overcome some of the challenges faced by those who document and investigate sexual violence as a crime under international law. **It will be a living document that will need to be updated as best practice evolves** (2014, p.11, emphasis my own).

Efforts by local civil society groups funded by the PSVI to create their own remedies are underway (Interview #9 2016). These should be matched by a second version of the Protocol updated to reflect the significant issues I have illustrated in this thesis. Several interviewees indicated that a new draft is unlikely, given the changed political emphasis of the U.K. Foreign & Commonwealth Office (Interviews #4, #6, 2015; #9, 2016). Should that be the case, at least a new annex should be put forward to supplement the existing text. The Protocol, as it stands, is a representative case of poor policy implantation, riddled with flaws despite ample funding and expertise invested in its creation.

My intent has never been to undermine efforts to stop sexual violence and better respond to the aftermath of its despicable use during war. Rather, I hope my critique helps to improve future investigations and advance the understanding of CRSV. As Badescu and Weiss put it, “debates and contestations after misapplications and abuses [of norms] can constitute steps in the

direction of norm advancement” (2010, p.369). My contestation of the Protocol should be seen in such a light—and used to address the sorely apparently flaws in the current version.

Annex Two: Interviews

1	Max Matthews	Legal Advisor, OSCE	Former International War Crimes Prosecutor, National Court of BiH
2	Lelja Mamut	Project Manager, UN Women, responsible for PSVI coordination	Formerly of TRIAL, a legal support organization dedicated to CRSV in BiH
3	Gorana Mlinarevic	PhD researcher at Goldsmiths University	Leading Bosnian feminist and activist
4	Dalida Tanovic	Project Manager, Foreign Commonwealth Office, U.K. Embassy Sarajevo	Manager of the PSVI and Protocol outreach project for BiH
5	Tim Bidey	Post-Conflict Research Center, Sarajevo	Responsible for Protocol launch inside BiH
6	Muris Brkic	OSCE Rule of Law Supervisor	Former War Crimes Prosecutor, CRSV expert from National Court of BiH
7	Amelia Randall	IOM Project Consultant	Developing a CRSV reparations package in cooperation with UN Women and the PSVI campaign from the UK Embassy

8	Teri Murphy	Professor, Southern Oregon University	Peacebuilding Practitioner and Researcher of CRSV
9	Paul Kirby	Lecturer in International Security, University of Sussex	Visiting fellow at LSE Women's Centre, Researcher of PSVI
10	Gina Donoso	University of Gent	Conflict and PTSD researcher
11	Lilly Todorovic	Staff Welfare and Medical Office in the United Nations Criminal Tribunal for the former Yugoslavia	Secondary trauma expert.
	*Hon. Patricia Whalen		Former International War Crimes Judge, National Court of BiH
	*Jasna Sahbegovic	Witness Support Officer, National Court of BiH	
	*Danae van der Straten	TRIAL (NGO), London	Primary Protocol drafter
	*Selma Korjenic	TRIAL, Sarajevo	
	*Margariet Prins,	Head of Field Office, ICTY Sarajevo	War Crimes Investigation Expert
	*Patricia Sellers	ICTY, War Crimes Consultant, Brussels	
	*Emma Hopkins	Ambassador of the U.K. to Bulgaria	Former team leader of the PSVI

	*Nina Sahinpasic	CRSV Expert and Legal Officer, National Court of BiH	
	*Hon. Bodzdarka	Judge, National Court of BiH	CRSV Expert
	*Richard Rodgers	CRSV Psychosocial Expert, London	Former PSVI and Protocol consultant
	*Chrystele Todd	U.K. Foreign & Commonwealth Office, London	PSVI Drafter
	*	Indicates potential future interview contact.	

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