

“Can we women unite to stem the  
tide?”

Revisiting the history of the creation of  
genocide theory and law through a  
feminist lens

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## Declaration

I declare that this thesis and the work presented in it is entirely my own. Where I have consulted the work of others, this is always clearly stated.

Signed: 

Date: 30<sup>th</sup> January 2023

## Abstract

The history of the creation of genocide theory and law has predominantly adopted a male-centric narrative. This has side-lined female actors and voices, rendering women and their role in this history virtually invisible. This thesis is a feminist exploration of the creation of the theory of genocide and its codification in international law. Using unpublished archival materials and memoirs, as well as official and personal records and secondary materials, this thesis uses a feminist lens to identify the historical contributions of women and conceptualisations of women. The time period researched extends from the development of the crime of genocide as a theory to the codification the crime in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereafter the Genocide Convention) and its ratification in the post-World War Two world. The core argument posited and explored by this thesis is the existence of an un-researched female history of the creation of the theory of genocide and the Genocide Convention.

First, this thesis explores the male-dominated history of the creation of genocide theory, from its origins in the concept of 'barbarism' to the Genocide Convention. By examining this history with a feminist lens, this thesis investigates how gendered harms, such as forced abortion and segregation of the sexes, were conceptualized in acts of genocide. It also assesses how women, and gender as a component of acts of genocide, were understood by the male drafters of the Convention. This first section analyses how women's vulnerabilities during genocides or women's experiences of acts of genocide were understood and the extent to which women were viewed as individuals, as opposed to their societally-cast roles as mothers and caregivers. In doing so, this research identifies several ill-defined and arguably gendered euphemisms commonly used throughout the materials, such as moral debasement and obscenity. It also uncovers feminist origins in the history of the creation of the theory of genocide.

Second, this thesis pivots to study the female actors in this history and showcases how women and women's organisations advocated for the Genocide Convention. This research presents a detailed analysis of female-led anti-genocide

activism at local, national and international levels. It highlights the contribution of notable women, such as Shaista Ikramullah, as well as prominent international women's organisations. These chapters explore the direct and indirect experiences of women during the period of the Holocaust and other genocides in motivating and sustaining this advocacy. This research showcases the successes of this movement, as well as the barriers faced in a male-dominated socio-political environment characterised by dismissive misogyny.

By adopting a feminist theory of research, this thesis offers a complementary history of the theory of genocide and the Genocide Convention. It challenges the historical dominance of male perspectives and personalities and, in keeping with a feminist research theory, seeks to elevate this forgotten global female activism.

## Acknowledgments and thanks

All of this thesis is dedicated to my mum, who passed away in my first year of this PhD. Although she was never able to see the finished product, I know she would have been proud. Her feminism inspired me. To my grandmother who also passed away during my PhD, thank you for your constant and incredible support of my academic goals.

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## Contents

<b>Declaration</b> .....	<b>1</b>
<b>Abstract</b> .....	<b>2</b>
<b>Acknowledgments and thanks</b> .....	<b>4</b>
<b>Contents</b> .....	<b>6</b>
<b>Table of Conventions and Statutes</b> .....	<b>10</b>
<b>Additional legal documents</b> .....	<b>11</b>
<b>List of Abbreviations</b> .....	<b>12</b>
<b>Preface</b> .....	<b>14</b>
<b>Introduction</b> .....	<b>16</b>
'So what?': why a feminist review of genocide is important.....	17
Parameters of this research .....	19
Research questions.....	19
Thesis structure .....	20
Review of the existing literature and methodology.....	21
The theory of genocide to the Convention .....	22
Women and International Women's Organisations' Fight for the Genocide Convention.....	23
Conclusion and reflections of this research .....	24
Terms used .....	24
<b>Chapter 1 – Review of existing literature and methodology</b> .....	<b>28</b>
Context: gender and genocide .....	30
Gender and genocide within genocide scholarship .....	30
Creation of the concept of genocide.....	32
Biographies of Lemkin .....	32
International criminal law and genocide.....	39
Creation of international criminal law and the crime of genocide .....	40
Women at the United Nations .....	56
Sociology and genocide .....	59
Sociology of human rights and social constructivism.....	63
Conclusion to literature review .....	65
Feminist research: theory, data collection and analysis .....	67
The theory of feminist research .....	69
Data collection: archival research method and legal text analysis .....	73

Social Movement Theory – guidance on analysis.....	78
Limitations of this research .....	80
<b>Conclusion of feminist theory-driven research and data collection and analysis ...</b>	<b>83</b>
<b>Chapter 2 - Pre-‘genocide’ barbarism .....</b>	<b>84</b>
Introduction.....	84
Vespasian Pella – a feminist? .....	85
The crime of barbarism as a predecessor of genocide theory, from Pella to Lemkin .....	89
Madrid, 1933.....	91
Pre-Genocide Convention uses of barbarism: Nuremberg .....	95
Conclusion .....	97
<b>Chapter 3 - Lemkin’s conceptualisation of women and gender .....</b>	<b>99</b>
Axis Rule .....	100
<i>Axis Rule</i> : Biological and physical techniques of genocide.....	101
Beyond <i>Axis Rule</i> : Lemkin on gender(ed harms) and genocide .....	103
Conclusion .....	116
<b>Chapter 4 - Travaux Préparatoires: Charting the change .....</b>	<b>118</b>
Introduction.....	118
Gendered harms.....	122
Gendered harms not understood by the drafters.....	149
Conclusion to gendered harms in the <i>Travaux Préparatoires</i> .....	161
Representation of the genders .....	162
‘Women’ .....	162
‘Men’ .....	163
Where are the women? .....	166
Comparison - Convention Relating to the Status of Refugees, and conclusion.....	169
Conclusion .....	171
<b>Chapter 5 - ‘Moral debasement’ and ‘obscenity’ in the origins of genocide.....</b>	<b>173</b>
Introduction.....	173
Context of prostitution and morality.....	175
Lemkin’s concept of moral techniques of genocide .....	177
Moral Debasement in the <i>Travaux Préparatoires</i> .....	181
Nuremberg: The IMT references to ‘moral debasement’ and ‘moral disintegration’ .....	182
Obscenity.....	192

Legislation restricting ‘obscene’ materials – Domestic attempts .....	193
Legislation restricting ‘obscene’ materials – International attempts .....	195
Obscene materials, obscenity and genocide .....	196
Conclusion .....	200
<b>Chapter 6 - Shaista Suhrawardy Ikramullah .....</b>	<b>202</b>
Introduction and context .....	202
Shaista Ikramullah’s experience of gendered genocide at the partition of India.....	204
At the United Nations on genocide .....	207
Conclusion .....	217
<b>Chapter 7 - Introduction to international women’s organisations .....</b>	<b>218</b>
<b>Chapter 8 - “Further pressure will be brought to bear” – Women’s International League for Peace and Freedom .....</b>	<b>223</b>
Introduction.....	223
1947.....	228
August 21-27, 1947, <i>Primer Congreso Interamericano de Mujeres</i> and Amalia de Castillo Ledón.....	228
1948.....	233
1949.....	236
WILPF’s Triennial Congress.....	241
1950.....	243
1951- 1952.....	246
1953.....	247
Conclusion .....	248
<b>Chapter 9 - “Can we women unite to stem the tide?” – International Alliance of Women .....</b>	<b>249</b>
Introduction.....	249
President of the IAW: Margery Corbett Ashby and genocide.....	252
1946.....	257
1947.....	259
1948.....	260
1949.....	262
1950.....	263
1951.....	265
Conclusion .....	266
<b>Chapter 10 - “May it soon be ratified!” - International Council of Women .....</b>	<b>268</b>

Introduction.....	268
Philadelphia Conference, 1947 .....	269
1948.....	273
1950.....	277
1951.....	278
1953.....	280
Conclusion .....	282
<b>Conclusion and reflections .....</b>	<b>284</b>
Conclusion overview.....	284
Methodological and theoretical grounding, and existing literature.....	285
The concept of genocide and gendered harms.....	287
Women’s fight for the Genocide Convention .....	291
Women advocating for women? .....	293
Can we measure the success of these women?.....	294
Final reflections .....	296
<b>Bibliography .....</b>	<b>297</b>
Primary Sources.....	297
Archival and compiled materials .....	297
IMT and NMT Transcripts .....	321
Secondary Sources .....	323
Websites .....	340

## **Table of Conventions and Statutes**

Charter of the International Military Tribunal (August 8, 1945)

Convention on the Elimination of Discrimination against Women (December 18, 1979)

Convention on the Prevention and Punishment of the Crime of Genocide (December 9, 1948)

Convention Relating to the Status of Refugees (July 28, 1951)

International Covenant on Civil and Political Rights (December 16, 1966)

International Covenant on Economic, Social and Cultural Rights (December 16, 1966)

## Additional legal documents

### National

Obscene Publications Act (1857) (UK)

Regina v Hicklin (1868) (UK)

Roth v. United States (1957) (USA)

R v. Butler (1992) (Canada)

### International

Medical Case (USA v. Karl Brandt et al.) “Doctors’ Trial”, Nuremberg Military Trials Case 1 (October 15, 1946-August 20, 1947).

The Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic (Judgement) “Kunarac” IT-96-23 & IT-96-23/1-A (June 12, 2002)

The Prosecutor v Emmanuel Rukundo (Judgement) ICTR-2001-70-T “Rukundo” (February 27, 2009)

The Prosecutor v Furundžija (Judgement) “Furundžija” IT-95-17/1 (December 10, 1998)

The Prosecutor v Jean-Paul Akayesu (Judgement) ICTR-96-04-T “Akayesu” (September 2, 1998)

The Prosecutor v Omar Hassan Ahmad Al Bashir (Appeals Chamber reverses decision on charges of genocide) “Al Bashir” ICC-02/05/01/09 (February 3, 2010)

The Prosecutor v Pauline Nyiramasuhuko et al. [Butare] (Judgement) ICTR-98-42-T “Nyiramasuhuko” (June 24, 2011)

Trial of The Major War Criminals before the International Military Tribunal, Nuremberg 14 November 1945 – 1 October 1946, Volumes I – XLII (November 14, 1945 – October 1, 1946)

## List of Abbreviations

Axis Rule In Occupied Europe: Laws Of Occupation, Analysis Of Government, Proposals For Redress (*Axis Rule*)

Charter of the International Military Tribunal (London Agreement)

Convention on the Elimination of Discrimination against Women (CEDAW)

Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)

Convention Relating to the Status of Refugees (Refugee Convention)

Fifth Conference for the Unification of Penal Law (Madrid Conference)

International Alliance of Women (IAW)

International Council of Women (ICW)

International Court of Justice (ICJ)

International Covenant on Civil and Political Rights (ICCPR)

International Covenant on Economic, Social and Cultural Rights (ICESCR)

International Criminal Court (ICC)

International Criminal Tribunal for Rwanda (ICTR)

International Criminal Tribunal for the former Yugoslavia (ICTY)

International Military Tribunal for the Far East (Tokyo Trials)

International Military Tribunal, Nuremberg (IMT, Nuremberg)

London School of Economics and Political Science (LSE)

Non-Governmental Organisation (NGO)

Special Court for Sierra Leone (SCSL)

The Genocide Convention: The Travaux Préparatoires (*Travaux Préparatoires*)

The Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic; The Prosecutor v Furundžija (*Furundžija-Kunarac*)

The Prosecutor v Emmanuel Rukundo (*Rukundo*)

The Prosecutor v Jean-Paul Akayesu (*Akayesu*)

The Prosecutor v Pauline Nyiramasuhuko et al. (*Nyiramasuhuko*)

Union of Soviet Socialist Republics (USSR, Soviet Union)

United Kingdom of Great Britain and Northern Ireland (UK, Great Britain, Britain)

United Nations (UN)

United Nations Economic and Social Council (ECOSOC)

United Nations General Assembly (UNGA)

United Nations High Commissioner for Refugees (UNHCR)

United States of America (USA, US, America)

Universal Declaration of Human Rights (UDHR)

Women's International League for Peace and Freedom (WILPF)

## Preface

This research was initially intended to explore the gap in gender-related crimes in the International Criminal Court (ICC), and to analyse difficulties in realising justice for victims of gendered harms during genocides. With a specific focus on the ICC, and the single charge of perpetrating the crime of genocide pending in the Court, this thesis was intended to examine the specific legal and practical challenges from evidence collection to perceptions of gendered harms.

In conducting the review of the literature to understand the scope of existing research on gender, it became clear that there was a pervasive narrative that feminists had taken up the mantle of exploring the gender-genocide nexus only following widespread rapes in Rwanda and former Yugoslavia. Upon examining the intersection of rape and acts of genocide at the inception of the concept of genocide however, individual names of women and women's organisations kept appearing frequently but with little scrutiny or in-depth examination of their work. Occasionally these international women's organisations were mis-named in original documents, and subsequent historical works did not rectify this error. Exploring this further, the absence of a female presence in the history of the creation of genocide theory became evident, specifically in relation to their activism in earlier years. Once it became clear that there had been no exploration of this history, it also became clear that this history needed to be researched in order to properly situate current conceptualisations of gender and genocide. Therefore, this thesis as originally intended to examine the contemporary gender-genocide nexus became a historical exploration, centring on female activism and the original conceptualisation of women the theory of genocide and subsequent law. As this thesis argues, this is in part to write women back into the history of the creation of the theory of genocide as actors, rather than solely victims.

This pivot in research was made at the end of December 2019 following an extensive literature review. With the declaration of a global pandemic and the ensuing first lockdown, access to these physical archives was initially impossible and remained patchy throughout 2020 and into 2021. As we cautiously emerged from the third lockdown in 2021, access to the London School of Economics and Politics (LSE) archives

was restricted; industrial action, prioritising LSE students' access, limited booking space due to social-distancing measures, and frequent and short-notice self-isolation and COVID testing meant that archival research was extremely limited and remained intermittent and unreliable throughout 2021 and into 2022. This research was ultimately adapted to fit these new parameters, for example documents being scanned by the UN archivists in Geneva rather than a physical visit to the archives. Some limits to this research are as a result of these adaptations.

A brief and final word on the context in which this research was conducted. Alongside the COVID pandemic, with the Russian invasion of Ukraine in February 2022 and the reports of sexual violence, claims of genocide by both sides and ICC and International Court of Justice engagement with these claims, as well as the rising cost of living in the UK, it is fair to say that the world in which this research was conducted is fundamentally different to when this research was initially conceived and designed in 2019. Despite these changing circumstances, this research and the process of uncovering this history has been extremely exciting and fascinating, and it is a hope that this is reflected in this thesis.

## Introduction

*We discover that rhetorical history has been written from the point of view of men and only records male theories and speeches. History has forgotten the other half of the population that has co-existed along with men but has been silenced.<sup>1</sup>*

Within the history of the creation of genocide as a theory and the law, there are distinct female-shaped lacunae. As this thesis will explore, currently this history is a predominantly male-centric one which emphasises the male personalities and perspectives, hitherto overlooking female perspectives and female, feminist advocacy. Even before Lemkin consolidated his theory of genocide, the origins of the theory of the crime of genocide contained female-influenced and feminist-leaning understandings which can be traced throughout subsequent developments in the theory of genocide and international law. This female history, in the words of Wu, has been silenced.<sup>2</sup> This thesis is a feminist project in recovering these silent histories, to raise the profile of female-driven advocacy within genocide studies in addition to investigating how gender has historically intersected with the crime of genocide in its inception. This research asks the ‘woman question’ of the history of the creation of genocide, the concept and the law. This research begins the process of filling a gap in genocide studies; there has yet to be a feminist history of the creation of genocide, and female activism.

This thesis is structured chronologically. Commencing with the foundational theories of genocide, the first chapters of this thesis track how prominent men conceptualised women and female vulnerabilities in genocides, exploring early theories and the wording of the Genocide Convention. The final five chapters explore how female advocacy grew around the Genocide Convention, and how female support was sought-out and relied upon to ensure its success. Documents researched for this

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<sup>1</sup> Hui Wu, ‘Historical Studies of Rhetorical Women Here and There: Methodological Challenges to Dominant Interpretive Frameworks,’ in *Landmark Essays on Archival Research*, eds. Lynee Lewis Gaillet, Helen Diana Eidson, and Don Gammill Jr. (Routledge, 2016), 134.

<sup>2</sup> Wu, ‘Rhetorical Women,’ 134.

thesis illustrate the hostile environment in which these women worked, showcasing how women were considered too emotional, international women's organisations considered too woolly, and the broad lack of gender parity in decision-making roles.

### **'So what?': why a feminist review of genocide is important**

Central to this thesis, as a feminist body of work, is the acknowledgement that women's histories are often ignored, minimised, or actively written out of collective histories. Unless specifically researching 'women', historical research defaults to the male subject at the expense of the female.<sup>3</sup> Genocide studies is no different. The current history of the concept of genocide is mainly a male history; from Vespasian Pella and Raphael Lemkin, to the drafters of the Genocide Convention and the decision-makers within national parliaments and government departments, the male-dominated history does not account for female actors. This thesis posits that traditional genocide scholarship has tended to overlook the valuable contributions of women during this time, opting instead to study 'women' as victims (or occasionally as anomalous perpetrators<sup>4</sup>) of acts of genocide.<sup>5</sup>

This research opens the door to a women's history of genocide. The study of history is value-laden; what is considered worthy of preservation and research and what is not. Thus far, the discipline of genocide studies has not placed academic value (through research) on the voices of the women who contributed to anti-genocide activism in its infancy. The 'woman question' has yet to be asked of this history of the creation of genocide as a theory and as a legal term. By asking this question, this thesis explores and examines the female viewpoint of history through activists, politicians, and influential decision-makers. The importance of this research is to recover and demonstrate the significance of women's voices in the past, it seeks to "unveil parts of

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<sup>3</sup> Wu, 'Rhetorical Women,' 84.

<sup>4</sup> Laura Sjoberg, *Women as Wartime Rapists: Beyond Sensation and Stereotyping, Perspectives on Political Violence* (New York: University Press, 2016).

<sup>5</sup> Examples of this are given in the following chapter. However, see for example Douglas Irvin-Erickson, *Raphaël Lemkin and the Concept of Genocide* (Philadelphia: University of Pennsylvania Press, 2017), 153-154.

history yet untold.”<sup>6</sup> Fundamentally, the “politics of memory and identity are at stake.”<sup>7</sup>

This research sits within wider gender imbalances. Historically there is considerable underrepresentation and an underappreciation of female researchers in the field of genocide scholarship. As a broad indication of this, in *Fifty Key Thinkers on the Holocaust and Genocide* only eight out of the fifty key thinkers are women.<sup>8</sup> Out of fourteen International Association of Genocide Scholars Presidents there have been only three women.<sup>9</sup> The ‘Board of Advisors’ of *Genocide Watch* features only six women among thirty-five current advisors.<sup>10</sup> Of the thirty-two contributing authors in *The Oxford Handbook of Genocide Studies* published in 2010, two are women and one of these female academics is the sole writer of the gender-genocide nexus.<sup>11</sup> Reflecting this trend in international relations and politics, by the end of 2020 women constituted only one quarter of members of parliaments around the world and only one fifth of cabinet ministers.<sup>12</sup> This is relevant to the following research as it is suggested herein that a greater inclusion of women in the drafting of the Genocide Convention could have resulted in a broader discussion on gendered harms and sexual violence (as was done at the International Criminal Tribunal for Rwanda (ICTR), discussed in Chapter 1 of this thesis) and greater recognition of women’s rights (seen in the Universal Declaration on Human Rights (UDHR), also discussed in Chapter 1 of this thesis). This broad overview of female contribution to top-level genocide scholarship is illustrative

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<sup>6</sup> Rebecca Adami, *Women and the Universal Declaration of Human Rights* (Ebook, New York: Routledge, 2018), <https://doi.org/10.4324/9780429437939>, 3.

<sup>7</sup> Immi Tallgren, ‘Absent or Invisible? Women Intellectuals and Professionals at the Dawn of a Discipline,’ in *The Dawn of a Discipline: International Criminal Justice and its Early Exponents*, eds. Frédéric Mégret and Immi Tallgren (Cambridge: Cambridge University Press, 2020), 413.

<sup>8</sup> Paul R. Bartrop and Steven L. Jacobs, *Fifty Key Thinkers on the Holocaust and Genocide* (United Kingdom: Routledge, 2010).

<sup>9</sup> ‘Boards & Committees,’ International Association of Genocide Scholars, accessed January 10, 2023, <https://genocidescholars.org/about-us/boards-and-committees/>.

<sup>10</sup> ‘Prevention, Analysis, Advocacy and Action,’ genocidewatch, accessed January 10, 2023, <https://www.genocidewatch.com>.

<sup>11</sup> Donald Bloxham and A. Dirk Moses, eds., *The Oxford Handbook of Genocide Studies* (Oxford; New York: Oxford University Press, 2010).

<sup>12</sup> Torlid Skard, ‘Introductory note: Learning journey for a feminist: Making women visible, recognizing women’s achievements and demanding power to women,’ in *Women and the UN: A New History of Women’s International Human Rights*, eds. Rebecca Adami, and Dan Plesch (EBook, London: Routledge, 2022), <https://doi.org/10.4324/9781003036708>, XVII.

of the lack of a gender-diverse academic discipline. By exposing female histories this thesis seeks, in part, to critique this continuing lack of gender parity and to draw a link between historical overlooking of women and contemporary trends in gender parity in genocide scholarship, mirroring Charlesworth and Chinkin's analysis that gender inequality in international law reflects society.<sup>13</sup> By challenging a male-dominated history, we must also challenge the power imbalances which created this dominance, which remain present in contemporary genocide studies.

### Parameters of this research

The time period parameters of this thesis begin with Vespasian Pella's work and the creation of the theory of 'barbarism' after 1900, continuing on to Lemkin's development of the theory of genocide to the creation of the final codified Genocide Convention in 1948. Following this, this thesis explores continued advocacy of women and women's organisations in the ratification of the Genocide Convention up to 1953 when archival materials reflect a decline in advocacy.

An additional parameter of this research (see the 'methodology' section in Chapter 1) is also geographical, based mainly in Northern Europe with exceptions of digitised materials available online or compiled archival materials.

### Research questions

The central argument of this research is that there is a female-shaped gap in the history of the creation of the theory of genocide and the Convention. If there is indeed a gap in our historical knowledge, then what would this look like and what, or who, has been side-lined in this history? This research seeks to answer the following questions:

- 1) In what ways did the theoretical predecessor of the concept of 'genocide' -

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<sup>13</sup> Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester: New York: Manchester University Press, 2000), 14.

- 'barbarism' - recognise gendered harms and women's unique vulnerabilities?
- 2) How were gendered harms understood by Lemkin and incorporated into his genocide theory?
  - 3) Were these gendered harms included and potentially removed from the Genocide Convention?
  - 4) In what ways were women influential in the adoption and ratification of the Genocide Convention?

By using a feminist lens and methodology, and a chronological structure, this thesis explores answers to these questions through archival research and text analysis.

### Thesis structure

The first section of this thesis explores the male-dominated history of the creation of genocide as a theory and later in international law, including the works of Vespasian Pella, Raphael Lemkin, and the drafters of the Genocide Convention. In doing so, it seeks to understand the space which women occupied, conceptually, in the minds of the creators of the original genocide theory and the law. The following second section of this thesis is solely female-centric, and uncovers how prominent women and international women's organisations advocated for ratification of the Genocide Convention. The natural starting point of this research, therefore, is with the theoretical predecessor of the concept of genocide, which is Vespasian Pella's concept of 'barbarism'.<sup>14</sup> The natural end point is the codification of the crime of genocide into international law. Following an analysis of where this research sits within existing literature and an explanation of research methodology, this thesis then explores historical materials to collect and analyse data.

This thesis is broadly chronological. The justification for this chronological approach is it allows for an analysis of developments; the chronological structure allows the data to build a picture of historical perceptions of women and establish

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<sup>14</sup> Irvin-Erickson, *Raphaël Lemkin*, 40-41.

whether these changed. It also enables the analysis of the terms used throughout the creation of the Genocide Convention, identifying a number of repeating concepts which are explored in Chapter 5. The chronological structure also enables a showcasing of the activism by women and women's organisations, and again illustrates the changing actions over time as well as the increasing reliance of Lemkin on their networks and activism.

## **Review of the existing literature and methodology**

A review of the current literature is undertaken in Chapter 1 to situate this research in the wider bodies of literature. This chapter showcases existing literature and debates from a wide range of disciplines which have been drawn on to inform the research design. Chapter 1 also highlights the gaps in contemporary research in order to demonstrate the contribution of this research. This literature review establishes that, between all disciplines discussed in Chapter 1, there remains a lacuna in the history of gendered harms as a component of acts of genocide in addition to a lack of research of female advocacy. Chapter 1 then discusses the overarching research methodology and theory adopted throughout this research which is a feminist one. Within a masculine-dominated legal system,<sup>15</sup> a feminist methodology provides a toolkit<sup>16</sup> to enable researchers to properly analyse women as a diverse and non-homogenous group. Feminist methodology ultimately enables researchers to consider intersectionality and heterogeneity, rejecting the international legal system's traditional casting of women as heterosexual, Western, and white.<sup>17</sup>

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<sup>15</sup> Hilary Charlesworth and Christine Chinkin, 'The Gender of Jus Cogens,' *Human Rights Quarterly* 15, no. 1 (1993), <https://doi.org/10.2307/762651>.

<sup>16</sup> Loveday Hodson, 'A Feminist Approach to Alyne Da Silva Pimentel (Deceased) v Brazil,' in *Research Methodologies for International Human Rights Law: Beyond the Traditional Paradigm*, eds. Loveday Hodson and Damian Gonzalez-Salzburg (Ebook, Legal Deposit, Abingdon, Oxford: Routledge, 2020), <https://doi.org/10.4324/9780429468971>, paragraph 146.

<sup>17</sup> Sharlene Nagy Hesse-Biber and Michelle L. Yaiser, 'Difference Matters: Studying Across Race, Class, Gender, and Sexuality,' in *Feminist Perspectives on Social Research*, eds. Sharlene Nagy Hesse-Biber and Michelle L. Yaiser (Oxford: Oxford University Press, 2004).

## The theory of genocide to the Convention

The first section of this thesis is a chronological exploration of women and gender as they feature in varying historical iterations of the crime of genocide. The central questions being asked in Chapters 1 to 5 are: in what ways were gendered harms understood by Pella, Lemkin, and the creators of the Genocide Convention? Were gendered harms an original consideration of Lemkin, informed by Pella's writings, and how are they reflected in the Genocide Convention?

Chapter 1, 'Pre-'genocide' barbarism', seeks to go back to the very origins of the theory of genocide, based heavily on the work of international law academic and pioneer (and later academic rival to Lemkin)<sup>18</sup> Vespasian Pella. Establishing the earliest elements of gendered harms in these writings will provide a base upon which it is possible to judge engagement with (or rejection of) these gendered harms in the drafting of the Convention. Following this, Chapter 2, titled 'Lemkin's conceptualisation of women and gender', explores gendered harms as understood by Lemkin when he developed and expanded his theory of the crime of genocide. Based on data from preliminary research, a presumption is made prior to data collection in this chapter that Lemkin was broadly aware of gendered harms demonstrated in his theorising of biological techniques in his 1944 book *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*. With this understanding in mind, this chapter analyses Lemkin's writings in order to establish the extent of awareness of gendered harms so defined in Chapter 1. Whilst rape and sexual violence feature predominantly in the early theory of acts of genocide, this chapter seeks to go beyond the traditional notion of gendered harms being exclusively acts of rape and sexual violence, in order to explore a more nuanced and broad understanding of gendered harms. For example, this chapter discusses Lemkin's inclusion of spreading pornography as an attributing act of a technique of genocide and draws parallels with theories to more contemporary feminist legal scholars and legal feminist historians. This will, in turn, form a basis for the analysis in Chapter 5.

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<sup>18</sup> Andrei Mamolea, 'Vespasian V. Pella: International Criminal Justice as a Safeguard of Peace, 1919-1952,' in *The Dawn of a Discipline*, eds. Mégret and Tallgren (Cambridge University Press, 2020), 86.

Following these chapters, and building on this base of historical knowledge, Chapter 4 analyses the *Travaux Préparatoires* (preparatory papers) of the Genocide Convention in order to locate the gendered harms as discussed by the drafters of the Convention. Taking the pre-established knowledge that “measures intended to prevent births” and “serious mental or bodily harm” are codified as acts of genocide in the final Convention, we ask what were the discussions which led to these inclusions, and to what extent did the drafters fully consider the particular vulnerabilities of women in genocides? This chapter draws on transcripts from the International Military Tribunal at Nuremberg (IMT), at which several prominent Genocide Convention drafters were present, as well as documents from the so-called “Doctor’s Trial” which followed the IMT and additional archival materials, in order to provide context for the discussions on gendered harms during the drafting process. This thesis examines these transcripts as a historical tool, a legal record of history which has enshrined the perspectives of the time. Using the findings from Chapter 3, and using a feminist lens, this chapter seeks to establish any changes in perceptions of gendered harms in the Genocide Convention. Chapter 5 explores two repeating euphemisms which appear in Lemkin’s work and in the *Travaux Préparatoires*: ‘morality’ and ‘obscenity’. These will be studied to establish their cultural significance and meanings of these euphemisms, as well as analysing how they were deployed at the time.

### **Women and International Women’s Organisations’ Fight for the Genocide Convention**

Using historical archival documents and memoirs, Chapters 6 to 10 of this thesis examine the women who influenced the success of the Genocide Convention both before and after its adoption by the UN. As an under-researched area, these chapters showcase the significant efforts of women in their advocacy on behalf of the Genocide Convention. From India’s Vijaya Lakshmi Pandit providing the final signature to the Genocide Declaration bringing international attention to outlawing genocide, to the groups of women around the world who lobbied for ratification of the final Convention, women have been a vital part of the genocide story. This section delves

into their contributions, and the discovery and showcasing of this work are the main original contribution of these chapters. Pakistan's Representative to the United Nations, Shaista Ikramullah, and her contribution to the recognition of genocide as a crime are explored in detail in Chapter 6. This thesis then turns to analyse the influence of three women's organisations, the Women's International League for Peace and Freedom (WILPF), International Alliance of Women (IAW), and the International Council of Women (ICW). Archives have preserved evidence of the hitherto unexplored contribution of women to the success of the Genocide Convention.

### **Conclusion and reflections of this research**

The final chapter of this thesis summarises and concludes the findings of this research, drawing on the archival materials and highlighting the continuing struggle to have gendered harms recognised within international law. This chapter reflects on the need for a feminist lens when examining the history of the creation of the term and theory of genocide. It discusses the unexpected finding of Vespasian Pella's feminist leanings and contrasts this with the more traditional patriarchal conceptualisation of women embodied in the work of both Lemkin and the drafters of the Convention. The limitations faced by women and women's organisations whilst conducting their advocacy is also discussed. The conclusion further demonstrates the need for a feminist lens, highlighting the main advocacy strategies employed by women and women's organisation in outlawing the crime of genocide.

### **Terms used**

This thesis uses the terms 'women' and 'female' interchangeably. The author acknowledges contemporary discussions and acceptance of people who identify as transgender or gender-nonbinary, and welcomes the more inclusive contemporary understandings of these terms. The historical texts examined throughout this research

refer to 'women' in the historically traditional sense of those born as female and the texts do not discuss gender in the terms that the current debate does. Although it is discussed in more detail in a section of Chapter 1, 'Limits of the Research', it is important to acknowledge here that there are different understandings of the word 'woman' as a differently defined concept in international law, and that this continues to be debated.<sup>19</sup> For this thesis, the historically traditional term is adopted. Furthermore, unless otherwise stated, this thesis refers to sexual violence in relation to sexual violence against women as opposed to against men. This vital area of emerging research on sexual violence against men falls outside of the scope of this current thesis.

The author accepts the contemporary preference of the term 'sex work' over 'prostitution' in reference to current terminology, accepting the argument that this recognises the legitimacy of consensual forms of sex work. This is a recent argument and development in the discourse. Within the historical documents examined in this thesis, there is often little distinction between voluntary sex work and forced prostitution. As Jain notes, definitions and terms "reflect changing times, changing politics, and can be interpreted through the lens of the place from which they are viewed."<sup>20</sup> Misunderstandings feed into a lack of clarity of the differences between legitimate forms of sex work and enforced or non-consensual prostitution, and the complexities as to why sex work is conducted. The term 'prostitution' is used throughout this thesis, and the justification for doing so is that it features in contemporaneous legal and published texts where no distinction is made between voluntary sex work and enforced prostitution.

Chapter 1 of this thesis explains the concept of gendered harms and justifies its adoption as a framework in this thesis. Briefly here, this term gendered harms encompasses harms experienced by women (and, although beyond the scope of this thesis, also men) as a result of their positions in society. The myriad social, economic,

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<sup>19</sup> Rosemary Grey, *Prosecuting Sexual and Gender-Based Crimes at the International Criminal Court: Practice, Progress and Potential* (Ebook, Cambridge: Cambridge University Press, 2019) <https://doi.org/10.1017/9781108652346>, 39-40, 60.

<sup>20</sup> Devaki Jain, *Women, Development, and the UN A Sixty-Year Quest for Equality and Justice* (Indiana University Press: Bloomington, 2005), 5.

political, and health inequalities faced by women as a result of patriarchal structures expose women to particular vulnerabilities and harms which include rape and sexual violence, but also goes beyond these to include care-giving responsibilities, financial restrictions, and social pressures among others. The adoption of gendered harms for this research allows for a broader scope to analyse terminology used, as justified in Chapter 1.

The full names of women are used throughout this thesis, where possible. The decision to use women's full names was made because these women are often recorded in archival materials as their husband's name preceded with 'Mrs', or often missing their first names, such as 'Mrs Pandit'. This is in contrast, often, to male names recorded in the archival materials whose full names frequently appear. This thesis has taken inspiration for this decision from Rebecca Adami's *Women and the Universal Declaration of Human Rights* on the use of women's full names when researching under-researched female histories.<sup>21</sup>

Chapter 5 analyses conceptualisation of 'morality' and 'obscenity'. As the chapter details, 'obscenity' is a contested and ambiguous term with no unanimous definition in law or society. This chapter scrutinises obscenity as a common theme in early genocide theory. Furthermore, the concept of 'morality' as a theoretical component of 'moral debasement' is investigated in order to gain a better understanding of how these concepts applied to acts of genocide as suggested throughout historical documents. This chapter seeks to establish how these terms were understood in their historical context, and how this understanding informed approaches to gendered harms in acts of genocide. These historical texts are illustrative of how societal perceptions, constraints, and potentially religiously-influenced sensitivities encapsulated in these terms informed the understanding of women and acts of genocide against women during this period.

Throughout this thesis, the shorthand for *The Convention on the Prevention and Punishment of the Crime of Genocide* is used, which is the Genocide Convention or the

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<sup>21</sup> Rebecca Adami, *Women and the Universal Declaration of Human Rights* (Ebook, New York: Routledge, 2018), <https://doi.org/10.4324/9780429437939>, 152-153.

Convention. Similarly, unless otherwise stated, the term *Travaux Préparatoires* refers exclusively to the *Travaux Préparatoires* of *The Convention on the Prevention and Punishment of the Crime of Genocide*.

## Chapter 1 – Review of existing literature and methodology

This chapter discusses a range of disciplines and sub-disciplines which have contributed literature to the history of the creation of the theory of genocide and the gender-genocide nexus. The existing literature explored in this chapter form the building-blocks for this research and will discuss the gaps in existing literature which the research in this thesis seeks to fill. This literature review broadly takes the structure of this thesis, followed by a detailing and justification of the chosen research methodology.

This chapter will first examine the biographies of Lemkin in order to highlight interactions and meetings with women influential to the success of the Genocide Convention. The gaps in knowledge in relation to these women and their influence is discussed. Following Lemkin's biographies, this literature review then turns to the codification of the Genocide Convention and the literature around this process. The current body of research on the creation of the Genocide Convention is examined to lay out the background to the overall thesis argument that women's roles and experiences are missing from this history, and to evaluate the gap of knowledge on women's input into these processes. In addition to this exploration, this review also examines the gap in our understanding of the evolution of gendered harms in Lemkin's idea and the Genocide Convention.

The second part of this chapter discusses the literature on international criminal law and genocide broadly, outlining the key debates and developments of this discipline. There is a sub-section of literature within this, which researches and debates the nexus of gender and genocide. Much of this literature has been built on the seminal work of the legal feminists and legal feminist historians of the 1990s, following accounts of atrocities against women and ground-breaking trials in the former Yugoslavia and Rwanda.<sup>22</sup> This literature began to identify and analyse the nexus between a male-dominated environment and violence against women, and developed a feminist lens through which to analyse international criminal law. By

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<sup>22</sup> See: Catharine A. MacKinnon, *Are Women Human? And Other International Dialogues* (Cambridge, Massachusetts; London: Belknap Press of Harvard University Press, 2006), 144.

drawing on the common theme of repression of women within states, this body of literature examines how, “because of its ubiquity, gender inequality often hides in plain sight”<sup>23</sup> both in domestic and international legal systems. This literature is also vital as it studies acts of genocide as it rejects the casting of women as only caregivers and mothers, whose only role is in the physical reproduction of the group as child-bearers, choosing instead to widen the understanding of women, their relationships and their value. This literature review explores persuasive research which argues that an over-focus on rape and sexual violence leads to an over-emphasis on the primacy of reproductive abilities of women, in essence falling foul of the historic patriarchal understanding of women. The body of literature on rape and sexual violence is reflected in this chapter, and much of the literature discussed in this chapter focuses on rape and sexual violence as the primary harm done to women during genocides. Despite this, as this chapter will demonstrate, increasingly common in the literature is the importance of gendered harms (harms experienced by women as a result of their position in society) and how expanding the scope of ‘harms’ beyond sexual violence enables greater analysis.<sup>24</sup> This part of the literature review will, therefore, be structured thematically in order to uncover the gaps in our current knowledge on gendered harms with a mind to understanding how these gendered harms are reflected in historical documents.

Research which has drawn attention to the under-discussed work of women in the international arena is then discussed. This body of work argues that the female history of international cooperation has been largely neglected. The history of women at the UN and their influence is a large element of this thesis, and therefore this literature is demonstrated to have provided a great foundation. This chapter illustrates there remains a gap in the research of women and the Genocide Convention.

The literature on genocide which heralds from sociology provides a new angle for analysis of research. For example, this chapter explores the sociology of human rights’ theoretical debates on the social construction of laws and the roles of outside

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<sup>23</sup> Grey, *Prosecuting*, 23.

<sup>24</sup> Grey, *Prosecuting*, 61.

actors to influence decision-makers. These notions in this literature are vital to this research, as it contends that laws such as the Genocide Convention are constructed by political individuals to reflect political interests.

## Context: gender and genocide

### Gender and genocide within genocide scholarship

It is important to first situate this research within the context of developments in the gender-genocide nexus literature. This section provides a broad context to the debates within this chapter, starting with a broad focus to enable a later, narrower, discussion of specific debates. Broadly, genocide scholarship is, in itself, a contested discipline.<sup>25</sup> By virtue of a lack of consensus on a singular definition of the crime genocide, genocide scholarship has struggled to establish solid parameters, and has resulted in unsettled debates on its fundamental issues.<sup>26</sup> Scholars in this field are split on issues such as comparative genocide studies, expanding genocide definitions to include other '-cides' (ecocide for example), and characteristics of acts of genocide and paramount acts of genocide (such as killing being a 'greater' act of genocide than rape).<sup>27</sup> This lack of parameters in genocide scholarship does, however, allow for multiple disciplines to provide scholarly input. These contributions provide interdisciplinary academic analysis to genocide scholarship and enable academics to broaden research areas and draw on knowledge from multiple disciplines.

Feminist engagement and attention on women in conflict, or more specifically the gendered manifestations of the crime of genocide in relation to women, increased in response to the conflict and sexual violence in Rwanda and former Yugoslavia in the 1990s.<sup>28</sup> The *Akayesu* trial in the International Criminal Tribunal for Rwanda (ICTR)

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<sup>25</sup> Dan Stone, 'Introduction,' in *The Historiography of Genocide*, ed. Dan Stone (Ebook, London: Palgrave Macmillan UK, 2008), 1, [https://doi.org/10.1057/9780230297784\\_1](https://doi.org/10.1057/9780230297784_1).

<sup>26</sup> Stone, 'Introduction,' 1-3.

<sup>27</sup> Stone, 'Introduction'.

<sup>28</sup> Grey, *Prosecuting*, 2; Carol Harrington, *Politicization of Sexual Violence: From abolitionism to peacekeeping* (London: Routledge, 2016), 1.

following the Rwandan genocide which was the first conviction of genocide and rape as an act of genocide, has been deemed the starting point for examining acts of genocide through a gendered perspective.

Much of the analysis of the gender-genocide nexus stems from the commentary of these conflicts and the subsequent international trials. Prior to this engagement in the 1990s and 2000s, the recognition of the harm of gender-based violence in international criminal law has historically been slow.<sup>29</sup> The Nuremberg and Tokyo Trials, which were the first to set modern precedent in prosecuting international crimes, refused to fully engage with rape and sexual violence against women. This thesis will explore in greater detail how this gender-genocide nexus was understood at these vital and momentous developments in international criminal law, with a focus on Nuremberg. However, despite evidence presented at the IMT, there was an apparent reluctance to speak on rape and sexual violence. A well-known example was the phrase “I will pass on” which a Prosecutor spoke instead of presenting the court with evidence of rapes and sexual violence perpetrated by Nazis.<sup>30</sup> Even as we look to the ICTR’s formative *Akayesu* judgement we can still see echoes of a reluctance to engage with rape and sexual violence as genocide; it was only following extensive lobbying by human rights groups and the interest of the sole female Judge, Judge Navanethem Pillay, at the Trial Chamber, that rape as a method of genocide was included as an indictment.<sup>31</sup> Prior to this, rape and sexual violence in Rwanda had gone commonly unreported, only to be brought into public attention following a doctor’s report noting the unusual increase in the number of women, nine months after the conflict, bearing children as a result of rape.<sup>32</sup> This gives credence to the feminist argument that greater female participation in the creation of international criminal law and legal protection within the private spheres results in greater gender-sensitive judgements.<sup>33</sup> As Adams

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<sup>29</sup> Grey, *Prosecuting*, 2; Harrington, *Politicization*, 1.

<sup>30</sup> Kelly Dawn Askin, *War Crimes against Women: Prosecution in International War Crimes Tribunals* (The Hague: Kluwer Law International, 1997), 98.

<sup>31</sup> Rhonda Copelon, ‘Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law International Conference/Conference Internationale,’ *McGill Law Journal* 46, no. 1 (2001, 2000), 225. See also: William A. Schabas, *Genocide in International Law: The Crime of Crimes* (Cambridge: Cambridge University Press, 2000), 164.

<sup>32</sup> Copelon, ‘Gender Crimes,’ 224.

<sup>33</sup> Charlesworth and Chinkin, ‘The Gender.’

writes, “[d]ue to a lack of representation by female lawyers and politicians in the past, crimes committed mainly against the female population have too often been overlooked.”<sup>34</sup>

Since the creation of the ICC over twenty years ago, there are indications of an increasingly “positive progress narrative” in gendered crimes more broadly.<sup>35</sup> This is despite what commentators call a “patchwork” approach to prosecuting gender-based and sexual crimes within the ICC.<sup>36</sup> Nearly half of the crimes charged at the ICC by July 2018 were gender-based crimes, showing a substantial increase from 2005.<sup>37</sup> At the time of writing, deposed former Sudanese dictator, Omar al Bashir, faces charges of genocide at the ICC and is awaiting transfer to the ICC for trial. These charges contain sexual violence allegations of gender-based violence against men of the Fur ethnic group,<sup>38</sup> and will be the first case of genocide tried at the ICC.

## Creation of the concept of genocide

### Biographies of Lemkin

Biographies of Lemkin and the creation of the theory and concept of genocide research his dogged determination to have this crime codified in international law. This saw increased engagement in the late 2000s onwards as this chapter explores. Moving beyond literature which cited Lemkin as the originator of the term, this body of research drew on archival materials to build a picture of Lemkin the man; his work as well as his motivations and writings, his interactions with those around him and his

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<sup>34</sup> Alexandra Adams, ‘The Legacy of the International Criminal Tribunals for the Former Yugoslavia and Rwanda and Their Contribution to the Crime of Rape,’ *European Journal of International Law* 29, no. 3 (August 2018), 753.

<sup>35</sup> Fionnuala Ní Aoláin, ‘Gendered Harms and Their Interface with International Criminal Law: Norms, Challenges And Domestication,’ *International Feminist Journal of Politics* 16, no. 4 (2014), 624, <https://doi.org/10.1080/14616742.2014.952126>.

<sup>36</sup> Chile Eboe-Osuji, *International Law and Sexual Violence in Armed Conflicts* (Ebook, Brill, Leiden, 2012), <https://doi.org/10.1163/9789004227224>.

<sup>37</sup> Grey, *Prosecuting*, 253.

<sup>38</sup> Grey, *Prosecuting*, 184.

passion became an emerging area of research. This thesis draws on this literature as a starting point for researching the female actors of this history. Consequently, this body of literature is foundational. There is a demonstrable gap in this literature on how women are conceptualised during the creation of the term genocide, in addition to female actors and their contributions. Whilst some biographies mention a handful of interactions between Lemkin and different women and representatives from women's organisations, there is little or no examination of the content or value of their discussions. On occasion, the name of these women's organisation has been incorrectly reported and subsequent historical inquiry has failed to rectify this error, which is discussed in this chapter.<sup>39</sup> In this section, we turn to the seminal research from historians and biographers such as Irvin-Erickson,<sup>40</sup> Cooper,<sup>41</sup> and Frieze,<sup>42</sup> as well as the collated primary materials by Jacobs<sup>43</sup> to examine their contribution to our understanding of Lemkin, and to find the gaps where it comes to women's contributions or where women sat in the minds of the men in this history. Within the context of this thesis, each of these biographies offers a different contribution to the body of literature on women's involvement in the success of the Genocide Convention which this chapter will explore in turn.

The natural starting place of this section is with Lemkin's own words as compiled and edited by Donna-Lee Frieze in *Totally Unofficial: The Autobiography of Raphael Lemkin*.<sup>44</sup> *Totally Unofficial* is "part autobiography, part biography, part memoir, and part report," in which Frieze combines Lemkin's drafts of his autobiography and editor's notes from the 1950s to create comprehensive insight into

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<sup>39</sup> A. Dirk Moses et al., 'Round Table (Full Symposium): What's Raphaël Lemkin Got to Do with Genocide Studies? A Conversation on Gender, Culture, Economics, Categorical Violence, and Colonization with Professors Sarah Federman, Dirk Moses, Max Pensky, and Scott Straus', *Genocide Studies and Prevention* 16, no. 2 (October 2022): 37–67, <https://doi.org/10.5038/1911-9933.16.1.1929>; Irvin-Erickson, *Raphaël Lemkin*, 153.

<sup>40</sup> Irvin-Erickson, *Raphaël Lemkin*.

<sup>41</sup> John Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention* (Basingstoke: Palgrave Macmillan, 2008).

<sup>42</sup> Raphael Lemkin and Donna-Lee Frieze, *Totally Unofficial: The Autobiography of Raphael Lemkin* (New Haven: Yale University Press, 2013).

<sup>43</sup> Raphael Lemkin and Steven L. Jacobs, *Raphael Lemkin's Thoughts on Nazi Genocide: Not Guilty?* (New York, Ontario: The Edwin Mellen Press, 1992); Raphael Lemkin and Steven L. Jacobs, *Lemkin on Genocide* (Lanham, Maryland: Lexington Books, 2014).

<sup>44</sup> Lemkin and Frieze, *Totally Unofficial*.

Lemkin's life and motivations.<sup>45</sup> It is not the first biographical publication to revisit Lemkin's life, although it is perhaps the most comprehensive in its use of Lemkin's own writings. Notwithstanding this work, the archival research of Steven Jacobs has formed a great basis upon which much research has stemmed. Jacobs' research in the American Jewish Archives, the American Jewish Historical Society and other archives, has been developed into two notable works; *Raphael Lemkin's Thoughts on Nazi Genocide: Not Guilty?* which is a collation of Lemkin's manuscripts from the IMT, and *Lemkin on Genocide* which is a volume of Lemkin's research on the crime of genocide including the manuscript for his never-completed *History of Genocide*. As other historical research on Lemkin has done, this thesis will draw on Jacobs' research. Irvin-Erickson's book, *Raphaël Lemkin and the Concept of Genocide*,<sup>46</sup> later builds on the work of Frieze and Jacobs, adding to the body of secondary-source literature on Lemkin's life and his inspirations for the creation of the theory and term genocide. It contributes to a centring of Lemkin within the discourse of genocide, reinforcing an alternative to the legal definition of genocide as enshrined in the Convention.

The first of Lemkin's comprehensive biographies was published in 2008 by John Cooper. The publication of Cooper's book coincided with the publication of Dan Stone's edited book, *The Historiography of Genocide*. This work provides an important collection of essays detailing thematic debates and case studies. The work of Jessie Bernard is touched upon briefly by Ann Curthoys and John Docker in their essay 'Defining Genocide' in this edited volume.<sup>47</sup> Although their essay does not explore Bernard's theories and her intricate relationship with Lemkin's genocide theory in detail, it does point to Bernard's sociological development of the concept within the context of the United States.<sup>48</sup> Bernard's contribution to this body of literature is discussed below.

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<sup>45</sup> Lemkin and Frieze, *Totally Unofficial*, XX, XXVI, XXVII

<sup>46</sup> Irvin-Erickson, *Raphaël Lemkin*.

<sup>47</sup> Ann Curthoys and John Docker, 'Defining Genocide,' in *The Historiography of Genocide*, ed. Dan Stone (London: Palgrave Macmillan UK, 2008), 14-15, [https://doi.org/10.1057/9780230297784\\_2](https://doi.org/10.1057/9780230297784_2).

<sup>48</sup> Curthoys and Docker, 'Defining Genocide,' 14-15.

In his own words, Lemkin claimed that "...I ought to state in all objectivity that in 1945 and in subsequent years the contribution of individual women and of women's organizations to the issue of genocide was considerable."<sup>49</sup> This sentiment is recorded in *Totally Unofficial*: "One by one I work on the nonratifying countries through these dedicated women, all of whom are devoted to social justice" speaking of the women at the newly-formed UN Commission on the Rights of Women.<sup>50</sup> Within the context of women's contributions to the realisation of genocide as a crime at an international level, a number of citations stand out in this biography.

One record of an interaction is illuminating in relation to this thesis' premise of an under-appreciated female history; Margery Corbett Ashby was described as former President of the 'World Alliance of Women' which is, in fact, called the International Alliance of Women (IAW) but which has been mis-cited by Lemkin and mis-cited by a number of subsequent biographers and researchers.<sup>51</sup> Margery Corbett Ashby provided Lemkin with useful connections at the United Nations, including Vijaya Lakshmi Pandit from India and the US Congresswoman and member of the US delegation Helen Gahagan Douglas. Lemkin recalled in *Totally Unofficial* how Margery Corbett Ashby organised a meeting of women "from many countries to visit the first session of the United Nations" where he further developed connections with prominent female representatives.<sup>52</sup> Also of interest at this meeting was the Swedish archaeologist and President of the International Alliance of Women, Dr Hanna Rydh, who appears to influence Lemkin's ideas of cultural losses through destruction of history as evidenced through archaeology and the particular importance of educating children using this archaeological evidence.<sup>53</sup> Although this meeting with prominent women is documented in *Totally Unofficial*, the contents of what was discussed is missing, and does not explore the outcome of the meeting. Lemkin does note how, at this gathering, accounts of torture were given by two women from Czechoslovakia, but

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<sup>49</sup> Lemkin and Frieze, *Totally Unofficial*, 125.

<sup>50</sup> Lemkin and Frieze, *Totally Unofficial*, 222.

<sup>51</sup> See: Moses et al., 'Round Table (Full Symposium)'; Irvin-Erickson, *Raphaël Lemkin*, 153.

<sup>52</sup> Lemkin and Frieze, *Totally Unofficial*, 124.

<sup>53</sup> Lemkin and Frieze, *Totally Unofficial*, 125.

does not expand.<sup>54</sup> Representatives from this gathering returned to lobby their respective countries on the Convention with noticeable effect,<sup>55</sup> and these interactions and any subsequent discussions deserve further analysis as it is done in this thesis.

Lemkin's work with female representatives from Latin America is a strong theme throughout his record of interactions with women in *Totally Unofficial*. Lemkin writes about the influence of Amalia de Castillo Ledón, President of the Inter-American Commission of Women, and his professional relationship with her.<sup>56</sup> It appears from his recollection, published in *Totally Unofficial*, that Amalia de Castillo Ledón was greatly instrumental in the Latin American support for the ratification of the Convention.<sup>57</sup> However, it does not go into detail about her impact beyond this signposting. Angela de Chacon, the Costa Rican representative, also provided publicity to Lemkin's lobbying as well as facilitating connections with the Costa Rican ambassador in Washington who, on her reckoning, would potentially be sympathetic to outlawing the crime of genocide.<sup>58</sup> Another female supporter of the Convention mentioned by Lemkin in *Totally Unofficial* was Shaista Ikramullah, Pakistan's delegate to the United Nations, who is quoted by Lemkin as so eloquently speaking of the genocide which occurred during the partition of India. He said it was "as if an angel had entered this drab room and touched them [the delegates] with its wings."<sup>59</sup>

Amalia de Castillo Ledón and Margery Corbett Ashby also feature in Cooper's book.<sup>60</sup> Margery Corbett Ashby is described as having provided "crucial" help to Lemkin through the International Alliance of Women, and Cooper hints at a long-standing co-operation between Margery Corbett Ashby and Lemkin.<sup>61</sup> Offering a British case study, Cooper's book notes the domestic lobbying conducted towards the Foreign Office by the British Federation of Business and Professional Women and the

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<sup>54</sup> Lemkin and Frieze, *Totally Unofficial*, 126.

<sup>55</sup> Lemkin and Frieze, *Totally Unofficial*, 126.

<sup>56</sup> Lemkin and Frieze, *Totally Unofficial*, 188.

<sup>57</sup> Lemkin and Frieze, *Totally Unofficial*, 188.

<sup>58</sup> Lemkin and Frieze, *Totally Unofficial*, 197.

<sup>59</sup> Lemkin and Frieze, *Totally Unofficial*, 160.

<sup>60</sup> Cooper, *Raphael Lemkin*, 187.

<sup>61</sup> Cooper, *Raphael Lemkin*, 82.

International Council of Women.<sup>62</sup> This thesis explores this relationship in more detail, drawing on different archival materials to Cooper, exposing the vital role of these women in the success of outlawing the crime of genocide.

John Cooper's book *Raphael Lemkin and the Struggle for the Genocide Convention* includes mentions of additional female support for the outlawing of genocide. Gertrude (Trudy) Sladek and Miriam Milliren were two of these women as they are described as conducting research for Lemkin into potential historical genocides.<sup>63</sup> Elizabeth Nowinski, Anna May Barbour and Margot Doehler are also women who feature in Cooper's book as conducting research for Lemkin or assisting his genocide work.<sup>64</sup> However, much of the focus of these women is on their personal or potentially romantic relationships with Lemkin, and what is missing is an exploration of their potential academic contributions to his work.

This section has evidenced that there has been little in-depth research into the historical intersection between these women and the Genocide Convention. A notable exception is the book chapter published in 2019 by David Crowe on Pearl Buck, Nobel Laureate, and her professional relationship with Lemkin in the years after the war.<sup>65</sup> Based on the archival materials housed in the Center for Jewish History, most of which are correspondences, Crowe's chapter speaks about how her personal connections were also leveraged to raise the profile of outlawing the crime of genocide.

Beyond recording interactions with women, this body of literature also captures historical perceptions of gendered harms. Irvin-Erickson makes a note on Lemkin's view on sexual harms as going beyond the reproductive abilities of women: "Lemkin's belief that women played a unique role in the reproduction of a society" and the mirroring of this in international judgments on this issue.<sup>66</sup> Irvin-Erickson cites

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<sup>62</sup> Cooper, *Raphael Lemkin*, 105.

<sup>63</sup> Cooper, *Raphael Lemkin*, 113.

<sup>64</sup> Cooper, *Raphael Lemkin*, 115.

<sup>65</sup> David M. Crowe, 'Pearl Buck, Raphael Lemkin, and the Struggle for the Genocide Convention,' in *Beyond the Good Earth: Transnational Perspectives on Pearl Buck*, eds. Jay Cole and John R. Haddad (Morgantown: West Virginia University Press, 2019), 11-34.

<sup>66</sup> Irvin-Erickson, *Raphaël Lemkin*, 155.

Lemkin's interactions with women's organisations in his pursuit of a better understanding of women's experiences of biological techniques of genocide.<sup>67</sup> The citation of this interaction with women's organisations in this book, however, is brief, and is not expanded to give an understanding of what these discussions entailed or what was discussed. This is researched in this thesis, and we see in the later chapters how Lemkin did not appear seek input from women on the more substantive acts of genocide pertaining to women. In the same citation Irvin-Erickson notes how Lemkin understood there to be low-levels of rape committed by the Nazi occupying armies and how this understanding has been "corroborated by historians who have pointed out that the German occupying armies generally did not commit rape."<sup>68</sup> This perception is problematised herein, and the argument is made in Chapters 4 and 5 how euphemisms were deployed in lieu of phrases such as 'rape' and 'sexual violence' in the aftermath of the Holocaust and World War Two which have potentially led to this misreading.

The similarities between accounts in the research of Cooper, Irvin-Erickson and Frieze on the one hand and Lemkin on the other of these interactions between prominent women, naturally, are a consequence of drawing on the same archives. They demonstrate potential limits to what can be gained from looking solely at Lemkin's account of these interactions. It raises the question of what gaps in our knowledge can be filled from looking at these interactions from the perspective of the woman, if this is indeed possible.

Recent genocide scholarship has focused on the contribution of Lemkin, evidenced in the *Genocide Studies and Prevention (GSP)* journal issuing a special issue in 2019 which revisited the works of Lemkin. More recently the GSP held a symposium in 2022 which focused on Irvin-Erickson's writings on Lemkin and even discussed briefly the lack of female representation in this history.<sup>69</sup> This contribution indicates this lack of female representation and argues that women's NGOs' aims, of greater recognition of harms such as rape, were betrayed by the drafters although it does not investigate

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<sup>67</sup> Irvin-Erickson, *Raphaël Lemkin*, 90.

<sup>68</sup> Irvin-Erickson, *Raphaël Lemkin*, 90.

<sup>69</sup> Moses et al., 'Round Table (Full Symposium),' 51.

this in detail beyond this mention which this thesis interrogates.<sup>70</sup> Furthermore, this article queries the inclusion of ‘imposing measures intended to prevent births’ in the final Convention, when ‘forced impregnation’ and such crimes are not. This thesis explores this in depth in Chapter 4, and analyses and presents data to support a different perspective. Counter to this, beyond genocide studies, there is a move to examine Lemkin’s work more critically and to widen the history beyond Lemkin to include other actors such as Vespasian Pella.<sup>71</sup> This thesis seeks to go beyond the predominantly Lemkin-centred history, adding additional voices as well as drawing on Lemkin himself. What is clear from these contributions to the literature is the impact which women have had in lobbying countries to ratify the Convention, although existing records of this remains notably patchwork. These points in history noted by Lemkin are points which this current research will use to develop a deeper understanding of these contributions. This gap in literature in relation to the role of women in the success of the Convention is partly addressed in this thesis.

## **International criminal law and genocide**

International criminal law’s critical engagement with the Genocide Convention following the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) saw a growth in academic literature from pure international legal scholars as well as feminist academics and activists. This section of the literature review will examine these contributions in turn. By doing so, this chapter will observe the historic lack of mainstreaming of feminist arguments into the international legal discourse, and the gaps caused by this lack of mainstreaming such as the reluctance of accepting rape and sexual violence as acts of genocide by some literature. By examining the contributions of these bodies of literature and their arguments and main texts, this section of the chapter will also tease out gaps within

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<sup>70</sup> Moses et al., ‘Round Table (Full Symposium),’ 51.

<sup>71</sup> See for example Andrei Mamolea, ‘Vespasian V. Pella: International Criminal Justice as a Safeguard of Peace, 1919-1952’; Frédéric Mégret, ‘Henri Donnedieu de Vabres: Penal Liberal, Moderate Internationalist and Nuremberg Judge’; Vesselin Popovski, ‘The Complex Life of Rafal Lemkin,’ in *The Dawn of a Discipline*, eds. Mégret and Talgren.

the literature. First, the academic literature on the creation of international law and the crime of genocide is examined along with the key texts and debates. Throughout this, the lack of gender mainstreaming is borne in mind. Following this, is an examination of the intersection of gender debates into international criminal law scholarship. It asks how this development came about, and what key arguments are posited by this scholarship, as well as the scope for further research and development in this field. Finally, this section of the chapter will explore the literature which critique this gender intersection; what are the key debates, and how are they relevant to this thesis?

## **Creation of international criminal law and the crime of genocide**

### ***Legal historical literature on the creation of international criminal law and the crime of genocide***

This section of the literature review will explore the contributions of historical literature to the creation of international law and the crime of genocide. Literature on the creation of international law from the Nuremberg Trials and the creation of the Genocide Convention has been developed for both the academic field and for those outside academia. For example, the accessible work of Professor Philippe Sands with *East West Street: On the Origins of Genocide and Crimes Against Humanity* and the academic-specific follow-up article 'Genocide at 70: A reflection on its origins' centring on the work of Lemkin and Lauterpacht in developing the concepts of international crimes we see today.<sup>72</sup> The cornerstone of literature on international criminal law and the crime of genocide is William Schabas' research and publications on the topics of international criminal law, the ICC, and the Genocide Convention. These have been pivotal in the field of legal genocide scholarship, in particular his forensic examination of the *Travaux Préparatoires* of the Genocide Convention. Schabas' work proved to be

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<sup>72</sup> Philippe Sands, *East West Street: On the Origins of Genocide and Crimes Against Humanity* (London: Weidenfeld & Nicolson, 2016); Philippe Sands, 'Genocide at 70: A Reflection on Its Origins,' *Netherlands Quarterly of Human Rights* 36, no. 3 (September 2018), 167–72, <https://doi.org/10.1177/0924051918784983>.

seminal in this field in providing comprehensive examination. Most relevant to the current thesis being *Genocide in International Law: The Crime of Crimes*, which details the creation of the Genocide Convention and subsequent applications of the law. Tracing the development of the concept of genocide through the Nuremberg trials and through to discussions at the UN on developing the Convention, Schabas' book is arguably a one-stop-shop for research on the Convention's history and application. In spite of this, however, Schabas' work does not take a gendered perspective and does not examine gendered harms, exemplifying the slow adoption of gender in the field of international criminal law and genocide. Schabas writes in *An Introduction to the International Criminal Court* that killing is "without a doubt the most important of the five acts of genocide."<sup>73</sup> Further, in the 2009 book *Genocide in International Law: The Crime of Crimes* Schabas examines the *Akayesu* Trial Chamber statement on the use of rape, describing it to be "exaggerated" as "unrealistic and perhaps absurd to believe that a group can be destroyed in whole or in part by rape and similar crimes."<sup>74</sup>

This body of international criminal law and genocide developed into historical legal scholarship, delving into the history of the Convention, and comparative genocide legal scholarship, which sought to understand differentiations and similarities in crimes intended to bring about the destruction of a group. Within the historical legal scholarship sits a vital text for this thesis; Chapter 4 of this thesis relies heavily on *The Genocide Convention: The Travaux Préparatoires* compiled in 2009 by Hiram Abtahi and Philippa Webb who subsequently wrote an article in 2018 in honour of Schabas titled 'Secrets and Surprises in the Travaux Préparatoires of the Genocide Convention'. Alongside noting the history of the concept of genocide and the debates on the inclusion of controversial concepts of political and cultural genocide,<sup>75</sup> they note that "[a]lthough gender issues did not constitute a topic as such during the drafting process, gender representation among state representatives was highly skewed." They

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<sup>73</sup> William A. Schabas, *An Introduction to the International Criminal Court* (Ebook, Cambridge: Cambridge University Press, 2017), <https://doi.org/10.1017/9781316459997>, 107.

<sup>74</sup> William Schabas, *Genocide in International Law: The Crime of Crimes*, (Cambridge: Cambridge University Press, 2009), 201.

<sup>75</sup> Hiram Abtahi and Philippa Webb, 'Secrets and Surprises in the Travaux Préparatoires of the Genocide Convention,' in *Arcs of Global Justice: Essays in Honour of William A. Schabas* (Oxford, UK: Oxford University Press, 2018), 305-312.

noted Shaista Ikramullah, Pakistan's representative to the UN, as being the only female representative to have given input into the Convention drafting.<sup>76</sup> The examination of the role of Shaista Ikramullah at the drafting of the Convention is a gap in the existing literature which is addressed in Chapter 6 of this thesis.

### *International criminal law and gender*

In spite of some international legal scholars arguing against the inclusion of harms, such as rape, being included as an act of genocide, there has been increasing engagement with this concept. As almost all academics in this field have noted, the 1990s and early 2000s saw a dramatic increase in the amount of academic literature and focus on sexual violence in conflict.<sup>77</sup> This follows reports of, and reaction to, sexual violence and rape in the former Yugoslavia and Rwanda, as correctly predicted by Adam Jones writing in 1993 and published in 1994.<sup>78</sup> The subsequent trials and landmark judgements, in addition to what Rebecca Jinks calls peak Holocaust awareness of the 1990s assisted by media, films, and testimonies added to this increased academic interest.<sup>79</sup>

What began as awareness raising of this crime by feminist legal academics developed into analysis of gendered crimes, seeking answers to why rape is perpetrated in genocides and the impact of this crime on the victim. As ICTR and ICTY trials exposed evidence of sexual violence, academic interest grew and the field saw a growth in expert analysis. This chapter suggests that these contributions broadly fit within five categories of literature: literature on evidence collection and prosecution of sexual violence; feminist literature which links a male-dominated legal sphere and a prevalence of sexual violence to the male-dominated world and societal repression of

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<sup>76</sup> Abtahi and Webb, 'Secrets and Surprises,' 300.

<sup>77</sup> Grey, *Prosecuting*, 2; Harrington, *Politicization*, 1.

<sup>78</sup> Adam Jones, 'Gender and Ethnic Conflict in Ex-Yugoslavia,' *Ethnic and Racial Studies* 17, no. 1 (January 1994), 115.

<sup>79</sup> Rebecca Jinks, *Representing Genocide: The Holocaust as a Paradigm?* (London: Bloomsbury Academic, 2016), 4.

women and stemming from this; the feminist literature which examines the broader impact of rape and gendered harms in genocides; the literature which academically interrogates why people commit rape; the body of literature which seeks to highlight the failings with definitions and institutions trying to prosecute genocides. There is overlap, naturally, between these broad categories, and much of the arguments in these bodies of work can be seen in other disciplines as discussed later in this chapter.

### Literature on evidence collection and prosecution of sexual violence

Firstly, the body of literature on evidence collection and prosecution on gendered harms (mostly rape) has developed as indictments and judgments have been issued by the ICC and international tribunals. As a result, this body of literature is relatively recent and continues to develop and has unanimously adopted the concept of gendered crimes. This body of literature is often critical of a perceived slow progress of the recognition of gendered crimes within international institutions.

The most poignant and important contributions in this literature is that of ICC Judge Chile Eboe-Osuji, who also assisted at the ICTR; in his book *International Law and Sexual Violence in Armed Conflicts*, Eboe-Osuji begins to address some of the gaps in the literature such as Schabas regarding sexual violence and rape in conflict.<sup>80</sup> Through an examination of seminal cases such as *Akayesu*, *Furundžija* and *Kunarac* cases, and the *Rukundo* case, Judge Eboe-Osuji deems the approach to sexual violence has lacked uniformity and therefore the results have been patchwork.<sup>81</sup> This is a theme which permeates later contributions to this body of literature, as academics sought to understand how individuals within the international criminal system understood gendered crimes and how this reflects in judgements. Academics such as Hayes and Grey are illustrative of this turn, both examining the approach taken to gendered crimes at the ICC and international tribunals. How the personality of the ICC's Chief

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<sup>80</sup> Eboe-Osuji, *International Law and Sexual Violence*.

<sup>81</sup> Chile Eboe-Osuji, 'Rape as Genocide and Some Questions Arising,' in *International Law and Sexual Violence in Armed Conflicts* (Ebook, Leiden: Brill, 2012), <https://www.jstor.org/stable/10.1163/j.ctt1w76w29.10>.

Prosecutor impacts the work of the Court on gendered crimes is a focus for Hayes,<sup>82</sup> whereas the Prosecutor's missed opportunities to indict on gendered crimes (where the Prosecutor argued that evidence collection was impossible) was a central focus for Grey.<sup>83</sup> The day-to-day workings of the ICC is where the difference can be made in the recognition of gender as opposed to larger judgements.<sup>84</sup> Evidence collection, or a lack of appropriate collection is key to this body of literature.<sup>85</sup>

Beyond this, however, a key development in this body of literature is the analysis by academics who demonstrate the wider impact of crimes of sexual violence and the need for this to be recognised by international tribunals. Hayes for example argues that the Pre-Trial Chamber in the *Bemba* case refused to acknowledge the wider impact of public rape,<sup>86</sup> and in relation to the ICTR Russell-Brown states that rape is "possibly the most effective and serious way of inflicting injury and harm on individual Tutsi women, thus advancing the destruction of the entire Tutsi group."<sup>87</sup> Judge Eboe-Osuji's work also supports this key development by suggesting that in Rwanda, rape caused a climate of fear.<sup>88</sup> How institutions are effected by individuals who are, themselves, restricted by definitions, is key to the analysis of this literature. Clearly central to this body of literature is a drive for greater recognition of gendered crimes and gendered harms within international criminal law; if "gendered assumptions and values ... are written into legal texts and reinforced through legal practices,"<sup>89</sup> then it is necessary to understand the individual assumptions and conceptualisations which formed the basis of these legal texts.

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<sup>82</sup> Hayes, 'Sisyphus Wept.'

<sup>83</sup> Grey, *Prosecuting*. It should be noted however that since this was published the *Ntanganda* judgment was handed down with a conviction which included sexual slavery.

<sup>84</sup> Grey, *Prosecuting*, 30.

<sup>85</sup> Hayes, 'Sisyphus Wept.'

<sup>86</sup> Charlesworth and Chinkin, *Boundaries*; Christine Chinkin, 'Rape and Sexual Abuse of Women in International Law,' *European Journal of International Law* 5, no. 1 (January 1994), 326.

<sup>87</sup> Sherrie L. Russell-Brown, 'Rape as an Act of Genocide,' *Berkeley Journal of International Law* 21, no. 2 (2003), 352.

<sup>88</sup> Chile Eboe-Osuji, 'Rape as Genocide.'

<sup>89</sup> Grey, *Prosecuting*, 68.

An interesting new development in this body of literature draws on similar themes of the importance of individuals in realising gendered crimes at the international level and asks the question: would judgments have been different if there had been more women involved? The recently published *Feminist Judgements in International Law* hypothesise this and provides interesting insights into the role of female and feminist judgements. Jurasz et al. argue that through an examination of the Special Court for Sierra Leone (SCSL), an “emotional response” to the crimes by the observer of these crimes is valid, and was missing, in judgments of crimes as atrocious as those committed in Sierra Leone.<sup>90</sup> Their re-examination of the definition of rape is interesting, as it includes under the term ‘perpetrator’ a person in a position of authority who orders the commission of rape, as well as emphasising the victims and perpetrators may be both male and female. Beyond this, it brings into question the very notion of gender, and the essential ability of victims to define their own gender identity.<sup>91</sup> In the same edited volume Brunger et al. analyse the landmark ICC trial of *Lubanga*, its lack of gendered perspective when addressing the crimes of girl child soldiers as well as a “marginalisation of the harms of sexual violence” against child soldiers despite substantial evidence.<sup>92</sup> This, they argue, ultimately allowed for a hierarchy of harms to manifest in the Trial Chamber.

### **Feminist literature identifying patriarchal structures of oppression, and their critique of international (criminal) law and genocide**

This body of literature is vast and encompasses critiques of gendered norms and power structures, international law and human rights law broadly, patriarchal conceptualisations of women, and the impact of gendered harms. Fundamentally, this

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<sup>90</sup> Olga Jurasz, Sheri Labenski, Solange Moutaahan, Dawn Sedman, ‘AFRC Trial Judgment (Prosecutor v Brima, Kamara and Kanu)’, in *Feminist Judgments in International Law*, eds. Troy Lavers and Loveday Hodson (Oxford: Hart Publishing, 2019).

<sup>91</sup> Jurasz et al., ‘AFRC Judgment,’ 116.

<sup>92</sup> Yassin M Brunger, Emma Irving, and Diana Sankey, ‘The Prosecutor v Thomas Lubanga Dyilo,’ in *Feminist Judgments in International Law*, eds. Loveday Hodson and Troy Lavers (Oxford: Hart Publishing, 2019), 1206.

body of literature identifies power structures and the manifestation of these structures in the repression of women.

The foundational text to this feminist literature is arguably Chinkin and Charlesworth's article 'The Gender of Jus Cogens' published in 1993 from which many later publications, from Chinkin and Charlesworth themselves as well as other academics, drew inspiration and analytical frameworks. Human rights law, they argue, has been dominated by men resulting in the protection of public life and the lack of protection of private life, traditionally the realm of women. This, in addition to male-dominated human rights fora, has led to contrasting international law in which non-discrimination on the basis of race is *jus cogens*, but discrimination on the basis of gender is not.<sup>93</sup> Violence against women, therefore, is endemic in all states but is not given protection by human rights law as it usually takes place in the private sphere.<sup>94</sup> As Claudia Card later puts it, there is a "cross-cultural language of male dominance" within sexual violence.<sup>95</sup>

Building on their original analysis, Chinkin and Charlesworth later apply this to the situations in international human rights law which do include women, such as cases of sexual violence.<sup>96</sup> They argue that within the international human rights law context, women are viewed as heterosexual members of a family unit which is integral to society. In international law, women are considered primarily in their roles of reproduction and mothering.<sup>97</sup> This is a fundamental analysis which the research of this thesis draws on throughout. We can see this in literature on international law and the theory and crime of genocide; when discussing the inclusion of gender in protected groups of the Convention, Schabas reiterates his perception that women are important to a group's survival due to their reproductive abilities.<sup>98</sup> The feminist body of

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<sup>93</sup> Charlesworth and Chinkin, 'The Gender of Jus Cogens.'

<sup>94</sup> Charlesworth and Chinkin, 'The Gender of Jus Cogens.'

<sup>95</sup> Claudia Card, 'Rape as a Weapon of War,' *Hypatia: A Journal of Feminist Philosophy* 11, no. 4 (Fall 1996), 7.

<sup>96</sup> Charlesworth and Chinkin, *The Boundaries of International Law*.

<sup>97</sup> Charlesworth and Chinkin, *The Boundaries of International Law*, 308.

<sup>98</sup> Schabas, *Genocide in International Law*, 188.

literature challenges this fundamental notion that women's value lies in the biological ability to reproduce. This is a central tenet of this thesis' analysis.

Further to the feminist argument which problematises the conceptualisation of women within their heteronormative gender roles, is the argument that this conceptualisation casts women as victims, failing to recognise female perpetration (or regarding it as an anomaly). This theory is developed by Laura Sjoberg who illustrates how gender norms permeate understandings of women in conflict.<sup>99</sup> Ronit Lentin provides a precursor to this argument, positing that the feminisation of genocides, the casting of women as the victim, hinders public perception of women as perpetrators as was demonstrated in the *Nyiramasuhuko* case.<sup>100</sup> Russell-Brown demonstrates how the traditional gender-normative way of thinking about how rape is perpetrated is clearly in the case of Pauline Nyiramasuhuko who was convicted of ordered rapes during the Rwandan genocide.<sup>101</sup> The application of gender roles to these cases, this body of literature argues, is a hindering factor.

The link between peacetime gender violence and wartime gender and sexual violence has been expertly championed by this body of literature. In her earlier work for example, Chinkin discusses how the power imbalances in society between men and women facilitate the prevalence of rape in conflict.<sup>102</sup> An interesting analysis of this link is provided by Catherine MacKinnon with regards to the Bosnian conflict.<sup>103</sup> What is particularly relevant to this thesis is MacKinnon's analysis of violence against women both in conflict and peacetime and the uses of pornography during the Bosnian conflict. The abundance of pornography in the former Yugoslavia is suggested by MacKinnon as a contributing factor in the prevalence of rape and sexual violence during the conflict.<sup>104</sup> Although MacKinnon's analysis on pornography is rejected by

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<sup>99</sup> Sjoberg, *Beyond Sensation*.

<sup>100</sup> Ronit Lentin, 'The Rape of the Nation: Women Narrativising Genocide,' *Sociological Research Online* 4, no. 2 (30 June 1999), <http://socresonline.org.uk/4/2/lentin.html>. See also: Ronit Lentin, 'Introduction: (En)gendering Genocides,' in *Gender and Catastrophe*, ed. Ronit Lentin (New York, London: Zed Books, 1997), 12.

<sup>101</sup> Russell-Brown, 'Rape as an Act of Genocide,' 354.

<sup>102</sup> Chinkin, 'Rape and Sexual Abuse of Women in International Law.'

<sup>103</sup> MacKinnon, 'Genocide's Sexuality'; MacKinnon, *Are Women Human?*.

<sup>104</sup> MacKinnon, *Are Women Human?*, 195.

Chinkin, who claims it is “simplistic and misleading” to attribute great emphasis on pornography resulting in sexual violence,<sup>105</sup> it does have a particularly interesting relevance in the field of genocide studies which deals primarily with Lemkin’s original understanding of the theory of genocide. In *Axis Rule*, Lemkin actually cited the spreading of pornography, along with “excessive alcohol consumption”, as a way of promoting “moral debasement.”<sup>106</sup> Without citing Lemkin’s work, MacKinnon’s analysis does seem to draw the same link between pornography and the concept of ‘moral debasement’, a term also used by the 1946 Saudi Arabian draft edits of the Genocide Convention during the preparatory sessions.<sup>107</sup> Perhaps MacKinnon’s analysis was not as far from explaining sexual violence as Chinkin perceived it to be, particularly in relation to crimes of genocide. It is clear that the theme of morality runs through the crime of genocide from Lemkin’s original theory. This intersection is analysed in greater detail in Chapter 5 of this thesis.

With regards to the use and impact of sexual violence in conflict, much of this body of literature draws on the seminal work of Susan Brownmiller, who published *Against our Will: Men, Women and Rape* in 1975 long before renewed interest in sexual violence in genocides in the 1990s and early 2000s.<sup>108</sup> Brownmiller traces the use of sexual violence against women during conflict throughout history to support her hypothesis that rape is ultimately a manifestation of male power over women, a tool of oppression and domination during conflict. Following Brownmiller’s research was a period of a lack of engagement. This period was critiqued as being “unsatisfactory” by de Londras,<sup>109</sup> until the 1990s, when renewed interest in the historic uses of sexual violence is evident in the literature. Seeking a greater understanding of sexual violence, but also an understanding of *how* these crimes have been ignored, was the goal of such academics as Kelly Dawn Askin whose *War Crimes Against Women:*

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<sup>105</sup> Chinkin, ‘Rape and Sexual Abuse of Women in International Law,’ 329.

<sup>106</sup> Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Ann Arbor, Michigan: UMI, 1944), XII.

<sup>107</sup> Schabas, *Genocide in International Law*, 215.

<sup>108</sup> Susan Brownmiller, *Against Our Will: Men, Women and Rape*. (London: Secker and Warburg, 1975).

<sup>109</sup> Fiona de Londras, ‘Prosecuting sexual violence in the ad hoc International Criminal Tribunals for Rwanda and the Former Yugoslavia,’ in *Transcending the Boundaries of Law, Generations of Feminism and Legal Theory*, ed. Martha Albertson Fineman (Oxford: Routledge, 2011), 292.

*Prosecution in International War Crimes Tribunals*, exposed the historical lack of justice for these crimes.<sup>110</sup> Askin's book is an examination of statements made at these trials, such as discreditation of eyewitness reports of sexual violence and rape at the Tokyo tribunal<sup>111</sup> and the disinclination of Nuremberg prosecutors to expand, in any substantial detail, on sexual crimes committed by Nazis, instead wishing to spare the Court the details.<sup>112</sup> Even before the *Akayesu* ICTR judgement, Askin was arguing for the inclusion of gendered crimes under the Genocide Convention.<sup>113</sup> This is vital to this thesis as, similar to Askin, this research seeks to understand the historic lack of justice in relation to gendered harms. This thesis builds on the work of Askin and draws on her work and theory.

There was not unanimous adoption of rape-as-a-method-of-genocide within this feminist body of literature, as a debate has developed over a perceived invisibilising of female victims of rape at the expense of a focus on the group.<sup>114</sup> An argument has been made within the school of feminist literature that to conflate acts of rape with acts of genocide is to 'lose' the women's identity within the group's identity. Rhonda Copelon's analysis is perhaps the clearest in this field, stating emphatically that "[r]ape and genocide are separate atrocities."<sup>115</sup> Copelon differentiates between the group's identity and the woman. This argument posits that to claim the existence of rape as a method of genocide is to pit crimes of genocide and rape against each other, vying for adequate attention. Fundamentally, to use the phrase "genocidal rape" is to risk rendering rape as an invisible crime once more. This tension is summarised by Russell-Brown, who wrote "[i]n short, one side of the debate is concerned with gender disappearing from 'genocidal rape' while the other recognizes and deems important its intersectionality."<sup>116</sup> Furthermore, within the feminist body of literature there is increasing recognition that this feminism is a

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<sup>110</sup> Askin, *War Crimes against Women*.

<sup>111</sup> Askin, *War Crimes against Women*, 184.

<sup>112</sup> Askin, *War Crimes against Women*, 97-98.

<sup>113</sup> Askin, *War Crimes against Women*, 392.

<sup>114</sup> See for example: Joan Ringelheim, 'Genocide and Gender: A Split Memory,' in *Gender and Catastrophe*, ed. Ronit Lentin (New York, London: Zed Books, 1997), 28-32.

<sup>115</sup> Copelon, 'Surfacing Gender,' 246.

<sup>116</sup> Russell-Brown, 'Rape as an Act of Genocide,' 363.

Western feminism challenging the dominance of Western legal norms; it lacks intersectionality and an appreciation of different contexts.<sup>117</sup> Ultimately, this body of literature examined rape and sexual violence through the lenses of society, relationships, gender norms and power structures. As Lisa Pine puts it, “[a]s a result of feminist scholarship, the concept of gender as an analytical tool developed.”<sup>118</sup>

### Gendered harms

This literature review will now look at the more recent literature on gendered harms, which has stemmed from the bodies of literature discussed above. Although gendered harms are featured in some writings discussed in this chapter, it remains an emerging field. We have seen a struggle in the literature on institutions with a recognition of wider gendered crimes resulting from crimes such as sexual violence, and a critique in feminist literature of an over-focus on women’s biological capabilities to reproduce (as a result of patriarchal gender norms). By bringing together these hypotheses, this emerging body of literature focuses on a newer concept of gendered harms.

Gendered harms are, as Grey notes, harms which are “magnified by socially constructed gender norms.”<sup>119</sup> The unique position of women in society such as lower socio-economic and political opportunities, gendered expectations of caregiving and domestic roles, and place within the private sphere all result in women being uniquely vulnerable, this literature argues. For example, concepts of gender roles and norms exacerbate the crime of rape to include harms such as stigma, delivery of the child and subsequent care of the child.<sup>120</sup> Sexualised scarring and infection, as well as stresses of migration and cultural shocks, are also considered wider harms experienced by women

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<sup>117</sup> Fionnuala Ní Aoláin, ‘Learning the Lessons: What Feminist Legal Theory Teaches International Human Rights Law and Practice,’ in *Transcending the Boundaries of International Law: Generations of Feminism and Legal Theory*, ed Martha Albertson Fineman (Oxford: Routledge, 2011), 280.

<sup>118</sup> Lisa Pine, ‘Gender and the Family,’ in *The Historiography of the Holocaust*, ed. Dan Stone (Palgrave Macmillan UK, 2004), 364–96, 364. See also: Ringelheim, ‘A Split Memory,’ 18-33.

<sup>119</sup> Grey, *Prosecuting*, 61.

<sup>120</sup> Grey, *Prosecuting*, 61.

and victims of sexual violence.<sup>121</sup> Gendered harms go beyond sexual violence, and can include unequal food distribution between the genders within households, health outcomes and disease susceptibility, and lack of access to sanitation.<sup>122</sup> This body of literature further expanded this theory to include a decentring of sexual violence in the analysis of women's experiences in conflict in order to broaden the scope of analysis and to remove the gender-normative value placed on women's childbearing capabilities. Emphasising sexual violence is to place it as a higher harm experienced by women and therefore reduces women to their traditional patriarchal value of mothers and child-bearers and enhances the value of sexual purity.<sup>123</sup> It also impedes analysis of underlying structural inequalities which enables sexual violence. In the words of Ní Aoláin, this "unrelenting emphasis on penetrative sexual violence has operated to exclude attention to the conditions conducive to the production of systematic violence."<sup>124</sup> Ní Aoláin describes the issue of sexual violence against women being "elevated" above other harms in international criminal law.<sup>125</sup> This elevation of sexual violence, for Rubio-Marin, obscures the "multiple forms of gender-specific harm that men and women experience in situations of conflict or authoritarian repression."<sup>126</sup>

Far from disregarding the experience of sexual violence, or the role rape has played in genocides and the importance of continuing research on this topic, this body of literature seeks to open the debate up to wider discussions on socio-economic and legal harms experienced by women which result from patriarchal structures, realising that men and women experience events and harms differently. Welch's gendered analysis of the Holocaust illustrates gendered harms and provides a case study where these gendered dimensions are considered. Jewish women comprised the majority of people on trains to Auschwitz and were disproportionately killed immediately upon

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<sup>121</sup> Allison Ruby Reid-Cunningham, 'Rape as a Weapon of Genocide,' *Genocide Studies and Prevention* 3, no. 3 (December 2008), 280, <https://doi.org/10.3138/gsp.3.3.279>, 287-288.

<sup>122</sup> See: Lentin, '(En)gendering Genocide,' 4.

<sup>123</sup> Ruth Rubio-Marín, 'Reparations for Conflict-Related Sexual and Reproductive Violence: A Decalogue,' *William & Mary Journal of Women and the Law, Special Issue on Women and Children in Post-Conflict*, 19, no. 1 (2012), 71-72.

<sup>124</sup> Ní Aoláin, 'Gendered Harms and Their Interface,' 631.

<sup>125</sup> Ní Aoláin, 'Gendered Harms and Their Interface,' 626.

<sup>126</sup> Rubio-Marín, 'Reparations,' 37, 72.

their arrival (accounting for the pre-existing gender distribution in the population at the time), as well as more likely to be killed by *Einsatzgruppen* in the east.<sup>127</sup> Gender and gender-roles, Welch says, mattered: “In almost every setting, women were more vulnerable and able to be exploited even as they took on new roles outside the home as workers and, often, representatives of their families” in addition to sexual violence.<sup>128</sup> The disproportionate number of women caught-up in Nazi transports to camps were, Welch argues, as a result of their caregiving responsibilities for the young and old which prevented them from being able to flee in the same way as men.<sup>129</sup> Men, on the other hand, were targeted for their labour. Upon arrival in Auschwitz, women and their young children were often immediately sent to the gas chambers without processing, and there was not a similar process for the men disembarking the transports.<sup>130</sup> Increasingly as well, literature has begun to engage with crimes such as forced marriage, and in particular in relation to specific genocides as demonstrated by Gzoyan and Galustyan’s 2021 analysis of the use of forced marriage in the Armenian genocide.<sup>131</sup>

In adopting the notion of gendered harms, over an arguable over-emphasis on sexual violence, this thesis is able to cast a wider conceptual net over the historical texts being examined, considering how euphemisms were employed rather than direct terms. Theoretically also, it enables the researcher to critically appraise the conceptualisation of women in their societally-ascribed roles of mothers and caregivers. With respect to the broader inequalities experienced by women, this body of literature seeks to raise awareness of the myriad harms experienced but not recognised. This thesis will draw on this notion of gendered harms and will highlight in the historical documents where awareness of these gendered harms is present.

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<sup>127</sup> Susan Welch, ‘Gender and Selection During the Holocaust: Transports of Western European Jews to the East,’ *Journal of Genocide Research* 22, no. 4 (October 2020), 495, 462, <https://doi.org/10.1080/14623528.2020.1764743>.

<sup>128</sup> Welch, ‘Gender and Selection,’ 462.

<sup>129</sup> Welch, ‘Gender and Selection,’ 469. See Also Ringelheim, ‘A Split Memory,’ 18-33

<sup>130</sup> Welch, ‘Gender and Selection,’ 472.

<sup>131</sup> Edita Gzoyan and Regina Galustyan, ‘Forced Marriages as a Tool of Genocide: The Armenian Case,’ *The International Journal of Human Rights* 25, no. 10 (November 2021), 1724–43, <https://doi.org/10.1080/13642987.2021.1874361>.

### *Critiquing the feminist contributions - international relations, the militarisation of sexual violence, and 'Gendercide'*

Arguments within literature from the field of international relations provide a valuable critique of feminist literature. This argument posits how the feminist arguments of the 1990s and early 2000s, which draws attention to women's experiences of sexual violence in conflict, have been co-opted in recent years as a convenient justification for war. This body of literature argues that the misleading adoption of feminist principles consequently allows for deceptive and inconsistent military interventions, and that ultimately humanitarian interventions are never truthfully conducted with women's rights at the centre.<sup>132</sup> Moreover, critiques of the feminist methodological standpoint hold that the over-focus on women is to the detriment of the experiences of men.<sup>133</sup> The recent increase in UN Resolutions and exposure to the existence of sexual violence in conflict is one indication of the influence of the advocacy efforts stemming from the 1990s, raising the profile of this crime. This increased exposure however, also brought criticisms from international relations academics such as Cerretti,<sup>134</sup> Cohen and Enlow,<sup>135</sup> Southwick<sup>136</sup> and Meger,<sup>137</sup> who argue that the renewed awareness of sexual violence in conflict has been co-opted for military uses and have not necessarily made women safer. What is interesting is that several academics in this field argue that militarisation and

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<sup>132</sup> Beth Van Schaack, 'The Crime of Aggression and Humanitarian Intervention on Behalf of Women,' *International Criminal Law Review* 11, no. 3 (2011), 478, <https://doi.org/10.1163/157181211X576375>.

<sup>133</sup> See for example: Jones, 'Gender and Ethnic Conflict.'

<sup>134</sup> Josh Cerretti, 'Rape as a Weapon of War(riors): The Militarisation of Sexual Violence in the United States, 1990-2000,' *Gender & History* 28, no. 3 (November 2016), <https://doi.org/10.1111/1468-0424.12250>.

<sup>135</sup> Carol Cohn and Cynthia Enloe, 'A Conversation with Cynthia Enloe: Feminists Look at Masculinity and the Men Who Wage War,' *Signs: Journal of Women in Culture and Society* 28, no. 4 (June 2003), <https://doi.org/10.1086/368326>.

<sup>136</sup> Katherine Southwick, 'Straining to Prevent the Rohingya Genocide: A Sociology of Law Perspective,' *Genocide Studies and Prevention: An International Journal*, no. 3 (2018), <https://doi.org/10.5038/1911-9933.12.3.1572>.

<sup>137</sup> Sara Meger, 'The Fetishization of Sexual Violence in International Security,' *International Studies Quarterly*, no. 60 (2016), 149–59.

intervention does very little to actually prevent violence against women,<sup>138</sup> even reinforcing the patriarchal perception of women as needing to be saved by men.<sup>139</sup>

This section of the chapter will explore these criticisms, both usurpation of these advocacy efforts as well as the advocacy efforts themselves. A notable criticism of feminist advocacy comes from Harrington who lays the charge that feminist academics failed to take up the topic of sexual and gender-based violence and gendered harms fully until the “explosion” of the 1990s literature, despite the earlier work of Brownmiller in cataloguing sexual violence in conflict.<sup>140</sup> Central to this critique is the analysis provided by Meger. This concept of co-opting feminist advocacy is what Meger describes as the “fetishization” of sexual violence in conflict, ultimately failing to address the systematic issues and structures which allow for sexual violence.<sup>141</sup> Through the term “securitization,” or the identification of an issue as a security concern requiring a military response, Meger demonstrates the stages and strategies through which the bodily integrity of women morphs into military policy.<sup>142</sup> In this way, this is similar to the analysis provided by Harrington of the women’s organisations’ sceptic approach to male politician’s sudden concern with female bodily integrity and rape during World War One, and their belief that this contributed to war propaganda.<sup>143</sup> The need for shocking-scale numbers and increasingly brutal reports turns sexual violence into media consumption for Western audiences and ultimately, Meger argues, this results in a commodification of sexual violence.<sup>144</sup>

Meger’s example of the nexus between states (such as Australia and the United Kingdom) promoting an end of sexual violence in conflict in international forums whilst defunding their national domestic violence initiatives, is used to demonstrate the need

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<sup>138</sup> Cerretti, ‘Rape as a Weapon of War(riors),’ 797; Cohn and Enloe, ‘A Conversation with Cynthia Enloe,’ 1203.

<sup>139</sup> Van Schaack, ‘Intervention on Behalf of Women,’ 490.

<sup>140</sup> Harrington, *Politicization*, 1.

<sup>141</sup> Meger, ‘Fetishization of Sexual Violence.’

<sup>142</sup> Meger, ‘Fetishization of Sexual Violence.’

<sup>143</sup> Harrington, *Politicization*, paragraph 13.6

<sup>144</sup> Meger, ‘Fetishization of Sexual Violence,’ 153.

for healthy scepticism towards the intention behind states' actions.<sup>145</sup> This theory argues that military interest trumps those of the survivors and draws on the example of sexual violence perpetrated during the invasion of Kuwait, vividly described by President Bush's as "the rape of Kuwait."<sup>146</sup> This body of literature argues that, in the words of Enloe, "when on occasion women's liberation is wielded instrumentally by any masculinized elite as a rationale-of-convenience for their actions, we should be on high alert; they'll put it back on the shelf just as soon as it no longer serves their longer-range purpose."<sup>147</sup> Contributions to this body of literature argue that the political usurpation of doctrines, such as the Responsibility to Protect, which were designed in part to protect women, has resulted in confusion of their applicability and state responsibility to respond. Crises such as the Rohingya genocide and the conflict in Darfur were marred by political debates on the applicability of the term genocide, eclipsing the need to protect women.<sup>148</sup>

Additional criticism of the feminist approach to conflict comes from the field of 'gendercide' theory, which seeks to centre the act of killing and the vulnerabilities of non-combatant men aged fifteen to fifty-five to this act of genocide; termed "gender-selective mass killings."<sup>149</sup> Developed primarily by Adam Jones, the literature of the 'gendercide' theory challenges the feminist-driven focus on the link between repressive patriarchal structures in society and law, and the treatment of women in conflict, and posits the argument that male experiences during genocides has gone ignored by public policy and academia.<sup>150</sup> Jones' theory primarily centres male victimhood as a counter to a perceived over-focus on female victimhood.<sup>151</sup> 'Gendercide' problematises the feminist standpoint broadly, as well as the analysis of societal imbalances; one such example is the "shameful" (as Jones describes it)

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<sup>145</sup> Meger, 'Fetishization of Sexual Violence,' 154.

<sup>146</sup> Cerretti, 'Rape as a Weapon of War(Riors),' 796-7.

<sup>147</sup> Cohn and Enloe, 'A Conversation with Cynthia Enloe,' 1203.

<sup>148</sup> Southwick, 'Straining to Prevent,' 130.

<sup>149</sup> Adam Jones, 'Gendercide and Genocide,' *Journal of Genocide Research* 2, no. 2 (2000), 185-186.

<sup>150</sup> Jones, 'Gender and Genocide,' 185.

<sup>151</sup> For an early example of the basis of this theory, see: Adam Jones, 'Does "gender" make the world go round? Feminist critiques of international relations,' *Review of International Studies* 22, no. 4 (1996), 427.

Amnesty International report, *Shattered Lives*, on post-genocide Rwandan women. This report evidences socio-economic strains experienced by women as a result of the death of male breadwinners.<sup>152</sup> The feminist literature would arguably find fault with Jones' perception and the description of women victims of rape, where not also killed, as "survivors" in contrast to male victims of killings who are the "victims" in genocides.<sup>153</sup> However, this theory of 'gendercide' does contribute the need to examine male victims of sexual violence, which is beyond the scope of this thesis. In the most recent contribution to this body of literature which critiques the feminist lens, Jones wrote in 2018 that a lack of prosecution of rape as a method of genocide is, in part, indicative of the problematic conceptualisation in international law that rape can be genocidal despite the *Akayesu* precedent.<sup>154</sup> This, therefore, aligns the theory of 'gendercide', or more specifically Jones' theory, to the sceptical approach to rape as an act of genocide seen in the work of Schabas detailed above. The theoretical criticism is discussed in greater detail in the following 'Methodology'.

## Women at the United Nations

There has been recent growth in the body of literature which examines the history of women and female advocacy at the United Nations and the League of Nations. In-depth research by academics such as Immi Talgren,<sup>155</sup> Rebecca Adami,<sup>156</sup> and Carol Harrington<sup>157</sup> 'ask the woman question' of the history of international cooperation and the United Nations. This literature evidences female-shaped gaps in history, and successfully exposes the advocacy work of women and women's

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<sup>152</sup> Adam Jones, 'Gender and Genocide in Rwanda,' in *Gendercide and Genocide*, ed. Adam Jones (Nashville: Vanderbilt University Press, 2004), 123

<sup>153</sup> Jones, 'Gender and Genocide in Rwanda,' 119-120, 128.

<sup>154</sup> Adam Jones, 'Gendering Rwanda: Genocide and Post-Genocide,' *Journal of International Peacekeeping* 22 (2018), 224.

<sup>155</sup> Tallgren, 'Absent or Invisible?,' 382.

<sup>156</sup> See: Adami, *Women and the Universal Declaration*; Rebecca Adami and Dan Plesch, eds., *Women and the UN: A New History of Women's International Human Rights* (EBook, London: Routledge, 2022) <https://doi.org/10.4324/9781003036708>.

<sup>157</sup> Harrington, *Politicization*, 241.

organisations. This area of research has focused on charting the female history of activism and intellectual input at the UN and the international level. Illustrating this gap in academic knowledge, Immi Tallgren makes the point in her 2020 essay featured in the edited volume *Dawn of a Discipline: International Criminal Justice and Its Early Exponents*, 'Absent or Invisible' that "the table of contents [of the volume] contained no chapters on female intellectuals or professionals."<sup>158</sup> This echoes a point made fifteen years earlier by Devaki Jain, who noted that the story of women's contributions within the UN is often "collapsed" with the narrative of female emancipation rather than embedded in the wider history.<sup>159</sup> Her research illustrates how feminists in the early days of the UN manoeuvred, strategised, and joined together to begin to realise gender equality at the UN.<sup>160</sup> The historical analysis from Harrington examines the different strategies employed by feminist activists throughout history to raise the profile of women's issues and how they adapted to contemporary politics and science.<sup>161</sup>

The recognition of international women's organisations as a source of expertise on the topic of sexual violence began to develop during the outbreak of World War One and continued on in the League of Nations.<sup>162</sup> Interestingly, and something which will be returned to in this body of this thesis, Harrington's research concludes that international women's organisations took little interest in the issues of rape and forced prostitution which occurred during World War Two.<sup>163</sup> Harrington notes how, despite the prevalence of accounts of sexual violence during the war, post-war women's rights organisations did not take up the cause.<sup>164</sup> International feminist movements and women's organisations in the inter-war period has received some scholarly attention, and a body of work has built up around the interactions with these groups and the League of Nations. Prior to the early 1990s, Carol Miller suggests that the lobbying for

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<sup>158</sup> Tallgren, 'Absent or Invisible?', 382.

<sup>159</sup> Jain, *Women, Development*, 1.

<sup>160</sup> Jain, *Women, Development*, 34.

<sup>161</sup> Harrington, *Politicization*.

<sup>162</sup> Harrington, *Politicization*.

<sup>163</sup> Harrington, *Politicization*, 241.

<sup>164</sup> Harrington, *Politicization*.

the League of Nations to recognise the equal rights of women, to be enshrined in a treaty, has been largely overlooked by historians.<sup>165</sup>

The story of women at the early years of the United Nations has been a relatively new addition to this body of historical literature; Hilikka Pietilä notes how engagement on the topic of women at the UN began relatively late in the 1990s.<sup>166</sup> Rebecca Adami and Dan Plesch's edited volume sits at the forefront of this literature, with their edited book *Women at the UN: A New History of Women's International Human Rights* published in 2022 as the most recent addition to the literature on the role at the UN and at the creation of the UDHR.<sup>167</sup> Academics such as Katherine M. Marino, whose book *Feminism for the Americas: The Making of an International Human Rights Movement* provides vital context to Chapter 7 of this thesis, and Khushi Singh Rathore who brings attention to Vijaya Lakshmi Pandit also discussed in this thesis, contribute their research to Adami and Plesch's volume. Similar with the aims of this thesis, Adami and Plesch's book draws attention to women from the Global South and "unearthing the hidden history of women in shaping human rights internationally through the UN."<sup>168</sup> Adami's research has looked at Shaista Ikramullah, Amalia de Castillo Ledón, and Margery Corbett Ashby, and their involvement with creating and influencing the UDHR.<sup>169</sup> In contrast, this thesis focuses on their roles supporting and advocating for the Genocide Convention. As this thesis will explore, there remains a gap in these women's involvement with the Genocide Convention.

Immi Tallgren's work has tackled the same question as this thesis, which is: where are the women in this history? Tallgren exposes the history of female attorneys and assistant prosecutors at Nuremberg and Tokyo, and she even notes the important work of WILPF at the early stages of the development of international law, although

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<sup>165</sup> Carol Miller, "'Geneva – the Key to Equality': Inter-War Feminists and the League of Nations,' *Women's History Review* 3, no. 2 (1 June 1994), 219–45, <https://doi.org/10.1080/09612029400200051>.

<sup>166</sup> Hilikka Pietilä, *Engendering The Global Agenda: The story of women and the United Nations* (Geneva: UN Non-Governmental Liaison Service, 2002), 1.

<sup>167</sup> Adami, *Women and the Universal Declaration*; Adami and Plesch, *Women and the UN*.

<sup>168</sup> Rebecca Adami, Dan Plesch, and Amitav Acharya, 'Commentary: The restorative archaeology of knowledge about the role of women in the history of the UN – Theoretical implications for international relations,' in *Women and the UN*, eds. Adami and Plesch, 161.

<sup>169</sup> Adami, *Women and the Universal Declaration*.

does not develop this point further.<sup>170</sup> Fundamentally, Tallgren asks how the absence of a history of women in international criminal law link with the feminist scholarship?<sup>171</sup> She invites further investigation on this gap in history, which this thesis will attempt to address in genocide scholarship,<sup>172</sup> and welcomes a reconceptualisation of women as active in the history of international criminal law. This addition, the literature asks what difference would it make to introduce this microhistory into international criminal law, stating that “[w]omen were not absent nor were they invisible, however, as the traces and echoes presented [in her essay] demonstrate.”<sup>173</sup> Through her research into the microhistories, Tallgren argues that the politics of memory and identity are at stake, a theme central to the feminist methodology of this thesis.<sup>174</sup> This body of literature illustrates the scale of absence of this female history at the international level, in addition to speaking to the need to rectify this.

## Sociology and genocide

The discipline of sociology has analysed the theory and acts of genocide, placing Lemkin’s original theories of genocide at the centre of analysis, opposing a purely legal perspective of the crime. Central to the argument of this body of work is the common themes between Lemkin’s original theory and core sociological values, discussed in this section of the chapter. In this way, it broadens the scope of ‘genocide’ beyond the Positivist legal conceptualisation. Much of the sociological engagement with gender and the crime of genocide has centred on the impacts of rape and sexual violence. Many academics such as De Vito, Short, and Gill,<sup>175</sup> Claudia Card,<sup>176</sup> and Ronit

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<sup>170</sup> Tallgren, ‘Absent or Invisible?’, 384-385.

<sup>171</sup> Tallgren, ‘Absent or Invisible?’, 387.

<sup>172</sup> Tallgren, ‘Absent or Invisible?’, 388.

<sup>173</sup> Tallgren, ‘Absent or Invisible?’, 413.

<sup>174</sup> Tallgren, ‘Absent or Invisible?’, 413.

<sup>175</sup> Daniela De Vito, Damien Short, and Aisha Gill, ‘Rape Characterised as Genocide,’ *International Journal on Human Rights* 9, no. 3 (September 2017).

<sup>176</sup> Card, ‘Rape as a Weapon.’

Lentin<sup>177</sup> approach acts of genocide and gendered harms in its many forms, including rape, through this sociological lens. What is particularly relevant about the sociological study of the theory of genocide, is that it avoids the pitfalls highlighted by the feminist analysis of reducing women to their traditional, heterosexual gender-normative roles of motherhood and reproductive abilities. This literature does not seek to discredit analysis of rape or the destruction or manipulation of women's biological ability to reproduce. Instead, sociology contributes a more contextualised, gendered, and comprehensive understanding than the pure legalistic school of thought stemming from the international legal discipline. The analysis provided by Schott, for example, demonstrates clearly the impact these harms have on the group.<sup>178</sup>

This section of the literature review will begin by examining the first contribution of sociologist and feminist to the topic of genocide, Jessie Bernard. In her monograph *American Community Behavior*, Bernard discusses the methods of genocide, and of particular interest is her focus on birth control and the racial fears of being over-populated by another race.<sup>179</sup> "Competitive population programmes" employed by industrialised countries emphasised the need to increase the birth rate and population of their country, upon which their national survival depends.<sup>180</sup> There are strong fears within these countries of being "outbred."<sup>181</sup> Bernard also notes that, as a result of this fear and the use of population programmes as a tool of genocide, underfeeding of populations in occupied territories was a low-cost effort of keeping the population down in Nazi-occupied countries.<sup>182</sup> Meiches also adds to this sociological interpretation by drawing on the history of racism in America and the charge of genocide brought against the country in the 1950s, linking the concept of

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<sup>177</sup> Lentin, 'The Rape of the Nation.'

<sup>178</sup> Robin May Schott, 'War Rape, Natality and Genocide,' *Journal of Genocide Research* 13, no. 1–2 (June 2011), <https://doi.org/10.1080/14623528.2011.559111>.

<sup>179</sup> Jessie Bernard, *American Community Behavior: An Analysis of Problems Confronting American Communities Today*. (New York: Dryden Press, 1952), 637-8.

<sup>180</sup> Bernard, *American Community Behavior*, 637-8.

<sup>181</sup> Bernard, *American Community Behavior*, 640.

<sup>182</sup> Bernard, *American Community Behavior*, 652.

racism to genocide.<sup>183</sup> She cites Lemkin's analysis of the influx of pornographic materials into Poland (along with relaxing gambling restrictions) as effective in destroying a community by means of doing "the opposite of what keeps it functional."<sup>184</sup> There is an assumption here that pornography is one tool to create a non-functioning society, as we shall see in Chapter 5 of this thesis.

Elements of sociology's contribution to genocide studies literature seeks to establish the role of ethnicity in crimes of genocide such as sexual violence; is it possible for a crime against a person such as rape also be a crime against a group? This debate was brought to the forefront by Lentin who argues for the repositioning of sexual violence to gender violence in order to bring in the ethnic and national identities which are, she argues, missing from the feminist legal historian's analysis.<sup>185</sup> The social construction of gender is inherent in genocidal rape, which in itself is gendered, Lentin argues.<sup>186</sup> Adding to this debate, a later article by De Vito, Gill and Short explores how it is possible to marry-up the crime of rape against an individual with the crime of genocide against a whole group (a concept which Copelon<sup>187</sup> struggled with); eventually the crime becomes subsumed into a crime against a group.<sup>188</sup> It is important, according to their argument, that where appropriate rape should be considered an act of genocide "for the sake of the victims and / or to reflect more precisely the context of a particular genocide."<sup>189</sup> This is in response to the dilemma posed by Russell-Brown; "there is also a fear that 'genocidal rape' will result in the female victim of rape becoming the object of the crime or that her subjectivity will be denied, for example, that the female victim will be viewed as the object of a crime that it ultimately or fundamentally perceived as a crime against a particular

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<sup>183</sup> Benjamin Meiches, 'The Charge of Genocide: Racial Hierarchy, Political Discourse, and the Evolution of International Institutions,' *International Political Sociology* 13, no. 1 (March 2019), <https://doi.org/10.1093/ips/oly030>.

<sup>184</sup> Bernard, *American Community Behavior*, 652-3.

<sup>185</sup> Lentin, 'The Rape of the Nation.'

<sup>186</sup> Lentin, 'The Rape of the Nation.'

<sup>187</sup> Copelon, 'Surfacing Gender.'

<sup>188</sup> De Vito, Short, and Aisha, 'Rape Characterised as Genocide.'

<sup>189</sup> De Vito, Short, and Aisha, 'Rape Characterised as Genocide,' 38.

group, rather than against that individual woman.”<sup>190</sup> Hagan et al. contribute to this debate with the conclusion that “gender and race are both parts of the patriarchal practice of genocide” following a discussion on the rape of women in the Darfur region of Sudan.<sup>191</sup>

Beyond this, sociology literature attempts to understand the reason that individuals commit or incite rape and sexual violence. Some academic contributions to this body of literature make the suggestion that sexual violence and rape during conflict is about dominance over the territory of the enemy, going beyond the feminist theories of the reasons for rape espoused in the 1990s, such as Lentin, as discussed earlier in this chapter.<sup>192</sup> A different argument posited by Claudia Card, developer of the concept of genocide as a “social death”<sup>193</sup> which has been cited by many<sup>194</sup> as the cornerstone of the sociological approach to genocide scholarship, suggests an analysis of rape and ‘intent’ through the prism of the chain of command; those lower in the chain of command who are perpetrating the rape may not have the same intent, Card argues, as those at the top to destroy the social group.<sup>195</sup> This theory is also echoed in MacKinnon’s article ‘Genocide’s Sexuality’.<sup>196</sup> Card diverges from the other scholars in her analysis of rape, by examining the immediate reason for male soldiers to commit rape; unlike feminist legal scholars discussed earlier who examine the wider societal context which permits these acts, Card cites a testimony from a soldier who was threatened with extreme punishment by his superior officer if he did not comply with the directions to rape and murder.<sup>197</sup> The public policy academic Dara Kay Cohen also takes this line of examination that focuses on the perpetrator, concluding that

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<sup>190</sup> Russell-Brown, ‘Rape as an Act of Genocide,’ 363.

<sup>191</sup> Hagan, Rymond-Richmond, and Parker, ‘The Criminology of Genocide,’ 552.

<sup>192</sup> Lentin, ‘The Rape of the Nation.’

<sup>193</sup> Claudia Card, ‘Genocide and Social Death,’ *Hypatia: A Journal of Feminist Philosophy* 18, no. 1 (December 2003), 63–79.

<sup>194</sup> For example: James Snow, ‘Claudia Card’s Concept of Social Death: A New Way of Looking at Genocide,’ in *Criticism and Compassion*, eds. Robin S. Dillon and Armen T. Marsoobian (Oxford, UK: John Wiley & Sons, Ltd, 2018), 133–51, <https://doi.org/10.1002/9781119463030.ch9>; Schott, ‘War Rape, Natality and Genocide’.

<sup>195</sup> Card, ‘Rape as a Weapon,’ 10.

<sup>196</sup> MacKinnon, ‘Genocide’s Sexuality,’ 314.

<sup>197</sup> Card, ‘Rape as a Weapon,’ 10.

“combatant socialization” explains the use of rape in conflict.<sup>198</sup> Card also writes how women in patriarchies are easy victims as a result of the power dynamics, and the desire to protect women which goes to the heart of what we now know as gendered harms. Card’s original concept of “social death” is expanded to include the social bonds between a group which can be severed through sexual violence and rape.<sup>199</sup>

### **Sociology of human rights and social constructivism**

This thesis is, in part, influenced by the argument championed by human rights sociologists such as Michael Freeman who posit the theory of social constructivism. This section will discuss theoretical components of this theory as relevant to this thesis. Central to this body of literature is the understanding that rights are products of “social interactions, with all its imbalances and imperfections.”<sup>200</sup> International human rights law is formed by (and therefore is reflective of) political governments and systems of power.<sup>201</sup> In the words of Rhiannon Morgan, the institutionalisation of rights in legal form is usually the process to which rights can be attributed.<sup>202</sup> Social constructionists argue that, as rights are results of social processes, it is necessary to study those involved in creating the rights, such as individuals and social movements.<sup>203</sup>

The sociology of law body of literature discusses the cultural shifts following the Holocaust, which resulted in international cooperation which birthed the Genocide Convention, in terms of human rights norms and individual criminal liability in such

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<sup>198</sup> Dara Kay Cohen, ‘Explaining Rape during Civil War: Cross-National Evidence (1980-2009),’ *The American Political Science Review* 107, no. 3 (2013), <https://doi.org/10.1017/S0003055413000221>.

<sup>199</sup> Card, ‘Rape as a Weapon.’

<sup>200</sup> Damien Short, ‘6. Sociological and Anthropological Approaches,’ in *Human Rights: Politics and Practice*, ed. Michael E. Goodhart (Oxford: Oxford university Press, 2016), 103.

<sup>201</sup> Freeman, cited in Short, ‘Sociological,’ 95.

<sup>202</sup> Rhiannon Morgan, *Transforming Law and Institution: Indigenous Peoples, the United Nations and Human Rights* (Routledge: Oxford, 2016), 37.

<sup>203</sup> Short, ‘Sociological,’ 96-97.

offences.<sup>204</sup> In short, international courts came to reflect a newly-recognised notion of human dignity and modernity.<sup>205</sup> This echoes eminent social constructionist Bryan Turner who championed the concept of human vulnerability, and how our increasing awareness of this vulnerability is a driver of institution-building, in order to protect this vulnerability and “attain security.”<sup>206</sup> Vulnerability, for Turner, not only defines our humanity but also has close connections with suffering and “notions of virtue” which includes “the conditions that make human society possible.”<sup>207</sup> Turner’s early publications theorised the existence of “collective sympathy” as a response to the vulnerability of humans; people want their rights to be recognised because they witness the suffering of those whose rights are not recognised.<sup>208</sup>

In a turn to focus on international law, Savelsberg argues that the IMT became a forum to share images and symbols to illustrate an “evil” which was in direct conflict with the conceptualised modern human dignity; this was a cultural trauma as recognised in international law, Savelsberg suggests.<sup>209</sup> As this thesis explores, human vulnerability and the desire to build institutions to secure from attacks on these vulnerabilities is a cornerstone of Lemkin’s theory of genocide and forms elements of the nebulous concept of moral techniques of genocide. Further, Turner’s theory of “collective sympathy” is a theme which runs through this thesis most notably in Chapters 3,4, and 5.

This sociological standpoint seeks to include additional analysis from politics, economics, ethics and beyond, into studies of the origins and consequences of human rights law.<sup>210</sup> For Freeman, “social action” is a key component of the sociological study

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<sup>204</sup> Joachim J. Savelsberg, ‘Chapter Thirteen: Crime, law and deviance,’ in *The Handbook of Sociology and Human Rights*, eds. David L. Brunnsma, Keri E. Iyall Smith, and Brian K. Gran (Boulder, Colorado: Paradigm Publishers, 2013), 134.

<sup>205</sup> Savelsberg, ‘Crime,’ 135.

<sup>206</sup> Bryan S. Turner, *Vulnerability and Human Rights* (State College: Penn State University Press, 2006), 26, 28.

<sup>207</sup> Turner, *Vulnerability*, 6.

<sup>208</sup> Bryan S. Turner, ‘Outline of a Theory of Human Rights,’ *Sociology* 27, no. 3 (August 1993), 506.

<sup>209</sup> Savelsberg, ‘Crime,’ 135.

<sup>210</sup> <sup>210</sup> Michael Freeman, *Human Rights: An interdisciplinary approach* (Cambridge: Polity Press, 2011), 78.

of international human rights.<sup>211</sup> Human rights, Freeman maintains, have historically been normative in their prescription of how people should behave, and the study of political sociology of law helps researchers understand social movements and their interaction with these laws.<sup>212</sup> As Nash puts it, the social constructivist school of thought in human rights places value on the pressure which NGOs can exert on governments and decision-makers to ensure human rights adherence in both 'soft' and 'hard' laws.<sup>213</sup> Sympathy, personal relationships, and the willingness of representatives to assist, are all vital components to lobbying for at the UN; this is an important consideration when we examine the role of relation-building in Lemkin's own lobbying but also his use of existing relationships within these women's organisation.<sup>214</sup> Both the influence of NGOs on ensuring human rights and the social construction of human rights laws are reflected in the chapters of this thesis.

Sociology's contribution to genocide studies goes beyond the international legal debates and returns to Lemkin's original theories, allowing for the examination of cases and contexts which have traditionally been outside the remit of pure legal analysis. These show an example of sociology going beyond the often-restrictive parameters of legal genocide scholarship, both thematically and in case studies.

## Conclusion to literature review

This chapter provided an exploration of the different bodies of literature and disciplines which have informed this thesis' research. It categorised this literature together and drew out common themes as well as debates. Firstly, this chapter argued that biographies of Lemkin and histories of the creation of the Convention have ignored the female history, despite prior archival work conducted on the origins of the

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<sup>211</sup> Freeman, *Human Rights*, 77.

<sup>212</sup> Freeman, *Human Rights*, 76-77.

<sup>213</sup> Kate Nash, *The Political Sociology of Human Rights* (Cambridge: Cambridge University Press, 2015), 7.

<sup>214</sup> Morgan, *Transforming Law*, 41.

theory of genocide. In spite of this gap, much of the research in this field provides a basis for research in this thesis.

The tension between genocide scholarship and gender was also discussed in this chapter; by examining this literature this chapter posited that there has been slow acceptance of a gender lens as an analytical tool within genocide studies is reflected in the gender disparity in high-level positions in genocide studies bodies, discussed in the introduction of this thesis, and recognised in literature. The conflicts in Rwanda and former Yugoslavia and the subsequent ICTR and ICTY trials proved a turning point in the approach to gender and genocide. Despite this, however, this chapter points to a lack of mainstreaming of gender within genocide studies. This chapter then turned to international law, firstly to Schabas' analysis of the Convention and the ICC in which this lack of gender mainstreaming was illustrated in his early rejection of rape as an act of genocide. The primacy of killing as an act of genocide over other acts was not a unanimous opinion in international law, however. This chapter chose to highlight the contributions of this literature which traces the engagement with gendered crimes through international law, and key to this thesis was the examination of the importance of individuals in gaining this recognition. This chapter explored the more recent developments in this field of research which have adopted an appreciation of the gender lens in international law.

The seminal texts of early feminist legal academics in the 1990s and 2000s were included in this chapter. The theories developed by this body of work, such as the rejection of a heteronormative conceptualisation of women as mothers and caregivers and solely as biological reproducers, is fundamental to the analysis in this thesis. This chapter argued for the adoption of this analytical framework in order to deconstruct the conceptualisations of women held by the drafter of the Convention and in the creation of the theory of genocide. The feminist lens which this body of work provides to the history of gendered crimes in conflict is vital to this research also, and the key additions in this body of literature was outlined in this chapter.

This chapter drew on academic work which illustrated the need to expand our analysis of harms beyond sexual violence to include gendered harms experienced by

women as a result of their particular vulnerabilities. The low socio-economic and political positions of women was an example of the vulnerabilities as well as the feminist analysis of the gender roles requiring women to take more of the caregiving responsibilities. This body of literature is vital to this thesis as, as this chapter contended, the harms experienced by women does not end with sexual violence. Literature which posits that a sole-focus on sexual violence also reverts women to their heteronormative roles as biological reproducers rather than individual women, was discussed. It is maintained in this research that this is a vital understanding to the conceptualisation of women in the Convention also.

What this chapter has illustrated is the existing research which this thesis draws on to form its analysis as well as historical research into the creation of the Convention and Lemkin's life. The gender-genocide research has explored the gendered impacts of genocides. What is missing from this body of literature, however, is a feminist exploration of the creation of the Convention. The historical research into the history of the creation of genocide and the Convention still has female-shaped gaps as demonstrated in this chapter. This female gap in this history is where the research in this thesis sits.

## **Feminist research: theory, data collection and analysis**

### ***Introduction***

A feminist approach to historical data collection is adopted for this research, which will now be discussed. Research methodology is the philosophical underpinning to research, and this chapter will now examine the research methodology used in this research.<sup>215</sup> Feminist epistemic theory, the feminist "theory of knowledge," provides the assumptions about the world; in this thesis this is a male-dominated society which

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<sup>215</sup> Roger Sapsford, 'Methodology,' in *The SAGE Dictionary of Social Research Methods*, ed. Victor Jupp (Ebook, London, UK: SAGE Publications, 2006), <https://doi.org/10.4135/9780857020116>, 118.

has created a male-centric history,<sup>216</sup> and that societal gender inequality is mirrored in gender inequality in the international legal system.<sup>217</sup> This forms the feminist theory-derived methodology of this thesis, the “theory of how research is done or should proceed.”<sup>218</sup> For the research in this thesis this a female-centric study of this history, placing women at the centre of analysis. The methods of data gathering are informed by the feminist theory and methodology, as this chapter will explore.<sup>219</sup> This research is an exploration of suggested potential female input into the creation of our understanding of the crime of genocide and seeks to ‘ask the woman question’ of the history of the theory of genocide and the subsequent law outlawing genocide. This chapter will now explore feminist theory as a guide for this research and situating this research in feminist theory. Following this, this chapter then states and justifies the methods of data collection and analysis. This chapter will detail the feminist theory which guides the direction of this research and the analytical tools which stem from feminist methodology.

This thesis adopts a predominantly qualitative research method. A qualitative approach has been selected as it is suited to a study of different perspectives.<sup>220</sup> It is only through a study of different historical perspectives that this research can ascertain whether women’s experiences and voices have been excluded from genocide history. Data collection is conducted using mostly archival research methods but also secondary sources. As demonstrated herein, this brings numerous advantages to the study of gendered harms and the study of genocide. As acknowledged by Hesse-Biber et al. as key to feminist researchers, no method of knowledge-gathering is better or worse than others.<sup>221</sup> Therefore, this thesis has adopted different methodological

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<sup>216</sup> Abigail Brooks and Sharlene Nagy Hesse-Biber, *Feminist Research Practice* (Thousand Oaks: SAGE Publications, 2007), 3-4, <https://dx.doi.org/10.4135/9781412984270>.

<sup>217</sup> Charlesworth and Chinkin, *Boundaries*, 14.

<sup>218</sup> Brooks and Hesse-Biber, *Feminist Research Practice*, 3-4.

<sup>219</sup> Brooks and Hesse-Biber, *Feminist Research Practice*, 3-4.

<sup>220</sup> Taylor and Bogdan, *Introduction*, 19.

<sup>221</sup> Sharlene Nagy Hesse-Biber, Michelle L. Yaiser, and P Leavy, ‘Feminist Approaches to Research as a Process. Reconceptualizing Epistemology, Methodology, and Method,’ in *Feminist Perspectives of Social Research*, eds. Sharlene Nagy Hesse-Biber and Michelle L. Yaiser (Oxford: Oxford University Press, 2004), 11.

approaches depending on the type of data being collected and the sources, with a central feminist foundation.

### **The theory of feminist research**

The theoretical framework and lens provided by feminist-driven research is adopted throughout this thesis. The guiding theory of this thesis, and the framework which informed the research questions and design, is feminist research. Feminist methodology is concerned with the activist implications of research, and of rejecting the dominance of legal positivist thought, and is interdisciplinary in nature.<sup>222</sup> Feminist research has political activism and advocacy as tenets of its methods.<sup>223</sup> It is expected within feminist methodological work that research is conducted to expose wrongs and seek change, and begins to address the fact that women have traditionally been hidden from mainstream scholarship.<sup>224</sup> Feminist research in international law challenges the notion of objectivity within the masculine-dominated legal system and laws, and seeks change to this traditional imbalance,<sup>225</sup> seeking out and addressing the blind spots of international law which are often occupied by women.<sup>226</sup> Feminist scholarship is “built on the premise of challenging hierarchical modes of creating and distributing knowledge” and on examining women’s experiences.<sup>227</sup> It adopts a critical approach to traditional knowledge and to the legal Positivist core principle of objective and value-neutral research.<sup>228</sup> In other words, feminist scholarship is distinctively and overtly partial.<sup>229</sup> Adopting a feminist lens for archival research is inherently radical in

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<sup>222</sup> Naomi Creutzfeldt, Marc Mason, and Kirsten McConnachie, ‘Socio-Legal Theory and Methods: Introduction,’ in *Routledge Handbook of Socio-Legal Theory and Methods*, eds. Naomi Creutzfeldt, Marc Mason, and Kirsten McConnachie (London: Routledge, 2019).

<sup>223</sup> Hesse-Biber, Yaiser, and Leavy, ‘Feminist Approaches,’ 3; Creutzfeldt, Mason, and McConnachie, ‘Socio-Legal Theory,’ 36.

<sup>224</sup> Hesse-Biber, Yaiser, and Leavy, ‘Feminist Approaches,’ 3.

<sup>225</sup> Charlesworth, ‘Feminist Methods.’

<sup>226</sup> Hodson, ‘A Feminist Approach.’

<sup>227</sup> Hesse-Biber, Yaiser, and Leavy, ‘Feminist Approaches,’ 3.

<sup>228</sup> Hesse-Biber, Yaiser, and Leavy, ‘Feminist Approaches,’ 3-5.

<sup>229</sup> Hodson, ‘A Feminist Approach,’ 148.

its desire to change established methodologies and write women back into history.<sup>230</sup> It is a requisite for feminist methodologies in historical research to challenge the norm which has thus far excluded half of the population, and to begin to address this gap in history.<sup>231</sup>

The use of a specifically feminist research method for this research is its identification and subsequent rejection of the pervasive 'universal woman' throughout research, a lack of contextual awareness within social research which has created the universal category of homogeneous 'woman' defined only by their relationship to men.<sup>232</sup> The failure to properly and fully understand the differences between women, for example race, sexuality, class, has led researchers to understand women's experience as one collective which is often Western, white, privileged and heterosexual.<sup>233</sup>

By avoiding unnecessary subscription to narrower feminist schools of thought, such as 'radical' and 'cultural' feminism, this research borrows theories from different feminist philosophies to allow a broader and more contextualised analysis. Competing feminist scholarship, as Harding notes, informs one another, allowing the researcher to "learn from all of them."<sup>234</sup> It is even expected, writes Hodson, that feminist legal scholars use different approaches to their research rather than subscribing to categories, using feminist methodologies as a "toolkit" instead of a "roadmap."<sup>235</sup> The recognition that feminist aims can, and should, be achieved through the law is a liberal feminist theory (or more specifically "second wave" liberal feminism).<sup>236</sup> This thesis asks whether a greater gender representation in the drafting of the Convention would have resulted in a more feminist Genocide Convention. This fits within a liberal

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<sup>230</sup> Wu, 'Rhetorical Women,' 130–44.

<sup>231</sup> Wu, 'Rhetorical Women,' 134-135.

<sup>232</sup> Hesse-Biber and Yaiser, 'Difference Matters.'

<sup>233</sup> Hesse-Biber and Yaiser, 'Difference Matters.'

<sup>234</sup> Sandra Harding, 'Rethinking Standpoint Epistemology. What Is "Strong Objectivity"?', in *Feminist Perspectives on Social Research*, eds. Sharlene Nagy Hesse-Biber and Michelle L. Yaiser (Oxford: Oxford University Press, 2004), 48.

<sup>235</sup> Hodson, 'A Feminist Approach,' 146.

<sup>236</sup> Rosemarie Tong, *Feminist Thought: A More Comprehensive Introduction* (Ebook, Legal Deposit, Milton, United Kingdom: Taylor & Francis Group, 2017), 26–29.

feminist framework, and this thesis borrows from this school of thought in order to analyse legal texts. However, the liberal feminist's argument that men and women should be treated equally in international law<sup>237</sup> (thus not recognising gendered harms or women's existing vulnerabilities) is challenged in this thesis. Additionally, radical feminist analysis is also drawn on throughout this thesis, such as the analysis of the use of pornography in genocides and the problematising of heteronormative conceptualisations of women and their role in society.<sup>238</sup> The argument posited by radical feminists that 'feminine' qualities have been imposed upon women<sup>239</sup> is also adopted in this thesis as a method of analysing male conceptualisations of women and the role which childbearing has. Furthermore, intersectional feminist thought is adopted in the analysis of gendered harms and the applicability of the Genocide Convention's notions of morality. As stated above, the differences between women (race, class, geography for example) are a crucial layer of analysis in this thesis. Demonstrably, therefore, this thesis takes a pragmatic approach to feminist research by adopting the different tools from the feminist toolkit.

It is important to indicate here that elements of feminist research methodology and theory remain contentious within some sections of the field of genocide studies and that the feminist methodology has been critiqued, as we will now explore. Adam Jones' 'gendercide' theory takes a critical approach to feminist research, positing that the feminist-driven over-focus on women and sexual violence against women in academia has obscured the vulnerability of men in genocides, resulting in men (or masculinity) becoming underrepresented in feminist literature, and men have been cast solely as aggressors.<sup>240</sup> This theme, Holter argues, considers men as expendable (their deaths an inevitable consequence) or that men themselves do not care.<sup>241</sup> These criticisms seek to illustrate the flaws of this theory, arguing that the feminist standpoint comes from an emancipatory context; women's social status (and the

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<sup>237</sup> Charlesworth and Chinkin, *Boundaries*, 39.

<sup>238</sup> Tong, *Feminist Thought*, 39.

<sup>239</sup> Charlesworth and Chinkin, *Boundaries*, 42.

<sup>240</sup> Jones, 'Does "gender"', 418; Jones, 'Gender and Genocide,' 185-186.

<sup>241</sup> Øystein Gullvåg Holter, 'A theory of Gendercide,' in *Gendercide and Genocide*, ed. Adam Jones (Nashville: Vanderbilt University Press, 2004), 62.

patriarchal structures which encourage this status) are inherent in the decision to take a feminist standpoint, as well as rejecting the belief all feminist thought centres on men-as-oppressors.<sup>242</sup> The justification for adopting a feminist methodology and theoretical stance has been detailed herein, and premised on the evidenced existence of a patriarchal hierarchy of creating and distributing knowledge.<sup>243</sup>

In line with the feminist social research methods and Denzin and Lincoln's definition of an "interpretive *bricoleur*,"<sup>244</sup> it is important to maintain a self-reflection of the researcher's context, known within feminist social research as Reflexivity.<sup>245</sup> Reflexivity "is the process through which a researcher recognises, examines and understands how her social background, personality and assumptions effect the practice of research."<sup>246</sup> At the heart of this notion is the understanding of contextual differences between and among women and the fundamental understanding that there is no 'universal' woman; the author's context is different to the participant or the subject of study.<sup>247</sup> Researcher bias is naturally ubiquitous, and the need to take into consideration that the researcher, shaped by previous professional and academic focus on this topic, personal experiences, geography, gender and sexual orientation and more, is conducting this research in an academically privileged context which is far removed from any cases or testimonies under analysis.<sup>248</sup> This context is relevant to the research as the design of this research is reflective of the researcher's feminist beliefs. In line with the feminist research methodology outlined above, the author states that she is a middle-class, white, feminist, woman in both sex and gender, European researcher conducting this research within a higher education institution in London, UK. The primary questions addressed in this research are attributable to the

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<sup>242</sup> Terrell Carver, Molly Cochran, and Judith Squires, 'Gendering Jones: feminisms, IRs, masculinities,' *Review of International Studies* 24, no. 2 (April 1998), 284-285.

<sup>243</sup> Hesse-Biber, Yaiser, and Leavy, 'Feminist Approaches,' 3.

<sup>244</sup> Norman K. Denzin and Yvonna S. Lincoln, *Collecting and Interpreting Qualitative Materials* (Thousand Oaks, California: SAGE, 2008), 8.

<sup>245</sup> Hesse-Biber and Yaiser, 'Difference Matters,' 115-116.

<sup>246</sup> Hesse-Biber and Yaiser, 'Difference Matters,' 115.

<sup>247</sup> Of interest within the context of genocide studies is that Hesse-Biber and Yaiser, 'Difference Matters,' 111, note that what constitutes sexual acts also differs between cultures.

<sup>248</sup> Hilary Charlesworth, 'Feminist Methods in International Law,' *The American Journal of International Law* 93, no. 2 (1999) 379, <https://doi.org/10.2307/2997996>.

author's feminist leanings, which explains the feminist research design. The research has been designed to be inclusive but with feminist theory remaining at the core; methodologies which assist with this research are also included. By adopting feminist research methods to analyse legal texts and the discussion (or lack of discussion) on women's history or gendered harms, this research is able to critically analyse gender stereotyping within international legal norms such as the paramount importance placed on reproductive abilities and motherhood.<sup>249</sup> Ultimately, this research method is what Charlesworth termed "searching for silences" of women in international law and genocide studies, facilitating the use of this research in advocacy on the topic.<sup>250</sup>

### **Data collection: archival research method and legal text analysis**

*It is a rare treat to visit an archive, to hold in one's hands the priceless and irreplaceable documents of our unfolding human drama... Each archival visit is a journey into an unknown realm that rewards its visitors with challenging puzzles and unexpected revelations.*<sup>251</sup>

For data collection, archival research and legal text analysis is adopted. Fundamentally, this research adopts a deductive thematic analysis; it identifies common themes within the texts to be analysed, basing the research questions and design on the theory that women's histories are under-valued broadly, and specifically in genocide studies there is existing data to suggest there is more to this history (such as mentions of women in biographies or the existence of biological techniques within Lemkin's theory, discussed earlier in this chapter).<sup>252</sup> As Salvelsberg succinctly puts it,

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<sup>249</sup> Charlesworth and Chinkin, *The Boundaries of International Law*.

<sup>250</sup> Charlesworth, 'Feminist Methods.'

<sup>251</sup> Michael Hill, *Archival Strategies and Techniques* (Thousand Oaks: SAGE Publications, 1993), <https://doi.org/10.4135/9781412983471>.

<sup>252</sup> John W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (Thousand Oaks: SAGE Publications, 2017), 56; Greg Guest, Kathleen M. MacQueen, and Emily E. Namey, *Applied Thematic Analysis* (Ebook, Thousand Oaks: SAGE Publications, 2012), <https://dx.doi.org/10.4135/9781483384436.n1>.

“[m]erging insights from different data sources can only enrich our understanding of social phenomena generally and of grave human rights violations specifically.”<sup>253</sup>

This research is concerned with accessing and analysing historical documents, and therefore archival research methodology will be employed. Connors’ strategy for archival research is useful here; beginning with an observation or a question which needs to be answered, the researcher subsequently establishes the kind of data which needs to be uncovered in order to provide answers.<sup>254</sup> The research questions being answered through the use of archival research are:

**1) How were gendered harms understood within the concept of ‘barbarism’ as genocide’s theoretical predecessor?**

**2) How were gendered harms understood by Lemkin?**

**3) Were these gendered harms included and removed from the Genocide Convention?**

**4) In what ways were women influential in the ratification of the Genocide Convention?**

As to the second element of Connors’ strategy on the type of data to be collected, Ventresca and Mohr provide two questions in the analysis of archival materials: what types of materials will be selected for analysis?; how will those materials be analysed?<sup>255</sup> For this, Connors distinguishes between libraries (mostly printed and reprinted secondary sources) and archives (predominantly primary sources which exist nowhere else, and which were never meant to be published).<sup>256</sup> To answer the second element of Connors’ strategy on the kind of data, therefore, the author looks to both

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<sup>253</sup> Savelsberg, ‘Crime, law and deviance,’ 137.

<sup>254</sup> Robert J. Connors, ‘Dreams and Play: Historical Method and Methodology,’ in *Landmark Essays on Archival Research*, eds. Lynne Lewis Gaillet, Helen Diana Eidson, and Don Gammill Jr. (Routledge, 2016), 52.

<sup>255</sup> Marc J. Ventresca and John W. Mohr, ‘Archival Research Methods,’ in *The Blackwell Companion to Organizations* (Ebook, Oxford: Blackwell Publishing, 2017), 816, <https://doi.org/10.1002/9781405164061.ch35>.

<sup>256</sup> Connors, ‘Dreams and Play,’ 51-52.

primary materials in archives based in the UK and online, and secondary materials where they are compiled records and legal texts of official UN documents relating to the creation of the Convention such as the official collection of the *Travaux Préparatoires*.

The archives and libraries selected for a majority of the archival research were The British Library, The National Archives, the Gerritsen Collection, The Women's Library archives at LSE, Hansard, the United Nations Geneva archives, and the Center for Jewish History online archives. A mixture of official texts, personal accounts, and meeting recordings are the materials which are included throughout this thesis in order to answer the research questions. As a result of COVID, physical archival research was not possible at the UN in Geneva, although librarian-directed scanning of documents was used. To this point, Hill notes, archivist and librarian knowledge is one of three initial methods of archival research.<sup>257</sup> Keyword searches in the general catalogue are also initial methods of archival materials,<sup>258</sup> and was used in The National Archives and the United Nations catalogue to identify potentially useful documents and their common classification numbers in the archives, which was then used to identify other potentially useful documents. As Hill writes, "[w]hat gets entered into the general catalogue – and what does not – depends on the interests, mandates, and resources of past and present curators."<sup>259</sup> This is particularly relevant in the archival data collection for this research.

Documents from The Women's Library at LSE were identified and requested using this method in addition to requesting documents which did not contain key words but could potentially include interesting information; the author sought to 'cast a wide net' in these archives, seeking out "fortuitous discoveries" in additional collections.<sup>260</sup> Often, further archival collections which may be of use were identified during visits.<sup>261</sup>

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<sup>257</sup> Hill, *Archival Strategies*.

<sup>258</sup> Hill, *Archival Strategies*.

<sup>259</sup> Hill, *Archival Strategies*.

<sup>260</sup> Hill, *Archival Strategies*.

<sup>261</sup> Hill, *Archival Strategies*.

Furthermore, all of the Lemkin Collection documents in the Center for Jewish History were reviewed and compiled for analysis.

In order to present context to the qualitative analysis of the *Travaux Préparatoires*, a brief qualitative analysis of the collated documents was undertaken at the start of research on this topic. For this quantitative data, the two volumes of the *Travaux Préparatoires* housed in The British Library were reviewed twice, at first in order to identify the phrases and euphemisms, and subsequently in order to establish the extent to which understanding of these terms developed. Finally, using the search function in a digitised version of the *Travaux Préparatoires*, the quantitative data was checked and collated. Having identified the potentially gendered words and phrases, each were counted in order to provide a quantitative backdrop to the subsequent qualitative analysis.

Thematic analysis takes place in this legal text analysis, a focus on *what* is recorded in the texts.<sup>262</sup> In the first instance this is identifying key themes in the texts followed by identifying gendered harms (using a broad net), then determining common themes in the texts.<sup>263</sup> Chatterjee suggests considering preceding legal texts and the reason behind the creation of the legislation as methods of analysis.<sup>264</sup> This provides a framework for analysis of the content of official texts, and will be adopted in this thesis particularly in Chapter 4. Chatterjee also invites researchers to consider the “norm-making qualities of that Convention.”<sup>265</sup> This research will use this approach along with Connors’ strategy for archival research in order to find data to answer the research questions posed in this thesis.

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<sup>262</sup> Arthur P. Bochner and Nicholas A. Riggs, ‘Practicing Narrative Inquiry,’ in *The Oxford Handbook of Qualitative Research*, ed. Patricia Leavy (New York: Oxford University Press, 2014), 213.

<sup>263</sup> Guest, MacQueen, and Namey, *Applied Thematic Analysis*.

<sup>264</sup> Charles Chatterjee, *Methods of Research in Law* (London: Old Bailey Press, 2000), 40-41.

<sup>265</sup> Chatterjee, *Methods of Research*, 56.

## Triangulation

Triangulation is the use of multiple data sources or methodologies to “enhance the credibility of a research study” and develop a more “comprehensive understanding” of the research.<sup>266</sup> A significant benefit of triangulation is in raising the profile of perspectives from those traditionally overlooked.<sup>267</sup> Of Denzin’s four posited types of triangulation (data triangulation, investigator triangulation, theory triangulation, methodological triangulation), data triangulation and methodological triangulation are used in this thesis to different extents.<sup>268</sup> Data triangulation requires using multiple data sources in research for greater credibility (although this will not eliminate bias fully) and methodological triangulation is an adoption of multiple methods typically complementing qualitative with quantitative methodologies.<sup>269</sup> In the words of Hastings, methodological triangulation “should be viewed as a tool to enrich the process of inquiry and to allow multiple perspectives to emerge.”<sup>270</sup> Furthermore, importantly within the context of the feminist methodological rejection of Positivist thought, triangulation allows the researcher to gather wider additional data to deepen and expand their understanding of the research questions.<sup>271</sup>

This thesis employs data triangulation where possible. Corroboration of statements or actions recorded in the archival materials have been sought in other primary and secondary materials. For example, information on advocacy efforts contained in women’s organisations archives in The Women’s Library at LSE sought to be evidenced in data sources elsewhere such as The National Archives, Hansard, or secondary materials and discussed in the *Travaux Préparatoires* were explored further in biographies and other works. This is caveated, however, with the feminist

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<sup>266</sup> Neil J. Salkind, *Encyclopedia of Research Design* (Ebook, Thousand Oaks: Sage, 2010), <https://dx.doi.org/10.4135/9781412961288>, 1537.

<sup>267</sup> Salkind, *Encyclopedia of Research Design*, 1538.

<sup>268</sup> Norman Denzin, *The Research Act: a theoretical introduction to sociological methods* (E-Book, Legal Depot, Routledge, 2017), paragraph 835.9.

<sup>269</sup> Salkind, *Encyclopedia of Research Design*, 1537, 9.

<sup>270</sup> Salkind, *Encyclopedia of Research Design*, 1539.

<sup>271</sup> Salkind, *Encyclopedia of Research Design*, 1538.

methodological theory “searching for silences;”<sup>272</sup> the evidenced female-shaped gap in the history of the creation of the theory of and law of genocide presupposes a lack of mainstream engagement on female history, which in turn raises the question of whether there was a historical lack of engagement outside women’s organisations on their activities. Data triangulation is made more difficult when the subject being research is contemporaneously disregarded and therefore little is documented elsewhere. Methodological triangulation is employed in Chapter 4 to establish the numerical appearances of gendered harms and references to men and women during the drafting process of the Genocide Convention in order to complement the subsequent qualitative analysis.

### **Social Movement Theory – guidance on analysis**

The final three chapters of this thesis will study the advocacy of international women’s organisations on the ratification of the Genocide Convention. In order to analyse this data within the broader theory of social movements and to fully appreciate the networks and impacts of the women’s organisations, social movement theory – or seeking to understand how social movement work - is adopted as an analytical lens in this second section. Keck and Sikkink make the point that transnational advocacy networks, as they call them, “seek to make the demands, claims, or rights of the less powerful win out over the purported interests of the more powerful.”<sup>273</sup> In her analysis of historical transnational women’s organisations, Harrington echoes this point; Harrington argues that Social Movement Theory is a useful tool to understand feminism as it provides a framework to analyse the relations between the political elites and decision-makers, and the collective groups who have limited power – where outsiders can leverage power.<sup>274</sup>

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<sup>272</sup> Charlesworth, ‘Feminist Methods,’ 381.

<sup>273</sup> Margaret E. Keck and Kathryn Sikkink, ‘Transnational Advocacy Networks in Movement Society,’ in *The Social Movement Society: Conscientious Politics for a New Century*, eds. David S. Meyer and Sydney Tarrow (Oxford: Rowman and Littlefield, 1998), 217.

<sup>274</sup> Carol Harrington, ‘Governmentality and the Power of Transnational Women’s Movements,’ *Studies in Social Justice* 7, no. 1 (November 2012), 48, 49.

With the increasing ease of communications in the Nineteenth Century, women's organisations were able to organise on a global scale in order to represent women as a collective and to share information.<sup>275</sup> Information exchange, and the sharing of testimony, is a core component of international advocacy networks in addition to the ability to 'frame' an issue to appeal to a target audience.<sup>276</sup> A common feature of the advocacy employed by women's organisations discussed in this thesis is framing which, as defined by Snow and Benford, is to attribute meaning to the work of an organisation or to concepts in order to garner attention and support as well as a means of interpreting their work.<sup>277</sup> Furthermore, Snow and Benford theorise that successful framing in social movements is predicated on three tasks: diagnostic framing, or the identification of a problem and, included in a later publication by Snow and Benford, the identification of a source of blame or responsibility;<sup>278</sup> prognostic framing, or the identification of solutions and strategies of the problem; motivational framing, understood as the call to arms which is based on diagnostic and prognostic framing.<sup>279</sup> Vital to transnational advocacy organisations is their capacity and capability to collate and share information quickly and accurately within their networks.<sup>280</sup> Keck and Sikkink's theory of the typologies of tactics used by transnational advocacy organisations include the following:

*( 1 ) information politics, or the ability to quickly and credibly generate politically usable information and move it to where it will have the most impact; (2) symbolic politics, or the ability to call upon symbols, actions, or stories that make sense of a situation for an audience that is frequently far away; (3) leverage politics, or the*

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<sup>275</sup> Harrington, 'Governmentality,' 48-49.

<sup>276</sup> Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Ebook, Ithaca: Cornell University Press, 2014), 2, 17, <http://ebookcentral.proquest.com/lib/ulondon/detail.action?docID=3138636>.

<sup>277</sup> David Snow and Robert Benford, 'Ideology, Frame Resonance, and Participant Mobilisation,' in *From Structure to Action: Comparing Social Movement Research Across Cultures*, eds. Bert Klandermans, Hanspeter Kriesi, Sidney G. Tarrow (UK: JAI Press, 1988), 198.

<sup>278</sup> David Snow and Robert Benford, 'Framing Processes and Social Movements: An Overview and Assessment,' *Annual Review of Sociology*, 26, no. 1 (2000), 616.

<sup>279</sup> Snow and Benford, 'Frame Resonance,' 201-202.

<sup>280</sup> Keck and Sikkink, *Activists*, 10.

*ability to call upon powerful actors to affect a situation where weaker members of a network are unlikely to have influence; and (4) accountability politics, or the effort to hold powerful actors to their previously stated policies or principles.<sup>281</sup>*

This thesis will draw-out these themes within the international women's organisations' advocacy on the Genocide Convention, in particular information politics and symbolic politics. The method of framing is important to the work of these groups' advocacy, as we will explore both the framing of acts of genocide from women's organisations amongst their network and to decision-makers, as well as Lemkin's framing of genocide to women's organisations.

### **Limitations of this research**

This section of the methodology presents and discusses the limitations of the research. Whilst some of these limitations can be partially mitigated against, some have been purely acknowledged in order to suggest areas of further research. The process of data collection provides a limitation to this research. Access to archives was limited by the location of the archives in relation to the author, COVID-19 restrictions, financial resources of the author to travel for research, and the range of archives which have been made digitally and remotely accessible. As Hill puts it, "in the real world of limited budgets and bureaucratic schedules ... researchers try to maximise archival payoffs while minimizing unproductive wild goose chases."<sup>282</sup> Researchers with limited time and resources, Hill writes, should concentrate on archives with a "highly probable relevance to the research" and to well-staffed archives, which is advice taken onboard during this research.<sup>283</sup> Notwithstanding the wealth of archival access available in London and remotely, it remains that some materials have been out-of-reach of the

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<sup>281</sup> Keck and Sikkink, *Activists*, 16.

<sup>282</sup> Hill, *Archival Strategies*.

<sup>283</sup> Hill, *Archival Strategies*.

author and therefore present a limitation, including a limitation on the diversity of voices being discussed in this research.

As Connors notes, confirmation bias of the initial hypothesis can result in archival research being tailored to fit the researcher's desired outcomes.<sup>284</sup> The author is aware of this pitfall, and discusses this layer of analysis in the final four chapters of the thesis on women's organisations; the thesis draws on this argument to inform the analysis of the final research question on the extent to which women's organisations were influential. Consequently, the women discussed in this research are overwhelmingly women whose works would have been considered important at the time, important enough to be archived. Openly LGBT+ women for example are not heavily represented in this research which is a limitation of this thesis. Furthermore, greater representation of Women of Colour should be sought in future research. In part, this is a limitation of geography; the discussions and exchanges between Lemkin and, for example, women from Latin America would require some access to libraries and archives in South America. The author would be delighted to see this research expanded and built-on to explore other historically-ignored intersectional groups in society and how they have been written out of the process. To this end, an epistemic decolonisation of the history of genocide could be had.

Recognising this discussion above, and considering the decolonisation initiative within scholarly work to recognise entrenched Eurocentrism and the epistemic hierarchy it produces,<sup>285</sup> the author has recognised the limitations of this research in terms of decolonisation. According to Denzin and Lincoln, research is inherently colonial as it views research participants as 'others' and seeks domination over them.<sup>286</sup> It has been important to the author to be mindful of this dynamic throughout the data collection which is predominantly Western. Noting Wu who said "[f]eminist ethno-rhetorical historiography, particularly that of Third World women, remains

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<sup>284</sup> Connors, 'Dreams and Play,' 61.

<sup>285</sup> See: Christopher Murray, 'Imperial Dialectics and Epistemic Mapping: From Decolonisation to Anti-Eurocentric IR,' *European Journal of International Relations* 26, no. 2 (June 2020), 419–42, <https://doi.org/10.1177/1354066119873030>; Meera Sabaratnam, 'Avatars of Eurocentrism in the Critique of the Liberal Peace,' *Security Dialogue* 44, no. 3 (2013), 259–78.

<sup>286</sup> Denzin and Lincoln, *Collecting and Interpreting*, 2.

largely uncharted territory” especially when considering analysis can only be performed on the historical materials left behind.<sup>287</sup> In this light, when this thesis discusses women’s influences and experiences, the author acknowledges this is, in the main although not fully, input from Western women and excludes Women of Colour or those outside the West. An additional limitation of this research is one of language; some works have been published in languages other than English and the tool of Google Translate has been used where possible.

Limited access to archives beyond the UK or online has resulted in a thesis where the data collected has been mostly from Europe and North America. The international women’s organisations researched herein were headquartered in Europe and North America, during the period under research, despite their international presence. In some historical documents, these organisations were cognisant of their presence in Europe and North America, and actively sought greater engagement with women from outside this sphere. Within this research, this thesis has highlighted the work of Pakistani and Latin American women in addition to those within Europe and Northern America. Furthermore, the main materials drawn-on for non-Western women were found predominantly in Europe and North America. There is great scope for further research of female efforts beyond Europe, and the author keenly welcomes such research.

An additional limitation of this thesis, as we will see, is the challenge presented in quantifying the impact of women and women’s groups on the ratifications of the Genocide Convention. Whilst correlations can be seen in the archival materials between advocacy and internal government concerns about growing pressure to ratify the Convention, it is not possible to definitively state a connection between the two. In some instances, however, it is possible to illustrate the impact more clearly, as seen in Chapter 9 particularly. The fourth research question seeks to build a picture of the actions and influence of these women, although there remain difficulties in attributing outcomes to these actions. This is also a limitation of the focus of this thesis; the focus of this thesis is women and women’s organisations and therefore does not necessarily

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<sup>287</sup> Wu, ‘Rhetorical Women,’ 130,135.

seek to collect data on other organisations such as religious organisations who also work to raise the profile of the Convention alongside women's organisations. This is a limiting factor of the chosen methodology, although is an area for further academic research.

## **Conclusion of feminist theory-driven research and data collection and analysis**

This section has laid out the benefits of adopting a feminist theory for this research, and the methods employed in data gathering and analysis. Foremost is the adoption of the theory of feminist research to enable the researcher to search for silences in relation to women in the data. This section also argued that the benefit of this feminist theory included the inherent activism within this chosen methodology, which leads to a rejection of the 'universal woman' as a heterosexual member of a family unit. It is also a rejection of Positivist methodology, which this chapter argues is one of the benefits of selecting this particular methodology. Furthermore, this chapter illustrated the benefit of drawing on different schools of feminist thought to inform analysis. Following this, the section expanded on the method for sourcing data through archival research, and the strategies and analytical questions posited by academics to assist with this research. The method of data analysis was also detailed demonstrating the use of legal text analysis, and it was argued that Social Movement Theory is a useful analytical tool to analyse the actions of international women's organisations.

The limitations of this research were discussed. These are limitations which both can and cannot be mitigated against. Within this section, the author discussed limitations including researcher context, researcher access and proximity to the archives in addition to the content of the archives which contain the writings of a small strata of society, which is mostly wealthy and Western. Following this, the researcher acknowledges the need for epistemic decolonisation within academia, and the lack of diversity as a limiting factor in this research. Suggestions are made on potential methods for mitigating these limitations.

## Chapter 2 - Pre-‘genocide’ barbarism

### Introduction

Lemkin’s early research on crimes against national groups, which would later become his theory of genocide, drew heavily on the two concepts of ‘vandalism’ and ‘barbarism’. These two concepts were created by Romanian academic Vespasian Pella. This chapter will look closely at the work of Pella, as the man who developed the two foundational concepts of the crime of genocide. This chapter posits that the origins of Lemkin’s theory of the crime of genocide, hidden within Pella’s work, included gender and gendered harms to different degrees.

This chapter presents evidence of Pella’s own feminist leanings and advocacy, adding to the picture of the history of the theory of genocide. In this chapter it is also suggested that Lemkin’s version of ‘barbarism’, as presented in a conference in Madrid in 1933, revolves around the notion of anti-social behaviour, a common theme within both Pella and Lemkin’s writings, and which is argued to contain gendered elements. As Pella additionally worked on the original draft Genocide Convention alongside Lemkin, the influence of feminist-thinking on Pella’s early theories should be interrogated.<sup>288</sup> This chapter is, in part, to bring in more voices into this history. As well as female voices and stories included in this history of the concept of genocide, it can be argued for a widening this history which ultimately incorporates other voices and stories too.

The research question being asked in this chapter is **in what ways were gender and gendered harms understood and incorporated into ‘barbarism’**. This return to the very origins of the theory of the crime of genocide is to provide a base of knowledge of gender-inclusion in early genocide theory. Against this, the engagement on the topic of gender from Lemkin the in the drafting of the Convention can be measured. It is also to understand the conceptualisation of women at the inception of genocide theory, and whether women, or gendered harms, were a consideration of the drafters of the theory of genocide as it developed.

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<sup>288</sup> Secretariat Draft E/447, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 222.

## Vespasian Pella – a feminist?

Vespasian Pella was born in January 1897 in Bucharest, Romania.<sup>289</sup> Pella's mother, Cornelia Pella, was quite remarkable; she was "one of the most distinguished students in philosophy" at the University of Bucharest before she married, and when the family moved to Brussels she earned a doctoral degree in law, along with her husband, from Université Nouvelle de Bruxelles.<sup>290</sup> This was rare for women in the 1890s. Notably, whilst in Romania practicing law, Pella's father published in journals such as *Adevărul* which championed the rights of women along with other marginalised groups in society, whilst Pella's mother organised weekly literary 'salons' and worked in social welfare organisations.<sup>291</sup> Author and biographer Andrei Mamolea describes how Pella's parents' "influence on him must have been considerable and likely inspired his progressive political values."<sup>292</sup> In a nod to the neglect of the recognition of female actors to international criminal law, Mamolea later noted how there are no known pictures of Cornelia Pella despite her incredible academic achievements for the time.<sup>293</sup>

In the development of his theory on international collective responsibility, Pella wrote about the Armenian massacre in terms of the "massacre of races" as an imperative for international intervention.<sup>294</sup> It was Pella's experience in Romania during World War One which convinced him that war was a crime.<sup>295</sup> Alongside crimes like forced conscription of civilians, poisonous gas use, and destruction of monuments and religious buildings, Pella explicitly includes the rape of women among these crimes.<sup>296</sup> The publication in which Pella wrote about these crimes was published in

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<sup>289</sup> Mamolea, 'Vespasian V. Pella,' 50.

<sup>290</sup> Mamolea, 'Vespasian V Pella,' 50.

<sup>291</sup> Mamolea, 'Vespasian V Pella,' 51.

<sup>292</sup> Mamolea, 'Vespasian V Pella,' 51.

<sup>293</sup> EU for You, 'The Life and Work of Vespasian V. Pella: International Criminal Justice as a Safeguard for Peace,' YouTube video, 2021, accessed May 31, 2022, [https://www.youtube.com/watch?v=r\\_oOlpnpn4o](https://www.youtube.com/watch?v=r_oOlpnpn4o).

<sup>294</sup> Mamolea, 'Vespasian V. Pella,' 65.

<sup>295</sup> Mamolea, 'Vespasian V. Pella,' 53

<sup>296</sup> Mamolea 'Vespasian V Pella,' 55.

1919, thirty years before the Geneva Convention IV protected against “rape, enforced prostitution, or any form of indecent assault.”<sup>297</sup> He also acknowledged the failings of domestic criminal law in failing to address the crime of forced abortion among others.<sup>298</sup> This fact demonstrates that Pella was cognisant of the vulnerability of women in conflict, as well as displaying an awareness of specific crimes committed against women in conflict. Beyond his analysis of laws on the battlefield, Pella also researched peacetime legislation. He wrote about the failings in the Civil Code in protecting women “deceived” into carrying the baby of an un reputable man. In this particular academic article, the dire choices facing these women (abortion, infanticide, or abandonment of the child) and how a future of economic destitution for these women, are described by Pella.<sup>299</sup> Clearly the vulnerabilities of women in peacetime were understood by Pella in this 1919 article.

Pella would later work with the Romanian feminist emancipation movement in the inter-war period, and collaborated with activist and poet Elena Văcărescu.<sup>300</sup> Here we see a relevant historic crossing-of-paths relevant to this thesis; alongside her accomplishment as the first female ambassador at the League of Nations, Elena Văcărescu also founded the National Council of Romanian Women in 1920,<sup>301</sup> an affiliated organisation of the International Council of Women (ICW)<sup>302</sup> explored in Chapter 9 of this thesis. Pella would go on to work with the National Council of Romanian Women to legislate women’s rights.<sup>303</sup> His work on women’s rights, the re-education of prostitutes and the nationality of illegitimate children are greatly in line with the advocacy of international women’s organisations in the post-war world, as

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<sup>297</sup> ‘Customary IHL: Practice Relating to Rule 93. Rape and Other Forms of Sexual Violence,’ *International Committee of the Red Cross*, accessed March 22, 2022, [https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v2\\_rul\\_rule93](https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v2_rul_rule93).

<sup>298</sup> Mamolea, ‘Vespasian V. Pella,’ see page 54 footnote 17.

<sup>299</sup> Aurora Ciuca, ‘Pellian Horizons on Women’s and Children’s Rights,’ *Law Annals from Titu Maiorescu University* 43 (2020), 44.

<sup>300</sup> Ciuca, ‘Pellian Horizons,’ 45.

<sup>301</sup> Ciuca, ‘Pellian Horizons,’ 45.

<sup>302</sup> Alexandrina Cantacuzino, ‘Speech at a Meeting of the National Council of Romanian Women,’ Constantin and Elena Meissner Family Collection, of Romania, National Archives (folder XI39, file 29-30), accessed April 1 2022, [https://0-search-alexanderstreet-com.catalogue.libraries.london.ac.uk/view/work/bibliographic\\_entity%7Cbibliographic\\_details%7C3262798](https://0-search-alexanderstreet-com.catalogue.libraries.london.ac.uk/view/work/bibliographic_entity%7Cbibliographic_details%7C3262798).

<sup>303</sup> Ciuca, ‘Pellian Horizons,’ 44.

was his participation in the Committee of the League of Nations for the Suppression of Trafficking of Women and Children in 1934.<sup>304</sup> The cross-over between Pella and international women's organisations does not stop at this involvement with the Romanian section of the ICW. Much of the discourse on the origins of the theory of genocide commences at a conference in 1933 in Madrid (hereafter the Madrid conference), discussed in more detail later in this chapter, where Pella was present. In The Women's Archives at LSE, an edition of the newspaper *L'International Feminin* published a report in 1933 on the activities of the Madrid conference and the involvement of women:

*International Conference for the Unification of Criminal Law.*

*The International Conference for the Unification of Criminal Law, which met in Madrid, under the chairmanship of the Ministers of Foreign Affairs, Justice and Public Instruction and Count Carton de Wiart, invited Mrs. Helene Gr. Romniciano, delegate of the Romanian government to the SD N in the Permanent Consultative Commission for the Protection of Entrance and Youth, and delegate of the Romanian Ministry of Justice to the juvenile penitentiaries to sit, as an expert legal, in the Commission which dealt with Madrid, of the offense of family abandonment and the sanctions to be applied to pimps. Ms H. Romniciano recently obtained the appointment of auxiliary police and Romanian officers.<sup>305</sup>*

This is evidence that at the Madrid conference there was a strong Romanian presence seeking to shape international law both broadly and specifically in relation to women. According to letter heading on a letter dated June 27, 1930 from the ICW's USA National Council, housed in the Illinois State Digital Library, both Helene Romaniciano and Elena Văcărescu were on the ICW Advisory Council of Romania in 1930.<sup>306</sup> Although there is no record indicating that Pella and Romaniciano met at the

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<sup>304</sup> Ciuca, 'Pellian Horizons,' 46-47.

<sup>305</sup> *L'International Feminin*, no. 11-12 November-December 1933, The Women's Library, LSE, GB106/7/MCA/D/4. Translated using Google Translate.

<sup>306</sup> 'National Woman's Party letter to Hazle Buck Ewing,' June 27, 1930,

Madrid Conference, it is possible to posit that, as prominent Romanian campaigners and academics with professional connections and similar goals, that there is a probability of meeting. This evidence is important firstly as it illustrates that Pella was a feminist advocate and secondly that prominent feminist ICW members, and potentially Pella's contemporaries, were also present at the Madrid conference which is an important historical event in the history of the creation of the crime of genocide as discussed in this chapter.

Prior to the outbreak of World War Two, Pella worked for the protection of children (including 'illegitimate' children) and the protection of some women's rights at the Social Commission of the League of Nations in 1939.<sup>307</sup> That same year, he conducted research on how states approach criminal behaviour of men and women and how the penal system seeks to punish them differently, with a mind to host a conference on this before these plans were derailed by World War Two.<sup>308</sup> After World War Two, Pella was a vocal proponent for a permanent international criminal court.<sup>309</sup> He argued that, should the principles established at Nuremberg be maintained as a standard for the future, there should be an international criminal court in which these principles can be enshrined.<sup>310</sup> He cited barbarism and vandalism as particular crimes, alongside trade in obscene materials, traffic in women and children and others, as offences which should be tried by this international criminal court.<sup>311</sup> In an obituary written after Pella's death in 1952, aged 55, he was described as a pioneer in the field of international law and having "deep sincerity and whole-hearted devotion to the cause of international law."<sup>312</sup>

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Hazle Buck Ewing Women's Suffrage Collection, Ewing Cultural Center (Illinois State University Foundation), Milner Library, Illinois State University Digital Collections, accessed January 16, 2023, <https://digital.library.illinoisstate.edu/digital/collection/hazle-ewing/id/397>.

<sup>307</sup> Ciuca, 'Pellian Horizons,' 45-46.

<sup>308</sup> Ciuca, 'Pellian Horizons,' 47.

<sup>309</sup> Vespasian V. Pella, 'Towards an International Criminal Court,' *The American Journal of International Law* 44, no. 1 (1950), <https://doi.org/10.2307/2193451>.

<sup>310</sup> Pella, 'Towards an International Criminal Court,' 43.

<sup>311</sup> Pella, 'Towards an International Criminal Court,' 54.

<sup>312</sup> Ivan S. Kerno, 'In Memoriam: Vespasian V. Pella, 1897-1952,' *The American Journal of International Law* 46, no. 4 (1952), 710.

## The crime of barbarism as a predecessor of genocide theory, from Pella to Lemkin

This section of the thesis will explore the crime of barbarism as it forms the foundation of the early theory of the crime of genocide. ‘Barbarism’ and ‘vandalism’ ultimately joined together to form different elements of the crime of genocide theorised by Lemkin. The crime of vandalism as a component of the theory of genocide alongside barbarism was, in the words of Lemkin in 1933, the “destruction of works of art and culture”<sup>313</sup> which would later become the much-debated concept of cultural genocide during the drafting of the Genocide Convention, as we will see in Chapter 4. Unlike barbarism, vandalism does not theorise crimes against persons, and therefore, the theory of barbarism (as a precursor to the crime of genocide recognised in the Convention) will be focused on in this chapter, rather than vandalism.

Developed by Pella and expanded by Lemkin, barbarism, as we will see in this chapter contains traces of understanding on the position and specific vulnerabilities of women in society. In 1931 Pella published *La Répression Des Crimes Contre La Personnalité De L'état* (The Repression of Crimes Against the Personality of the State) in which he elaborates on the concept of barbarism and vandalism as components of terrorism.<sup>314</sup> Instilling fear whilst paralysing the population are the aims of acts which include explosions and fires, as well as bodily integrity and human health.<sup>315</sup> Pella wrote that these acts aimed to “*détruire l'esprit de discipline sociale,*” destroy the spirit of social discipline. This notion of social order, and the crime of disrupting it, permeate throughout this work. In this way, Pella arguably demonstrates the social constructivist observations of the intersection of law and social “disorganisation” and instability,<sup>316</sup> discussed in Chapter 1 of this thesis. Pella writes that the peaceful coexistence among peoples is the foundational basis of the international community.<sup>317</sup> To highlight again Pella’s awareness of the importance of considering women in the law, he wrote in this

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<sup>313</sup> ‘Front Cover,’ General Writings on Law, undated, box 1, folder 11, Raphael Lemkin Collection (P-154), Center for Jewish History, 1.

<sup>314</sup> Vespasian V. Pella, ‘La Répression Des Crimes Contre La Personnalité de l'Etat (Volume 33),’ *Recueil Des Cours - Académie De Droit International*, no. 33 (1930), 671-837, translated using Google Translate, 703.

<sup>315</sup> Pella, ‘La Répression Des Crimes,’ 704.

<sup>316</sup> Savelsberg, ‘Crime, law and deviance,’ 136.

<sup>317</sup> Pella, ‘La Répression Des Crimes,’ 789-790.

text that, although some authors consider sex (and age) of no importance, on the contrary in modern warfare it is important considering the different roles women (and the young and old) can do.<sup>318</sup> This is indicative of Pella's broader understanding that women face a particular vulnerability as a result of gender roles, strikingly similar to our contemporary understanding of gendered harms.

Pella explicitly linked integrity to the crime of rape in this work; in discussing the application of offenses against life, integrity and personal freedom against the Heads of State, Pella noted that offense also extends to the members of the family of the Head of State. In the footnote for this statement, Pella noted that an example of this is in England with the rape of the King's wife and eldest unmarried daughter. Importantly he also included that the wife in this situation would share in the guilt if she "accepts the tributes of her 'paramour'" (note the use of quotation marks suggesting Pella in fact problematised this conceptualisation of rape as a consensual encounter between lovers).<sup>319</sup> Coupled with the recognition that gender roles are an important consideration when exploring impacts of modern warfare, it is possible to deduce that Pella incorporated some nuanced understanding of women and women's vulnerabilities into his concept of barbarism.

Further research in Romanian archives has yet to be done into Pella's creation of barbarism and vandalism; given the feminist-leaning context of Pella's work, this body of work would potentially enlighten greatly on the subject of gendered harms in the origins of the concept of genocide. However, given existing evidence of Pella's understanding and interest in women's vulnerabilities and his advocacy on women's rights, a fair conclusion would be that, inclusive in the crime of barbarism, were some of Pella's feminist analysis. Although we can see here that Pella was, if not out-rightly critical, then certainly sceptical of the ways in which women were perceived by lawmakers as having agency in situations they did not (rape). Furthermore, Pella's cognisance of the different gender roles which single women out as experiencing warfare differently is clearly seen in this article on barbarism. Expansion on this awareness is not evidenced in Pella's writings however. His writings on barbarism

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<sup>318</sup> Pella, 'La Répression Des Crimes,' 724.

<sup>319</sup> Pella, 'La Répression Des Crimes,' 740.

spoke of the destruction of a social order. In this next section, we shall analyse the forum in which Lemkin then promoted concepts and we will interrogate the myths surrounding this Madrid conference.

### Madrid, 1933

The Fifth Conference for the Unification of Penal Law was held in Madrid in 1933 from October 14 to 20 (the Madrid conference), and was later promoted by Lemkin as the occasion he angered a Nazi delegation as well as a forum where he promoted his concepts of barbarism and vandalism. It is a relevant point in history to understand the formation of genocide theory and how women were conceptualised.

By his own, now debunked, account, Lemkin physically attended the Madrid conference and presented his report: “I formulated two crimes: the crime of barbarity and the crime of vandalism” he writes in his memoirs, notably failing to credit Pella.<sup>320</sup> Philippe Sands writes how in 1942 Lemkin described being in the room in Madrid, and how the Nazi delegation got up and left the room when he began his presentation.<sup>321</sup> Lemkin described how his travel to Madrid was “opposed” but not prevented in *Totally Unofficial*, recalling “I sincerely believed that a modification of the proposal I *had made in Madrid in 1933* could be enforced through the U.N.”<sup>322</sup> Even the UNHCR makes the mistake of stating the Lemkin appeared before the Legal Council at Madrid.<sup>323</sup> Dirk Moses makes a point in his book *The Problems of Genocide*: “In the main, historians have been seduced by Lemkin’s melodramatic narrative by casting him as the intrepid discoverer of genocide in the face of these largely forgotten rivals.”<sup>324</sup> Moses notes that the non-Lemkin-centric reading of the history of genocide studies is “all too rare,”

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<sup>320</sup> Lemkin and Frieze, *Totally Unofficial*, 22. Note that Lemkin began his autobiography after his falling out with Pella. This lack of credit is perhaps unsurprising given the souring of the relationship in the years before Pella’s death. See Mamolea, ‘Vespasian V. Pella.’

<sup>321</sup> It is correct, however, that the German delegation did walk out of the League of Nations that same week as the conference in Madrid. There is no link with Lemkin. See Prevent Genocide, accessed May 31, 2022, <http://www.preventgenocide.org/lemkin/madrid1933-english.htm>

<sup>322</sup> Lemkin and Frieze, *Totally Unofficial*, 23, 120. Emphasis added.

<sup>323</sup> ‘Lemkin, Raphael,’ UNHCR Central Europe, accessed September 21, 2021, <https://www.unhcr.org/ceu/9486-lemkin-raphael.html>.

<sup>324</sup> A. Dirk Moses, *The Problems of Genocide: Permanent Security and the Language of Transgression* (Cambridge, United Kingdom: Cambridge University Press, 2021), 150.

and that Lemkin himself forgets to cite the works of Pella where he uses his theories.<sup>325</sup> In an article penned by Lemkin and published in 1945, we see an explainer at the bottom which credits Lemkin as “[a]t the Madrid Conference in 1933 he introduced the first proposal ever made to outlaw nazizm [sic] by declaring it a crime.”<sup>326</sup> In the preface to *Raphael Lemkin’s Thoughts on Genocide* Lemkin is noted as having travelled to Madrid, in addition to “almost singlehandedly” designing the theory of the crime of genocide.<sup>327</sup> We see this in more recent literature too. Kornat writes how barbarism and vandalism were introduced by Lemkin in 1933 as “two basically new offences under the law of nations, unknown to the science of the time.”<sup>328</sup> Lemkin was also credited with creating the concepts of barbarism and vandalism, as outlined in the Madrid conference document, in Jacobs’ archival collection.<sup>329</sup> Whilst Lemkin claimed full responsibility for the creation of the term barbarism after the war, before the war he would cite Pella as its creator.<sup>330</sup> Historical source material is an important theme to discuss here. It presents the issue with genocide scholarship’s use of Lemkin as a sole standpoint: his account and recollections can be over-hyped and biased in places.

With this context in mind, this thesis will examine the content of the Special Report sent by Lemkin to the Madrid conference. A copy of the Special Report presented to the Fifth Conference for the Unification of Criminal Law in Madrid has been preserved in the Center for Jewish History archive, and has been translated for this thesis from the original French to English using Google Translate. The title page of this presentation by Lemkin states “[t]he author proposes the introduction of two new crimes, namely barbarity and vandalism” and further seeks to define acts of barbarity as “[p]ersecution of racial communities, religious or social communities.”<sup>331</sup> Themes of

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<sup>325</sup> Moses *Problems of Genocide*, 157, 173.

<sup>326</sup> Raphael Lemkin, ‘Genocide – A Modern Crime,’ *Free World* 4 (April 1945), accessed January 26, 2023, <http://www.preventgenocide.org/lemkin/freeworld1945.htm>.

<sup>327</sup> Lemkin and Jacobs, *Thoughts on Nazi Genocide*, v.

<sup>328</sup> Marek Kornat, ‘Barbarity—Vandalism—Terrorism—Genocide. On Raphael Lemkin and the Idea of Defining “the Crime under the Law of Nations”,’ *The Polish Quarterly of International Affairs* 17, no. 2 (2008), 87.

<sup>329</sup> Lemkin and Jacobs, *Lemkin on Genocide*, IX.

<sup>330</sup> Mamolea, ‘Vespasian V. Pella,’ 82.

<sup>331</sup> ‘Front Cover,’ General Writings on Law, undated, box 1, folder 11, Raphael Lemkin Collection (P-154), Center for Jewish History, 1.

the later theory of cultural genocide can be seen in Lemkin's definition of vandalism: "[d]estruction of works of art and culture." The distinct shift towards the persecution of minorities within the crime of barbarism can be seen in this document:

*Article 1. Whosoever, out of hatred towards a racial, religious or social collectivity, or with a view to the extermination thereof, undertakes a punishable action against the life, bodily integrity, liberty, dignity or economic existence of a person belonging to such a collectivity, is liable, for the crime of barbarity.*<sup>332</sup>

Lemkin identifies these crimes as potentially harmful towards the international community, similar to Pella's work on the need for a stable international community and peaceful coexistence among peoples, published two years earlier and drawing on The Third Conference for the Unification of Criminal Law in Brussels.<sup>333</sup>

How was bodily integrity, as included in the quote above, conceptualised in 1933? Does it mirror our contemporary understanding of bodily integrity centring on the concept of autonomy?<sup>334</sup> Mackenzie suggests two understandings of autonomy: as a status (individuals are entitled to self-determination over their lives) and as capacity (self-defining and self-governing, or the ability to make decisions for ones' self).<sup>335</sup> Within feminist philosophy, autonomy can define women's freedom from oppression in the ways it manifests to restrict her decisions, ranging from sexual exploitation to gender oppression.<sup>336</sup> It is perhaps clear in the excerpt above that bodily integrity is akin to the status interpretation of autonomy; the ability to make decisions free from oppression. Whilst in the feminist conceptualisation this inherently links with patriarchal systems of oppression, this particular link is not clear in the text.

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<sup>332</sup> 'Front Cover,' General Writings on Law, undated, box 1, folder 11, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>333</sup> Pella, 'La Répression Des Crimes', 789-790; 'Page 2,' General Writings on Law, undated, box 1, folder 11, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>334</sup> Jonathan Herring and Jesse Wall, 'The Nature And Significance Of The Right To Bodily Integrity,' *The Cambridge Law Journal* 76, no. 3 (November 2017), <https://doi.org/10.1017/S0008197317000605>.

<sup>335</sup> Catriona Mackenzie, 'Feminist Conceptions of Autonomy,' in *The Routledge Companion to Feminist Philosophy*, eds. Ann Garry, Serene J. Khader, and Alison Stone (New York: Routledge, 2019), 515.

<sup>336</sup> Mackenzie, 'Feminist Conceptions,' 515.

Lemkin's paper then expands on the theory of the crime of barbarism, and seeks to compare it to crimes such as the slave trade ("white, child and slave") designated as crimes due to their humanitarian impact.<sup>337</sup> The designation of "white" slavery here is relevant; English feminists campaigned in the last twenty years of the 1800s to raise the age of consent from thirteen in order to address what had become the legal prostitution of girls from the age of thirteen.<sup>338</sup> They viewed this as a vehicle to enhance restrictions on prostitution (procuring women for sex, rather than the woman), what was termed "white slavery."<sup>339</sup> Protecting humans from commodification in addition to protecting their freedom and dignity are fundamental to this crime of barbarism. This is distinctive as it seeks to be a crime against a member of the community as a result of their membership simultaneously hurting the individual and the community.<sup>340</sup> Here again, we see echoes of Pella's concept of social order, and indeed Lemkin credits Pella in the footnote as such, but going further to identify the particular communities which can be targeted (political, religious, ethnic, social).<sup>341</sup> More specifically relevant to this thesis, Lemkin cites attacks on a person's dignity through humiliation as a way to destroy the group.<sup>342</sup> In Chapter 5 of this thesis the notion of humiliation as a gendered concept is dissected. It is not possible to determine from the text presented at the Madrid conference whether Lemkin considered this to be a gendered concept at the time, although it is possible to argue that Pella had considered the specific notion of humiliation to women as different to men based on the evidence of this in his previous writings on the topic.

In the concluding sentence of this paper dedicated to barbarism, Lemkin wrote that these acts of barbarism threaten upheaval and the movement of people (later

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<sup>337</sup> 'Page 4,' General Writings on Law, undated, box 1, folder 11, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>338</sup> Lucy Bland, *Banishing the Beast: Feminism, Sex and Morality* (London, New York: Tauris Parke, 2002), xvi.

<sup>339</sup> Bland, *Banishing the Beast*, xvi.

<sup>340</sup> 'Page 4,' General Writings on Law, undated, box 1, folder 11, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>341</sup> 'Page 4,' General Writings on Law, undated, box 1, folder 11, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>342</sup> 'Page 5,' General Writings on Law, undated, box 1, folder 11, Raphael Lemkin Collection (P-154), Center for Jewish History.

known as refugees), potentially resulting in “anti-social tendencies,” citing the example of the assassination of a French President.<sup>343</sup> Chapter 3 of this thesis explores Lemkin’s conceptualisation of ‘anti-social’ behaviours as shaped by Nazi policies in occupied territories, and most notably the use of pornography, gambling and alcohol to artificially create ‘anti-social’ behaviour, eventually forming the foundation to the theory of moral techniques of genocide which Lemkin develops.<sup>344</sup> Within the context of the pre-World War Two debates on international law, it is not possible to draw from the documents that there exists a gendered dimension to the ‘anti-social’ behaviour developed in Lemkin’s 1933 paper. However, an analysis of the documents shows this would go on to form an ill-defined component of acts of genocide containing gendered elements.

### **Pre-Genocide Convention uses of barbarism: Nuremberg**

Writing after World War Two, Lemkin pinpointed the 1933 Madrid conference as a failure of the international community to legislate, outlaw and ultimately prevent the rise of fascism and the Holocaust.<sup>345</sup> In the aftermath of the Holocaust and World War Two, the International Military Tribunal at Nuremberg (IMT) also employed the language of barbarism, and the concept of barbarism would later become tied to the actions of Nazis at the IMT. This chapter will now examine evidence of the formation of barbarism and its application in the IMT transcripts.

The French Chief Prosecutor Francois de Menthon spoke about the crimes committed against French citizens by the Nazi invasion including torture and murder, stating that France “was subjected to the still more horrible grip of demoralization and return to barbarism diabolically imposed by Nazi Germany.”<sup>346</sup> Menthon continued:

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<sup>343</sup> ‘Page 5,’ General Writings on Law, undated, box 1, folder 11, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>344</sup> Lemkin, *Axis Rule*, 80-90.

<sup>345</sup> Lemkin, *Axis Rule*, 91.

<sup>346</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, January 9, 1946 – January 21, 1946*. Volume V, 368, available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 27, 2022.

*There can be no well balanced and enduring nation without a common consent in the essential rules of social living, without a general standard of behavior [sic] before the claims of conscience, without the adherence of all citizens to identical concepts of good and of evil. There is no domestic law which, in defining and punishing criminal violations, is not founded on criteria of a moral order which, is accepted by all-in a word, without a common morality. There can be no society of nations tomorrow without an international morality, without a certain community of spiritual civilization, without an identical hierarchy of values; international law will be called upon to recognize and guarantee the punishment of the gravest violations of the universally accepted moral laws. This morality and this international criminal law, indispensable for the final establishment of peaceful co-operation and of progress on lasting foundations, are inconceivable to us today after the experience of past centuries and more especially of these last years...<sup>347</sup>*

Themes herein also echo those we will examine in Chapter 5 on morality and obscenity, although it is particularly interesting to examine in this quote how the concept of barbarity has been fused with morality, or perhaps more accurately becoming polar opposites in the mind of Menthon.

Prosecutor Menthon continued to use the concept of barbarism explicitly:

*I propose today to prove to you that all this organized and vast criminality springs from what I may be allowed to call a crime against the spirit, I mean a doctrine which, denying all spiritual, rational, or moral values by which the nations have tried, for thousands of years, to improve human conditions, aims to plunge humanity back into barbarism, no longer the natural and spontaneous barbarism of primitive nations, but into a diabolical barbarism, conscious of itself*

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<sup>347</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, January 9, 1946 – January 21, 1946.* Volume V, 369, available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 27, 2022.

*and utilizing for its ends all material means put at the disposal of mankind by contemporary science.*<sup>348</sup>

This quote illustrates that Prosecutor Menthon conceptualised the term ‘barbarism’ in a broad and vague way, and a feminist analysis of this quote shows that there is an absence of any concept of gendered harms. That being said, the linking of barbarism with “primitive”<sup>349</sup> nations and the elevation of the morals of therefore “civilised” nations does continue as a theme throughout the data in this thesis, in particular Chapter 4.

## Conclusion

The crime of barbarism formed a founding pillar of Lemkin’s genocide theory. As the crime of barbarism was originally developed by Vespasian Pella, it was with his work that this chapter began. This chapter sought to provide an answer to the first research question: in what ways did the theoretical predecessor of the concept of genocide, ‘barbarism’, recognise gendered harms and women’s unique vulnerabilities? In order to fully answer this question, this chapter explored the development of barbarism as a crime as theorised by Vespasian Pella. In doing so, this research exposed relevant and interesting feminist origins of the concept. Pella’s early work can be identified as certainly having distinct feminist sympathies. This translated into his formation of domestic and international law, and his appreciation of the vulnerabilities of women in society. His work with the National Section of the ICW in Romania illuminates potentially feminist sympathies. The research illustrated some appreciation of women’s unique vulnerabilities, evident in Pella’s writings on domestic protections for women and the need to recognise these in laws governing war. This appreciation of gendered harms took a different form as Lemkin developed barbarism to recognise the broad notion of bodily integrity but situated within social order. As we will see in the following chapter, Lemkin relied heavily on biological techniques of the crime of

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<sup>348</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, January 9, 1946 – January 21, 1946*. Volume V, 373, available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 27, 2022.

<sup>349</sup> See also A/C.6/SR.83, ‘Eighty-Third Meeting Held at the Palais de Chaillot, Paris, on Monday, 25 October 1948, at 3 p.m.,’ *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1511.

genocide to conceptualise women's experiences during genocides. This chapter argued how feminist thought, or at the very least an appreciation of women's vulnerabilities, did indeed form a base in the original concept of barbarism.

This chapter then traced barbarism as a threat to a social order from its inception to its adoption by Lemkin, its specific trait of a crime against minorities, and eventually into a more crystallised concept in the 1933 Madrid conference paper. Language, such as 'bodily integrity' and 'social order' used by Lemkin in the Madrid conference paper, could point to an appreciation of women within the crime of barbarism, although the documents do not provide any further information on this. The IMT transcripts were also drawn on in this chapter to further illustrate additional contemporaneous understandings of barbarism in international criminal law. Pella and Lemkin relied heavily on the notion of destroying the social order or moral spirit of society for their concept of barbarism. Barbarism was the antithesis of a socially ordered and moral society for both Pella and Lemkin as demonstrated in this chapter. This thesis will explore this concept in greater detail in Chapter 5, but this current chapter drew on IMT transcripts to demonstrate the ubiquity of conflating barbarism with disorder or harming the spirit of a group.

This chapter, in part, challenged the history of the origins of the concept of genocide which takes a solely Lemkin-focus. This is a natural standpoint for a thesis which seeks to uncover forgotten (female) voices in this history. In stepping outside of this narrative, we have been able to widen the field to include the work of Pella and in doing so we have uncovered, in the data of history of genocide, an overt women's rights activist and sympathiser who worked to have women's rights recognised through law. An addition to this chapter, which was unexpected when research was designed, was evidence that Pella's path crossed with the ICW, also researched in Chapter 10 of this thesis. This was perhaps the most delightful and important revelation in this chapter, and further research in the Romanian archives into Pella's work and the inspiration he drew from his feminist mother will undoubtedly provide further welcome revelations.

## Chapter 3 - Lemkin's conceptualisation of women and gender

This chapter follows chronologically on from the previous chapter. Chapter 2 discussed the feminist-sympathetic context of the creation of the crime of barbarism and how this formed a foundational pillar to Lemkin's subsequent writings on what became the crime of genocide. This chapter will explore and analyse Lemkin's own conceptualisations of gender and women, and how these were included in his theory of the crime of genocide.

According to biographer Irvin-Erickson, Lemkin believed that women "played a unique role in the social reproduction of a society," and that his view of sexual violence was informed by its impact on the social group rather than on the victim.<sup>350</sup> There are many instances when Lemkin cited women as being the most effected by acts of genocide. For example, in a letter in November 1949 Lemkin made the statement that "[g]enocide is particularly of interest to women [in terms of advocacy] because through biological genocide (sterilization,<sup>351</sup> stealing of children and breaking up of families) women are mostly effected."<sup>352</sup> By developing a better understand the original conceptualisation of gender in the crime of genocide, this thesis can begin to trace how these conceptualisations changed, or were forced to change by other actors or circumstances, in the following chapters. Answers are being sought to understand what were Lemkin's understandings of the effects of acts of genocide on women specifically and whether his conceptualisations changed. In order to answer these questions, archival materials and Lemkin's published works such as *Axis Rule* are analysed in this chapter in order to establish a knowledge baseline of how women were originally understood in Lemkin's genocide theory. This will enable this thesis to subsequently measure developments in relation to gender during the period of time under research.

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<sup>350</sup> Irvin-Erickson, *Raphaël Lemkin*, 154-155.

<sup>351</sup> The use of the Americanisation spelling "sterilization" rather than the British "sterilisation" is intentional. This Americanised spelling is used in the *Travaux Préparatoires*, and is therefore reproduced in this chapter in the Americanised spelling.

<sup>352</sup> Correspondence to Torres Bodet, December 19, 1949, Lemkin Correspondence, August-December 1949, box 2, folder 2, Raphael Lemkin Collection (P-154), Center for Jewish History.

In this chapter, it is asserted that Lemkin broadly understands women in their traditional heteronormative role as mothers. By using a feminist methodology of identifying and analysing materials, this chapter argues that Lemkin's formulation of the crime of genocide as it relates to women is primarily centred on the biological ability to bear children. Furthermore, through a feminist analysis this chapter argues that Lemkin's development of the crime of rape as an act of genocide was inherently problematic by critiquing his source materials, terminology, and framing of women.

## Axis Rule

Lemkin published *Axis Rule In Occupied Europe: Laws of Occupation, Analysis of Governments, Proposals for Redress* in 1944 (herein *Axis Rule*) which was the first time the word 'genocide' was seen in print. In *Axis Rule*, Lemkin forensically analyses how the Nazis changed national laws and imposed their own laws in order to persecute minorities and unify Europe under Nazi-derived laws. Lemkin studied each country under Nazi occupation, writing how Nazi changes in law and administrative procedures were catalogued at every level, from freedom of the press and confiscation of property, to the regulation of prostitutes.

Broadly speaking, when we 'ask the woman question' in studying the text of *Axis Rule*, the content is split (as we will also see in Chapter 4 on the *Travaux Préparatoires*) between the more obvious mentions of women in relation to biological techniques of genocide and direct persecution within states under Nazi control, and more ambiguous and nuanced discussion of morality and social order. The latter, as we will explore, contain gendered notions. This section of the chapter will look at Lemkin's theory of biological and physical genocide techniques, and how they were conceptualised as gendered by Lemkin in *Axis Rule*.

## ***Axis Rule: Biological and physical techniques of genocide***

Lemkin's broad understanding of genocide consists of actions "aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves" through the destruction of personal security, liberty, health, dignity and lives.<sup>353</sup> Emphasis in *Axis Rule* is placed on the importance of a "social structure" of a nation and the "national spiritual resources" which could be targeted as part of acts of genocide.<sup>354</sup> Here we see a recognition of what social constructivist Bryan Turner would call human vulnerability and the "conditions that make human society possible."<sup>355</sup> Ordered society protects against human vulnerability, and a disordered society without a social structure can facilitate attacks on this vulnerability. For Lemkin, biological techniques of genocide hinge on a "policy of depopulation":

*Foremost among methods employed for this purpose is the adoption of measures calculated to decrease the birthrate of the national groups of non-related blood, while at the same time steps are taken to encourage the birthrate of the occupier.*<sup>356</sup>

The context for this particular extract is the Nazi theory of Germanic blood, those close to Germanic blood, and those of non-related blood. Examples given for biological techniques in *Axis Rule* are not allowing marriages, separation of males and females (for this, Lemkin used the example of Nazis separating men and women for different forced-labour camps), and undernourishment through rationing and, as a result, poor outcomes for children born to malnourished parents.<sup>357</sup> This does not provide particularly new insight into pre-existing understandings of gender and the crime of genocide. With this being said, Lemkin did point to two orders by the Nazis which are of particular interest here. First, is an order from July 28, 1942, strongly

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<sup>353</sup> Lemkin, *Axis Rule*, 79.

<sup>354</sup> Lemkin, *Axis Rule*, 83.

<sup>355</sup> Turner, *Vulnerability*, 1.

<sup>356</sup> Lemkin, *Axis Rule*, 86.

<sup>357</sup> Lemkin, *Axis Rule*, 86.

incentivising Dutch and Norwegian women to give birth to children of German military men, as it was believed that their blood was close to Germanic blood, and would therefore support the Nazi programme of procreating the ideal bloodline.<sup>358</sup> The second order was similar, but was an order of February 28, 1941, in Luxembourg which changed family law to encourage extramarital affairs with German men to the same ends.<sup>359</sup> With this focus on the change in domestic legislation, we can see in the extract above that Lemkin was aware that women of ‘more desirable’ blood were also targets for the Nazi regime in their quest for racial purity as well as those deemed ‘less desirable’. If we briefly look at an Allied report, published in 1943 titled *Women Under Axis Rule*, we can see striking similarities with Lemkin’s *Axis Rule*; the report quoted a Nazi authority as saying “I have good news for you. Henceforth young Luxembourg girls will be able to go to Germany in order to work there during six months for our Führer, and they will be proud to return as German mothers.”<sup>360</sup>

Unlike with his peer, Vespasian Pella, we do not see sexual violence as central in *Axis Rule*. If we look beyond *Axis Rule* however, there is evidence to suggest that Lemkin understood rape as an act of genocide at this early juncture of the development of the theory of genocide; Lemkin was also lobbying IMT prosecutors to have genocide recognised as a crime, and included rape in his argument.<sup>361</sup> Whilst this apparent lack of discussion in sexual violence does, indeed, change when we explore Lemkin’s other writings later, *Axis Rule* does not touch upon sexual violence, choosing instead to take an approach which examines purely the legislative changes in Nazi-occupied countries. With this in mind, the next section of this chapter will explore Lemkin’s conceptualisation of women in relation to the crime of genocide through his other work and writings.

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<sup>358</sup> Lemkin, *Axis Rule*, 488.

<sup>359</sup> Lemkin, *Axis Rule*, 474.

<sup>360</sup> United Nations Information Organisation, *Women Under Axis Rule* (London: UK, 1943), 11.

<sup>361</sup> Irvin-Erickson, *Raphaël Lemkin*, 149.

## Beyond *Axis Rule*: Lemkin on gender(ed harms) and genocide

This chapter will now look at Lemkin's conceptualisation of the nexus between gender and genocide more broadly, within his earlier writings beyond *Axis Rule*. We will look at his correspondence and writings to build a picture of this understanding. Lemkin's understanding of gender and genocide was founded on the view of women as predominantly reproductive vessels; the biological role of women in motherhood was central in how Lemkin conceptualised women as victims of the crime of genocide, as evidenced and explored in this section of the chapter. It must be noted also that, throughout Lemkin's further writings when he discussed pregnancy, abortion and rape, there is no evidence in the archival materials that he conferred with, or sought guidance from, women. The historical occurrences of acts of genocide where women are victims cited throughout this chapter were drawn from male historical accounts as far as the data shows. From German-occupied West Africa to the Mongol empire, all historical accounts of female victimisation are from men. The following materials and accounts illustrate the problematic conceptualisation of women in their heteronormative roles as mothers or overtly fetishized as young "good looking" girls who are victims of rape. These myopic conceptualisations come through in the following sections.

Lemkin wrote in 1950 how sterilization and similar acts which prevent life are essential parts of the theory of the crime of genocide (and subsequently the Genocide Convention), and result in a "slow destruction" of the group.<sup>362</sup> We can see the formation of biological genocide beginning in *Axis Rule*, and it grew to encompass many specific crimes which became essential to Lemkin's theory of genocide. Similarly, Lemkin drew on his and Pella's formation of the crime of barbarity and adopted the concept of bodily integrity.<sup>363</sup> In an inserted information pamphlet sent to the International Alliance of Women (IAW) President, Margery Corbett Ashby, Lemkin

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<sup>362</sup> Correspondence from Lemkin to the Reverend Edward Conway of the 'American Magazine,' January 9, 1950, Lemkin Correspondence, 1950, box 2, folder 3, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>363</sup> 'Memorandum on the Necessity of Including Anti-Genocide Clauses in Peace Treaties, by Raphael Lemkin,' undated, Lemkin Statements and Memoranda, undated, 1948 – 1950, box 6, folder 2, Raphael Lemkin Collection (P-154), Center for Jewish History.

outlined the examples of how the “procreation possibilities of womanhood” were attacked by the Nazis, in order to demonstrate women’s specific victimhood to Margery Corbett Ashby.<sup>364</sup> This document details eight examples of biological genocide committed against women; sterilization either “by direct operations or by injections stopping their menstruation”; women in Holland and Norway bearing children for the Nazi nation; the changing of Dutch law to enable young girls to be married to Nazi soldiers against parental permission; sending young married women to labour camps; abortions; removal of children of the ‘Nordic type’ from mothers to be brought up as Germans; obstructing marriages between perceived ‘undesirable’ races; subjecting women to medical experiments.<sup>365</sup> Precise Nazi legislative proof was also provided, including again citing the July 28, 1942 order mentioned earlier in this chapter on the incentivisation of Dutch and Norwegian women to procreate with German soldiers. Also included was another example of Nazi orders of biological acts of genocide on women which was the Order of the Reich Commissioner for the Occupied Netherlands Territories concerning Marriages of Male Persons of German Nationality in the Occupied Netherlands Territories, and Related Matters, issued February 28, 1941. This order dictated that the Reich Commissioner of the Occupied Netherlands Territory’s consent supersedes the consent of Dutch women’s guardians or parents/grandparents when she applies to marry a Nazi soldier, and that any existing waiting period can be waived if a Dutch woman wants to marry a German national.<sup>366</sup> Similarly, in a letter to Mrs L. K. Garrison in 1949 Lemkin wrote how women are victims of genocide as a result of sterilization, compulsory abortions and biological experiments.<sup>367</sup>

Before this chapter explores the specific and notable inclusion of certain gendered harms in Lemkin’s writings on the theory of genocide, it is possible to identify some broader themes which persist throughout these correspondences. The first theme to draw out is that Lemkin unequivocally conceptualised women as vital to

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<sup>364</sup> ‘Genocide Committed on Women,’ The Women’s Library, LSE, 7/MCA/C/23, 1.

<sup>365</sup> ‘Genocide Committed on Women,’ The Women’s Library, LSE, 7/MCA/C/23, 1 -2.

<sup>366</sup> ‘Genocide Legislation: Order of the Reich Commissioner for the Occupied Netherlands Territories concerning Marriages of Male Persons of German Nationality in the Occupied Netherlands Territories, and Related Matters, February 28, 1941,’ The Women’s Library, LSE, 7/MCA/C/23.

<sup>367</sup> Correspondence from Lemkin to Mrs L. K. Garrison, December 20, 1949, Lemkin Correspondence, August – December 1949, box 2, folder 2, Raphael Lemkin Collection (P-154), Center for Jewish History.

the *physical* future of a group. An undated information document in the Center for Jewish History which lays out the answers to questions such as ‘what is genocide’ and how it occurs, there is a statement which reads: “Women bear the brunt of this outrage because they are considered the logical bearers of a nation’s future generations.”<sup>368</sup> Within the context of the document, this quote comes from a paragraph titled ‘Prevention of Birth’ and follows citations of abuses to pregnant women suffered as Nazi victims and as Armenians.<sup>369</sup>

The second theme to draw out is that Lemkin understood women to be society’s ‘weak link’. In a letter dated January 2, 1950, Lemkin wrote: “women are supporting the treaty [Genocide Convention] because they are on the first line of attack being the weakest part of society.”<sup>370</sup> Unfortunately, this is not expanded upon in this correspondence. It would be possible to take a critical feminist stand on this viewpoint, interpreting that Lemkin conceptualises women as weaker than men and therefore are in need of more protection in genocides. Whilst this interpretation may well be correct (Lemkin perhaps cannot as easily be deemed a feminist-sympathiser as Pella given the evidence presented in the previous chapter), arguably within the context of his reliance on women’s organisations, and an appreciation for the work of women, it is perhaps fairer to interpret this statement as a more rudimentary attempt at voicing the concern that women, given their societal inequalities, are particularly vulnerable. The legislation regulating the reproduction of both women of ‘desirable’ and ‘undesirable’ blood under the Nazi policies, which Lemkin examined in depth in *Axis Rule*, can attest to his conceptualisation of women as uniquely vulnerable during genocides. Clearly in the same mindset, Lemkin wrote another letter dated that same

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<sup>368</sup> ‘Informe Sobre la Convencion para la Prevencion y Castigo del Crimen del Genocidio,’ undated, Unpublished Papers, undated, box 7, folder 3, Raphael Lemkin Collection (P-154), Center for Jewish History, 5.

<sup>369</sup> ‘Informe Sobre la Convencion para la Prevencion y Castigo del Crimen del Genocidio,’ undated, Unpublished Papers, undated, box 7, folder 3, Raphael Lemkin Collection (P-154), Center for Jewish History, 5.

<sup>370</sup> Correspondence to Willard Johnson, January 2, 1950, Lemkin Correspondence, 1950, box 2, folder 3, Raphael Lemkin Collection (P-154), Center for Jewish History.

day in which he referred to womanhood as “victims” when he wrote about the consequences of genocide on a population.<sup>371</sup>

This chapter will now examine specific elements and common themes throughout Lemkin’s writings in relation to the gender-genocide nexus. Pregnancy, as well as crimes of enforced sterilization and rape, are discussed in the remainder of this chapter, as these are areas which Lemkin focuses on in his writings.

### *Pregnancy*

In much of Lemkin’s writings, the conceptualisation of women in genocide is often coupled with pregnancy. Thus, women’s role as vessels, rather than as individual victims, is solidified. This is a mainstay of Lemkin’s writings on women; for Lemkin women are mothers or potential mothers, and therefore all women are conceptualised as heterosexual members of family units (rather than stand-alone individuals). Evidence presented in this chapter shows that in Lemkin’s theory of the crime of genocide, to protect women is to protect their biological reproductive abilities to save the group, rather than women. As previously stated, the impact of impairing pregnancies, or the physical reproduction of a group, is a common feature of the crime of genocide. However, this section analyses the reluctance or inability to see beyond women-as-mothers-and-caregivers conceptualisation which is common in international law (their sole function and therefore harm experienced is to their capacity to physically reproduce and give birth).<sup>372</sup>

When discussing the effects of the crime of genocide on women, Lemkin frequently drew on the examples of Armenian women. Armenian women were, as Lemkin wrote in August 1949, raped and pregnant women had foetuses cut out and were left to die, left to install fear in other women in order to ensure they obeyed.<sup>373</sup>

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<sup>371</sup> Correspondence to Father Conway, January 2, 1950, Lemkin Correspondence, 1950, box 2, folder 3, , Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>372</sup> Charlesworth and Chinkin, *The Boundaries of International Law*, 308.

<sup>373</sup> Correspondence to Len Peterson, August 9, 1949, Lemkin Correspondence, August-December 1949, box 2, folder 2, Raphael Lemkin Collection (P-154), Center for Jewish History.

Lemkin would continue to refer to, and potentially draw on the ‘shock factor’ of, foetuses being cut from women as a form of genocide in his correspondences to, for example, the Editor of the New York Times in 1950<sup>374</sup> and in unpublished documents explaining the methods of genocide.<sup>375</sup> Another example Lemkin drew on in his writings on genocide was Japan; on the condition in Japan, Lemkin wrote in his notes for his book *History of Genocide* that one ruler demanded women “had to swear that even their unborn children would not be Catholics. If they refused, their stomachs were opened and the embryo torn out.”<sup>376</sup> Similar crimes against Armenian women, as previously noted, permeated Lemkin’s correspondences.<sup>377</sup>

### ***Forced sterilization and abortion***

In many of his writings on genocide collated by the Center for Jewish History, Lemkin cited forced sterilization as an example of genocide and biological techniques of genocide. In a publication titled ‘Genocide as a Crime Under International Law’, as well as in various other writings and correspondences,<sup>378</sup> Lemkin included acts intended to “sterilize through compulsion.”<sup>379</sup> Lemkin briefly referred to “outright killings and abortions” as “ktonotechnics” from the Greek word for murder, “ktonos”, and sterilizations and castrations as “steriotechnics” from the Greek word for infertility and infertile, “steiros” and “steirosis.” Despite this brief notation, Lemkin did not develop this concept beyond this. From his writings and letters, Lemkin emphasised

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<sup>374</sup> Correspondence from Lemkin to the Editor of the New York Times, January 2, 1950, Lemkin Correspondence, 1950, box 2, folder 3, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>375</sup> ‘Informe Sobre la Convencion para la Prevencion y Castigo del Crimen del Genocidio,’ undated, Unpublished Papers, undated, box 7, folder 3, Raphael Lemkin Collection (P-154), Center for Jewish History, 5.

<sup>376</sup> Lemkin and Jacobs, *Lemkin on Genocide*, 355.

<sup>377</sup> Correspondence from Lemkin to Len Peterson, August 9, 1949, Lemkin Correspondence, August-December 1949, box 2, folder 2, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>378</sup> See for example: Interview with Professor Lemkin on United Nations NewsReel, June 12, 1947, Lemkin Interviews and Radio Transcripts, 1947-1951, box 6, folder 1; ‘Stop Genocide Now,’ undated, Unpublished Papers, undated, box 7, folder 3; ‘On the need for a Genocide Convention,’ undated, Unpublished Articles, undated, box 7, folder 2; ‘Memorandum on Genocide,’ undated, Unpublished Papers, undated, box 7, folder 3, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>379</sup> ‘Genocide as a Crime Under International Law,’ undated, Lemkin Statements and Memoranda, Undated, 1948-1950, box 6, folder 2, Raphael Lemkin Collection (P-154), Center for Jewish History, 2.

the difference between sterilization of women and the voluntary use of birth control to limit children. In an undated, unpublished document titled ‘Nature of Genocide’, the distinction is made in terms of the intent to destroy a group:

*The underlying idea of birth control is that mothers in poor condition of health might ruin themselves through physical exertion by bearing too many children. Also bearing too many children might in the view of the advocates of birth control diminish the educational opportunities within a family of very many children. It has been said that a physically underdeveloped mother living in a basement, without air and hygienic conditions with 9 children does harm to herself and to her children by bearing a tenth child.<sup>380</sup>*

This is juxtaposed with the deliberate “sterilisations, abortions and compulsory abortions” seen in genocidal acts.<sup>381</sup> As it transpires, there is evidence to suggest that this broader differentiation between abortion and birth control, and the imposition of measures intended to prevent births in a group including forced abortions and sterilisations, was perhaps radical for the time. Evidence in Hansard of a UK House of Commons debate on the Genocide Convention ten years after Lemkin’s death illustrates the confusion between voluntary family planning and genocidal acts to restrict birth rate.<sup>382</sup> A male MP, Mr Peter Kirk, suggests that to enforce a law which legalises abortion<sup>383</sup> within a nation which rejects the idea of abortion would amount to an act of genocide. This confusion is countered by subsequent MPs in the debate, making the point that the legislation must make abortion compulsory and with the

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<sup>380</sup> Nature of Genocide, undated, Unpublished Articles, box 7, folder 2, Raphael Lemkin Collection (P-154), Center for Jewish History, 8.

<sup>381</sup> Nature of Genocide, undated, Unpublished Articles, box 7, folder 2, Raphael Lemkin Collection (P-154), Center for Jewish History, 8-9.

<sup>382</sup> UK Parliament, *Parliamentary Debates*, House of Commons, Wednesday 5 February 1969, col. 499-500, Mr Peter Kirk MP, accessed January 19, 2022, <https://hansard.parliament.uk/Commons/1969-02-05/debates/4586a501-d888-4ee5-adb1-b43f481ed311/GenocideBillLords?highlight=genocide#contribution-3a42b55e-7418-4b67-8b9d-baf869238e8c>.

<sup>383</sup> For context, abortions up to 28 weeks in most cases was made legal in England and Wales in 1967 in the Abortion Act.

intent to destroy a group for it to be considered genocide.<sup>384</sup> Mr Kirk was of the opinion that “[a]ny of birth control or abortion is ‘with intent to destroy’.”<sup>385</sup> Context is important to provide here; women have sought to control their fertility throughout history, and often turned to abortions when methods of contraception were unsuccessful which, in turn, had the potential to cause ill health and death when performed illegally.<sup>386</sup> This female history of abortion and contraception is notably missing in the House of Commons debate. Furthermore, a feminist analysis exposes an additional theme here: there are no women in these conversations, by decisionmakers and law-makers on the difference between family planning, abortion and forced prevention of births.

This feminist, female-standpoint analysis also exposes a distinct difference in these opinions; Lemkin’s conceptualisation of this distinction centres the mother’s health and through this, the health of her children. Whilst this conceptualisation still invokes the women-as-mothers-and-caregivers perception, the fundamental point of female choice (a woman’s *choice* in receiving family planning and abortion) contrasts with that of Mr Kirk MP who does not distinguish between legal access to family planning and abortions (and therefore a woman’s right to choose to access such services) and it being forced upon women through genocide. Simply put, female agency and decision-making is present, if flawed, in Lemkin’s writings whereas it is notably absent in Mr Kirk’s conceptualisation in 1969 as well as being absent in any rebuff of his statement by fellow male MPs during this debate. Interpreting Mr Kirk’s comments as indicative of the broader debate would be simplistic. However, coupled with the lack of female voices in addition to a lack of nuanced perception of female

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<sup>384</sup> UK Parliament, *Parliamentary Debates*, House of Commons, Wednesday 5 February 1969, col. 499 and 508, Mr Elystan Morgan MP, accessed January 19, 2022, <https://hansard.parliament.uk/Commons/1969-02-05/debates/4586a501-d888-4ee5-adb1-b43f481ed311/GenocideBillLords?highlight=genocide#contribution-3a42b55e-7418-4b67-8b9d-baf869238e8c>, accessed January 19, 2022.

<sup>385</sup> UK Parliament, *Parliamentary Debates*, House of Commons, Wednesday 5 February 1969, col. 499 and 508, Mr Elystan Morgan MP, accessed January 19, 2022, <https://hansard.parliament.uk/Commons/1969-02-05/debates/4586a501-d888-4ee5-adb1-b43f481ed311/GenocideBillLords?highlight=genocide#contribution-3a42b55e-7418-4b67-8b9d-baf869238e8c>, col. 499-500, Mr Peter Kirk MP.

<sup>386</sup> Eleanor S. Riemer and John C. Fout, *European Women: A Documentary History, 1789-1945* (New York: Schocken Books, 1980), 202-203.

decision-making in relation to family planning, the debate in the House of Commons is perhaps indicative of a broader exclusion of women from discussions where simplistic conceptualisations are propounded.

## **Rape**

### **History of genocide**

In his manuscripts and notes for his never-completed *History of Genocide*, Lemkin explicitly mentions incidences of rape being used as a method of genocide throughout history, and we see a centring of rape in his formation of the gender-genocide nexus. Although it was not possible for the author to access The American Jewish Historical Society during this research, Irvin-Erickson drew on these archives and notes that, whilst lobbying the IMT Prosecutors to include the charge of genocide, Lemkin used the example of rape as an act of genocide in his letters to British Prosecutor Sir David Maxwell Fyfe.<sup>387</sup> Lemkin's research for *History of Genocide* on the German administration of South West Africa, and the genocide against the Herero population, contains many examples of the sexual violence and gendered harms relating to acts of genocide which is useful in building a picture of what Lemkin understood as gendered experiences during genocide. As we shall see in this section, rape was formulated as a crime against women's reproduction and against the men in the group too, by way of sexually transmitted diseases. These documents do not display a deeper appreciation of the impact of rape on the women beyond biological reproduction and the women's relation to men. Again, it is important to note that Lemkin draws on male historical recollections to form his understanding of rape as an act of genocide.

The Herero genocide, committed by German colonisers in South West Africa at the beginning of the 1900s, formed a larger part of Lemkin's evidence for his theory of genocide. The German territory in South West Africa was Germany's largest settler

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<sup>387</sup> Irvin-Erickson, *Raphaël Lemkin*, 149.

colony and it is estimated that the genocide in German South West Africa killed 80 percent of the Herero population.<sup>388</sup> An account given by a leading Herero cited by Lemkin recalled how Herero women were forced into hard labour and upon their return to their families they either had, or were expecting, a child by a white man.<sup>389</sup> Another account of the treatment experienced by the Herero was given by a Percival Griffiths who noted that the German soldiers maintained “harems” of Herero women who, if they fell pregnant, were given a few goats before being dismissed.<sup>390</sup>

Beyond the implication of carrying a non-Herero pregnancy to term, Lemkin drew the link between rape and the spread of venereal infections among the population. Lemkin cited accounts from the Herero peoples including one which recalled how wives and daughters were forced into starvation or to work on the farms owned by German colonisers:

*In these villages and on these farms they came into contact with immoral whites and soldiers, contracted gonorrhoea [sic], and when after years they again were met by their husbands and fathers, they were sterile. At Windhoek a house of prostitution was opened for the German military. Our daughters were placed in it, and when they returned from there and got married to Herero men, they were sterile.*<sup>391</sup>

The infection spread to their husbands and broke up families.<sup>392</sup> Missing in this account of venereal diseases and sexual violence, however, is the history of female resistance to invasive and humiliating medical examinations performed on Herero women in German concentration camps, which were ostensibly performed to curb

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<sup>388</sup> Elisa von Joeden-Forgey, ‘Gender, Sexual Violence and the Herero Genocide,’ in *The Routledge Companion to Sexuality and Colonialism*, eds. Chelsea Schields and Dagmar Herzog (Ebook, London: Routledge), 317, <https://doi.org/10.4324/9780429505447>.

<sup>389</sup> Lemkin and Jacobs, *Lemkin on Genocide*, 273.

<sup>390</sup> Percival Griffiths, *Cape Argus*, cited in Lemkin and Jacobs, *Lemkin on Genocide*, 273 – 274.

<sup>391</sup> Mr Steenkamp, *A Doctor’s Diary in Damaraland*, cited in Lemkin and Jacobs, *Lemkin on Genocide*, 274.

<sup>392</sup> Mr Steenkamp, *A Doctor’s Diary in Damaraland*, cited in Lemkin and Jacobs, *Lemkin on Genocide*, 274.

venereal diseases.<sup>393</sup> Also missing from this account, and illustrating the need for a feminist lens, is the impact these rapes and subsequent infections had on the women in addition to the fathers and husbands. Moving away from the focus on female reproduction and viewing females through their relationships with men (sterilization cited in this account), untreated gonorrhoea can cause complications such as painful pelvic inflammatory disease and life-threatening ectopic pregnancies.<sup>394</sup> Building a male-dominated and male-influenced concept of rape as a method of genocide has, therefore, resulted in a narrow crime which places great emphasis on biological reproduction whilst ignoring the wider impacts on women. Interestingly, Lemkin's book does not note how sexual relations between German colonisers and Herero women were, occasionally, consensual, and that in the earlier years of the German settlers there was a high level of accepted intermarriage.<sup>395</sup> During the subsequent genocide against the Hereros, sexual violence against women was so common that the German colonisers use the terms *Verkafferung* ('going native') and *Schmutzwirtschaft* ('dirty trade') to refer to sexual violence.<sup>396</sup> The use of these terms further dehumanises the Herero population, and specifically women.

Whilst Lemkin occasionally used the word 'rape' outright, a majority of his writings on gendered harms was euphemistic. Consequently, we again see the importance of adopting the broader methodology of searching for gendered harms rather than rape. What is relevant to this chapter is that, although Lemkin had already mentioned rape in his manuscripts for *Introduction to Genocide*, he would later echo the "I will pass on" sentiment of the Nuremberg trials.<sup>397</sup> In a report on the Mongol's treatment of communities in Hungary, Lemkin wrote "Roger [an Archdeacon of Wardein who recounted his account of the events] further reports that in other churches of the fortress [where women and children had fled for shelter from the

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<sup>393</sup> Joeden-Forgey, 'Herero Genocide,' 322.

<sup>394</sup> NHS, 'Complications: Gonorrhoea,' accessed June 21, 2022, <https://www.nhs.uk/conditions/gonorrhoea/complications/>.

<sup>395</sup> Joeden-Forgey, 'Herero Genocide,' 317.

<sup>396</sup> Joeden-Forgey, 'Herero Genocide,' 318.

<sup>397</sup> Askin, *War Crimes against Women*, 98.

Mongol army], women were tortured and ravaged in ways which had better remain untold.”<sup>398</sup> They were, thus defined by Lemkin as, “maltreated women.”<sup>399</sup>

An account reproduced by Lemkin in his notes on the German occupation of South West Africa noted the “sensual cruelties, assaults on women, horrible ill-treatment” amongst the experiences of the native population.<sup>400</sup> Lemkin later described the actions in German South West Africa as “atrocities and immoralities.”<sup>401</sup> Other acts of undisclosed “cruelty and improper conduct accompanied by acts of violence” towards women in custody are claimed by Lemkin to have been committed by a Herr Kleist in South West Africa.<sup>402</sup> According to Lemkin, the men who administered over the German rule in Africa had been men of poor reputation at home and who “were dumped into the colonies to get rid of them, and yet these men were given practically unlimited opportunities to indulge their sadistic tendencies and lust.”<sup>403</sup> More explicitly, in German South West Africa, Lemkin’s notes cited a doctor called G. H. Schmidt who allegedly demanded all girls in the area to dance for him by fear of fine, and subsequently seizing a girl of fourteen called Adjaro and, “abusing and flogging her severely. It was known that Schmidt kept a harem of young native girls, some under the age of puberty.”<sup>404</sup> Lemkin also drew on the Inca civilisation to form his theory of the crime of genocide. The case of the Incas, under the heading of “Biological genocide,” Lemkin quoted a Mr Prescott who wrote: “the young maiden was torn without remorse from the arms of her family to gratify the passions of her brutal conquerors.”<sup>405</sup> Again, we see Lemkin drawing on sensational historic male accounts of rape, which arguably fetishizes this crime; this passage chosen to frame the “brutal conquerors” as seeking out “young maidens”, a term used to describe

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<sup>398</sup> Wolfe as cited in Lemkin and Jacobs, *Lemkin on Genocide*, 321-322.

<sup>399</sup> Wolfe as cited in Lemkin and Jacobs, *Lemkin on Genocide*, 322.

<sup>400</sup> Quote from a Dr Schaedler reproduced in: Lemkin and Jacobs, *Lemkin on Genocide*, 190.

<sup>401</sup> Lemkin and Jacobs, *Lemkin on Genocide*, 191.

<sup>402</sup> Lemkin and Jacobs, *Lemkin on Genocide*, 209.

<sup>403</sup> Lemkin and Jacobs, *Lemkin on Genocide*, 221.

<sup>404</sup> Lemkin and Jacobs, *Lemkin on Genocide*, 208.

<sup>405</sup> William H. Prescott, *History of the Conquest of Peru* (London and New York, 1916) as cited in Lemkin and Jacobs, *Lemkin on Genocide*, 385.

unmarried (or virgin) girls or women,<sup>406</sup> who in this case exists within the family unit. Her implicit innocence contrasted with the “passions” of “brutal” men sets the framing of rape to be uncontrollable sexual desire of men played out on girls. Coupled with the phrase “sensual cruelties” noted above, this repeating theme becomes clearer. This is a sensationalist account which Lemkin draws on as evidence of genocidal rape. Lemkin follows this account of rape in Peru with: “[b]etween this forceful removal of Indian girls and the undermining of the health of the male slave, the biological continuity of the Peruvian people must have been greatly jeopardised.”<sup>407</sup> Similarly, in Lemkin’s research he discusses the many occasions throughout history when “good-looking” girls were separated from the rest of the peoples in a town under siege.

Lemkin drew on records of the town of Egres, where according to accounts, only some monks and “good-looking women” were allowed to leave, the others were killed.<sup>408</sup> An account from a Thomas of Spolato, cited by Lemkin, describes how the “Mongol women who accompanied the armies displayed even greater cruelty toward the captive women than their male companions. They would immediately kill the more good-looking women while reserving others for slavery, cutting off their noses and defacing their countenances.”<sup>409</sup> This theme is a constant within Lemkin’s writing: “At Khaf and Tun which fortresses were taken first, the entire population was massacred with the exception of some attractive girls.”<sup>410</sup> In Sarkad the local populations traded livestock for “beautiful girls” with the Mongols.<sup>411</sup> Lemkin cited this as a biological technique of separating families; an example of this in Poland in 1258 was cited by Lemkin as another case of biological genocide by separation of families.<sup>412</sup> In a section of his chapter on Hungary, Lemkin titled a sub-section “Demoralization” under the “Cultural genocide” section. In this he wrote: “Roger [as above] relates how the people in repopulated villages were forced to buy their lives by lending out their wives,

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<sup>406</sup> ‘Definition of Maiden’, accessed 31 October 2022, <https://www.merriam-webster.com/dictionary/maiden>.

<sup>407</sup> Lemkin and Jacobs, *Lemkin on Genocide*, 385.

<sup>408</sup> Lemkin and Jacobs, *Lemkin on Genocide*, 324.

<sup>409</sup> Thomas of Spolato, included in Wolfe as cited by Lemkin and Jacobs, *Lemkin on Genocide*, 324.

<sup>410</sup> Lemkin and Jacobs, *Lemkin on Genocide*, 243.

<sup>411</sup> Lemkin and Jacobs, *Lemkin on Genocide*, 327.

<sup>412</sup> Wolfe as cited in Lemkin and Jacobs, *Lemkin on Genocide*, 373.

daughters, and sisters to the Mongols. The Mongols found it particularly to their taste to violate these women in front of the eye of their relatives. In Pecksa and Egres some good-looking women were sorted out from the victims destined for slaughter for the purposes of rape."<sup>413</sup> Note in this passage how Roger frames women as passive objects to be "lent out."

In these accounts, we can see a common theme of a male-dominated narrative of rape as a method of genocide producing problematic conceptualisations of women. If we return to the analysis of Meger from Chapter 1, which criticises the "fetishization" of sexual violence in conflict,<sup>414</sup> and we analyse Lemkin's writings of sexual violence through this feminist critique, there is scope to problematise Lemkin's framing of "beautiful" and "good-looking" women being subjected to sexual violence in his writings. Could this be a similar fetishization of female victims of sexual violence in genocide? Fundamentally, at the base of Lemkin's writings and the historical documents which he draws on to formulate his theory of rape, there is the need to cast the victims as young good-looking virgins who must be protected from "brutal conquerors" with "passions", or as objects to be traded for safety. The inherent need to protect these vulnerable maidens is clear in these passages. It is possible, therefore, that Lemkin's framing of rape in such ways does fit with Meger's fetishization theory which highlights how sexual violence is fetishized whilst failing to account for the structural issues which enables sexual violence, leading to the "securitization" of sexual violence, or the requirement of military intervention to ostensibly protect women.<sup>415</sup> At the heart of this theory is the commodification of women's bodies, a component clear in the passages above.

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<sup>413</sup> Wolfe as cited in Lemkin and Jacobs, *Lemkin on Genocide*, 328.

<sup>414</sup> Meger, 'Fetishization of Sexual Violence,' 149-59.

<sup>415</sup> Meger, 'Fetishization of Sexual Violence.'

## Conclusion

This chapter sought to develop our understanding of how Lemkin conceptualised gender within the context of the newly formed theory of genocide. The previous chapter, Chapter 2, explored the potential feminist context in which barbarism was developed, and this chapter sought to understand whether elements of this feminist context remained as barbarism was re-worked into the theory of genocide.

Beginning with *Axis Rule* and then turning to Lemkin's later writings, this chapter identified potentially gendered harms in archival documents and published materials in order to understand how these harms were conceptualised. Rape was a major focus for Lemkin in how he conceptualised acts of genocide against women which, and as we have seen in the literature review for this thesis, is not so far from contemporary understandings. Lemkin coherently illustrates in his early writings discussed herein how female victimhood can be a result of legislation, particularly under the Nazi regime against women of desirable heritage, incentivising or forcing marriages and procreation. In doing so, Lemkin provides a different viewpoint which focuses on genocide by legislative restrictions. By identifying this experience of genocide-by-legislation, whether intended or not, Lemkin indeed provides an example of a more subtle gendered harm (albeit still predicated on the women-as-mothers-and-caregivers perception), and demonstrates how genocidal acts as such are not only targeted against the 'undesirable' women but also against the 'desirable'.

Beyond this, however, *History of Genocide* provides problematic content from a feminist standpoint. It was argued in this chapter that writings chosen to form Lemkin's theory of rape as genocide were written by men. There appears to be no female input or influence of this crime as it pertains to women, and Lemkin did not appear to seek this out so far as the data shows. As a result, the accounts which Lemkin did choose to draw on tended to sensationalise rape as a crime done to young beautiful virgins by brutish men, or as passive objects to be traded. In the writings and publications of Lemkin, the view of women as mothers-and-caregivers permeates. This is solidified in his highlighting the crimes of enforced sterilisation and rape – as crimes

against the reproductive abilities of women – as examples of acts of genocide against women. However, evidence presented in this chapter suggests that he was aware of some vulnerabilities of women and their experienced inequalities, albeit problematically worded.

Ultimately, this chapter demonstrated that although Lemkin's understanding of the nexus between gender and acts of genocide remained rooted in problematic conceptualisations and based solely on the historical records of men, there was an awareness in the early-to-mid era of the development of genocide theory that women deserved special protection in genocides as a result of their gender. There is no evidence that Lemkin sought advice from women on the impact of rape, or sought female historical accounts of rape being perpetrated. As Lemkin's theory of the crime of genocide became realised in the form of the Genocide Convention, did these conceptualisations of gender discussed in this chapter also carry-over into the Convention? This will be discussed in the following chapter.

## Chapter 4 - Travaux Préparatoires: Charting the change

### Introduction

In the post-war world, as momentum to outlaw the crime of genocide grew, the newly forming justice institutions proved to be the ideal forums in which Lemkin would promote his theory of genocide and seek international support for outlawing the crime. Lemkin developed an allyship with a US Prosecutor at the International Military Tribunal, Nuremberg (IMT) even before the London Conference, establishing the IMT, got underway in June 1945.<sup>416</sup> Two months before the London Conference, Lemkin wrote to the newly-appointed US Prosecutor Justice Jackson to strongly advocate for the crime of genocide and it is recorded that Justice Jackson borrowed a copy of *Axis Rule* for his travel to Nuremberg, and Lemkin was ultimately hired by Jackson as chief council.<sup>417</sup> Although genocide was not yet a well-known theory, the Nuremberg Charter article 6(c) provided language which would later benefit the outlawing of genocide:

*Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in connection with any crime...*<sup>418</sup>

Clearly seeing the value in adopting the crime of genocide, Justice Jackson explicitly spoke of the “extermination of Jews and destruction of the rights of minorities” at the London Conference, and would go on to be the first to mention genocide in international law by including genocide in Count Three-War Crimes of the

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<sup>416</sup> Irvin-Erickson, *Raphaël Lemkin*, 140.

<sup>417</sup> Irvin-Erickson, *Raphaël Lemkin*, 140; the work of John Barrett; Lemkin and Frieze, *Totally Unofficial*, xiv.

<sup>418</sup> United Nations, *Charter of the International Military Tribunal – Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis (“London Agreement”)*, August 8, 1945, accessed April 25, 2022, <https://www.refworld.org/docid/3ae6b39614.html>.

IMT indictment.<sup>419</sup> Prosecutors, such as the British Sir Maxwell-Fyfe and Sir Hartley Shawcross (who we shall see in this chapter as eventually cooling on the concept of genocide), also used terms or language associated with the crime of genocide.<sup>420</sup> Post-war trials built on this to include genocide increasingly in relation to the Holocaust.<sup>421</sup> Despite these early successes, Lemkin would later recall his perception of the IMT as timid in its approach to adopting the new concept of genocide.<sup>422</sup> Irvin-Erickson suggested that the lack of information on the IMT in Lemkin's autobiography was due to this perception of the IMT as a failed attempt to have genocide recognised as a crime.<sup>423</sup> Despite this, the IMT proved to be a springboard for the new crime of genocide to be launched into the international law arena. The newly-minted United Nations, sitting for the first time in New York as the IMT judgements were handed down, provided the next target for Lemkin and his aim of getting genocide recognised as a crime.<sup>424</sup>

To provide context to this chapter on the wording in creation of the Genocide Convention, a brief timeline will be useful here. The General Assembly Resolution on Genocide, penned by Lemkin in the autumn of 1946, was supported by Cuba, India, and Panama who also supported a draft Resolution after it was referred to the Sixth (Legal) Committee.<sup>425</sup> The draft Resolution was adopted on December 11, 1946, at the General Assembly after it had returned from the Sixth Committee's Sub-Committee on Genocide.<sup>426</sup> It was then handed to the Economic and Social Council (ECOSOC) to draft a Genocide Convention, which in turn sought advice from the Human Rights Division's three experts: genocide's Lemkin, barbarism's Vespasian Pella, and French IMT Prosecutor Henri Donnedieu de Vabres, who created a working draft of the Genocide Convention.<sup>427</sup> This version of the Convention was referred back to the General

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<sup>419</sup> Irvin-Erickson, *Raphaël Lemkin*, 140-141.

<sup>420</sup> Irvin-Erickson, *Raphaël Lemkin*, 143.

<sup>421</sup> Schabas, *Genocide in International Law*, 51.

<sup>422</sup> Lemkin and Frieze, *Totally Unofficial*, 118.

<sup>423</sup> Irvin-Erickson, *Raphaël Lemkin*, 148.

<sup>424</sup> Schabas, *Genocide in International Law*, 52.

<sup>425</sup> Schabas, *Genocide in International Law*, 52; Irvin-Erickson, *Raphaël Lemkin*, 152.

<sup>426</sup> Schabas, *Genocide in International Law*, 54-55.

<sup>427</sup> Schabas, *Genocide in International Law*, 60.

Assembly in December 1947, and subsequently was returned to the Sixth Legal Committee to begin deliberations on the parameters of the Convention.<sup>428</sup> To prevent any further delays, ECOSOC created the Ad Hoc Committee on Genocide to draft a convention in the spring of 1948.<sup>429</sup> Thus began the debates on the content of the Genocide Convention. These historical debates and discussions were recorded at the time, and the official records (published between 1946 and 1948) have since been collated and published in two volumes titled *The Genocide Convention: The Travaux Préparatoires*, by Hiram Abtahi and Philippa Webb.<sup>430</sup> These documents catalogue the debates and opinions held by those drafters of the Genocide Convention. These two volumes of preparatory papers form the majority of primary data for this chapter.

This chapter examines the debates surrounding Article II of the Convention, which contains the acts of genocide. As a feminist research project, this chapter of the thesis will examine the *Travaux Préparatoires* in order to identify debates on gendered harms and acts of genocide as they pertain to women. How do they compare with the previously established understandings of gendered harms and women in genocide from Chapters 2 and 3? The research question being answered in this chapter is **were these gendered harms included and potentially removed from the Genocide Convention?** This chapter posits two conceptualisations of gendered harms reflected in the record of the drafting. In the first group are explicitly gendered harms; harms which are clearly understood by the drafters as having gendered components. The second group is harms not understood as gendered although (argued herein) which contain gendered components proved by an examination of historical documents.

Taking the social constructivist's concept, discussed in Chapter 1, that international human rights laws are socially constructed reflections of political actors, this chapter highlights where these political reflections can be seen in the gender prism. Firstly, this chapter explores explicitly gendered harms such as forced abortion, rape, and castration in the first instance. Secondly, this chapter explores concepts

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<sup>428</sup> Schabas, *Genocide in International Law*, 66.

<sup>429</sup> Schabas, *Genocide in International Law*, 69-70.

<sup>430</sup> Philippa Webb and Hiram Abtahi, *The Genocide Convention: The Travaux Préparatoires, Volumes 1 and 2* (Ebook, Leiden, Boston: Martinus Nijhoff Publishers, 2008), <https://doi.org/10.1163/ej.9789004164185.i-2236>.

which could potentially be gendered harms, in order to better understand how the drafters perceived these. Charlesworth and Chinkin argue that male assumptions are codified in international law, and that international law, in turn, reinforces gendered assumptions.<sup>431</sup> This chapter similarly argues that, as with Lemkin, the documents show that the drafters of the Convention understood women solely in their role as mothers or by their ability to bear children, codifying and thus reinforcing gendered assumptions in the Genocide Convention. Whilst this chapter will illustrate that there was little development in understanding of these gendered harms, there are a number of key findings in the drafter's perceptions of women and women's vulnerabilities in genocides, such as the opinion of abortion.

Why is this important and why are these questions being asked of this historical document? If we are to understand the current role of the Genocide Convention and the impacts of acts of genocide on all members of the persecuted group, including women, then the drafting of the Convention and the perceptions of women and harms which were included at its inception provides important insight into the origins of the Convention. By examining and analysing each gendered harm in turn and in context, this chapter seeks to uncover perceptions and to deconstruct the accepted male-as-norm approach to historical documents.

Finally, this chapter asks the question of where are the women? In a 2018 follow-up essay to their volumes of preparatory papers, Abtahi and Webb note the gender imbalance present during the drafting process of the Genocide Convention, highlighting that Shaista Ikramullah was the only significant female to have participated during the process, who is discussed in greater detail in Chapter 6 of this thesis.<sup>432</sup> This chapter draws on the *Travaux Préparatoires* to evidence the male-dominated drafting of the Convention, and makes the argument that there exists common themes in terms used by the drafters which cast men as rights-holders and decision-makers and women as mothers and victims. By way of a comparison, the 1951 Refugee Convention *Travaux Préparatoires* is examined in this chapter to

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<sup>431</sup> Charlesworth and Chinkin, *Boundaries*, 17.

<sup>432</sup> Abtahi and Webb, 'Secrets and Surprises,' 300.

determine the extent to which the Genocide Convention was arguably advanced in considerations of gendered harms. This comparison provides a contemporaneous legal human rights treaty to which the Genocide Convention can more fairly be judged against than a later convention. This chapter also draws on the trial transcripts from the IMT. This is done to posit that evidence presented throughout the IMT of sexual violence and gendered harms presupposes a level of awareness amongst drafters of the Genocide Convention of these gendered crimes and harms; Henri Donnedieu de Vabres, British Chief Prosecutor Henry Shawcross, Vespasian Pella, and (for a time present at the IMT) Lemkin were influential individuals both at Nuremberg and the drafting of the Genocide Convention. Furthermore, as discussed in Chapter 3, Lemkin used the example of rape as an act of genocide in his letters to British Prosecutor Sir David Maxwell Fyfe when lobbying for genocide to be recognised in the IMT indictments.<sup>433</sup> It is arguable that these individuals were, at the very least, cognisant of the extent of sexual violence presented in IMT testimony. Whether this awareness is reflected in the debates in drafting the Genocide Convention is interrogated in this chapter.

Whilst a main goal of this chapter is to qualitatively assess the extent to which these gendered harms were originally understood and whether this understanding developed over the drafting process, elements of quantitative data is also used. As this chapter will demonstrate, this quantitative data illustrates clearly the disparity in considerations of crimes in the minds of the drafters. When compared to the qualitative analysis, this helps to build a strong picture and provides a basis for comparing the focus on gendered acts of genocide to the focus on other acts of genocide killings.

## Gendered harms

This section of this chapter will first aggregate and explain the gendered harms discussed in the *Travaux Préparatoires*, and continues on to explore their context and

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<sup>433</sup> Irvin-Erickson, *Raphaël Lemkin*, 149.

subsequently compare them with the techniques of killing as genocide. Throughout the drafting, frequent references were made to the trade or traffic in women and obscene materials. These discussions were in relation to using pre-existing conventions treaties being used as templates for the Genocide Convention, rather than substantive discussions on these crimes. These debates are excluded from the analysis in this chapter, as they are not relevant to Article II of the Convention on acts of genocide. Furthermore, discussions on obscenity as featured in the *Travaux Préparatoires* is a focus of Chapter 5, and therefore not discussed in this chapter.

This section is divided into two as previously indicated; the first section is an observation and analysis of the gendered harms which are clearly understood as gendered in the minds of the drafters. Broadly discussed under the umbrella of restricting births within a group, these gendered terms include forced abortions, sterilization, castration, rape, segregation of the sexes, obstacles to marriage, and procreation. The second section explores the concepts which arguably (herein this argument is made) are still gendered, but are not explicitly stated or understood as such during the drafting of the Convention. These include biological experiments, mutilations, enfeeblement of members of a group, moral debasement, transfer of children, and sex as a persecuted group akin to national, ethnic and racial groups. Each of these terms are discussed in relation to the number of times and the context in which they appear in the *Travaux Préparatoires* to better understand how each of these gendered harms were conceptualised.

### ***Restricting / preventing births and 'biological' genocide***

Restricting or preventing births within a group is the umbrella act of genocide under which biological acts (forced abortion, sterilization, obstacles to marriage, and segregation of the sexes) were discussed at the drafting of the Genocide Convention. Prevention or restriction of births was mentioned thirty-nine times, although more relevant to this thesis is the context and debates, in addition to any development recorded in the *Travaux Préparatoires*.

Through the collation of the data for this element of the crime of genocide, immediately what became clear was that the drafters spent no time on it after the Thirteenth Meeting of the Ad Hoc Committee on Genocide at Lake Success in New York on April 20, 1948. Aside from discussing the transfer of children in their meeting in Paris on October 23, 1948, any discussion of new terms to do with biological techniques happened between June 1947 and April 1948. Furthermore, there is no significant development in the consensus understanding among the drafters of biological techniques throughout the process. It continued to be viewed as a non-contentious umbrella term.

In March 1947, a draft of the Convention prepared by the UN Secretary-General included an original broad explainer of the concepts of genocide as well as the scope of the Convention and the jurisdictional application.<sup>434</sup> Importantly, in the table of contents of this document, the term “‘Biological’ genocide’ was used to head the section which included sterilization and/or compulsory abortion, segregation of the sexes, and obstacles to marriage. A brief explainer is included later in this draft Convention which outlined Lemkin’s theory of physical genocide, biological genocide (determined as preventing births) and cultural genocide.<sup>435</sup> However, to return to the beginning of the draft Convention, restricting births was used as the section heading (and biological experiments and mutilations remained under the first act of causing “the death of members of a group or injuring their health or physical integrity”).<sup>436</sup> Included in these documents are comments on the draft, which contains the following explainer for “biological” genocide:

*This is characterized by measures aimed at the extinction of a group of human beings by systematic restrictions on births without which the group cannot survive. Such restrictions may be physical, legal or social. Article I lists these processes as follows: (a) Sterilization and/or compulsory abortion; These are biological means. (b) Segregation of*

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<sup>434</sup> Secretariat Draft E/447, ‘Draft Convention On The Crime Of Genocide, 28 March, 1947,’ *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 209 – 280.

<sup>435</sup> Secretariat Draft E/447, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 224.

<sup>436</sup> Secretariat Draft E/447, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 215.

*the sexes; This may be induced by various causes such as compulsory residence in remote places, or the systematic allocation of work to men and women in different localities. (c) Obstacles to marriage; These are legal restrictions<sup>437</sup>*

We therefore see this further categorisation into physical, medical and legal restriction aimed at reducing the births within a group. Strong emphasis is placed here on the importance of physical reproduction of the group. In this paragraph we can see strong similarities with Lemkin's *Axis Rule* analysis of the legal methods of genocide imposed on occupied territories by the Nazis as discussed in Chapter 3, as well as explicit mentions of sterilization and abortions. Equally important as to what is included is what is not included. One observation, and an observation which this chapter explores later, is that there is no inclusion of sexual violence or rape, or of castration in this initial paragraph. The joining of sterilization and compulsory abortion in the first act (as "and/or") leads to these two acts as being presumed to be female-focused. Whilst compulsory abortion is a crime against women, sterilization can impact both men and women. When considered within "restricting births" as a whole, therefore, there is early indication in this extract that the potential for the sole focus of the biological means of restricting births to be placed on women as discussed in greater detail later in this chapter.

The broader concept of restricting births was ultimately included as an act in the draft Convention in June 1947, and included: "(a) sterilization and/or compulsory abortion; or (b) segregation of the sexes; or (c) obstacles to marriage."<sup>438</sup> Biological genocide was removed in favour of restricting births in August 1947, which included the same acts as above,<sup>439</sup> and this remained the case throughout the drafting process. In April 1948, the UN Secretary-General's note to the genocide Ad Hoc Committee provided guidance for the discussions of the Ad Hoc Committee. In the second section of this note, it was reiterated that "'Biological' genocide consists of placing restrictions

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<sup>437</sup> Secretariat Draft E/447, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 234.

<sup>438</sup> A/AC.10/42/Rev.1, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 124-125.

<sup>439</sup> A/362, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 331.

upon births.”<sup>440</sup> A USSR comment a few days later placed “compulsory” in front of “abortion.”<sup>441</sup> This is explored in greater detail in the ‘Forced abortion’ section of this chapter.

The *Travaux Préparatoires* illustrates that the subject of restricting births within the group was advocated mostly by the Lebanese representative, Mr Azkoul, at the Ad Hoc Committee. On April 20, 1948, amongst the discussions of the definition of partial and total destruction of a group and the topic of intent, Mr Azkoul stated that there was yet to be a provision to prevent any act intended to restrict births in a group, suggesting this French text be included:

*Tout acte ou mesure destiné à limiter la natalité au sein du groupe.*

With four votes to three abstentions, the Ad Hoc Committee agreed to include an English translation of this text:

*Any act or measure calculated to prevent births within the group.*<sup>442</sup>

Commentary provided on these articles adopted by the Ad Hoc Committee, which included the line above, elaborated further:

*The formula refers to measures of any kind intended forcibly to prevent the births by which the group reproduces itself (the sterilization of individuals, forced abortions, separation of the sexes, barriers to marriage etc).*<sup>443</sup>

Subsequent discussions and iterations of the draft Convention on this method of genocide mostly centred on the wording, with the Chairman of the Ad Hoc

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<sup>440</sup> E/AC.25/2, ‘Ad Hoc Committee On Genocide Ad Hoc Committee’s Terms Of Reference, Note by the Secretary-General, 1 April 1948,’ *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 646.

<sup>441</sup> E/AC.25/7, ‘Ad Hoc Committee On Genocide Basic Principles Of A Convention On Genocide (Submitted by the Delegation of the Union of Soviet Socialist Republics on 5 April 1948), 7 April 1948,’ *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 694.

<sup>442</sup> E/AC.25/SR.13, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 880 - 881.

<sup>443</sup> E/AC.25/W.1, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 982.

Committee suggesting “imposing measures preventing births within the group”<sup>444</sup> change to “any act or measure calculated to prevent births within the group,” the latter ultimately being the wording adopted by four votes to three abstentions at the Ad Hoc Committee meeting on April 30, 1948.<sup>445</sup>

In a report on the work of the Ad Hoc Committee, drawn up by Lebanon’s Mr Azkoul, we see for the first time the wording which ends up in the final Genocide Convention. Following a brief explainer outlining that it would not be helpful to the Convention to enumerate the different acts of genocide for the Convention, “[i]mposing measures intended to prevent births within the group” was accepted by four votes to three abstentions.<sup>446</sup> This wording was subsequently adopted. Later in the drafting, the Greek representative attempted to draw a comparison between the removal of children and preventing births within a group, arguing that the former is just as effective a tool as the latter.<sup>447</sup> The Uruguayan representative Mr Manini Y Ríos rejected this comparison, opting for these to be recognised in two separate acts of genocide.<sup>448</sup> This is a theme we shall continue to see throughout this chapter and indeed into the later chapters on women’s organisations; Greece and its representatives in international arenas are seen to be strong and extremely successful advocates for including the removal of children as an act of genocide, and indeed for the Convention in general.

Whilst the wording of the imposing measures was agreed upon, the USSR proposed an amendment in October 1948 to include only “sterilization and enforced

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<sup>444</sup> E/AC.25/SR.24, ‘Ad Hoc Committee On Genocide Summary Record Of The Twenty-Fourth Meeting, Lake Success, New York Wednesday, 28 April 1948, at 2:00 p.m.,’ *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 1015.

<sup>445</sup> E/AC.25/W.4, ‘Ad Hoc Committee On Genocide, Meeting held on 30 April 1948 (Afternoon),’ *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 1057.

<sup>446</sup> E/794, ‘Report Of The Committee And Draft Convention Drawn Up By The Committee, 24 May 1948,’ in Abtahi and Webb, *The Genocide Convention: The Travaux Préparatoires, Volume 1*, 1124.

<sup>447</sup> A/C.6/SR.82, ‘Eighty-Second Meeting Held at the Palais de Chaillot, Paris, on Saturday, 23 October 1948, at 10.30 a.m.,’ *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1493.

<sup>448</sup> E/794, *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1494

abortion” under measures to restrict births.<sup>449</sup> However, with the exact wording of the act already agreed upon, and a declaration from the Ad Hoc Committee that there was no value in enumerating these acts further, there was no debate and “[i]mposing measures intended to prevent births within the group” became the fourth act of genocide under Article II of the Genocide Convention.

To provide some insight into the thoughts of this act of “imposing measures intended to prevent births within the group,” we can turn to the UK Government in order to understand its perspective of this act. Internal UK Government documents housed in The National Archives demonstrate how this act of genocide was, within the UK context, revolutionary. A letter to Sir Theobald Mathew, Director of Public Prosecutions, from Sir Eric Beckett in the Foreign Office noted that the crimes enshrined within the Genocide Convention were already crimes within UK law with the exception of Article II (4) (‘Imposing measures intended to prevent births within a group’).<sup>450</sup> Similarly, documents from the UK’s War Crimes Commission in June 1947 make a point to note that:

*Whilst abortion is illegal in England – except where child-birth would endanger the life or permanent health of the mother, in some countries voluntary abortion is lawful. In order to establish a war crime it will be necessary to secure evidence that the abortions were carried out either by force or by fraud, for instance under anaesthetic without the prior knowledge and consent of the victim or by deceiving her into supposing that some other sort of surgical operation or medical examination was being carried out.*<sup>451</sup>

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<sup>449</sup> A/C.6/224 and A/C.6/224/Corr.1, ‘Union of Soviet Socialist Republics: amendments to article II of the draft convention on genocide (E/794), 7 October 1948,’ *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1978.

<sup>450</sup> Letter from Sir Eric Beckett, Foreign Office, to Sir Theobald Mathew, Department of the Director of Prosecutions, Devonshire House, Piccadilly, September 27 1948, The National Archives, FO 371/117436, WHI.8440.

<sup>451</sup> ‘Brief of Investigation. Accused: Dr WIX, Chefarst. Place: Emden Krankenhaus, Anlage Sandhorst. Offence: Forcible abortion of Slaveworkers. Victims: Seven Russian Women. Date: 1944/45,’ June 23, 1947, The National Archives, WO 310/159, 2.

The core feature from this data and analysis in this section of the chapter is that the act of restricting births as an act of genocide was understood as a broad umbrella under which many constituent acts of genocide were included. It is clear from this section of the chapter that this remained the understanding throughout the drafting, and is drawn from Lemkin's original conceptualisation of biological techniques. There was, perhaps, nothing surprising in this data to suggest a change in opinions towards this act of genocide. This chapter will now look in more depth at the act of forced abortion and how it was conceptualised within the drafting of the Genocide Convention.

### ***Forced abortion***

This section will explore the mentions of the terms 'abortion' and 'forced abortion', noting this difference as they are importantly used interchangeably throughout as we will see. The discussion on the Eighty-Second Meeting, Palais de Chailiot in Paris on October 23, 1948, has particular importance in understanding the drafters' conceptualisation of gendered harms, and therefore will be discussed in a separate section below.

Examining the mentions of abortion in the *Travaux Préparatoires* broadly, the most striking observation is the number of times it appears in tandem with sterilization; many of the mentions of abortion as an act of genocide are in the form of acts to restrict births such as "sterilization of individuals and compulsory abortion" or "sterilization and/or compulsory abortion." These two crimes are conceptualised together to the point where all but a small number of mentions of sterilization are alongside compulsory abortion, as discussed in the sterilization section in this chapter. Similarly, there are two occasions where abortion is mentioned in the same context as castration. These are the only two times castration is mentioned in the *Travaux Préparatoires*. What we can draw from this observation is that castration, as a gendered harm against men, is almost considered as an afterthought of the crime of forced abortion in the two times it was mentioned. This theory is developed below in the 'castration' section of this chapter.

Of abortion in the *Travaux Préparatoires*, it is noticeable that there was on occasion the inclusion of ‘forced’ or ‘compulsory’ before abortion. There is a clear distinction drawn by the drafters of the Convention between abortion by choice and forced abortion, although as this chapter will now explore, this was not always the case. An American Government commentary on the Convention, in 1947, suggested removing the word “compulsory” from “compulsory abortion”, and essentially re-situating it in the previous sentence so it would read “Compulsory restrictions of births by.....abortions”.<sup>452</sup> This suggestion was not popular, however, and was not adopted. Two notable anomalies to the inclusion of ‘compulsory’ before abortion are the French representative, Mr Ordenneau, who proclaimed on August 26, 1948, that:

*All the physical acts of “genocide” constituted common crimes (murder, assault and battery, abortion). What distinguished them from those crimes was the intent to destroy an entire human group on grounds of race, nationality, religion or political opinion.*<sup>453</sup>

Note the inclusion of the phrase ‘abortion’ as opposed to compulsory or forced abortion. In 1948 it was illegal to obtain an abortion in France.<sup>454</sup> Insight into the origins of this perspective is provided by Mr Spanien, an Advisor with the French delegation at the drafting of the Convention, who noted that at the time the French penal code in fact contained provisions to prevent even propaganda promoting abortions in addition to the procedure of abortions.<sup>455</sup> To return briefly to the context of the UK, and the similar confusion over the inclusion of abortion as a form of genocide presented itself, as discussed in the previous chapter but worth noting here in relation to the national contexts. Mr Peter Kirk MP, appeared confused by the inclusion of ‘imposing measures intended to prevent births with a group’, stating that

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<sup>452</sup> A/401 ‘Communication received from the United States of America, Washington, 30 September 1947,’ *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 374.

<sup>453</sup> E/SR.219, ‘Two Hundred And Nineteenth Meeting, Held at the Palais des Nations, Geneva, on Thursday, 26 August 1948, at 9 p.m.,’ *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 1244.

<sup>454</sup> It was legalised in January 1977 in Law 75-17 which allowed for abortions up to 10 weeks.

<sup>455</sup> A/C.6/SR.84, ‘Eighty-Fourth Meeting, Held at the Palais de Chaillot, Paris, on Tuesday, 26 October 1948, at 3.15 p.m.,’ *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1531.

abortion (through choice) and family planning would necessarily fall within this act.<sup>456</sup> Mr Kirk MP argued that any “act of birth control or abortion is "with intent to destroy." What one has to prove under this is the intent to destroy a particular group.”<sup>457</sup> Whilst this was not a view held by the other Members of Parliament in the debate, it does echo the confusion which Lemkin himself tried to avoid in noting the difference between voluntary and involuntary birth control, and the subsequent inclusion of ‘forced’ or ‘compulsory’ before ‘abortion’ to create an act of genocide.<sup>458</sup>

To briefly draw on the IMT for prior context in international law for forced abortion, testimony supplied by concentration camp survivor Mme Valliant-Couturier recalled how Jewish women who were in the first stages of pregnancy were subjected to forced abortion when they came to the concentration camps.<sup>459</sup> This testimony will be discussed throughout this chapter and the following chapter, as it illustrates the gendered harms perpetrated in Nazi-occupied territory and can provide us with more context to the *Travaux Préparatoires*.

From the documents analysed in the following chapters on women’s organisations, interestingly, the subject of forced abortions was not one around which these organisations rallied. Could this suggest that the drafters of the Genocide Convention, and Lemkin, were in fact ahead of their time in recognising and protecting women’s rights? Or is it more the case that women’s organisations sought to appeal to their broad global base on the crime of genocide and avoid arguably controversial topics (as we have seen herein) such as forced abortion? There is not enough evidence

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<sup>456</sup> United Kingdom, House of Lords, *Hansard Parliamentary Debates*, Volume 777, February 5, 1969, column 499, accessed April 26, 2022, <https://hansard.parliament.uk/Commons/1969-02-05/debates/4586a501-d888-4ee5-adb1-b43f481ed311/GenocideBillLords>.

<sup>457</sup> United Kingdom, House of Lords, *Hansard Parliamentary Debates*, Volume 777, February 5, 1969, column 499, accessed April 26, 2022, <https://hansard.parliament.uk/Commons/1969-02-05/debates/4586a501-d888-4ee5-adb1-b43f481ed311/GenocideBillLords>.

<sup>458</sup> Nature of Genocide, undated, Unpublished Articles, box 7, folder 2, Raphael Lemkin Collection (P-154), Center for Jewish History, 8.

<sup>459</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, November 14, 1945 – October 1, 1946*. Volume VI, 212. Available at The Library of Congress: [https://www.loc.gov/item/2011525338\\_NT\\_Vol-VI/](https://www.loc.gov/item/2011525338_NT_Vol-VI/), accessed March 9, 2022.

in the documents examined in this chapter to suggest either, unfortunately. This will be discussed in greater depth in the following chapters.

### **Eighty-Second Meeting, Palais de Chailiot in Paris, October 23, 1948.**

One of the clearest examples in the *Travaux Préparatoires* of problematic conceptualisations of gendered harms comes at the Eighty-Second Meeting in Paris, in October 1948. This is an occasion of substantive discussion of women and the impact that acts of genocide have on women. This exchange was between the Greek and American representatives. The Greek representative, Mr Vallindas, discussed the transfer of children within the context of genocide, and made this proclamation:

*There could be no doubt that the act [of forceable transfer of children] also constituted an effective means of committing genocide, since there was no difference between sterilization, abortion and abduction.<sup>460</sup>*

In reply, the American representative, Mr Maktos, stressed that:

*In the eyes of a mother, there was little difference between the prevention of a birth by abortion and the forceable abduction of a child shortly after birth.<sup>461</sup>*

In this short exchange, the only one of its kind in the *Travaux Préparatoires*, women are conceptualised as mothers, and harms linked to their biological value as heterosexual child-bearers, a common theme in international law.<sup>462</sup> This was a theme we saw frequently in Lemkin's writings on gendered harms in Chapter 3; the acts of genocide against a woman was either against her ability to biologically reproduce or the harm experienced by her male relatives (such as venereal diseases). From a

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<sup>460</sup> A/C.6/SR.82, *Travaux Préparatoires*, Volume 2, Abtahi and Webb, 1495.

<sup>461</sup> A/C.6/SR.82, *Travaux Préparatoires*, Volume 2, Abtahi and Webb, 1496.

<sup>462</sup> See: Charlesworth and Chinkin, *The Boundaries of International Law*.

primarily international criminal law standpoint, it could be argued that the abduction of children, forced abortion, and sterilization result in the same destruction in whole or in part of the group. This is akin to William Schabas' analysis of crimes of genocide and international law, which centres killing as a primary method of genocide and not the experiences of women during other acts of genocide such as rape, as discussed in Chapter 2. Could Maktos and Vallindas' understanding, with a focus on the end result, be understandable in this context? These actions result in the same outcome of no future biological generation. However, if we apply a feminist lens to this statement, and look at Maktos' comment from a women-centred standpoint, it becomes problematic. A main take-away from Maktos' comment is that there is no evidence of understanding of the harms associated with forced abortion, methods employed to bring about this abortion, and the invasion of bodily autonomy of a woman which this involves, and how this differs from the removal of children or babies once they are born. If, in the eyes of a mother as Maktos states, there is little difference between these two crimes, then there must be little difference in the experiences. A feminist standpoint would refute this and problematise the conflation of these two crimes and the harms experienced by the victims. Feminist standpoint theory would differentiate between a woman's bodily autonomy through a non-consensual medical procedure (abortion) and removal of children after birth.

To conclude this section on forced abortion, the key take away from the discussions on abortion in the *Travaux Préparatoires* is the conflation between abortion and forced abortion, but more importantly, from a feminist standpoint the clear conceptualisation of women in their role as mothers. This is perhaps the clearest example of this throughout the *Travaux Préparatoires*. Perhaps unsurprisingly for the era, we also witness men speaking as authorities on harms experienced by women, and as with Chapter 3 there is no evidence in the documents of female consultation.

### ***Procreation and Reproduction***

This section of the chapter will explore mentions of procreation and reproduction (the verb as well as noun) in the *Travaux Préparatoires*, in order to

discover how the drafters of the Convention conceptualised these terms, both as gendered (i.e., preventing physical reproduction through sterilisation) and as less-gendered (i.e., the ability of a culture to reproduce beyond the physical act of childbirth/rearing).

The first observation of this section is that, unsurprisingly, ‘procreation’ and ‘reproduction’ are used interchangeably. A secondary observation is that these phrases remain situated firmly within biological reproduction; there is no discussion beyond this to notions of cultural reproduction. Arguably this may be because the theory of cultural genocide, to destroy the the cultural reproduction of a group, became hotly debated amongst the drafters, and ultimately was never adopted. If it had been more warmly welcomed, perhaps we could have seen a broader understanding of reproduction beyond biological reproduction. However, this section will draw out these terms in the *Travaux Préparatoires* and analyse the development, if any, of these concepts.

‘Procreation’ appears three times in the *Travaux Préparatoires*. Procreation as understood by the French representative, Mr Ordonneau, was explicitly in relation to physical procreation including acts such as separation of the sexes.<sup>463</sup> A later reference to procreation was made by the American representative, also the Chairman of the Ad Hoc session, who proposed the wording of a section of the Convention as:

*Subjecting members of a group to such physical conditions or measures as will cause their death or prevent the procreation of the group.*<sup>464</sup>

The reproduction of the group, rather than necessarily biological reproductive capabilities, is the focal conceptualisation in this statement. However, as the debate continued throughout Tuesday April 20, 1948, the French representative noted that the Lebanese representative pointed out the original draft list of acts of genocide did not include those directed against procreation; the French representative considered

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<sup>463</sup> E/AC.25/SR.4, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 720.

<sup>464</sup> E/AC.25/SR.13, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 877.

acts such as castration, compulsory abortion and other gendered crimes including “enfeeblement of members” should be included under the umbrella of “conditions of life.”<sup>465</sup> The conceptualisation of ‘enfeeblement’ is discussed in a later section of this chapter.

Moving to ‘reproduction’ as it appears in the *Travaux Préparatoires*, removing the occasions when ‘reproduction’ appears in relation to the reproduction of materials or the reproduction of debates for the consideration of the drafters,<sup>466</sup> there are only two substantive mentions of reproduction. We return to the record of events on April 20, 1948, the Lebanese representative, Mr Azkoul, suggested an edit to a previous Chinese draft of the Convention (“Subjecting such group to such conditions or measures as will cause the destruction, in whole or in part, of the physical existence of such group”<sup>467</sup>) to include acts which “[d]estroy the group indirectly, totally or partially” including “[b]y stopping or preventing its reproduction” as well as “[b]y subjecting it to conditions likely to destroy its physical existence.”<sup>468</sup>

The debate following this suggestion centred briefly on the value or impediment of enumerating the acts of genocide, and subsequently on the merit of including “partial destruction” should it be confused with complete destruction and the subsequent debate circled the inclusion of intent.<sup>469</sup> The United States representative suggested the wording be changed from “[a]ny act directed against the corporal integrity of members of the group” to “[s]ubjecting members of a group to such conditions or measures as will cause their deaths or prevent the procreation of the group.” Thus, the wording of this particular act took many forms from the vague

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<sup>465</sup> E/AC.25/SR.13, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 878.

<sup>466</sup> A/AC.10/SR.28, ‘Committee On The Progressive Development Of International Law And Its Codification Summary Record Of The Twenty-Eighth Meeting Held at Lake Success on Friday, 13 June 1947, at 3 p.m.’, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 150; E/621, ‘Prevention And Punishment Of Genocide Historical Summary (2 November 1946 – 20 January 1948)’, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 489; E/AC.25/SR.25, ‘Ad Hoc Committee On Genocide Summary Record Of The Twenty-Fifth Meeting Held at Lake Success, New York, on Friday, 30 April 1948, at 11 a.m.’, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 1034.

<sup>467</sup> E/AC.25/SR.13, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 876.

<sup>468</sup> E/AC.25/SR.13, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 874.

<sup>469</sup> E/AC.25/SR.13, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 874-879.

(“corporal integrity”) to the specific (“death”).<sup>470</sup> We do see, later in this debate, the inclusion of the term ‘procreation’ by the United States, which was then taken up as a point of debate as previously discussed, almost by way of replacing ‘reproduction’.<sup>471</sup> Just over a week later, on April 28, 1948, the act “or measure calculated to prevent births within the group” was accepted by the Committee with four votes to three abstentions:

*The formula refers to measures of any kind intended forcibly to prevent the births by which the group reproduces itself (the sterilization of individuals, forced abortions, separation of the sexes, barriers to marriage etc).*<sup>472</sup>

Reproduction, therefore, was not a contested or controversial topic of discussion by the drafters of the Genocide Convention. As we might expect, it was conflated with procreation, and was discussed mainly in relation to the biological reproduction of the group. The acts which prevent reproduction as outlined above, such as sterilizations, forced abortions, separation of the sexes and barriers to marriage, are analysed in detail in this chapter using a feminist lens. Reproduction as conceptualised by the drafters of the Convention is a broad notion which encompasses further acts.

### ***Sterilization***

There are twenty mentions of sterilization in the *Travaux Préparatoires*, and none of its corresponding verb, ‘sterilize’. Examining the discussions on sterilization throughout the drafting process, it is observable that there was no major shift in understanding on sterilization. Indeed, the drafters did not qualify sterilization. Sterilization sat under the broader method of ‘preventing births within a group’ and

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<sup>470</sup> E/AC.25/SR.13, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 877.

<sup>471</sup> E/AC.25/SR.13, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 877.

<sup>472</sup> E/AC.25/W.1, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 982.

frequently alongside abortions. As discussed in the section on abortion above, sterilization and forced abortion frequently appear together in both iterations of the Convention as well as in debates amongst drafters. It is often conceptualised as sterilization and / or forced abortion, rather than two separate crimes (for example: a) sterilization; b) forced abortion; c) segregation of the sexes; d) obstacles to marriage). This could arguably be interpreted as problematic in that it situates sterilization, as a crime against *both* genders, with a crime of forced abortion which can only be committed against women,<sup>473</sup> a point previously made in this thesis worth reiterating here. Mr Noriega, Mexico's representative, for example made a point that whilst sterilization and forced abortions are clearly acts of genocide, the segregation of the sexes and obstacles to marriage are not and should therefore be more carefully considered.<sup>474</sup>

If we turn to additional contemporaneous international legal documents, there is evidence in a statement that forced sterilization can be an act of genocide. In the first instance, as noted in Lemkin's manuscripts as collated by Jacobs, British Chief IMT Prosecutor Hartley Shawcross was citing sterilization as a biological "device" at the IMT, describing sterilization experiments as "the depths of degeneracy."<sup>475</sup> In the so-called "Doctors' Trial", *U.S.A. v. Karl Brandt et al.*, twenty-three Nazi doctors and administrators were prosecuted for crimes against humanity for conducting medical experiments including forced sterilization experiments with the primary aim of seeking expeditious, extensive, undetectable, and inexpensive sterilization techniques.<sup>476</sup> On December 16, 1946, the Prosecution set out the case for forced sterilization, and Chief Prosecutor James McHaney stated "[t]he weapon of sterilization was in fact used to permit the Crime of Genocide, which is the mass extermination of an enemy people; and that was the purpose of the sterilizations with which we are concerned."<sup>477</sup> As

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<sup>473</sup> It is important here to reiterate that the author appreciates that at the time of research we *now* understand that both men and women can have abortions.

<sup>474</sup> A/C.6/SR.69, *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1358.

<sup>475</sup> Lemkin and Jacobs, *Thoughts on Nazi Genocide*, 114.

<sup>476</sup> Harvard Law School Nuremberg Trials Project, 'NMT Case 1: *U.S.A. v Karl Brant et al: The Doctors' Trial*,' accessed January 5, 2023, [https://nuremberg.law.harvard.edu/nmt\\_1\\_intro](https://nuremberg.law.harvard.edu/nmt_1_intro).

<sup>477</sup> 'Transcript for NMT 1: Medical Case,' Harvard Law School Nuremberg Trials Project, accessed January 5, 2023, <https://nuremberg.law.harvard.edu/transcripts/1-transcript-for-nmt-1-medical-case?seq=511>.

Hilary Earl writes, the earlier IMT Prosecutors were aware that the new concept of genocide indicated a form of ‘race murder’ against the European Jewish population.<sup>478</sup> This example in the Doctors’ Trial illustrates a direct link between the new theory of genocide and the gendered crime of forced sterilization.

To return to IMT testimony provided by Marie-Claude Vaillant-Couturier, she recalled sterilization in terms of female concentration camp prisoners being sterilized or subjected to forced abortions (or, later, death by gas chamber if they were pregnant), whilst remembering that castrations were performed in the male concentration camps.<sup>479</sup> The mortality rate amongst women who were forcibly sterilized in the concentration camps was high, as they were used as experiments to test different methods of sterilization from injection, X-rays and operations.<sup>480</sup> As this testimony suggests, the lives of the women were not spared for the sake of these experiments.

Evidence collected by the UK War Office following the war, housed in The National Archives, illustrates the conditions of women subjected to forced sterilization and, vitally, the link between forced sterilization and death. Included in this evidence collected by the War Office is the testimony of Olga Mihailovic, a nurse at the *Stazione Sanitaria* in Graz Hospital, Austria, where she assisted in the sterilization of Polish and Russian concentration camp prisoners. Her job was to prepare the anaesthetics and disinfect equipment; however, by Olga’s account not all of the women received anaesthetic for the procedure, and medical equipment was disinfected for the first woman but not for the remaining women due to be operated on that day.<sup>481</sup> She witnessed a seventeen-year-old Russian woman die whilst undergoing the procedure,

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<sup>478</sup> Hilary Earl, ‘Prosecuting Genocide Before the Genocide Convention: Raphael Lemkin and the Nuremberg Trials, 1945–1949’, *Journal of Genocide Research* 15, no. 3 (September 2013): 317–37, <https://doi.org/10.1080/14623528.2013.821225>, 319.

<sup>479</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, November 14, 1945 – October 1, 1946*. Volume VI, 211-212. Available at The Library Of Congress: [https://www.loc.gov/item/2011525338\\_NT\\_Vol-VI/](https://www.loc.gov/item/2011525338_NT_Vol-VI/), accessed March 9, 2022.

<sup>480</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, November 14, 1945 – October 1, 1946*. Volume VI, 211-212. Available at The Library Of Congress: [https://www.loc.gov/item/2011525338\\_NT\\_Vol-VI/](https://www.loc.gov/item/2011525338_NT_Vol-VI/), accessed March 9, 2022, 212.

<sup>481</sup> Statement of Olga Mihailovic, dated 13.6.1945, Rome, The National Archives, WO 310/159. Accessed January 21, 2022.

and testified that those who survived these procedures were given a glass of water, no food, and forced to return to the concentration camps two days after the operation to continue forced labour.<sup>482</sup> Another testimony from Helena Nowozylo, collected by the War Office and housed in The National Archives, who was a Polish patient in the same *Stazione Sanitaria* in Graz, who came to know Olga, provided evidence of the cruelty of forced abortions and sterilizations performed by a Dr Muller. According to Helena's account, procedures were performed on women in their seventh month of pregnancy:

*After the abortions she [Dr Muller] was laughing at the women and said "Now go and see your children and then you can go to the brothels without fear".*

*She was laughing when we were going nearly crazy listening to the screams of women who were being operated on, and was always eating good food in the presence of us half starved women.*

*She despised all Russian and Polish women who she said smelled. When she had to do medical dressings for sick people she did not want to give it and people had to insist for her to change their dressings.<sup>483</sup>*

Evidence presented here shows the wider impact of forced sterilization. The case given as an example above illustrates the conditions in which these sterilizations had occurred under Nazi occupation. The surgical sterilizations impacted women more than just preventing procreation, the experience of undergoing surgery in tandem with unhygienic and cruel peri-surgical conditions threatened the life of the woman herself. Furthermore, it is possible to draw from the case above that there would undoubtedly be a mental impact from undergoing forced sterilization without anaesthetics and with little regard for the life of the woman. These features are missing from the debates on

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<sup>482</sup> Statement of Olga Mihailovic, dated 13.6.1945, Rome, The National Archives, WO 310/159. Accessed January 21, 2022.

<sup>483</sup> Statement of Nowozylo Helena a Polish Subject who was a Patient at the Stazione Sanitaria Graz Given of Her Own Free Will. Read and Translated to Her. 17.6.1945, The National Archives, WO 310/159. Accessed January 21, 2022.

sterilization as an act of genocide. In the *Travaux Préparatoires*, an additional key detail is how sterilization was placed with other acts of genocide such as castration which created a clear division between crimes against women and crimes against men.

To conclude this section on sterilization, lack of development or discussion on sterilization during the drafting of the Convention is a key take away of this section, and this is not a surprising find. It appears that sterilization, as a direct threat against biological reproduction, was not a crime which the drafters struggled to define, and there was no discussion on methods of sterilization. Additionally, there was scope for the drafters of the Convention to draw the link between forced sterilization and murder or the wider experiences of women beyond biological consequences of not being able to procreate. It is clear from the discussion on sterilization as ‘sterilization and forced abortion’ and separately castration, that perhaps these were divided along gendered lines with latter as male-centric and the former as female-centric crimes.

### ***Castration***

Castration was only mentioned in the *Travaux Préparatoires* twice, and both times with reference to forced or compulsory abortion. The first of these mentions was by French representative Mr Ordenneau as discussed in the ‘separation of the sexes’ section of this chapter. The second mention was in relation to the enfeeblement of members of a group, also briefly cited earlier in the chapter and later explored in detail. Castration was not discussed in any depth by the drafters. Similarly, the conceptualisation of castration, as a biological technique of genocide, preventing births within a group, did not develop or change during the drafting of the Convention. One element which perhaps could have been explored by the drafters is the link between castration and death, however. Mr Maktos does give an indication of this, when he proposed the inclusion of the word “death” in the text of the Convention so it would read:

*Subjecting members of a group to such physical conditions or measures as will cause their death or prevent the procreation of the group.*<sup>484</sup>

By doing so, he argued that this would necessarily include all actions which lead to death as well as death itself. Further research using theories of masculinities to expose the male gendered harms hidden within the histories of the creation of the Genocide Convention is extremely welcomed by the author, although beyond the scope of this current feminist project.

### **Rape**

There is only a single mention of rape in the *Travaux Préparatoires*. The sole mention of rape in the *Travaux Préparatoires* was not in relation to an act of genocide under Article II of the Convention.<sup>485</sup> It appears in relation to crimes against humanity in the Control Council Law No. 10, which was enacted by France, the UK, USA and the USSR in December 1945 to prosecute war crimes and crimes against humanity.<sup>486</sup> This was a supplementary document for the drafters to consider in addition to the Charter for the International Military Tribunal and other similar documents relevant to the drafting of the Convention.<sup>487</sup> Despite its reference in the Control Council Law No. 10, the crime of rape was ignored by the drafters; they did not discuss it explicitly or any crime relating to sexual violence as such. Perhaps the context of the drafting of the Convention can give us a better understanding as to why this was the case? The attitude towards crimes of rape and sexual violence at Nuremberg was evasive, and it has been argued that perhaps it is no surprise that these men were once again reluctant to discuss these crimes.<sup>488</sup> Hon argues that the silence on rape was because

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<sup>484</sup> E/AC.25/SR.13, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 877.

<sup>485</sup> E/AC.25/1, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 654.

<sup>486</sup> John P. Grant, J. Craig Barker, and Clive Parry, *Parry and Grant Encyclopaedic Dictionary of International Law* (Ebook, Cary: Oxford University Press USA, 2009).

<sup>487</sup> E/AC.25/1, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 649-656.

<sup>488</sup> Askin, *War Crimes against Women*, 98.

men had written the law of war at a time when rape was considered an inevitable consequence of war, and we can arguably see echoes of this in the ignoring of rape in the *Travaux Préparatoires*.<sup>489</sup> The argument that, because the IMT prosecutors were evasive in their approach to sexual violence, the drafters of the Genocide Convention were equally as evasive, is not a persuasive one, as this thesis will now explore. IMT testimonies provided detail of the scale of rape and sexual violence, as was the evidence of biological experiments and sterilizations cited in the *Travaux Préparatoires*.

So why is there an absence of discussion on rape specifically? Could this absence be as a result of perceptions that rape was an inevitable consequence of conflict, or that perhaps it was an uncomfortable topic for the male drafters to discuss just as it had been for the male Prosecutors at the IMT? Did they discuss rape under the guise of a euphemism? If the post-war “lack of response to these rapes [occurring in World War Two and recounted by women] within the discourses of women’s rights and human rights cannot be explained by victim silence or lack of knowledge and information about rapes,”<sup>490</sup> then what explains this absence in the *Travaux Préparatoires*? Joan Ringleheim suggests a simpler reason why sexual violence of the Holocaust was, in her words, understandably minimised, by suggesting that the very nature of the topic was delicate and intimate.<sup>491</sup>

If we return to the work of Pella, who assisted in drafting the original draft Convention, there is evidence of an awareness of the crime of rape as discussed in Chapter 2. In addition, Lemkin was certainly cognisant of the crime of rape and the role it plays in the crime of genocide in the early years of developing his theory; in a letter he wrote to Len Peterson in 1949 he recalled the crimes perpetrated against the Armenians including the rape of Armenian women.<sup>492</sup> However, as we discovered in Chapter 3 Lemkin’s conceptualisation of rape was fundamentally problematic in its

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<sup>489</sup> Richard J Goldstone Hon, ‘Prosecuting Rape as a War Crime,’ *Case Western Reserve Journal of International Law* 34, no. 3 (2002), 11.

<sup>490</sup> Harrington, *Politicization*, 87.

<sup>491</sup> Ringelheim, ‘A Split Memory,’ 25.

<sup>492</sup> Correspondence from Lemkin to Len Peterson, August 9, 1949, Lemkin Correspondence, August-December 1949, box 2, folder 2, Raphael Lemkin Collection (P-154), Center for Jewish History.

framing of women. An earlier version of the Convention in 1948 included the “moral debasement of entire group by such means as prostitution, publicly inflicted indignities and wide spread demoralisation through imposition of intoxicants and obscene publications.”<sup>493</sup> Chapter 5 explores in more depth this concept of ‘moral debasement’ and considers the potential that this term was deployed instead of the term ‘rape’. Perhaps this absence can be reflective of the international attitude towards rape and sexual violence in the international community at the time. We must remember that at Nuremberg, prosecutors passed on discussing details of the rapes committed by the Nazis in order to spare the courts despite the evidence presented of these crimes.<sup>494</sup>

A comparison with another act of genocide is helpful, as this illustrates the focus of the drafters of the Convention. In comparison to rape, there are twenty-eight mentions of ‘killing’ including ‘killing of hostages’ and ‘killing members of a group’ and ‘mass killings’. After accounting for the removal of irrelevant terms under ‘assassination’ (‘assassins’), the number of times ‘assassination’ appears is seven unique times. ‘Homicide’ appears thirty times, and ‘murder’ appears fifty-eight times removing the mentions of ‘murderers’. ‘Massacre’ appears thirty-eight times. In total, there are one hundred and sixty-one mentions of different terms linked with ending lives of individuals or as groups. Normatively, this is perhaps expected given that the crime of genocide is often conceptually conflated with mass killings as opposed to rape and sexual violence. This is reflected in contemporary discussions in genocide studies; Bachman’s 2020 analysis of cases studied in genocide research found overwhelming focus on killings as a method of genocide in the discipline.<sup>495</sup> This is reflected in the historical data here. The disparity between these two acts of genocide is great, with one hundred and sixty-one to one.

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<sup>493</sup> ‘Draft of preamble and operative parts of the Convention, April 28, 1948,’ Drafts and Early Version of Convention Text, undated, [1947-1949], box 5, folder 12, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>494</sup> Askin, *War Crimes against Women*, 98.

<sup>495</sup> Jeffrey Bachman, ‘Cases Studied in Genocide Studies and Prevention and Journal of Genocide Research and Implications for the Field of Genocide Studies,’ *Genocide Studies and Prevention* 14, no. 1 (May 2020), 2–20, <https://doi.org/10.5038/1911-9933.14.1.1706>.

To conclude this section on rape, the lack of discussions on rape was initially surprising. Evidence presented in the previous two chapters of this thesis illustrate an awareness of rape, and the role rape has in genocides. The reluctance to discuss rape and sexual violence at the IMT by the prosecutors was posited as one suggestion to explain this absence. As was the wider reluctance to discuss these crimes. As following chapters in this thesis explores, this wider reluctance is mirrored in the international women's organisations. The use of euphemisms in lieu of rape was also suggested, and this is explored in more detail in Chapter 5.

### *Segregation / separation of the sexes*

The terms 'segregation of the sexes' and 'separation of the sexes' are included herein as one concept and used interchangeably as was done in the *Travaux Préparatoires* as there is no discernible difference between the two in the records. The segregation / separation of the sexes appears fourteen times in the *Travaux Préparatoires* and as this section will now explore, there are no surprises within discussions of the definition of this act of genocide.

Segregation or separation of the sexes is, as you would expect, fundamentally gendered. In the draft Convention prepared by the Secretariat of the Committee on the Progressive Development of International Law and its Codification in early June 1947, segregation of the sexes is included as a method of 'Restricting Births' alongside sterilization and compulsory abortion (both grouped together), and obstacles to marriage, and again in the June 12, 1947 revised draft.<sup>496</sup> By late June 1947, a subsequent draft Convention included segregation of the sexes under "'Biological' genocide', where it remained alongside sterilization and compulsory abortion, and obstacles to marriage. Although going into the definitions of terms within the

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<sup>496</sup> A/AC.10/42, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 116; A/AC.10/42/Rev.1, 'Committee On The Progressive Development Of International Law And Its Codification Draft Convention For The Prevention And Punishment Of Genocide, 12 June 1947,' *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 124.

Convention, it returned to its original grouping under ‘Restricting births’,<sup>497</sup> where it remained.<sup>498</sup>

A more detailed explainer of what constitutes the segregation of the sexes was given later in the Secretariat Draft Convention, under “‘Biological’ genocide’:

*This may be induced by various causes such as compulsory residence in remote places, or the systematic allocation of work to men and women in different localities.*<sup>499</sup>

There is nothing surprising in these examples given of the act of separating the sexes. In discussions between representatives, French representative Mr Ordonneau spoke of castration, compulsory abortion and segregation of the sexes in addition to enfeeblement of members of a group as coming “under the item dealing with conditions of life.” He was correcting the Lebanese representative Mr Azkoul in an exchange also cited in this chapter’s section on ‘procreation’.<sup>500</sup> In an earlier exchange with the USSR representative, Mr Ordonneau asked whether segregation of the sexes should be included as an act “of violence which makes procreation impossible” within the scope of the USSR definition of genocide. Mr Morozov, USSR representative, then “agreed to change the last sentence of Section VII to read as follows: ‘Restriction of birth by means including among others, sterilization and compulsory abortion.’”<sup>501</sup> Mr Azkoul of Lebanon subsequently sought to expand the definition of physical extermination to “the premeditated infliction on groups of the population of conditions of life leading to their extermination,” which presumably would include any act of separation of sexes, although this was deemed too broad by Mr Ordonneau.<sup>502</sup>

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<sup>497</sup> Secretariat Draft E/447, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 211, 216, 228.

<sup>498</sup> A/362, ‘Draft Convention For The Prevention And Punishment Of Genocide,’ no date, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 334; E/623, ‘Prevention And Punishment Of Genocide Comments By Governments On The Draft Convention Prepared By The Secretariat, 30 January 1948,’ *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 537.

<sup>499</sup> Secretariat Draft E/447, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 243.

<sup>500</sup> E/AC.25/SR.13 *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 878.

<sup>501</sup> E/AC.25/SR.4 *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 720.

<sup>502</sup> E/AC.25/SR.4, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 720.

Ultimately, the inclusion of “[a]ny act or measure calculated to prevent births within the group” was included by four votes to three abstentions with the explainer that the “formula refers to measures of any kind intended forcibly to prevent the births by which the group reproduces itself (the sterilization of individuals, forced abortions, separation of the sexes, barriers to marriage etc).”<sup>503</sup>

The final recorded discussion on the segregation of the sexes was had briefly in October 1948, with the reference made by Mexico’s representative, Mr Noriega, who argued that there should be no room for ambiguity in the acts of genocide as contained within the Convention. Mr Noriega was not in favour of including segregation of the sexes and legal obstacles to marriage in the Convention on the grounds that they are not as clear acts of genocide as sterilization and obligatory abortions, arguing that perhaps it falls within the remit of ‘discrimination’ rather than genocide.<sup>504</sup> He warned against confusing the definition of genocide lest all “reprehensible acts” become included in the Convention.<sup>505</sup> Mr Noriega’s point on the segregation of sexes was not taken up in the discussions, however the discussion on the broadening definition of genocide to include many acts continued to be a theme throughout the drafting.

In summation therefore, the *Travaux Préparatoires* contains no surprising interpretation of the act of separating sexes as one may have expected. The debate on its inclusion centred mainly on concerns relating to an expansion and problematic broadening of the definition of genocide and its acts. As this chapter has demonstrated, the Lebanese representative was heavily involved in discussions on gendered terms, and the inclusion of separation of the sexes is no exception to this.

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<sup>503</sup> E/AC.25/W.1, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 982.

<sup>504</sup> A/C.6/SR.69, *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1358.

<sup>505</sup> A/C.6/SR.69, *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1358.

## *Obstacles and barriers to marriage*

Obstacles or barriers to marriage within a group was mentioned fifteen times in the *Travaux Préparatoires*. Conceptually, obstacles to marriage sat under restricting births within a group or biological genocide and did not change throughout the process. This is despite it not being present in the final Convention for reasons of unnecessary enumeration of the methods of restricting births.<sup>506</sup> Perhaps unsurprisingly, the concept of obstacles to marriage was not the subject of major discussion during the drafting process; comments on the draft Convention provided in June 1947 by the UN Secretary-General merely stated that obstacles to marriage - “[t]hese are legal restrictions.”<sup>507</sup> The role of the state in creating these legal barriers (as opposed to individual perpetration of acts of genocide) was reiterated by Norway in a letter dated April 9, 1948, noting that this was also the case for the prohibition of the use of national languages.<sup>508</sup>

The country of Siam (Thailand) drew attention to the fact that in some racial groups, men outnumbered women and the prohibition of marriage to people outside the racial group will lead to its inevitable demise. Siam also proposed including a provision for “systematic deprivation of intercourse with the individuals representing the culture of the group by acts of violence or infringement of personal liberty.”<sup>509</sup> Here, then, we see another interpretation of obstacles to marriage; whilst Lemkin’s concept of genocidal obstacles to marriage draws heavily on the Nazi restrictions on marriage between ‘undesirable races’ in parallel with incentivising marriages between those of perceived desirable racial heritage,<sup>510</sup> the government of Siam suggested the

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<sup>506</sup> A/AC.10/42, 166; Secretariat Draft E/447, 211; E/522, ‘Draft Convention On The Crime Of Genocide, 4 August 1947,’ 304; A/362, ‘Draft Convention On The Crime Of Genocide, 25 August 1947,’ 334, *Travaux Préparatoires, Volume 1*, Abtahi and Webb.

<sup>507</sup> Secretariat Draft E/447 *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 234.

<sup>508</sup> E/623/Add.2, ‘Economic And Social Council Prevention And Punishment Of Genocide Comments By Governments On The Draft Convention Prepared By The Secretariat, 19 April 1948,’ *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 634.

<sup>509</sup> E/623.Add.4, ‘Prevention and Punishment of Genocide Comments of Governments on the Draft Convention Prepared by the Secretary: Siam (25 May 1948),’ *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 639.

<sup>510</sup> ‘Genocide Committed on Women,’ The Women’s Library, LSE, 7/MCA/C/23, 1 -2.

reverse. Instead of preventing marriages *between* the members of the group (as Lemkin suggests), Siam suggests preventing marriages between those of the group and those *outside* the group could be genocidal.

Finally, at the sixty-ninth meeting of the Ad Hoc Committee, the Mexican representative raised the concern that whilst sterilization and obligatory abortion constitute clear acts of genocide and should be included as such, segregation of the sexes and obstacles to marriage should be more carefully considered. He warned:

*Discrimination should not be confused with genocide. The inclusion of all reprehensible acts of the type described under genocide would only lead to confusion in the definition of the crime.<sup>511</sup>*

This positioning of obstacles to marriage is particularly interesting if we take a feminist standpoint; obstacles to marriage is only ever understood as a way to prevent births within a group. To prevent marriages is to prevent births. Again, we see a central focus on biological reproduction within these acts of genocide; the manipulation of procreation through legislation is central to this concept as it was to Lemkin's concept discussed in Chapter 3 and is visible here. Central to this understanding is the requirement that legitimate procreation does not occur outside of the institution of marriage. Marriage for the drafters of the Convention, therefore did not necessarily mean a non-procreation-focused union. There was no scope in the drafting of the Convention for marriage to be more than a driver of procreation as a result of its positioning as a crime intended to prevent births. It is possible to hypothesise that this was a result of the drafters' rejection of the notion of cultural genocide, which may be where non-procreation-centred marriages in a group would have conceptually sat. However, because the inclusion of the theory of cultural genocide was a debate in itself, it would be difficult to find evidence to further this argument.

In summation, as with many of the acts discussed herein, there were concerns that the inclusion of obstacles to marriage unnecessarily broadened or enumerated the Convention, as well as concerns that discrimination through the law would become

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<sup>511</sup> A/C.6/SR.69 *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1358.

conflated with the crime of genocide. Similarly, the intervention from the government of Siam provides a different angle to view this act of genocide.

## **Gendered harms not understood by the drafters**

### *Biological experiments*

At first analysis, biological experiments as evidenced in the *Travaux Préparatoires* are not necessarily all gendered. If we draw on the Holocaust (as the drafters of the Genocide Convention did), the evidence of biological experiments ranged from freezing experiments to infectious disease experiments on those in concentration camps. There is no evidence that the drafters of the Convention considered biological experiments as gendered, or how each gender was subjected to different biological experiments. However, with deeper analysis of different data it can be argued that biological experiments can be inherently gendered both in the selection of victims and the experiment itself. In the *Travaux Préparatoires* there are fourteen unique mentions of biological experiments. Within these fourteen mentions, ten are included in a draft of the Convention or mentioned in a list alongside other acts of genocide, and are therefore purely mentions with no substantial context.

A debate swirled amongst the drafters on the inclusion of the phrase “biological experiments with no curative purpose” and whether its inclusion would broaden the definition unnecessarily from a more streamlined and adequately concise “biological experiments,” especially in relation to the ‘intent’ of the destruction of a group.<sup>512</sup> One discussion on biological experiments directly cited Nazi Germany as being a place where these acts took place:

*Mutilations and biological experiments imposed with no curative purpose. These practices were current in Hitlerite Germany. Biological experiments are to be condemned even if they have a scientific value because they imply that the life and health of the members of the*

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<sup>512</sup> A/401; E/623, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 373/4, 538.

*group of human beings subjected to them are regarded as worthless.*<sup>513</sup>

This addition of 'curative purpose' was eventually removed from later iterations,<sup>514</sup> albeit making a brief appearance in relation to pseudo-experiments in a statement by Venezuelan delegate Mr Perez-Perozo who was in favour of broadening acts to include "pseudo-biological experiments performed upon individuals for no real scientific purpose,"<sup>515</sup> and again when the umbrella "[a]ny act directed against the corporal integrity of members of the group" (which included biological experiments "conducted with no useful end in view") which was accepted by the Ad Hoc Committee by five votes to one with one abstention.<sup>516</sup>

As drafters drew evidence from the Holocaust to inform the drafting of the Convention, this chapter will also do so in order to illustrate how the seemingly ungendered biological experiments can contain gendered components. Testimony provided by concentration camp survivor Marie-Claude Vaillant-Couturier at the IMT provides evidence to this point:

*On leaving Auschwitz we were sent to Ravensbrück. There we were escorted to the "NN" block meaning "Nacht und Nebel", that is, "The Secret Block." With us in that block were Polish women with the identification number "7,000." Some were called "rabbits" because they had been used as experimental guinea pigs. They selected from the convoys girls with very straight legs who were in very good health, and they submitted them to various operations. Some of the girls had parts of the bone removed from their legs, others received injections; but what was injected, I do not know. The mortality rate was very high among the women operated upon. So when they came to fetch the others to operate on them they refused to go to the*

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<sup>513</sup> Secretariat Draft E/447, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 233.

<sup>514</sup> E/623, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 558.

<sup>515</sup> E/AC.25/SR.13, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 874.

<sup>516</sup> E/AC.25/W.1, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 981.

*Revier. They were forcibly dragged to the dark cells where the professor, who had arrived from Berlin, operated in his uniform, without taking any aseptic precautions, without wearing a surgical gown, and without washing his hands. There are some survivors among these "rabbits." They still endure much suffering. They suffer periodically from suppurations [discharge of pus from wounds]; and since nobody knows to what treatment they had been subjected, it is extremely difficult to cure them.<sup>517</sup>*

This account from Marie-Claude Vaillant-Couturier goes some way to providing an evidentiary and contemporaneous context to discussions of the Convention drafting. Additionally, this extract indicates the potential for this term to be fundamentally gendered in parts despite this not being wholly considered by the drafters. To briefly return to the archives of Lemkin's correspondence, we see in a letter from Lemkin to Margery Corbett Ashby that he indeed did conceptualise biological experiments as gendered.<sup>518</sup> Consequently, the key point of analysis of this section is the inherently gendered nature of biological experiments and beyond this the direct link between this crime and the Holocaust in the drafting of the Convention.

### ***Mutilations***

There are seventeen unique mentions of mutilation(s) in the *Travaux Préparatoires*, most of which map onto mentions of biological experiments; where biological experiments are mentioned as highlighted in the above section, so are mutilations, and therefore it is not necessary to repeat all the appearances here. There are a number of exceptions, however. At the Ad Hoc Committee meeting on April 9, 1948, the French representative Mr Ordonneau made the point that murder, mutilation and other acts included in the draft Convention already exist in national

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<sup>517</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, November 14 1945 – October 1 1946*. Volume VI, 454-456. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed March 22, 2022, 220.

<sup>518</sup> 'Genocide Committed on Women,' The Women's Library, LSE, 7/MCA/C/23, 1 -2.

penal codes.<sup>519</sup> In October of the same year, at the eighty-third meeting, Venezuela's Perez-Perozo suggested that it is not necessary to use mutilation, torture, or malnutrition to commit genocide against the children of a group when it was possible to transfer the children, noting that the intent to commit genocide was vital to this act.<sup>520</sup>

As with biological experiments, the drafters give no example of the types of mutilations they were considering as acts of genocide. Again however, there is evidence in other documents which demonstrate how mutilations are often gendered in genocide, such as evidence presented in form of the IMT on mutilations to the women's bodies.<sup>521</sup> Askin catalogues these gendered mutilations, as presented in the IMT transcripts, and in doing so makes the point that "sexual mutilation often followed rape, as did death" during the Holocaust.<sup>522</sup> Often these mutilations would take the form of the breast of women and girls being cut off after being raped.<sup>523</sup> As with sterilization, mutilation was not expounded upon, and this similarity is the primary finding in this sub-section.

### *Enfeeblement of members of a group*

Enfeeblement of members of a group is a term seen twice in the *Travaux Préparatoires* and is not expounded upon in any detail and, of course, it does not appear in the final Genocide Convention. This section of the chapter will explore in more detail the potential conceptualisation of enfeeblement as presented by the French representative during the drafting process, and whether this term could be

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<sup>519</sup> E/AC.25/SR.6, 'Ad Hoc Committee On Genocide Summary Record Of The Sixth Meeting, Lake Success, New York, Friday, 9 April 1948 at 2 p.m.,' *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 752.

<sup>520</sup> A/C.6/SR.83, 'Eighty-Third Meeting, Held at the Palais de Chaillot, Paris, on Monday, 25 October 1948, at 3 p.m.,' *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1504.

<sup>521</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, February 5, 1946 – February 19, 1946*. Volume VII, 454-456. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 28, 2022

<sup>522</sup> Askin, *War Crimes against Women*, 53.

<sup>523</sup> Askin, *War Crimes against Women*, 53.

considered gendered. The key analysis in this section centres on what constitutes a crime intended to bring about the enfeeblement of a group and how this was understood within the parameters of the crime of genocide.

On April 20, 1948, Mr Ordonneau, the French representative, stated that:

*actions such as castration, compulsory abortion, segregation of the sexes or the enfeeblement of members of ... a group came under the item dealing with conditions of life. He saw ... no need to enumerate them, since all enumeration was necessarily restrictive.*<sup>524</sup>

It is clear from this suggestion by Mr Ordonneau that ‘enfeeblement of a group’ was to be conceptualised alongside distinctly gendered acts (such as castration, abortion). However, this suggested inclusion was immediately rejected by the Chairman, American representative Mr Maktos, stating that this is a new inclusion and that the draft Convention should only cover “violent destruction of groups.”<sup>525</sup> Would the enfeeblement of a group, so undefined, have developed to become something akin to ‘moral debasement’? Perhaps this is akin to the incentivisation of alcohol consumption and gambling which prevented contributing to the active life of the group as was done to the Herero peoples, as discussed in Chapter 3?<sup>526</sup> Or was Mr Ordonneau purely elaborating on the gendered crimes he was listing, suggesting that they all culminate in enfeebling or depriving the group of their strength?<sup>527</sup> Perhaps Mr Ordonneau was recalling Pella’s theory of “*détruire l’esprit de discipline sociale*,” to destroy the spirit of social discipline?<sup>528</sup> The context and prior discussions of the Ad Hoc Committee unfortunately does not provide much information on what the enfeeblement of a group could have meant to Mr Ordonneau.

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<sup>524</sup> E/AC.25/SR.13, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 878.

<sup>525</sup> E/AC.25/SR.13, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 878.

<sup>526</sup> Lemkin and Jacobs, *Lemkin on Genocide*, 274.

<sup>527</sup> ‘Definition of Enfeeble’, *Merriam Webster*, <https://www.merriam-webster.com/dictionary/enfeeble>, accessed March 10, 2022.

<sup>528</sup> Pella, ‘La Répression Des Crimes,’ 704.

In the discussion immediately before the mention of the enfeeblement of a group, Mr Ordonneau suggested the wording of the Convention to protect the “corporal integrity” of the group on one hand, and the conditions of life of the group on the other, although again did not elaborate.<sup>529</sup> If we turn to the other document on the creation of the theory of genocide examined thus far, it is most similar to Lemkin’s original theory of genocide as developed in *Axis Rule* which describes genocide as actions aimed at the “the destruction of essential foundations of the life of national groups” through the destruction of, amongst others, dignity.<sup>530</sup> The question, therefore, is whether enfeeblement meant physical enfeeblement through biological techniques of genocide or spiritual enfeeblement through the destruction of dignity of the individuals. There is nothing to suggest that it could not mean both spiritual and physical, as the two notions are bound within Lemkin’s cultural and biological genocide.

We can broaden the scope of analysis to other contemporaneous documents to try and build a picture of what enfeeblement means in a genocide context. Turning to the Allied report of 1943, *Women Under Axis Rule*, we can arguably see echoes of what became enfeeblement of a group, especially in relation to women: “The occupation [in France] weighs perhaps more heavily on them [women] than men. They suffer doubly from the insufficiency of food, not only because they are hungry like everybody else, but because it is they who have to find the family’s rations.”<sup>531</sup> This report drew attention to the fact that women in Belgium relied on the black market for food for their children, and they struggled to obtain fuel for cooking and heating, and as a result children were becoming malnourished.<sup>532</sup> Not only does this illustrate a potential ‘enfeeblement’ of the group, it also illustrates a unique awareness of gendered harms, and a recognition that as a result of women’s caring responsibilities these stresses on a community are felt more acutely by women. Unfortunately, however, the enfeeblement of a group was dismissed from the drafting discussions

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<sup>529</sup> E/AC.25/SR.13, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 877.

<sup>530</sup> Lemkin, *Axis Rule*, 79.

<sup>531</sup> United Nations, *Women*, 8.

<sup>532</sup> United Nations, *Women*, 4-5.

and there is no evidence that this was expound on. Therefore, we are not able to fully understand how this concept was intended to fit as a method of genocide, as originally understood.

### *Forced transfer of children*

The forced transfer of children from one group to another group is included in the Genocide Convention, and whilst it may not immediately appear to be a gendered concept, this section of the chapter will explore the debate and definitions of this crime and the gendered themes. It transpired in the data, that it was unhelpful to collect information on the number of times that 'transfer of children' appeared in the *Travaux Préparatoires*. This was due to the characteristics of 'transfers' were debated at the same time as 'transfer of children'; what does it mean to transfer and how is this done? Therefore, the number of times 'transfer' was mentioned in relation to the act of genocide was collated, with the result that there were sixty-eight mentions of 'transfer' in relation to the transfer of children or more broadly the methods of or rationale for the transfers. What this section will briefly discuss the divisions between the inclusion or exclusion of cultural genocide in the Convention.

We will see an interesting overlap in this section, in the work of the women's organisations and the drafters of the Convention. This act of genocide is one of the only specific acts of genocide aside from 'killing' to appear in the advocacy of the international women's organisations of the time. As the following chapters will explore in more detail and as briefly noted earlier in this chapter, the Greek representatives within these organisations used this act within the Genocide Convention to push for action on the removal of children in Greece. This is, in part, the reason for this inclusion as a non-explicitly gendered harm; women's organisations at the time conceptualised it as a such and used it as a main advocacy tool. It was also a call-to-action by Lemkin and his colleagues in their advocacy efforts as well. We briefly see in *Totally Unofficial* Lemkin's cognisance of this being a hook to garner attention by women in the cause of outlawing the crime of genocide; he wrote "[i]n 1947, fifty thousand Greek children had been kidnapped during the Greek civil war. Use this as a

basis to interest Queen Frederica in the Genocide Convention.”<sup>533</sup> Similarly, in a telegram in November 1948 to Ruth Gage-Colby, representative of the USA section of WILPF at the UNGA, Lemkin stated that:

*As a mother surrounded by thousands of Greek mothers in grief whose children have been torn away from their bosoms by the Slavocommunists to be carried away in strange and hostile surroundings where they will be educated by the enemies of their own country I have felt a deep emotion in receiving the cable from great women leaders representing the mothers sisters and daughters...The initiatives so courageously and generously taken by the various international womens [sic] organisations should mark a worldwide crusade for a moral cause as is the salvation of Greek children from moral death and their restoration to their families and homes the only natural environment<sup>534</sup>*

This telegram was sent following a letter from Gage-Colby to the U.S. Committee for a U.N. Genocide Convention which re-stated WILPF’s dedication to the Convention in the Conference of NGOs held on November 22, 1948.<sup>535</sup> We also see WILPF’s Mrs Palentova, who was also persecuted under the Nazis for her role as Deputy Mayor of Prague, quoted in a *New York Times* article in 1946 that it was “one of the greatest tragedies of the occupation was the sending of Czechoslovakian children into Germany where they forgot about their parents and could no longer remember their native tongue.”<sup>536</sup> In a similar vein, the U.S. Committee for a U.N. Genocide Convention Chair Mr Rosenberg wrote in a 1948 letter to the Chairman of the International Union for Child Welfare that other women’s organisations have

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<sup>533</sup> Lemkin and Frieze, *Totally Unofficial*, 219.

<sup>534</sup> Telegram to Ruth Gage-Colby, November 11, 1948. [U.S. Committee for a U.N. Genocide Convention] Correspondence, July – December 1948, box 2, folder 9, Raphael Lemkin Collection (P-154), Center for Jewish History. Emphasis added.

<sup>535</sup> Correspondence from Ruth Gage-Colby, November 1948. [U.S. Committee for a U.N. Genocide Convention] Correspondence, July – December 1948, box 2, folder 9, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>536</sup> ‘CZECH SUFFERING TOLD: Prague Deputy Mayor Describes How War Broke Up Families’, *New York Times*, November 3, 1946: 31, accessed June 1, 2022, <https://www.proquest.com/historical-newspapers/czech-suffering-told/docview/107614918/se-2?accountid=13042>.

supported the Convention “because it provides the tools for the protection of family life and childhood.”<sup>537</sup> Lemkin echoed this in a letter dated the following year, stating that women are interested in genocide because of their vulnerability to biological genocide including sterilization and stealing of children.<sup>538</sup> We will see how women’s organisations adopt this point in the following chapters.

To return to the discussion in the *Travaux Préparatoires*, an explainer of the definition of forceable transfer of children is provided in the Secretary-General’s draft Convention in June 1947. It was situated under ‘Means of cultural genocide’ and stated that:

*The separation of children from their parents results in forcing upon the former at an impressionable and receptive age a culture and mentality different from their parents’. This process tends to bring about the disappearance of the group as a cultural unit in a relatively short time. The experts were agreed that this point should be covered by the Convention on genocide, but their agreement did not go further than that.*<sup>539</sup>

The grouping in which forced transfer was initially put included systematic exile of members of the group, prohibition of national language, and destruction of books, monuments and artefacts.<sup>540</sup> Whilst other acts of cultural genocide were ultimately rejected for inclusion in the Convention, the transfer of children was selected amongst them as a legitimate form of genocide.<sup>541</sup> The United States delegation was a strong proponent of this differentiation.<sup>542</sup> As noted previously, the Greek representative was the outstanding advocate for this act’s inclusion into the final Convention, also

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<sup>537</sup> Correspondence from James N. Rosenberg to Mrs Gordon Moirer, August 7, 1948. [U.S. Committee for a U.N. Genocide Convention] Correspondence, July – December 1948, box 2, folder 9, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>538</sup> Correspondence to Torres Bodet, December 19, 1949, Lemkin Correspondence, August-December 1949, box 2, folder, 2, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>539</sup> E/447, *Travaux Préparatoires*, Volume 1, Abtahi and Webb, 235.

<sup>540</sup> E/447, *Travaux Préparatoires*, Volume 1, Abtahi and Webb, 235-236.

<sup>541</sup> E/621, *Travaux Préparatoires*, Volume 1, Abtahi and Webb, 526

<sup>542</sup> E/623 *Travaux Préparatoires*, Volume 1, Abtahi and Webb, 538.

suggesting it is a clearer crime than that of the other acts of cultural genocide such as destruction of monuments.<sup>543</sup> Despite the USSR's rejection of this act on the grounds of a lack of historical precedent, the Belgium point that it would enumerate the acts of genocide unnecessarily, and the Polish fear of a political tone of this act,<sup>544</sup> the representatives voted to discuss forced transfers of children outside of the broader scheduled discussion of then-Article III on cultural genocide.<sup>545</sup> Ultimately the Greek amendment was adopted, although not unanimously.<sup>546</sup> The next day, the Venezuelan representative noted that forced transfer of children does not necessarily have to include physical harm to the children, and therefore opens the door to genocide being perpetrated through non-physical means.<sup>547</sup> However, as we know the elements of cultural genocide were rejected, and the forced transfer of children from one group to another featured in the draft Convention adopted by the Sixth Committee,<sup>548</sup> where it remained and was eventually codified into the final Genocide Convention. Whilst it was controversial for a time amongst the drafters as a component of cultural genocide, this gendered act of genocide was eventually adopted into the final Convention.

In summation, evidence shows that the forcible removal of children was initially envisaged under the controversial concept of cultural genocide. Had it remained there, it would not have been included in the final Convention, as cultural genocide was ultimately rejected. A key take away from this section is the role women's organisations played in advocating for the Convention on the basis that this act of genocide was included in the final Convention. This is discussed further in later chapters.

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<sup>543</sup> A/C.6/SR.82, 'Eighty-Second Meeting Held at the Palais de Chaillot, Paris, on Saturday, 23 October 1948, at 10.30 a.m.,' *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1492-1493.

<sup>544</sup> A/C.6/SR.82, *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1493, 1495-6

<sup>545</sup> A/C.6/SR.82, *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1497.

<sup>546</sup> A/C.6/SR.82, *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1498.

<sup>547</sup> A/C.6/SR.83, 'Eighty-Third Meeting Held at the Palais de Chaillot, Paris, on Monday, 25 October 1948, at 3 p.m.,' *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1504

<sup>548</sup> A/C.6/245, 'Genocide – Draft Convention And Report Of The Economic And Social Council, 23 October 1948,' *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1992

### *Sex as a distinct group*

Should sex be considered as a persecuted group alongside national, ethnical, racial, religious, political or cultural groups? This was a question raised only once throughout the drafting of the Convention. The Chinese representative, Mr Lin, who was also an anomaly in raising the profile of destroying a group through addiction,<sup>549</sup> stated:

*There was, in fact, no good reason why social, economic and other groups should not be included, or even why no mention of sex distinction should be made, because there again it was possible to envisage separate groups.*<sup>550</sup>

This was not subsequently entertained or revisited by the drafters of the Convention as the inclusion of political groups became the main topic of debate for the remainder of the drafting process. What is perhaps the most relevant observation of Mr Lin's brief comment is how this concept was not even considered or debated. Gender (both men and women) was not ultimately included in the Genocide Convention. What would the Genocide Convention and its jurisprudence look like if it had been, and would this have resulted in different protections than we have today under the Convention? Academics such as Askin have asked this question and posit that, yes, protections for women would be greater today if gender was included alongside national, racial and ethnic groups.<sup>551</sup>

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<sup>549</sup> E/SR.218, 'Two Hundred And Eighteenth Meeting, Held at the Palais des Nations, Geneva, on Thursday, 26 August 1948, at 3 p.m.,' *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 1226.

<sup>550</sup> E/AC.25/SR.4, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 718.

<sup>551</sup> Askin, *War Crimes against Women*, 402.

## *Moral debasement*

The next chapter of this thesis will explore in greater detail the formation of the theory of moral debasement within genocide. This chapter will present the numerous appearances of moral debasement in the *Travaux Préparatoires*, followed by a deeper analysis in Chapter 5. The first iteration of the Convention submitted by Saudi Arabia was the first inclusion of the term moral debasement.<sup>552</sup> It sought to outlaw "[s]ystematic moral debasement of a group, people or nation" as well as acts "of terrorism committed for the purpose of creating a state of common danger and alarm in a group, people or nation with the intent of producing their political, social, economic or moral disintegration" and the "[p]lanned disintegration of the political, social or economic structure of a group, people or nation."<sup>553</sup> In their follow-up essay to the *Travaux Préparatoires*, Abtahi and Webb suggest the reason Saudi Arabia included these acts is historical experiences or cultural reasons, although this is not expanded in the article.<sup>554</sup> The next chapter of this thesis posits a different interpretation of the inclusion and understanding of these acts as proposed by Saudi Arabia. The incorporation of the concepts of debasement in Saudi Arabia's proposed draft Convention and the direct reference made by Saudi Arabia's representative, Riad Bey, to Lemkin's *Axis Rule* (and therefore the concept of moral techniques of genocide, mirrored in the draft) during the discussions on this draft is overlooked by Abtahi and Webb, and is discussed later in this thesis.<sup>555</sup>

There are no other references to moral debasement throughout the drafting process of the Genocide Convention, suggesting that this vaguely-formed concept was not entertained as an act to be included in Article II of the Convention. The next chapter of this thesis analyses the important references and concepts of morality,

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<sup>552</sup> A/C.6/86, 'Draft Protocol by Saudi Arabia,' *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 7.

<sup>553</sup> A/C.6/86, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 6-7.

<sup>554</sup> Abtahi and Webb, 'Secrets and Surprises,' 303.

<sup>555</sup> A/C.6/91, 'Twenty-Third Meeting, Summary Record of Meetings, Saturday, 30 November 1946,' *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 13; Abtahi and Webb 'Secrets and Surprises.'

discussing how these translate into the ill-defined acts of moral genocide and moral debasement.

### **Conclusion to gendered harms in the *Travaux Préparatoires***

This section of the chapter provided an in-depth examination of the gendered harms as they appear in the *Travaux Préparatoires*. Divided into two sections, the first explored the explicitly gendered harms and the second analysed the nuanced and less-explicit gendered harms. Each act posited during the drafting of the Convention was discussed to establish how they were conceptualised by the drafters and occasionally by those around the drafting of the Convention. Furthermore, this chapter sought to understand any changes in perceptions of these harms as the drafting progressed.

The goal was to ‘ask the woman question’ of the *Travaux Préparatoires*; how were women represented in the drafting of the Genocide Convention, and how were the specific harms experienced by women, and evidenced at the IMT, understood by the male drafters of the Convention? Perhaps unsurprisingly, a main conclusion from this data is that the approach to gendered harms was patchwork, and discussions remained couched in the women-as-mothers-and-caregivers mindset. Similarly, there was no data to suggest that perceptions of these harms changed over the course of the drafting process, aside from the act of transfer of children being considered as a separate act, rather than within the umbrella of cultural genocide.

There were a few surprises in this data, however. The first was the debate on October 23, 1948, in which the American representative stated that in the eyes of a mother there is little difference between abortion and abduction of the child. This was a particularly important interaction as it illuminated the perceptions held by the American representative, which remained unchallenged by other representatives. Also illuminating were the perceptions of abortion which country representatives brought into the drafting process and the influence of domestic legislation to inform this international convention. The absence of any substantive mention of rape was also a key finding. The presence of euphemisms of moral debasement and enfeeblement of

the group may go some way to support the theory that these euphemisms were employed in lieu of the word ‘rape’. This chapter again drew on contemporaneous IMT testimonies of sexual violence. Similar themes are identifiable in the discussions of mutilations and biological experiments; the IMT transcripts provide insight into the experiences of the genocide which inspired the Convention, which were fundamentally gendered despite not being reflected as such in the *Travaux Préparatoires*.

Would greater gender diversity in the drafting process have changed how these gendered harms were conceptualised in the Convention? Can we see examples elsewhere in contemporaneous international law of a different approach to gendered harms or women’s rights? These are some questions the next section of this chapter will explore.

## Representation of the genders

This chapter will now look at how genders (at the time, ‘men’ and ‘women’) were discussed in the *Travaux Préparatoires*.

### ‘Women’

In order to continue to build a picture of the consideration women were given throughout the drafting process, a basic examination of the index for the *Travaux Préparatoires* volumes is particularly illuminating. The records of the *Travaux Préparatoires* shows that ‘women’ appears on thirty-three pages. By cross-referencing the page numbers of these appearances and the number of times the phrases “traffic in women” and “traffic in women and children” appear (as groupings which include “women”), twenty-one of the appearances of ‘women’ are in relation to traffic of women and children. Only twelve of the mentions of women in the *Travaux Préparatoires* of the Genocide Convention are stand-alone mentions of women. Accounting for the fact that one reference was in relation to the Women’s International Democratic Federation (discussed later in this chapter), and the

International League of Catholic Women (noted briefly as also lobbying on behalf of the Convention), and broad statements on the goodwill of men, women and children as well are references to the Status of Women Commission,<sup>556</sup> the only relevant mention of 'women' to this thesis is in relation to the separation of the sexes.<sup>557</sup> The sole reference to 'female' within the *Travaux Préparatoires* is in a comment by Siam noting that there are racial groups in which men outnumber the women and that prohibition of marriage between racial groups may result in their demise, as was discussed earlier in this chapter.<sup>558</sup> There are no other references to 'female'.

## 'Men'

To provide a contrast, there are sixteen mentions of 'men' or 'male' in the *Travaux Préparatoires*. The content of the text in which men are mentioned is more illuminating, and this section will analyse this in more detail. In order to discount some of these references to men, this thesis will discuss why some references are not of interest. Out of the sixteen times men is mentioned in the *Travaux Préparatoires*, eight were discussing the rights of men (notably not men and women). These references are either within the context of individual countries respecting the rights of men, how the Genocide Convention will protect the rights of men, or the need to avoid confusion with other treaties or declarations which protect the rights of men.<sup>559</sup> Another

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<sup>556</sup> E/C2/105, 'Committee On Arrangements For Consultation With Non-Governmental Organizations,' 1173; E/C.2.64, 'Committee On Arrangements For Consultation With Non-Governmental Organizations List Of Communications Received From Non-Governmental Organizations Granted Category (B) Or (C) Consultative Status,' 476; E/623, 'Communications Received From Non-Governmental Organizations,' 570; E/SR.201, 'One Hundred And Eightieth Meeting Held At The Palais Des Nations, Geneva, On Wednesday, 21 July 1948, at 3 p.m.,' 1190, *Travaux Préparatoires, Volume 1 & 2*, Abtahi and Webb.

<sup>557</sup> E/447, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 234.

<sup>558</sup> E/623/Add. 4, 'Prevention and Punishment of Genocide, Comments of Governments on Draft Convention Prepared by the Secretariat (Document E/447),' *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 639.

<sup>559</sup> E/421, 'Economic And Social Council Summary Record Of The Seventieth Meeting Held at Lake Success, New York, on Saturday, 15 March 1947, at 10:30 a.m.,' 40; A/AC.10/SR.28, 'Committee On The Progressive Development Of International Law And Its Codification Summary Record Of The Twenty-Eighth Meeting Held at Lake Success on Friday, 13 June 1947, at 3 p.m.,' 168; A/PV.123, 'Hundred And Twenty-Third Plenary Meeting Held in the General Assembly Hall at Flushing Meadow, New York On Friday, 21 November 1947, at 3 p.m.,' 450; A/C.6/SR.65, 'Sixty-Fifth Meeting, Held at the Palais de Chaillot, Paris, on Saturday, 2 October 1948, at 10.40 a.m.,' 1320; A/C.6/SR.75, 'Seventy-Fifth Meeting

mention was by the Iranian delegate stating that all men must be judged on their actions rather than their position in society.<sup>560</sup> Four mentions are as men, women and children. These include men with women and children either as victims of genocide (the segregation of the sexes as discussed above), gender imbalances in groups, or as the need for free men and women to rally around the Genocide Convention.<sup>561</sup>

The three remaining mentions are of particular interest to this thesis. The first was a statement from the USA representative, that the Genocide Convention must be codified into international law quickly lest it become “faded from the minds of men.”<sup>562</sup> The second was the Haitian representative stating that the Committee must strive towards a world in which men are no longer destroyed.<sup>563</sup> The final was a mention by the Philippine representative who discussed the difference between rulers and heads of State as pertaining to the ultimate responsibility (and therefore criminal responsibility) for acts of genocide; “the word ‘rulers’ meant rather the men who imposed their will on the Government.”<sup>564</sup>

By drawing out these mentions and comparing them to the mentions of women, we can clearly see a crystallisation of themes in the *Travaux Préparatoires* of the roles and responsibilities of men and women. There are four distinct relevant

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Held at Palais de Chaillot, Paris, on Friday, 15 October 1948, at 3.20 p.m.,’ 1406; A/C.6/SR.83, ‘Eighty-Third Meeting Held at the Palais de Chaillot, Paris, on Monday, 25 October 1948, at 3 p.m.,’ 1502; A/C.6/SR.87, ‘Eighty-Seventh Meeting Held at the Palais de Chaillot, Paris, on Friday 29 October 1948, at 3.15 p.m.,’ 1574, *Travaux Préparatoires, Volume 1 & 2*, Abtahi and Webb.

<sup>560</sup> A/C.6/SR.100, ‘Hundredth Meeting, held at the Palais de Chaillot, Paris, on Thursday, 11 November 1948,’ *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1728.

<sup>561</sup> E/447, 234; E/C.2/64, ‘Committee On Arrangements For Consultation With Non-Governmental Organizations List Of Communications Received From Non-Governmental Organizations Granted Category (B) Or (C) Consultative Status, 12 November 1947,’ 476; E/623/Add.4, ‘Prevention And Punishment Of Genocide Comments Of Governments On The Draft Convention Prepared By The Secretariat, 20 July 1948,’ 639; E/623, ‘Prevention And Punishment Of Genocide Comments By Governments On The Draft Convention Prepared By The Secretariat, 30 January 1948,’ 570, *Travaux Préparatoires, Volume 1 & 2*, Abtahi and Webb.

<sup>562</sup> A/C.6/SR.63, ‘Sixty-Third Meeting, Held at the Palais de Chaillot, Paris, on Thursday, 30 September 1948, at 10.30 a.m.,’ *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1290.

<sup>563</sup> A/C.6/SR.74, ‘Seventy Fourth Meeting, Held at the Palais de Chaillot, Paris, on Thursday, 14 October 1948, at 3.25 p.m.,’ *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1397.

<sup>564</sup> A/C.6/SR.80, ‘Eightieth Meeting, Held at the Palais de Chaillot, Paris, on Thursday, 21 October 1948, at 10.45 a.m.,’ *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1465.

themes which can be drawn here. First is that, to some of the drafters, men are understood as the default; men as conceptualised in law refers to men and women, and therefore both genders fall under this term. This observation is not unique to the Genocide Convention; in her feminist history of the creation of the Universal Declaration of Human Rights, Adami writes how the inclusion of 'men' as a placeholder for all humanity was a controversial and debated topic amongst the delegates drafting the UDHR.<sup>565</sup> Charlesworth and Chinkin make a similar point, that 'men' is equitable to 'human' in international law.<sup>566</sup> Whilst at first, referring to humanity as men may be considered a contemporary norm reflected in these documents, the debate around the use of men as a catch-all term had already been had at the San Francisco conference in 1945, the outcome of which was the inclusion of men *and* women in the UDHR.<sup>567</sup> As Minerva Bernardino, Dominican Republic's representative to the San Francisco conference in 1945, said, "the word 'man,' although it is assumed that it represents all human beings, only represents its gender."<sup>568</sup> At this juncture the use of men to include women was not good enough, as Jair notes.<sup>569</sup>

The second point of relevance, thematically stemming from the first point, is the positioning of the role of men as gatekeepers of memories and rulers, illustrated in the citations above. If we contrast this with the reference of women detailed above which predominantly reference women as victims, we can see a distinct difference in the roles of men and women. The third point of relevance is similar, in that these references to men centre male agency; the men herein are men who have decision-making capacity in their roles as rulers and memory gatekeepers. Again, if this is contrasted with the references to women above, these references distinctly centre female victimhood as opposed to their agency; the women are not discussed in terms of their agency but mainly in relation to their vulnerabilities to being trafficked. The final point of relevance is that the drafters were almost exclusively male. These references are not, perhaps, surprising within the context of the post-war male-

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<sup>565</sup> Adami, *Women and the Universal Declaration*, see in particular 67, 87 91-92.

<sup>566</sup> Charlesworth and Chinkin, *Boundaries*, 17.

<sup>567</sup> Adami, *Women and the Universal Declaration*, 8, 37.

<sup>568</sup> Quote cited in Adami, *Women and the Universal Declaration*, 8.

<sup>569</sup> Jair, *Women, Development*, 12.

dominated international law forum. The next section of this chapter will explore this in more detail.

### Where are the women?

Perhaps the most notable observation made upon the first reading of the *Travaux Préparatoires* is the distinct lack of female representation, although there were a handful of women. This was also an observation made by the editors of the volumes, Abtahi and Webb, who noted that there is a large gender skew of those present in the room during, and therefore influencing, the drafting process.<sup>570</sup> In this section of the chapter, we will be looking at the extreme gender disparity present in the drafting process as well as drawing out the few women who were present.

The first female representative recorded in the *Travaux Préparatoires* was Miss Hampton who represented New Zealand at the Fifth Session of the Social Committee.<sup>571</sup> She is not recorded in the summary records of the meeting as having spoken during the discussion. Lemkin recalled a conversation with a young lady from the New Zealand delegation, later, in 1948 in Paris, who is remembered as being positive on the imminent success of the Convention which struck Lemkin as a “refreshing lesson from a representative of the younger generation.”<sup>572</sup> Another female delegate from New Zealand, a Mrs Newlands, is also recorded in Lemkin’s biography as being a believer in and an advocate for the Genocide Convention.<sup>573</sup> As it stands, it is not possible for the author to confirm which of these women Lemkin spoke to in Paris in 1948. This is perhaps a victim of the neglect women have had in the recording of this history. Further research into these women, one of whom was

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<sup>570</sup> Abtahi and Webb, ‘Secrets and Surprises,’ 300.

<sup>571</sup> E/AC.7/SR.17, ‘Fifth Session Social Committee Summary Record Of The Seventeenth Meeting, 6 August 1947,’ *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 197.

<sup>572</sup> Lemkin and Frieze, *Totally Unofficial*, 165.

<sup>573</sup> Lemkin and Frieze, *Totally Unofficial*, 159.

passionate about the Convention, could yield interesting results and the researcher welcomes this further research.

The second woman mentioned in the *Travaux Préparatoires* is Pakistan's Shaista Ikramullah. She was present at the Sixty-Third meeting in September 1948 where she spoke on the special interest Pakistan has with the Genocide Convention given the recent turmoil in her region in relation to intercommunal violence.<sup>574</sup> She also points to the fact that in India the Urdu language was under attack, using this to show her support for the concept of cultural genocide.<sup>575</sup> Shaista Ikramullah was also Pakistan's representative in December 1948, where she congratulated the efforts of completion of the Convention whilst lamenting the lack of cultural genocide's presence. She stated that "[t]o deprive a human group of its separate culture could thus destroy its individuality as completely as physical annihilation" and spoke of the importance of a soulful existence as well as a physical one for the group.<sup>576</sup> Shaista Ikramullah's contribution to the success of the Genocide Convention reaches beyond what is recorded in the *Travaux Préparatoires*, illustrating the use of a taking a female-centric approach to this research; using these brief recording of Shaista Ikramullah's input into the drafting process as a starting point rather than an end point, this thesis was able to uncover her historical nexus with the Genocide Convention explored in Chapter 6.

The final input into the drafting process of the Convention by women as recorded in the *Travaux Préparatoires* was a statement from the Women's International Democratic Federation, an NGO with ECOSOC Consultative Status. It was addressed to the Sub-Commission on Prevention of Discrimination and Protection of Minorities and received October 23, 1947. Although it does not specifically relate to genocide *per se*, it is an important document to include and analyse as it appears to be

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<sup>574</sup> A/C.6/SR.63, 'Sixty-Third Meeting Held at the Palais de Chaillot, Paris, on Thursday, 30 September 1948, at 10.30 a.m.,' *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1298.

<sup>575</sup> A/C.6/SR.63 *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1298-1299.

<sup>576</sup> A/PV.179, 'Hundred And Seventy-Eighth Plenary Meeting Held at the Palais de Chaillot, Paris, on Thursday, 9 December, 1948, at 10.55 a.m.,' *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 2049-2050.

the only advocate for women's rights and the rights of Black women and women living under colonial rule:

*Women lack legal rights such as the right to vote and to hold high public office, not only in colonial nations but also in advanced industrial nations. Certain States of the United States bar women from jury service, from controlling their own children and earnings, and from making contracts. In colonial nations, the situation is far worse.*

*In most countries women are a social minority; they are barred from equal entrance into universities and often are ineligible for membership in learned or professional societies; they are attacked as incompetents in newspapers, books and on the radio.<sup>577</sup>*

The letter continues on to discuss economic disparity between men and women around the world and in the United States. More importantly, this letter states that Black women in the United States are by far the most discriminated minority.<sup>578</sup> These are undoubtedly the strongest feminist sentiments contained in the two volumes of the *Travaux Préparatoires*. It is also explicitly intersectional, discussing the multiple discriminations experienced by Black women in the United States. Such strong words recognising and evidencing these discriminations is absent in the *Travaux Préparatoires*.

In summation, there were few women represented in the *Travaux Préparatoires*. Whilst this is not necessarily a surprising conclusion, the appearance of some women in the records have provided an avenue for further research into

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<sup>577</sup> E/C.2/63, 'Women's International Democratic Federation: Committee On Arrangements For Consultation With Non-Governmental Organizations List Of Communications Received From Non-Governmental Organizations Granted Category (B) Or (C) Consultative Status,' *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 473.

<sup>578</sup> E/C.2/63, 'Women's International Democratic Federation: Committee On Arrangements For Consultation With Non-Governmental Organizations List Of Communications Received From Non-Governmental Organizations Granted Category (B) Or (C) Consultative Status,' *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 473.

women's involvement in the Genocide Convention, as Chapters 6 to 10 of this thesis will illustrate.

### **Comparison - Convention Relating to the Status of Refugees, and conclusion**

In order to better establish the uniqueness or otherwise of the data collected above, and to provide a valuable comparison, this thesis will briefly explore the Convention Relating to the Status of Refugees, 1951 (hereafter the Refugee Convention) as a comparison to the Genocide Convention *Travaux Préparatoires*. This treaty has been selected by the author as a comparative treaty due to it being the closest legal human rights treaty in date to the Genocide Convention, 1948, and therefore provides a comparison in wording to the Genocide Convention as the Refugee Convention was approved in July 1951.

A relevant observation of the Refugee Convention *Travaux Préparatoires* was that women were not designated as particularly vulnerable on account of their gender, and are not included as a category of at-risk groups in Article I (II) of the Refugee Convention, or protected under non-discrimination in Article III.<sup>579</sup> The *Travaux Préparatoires* of the Genocide Convention, although demonstrating a flawed understanding and approach to women's rights and gendered harms, does partially recognise the harms done to women such as forced abortions. To put this into a greater context of the subsequent human rights treaties, women are mentioned in the ICCPR (1966) in relation to "the rights of men and women," and the protection of pregnant women from execution, whereas the ICESCR (1966) demonstrates a maturing of understanding of the inequalities of women and in Article 7 (a) (ii) provides for the right for equal pay for equal work and equitable working conditions to that of men.<sup>580</sup> This development occurred over seventeen years at the United Nations and would

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<sup>579</sup> United Nations High Commissioner for Refugees, 'The Refugee Convention, 1951: The *Travaux Préparatoires* Analysed with a Commentary by Dr. Paul Weis,' UNHCR, 1990, <https://www.unhcr.org/protection/travaux/4ca34be29/refugee-convention-1951-travaux-preparatoires-analysed-commentary-dr-paul.html>, accessed June 7, 2022, 9.

<sup>580</sup> United Nations, *International Covenant on Civil and Political Rights*, 1966, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

take another thirty years until the United Nations would begin to address the harms experienced by women and their need for specific legal protection in CEDAW, 1979.

To return to the *Travaux Préparatoires* of the Refugee Convention, ‘women’ are mentioned thirteen times. Six of the mentions of women are in relation to the “legal capacity of married women” and two are concerning the broader employment and labour of women.<sup>581</sup> Five of the mentions of women are to do with “women’s work” as a category of work, often included with “the work of young persons.”<sup>582</sup> An interesting overlap in data between the chapters is also visible here; both the ICW and WILPF were present at the signing of the Refugee Convention, although it is not known to what extent (if any) they influenced the initial development of this Convention.<sup>583</sup> Foster and Anderson make the point that, the *Travaux Préparatoires* of the Refugee Convention indicate a negligence on the topic of persecution on the basis of sex or gender and that only male refugees were considered during the drafting.<sup>584</sup> The Refugee Convention provides an additional layer of analysis in the comparison to the Genocide Convention. The economic possibilities of women (“women’s work”) included and protected in the Refugee Convention is a notable difference, as it arguably steps beyond conceptualisations of women as just mothers to a broader conceptualisation of women as having some form of autonomy as members of the labour force. This is despite no specific recognition of the vulnerabilities of female refugees being persecuted on the basis of their gender.

What, then, can we draw from this? The male drafters of the Genocide Convention did not have an observably advanced understanding of women’s rights, their role and experiences beyond physical reproduction, or the particular vulnerabilities to gendered harms in comparison to the more contemporary understandings we can see in the later human rights treaties. That being said, the

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<sup>581</sup> High Commissioner for Refugees, ‘The Refugee Convention, 1951.’

<sup>582</sup> High Commissioner for Refugees, ‘The Refugee Convention, 1951.’

<sup>583</sup> United Nations General Assembly, *Convention and Protocol Relating to the Status of Refugees*, July 28, 1951, United Nations, Treaty Series, vol. 189, <https://www.refworld.org/docid/3be01b964.html>, accessed April 28, 2022.

<sup>584</sup> Adrienne Anderson and Michelle Foster, ‘A Feminist Appraisal of International Refugee Law,’ in *The Oxford Handbook of International Refugee Law*, eds., Cathryn Costello, Michelle Foster, and Jane McAdam (Oxford: Oxford University Press, 2021), 64.

*Travaux Préparatoires* of the Refugee Convention and its final wording demonstrates that despite their many failings, the creators of the Genocide Convention were perhaps more advanced than one could assume by merely analysing the Genocide Convention in isolation. By providing a comparison in the Refugee Convention it is possible to suggest the Genocide Convention drafters had different understandings of the role of women but understood, to some extent, the need to protect women from different acts of genocide, in contrast to the Refugee Convention.

## Conclusion

This chapter examined the record of the creation of the Genocide Convention using a feminist lens to establish an understanding of the gender-balance of people interacting with the process, and how these discussions conceptualised women and gendered harms. The comparison in this chapter between the discussions of ‘men’ and ‘women’ by the drafters of the Convention illustrate a clear perception of active men (leaders, decision-makers and rights-holders) and passive women (as victims of trafficking and victims of genocide). This chapter identified clear and potential gendered terms and phrases in the *Travaux Préparatoires*, and analysed them in turn to establish a base understanding as held by the drafters and subsequently whether there was any development in understanding of these phrases. What is perhaps the most observable conclusion in this chapter is that a majority of the gendered terms were not expounded upon in great detail. In some cases, these gendered harms began to be discussed in problematic terms which the feminist lens levels a critique of, such as the statement that in the eyes of the mother there was little difference between forced abortion and the removal of children after birth.

There were several surprises throughout the research for this chapter, although the lack of female representation and lack of nuanced appreciation of female experiences during genocide was, given the context these debates were occurring, not one of these surprises. At first reading, the first surprising feature was the complete avoidance, intentional or unintentional, of discussions of rape. This was contextualised in the chapter within the broader lack of willingness to discuss rape using the term.

This can be compared with responses to evidence of rape at Nuremberg (“I will pass on”<sup>585</sup>), as well as the fact that Lemkin’s conceptualisation of the nexus between gender and genocide speaks most explicitly about rape and the history of sexual violence in genocides. It was argued in this chapter that this neglect of the opportunity to discuss rape as an act of genocide was disappointing given the evidence of sexual violence provided at Nuremberg in spite of Prosecutor hesitancy.

Evidence discussed in this chapter illustrated the drastically male-dominated discussions, with Shaista Ikramullah as the sole female recorded as contributing during the drafting, and only a small handful of women on the delegations. Shaista Ikramullah’s intervention and the gendered criticisms she received are analysed closely in Chapter 6 of this thesis. Another important discovery in the data was how the discussions often featured strong moralistic features, and the presence of the ill-defined term ‘moral debasement’ in the *Travaux Préparatoires*. This thesis will now look at the formation of this notion of moral acts of genocide, particularly as it relates to women, in the following chapter.

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<sup>585</sup> Askin, *War Crimes against Women*, 98.

## Chapter 5 - 'Moral debasement' and 'obscenity' in the origins of genocide

### Introduction

This chapter will examine conceptualisations of morality, focusing in relation to women, as it appears throughout the history of the creation of the theory of genocide. From Lemkin's 'moral techniques' of genocide to the inclusion of 'moral debasement' as an act included in Article II of a draft of the Convention, evidence scattered throughout primary materials researched for this thesis suggest a loosely defined notion that a component element of genocide includes acts attacking the so-called morality of a group. When contextualised in the post-World War Two era, these references to morality and obscenity, as evidenced in this chapter, potentially refer to sex, pornography and enforced prostitution, but also to broader notions of humiliation or attacking the humanity of a group.

This chapter draws on common themes throughout the materials and context in order to establish the meaning behind such acts of genocide and to investigate whether these terms were employed euphemistically. The main question being addressed in this chapter is **how were gendered harms understood by Lemkin, and were they included and potentially removed from the Genocide Convention?** In seeking answers to these questions in the previous chapters, it became evident that greater interrogation of repeating phrases of morality and obscenity was required as they include gendered themes such as prostitution. Within the context of genocide, how was the morality of a group understood to be under attack, and was this gendered? In answering these questions, this chapter begins by examining Lemkin's moral techniques of genocide. This theory was first developed in the context of Nazi atrocities in *Axis Rule*. Following this, the chapter will explore the reflections of Lemkin's theory of morality in the *Travaux Préparatoires* and discussion on the Genocide Convention to establish whether Lemkin's 'moral debasement' translated into the Genocide Convention. This chapter will then analyse at the concept of 'obscenity' as reflected in the *Travaux Préparatoires*, and seeks to contextualise this within issues of international legislation and definitions.

Argued in this chapter is that the notion of what is obscene is ill-defined and contested, although it is assumed to relate to pornography. Whilst evidence illustrates this is a common theme with Lemkin's moral techniques, it also importantly features in much later commentary of methods of genocide from the early 2000s. The predominant key finding in this chapter is the dichotomy between cheap pleasures (or actions considered not to be moral such as prostitution, gambling, drinking, and spreading obscene materials) and higher morality (or, in the case of genocide, the greater good of the group). This chapter posits that, whilst prostitution and obscene materials are strong components of moral debasement in relation to the theory of genocide, this theory is also strongly akin to attacking the humanity of a person or a group.

As we will see in this chapter, the posited confluence of prostitution and obscenity with immorality and perceived damage to society has been a long-held belief. The feminist movement in England before World War One, for example, problematised the societally-accepted notion that chastity was a requirement of women but not for men, and sought to equalise unequal sexual relations between men and women.<sup>586</sup> They challenged the sexual objectification of women that this inequality created, and opened the debate on the dichotomy between moral sexual interactions (in a marriage between a man and a woman) and immoral sexual interactions (prostitution, sex outside marriage).<sup>587</sup> This inequality between the sexes in sexual morality was similarly prominent in Europe in the Nineteenth Century as women's sexuality was repressed whilst male sexuality accepted.<sup>588</sup> Moral sex was for procreation only and, as we shall see in this chapter, the implications for prostitution was a moral one.<sup>589</sup> This chapter will explore historic perceptions along with recent arguments centred on gender power dynamics and violence against women. In doing so, this seeks to contextualise Lemkin's conception of morality, prostitution, and

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<sup>586</sup> Bland, *Banishing the Beast*, xiii.

<sup>587</sup> Bland, *Banishing the Beast*, xiii, xviii, 4.

<sup>588</sup> Riemer and Fout, *European Women*, 220-221.

<sup>589</sup> Riemer and Fout, *European Women*, 221.

obscenity in the era he was writing on moral techniques of genocide, up to more recent arguments and perceptions.

### Context of prostitution and morality

This chapter will explore in detail the notions of prostitution and forced prostitution<sup>590</sup> as they are conceptualised in the theory of genocide. It is therefore useful to provide a brief overview of prostitution prior to the period of research in order to situate this chapter. Prior to the beginning of the Twentieth Century, prostitution was widely considered in the West, although not discussed as, a “supplement to marriage.”<sup>591</sup>

Against the backdrop of perceptions of sexual morality in the Nineteenth Century discussed in the section above, prostitutes were perceived as embodying sexuality and were therefore seen as the ultimate immodest woman.<sup>592</sup> Suggestions were even made among Western scientific communities that sexual promiscuity embodied by prostitutes were lower in the evolutionary development than chaste women, and was a result of “moral imbecility.”<sup>593</sup> Debates within reformist feminist movements in the UK on prostitution in the Nineteenth Century recognised prostitution as a symptom of “double sexual standards” in a society which permitted male promiscuity whilst requiring female chasteness and moral purity and a repression of female sexuality.<sup>594</sup> Feminist writings also make clear that societally women have been divided between the “pure” and “impure,” and that morality lay at the centre of this divide.<sup>595</sup> We can also see this prominently in the International Alliance of Women German section’s statement made in 1929 which, under the heading “Moral Rights”

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<sup>590</sup> See explanation of terms in Chapter 1, ‘Terms Used.’

<sup>591</sup> Dagmar Herzog, *Sexuality in Europe: A Twentieth-Century History* (Cambridge: Cambridge University Press, 2011), 6.

<sup>592</sup> Bland *Banishing the Beast*, 57.

<sup>593</sup> Bland, *Banishing the Beast*, 57-58.

<sup>594</sup> Riemer and Fout, *European Women*, 221.

<sup>595</sup> Bland, *Banishing the Beast*, 23-24.

emphatically stated that “Traffic in Women and procuration in general are the consequence of a double moral standard between the sexes.”<sup>596</sup> This divide, Bland argues, stems from the revival of Anglican evangelicalism in the early Nineteenth Century and the overt themes of wives’ submission and obedience to their husbands.<sup>597</sup> The English feminist movement had identified, and were discussing openly, the relationship between women’s societally subordinate roles and implications this has on sexual relations long before the outbreak of World War One. Reformists sought to end state-sanctioned prostitution, which, through this prism of unequal sexual morality, they viewed as exploitation and victimisation of working-class women.<sup>598</sup>

After the turn of the century, the fear of venereal diseases led to public and political outcries against prostitution.<sup>599</sup> Although there was, of course, some truth to the fear that prostitution led to the trafficking of women and children for this reason, Herzog makes the point that these fears were also greatly exaggerated at the time.<sup>600</sup> Stories of trafficked women and children were, Herzog suggests, a method of distributing titillating content in newspapers under the veneer of moral outrage.<sup>601</sup> Interestingly, the feminist movement also overlapped with the moral outrage regarding prostitution at the beginning of the century.<sup>602</sup> By World War One, women’s organisations such as the IAW were deputised by governments to ostensibly prevent the spread of venereal disease through troops by patrolling barracks and promoting chastity.<sup>603</sup> As we have seen in Chapter 3 on Lemkin’s conceptualisation of women and gender, the chastity of female rape victims in genocide is a theme in the early formation of rape as an act of genocide. This chapter will explore this in more detail.

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<sup>596</sup> International Alliance of Women, ‘Restatement Policy After 25 Years,’ cited *European Women: A Documentary History*, eds. Riemer and Fout, 84-85.

<sup>597</sup> Bland, *Banishing the Beast*, 49.

<sup>598</sup> Riemer and Fout, *European Women*, 221.

<sup>599</sup> Herzog, *Sexuality in Europe*, 7.

<sup>600</sup> Herzog, *Sexuality in Europe* 7.

<sup>601</sup> Herzog, *Sexuality in Europe*, 7.

<sup>602</sup> Herzog, *Sexuality in Europe*, 9.

<sup>603</sup> Harrington, *Politicization*, 60-63.

## Lemkin's concept of moral techniques of genocide

Phrases akin to 'morality' appear throughout Lemkin's work. There is no evidence in Pella's published works that morality was a consideration in his theories *per se*, although there are relevant themes in his work which this chapter will draw on. Lemkin's understanding of a moral technique of genocide is in "order to weaken spiritual resistance of a national group, the occupant attempts to create an atmosphere of moral debasement within this group."<sup>604</sup> He continued:

*According to this plan, the mental energy of the group should be concentrated upon base instincts and should be diverted from moral and national thinking... It is important for the realization of such a plan that the desire for cheap individual pleasure be substituted for the collective feelings and ideals based upon a higher morality.*<sup>605</sup>

The language used in this text, notably the pitting of "base instincts" against "moral and national thinking," and "cheap individual pleasure" against a "higher morality," suggests in Lemkin's theory there exists hierarchy of morality with individual satisfaction as a lower moral cause and group welfare as a higher moral cause. To recall the themes encompassed within the theory of barbarism from Chapter 2 of this thesis, for both Pella and Lemkin barbarism is the antithesis of a socially ordered and moral society. We can see a clear example of this in the quote above, as the collective good is conceivably more moral than individual pleasure-seeking. Feminist writings in Nineteenth Century England also conceptualised morality and society in this way; Nineteenth Century academic Isabella Clemes for example, wrote that morality was both a "social duty" to others and "individual duties" to oneself.<sup>606</sup> Feminist Annie Easty also drew on the "moral sense" as a foundation of survival.<sup>607</sup>

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<sup>604</sup> Lemkin, *Axis Rule*, 89.

<sup>605</sup> Lemkin, *Axis Rule*, 90.

<sup>606</sup> Bland, *Banishing the Beast*, 23.

<sup>607</sup> Bland, *Banishing the Beast*, 22-23.

In spite of the broader conceptualisation of morality and social order, it becomes clear that in relation to genocide there is a gendered dimension. We will explore the evidence which illustrates this in this next section. Lemkin cited women being trafficked for prostitution in Peru as an example of the “moral” consequence of the crime of genocide as well as social and demographic consequences.<sup>608</sup> These themes can be seen in other contemporaneous documents; the official *Molotov Note on German Atrocities*, published in 1943 contained phrases such as “the robbing and ruin of the population has been accompanied by widespread bestial outrages and massacres,” and the “extreme moral degradation” of the occupying Nazi forces in the Soviet Union.<sup>609</sup> This language can also be seen in Nazi-occupied territories; leading Nazi and originator of the Holocaust Heinrich Himmler cited immorality as the motive for transferring prostitutes to concentration camps.<sup>610</sup>

In camps such as Dachau, prostitutes were the first victims of the immersion-hypothermia and rewarming medical experiments.<sup>611</sup> Additionally, contained within Lemkin’s never-published manuscripts collated in Jacobs’ *Raphael Lemkin’s Thoughts on Nazi Genocide: Not Guilty?* a female prisoner at Ravensbrück who volunteered to be posted in the camp’s brothel (due to better conditions than hard labour) was described as experiencing “dishonourable conditions.”<sup>612</sup> It is possible to conclude from these themes that prostitutes were conceptualised as immoral and, consequentially, more expendable. Outside the concentration camps, women in brothels in Nazi-occupied

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<sup>608</sup> Correspondence to Mrs L. K. Garrison, December 20, 1949, Lemkin Correspondence, August-December 1949, box 2, folder 2, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>609</sup> Soviet Union, *The Molotov Notes on German Atrocities. Notes Sent by V.M. Molotov, People's Commissar for Foreign Affairs, to All Governments with Which the U.S.S.R. Has Diplomatic Relations*, (England: H. M. Stationery Off., 1942), 2,3,6,12-13.

<sup>610</sup> Annette F. Timm, ‘Sex with a Purpose: Prostitution, Venereal Disease, and Militarized Masculinity in the Third Reich,’ *Journal of the History of Sexuality* 11, no. 1/2 (2002), 224.

<sup>611</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, January 22, 1946 – February 4, 1946*. Volume VI, 206. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 27, 2022.

Dr Robert Berger examines the ethics of using this data gathered by the hypothermia experiments in Dachau: Robert L. Berger, ‘Nazi Science — The Dachau Hypothermia Experiments,’ *New England Journal of Medicine* 322, no. 20 (May 1990), 1435–40, <https://doi.org/10.1056/NEJM199005173222006>.

<sup>612</sup> Lemkin and Jacobs, *Thoughts on Nazi Genocide*, 51.

Poland were subjected to forced abortion should they fall pregnant by a Nazi police officer.<sup>613</sup>

Lemkin himself drew on Nazi-occupied Poland for his theory of moral method of genocide. In this territory, he noted, the circulation of pornographic publications and movies was encouraged by authorities as was drinking alcohol and gambling. Food prices in Poland increased whilst alcohol prices remained the same, and a curfew imposed on civilians was lifted if citizens could prove they were en route to gambling houses.<sup>614</sup> This is strikingly similar to what Jessie Bernard argued in 1952, that methods of genocide include doing “the opposite of what keeps [society] functional” including increasing circulation of pornography.<sup>615</sup> In the manuscript for *Introduction to Genocide*, Lemkin included a chapter on ‘Moral interdependence of Life’.<sup>616</sup> According to his theory, “personal disintegration” is not necessarily a result of being a member of the victimized group.<sup>617</sup> It must, therefore, come from the actions perpetrated against members of the group.

As discussed in Chapter 3, the case of the Hereros in German-controlled West Africa formed a large basis for Lemkin’s unpublished book. In a chapter examining the genocide against the Herero peoples, Lemkin included a section titled “Immorality and Degradation.” In this he writes that after the Herero rebellion “the decimation of the Hereros by gunfire, hanging, starvation, forced labor [sic], and flogging was *augmented by prostitution and the separation of families*, with a consequent lowering of the birthrate.”<sup>618</sup> In this section of his transcript, Lemkin also cited the introduction of alcohol by the Germans to the Herero peoples as having a damaging effect on their productivity,<sup>619</sup> perhaps akin to the undefined ‘enfeeblement of members of a group’

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<sup>613</sup> Harrington, *Politicization*, 75.

<sup>614</sup> Correspondence to Mrs L. K. Garrison, December 20, 1949, Lemkin Correspondence, August-December 1949, box 2, folder 2, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>615</sup> Bernard, *American Community Behavior*, 652-3.

<sup>616</sup> Lemkin and Jacobs, *Lemkin on Genocide*, 13.

<sup>617</sup> Lemkin and Jacobs, *Lemkin on Genocide*, 32.

<sup>618</sup> Lemkin and Jacobs, *Lemkin on Genocide*, 274. Emphasis added.

<sup>619</sup> Lemkin and Jacobs, *Lemkin on Genocide*, 274.

suggested by Mr Ordanneau in the drafting of the Convention.<sup>620</sup> Lemkin also conceptualised the rape of women in front of their families as a form of “demoralization,” writing in his manuscripts for *Introduction of History* the account of a witness to Mongol’s buying women who were publicly raped (“wives, daughters, and sisters”) in exchange for saving lives.<sup>621</sup>

Beyond these gendered conceptualisations of morality and moral debasement, there are some examples in Lemkin’s writings to suggest a broader conceptualisation. Lemkin details the ‘abasement’ experienced by the leaders of tribes in the German-ruled South West Africa, including disrespecting their standing in their group and broader ill-treatment of communities.<sup>622</sup> The abundance and cruelty of the flogging of the native population by the Germans in South West Africa was described by the Bishop of Zanzibar who witnessed the treatment of the local population: “The German method of governing Africans is cruelly inhuman and destructive of the native’s self-respect.”<sup>623</sup> Defeat in battles as a form of demoralization was also cited in Lemkin’s work,<sup>624</sup> and the removal of the wealth of the Incas was categorised by Lemkin as ‘demoralization’ in addition to the harem of Inca women for the Spaniards.<sup>625</sup> In the collated manuscripts for his never-completed book on Nazi atrocities, Lemkin included a section on victim experiences titled ‘Loss of Self Respect’. This included restricting Jewish communities’ education, training, and ownership of possessions to lower the self-respect of the community “thereby implanting them the attitude and morality often found in enslaved and outcast groups.”<sup>626</sup> If we look at other potentially genocidal contexts such as the partition of India, it has been posited that the violence in Bengal prior to the partition of India has been blamed in part on the corrupting

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<sup>620</sup> E/AC.25/SR.13, *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 878.

<sup>621</sup> Wolfe as cited in Lemkin and Jacobs, *Lemkin on Genocide*, 328.

<sup>622</sup> Lemkin and Jacobs, *Lemkin on Genocide*, 200-201.

<sup>623</sup> Quote from Bishop Dr Frank Weston reproduced in: Lemkin and Jacobs, *Lemkin on Genocide*, 218.

<sup>624</sup> Lemkin and Jacobs, *Lemkin on Genocide*, 336.

<sup>625</sup> Lemkin and Jacobs, *Lemkin on Genocide*, 392, 399.

<sup>626</sup> Lemkin and Jacobs, *Thoughts on Nazi Genocide*, 236.

influence of the US troops stationed in the area and their encouragement of prostitution and black-market weapons selling.<sup>627</sup>

This evidence presented here illustrates that moral techniques of genocide undoubtedly drew from the perception that prostitution was immoral and functioned as an indication of the moral disintegration of a group. Alongside prostitution, other acts which encouraged individual pleasures also led to social disintegration, or prevented society from functioning in a way which is perceived to be productive. ‘Demoralization’ appears, according to the information present in the documents, to be a broader-ranging concept which includes destroying productivity and respect as well as sexual violence and prostitution.

### **Moral Debasing in the *Travaux Préparatoires***

This chapter has presented evidence on the origins of morality in the theory of genocide, and this section of the chapter will now examine how the phrase ‘moral debasing’ appeared in the process of developing and drafting the Genocide Convention. Moral debasing appears only once in the *Travaux Préparatoires*, in a draft protocol by Saudi Arabia. In 1946 Saudi Arabian representative Riad Bey proposed a suggested definition of genocide which includes “systematic moral debasing of a group, people or nation” in addition to:

*acts of terrorism committed for the purpose of creating a state of common danger and alarm in a group, people or nation with the intent of producing their political, social, economic or moral disintegration.*<sup>628</sup>

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<sup>627</sup> Analysis provided by Suranjan Das, cited in Ian Talbot, ‘The 1947 Partition of India,’ in *The Historiography of Genocide*, ed. Dan Stone (London: Palgrave Macmillan UK, 2008), 420–37, [https://doi.org/10.1057/9780230297784\\_17](https://doi.org/10.1057/9780230297784_17), 429.

<sup>628</sup> A/C.6/86, *Travaux Préparatoires*, Volume 1, Abtahi and Webb, 7.

Whilst acts of terrorism have a clear origin in Pella's earlier work of barbarism and vandalism, as previously discussed in Chapter 2 of this thesis, moral debasement and moral disintegration do not. Bey does not expand on the concept of moral debasement. A draft of the Convention from April 1948 does detail moral debasement further, however:

*moral debasement of entire groups by such means as prostitution, publicly inflicted indignities [sic] and wide spread demoralisation through imposition of intoxicants and obscene publications.*<sup>629</sup>

There is a clear reflection here with the notions of social morality and sex which is seen in the data earlier in this chapter with relation to Lemkin's moral techniques of genocide. In this next section of the chapter, mentions of moral debasement and moral disintegration in the IMT are examined in order to build-up a picture of this ill-defined concept.

### **Nuremberg: The IMT references to 'moral debasement' and 'moral disintegration'**

If the *Travaux Préparatoires* do not provide any further substantial elaboration of the concept of moral debasement in the Genocide Convention, and Lemkin's theory remains broad and ill-defined, we can turn to events immediately before the creation of the Convention, at the IMT. As has been done throughout this thesis, a turn to the transcripts of the IMT allows us to better grasp concepts as they were contemporaneously understood, and to provide context to what we are examining. As Chatterjee suggests, preceding legal texts can be considered when examining a Convention.<sup>630</sup> This section of the thesis will first look at evidence of moral debasement or phrases akin to this, in the IMT transcripts. This will be followed by an

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<sup>629</sup> 'Draft preamble and operative parts of the Convention, April 28, 1948,' Drafts and Early Version of Convention Text, undated, [1947-1949], box 5, folder 12, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>630</sup> Chatterjee, *Methods of Research*, 40-41.

analysis of this evidence, drawing on Lemkin's theory discussed above and the *Travaux Préparatoires*.

## Evidence

Describing the crimes committed against women by the Nazis in Russia, Councillor Smirnov made the link between the “profound moral corruption” of the Nazis and the abuses they committed, which included rapes, forced prostitution in brothels, mutilation of the bodies of pregnant women, and the displaying of a female corpse next to that of her child in order to instil fear in the local population.<sup>631</sup> This is a continuing theme throughout the IMT, one of the moral disintegration of the perpetrators. The distinction is made herein, however, between the morality or the moral disintegration of the perpetrators of the crimes, and acts intended to create a ‘moral disintegration’ of a victimised group. Throughout the transcripts, the link is often clearly made between the lack of morality of the perpetrator and the acts intended to cause moral debasement, with the former allowing for the latter. Proclamations of moral debasement of the perpetrator are, however, distinctly polemical within the IMT transcripts, often questioning morals which would allow for such cruelty. Whilst the morality of the perpetrator has undergone excellent research in genocide studies,<sup>632</sup> it is the acts intended to cause moral debasement or disintegration within the group is of interest to this thesis.<sup>633</sup>

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<sup>631</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, February 5, 1946 – February 19, 1946*. Volume VII, 454-456. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 28, 2022

<sup>632</sup> For example, Reid-Cunningham, ‘Rape as a Weapon’; Cohen, ‘Explaining Rape’; Brownmiller, *Against Our Will*; Janine Clark, ‘Genocide, war crimes and the conflict in Bosnia: understanding the perpetrators,’ *Journal of Genocide Research* 11, no.4 (2009); Ervin Staub, *The Roots of Evil: The Origins of Genocide and Other Group Violence* (Cambridge: Cambridge University Press, 1989); Philip Zimbardo, *The Lucifer Effect: Understanding How Good People Turn Evil* (London: Rider, 2009).

<sup>633</sup> The concept of ‘morality’ as referring to women was not only the language of the victims but also the perpetrators; Nazi General Kesselring referred to the “morality of Russian women” being respected by the German soldiers in Russia. See: *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, March 8, 1946 – March 23, 1946*. Volume IX, 186. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 28, 2022.

The notion of demoralisation linked to forced prostitution and forced nakedness can be seen in the IMT transcripts, which provides a clear instance of this evidence of gendered harms which could have potentially been brought to the attention of the drafters of the Genocide Convention at Nuremberg. One who spoke of the Nazi crimes committed against concentration camp inmates during the IMT was Marie-Claude Vaillant-Couturier, a member of the French Resistance who was an inmate at Auschwitz-Birkenau and subsequently Ravensbrück and later, Secretary-General of the Women's International Democratic Federation. Marie-Claude Vaillant-Couturier testified that:

*The system employed by the SS of degrading human beings to the utmost by terrorizing them and causing them through fear to commit acts which made them ashamed of themselves, resulted in their being no longer human. This was what they wanted. It took a great deal of courage to resist this atmosphere of terror and corruption.*<sup>634</sup>

Continuing her testimony, Marie-Claude Vaillant-Couturier spoke of the brothels in Auschwitz for the male SS staff and one for the male internees of the SS, and, while women were stripped to be disinfected, the Oberaufseherin (female commandant of the camp) would pick out a young girl to be hired as a 'maid' under the instructions not to disobey any orders.<sup>635</sup> Identifying this point of forced nakedness, member of the French delegation Mr Charles Dubost asked whether "[t]his system of demoralization and corruption – was it exceptional?" to which Marie-Claude

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It was also used in reference to the persecution of the Jews by Nazi military commander Alfred Jodl: "Of course I knew that Jewry, after the war and in the moral disintegration that appeared after the first World War". See: *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, May 29, 1946 – June 10, 1946*. Volume XV, 285. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 28, 2022.

<sup>634</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, January 11, 1946 – February 4, 1946*. Volume VI, 213. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 26, 2022.

<sup>635</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, January 11, 1946 – February 4, 1946*. Volume VI, 214. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 26, 2022.

Vaillant-Couturier said it was not exceptional, and it was in fact being conducted identically in other camps.<sup>636</sup>

*Mr Dubos: "Then, according to you, everything was done to degrade those women in their own sight?"*

*Mme Vaillant-Couturier: "Yes."*<sup>637</sup>

This was a point Dubos made later, that the unclothing of inmates, by way of reprisals or to prevent escape from the camps, was "aimed at the moral degradation of the individual."<sup>638</sup> We see further use of this euphemism by a Mr Dodd on the seventh day of the IMT, who noted that, following the transportation of Ukrainians, "[t]he women were subjected to physical and moral indignities and indecencies during medical examinations."<sup>639</sup> Mr Dodd later recounted how male SS guards would 'help' female prisoners with soaping themselves during delousing and how they, the female Ukrainian prisoners, "were mostly of high moral standard and used to strict modesty; they must have considered such a treatment as a national degradation."<sup>640</sup> This was echoed by Chief French Prosecutor Menthon in January 1946 when he spoke of how "[t]he most terrible aspect was perhaps the desire to create moral degradation and debasement in the prisoner until he lost, if possible, all semblance of a human individual."<sup>641</sup> He continued on, stating that "German Nazis directed a systematic

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<sup>636</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, January 11, 1946 – February 4, 1946*. Volume VI, 214. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 26, 2022.

<sup>637</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg January 11, 1946 – February 4, 1946*. Volume VI, 214. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 26, 2022.

<sup>638</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg January 11, 1946 – February 4, 1946*. Volume VI, 323. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 26, 2022.

<sup>639</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, December 1, 1945 – December 14, 1945*. Volume VIII, 368. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 27, 2022.

<sup>640</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, December 1, 1945 – December 14, 1945*. Volume VIII, 437. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 27, 2022.

<sup>641</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, January 9, 1946 – January 21, 1946*. Volume V, 402. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 27, 2022.

policy of corruption and demoralization” and that man is more concerned with his physical integrity and dignity than property.<sup>642</sup>

This theme of actions resulting in humans being made to feel less than human was also echoed by former Auschwitz prisoner Shmaglevskaya on the sixty-ninth day of the IMT, who said “I should also like to add a few words regarding the methods of demoralization [sic] of the people who were interned in concentration camps. Everything that we had to suffer was the result of a whole system for degrading human beings,” particularly as a result of starvation,<sup>643</sup> and the increasing rise of inflation and cost of living in Nazi-occupied Poland.<sup>644</sup> Lemkin similarly drew the connection from starvation to moral deterioration in an analysis of the Mongol empire for his unpublished book on genocide; the active destruction by the Mongols of subsistence and food sources of the population was cited by Lemkin as an aftermath of the Mongol genocide, in addition to the demoralisation by starvation experienced by the Moriscos in Spain.<sup>645</sup>

Another example of where moral debasement or corruption was gendered was given in the testimony from an American officer collecting evidence from the IMT who noted that:

*Women were subjected to the same treatment as men. To see physical pain, the sadism of the torturers added the moral anguish, especially mortifying for a woman or a young girl, of being stripped nude by her torturers. Pregnancy did not save them from lashes. When brutality brought about a miscarriage, they were left without*

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<sup>642</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, January 9, 1946 – January 21, 1946*. Volume V, 407. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 27, 2022.

<sup>643</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, February 20, 1946 – March 7, 1946*. Volume VIII, 321 - 322. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 28, 2022.

<sup>644</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, April 18, 1946 – May 2, 1946*. Volume XII, 108. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 28, 2022.

<sup>645</sup> Lemkin and Jacobs, *Lemkin on Genocide*, 134-135, 174-175.

*any care, exposed to all the hazards and complications of these  
criminal abortions.*<sup>646</sup>

More evidence is provided in the IMT transcripts in the questioning of defendant Hermann Göring: “Moral crimes against a Jewess” was cited, and Göring claimed that those responsible for this crime were expelled from the NSDAP.<sup>647</sup> Similarly, in evidence presented to the IMT on the situation in Czech life after the invasion, it was noted the existence of a system of “material and moral destruction” against the Jews in Czechoslovakia,<sup>648</sup> and reference was made to the morality of equal rights in contrast to the “debasement of citizens of the second class.”<sup>649</sup> During the first period of the war to 1940 “the Germans were aiming only at the moral degradation and complete pauperisation of the Jews by all kinds of restrictions of their rights, by confiscating their property etc, but later on they turned to their gradual annihilation and destruction as a nation.”<sup>650</sup> In 1947 Madame Grabinska of the International Council of Women also proposed that the war caused “the physical and moral crushing of thousands of human lives” and links this directly to war crimes and

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<sup>646</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, January 22, 1946 – February 4, 1946.* Volume V, 170. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 27, 2022.

<sup>647</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, March 8, 1946 – March 23, 1946.* Volume IX, 523. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 28, 2022.

<sup>648</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, Documents and other materials in Evidence, Numbers 405-PS to 1063 (d)-PS.* Volume XXVI, 488. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 28, 2022.

<sup>649</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, Documents and other materials in Evidence, Numbers 1742-PS to 1849-PS.* Volume XXVIII, 283. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 28, 2022.

<sup>650</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, Documents and other materials in Evidence, Numbers 3058-PS to 3728-PS.* Volume XXXII, 155. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 28, 2022.

This also appears in French as “Conditions des camps et des prisons en Allemagne.- sous-alimentation, hygiene, *degradation morale*, tortures, executions, travaux, etc”, emphasis added, see: *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, Documents and other materials in Evidence, Numbers 257-F to 180-L.* Volume XXXVII, 117, 127, 135, 174. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 28, 2022.

the traffic of women, urging states to suppress prostitution.<sup>651</sup> Finally, Russian accounts from prisoners of war described “being subjected to moral outrages” without expanding on this further.<sup>652</sup>

If we look to another document, *Women Under Axis Rule*, published in 1943, we see similar terminology providing additional relevant insight into how crimes against women were perceived at the time by those outside Nazi occupied territories. Whilst this document is mostly a catalogue of these crimes and the situation faced by women under Nazi occupation, it does illustrate a similar use of terminology. “[P]rocuration of girls and young women for immoral purposes” was noted in this report, alongside the stress of a lack of resources to adequately provide for children as some of the challenges women in occupied territories faced.<sup>653</sup> Young girls from Luxembourg were “‘entrusted’ to employers who have never had servants before and who often misuse them in an ignoble way.”<sup>654</sup> Forced labour camps for Dutch women are said in this report to include information on the importance of motherhood, and claims that the Nazi authorities encouraged relations with Dutch girls even when not consensual – to “force their attention on Dutch girls.”<sup>655</sup>

*Yet the most monstrous crime committed by the Germans on Polish women is the wholesale seizure of young Polish girls and women to be sent to brothels for soldiers. These filthy attacks on Polish women have not been isolated incidents but the result of the coldly methodical policy of German authorities.*<sup>656</sup>

The report cites the “wholesale official abduction” of girls from one particular region. Young women “of agreeable physique” (again, we can note this problematic

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<sup>651</sup> ‘International Council of Women: The Philadelphia Conference,’ *International Council of Women*, November 1947, The Women’s Library, LSE, 5ICW/B/13 Philadelphia 1947, 16.

<sup>652</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, February 5, 1946 – February 19, 1946*. Volume VII, 364. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 27, 2022.

<sup>653</sup> United Nations, *Women*, 3.

<sup>654</sup> United Nations, *Women*, 11.

<sup>655</sup> United Nations, *Women*, 11.

<sup>656</sup> United Nations, *Women*, 15.

terminology as with Chapter 3) were segregated, examined by medical professionals and some were “sent back home after a few months, pregnant, diseased, and in a state of complete physical and mental exhaustion” which is a theme we have also seen in Lemkin’s writings on the gender-genocide nexus in Chapter 3.<sup>657</sup> Women in Poland, according to this report, lived in fear of having “her dignity as a woman injured” and continues on to use the term “savagery” to describe these actions.<sup>658</sup> Of the USSR, the report states: “Organised rape has been so general that to give here a complete list of such crimes is impossible,” going on to cite a newspaper report which uses the term “honour” in relation to these crimes.<sup>659</sup> Transportation of women and girls to brothels, removal of children, women being “treated worse than cattle,” being subjected to “sadistic” torture, are all incidences reported in this document, alongside the fact that these women, in particular pregnant and breastfeeding women, were left in difficult circumstances when the men went to war.<sup>660</sup> Familiar terminology was used when the report turned to the situation in China under Japanese occupation, stating that “Chinese women have been spared no degradation.”<sup>661</sup> In a particular extract of this report, it is shown that women’s particular vulnerabilities in conflict can lead to sexual violence: “The Italians were less systematic in the excesses but more inclined to individual molestation. Exploiting widespread starvation conditions, they tried to entice young girls of 13 to 15 with a ration card or a loaf of bread. Disease is rampant, and there is no redress against this kind of exploitation.”<sup>662</sup>

## **Analysis**

Vital to the analysis presented in this section is the fact that we can examine the IMT transcripts using a gendered harm approach (casting the wider net of possible gender harms terms). This is opposed to a sole focus on the harms of rape and sexual

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<sup>657</sup> United Nations, *Women*, 16.

<sup>658</sup> United Nations, *Women*, 16.

<sup>659</sup> United Nations, *Women*, 16.

<sup>660</sup> United Nations, *Women*, 3,4, 17.

<sup>661</sup> United Nations, *Women*, 6.

<sup>662</sup> United Nations, *Women*, 10.

violence, more crimes than are highlighted by Askin, for example, can be explored.<sup>663</sup> Adopting the concept of gendered harms has allowed the author to ‘cast a wide net’ within historical documents such as the IMT transcripts to allow for the identification of euphemisms, such as moral debasement.

The IMT transcripts provide more contextual information on the historical understanding and use of the phrase moral debasement than the *Travaux Préparatoires*. Although never described or codified in the IMT transcripts, moral debasement and its variations arguably appear to be similar to the notions of honour and humiliation. In *The Boundaries of International Law: a feminist analysis* Charlesworth and Chinkin comment on how the inclusion of ‘honour’ and ‘outrages upon personal dignity’ in the Geneva Convention protocols consigns women to the role of male possessions and rape as a crime against dignity rather than personal integrity.<sup>664</sup> Whilst Charlesworth and Chinkin make the point that abuses of a sexual nature against the moral and physical integrity makes an appearance at the ICTY’s *Furundžija* trial, they do not touch upon the concept of moral debasement or its variations seen in the IMT.<sup>665</sup>

The data presented in this chapter illustrates that moral debasement as a component act of genocide includes patriarchal notions of the immorality of prostitutes themselves (as opposed to the act of solicitation of prostitutes). Evidenced in this chapter, as a result of this status of lesser-morality, not only were prostitutes conceptualised as a damage to social order and their presence deemed a feature of moral techniques of genocide, women assumed to be prostitutes were subjected to greater harms during genocides. The IMT documents and further primary source materials illustrate this. It should be noted here that the distinction between voluntary and involuntary prostitution is often lacking in these documents. The act of forced prostitution was cited, as shown, by Lemkin as an act of moral genocide along with just non-descriptive prostitution. This presents a challenge in analysis where this

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<sup>663</sup> Askin, *War Crimes against Women*, 97 – 98.

<sup>664</sup> Charlesworth and Chinkin, *The Boundaries of International Law*, 314-315.

<sup>665</sup> Charlesworth and Chinkin, *The Boundaries of International Law*, 323.

distinction is not clear, as the morality of prostitution and forced prostitution can be understood differently.

Moral debasement is closely related to humiliation and vulnerability, as seen in the documents discussed herein. When not in specific reference to women, this wide and unspecified crime appears to encompass many acts which lead to members of a group losing their humanity. Or more specifically, the act of removing their humanity and dignity as suggested by Lemkin's writings in *History of Genocide* and supported by the statement provided by Marie-Claude Vaillant-Couturier who emphasised acts which took away the victims' humanity.

A relevant element of this IMT analysis should be discussed; there were definitive attempts in post-war Federal Germany to socially repress liberalisation of sexuality.<sup>666</sup> It has been posited that sex and rape arguably became, in the minds of the German population, an issue of memory-management.<sup>667</sup> Additionally, the Nazis became the object of blame for secularization, resulting in a push to adopt greater Christianity and therefore Christian morals.<sup>668</sup> This contextual analysis provides an important contribution to our understanding of why these euphemisms of morality and moral debasement, with their undertones of sexual relations, were potentially deployed at the time. This additional layer of context allows our analysis to go beyond suggestions of just "shyness, prudishness, reserve, ignorance, revulsion, confusion" Askin suggested as reasons why rape and sexual violence was not discussed at the time.<sup>669</sup>

To conclude this section, personal dignity appears to be a key tenet of Lemkin's moral techniques of genocide. Within this is included prostitution, often not defined as forced or voluntary. Also key to this theory is the individual's and the community's humanity. The disrespect shown to individuals of standing within a group also forms a part of Lemkin's concept, as discussed in this chapter. Taking away a person's

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<sup>666</sup> Dagmar Herzog, 'Sexuality, Memory, Morality,' *History & Memory* 17, no. 1–2 (April 2005), 241, <https://doi.org/10.2979/his.2005.17.1-2.238>.

<sup>667</sup> Herzog, 'Sexuality, Memory, Morality,' 241.

<sup>668</sup> Dagmar, 'Sexuality, Memory, Morality.'

<sup>669</sup> Askin, *War Crimes against Women*, 98.

humanity is a common theme within all of the different materials which refer to this elusive and undefined concept of moral debasement. Perhaps IMT Prosecutor Menthon captured it accurately as “a crime against the spirit” in “denying all spiritual, rational, or moral values.”<sup>670</sup>

## Obscenity

Alongside moral debasement, the word ‘obscenity’ appears throughout the history of the concept of genocide. Does obscenity mean pornography, as Lemkin discussed within the same conceptual framework as moral debasement, but without further analysis?<sup>671</sup> How do these concepts contribute to the moral debasement of a group as part of genocide? As this thesis will demonstrate, there are many references to obscene publications and materials throughout the *Travaux Préparatoires*. Many of these mentions of obscene publications refer to the attempted global ban of such materials, and how the Genocide Convention should mirror such a treaty. However, many references to obscene publications throughout the history of the theory and law of genocide are methods used to ensure moral debasement within a group, as evidence in this chapter shows. Before examining obscene materials in relation to genocide, it is important to provide context of obscene materials, what we mean by them and how legislators have attempted to curb its distribution. This provides context to our analysis of obscene imagery as used in genocides. In the words of Mason, “obscenity is a morally loaded idea”<sup>672</sup> which Crenshaw criticises as being used for racist ends in the oppression of minority communities.<sup>673</sup>

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<sup>670</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, January 9, 1946 – January 21, 1946*. Volume V, 373. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 27, 2022.

<sup>671</sup> Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Ann Arbor, Michigan: UMI, 1944), XII.

<sup>672</sup> Elinor Mason, *Feminist Philosophy: An Introduction* (Ebook, Abingdon, New York: Routledge, 2022), 72, <https://doi.org/10.4324/9781315406626>.

<sup>673</sup> Kimberle Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color’, *Stanford Law Review* 43, no. 6 (1991), 1283–96, <https://doi.org/10.2307/1229039>.

Firstly, this section will bring in a vital feminist context for the following analysis, as this chapter will draw on radical feminist theories to help build a picture of the role of obscenity and pornography in the crime of genocide. Pornography and definitions of obscenity have caused fault lines in the Western feminist movement; from active adoption of pornography as part of 1960s liberation movements to agreement with conservatives that these materials represent a societal danger, the Western feminist movement's approach to pornography and obscenity has been disunited.<sup>674</sup> The most useful feminist analysis on pornography for this chapter heralds from radical feminist philosophy and research looking into the use of pornography in genocides and conflict. This chapter will explore the link between pornography and obscene materials with experiences of sexual violence and the danger this presents to women in genocides as posited by this literature.<sup>675</sup>

### **Legislation restricting 'obscene' materials – Domestic attempts**

Historical legal attempts to limit obscene materials have been controversial and largely ineffectual. According to Arthur this is a result of poor definitions of what actually constitutes obscene.<sup>676</sup> Legal definitions in domestic legislation are vague and do not account for the differences between obscenity and pornography, and how both terms mean different things to different people.<sup>677</sup> The question of whether it possible to have a publication which is obscene, but not pornographic is not answered in historic legislation. To highlight the problem of different perspectives on obscenity, Arthur cites Caroline West who notes that sexually explicit and pornographic things are different according to the culture, giving the example of women's ankles, anatomy texts, and Michelangelo's David.<sup>678</sup> Are restrictions to focus on materials which intend

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<sup>674</sup> Dany Lacombe, *Blue Politics: Pornography and the Law in the Age of Feminism* (Ebook, Toronto: University of Toronto Press, 2016), 20, <https://doi.org/10.3138/9781442671478>.

<sup>675</sup> See for example: MacKinnon, *Are Women Human?*; MacKinnon, 'Genocide's Sexuality.'

<sup>676</sup> Thomas C. Arthur, 'The Problems with Pornography Regulation: Lessons from History,' *Emory Law Journal* 68, no. 5 (May 2019), 867–907.

<sup>677</sup> Arthur, 'Problems with Pornography Regulation,' 886.

<sup>678</sup> Arthur, 'The Problems with Pornography Regulation,' 886.

to be obscene or pornographic, or are they to focus on works *perceived* to be obscene or pornographic?<sup>679</sup> To this point, John Jenkins likens obscenity to beauty; it is in the eye of the beholder.<sup>680</sup>

Religious restrictions in the West on works considered to be immoral began in the Fourth Century by the Catholic Church and continued in to the Middle Ages with the banning of immoral books by Pope Paul IV.<sup>681</sup> The focus in Protestant countries was mostly on anti-religious texts rather than those understood to be of an obscene nature.<sup>682</sup> The Nineteenth Century marked the convergence of obscene and political works in the eyes of the law in Europe with cases being held in France on obscene materials and in increasingly prudish Victorian Britain, the introduction of the Obscene Publications Act in 1857.<sup>683</sup> The distribution of materials deemed to be pornographic was included under the umbrella idea of public decency and indecency; it went beyond sexual and religious notions to include modesty and the importance of social norms.<sup>684</sup> English law attempted to define obscene materials in the *Regina v Hicklin* 1868 case thus: “to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall.”<sup>685</sup> Here we see the link being drawn between the obscene and morality.

In the United States, the introduction of the Comstock Law in 1875 banned any “obscene, lewd, or lascivious book, pamphlet, picture, paper, print or other publication of an indecent character”<sup>686</sup> and led to the banning of medical books which contained

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<sup>679</sup> Sharon Grace, *Testing Obscenity: An International Comparison of Laws and Controls Relating to Obscene Material*, Home Office Research Study; No 157 (UK: Home Office, Research and Statistics Directorate, 1996), 7.

<sup>680</sup> John Philip Jenkins, ‘Obscenity,’ Encyclopaedia Britannica, May 11, 2018, <https://www.britannica.com/topic/obscenity>.

<sup>681</sup> Jenkins ‘Obscenity.’

<sup>682</sup> Jenkins ‘Obscenity.’

<sup>683</sup> Jenkins ‘Obscenity.’

<sup>684</sup> David J. Cox, Kim Stevenson, Candida Harris, and Judith Rowbotham, *Public Indecency in England 1857-1960: ‘A Serious and Growing Evil’* (Ebook, Legal Deposit, London: Routledge, 2015), 2.

<sup>685</sup> ‘Regina v. Hicklin, British Law Case [1868],’ accessed April, 28 2022, <https://www.britannica.com/topic/Regina-v-Hicklin>.

<sup>686</sup> Arthur, ‘Problems with Pornography Regulation,’ 876.

contraception information as well as several famous novels.<sup>687</sup> The US Supreme Court held, in 1957 in *Roth v United States*, that ‘obscenity’ should be “to the average person applying contemporary community standards, the dominant theme of the material taken as a whole appealed to prurient interest.”<sup>688</sup> More recently in Canada, the Supreme Court decision in *R v Butler* case in 1992 distinguished between obscene and non-obscene materials with the former requiring representations of violence, degrading or dehumanising, or children, to be considered obscene.<sup>689</sup> This provides more parameters to the definition of obscene. However, as we will see in this chapter, it does not settle the debate on ‘degrading’ and ‘dehumanizing’.

### Legislation restricting ‘obscene’ materials – International attempts

We now turn briefly to examine international attempts to define and repress obscene materials. The League of Nations drew up the Repression of Circulation of Obscene Materials Convention in 1924, which outlined how state parties should approach the ban on obscene publications but failed to define what materials it refers to.<sup>690</sup> An amended version of this international convention, the Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications, as was developed under the League of Nations, was signed in Lake Success in November 1947 under the auspices of the United Nations:

*It shall be a punishable offence:*

*(1) For purposes of or by way of trade or for distribution or public exhibition to make or produce or have in possession obscene writings, drawings, prints, paintings, printed matter, pictures, posters,*

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<sup>687</sup> Jenkins, ‘Obscenity.’

<sup>688</sup> Lexis Nexis, ‘Roth v. United States, Case Brief for Law School,’ accessed June 15, 2021, <https://www.lexisnexis.com/community/casebrief/p/casebrief-roth-v-united-states>.

<sup>689</sup> Shannon Bell, *Bad Attitude(s) on Trial: Pornography, Feminism, and the Butler Decision* (Ebook, Toronto: University of Toronto Press, 2016), 4, <https://doi.org/10.3138/9781442671157>.

<sup>690</sup> League of Nations, ‘Repression of Circulation of Obscene Publications,’ (1924) <http://www.worldlii.org/int/other/treaties/LNTSer/1924/143.html>.

*emblems, photographs, cinematograph films or any other obscene objects;*

*(2) ... to import, convey or export or cause to be imported, ...any of the said obscene matters or things, or in any manner whatsoever to put them into circulation...<sup>691</sup>*

No definition of these materials was provided. The Genocide Convention *Travaux Préparatoires* provides insight into how this Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications was used as a model for the Genocide Convention, with the first reference on April 13, 1948.<sup>692</sup> The substantive inclusion of obscene materials in historical documents relating to genocide is perhaps more relevant to analyse for this chapter, when seeking information on the intersection of obscene materials, pornography, and acts of genocide. This chapter will now explore this.

### **Obscene materials, obscenity and genocide**

Following on from this context, we will now look at the nexus between obscene materials and obscenity and the theory and acts of genocide. As we have demonstrated, the concept of obscene materials is often understood in current parlance as pornography, although what is considered pornographic is debated. Therefore, we will explore in more detail this interesting theme of pornography's relationship with the theory of genocide, which appears throughout writings on genocide. Recalling what was evidenced in the previous section of this chapter on the

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<sup>691</sup> League of Nations, *International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications*, Geneva, September 12, 1923, accessed April 28, 2022, [https://treaties.un.org/doc/Treaties/1923/09/19230912%2006-01%20AM/Ch\\_VIII\\_03p.pdf](https://treaties.un.org/doc/Treaties/1923/09/19230912%2006-01%20AM/Ch_VIII_03p.pdf).

<sup>692</sup> E/AC.25/SR.6, 'Ad Hoc Committee On Genocide Summary Record Of The Eighth Meeting Lake Success, New York Tuesday, 13 April 1948, at 2:00 p.m.,' *Travaux Préparatoires, Volume 1*, Abtahi and Webb, 801.

spreading of pornography as a component of moral acts of genocide, the role of pornography must be interrogated further.

The spreading of obscene materials, and the creation of pornographic materials is an important distinction made throughout this section of the chapter. The spreading of obscene materials was ill-defined in the analysis of the harm involved when it was included alongside prostitution and intoxication in a draft of the Genocide Convention in 1948 as moral debasement. In contrast to this, the creation of pornography and any violence involved provides a different angle for analysis as this chapter will explore.<sup>693</sup> A different interpretation of pornography and the role this plays in genocides stems from accounts which recall coercion in creating pornographic materials, as opposed necessarily to the spreading of pornography.

If we return to IMT transcripts, we see the first reference to pornography was made on the second day at the IMT, on November 21, 1945. Evidence was given of Russian girls who were forced by Nazis into positions whilst nude so that photographs were taken of them.<sup>694</sup> The second reference, on day sixty-one of the IMT, was similar; women who were to be executed in the Moscow region were forced to strip by Obergruppenführer Strock in freezing temperatures and their photographs were taken while they were forced to pose.<sup>695</sup> A similar account was recalled by Mr Dodd on the seventh day of the IMT; whilst Ukrainian women were forced to delouse, men “for some time were taking photographs in the women’s shower rooms.”<sup>696</sup>

The act of spreading pornography is included throughout the history of the creation of the theory of genocide and the Genocide Convention. As stated, this is a

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<sup>693</sup> ‘Draft preamble and operative parts of the Convention, April 28, 1948,’ Drafts and Early Version of Convention Text, undated, [1947-1949], box 5, folder 12, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>694</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, November 14, 1945 – October 1, 1946*. Volume II, 139. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 26, 2022.

<sup>695</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, November 14, 1945 – October 1, 1946*. Volume VII, 548. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 26, 2022.

<sup>696</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, December 1, 1945 – December 14, 1945*. Volume VIII, 437. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 27, 2022.

broad notion, with no apparent analysis of the harms involved in sharing such materials. We can turn to radical feminist analysis to provide relevant insight into the gendered harms of spreading obscene materials and the crime of genocide. Many radical feminists object to the very presence of pornography, such as Susan Brownmiller who writes that pornography, “like rape, is a male invention, designed to dehumanize women, to reduce women to an object of sexual access, not to free sensuality from moralistic or parental inhibition.”<sup>697</sup> This is to say that the agenda for radical feminists in discussing pornography is clear in their perception of its role in perpetuating female oppression. However, this focus on the inherent harm of pornography on women provided by the radical feminists has uncovered the intersection of pornography and genocide.

Catherine MacKinnon’s radical feminist contribution is of particular interest to this chapter. Through the lens of the Bosnia-Herzegovina conflict, MacKinnon in *Are Women Human?* makes the argument that there is direct causal link between the prevalence of pornography in society (both before and during the conflict) and the prevalence of sexual violence. She argues that prior to the conflict pornography was extremely ubiquitous in Yugoslav society and that, as a result of this peacetime ‘dehumanisation’ of women through pornography in newspapers and magazines this was then mirrored in the conflict.<sup>698</sup> During the conflict, there was what MacKinnon described as “rape theatre” run by Serbian soldiers which generated pornography and rapes were filmed and distributed as well as being watched ‘live’ by soldiers.<sup>699</sup> This pornographic content was also broadcast on the evening news.<sup>700</sup> The direct link is made by MacKinnon in the witness testimony of survivors; women recalled how pornographic magazines were shared amongst the soldiers and later they would be subjected to the same as what was displayed in the magazines, as well as victims recalling how their rapes were filmed and were forced to ‘confess’ to the camera that the rapes were committed by men from her own community, the footage

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<sup>697</sup> Brownmiller, *Against Our Will*, 394.

<sup>698</sup> MacKinnon, *Are Women Human?*, 164.

<sup>699</sup> MacKinnon, *Are Women Human?*, 160, 165.

<sup>700</sup> MacKinnon, *Are Women Human?*, 163.

subsequently being used for propaganda purposes.<sup>701</sup> MacKinnon points to reports that, earlier in the conflict, tanks would enter a city plastered with pornography, and how a UN presence encouraged an increase in brothels and pornographic films for the UN personnel as further evidence that “[p]ornography is a tool of genocide.”<sup>702</sup>

Lemkin’s theory as outlined in *Axis Rule* that moral debasement, as a method of genocide, includes “promoting pornographic publications and motion pictures” as happened in Poland.<sup>703</sup> In his 1945 article ‘Genocide – A Modern Crime’ Lemkin argued that pornographic movies were “foisted upon” the Polish population, again alongside cheap alcohol and expensive food.<sup>704</sup> Lemkin does not explore the role of pornographic materials in genocides in more depth, although does link it with other forms of moral debasement, such as excessive drinking and gambling.<sup>705</sup> Inspired by Lemkin’s theory of pornography, Jessie Bernard argues that pornography contributes to factors which are “the opposite of what keeps it [society] functional.”<sup>706</sup> Echoes in MacKinnon’s theory that the spread of violent pornography in part contributes to societal breakdown by encouraging acts of sexual violence can be seen in Bernard’s theory too.

On its own, there is the potential to consider Lemkin’s original theory of moral techniques of genocide as perhaps puritanical and moralistic. Within the context of the former Yugoslavia, however, we can see how pornographic materials were used as a way to dehumanise women and arguably enable the sexual violence. Similarly, within the IMT, there is evidence that pornography was created by filming non-consenting concentration camp victims. MacKinnon draws the link with peacetime pornography and, in line with her radical feminist philosophy, claims that all pornography results in a dehumanisation of women. Just as Chinkin and Charlesworth claim that peacetime violence against women results in wartime violence and sexual violence against women, MacKinnon persuasively makes this connection between peacetime and wartime pornography. Whether or not this radical feminist lens has general merit in

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<sup>701</sup> MacKinnon, *Are Women Human?*, 162, 164, 166.

<sup>702</sup> MacKinnon, *Are Women Human?*, 162, 163, 146.

<sup>703</sup> Lemkin, *Axis Rule*, 90.

<sup>704</sup> Lemkin, ‘A Modern Crime.’

<sup>705</sup> Lemkin, *Axis Rule*, XII.

<sup>706</sup> Bernard, *American Community Behavior*, 652-3.

broader peacetime contexts is debated, but what is clear is that pornography has had an evidenced role in genocides, and historically was understood as doing so.

## Conclusion

Chapter 5 of this thesis interrogated the concept of moral debasement and the moral techniques of genocide. This chapter began by highlighting the incidences where these concepts appeared and drawing out the common themes in line with deductive thematic analysis outlined in Chapter 1. Apparent in these common themes, this thesis argues, is the connection between social morality and sexual piousness; the opposite to piousness and morality leading to social disorder and the collapse of the group's moral spirit. Within Lemkin's moral techniques of genocide, as well as the definition provided by Saudi Arabia in the drafting of the Convention directly cite obscene publications as a factor in moral debasement. Diverting attention of the group from "moral thinking" to "base instincts" through promoting intoxicants, prostitution and gambling are fundamental to this broad concept, which permeates through the materials on the theory and crime of genocide.<sup>707</sup> This chapter contextualised prostitution, as highlighted by Lemkin as a tool for moral debasement, and then explored the IMT transcripts in order to build a greater understanding of how Lemkin and contemporaries understood prostitution to impact morality.

This chapter demonstrated how morality was used to encompass acts of rape and sexual violence. It was also shown to conceptually include humiliation and starvation of a population. Fundamental to the conceptualisation of moral debasement, this chapter argued, was the removal of humanity through many varied acts. The broad concept of obscenity and how this linked to moral debasement was also discussed, firstly contextualising national and international issues with defining obscenity. Evidence presented in this chapter showed how the fluid and debated concept of obscenity was linked with pornography. By once more drawing on the IMT, this chapter exposed the role of non-consensual pornography in further dehumanising

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<sup>707</sup> Lemkin, *Axis Rule*, 90.

women during the Holocaust. Additionally, this chapter drew on MacKinnon's radical feminist analysis of evidence of pornography in the former Yugoslavia and her conclusion that its prevalence caused greater use of sexual violence in the conflict. The role of pornography in its increasingly available formats, MacKinnon argues, equates to a dehumanisation of women in society broadly as well as in conflict. This chapter demonstrated the role of obscene materials in the further dehumanisation of women in conflict, and how pornography was a key pillar of the notion of morally destroying a group.

## Chapter 6 - Shaista Suhrawardy Ikramullah

### Introduction and context

Throughout the published history of the creation of the theory and crime of genocide a name continuously appears, dotted in secondary sources without interrogation: Shaista Ikramullah. Substantial examination into why exactly Shaista Ikramullah became such a strong advocate for outlawing the crime of genocide, and how her efforts helped the success of the Genocide Convention, is lacking from the history however. Therefore, this chapter will explore Shaista Ikramullah's background and personal experiences of witnessing acts of genocide, and how she became a constant figure in the story of the Convention despite being under-researched. The decision to focus on Shaista Ikramullah for a chapter of this thesis is due to the wide-ranging advocacy she conducted on behalf of Lemkin and the Genocide Convention. During the preliminary research for this thesis, Shaista Ikramullah appeared infrequently in secondary sources without context or exploration. The wealth of information on Shaista Ikramullah's work on the Genocide Convention became apparent as the author conducted initial research. With this justification in mind, this chapter presents evidence that Shaista Ikramullah was a passionate advocate for the Convention who drew on her personal experiences during the partition of India to call for successful drafting and subsequent ratification of the Convention. Furthermore, this chapter posits that, as the sole female to speak during the drafting, Shaista Ikramullah faced misogyny in doing so. Finally, this chapter contends that Shaista Ikramullah's relationship with Lemkin proved to be beneficial to the success of the Convention in her ability to make high- and low-level connections for Lemkin.

Pakistani diplomat Shaista Suhrawardy Ikramullah, who earned her PhD from the University of London,<sup>708</sup> represented her country on the international stage and at the United Nations and helped to develop the Universal Declaration of Human Rights. Studying for her PhD in London in the late 1930s whilst looking after three small

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<sup>708</sup> By the time Ikramullah had completed her PhD at the University of London, World War Two had broken out and the University had moved to Wales. See: Shaista Suhrawardy Ikramullah, *From Purdah to Parliament*, (Oxford: Oxford University Press, 1998), 81.

children, Shaista Ikramullah broke the mould of what was expected of women in her Islamic community.<sup>709</sup> As tensions grew in Europe over the rise of fascism, Shaista Ikramullah later recalled her relief upon news of Chamberlain's appeasement of Nazi aggression, although she would later write in her memoir about the crowds of people at Waterloo station, mostly children, evacuating London a year later when war was declared.<sup>710</sup> She herself moved to Paignton in Devon, for the duration of the war.<sup>711</sup> After the war, Shaista Ikramullah was elected to the Constituent Assembly of India in 1946 as a Muslim League candidate, but never took-up this seat. Following the creation of the state of Pakistan, she became one of only two female representatives at the first Constituent Assembly of Pakistan in 1947 as well as ambassador to the United Nations.<sup>712</sup> In September 1948, at the same time as her presence at the Sixty-Third Meeting on the creation of the Genocide Convention, Shaista Ikramullah represented Pakistan at the drafting of the UDHR, along with Margery Corbett Ashby and Mabel Annie Newlands from New Zealand, who we can remember as appearing in the research in Chapter 1. Here, she championed human rights and specific women's rights such as her rights following divorce, and he worked on preventing child marriage.<sup>713</sup>

The history of Shaista Ikramullah's role in the creation of the first Pakistani constitution, as with her work on the Genocide Convention, has been ignored in favour of the male characters in history.<sup>714</sup> She was familiar with being the only woman in a room of men and had worked alongside influential women to promote women's rights in Muslim northern India (later Pakistan) whilst promoting the idea of a separate Pakistani state to preserve a culture which was perceived to be at risk of annihilation in India.<sup>715</sup> Prior to the immediate partition of India there was a burgeoning move for female emancipation; one such moment, recalled by Shaista Ikramullah, was the

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<sup>709</sup> Ikramullah, *Purdah*, 80–81.

<sup>710</sup> Ikramullah, *Purdah*, 82.

<sup>711</sup> Ikramullah, *Purdah*, 82.

<sup>712</sup> Ikramullah, *Purdah*, 82.

<sup>713</sup> Adami, *Women and the Universal Declaration*, 137.

<sup>714</sup> Adami, *Women and the Universal Declaration*, 4.

<sup>715</sup> Ikramullah, *Purdah*, 96–99.

occasion of Muhammad Ali Jinnah (founder and subsequent Governor-General of Pakistan) placing his sister next to him on the dais (podium), thus introducing the notion of women being allowed in these positions which were so close to power, indicating other women to do the same. As a result of their proximity to Jinnah, women were not questioned or harassed, and the presence of women at discussions would become the norm.<sup>716</sup>

On the international stage, Shaista Ikramullah advocated strongly for feminist ideals during the drafting process of the Universal Declaration of Human Rights. In the words of Adami, Shaista Ikramullah understood “how women’s rights can be compromised when women are in the minority as representatives” as well as how women in her own new country had their rights denied through child marriage, property inheritance law and restricted education among others.<sup>717</sup> She believed that women's rights were inherent in human rights.<sup>718</sup> In this chapter, we will examine evidence of Shaista Ikramullah’s contribution to the creation of the Genocide Convention specifically, to situate her contribution and comments within the wider context of societal gendered expectations. Her relationship with Lemkin is a key feature discussed in this chapter.

### **Shaista Ikramullah’s experience of gendered genocide at the partition of India**

Shaista Ikramullah was one of only a handful of female voices at the creation of the Genocide Convention, as evidenced in earlier chapters of this thesis. As Pakistan’s representative at the sixty-third meeting of the Ad-Hoc Committee on Genocide in Paris in September 1948, Shaista Ikramullah spoke about the importance of the Genocide Convention in relation to the violence between Sikhs, Muslims and Hindus in neighbouring India. Prior to the partition of India and the creation of the separate states of India and Pakistan, there was frequent inter-communal violence, occurring

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<sup>716</sup> Ikramullah, *Purdah*, 110.

<sup>717</sup> Adami, *Women and the Universal Declaration*, 115.

<sup>718</sup> Adami, *Women and the Universal Declaration*, 115.

when different religious festivals coincided over parade routes and loud music, among communities which usually lived peacefully side-by-side.<sup>719</sup> The eventual partition of India resulted in widespread violence between communities which had been displaced as a result of British colonial withdrawal from the territory.<sup>720</sup> Unprecedented human migration of between ten and twelve million people and intercommunal and retributive violence resulted in the death of between two hundred thousand and three hundred and sixty thousand people in the newly formed states of India and Pakistan.<sup>721</sup> It has been described by historians as the greatest forced migration of the Twentieth Century as Hindus and Sikhs fled Pakistan and Muslims fled India.<sup>722</sup> The post-partition violence involved organs of the state (such as policemen, civil servants) both in active violence towards communities, as well as indifference to complaints about violence, permitting impunity.<sup>723</sup> The particular brutality of the post-partition violence in comparison with the violence which had preceded it, led scholars Talbot and Singh to question whether the term 'ethnic cleansing' could be applied in this situation and to highlight that "much of the violence manifested itself as having genocidal tendencies," and, in an emerging feature of the conflict, women were singled out as victims in many instances.<sup>724</sup>

Before to the partition of India, Shaista Ikramullah witnessed inter-communal violence as early as August 1946 in Calcutta during which an estimate four thousand people died:<sup>725</sup>

*The riots in Calcutta were terrible, no matter who was to blame. The suffering that it caused to thousands of people shocked and horrified*

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<sup>719</sup> Ian Talbot and Gurharpal Singh, *The Partition of India* (Cambridge: Cambridge University Press, 2009), 66.

<sup>720</sup> Paul R. Brass, 'The Partition of India and Retributive Genocide in the Punjab, 1946-47: Means, Methods, and Purposes 1,' *Journal of Genocide Research* 5, no. 1 (March 2003), 75, <https://doi.org/10.1080/14623520305657>.

<sup>721</sup> Brass, 'The Partition of India.'

<sup>722</sup> Ian Talbot, 'The 1947 Partition of India,' in *The Historiography of Genocide*, ed. Dan Stone (London: Palgrave Macmillan UK, 2008), 420, [https://doi.org/10.1057/9780230297784\\_17](https://doi.org/10.1057/9780230297784_17).

<sup>723</sup> Talbot and Singh, *Partition of India*, 66–67.

<sup>724</sup> Talbot and Singh, *Partition of India*, 68.

<sup>725</sup> Talbot, 'The 1947 Partition of India,' 430.

*us all, and even though, since then there have been still more terrible riots (I have seen the victims of the East Punjab riot after Partition which made the Calcutta riots seem insignificant), I somehow have never been able to get over the shocked impact the Calcutta riots had on me.*<sup>726</sup>

A girl's school close to Shaista Ikramullah's house in Calcutta became a refugee centre where "truckloads" of people seeking refuge came every day, shocked and often separated from their families, sharing their experiences of the violence with Shaista Ikramullah.<sup>727</sup> Women whose families had been killed in this violence were described by Shaista Ikramullah as "defenceless."<sup>728</sup> The effort to accommodate, feed and inoculate people from cholera and smallpox was coordinated by Shaista Ikramullah's cousin, Mrs Ahmed Sulaiman who oversaw a group of female volunteers to meet this challenge.<sup>729</sup> These same women would go on to help thousands of refugees in Pakistan following the partition of India by providing medical care, food and clothing.<sup>730</sup> Intermittently, Shaista Ikramullah's own house became a refugee centre during the pre-partition rioting; when neighbours and local families feared an upsurge in violence they would seek refuge in her home she was sharing with her sick father.<sup>731</sup> She played an active role in the community during and after these riots and experienced first-hand the human impact of inter-communal religious violence. She would later recount the violence of the riots in Bihar which, by her estimation, killed all the Muslim people in the state, and the riots in Gurmakteshar during a Hindu festival, and the resulting outbreak in violence in Noakhali in Bengal.<sup>732</sup> In an article published in 1948, Shaista Ikramullah uses the violence of the right-wing Hindu Rashtriya

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<sup>726</sup> Ikramullah, *Purdah*, 139–40.

<sup>727</sup> Ikramullah, *Purdah*, 142–43.

<sup>728</sup> Ikramullah, *Purdah*, 144.

<sup>729</sup> Ikramullah, *Purdah*, 144.

<sup>730</sup> Ikramullah, *Purdah*, 161.

<sup>731</sup> Ikramullah, *Purdah*, 142–144.

<sup>732</sup> Ikramullah, *Purdah*, 149.

Swayamsevak Sangh (RSS) group during the partition as an example of how groups, in addition to governments, “can commit what is virtually genocide.”<sup>733</sup>

Upon the partition of India, Shaista Ikramullah remembered the elation of the creation of Pakistan when she travelled to Karachi, which was mixed with fear for the millions of refugees and victims of immense violence who were moving from India to newly-created Pakistan; a particularly relevant point to note on Shaista Ikramullah’s experience of the partition was that at the time, her youngest daughter was just three weeks old, and her eldest daughter was sick so soon after Shaista Ikramullah’s father had died, causing Shaista Ikramullah a lot of anxiety.<sup>734</sup> She wrote how she desperately wanted to join in the celebrations on Pakistan’s creation but was unable to, and in doing so she highlights her caring responsibilities. In the years following the influx of refugees, Shaista Ikramullah advocated for their rights in Pakistan once public attention on their plight had waned; she worked to prevent evictions of refugees from their shelters in 1948, much to the relief of the refugees.<sup>735</sup> Shaista Ikramullah recalled in her memoir the stories of those who had experienced violence or trying to find missing family, almost as to bear witness to their suffering. In her memoirs she wrote as though she was profoundly moved by these people, but also acknowledged the hopelessness of many of the stories. She wrote: “And so the story goes on – of loss, suffering, of man’s cruelty to man.”<sup>736</sup>

### **At the United Nations on genocide**

On the international stage, Shaista Ikramullah was a key presence both as an advocate for women’s rights and outlawing the crime of genocide. Much of Shaista Ikramullah’s work at the UN on the UDHR has been comprehensively researched by

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<sup>733</sup> Shaista S. Ikramullah, ‘United Nations Discussions On Human Rights And Genocide,’ *Pakistan Horizon* 1, no. 4 (1948), 232.

<sup>734</sup> Ikramullah, *Purdah*, 153–95.

<sup>735</sup> Ikramullah, *Purdah*, 179–181.

<sup>736</sup> Ikramullah, *Purdah*, 175.

Adami,<sup>737</sup> and this chapter seeks to contribute to this understanding of her international advocacy on the cause of outlawing the crime of genocide at the UN. As this section of the chapter will explore, Shaista Ikramullah's path crossed with many others actors discussed in this thesis, including on the cause of outlawing genocide. Shaista Ikramullah would later describe her involvement with the Genocide Convention and the UDHR as a "privilege" especially given the immediate history of the horrors of the Second World War.<sup>738</sup> Shaista Ikramullah wrote fondly of Lemkin and his cause to outlaw the crime of genocide, and interestingly she likened herself and her experiences during the partition of India to that of Lemkin and his experiences in Nazi-occupied territory.<sup>739</sup> Within the newly forming United Nations, Shaista Ikramullah understood there to be a moral need to protect people against acts of genocides, and her work on the Genocide Convention very much illustrates her passion on the subject.<sup>740</sup>

Shaista Ikramullah was Pakistan's representative in Paris at the drafting of the Convention, and it is here in September 1948 that we find the first record of her in the *Travaux Préparatoires*.<sup>741</sup> The official (non-verbatim) record of the meeting notes that she draws attention to the ethnic tensions in India following the partition as an example of the need for the Convention. Lemkin's later recollection of Shaista Ikramullah's intervention in September 1948 is more elaborate than her own account, however. Whilst the *Travaux Préparatoires* records Shaista Ikramullah as speaking of the situation after the partition of India, Lemkin recalled her speaking of "the blood and tears of more than one million Moslems [sic] who perished through genocide during the partition of India in 1947."<sup>742</sup>

*While it has always shocked the conscience of mankind, nothing has been done to punish the crime. The discoveries of science put such*

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<sup>737</sup> See: Adami, *Women and the Universal Declaration*.

<sup>738</sup> Ikramullah, *Purdah*, 186.

<sup>739</sup> Ikramullah, *Purdah*, 187.

<sup>740</sup> Ikramullah, *Purdah*, 188.

<sup>741</sup> A/C.6/SR.63, 'Sixty-Third Meeting. Held at the Palais de Chaillot, Paris, on Thursday 30 September 1948, at 10.30 a.m.,' *Travaux Préparatoires, Volume 2*, Abtahi and Webb, 1298-1299.

<sup>742</sup> Lemkin and Frieze, *Totally Unofficial*, 159.

*weapons in the hands of men that genocide today can be swift and terrible indeed. Therefore such a convention becomes imperative and its acceptance should not be delayed.*<sup>743</sup>

Lemkin went on to say of Shaista Ikramullah's speech:

*I watched the faces of the delegates when she spoke. It was as if an angel had entered a drab room and touched them with its wings. I saw a sign of preoccupation on the face of Sir Hartley [Shawcross, UK representative] but I was so elated that I even liked him at that moment. I thought how true was the saying of the ancient Greeks, that only wounded people, bringing these sufferings within the context of present history.*<sup>744</sup>

Here, Lemkin clearly links Shaista Ikramullah's experience of witnessing acts of genocide with her advocacy. Her words, Lemkin recalled later, "still resound in my ears," and started Lemkin and Shaista Ikramullah on a path of friendship which would ultimately benefit the Genocide Convention.<sup>745</sup>

Following Shaista Ikramullah's intervention above, Sir Hartley Shawcross voiced his concerns to Lemkin in the corridor outside that the committee was "becoming emotional."<sup>746</sup> Indeed, Shaista Ikramullah herself wrote about how, directly after her speech (which she described as moral and emotional), Shawcross began "speaking opposite me in very complicated and legal terms."<sup>747</sup> For context, Sir Hartley Shawcross was chief British Prosecutor at the IMT at Nuremberg who, whilst noting the exceptionality of the targeting of Jews for destruction by the Nazis, also did not identify the Nazi's policy for extermination as targeting one group in an arguably

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<sup>743</sup> Quote reproduced in Lemkin and Frieze, *Totally Unofficial*, 159.

<sup>744</sup> Quote reproduced in Irvin-Erickson, *Raphaël Lemkin*, 180.

<sup>745</sup> Lemkin and Frieze, *Totally Unofficial*, 159.

<sup>746</sup> Lemkin and Frieze, *Totally Unofficial*, 180.

<sup>747</sup> Ikramullah, *Purdah*, 187.

seemingly contradictory way.<sup>748</sup> He wrote in an article in 1947 about the need for international law to be properly implemented to prevent conventions becoming just “scraps of paper.”<sup>749</sup> Shawcross advocated for the codification of the Nuremberg Principles in the United Nations over the adoption of a Genocide Convention, arguing this point on several perceived inconsistencies in Lemkin’s theory.<sup>750</sup>

We shall briefly return to analyse Shawcross’ reaction to the ‘emotion’ becoming a problem at the drafting of the Genocide Convention after Shaista Ikramullah’s intervention. Could Shawcross’ concern about emotion be in relation to Shaista Ikramullah’s statement, or indeed Shawcross’ own angry outburst the day before that “Nuremberg is enough! A genocide convention cannot be adopted!” which silenced the room?<sup>751</sup> If we can contextualise this comment of perceived problematic emotion in the wider context of gender relations of the time at the United Nations, we can hypothesise that it was with Shaista Ikramullah’s perceived emotions to which Shawcross objected. Dr Virginia Gildersleeve provides insight into the reaction which female representatives were met with at the UN. Dr Gildersleeve was the United States’ signatory to the United Nations Charter and was the sole female politician in President Roosevelt’s presidential campaign.<sup>752</sup> During her time as part of the US delegation to the San Francisco Conference in 1945, which developed the wording of the United Nations Charter and its signature, Dr Gildersleeve made a particularly relevant observation which she recalls in her memoirs.<sup>753</sup> At the United Nations, the “British and the American men hated being lectured on the virtues and the rights of

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<sup>748</sup> Alexa Stiller, ‘The Mass Murder of the European Jews and the Concept of “Genocide” in the Nuremberg Trials: Reassessing Raphaël Lemkin’s Impact,’ *Genocide Studies and Prevention* 13, no. 1 (April 2019), 157, <https://doi.org/10.5038/1911-9933.13.1.1610>.

<sup>749</sup> Hartley Shawcross, ‘International Law: A Statement of the British View of Its Role,’ *American Bar Association Journal* 33, no. 1 (1947), 11.

<sup>750</sup> Irvin-Erickson, *Raphaël Lemkin*, 179; It was also British Deputy Prosecutor, Sir David Maxwell-Fyfe, who raised the concept of genocide and Lemkin’s work numerous times during the Nuremberg trials. The British contingent were keen to develop the concept of genocide as part of the Nuremberg Trails, although it was never included in any indictments. Hilary Earl, ‘Prosecuting Genocide before the Genocide Convention: Raphael Lemkin and the Nuremberg Trials, 1945–1949,’ *Journal of Genocide Research* 15, no. 3 (September 2013), 317–37, <https://doi.org/10.1080/14623528.2013.821225>. This is despite the British originally bring firmly against the inclusion of the term ‘genocide’ in Nuremberg documents, see: Sands, *East West Street*, 187–188.

<sup>751</sup> Irvin-Erickson, *Raphaël Lemkin*, 178–79.

<sup>752</sup> Adami, *Women and the Universal Declaration*, 19–20.

<sup>753</sup> Adami, *Women and the Universal Declaration*, 15.

women” and were “bored and irritated by the repeated and lengthy feminist speeches” which on one occasion noted by Gildersleeve, took forty minutes.<sup>754</sup> It is interesting to note here, however, that Shaista Ikramullah did not speak on the need for women’s rights or needs to be recognised in the Genocide Convention; there was not a particularly strong feminist theme in her discussions on outlawing the crime of genocide.

To return to Shawcross’ comment on emotions using a feminist lens and situating it within recollections of hostility from British delegations towards women at the UN, it would be possible to suggest that the emotion which Shawcross spoke of were perhaps not as a result of his own outbursts and confrontations in the Ad-Hoc Committee, but rather as a result of the speech by the female representative of Pakistan. If Shaista Ikramullah’s intervention was tonally similar to a speech she delivered later that year on the topic of the crime of genocide discussed below, it is difficult to understand Shawcross’ issue with emotion. Unfortunately, whilst this interaction was remembered by both Lemkin and Shaista Ikramullah, Shawcross does not record this incident in his memoirs.<sup>755</sup> We are therefore unable to gain his insight into his perception of Shaista Ikramullah’s speech. Ultimately, there are several key features to draw out of this interaction. First, Shaista Ikramullah was the only women to speak at the drafting of the Genocide Convention, indicating a gender imbalance in the first instance. Second, when Shaista Ikramullah spoke to the assembled male drafters, there was an immediate complaint of the conversations becoming too emotional. Emotions were considered an issue only immediately following Shaista Ikramullah’s intervention and not, for example, following Shawcross’ own emotional intervention. Third, situated in the context provided by Dr Gildersleeve, there was notable hostility from some male delegates towards women at the United Nations. Fourth and finally, even more broadly considering societal context, ‘reasonableness’ has been considered a male trait (especially within criminal law) and not applicable to women to whom the traits of unconstructive emotion and hysteria are ascribed.<sup>756</sup>

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<sup>754</sup> Virginia Crocheron Gildersleeve, *Many a Good Crusade: Memoirs of Virginia Cocheron Gildersleeve* (New York: Macmillan, 1954), 352, 353.

<sup>755</sup> Hartley Shawcross, *Life Sentence: Memoirs of Lord Shawcross* (London: Constable, 1995).

<sup>756</sup> Alena M. Allen, ‘The Emotional Woman,’ *North Carolina Law Review* 99, no. 4 (May 2021), 1027–83.

This incident and later recollections, therefore, is indicative of the hostile misogynistic environment in which women worked.

We can see evidence in the UN archives of Shaista Ikramullah's continuing and increasing support of the cause of outlawing the crime of genocide after this intervention at the Ad-Hoc Committee. One month after this discussion of emotion, the UN Radio broadcast an interview with Shaista Ikramullah on genocide, which she described as the "ugly side of human nature" which is the "death knell of humanity."<sup>757</sup> In the interview, she interestingly used the terms "barbaric hoards" as they struggle with "civilised peoples," which as we have identified as a theme in Chapter 2 of this thesis.<sup>758</sup> She continued in her interview to note that genocide is both physical and cultural, and consequently international law should focus on both.<sup>759</sup>

Following this, three months after Shaista Ikramullah's statement to the Ad-Hoc Genocide Committee she addressed the Third Session of the UN General Assembly on December 9, 1948, at the presentation of the draft Convention to the Assembly. Shaista Ikramullah recalled in her memoir that the invitation to speak at the Assembly the following day was a surprise, as the original speaker was unable to attend. After initially declining, Shaista Ikramullah accepted this invitation and worked into the late hours of December 8 and rose early on the morning of December 9 to edit her speech in time for the nine-thirty a.m. start of the General Assembly.<sup>760</sup> Shaista Ikramullah presented her speech in a calm and clear tone as the video recording of the speech evidences. In the recording of the meeting, she shows none of the "fear and trepidation" she was experiencing when she stood at the lectern to speak.<sup>761</sup> In her speech, Shaista Ikramullah gave great credit to the Latin American countries for their work in getting the crime of genocide recognised as an international crime, as well as expressing her regret that cultural genocide was ultimately removed from the final

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<sup>757</sup> 'Genocide Convention - Ms. B. Ikramullah,' UN Web TV, accessed May 4, 2022, <https://media.un.org/en/asset/k1z/k1z6w4js63>.

<sup>758</sup> 'Genocide Convention - Ms. B. Ikramullah.'

<sup>759</sup> 'Genocide Convention - Ms. B. Ikramullah.'

<sup>760</sup> Ikramullah, *Purdah*, 189.

<sup>761</sup> United Nations, *Genocide Convention - General Assembly, 3rd Session, 178th and 179th Plenary Meetings*, 1948, <https://media.un.org/asset/k1o/k1o8bjanzi>; Ikramullah, *Purdah*, 190.

draft. It is interesting to note here that it was reported by Lemkin that the Latin American delegations, who had been greatly relied upon for support for the Convention, had ultimately stopped attending meeting of the Sixth Committee due to boredom.<sup>762</sup> In her speech, Shaista Ikramullah stated that, in her understanding, genocide is to destroy the soul of the group.<sup>763</sup> Lemkin came to congratulate Shaista Ikramullah immediately after her speech, and they met again later that day on December 9, 1948, where he thanked her for her hard work on the Genocide Convention.<sup>764</sup> From Lemkin's own account, he was in admiration of Shaista Ikramullah. He wrote favourably of her speeches in his memoir, and Donna-Lee Frieze notes how her speeches moved both Lemkin and the United Nations, and as a result were included in the official United Nations book series on the purpose of the Genocide Convention.<sup>765</sup>

Following these successes, Shaista Ikramullah immediately wrote an article on genocide and human rights in the *Pakistan Horizon* which was published in December 1948, coinciding with her speech to the United Nations General Assembly.<sup>766</sup> In this article, Shaista Ikramullah described the process of the discussions on the Genocide Convention, noting in particular the "prolonged and heated discussions" which "gave room for legal quibbling."<sup>767</sup> Shaista Ikramullah expressed her frustration that cultural genocide was removed from the Convention, against the spirit of the Declaration, and outlined the importance of cultural genocide in the process of the crime of genocide alongside physical destruction.<sup>768</sup> On December 20, Lemkin wrote a letter to Pakistan's Foreign Minister, Mr Zafrullah Khan, Minister for Foreign Affairs in Pakistan, and his Secretary, Mr Aga Shahi, praising the "[h]umanitarian contributions for the genocide

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<sup>762</sup> Irvin-Erickson, *Raphaël Lemkin*, 179–80.

<sup>763</sup> United Nations, *Genocide Convention - General Assembly, Third Session, 178th and 179th Plenary Meetings*.

<sup>764</sup> Ikramullah, *Purdah*, 190.

<sup>765</sup> Lemkin and Frieze, *Totally Unofficial*, 253–54.

<sup>766</sup> Ikramullah, 'Discussions On Human Rights.'

<sup>767</sup> Ikramullah, 'Discussions On Human Rights,' 232.

<sup>768</sup> Ikramullah, 'Discussions On Human Rights,' 234-235.

cause” made by Shaista Ikramullah and other Pakistani representatives.<sup>769</sup> This letter is particularly important as it provides evidence which allows us to fill the gaps of prior activism on outlawing the crime of genocide. Shaista Ikramullah provided Lemkin with the introduction to Mr Shahi, saying Shahi was her advisor and advocate on the Genocide Convention.<sup>770</sup> Through Shahi, as a result of Shaista Ikramullah’s introduction, Lemkin was also able to meet with the Chairman of the Pakistani delegation and Sir Zafarullah Khan. At lunch overlooking the Eiffel Tower, Lemkin and Khan talked about the partition of India and the creation of Pakistan, as well as the moral need for the Genocide Convention, and would form a friendship which would last years at the United Nations.<sup>771</sup> Khan would later become a member of the International Court of Justice, and eventually became the Court’s President from 1970 to 1973.<sup>772</sup> Not only is this important evidence of a successful advocacy link, made visible by taking a female-standpoint of history and using this data as a starting point rather than a Lemkin-standpoint, it also demonstrates the lower-level informal advocacy, which was being done by women such as Shaista Ikramullah. As Morgan succinctly puts it, informal advocacy, such as Shaista Ikramullah’s informal advocacy here, supplements opportunities for formal engagements at the UN.<sup>773</sup> Such networking and connections would not necessarily have been recalled in memoirs or interviews, but ultimately may have benefitted the Genocide Convention.

After this flurry of high-profile and low-level activism on outlawing the crime of genocide, the next evidence of interaction between Lemkin and Shaista Ikramullah was in June 1949; Lemkin wrote to Shaista Ikramullah saying “I remember with deep gratitude your generous and so brilliant help on the Genocide Convention” and providing her with an update on the countries who have ratified. In this letter, he also asked for her help again, hoping that she would write to the New Zealand delegate

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<sup>769</sup> Letter from Lemkin to Mr Shahi, December 20, 1948, Lemkin correspondence, 1948, box 1, folder 19, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>770</sup> Lemkin and Frieze, *Totally Unofficial*, 160.

<sup>771</sup> Lemkin and Frieze, *Totally Unofficial*, 163–64.

<sup>772</sup> ‘Sir Muhammad Zafrulla Khan, Pakistani Politician,’ Britannica, accessed 19 January 2023, <https://www.britannica.com/biography/Muhammad-Zafrulla-Khan>.

<sup>773</sup> Morgan, *Transforming Law*, 41.

Ann Newland,<sup>774</sup> who we saw appear in the *Travaux Préparatoires* chapter as a support and advocate of the Convention,<sup>775</sup> as well as representing New Zealand at the drafting of the UDHR.<sup>776</sup> In an interesting use of terminology not seeming to appear in his letters to men, Lemkin pleads to Shaista Ikramullah “not to let this convention become a still born child.”<sup>777</sup> Ultimately, Shaista Ikramullah’s male colleagues were of the opinion that her speeches were garnering too much attention and she was moved from the Genocide Convention discussions to the UDHR debates.<sup>778</sup> The importance of including Shaista Ikramullah’s advocacy and networking here as one of the only female representatives during the discussions. This chapter will now analyse this in more detail.

### *The case of Shaista Ikramullah: women and a feminist Genocide Convention?*

As previously stated, Shaista Ikramullah was a female anomaly in a male-dominated discussion of the Genocide Convention. Her intervention was not necessarily feminist in content, and she did not call for greater recognition of women’s rights in the Genocide Convention. However, her presence during the drafting was revolutionary and not without backlash. Given this context provided in this chapter, we can ask whether a greater female presence at the drafting of the Convention would have resulted in a greater understanding of women’s vulnerabilities and provided protections accordingly? It is not possible to conclude concretely, with the evidence presented in this thesis thus far, that a greater number of women present during drafting of the Genocide Convention would have resulted in a greater recognition of

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<sup>774</sup> Letter from Raphael Lemkin to Begum Ikramullah, June 7, 1949, Lemkin Correspondence, February-July 1949, Box 2, folder 1, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>775</sup> Letter from Raphael Lemkin to Begum Ikramullah, June 7, 1949, Lemkin Correspondence, February-July 1949, box 2, folder 1, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>776</sup> Adami, *Women and the Universal Declaration*, 112. It is interesting that each of the references to Newlands in the documents her name appears differently: Mable Annie Newlands, Ann Newland. Although research into this figure is beyond the scope of this current research, it would indeed be a further area of research to explore this female pioneer from New Zealand and her role in the Genocide Convention.

<sup>777</sup> Letter from Raphael Lemkin to Begum Ikramullah, June 7, 1949, Lemkin Correspondence, February-July 1949, box 2, folder 1, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>778</sup> Adami, *Women and the Universal Declaration*, 117.

women's rights and vulnerabilities in the final Convention. However, it is possible to infer from examples in international criminal law history which indicate that greater female representation leads to greater emphasis of gender-related crimes. The sole female judge in the *Akayesu* Trial Chamber was lobbied by women's groups, and subsequently lobbied for, the recognition of rape as an act of genocide.<sup>779</sup> Grey, McLoughlin and Chappell make the point in their article 'Gender and judging at the International Criminal Court: Lessons from 'feminist judgment projects'' that a greater number of female judges on the ICC judiciary with expertise in feminist issues results in greater recognition of gender sensitivity issues.<sup>780</sup> Furthermore, recalling in particular the conflation of forced abortion with removal of children from Chapter 4, we can posit that the addition of female drafters of the Convention would have allowed women to speak as authorities on gendered harms as they relate to women. Given this, it is possible to posit that had there been greater female representation during the drafting of the Genocide Convention, this would have been reflected in the *Travaux Préparatoires* if not in the final Convention.

This argument is not a recent one, as the international women's organisations discussed in this thesis also lobbied for greater involvement of women at decision-making levels in society and internationally, suggesting that this will result in greater equality for women.<sup>781</sup> We see with the evidence presented in this chapter of Shaista Ikramullah that she entered an environment of misogyny and had witnessed first-hand the experiences of women in genocides. As an experienced diplomat with a wide network, she was a key ally to Lemkin, although her contribution to the Genocide Convention has been mostly ignored or placed in footnotes in the history of the creation of the term genocide.

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<sup>779</sup> Rhonda Copelon, 'Gender Crimes,' 225.

<sup>780</sup> Rosemary Grey, Kasey McLoughlin, and Louise Chappell, 'Gender and Judging at the International Criminal Court: Lessons from "Feminist Judgment Projects",' *Leiden Journal of International Law* 34, no. 1 (March 2021), <https://doi.org/10.1017/S0922156520000588>.

<sup>781</sup> See for example: International Alliance of Women, 'Restatement Policy After 25 Years,' cited *European Women: A Documentary History*, eds. Riemer and Fout, 84-85; Francesca Miller, *Latin American Women and the Search for Social Justice* (Hanover; London: University Press of New England, 1991), 129.

## Conclusion

This chapter has explored evidence showing Pakistani politician and diplomat Shaista Ikramullah as a great proponent and advocate of the Genocide Convention. It was shown in this chapter that she worked to get the Genocide Convention adopted, and subsequently was called upon by Lemkin to help its ratification. Shaista Ikramullah provided not only high-level platforms to promote the outlawing of genocide, but also low-level networking opportunities for Lemkin to raise the profile of the crime of genocide and advance the Convention. Shaista Ikramullah was a dedicated advocate for outlawing genocide from outside of the West's post-World War Two ethnocentric focus. A female Muslim from then-independence-seeking India who witnessed inter-communal violence, and who became a prominent figure in the burgeoning post-partition Pakistan, Shaista Ikramullah broke the mould of other prominent figures in international law in the late 1940s. This chapter argues that, despite her advocacy on outlawing the crime of genocide, Shaista Ikramullah faced misogyny from the drafters of the Convention. This chapter also posits that her experiences during the partition of India inspired her passion for outlawing genocide, including cultural genocide. Her history's intersection with that of the Genocide Convention has not been widely appreciated, and it is a goal of this chapter to raise the profile of her work outlawing genocide.

## Chapter 7 - Introduction to international women's organisations

The following three chapters of the thesis will explore the contributions of three international women's organisations: Women's International League for Peace and Freedom (WILPF), International Alliance of Women (IAW), and International Council of Women (ICW) to the creation and ratification of the Genocide Convention. Their advocacy and networking efforts, in Lemkin's own words, were "considerable."<sup>782</sup> The following chapters showcase how important the work of the organisations and their individual members, were to the ratification of the Genocide Convention. As we have seen in previous chapters, women were not consulted when the crime of genocide was being formulated. As Lemkin's later allies in raising the profile of the Convention and lobbying for its ratification, he did not seek out their expertise when developing the theory of genocide and included crimes against women. Similarly, the drafters of the Convention did not seek out experts on gendered crimes or input from women's organisations in order to formulate a Convention.

Through adopting Snow and Benford's Social Movement Theory, discussed in Chapter 1, in the following chapters, a key theme becomes evident; Lemkin identified the problem of non-ratification (or "diagnostic framing") and often identified the responsibility of ratification as different states ("prognostic framing"), and the women's organisations then provided the call to arms based on Lemkin's information ("motivational framing").<sup>783</sup> We shall see in the following chapters how these women's organisations provided global activism for a Convention. These chapters chronologically examine WILPF, IAW, and ICW's advocacy on outlawing the crime of genocide and explore the different and similar advocacy techniques used.

The decisions to focus on these specific women's organisations originates from initial explorative research in the first stages of research design; the names of these organisations appeared in secondary source publications and biographies. Further

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<sup>782</sup> Lemkin and Frieze, *Totally Unofficial*, 125.

<sup>783</sup> Snow and Benford, 'Frame Resonance,' 201-202.

research into Lemkin's archived letters illustrate a much deeper relationship and greater reliance on the global reach of these organisations than had previously been explored. Further research of additional organisations, such as religious groups, and their advocacy on the Genocide Convention is needed but beyond the scope of this research. These three organisations with their global reach, are the 'giants' in this field of women's organisations and lent global activism to the cause of outlawing genocide. This is the justification for the focus on these three organisations.

Many post-World War One women's organisations had lobbied the League of Nations for equal rights, and were well-versed in international advocacy when the United Nations was created.<sup>784</sup> These women and women's organisations were confident and well-articulated in their engagement with the League of Nations and then the UN.<sup>785</sup> This is evident in the data analysed in the following chapters. For women, the new UN provided a forum to advocate for women's rights beyond nation states where women's voices could be ignored<sup>786</sup> – women uniting beyond borders.<sup>787</sup> Inter-war advocacy in the West downplayed the differences between men and women and pushed for exactly equal rights from the law in some feminist circles.<sup>788</sup> This was not uniform across international feminist movements, however, as the Pan-American feminist movement in the inter-war period intertwined women's rights with other human rights arenas such as racial justice and the fight against fascism, and sought to promote the importance of women's rights in the international system.<sup>789</sup> Broadly, the understanding has been that, despite the many accounts of sexual violence during World War Two, international women's organisations did not choose to advocate and raise awareness of this issue in the emerging post-World War Two UN system.<sup>790</sup> This is perhaps a result of rape and sexual violence being politicised in propaganda by

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<sup>784</sup> Miller, 'Geneva.'

<sup>785</sup> Jair, *Women, Development*, 11.

<sup>786</sup> Jair, *Women, Development*, 33.

<sup>787</sup> Pietilä, *Engendering*, 1.

<sup>788</sup> Miller 'Geneva,' 222.

<sup>789</sup> Katherine M. Marino, 'From women's rights to human rights: The influence of Pan-American feminism on the United Nations,' in *Women and the UN*, eds. Adami and Plesch, 5-6.

<sup>790</sup> Harrington, *Politicization*, 73.

parties during the war.<sup>791</sup> Following the war, sexual violence was politicised further; the USSR recognised sexual violence and the subservience of women as an evil of capitalism, whereas within the USA sexual violence had become embroiled in the prevalent racism of the era.<sup>792</sup> Feminist movements more broadly became increasingly less popular into the 1950s in the USA, following a trend to return to traditional heteronormative society, and the USSR, where independent feminist movements were considered part of the bourgeois elite.<sup>793</sup> This is mirrored in the following chapters also. Furthermore, as we have seen in Chapter 4, there was little female influence in the development of the Convention. The surprising observation is made in the following chapters that these women's organisation did not lobby for a greater recognition of women's rights and vulnerabilities in the Convention. As far as information in the archival documents show, their role was in providing support and advocacy to the smooth progress of the already-completed Convention open to ratification.

Of the organisations discussed in this chapter, it is important to note their origins and bases for the time under discussion was in the global North. Whilst their reach and membership were global and many of their influential members heralded from the global South, it is important to consider how this influence effected the operations of the organisations. Internal WILPF discussions on the rape perpetrated against Chinese women by Japanese troops and the rape of Armenian women exposed racist perceptions of the victimised groups or perpetrators.<sup>794</sup> Furthermore, publishing in 1980, WILPF's Gertrude Bussey and Margaret Tims' recollect the early years of the organisation, describing countries in East Asia as "new" and those in Latin America as "unawakened" in the years closely following World War Two.<sup>795</sup> Female Latin American delegates to the UN understood (evidently correctly) that the Western delegates

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<sup>791</sup> Harrington, *Politicization*, 89.

<sup>792</sup> Harrington, *Politicization*, 90-91.

<sup>793</sup> Rebecca Adami, 'The Swedish Middle Way and UN Experiences in Domestic Politics: Exploring International Welfare Feminism during Early Cold War Years,' *Nordic Journal of Women's Studies* 30, no. 1 (2022), 23-24.

<sup>794</sup> Rupp cited in Harrington, *Politicization*, 67.

<sup>795</sup> Gertrude Bussey and Margaret Tims, *Pioneers for Peace: Women's International League for Peace and Freedom 1915-1965* (London: WILPF British Section, 1980), 192.

perceived them as “backwards” and not as advanced. These organisations constituted individual women whose views differed on subjects; the difference of opinions of women at the United Nations can be seen in recent research on the subject, from the role of anti-racism and anti-imperialism in liberation, to the age of consent for marriage.<sup>796</sup> Whilst anti-imperialism was a focus of Latin American feminists at the UN, their North American counterparts sought civil equality.<sup>797</sup>

Within these organisations as formal structures which are non-governmental entities (as opposed to country delegates at the UN), IAW sought a full realisation of women’s rights on a par with men’s as a primary aim, differing from the primacy of peace in WILPF’s aims, and was run by European and North American women.<sup>798</sup> IAW was liberal in its brand of feminism, seeking to include women from all around the globe, acknowledging the common theme of female oppression.<sup>799</sup> Weber writes “the tension between feminism and orientalism tended to resolve in favor [sic] of the former in cases where ‘progress’ (i.e., westernization) was evident.”<sup>800</sup> This is vital contextualisation for the following chapters of this thesis as it allows us to critically engage with the archival materials in terms of origins and perspective of the author. It also provides context to the question of whether these organisations recognised women’s rights within the Genocide Convention, and therefore lobbied on this topic.

The following chapters seek to answer the research question of **in what ways were women influential in the adoption and ratification of the Genocide Convention?**<sup>801</sup> Each begins by providing brief histories and context of the organisations. This provides historical context to these women’s involvement and passion in outlawing genocide, as well as showcasing prior advocacy, enabling the identification of common themes and strategies. Following this history and context, each chapter will then, in turn, showcase the advocacy these organisations and their

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<sup>796</sup> Roland Burke, ‘Universal human rights for women: UN engagement with traditional abuses: 1948-1965,’ in *Women and the UN*, eds. Adami and Plesch, 80.

<sup>797</sup> Marino, ‘From women’s rights to human rights,’ in *Women and the UN*, eds. Adami and Plesch, 3.

<sup>798</sup> Weber, ‘Unveiling Scheherazade,’ 126.

<sup>799</sup> Weber, ‘Unveiling Scheherazade,’ 126.

<sup>800</sup> Weber, ‘Unveiling Scheherazade,’ 139,144.

<sup>801</sup> See: Keck and Sikkink, *Activists*; Carol Harrington, ‘Governmentality,’ 47–63.

female networks gave to the topic of genocide and the Genocide Convention. In each of these chapters, we will see different advocacy strategies employed, such as global letter-writing campaigns, as well as targeting UN and parliamentary decision-makers.

We will see in the following chapters the extent to which Lemkin and others more intimately involved with the Genocide Convention campaign came to rely on these women and organisations throughout the process of drafting and ratification of the Convention. The following chapters primarily aim to showcase this unresearched history of the creation of the crime of genocide using these archival documents, and drawing out key themes to analyse. In this way, this thesis seeks to understand the scale of the influence of these women, based on the evidence presented in these four chapters. The research is presented in chronological order in each of these chapters. The justification for doing so is that this allows us to gradually build a picture of growing and waning advocacy on outlawing the crime of genocide, as well as the changing strategies employed by these organisations. It enables us, too, to plot the advocacy timelines against the successes and setbacks of the drafting and ratification of the Genocide Convention.

## Chapter 8 - “Further pressure will be brought to bear” – Women’s International League for Peace and Freedom

### Introduction

Women’s International League for Peace and Freedom, or WILPF, has been unfaltering in their pursuit of global peace, and throughout the tumultuous Twentieth Century continued to campaign for peace. Its positioning as one of the foremost international women’s organisations lobbying on peace made WILPF a natural ally for Lemkin on the cause of outlawing the crime of genocide, but little research has been done into the nature of this allyship and ultimately how much this cause owes to the work of WILPF and its members.

Through an analysis of the archival materials, this chapter testifies to the influences of WILPF on raising and maintaining the profile of the Convention amongst its international membership. Social Movement Theory is used in this chapter to analyse the types of advocacy strategies employed by WILPF such as framing and information politics. Through an examination of internal UK Government documents, this chapter draws a link between their advocacy and Government concerns about the need to ratify the Convention. This chapter argues that, whilst the influence of WILPF cannot necessarily be quantified, it can be showcased.

An important observation should be highlighted here at the beginning of this chapter; there is no data in the archives to suggest that WILPF sought to influence the content of the Genocide Convention. Furthermore, unlike the IAW and the ICW, evidence available shows that WILPF did not critically engage with the wording or content of the Convention. This absence of discussion on the content of the Convention, or perhaps rather the emphasis WILPF placed on the need to ratify the Convention, is a gap in this chapter. Unfortunately, there is nothing in the materials to indicate why this is the case. However, juxtaposed with the information-gathering activities of Margery Corbett Ashby, reflected in the information sharing of the IAW illustrated in Chapter 9, WILPF’s information-gathering on the content of the Convention is perhaps comparably less. Whereas the IAW sought greater information

on who the Convention protected and why, there is little evidence to suggest this was a shared desire for WILPF.

This chapter will begin with providing context and history of WILPF. Throughout the Twentieth Century, WILPF changed and adapted its focus as threats to peace and liberation changed; beginning with attempts to prevent World War One, through to the testing and use of atomic bombs, WILPF remained stalwart in its feminist aims for peace. Throughout their history, and particularly in the time period under discussion in this thesis, WILPF was a strong advocate for decolonisation and self-determination of nations. At the beginning of their 1946 Congress in Luxembourg, WILPF stated that “[c]olonial exploitation condemned by the conscience of mankind must be abolished as slavery has been abolished,”<sup>802</sup> fighting against what they called “white imperialism.”<sup>803</sup>

From its inception, WILPF demonstrated a strong respect for human and minority rights, drawing a clear link between these rights and peace and freedom. The year WILPF was founded, 1915, the organisation was cognisant of the persecution of the Jewish population, passing a resolution stating that “[w]e hold that no restrictions should be placed on the civil or political rights of the Jews because of their race.”<sup>804</sup> As early as 1921, WILPF declared the right to self-determination of minority populations in a resolution passed at their Triennial Conference in Vienna,<sup>805</sup> and later, in 1930, WILPF was vocal about concerns over treatment of minorities in Yugoslavia.<sup>806</sup> That same year the organisation raised concerns about the continued mistreatment of Armenians in Turkey, and the UK WILPF appealed “to H.M. Government to instruct its representatives at the League of Nations to co-operate to the fullest possible extent

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<sup>802</sup> ‘Xth International Congress of the Women’ International League for Peace and Freedom at Luxembourg.’ The Women’s Library, LSE, WILPF 18/8, 53.

<sup>803</sup> ‘Xth International Congress of the Women’ International League for Peace and Freedom at Luxembourg.’ The Women’s Library, LSE, WILPF 18/8, 145.

<sup>804</sup> Women’s International League for Peace and Freedom, ‘Resolutions of the Zurich Congress, 1919, Resolutions of the Hague Congress 1915,’ 21, The Women’s Library, LSE, WILPF/5/8.

<sup>805</sup> Women’s International League for Peace and Freedom, ‘Resolutions passed at the Third Congress of the Women’s International League for Peace and Freedom. Vienna, July 10 – 17, 1921,’ The Women’s Library, LSE, WILPF/5/8.

<sup>806</sup> Women’s International League for Peace and Freedom, ‘Final Agenda of the Annual Council Meeting, Tuesday April 8th 1930 to Wednesday 9th April 1930,’ The Women’s Library, LSE WILPF/5/10

with any measures for the proposed relief of these refugees.”<sup>807</sup> Foreshadowing what Lemkin would write later, a 1940 edition of WILPF’s international newsletter publication, *Pax et Libertas International*, recorded that the International Executive Committee of WILPF

*protests strongly against the forcible removal and resettlement of groups for political purposes. It is a barbaric proceeding to tear human beings from their homeland against their will, and is a denial of those human rights on which alone the natural and peaceful life of nations can be built.*<sup>808</sup>

Beyond this, we see a convergence in the early focus of works of Lemkin and WILPF, on the topic of the Herero peoples; WILPF lobbied for a judicial statement on the status of South-West Africa, considering the Herero peoples and WILPF worked with Reverend Michael Scott on his fight to gain international recognition for the plight of the Herero.<sup>809</sup> Furthermore, evidence shows that by 1946 the French section of WILPF was aware of the military use and regulation of brothels during the war, something which they strongly disagreed with.<sup>810</sup>

WILPF’s advocacy on behalf of peace was not without danger, however. Throughout World War Two and the Holocaust, members of WILPF were targeted and killed. WILPF’s *Pax et Libertas International* newsletter in January 1940 reported from their Headquarters in Geneva expressing a “heavy heart” at knowing how many members would not be reading the message due to censorship, imprisonment in concentration camps, or having been driven away from their homes.<sup>811</sup> In this edition of *Pax International*, WILPF women were encouraged to keep faith in human rights and reason in the face of the conflict. When WILPF met for the first time following the war

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<sup>807</sup> Women’s International League for Peace and Freedom, ‘Final Agenda of the Annual Council Meeting, Tuesday April 8<sup>th</sup> 1930 to Wednesday 9<sup>th</sup> April 1930,’ The Women’s Library, LSE, WILPF/5/10

<sup>808</sup> Women’s International League for Peace and Freedom, *Pax International WILPF*, Jan 1940. The Women’s Library, LSE, WILPF /2009/15/3/3.

<sup>809</sup> Bussey and Tims, *Pioneers for Peace*, 200.

<sup>810</sup> Harrington, *Politicization*, 273.

<sup>811</sup> Women’s International League for Peace and Freedom, *Pax International WILPF*, Jan 1940. The Women’s Library, LSE, WILPF /2009/15/3/3

in 1946, they remembered WILPF women who were killed. Nobel Peace Prize winner and WILPF leader Emily Greene Balch spoke to the *New York Times* on the occasion of this conference about the women from the WILPF Budapest office who were killed during the Holocaust, Eugenie Meller and Melanie Vanbery.<sup>812</sup> Echoes of remembrance for those members killed will be seen in other women's organisations, as the following chapters on IAW and ICW will show that WILPF members were not alone in this experience. Following the Holocaust and World War Two, WILPF US encouraged US engagement with the IMT, sending a representative to the State Department Conference on the Nuremberg Trials to push for this engagement.<sup>813</sup>

It is important to draw attention to this sacrifice of the WILPF members throughout the war, not least because history tends to write-out the contributions of female actors in the history. It is also important to give these women and their work the respect which has too often not been afforded to them; internal documents from the British Government's Foreign Office in 1957 describe WILPF as a "woolly" organisation, advising officials that "I wouldn't spend too much time on them" and suggesting sending a stock reply to WILPF's letter to the Prime Minister on the subject of British nuclear testing.<sup>814</sup> Highlighting the sacrifices which WILPF members endured as a result of their work reconceptualises this historical view of the organisation, moving away from this notion of a "woolly" women's group, one to be disregarded, to a group whose members were active in the face of persecution.

WILPF employed a range of methods in its advocacy work throughout its history. This chapter will showcase and analyse the wide range of advocacy methods used to raise the profile of the crime of genocide. Information politics, more specifically the ability to quickly collate and share useable information,<sup>815</sup> is the method frequently used by WILPF on the cause of outlawing the crime of genocide, as

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<sup>812</sup> 'Mrs Balch Urges World Women's Party to Promote Cooperation—of All Peoples,' *New York Times*, July 26, 1946. ProQuest Document ID: 107602963, accessed through The British Library.

<sup>813</sup> Harrington, *Politicization*, 89.

<sup>814</sup> 'Cessation of Tests: Urge suspension of United Kingdom Nuclear Tests' from Women's International League for Peace and Freedom to 10 Downing Street,' dated 17 December 1957, The National Archives, E212/701, FO 371/129282.

<sup>815</sup> Keck and Sikkink, *Activists*, 16.

we will see. As Foster puts it, WILPF was often understood as an organisation which “makes connections.”<sup>816</sup> By sharing accurate information among its vast international connections and network of members, WILPF was able to spread the word of anti-genocide campaigns around the world as well as updates on any internal debates within the UN. This chapter tracks information sharing and the use of symbolic politics (or “the ability to call upon symbols, actions, or stories that make sense of a situation for an audience that is frequently far away”<sup>817</sup>) by Lemkin to share the cause of the Genocide Convention with WILPF, and in turn the advocacy which WILPF and its National Sections conducted in this cause. This chapter will explore this relationship, as well as how Lemkin came to rely on the international networks of women which WILPF provided.

A majority of WILPF’s advocacy on genocide centred on their expansive international network of women in their National Sections. WILPF urged National Sections to lobby their respective governments on both promoting the cause of the Genocide Convention or not hindering its progress, and on ratification. All the way down the organisation’s structure to WILPF’s regional branches within National Sections, these women were called upon continually for their support and efforts to raise the profile of the crime of genocide, with actions such as letter writing campaigns to Senators.<sup>818</sup> This chapter will look chronologically at WILPF’s advocacy on the topic of outlawing genocide, looking at activities and successes from 1947 to 1953. As discussed in this thesis’ methodology, the geographical location of the archives and limitations of travel means that the activities of the UK section of WILPF are used as examples of the impact of this advocacy over other countries.

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<sup>816</sup> Catherine Foster, *Women for All Seasons: The Story of the Women’s International League for Peace and Freedom* (Athens, London: University of Georgia Press, 1989), 5.

<sup>817</sup> Keck and Sikkink, *Activist*, 16.

<sup>818</sup> See for example Letter from Mrs Edith Hansen, Chairman for the Human Rights Delaware County Branch of WILPF to Lemkin, no date, Lemkin Correspondence, undated, Box 2, Folder 5, Raphael Lemkin Collection (P-154), Center for Jewish History.

## 1947

Following the adoption of the Resolution on Genocide at the end of 1946, international women's organisations start advocating around this topic. It is not possible to pinpoint exactly when the relationship between WILPF and Lemkin began with the data in materials. This section of the chapter will explore briefly the exchanges on the topic of genocide between WILPF and Lemkin and will then look in detail at a particular WILPF conference in 1947 which has relevance to the topic of genocide. Evidence of WILPF's early lobbying can be seen in the UN archives; a letter addressed to the then-President of the Swedish section of WILPF, Birgitta Bellander, was sent in April 1947 in response to a request to have Lemkin sit-in on the ECOSOC genocide deliberations in an official capacity. This request was denied by the UN,<sup>819</sup> although this is evidence that the advocacy relationship between WILPF and Lemkin began much before the letters housed in the Center for Jewish History (CJH) suggest. This letter does also demonstrate how WILPF used its position as a high-profile NGO to try and gain Lemkin access to ECOSOC to further promote the cause of outlawing genocide.

### **August 21-27, 1947, *Primer Congreso Interamericano de Mujeres* and Amalia de Castillo Ledón**

In 1947, in the shadow of increasing polarisation in Europe, WILPF organised a meeting in Guatemala City.<sup>820</sup> It ran in parallel to the Rio Conference, a meeting of Latin American governments seeking collective security against the perceived threat of communism. This Rio Conference culminated in the Rio Pact, also known as the Inter-American Treaty of Reciprocal Assistance.<sup>821</sup> The agreements of collective security and increasingly combative rhetoric around communism was perceived by WILPF to be a

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<sup>819</sup> Letter dated April 4, 1947 from D. Underwood to Miss Birgetta Bellander, President, Women's International League for Peace and Freedom, Swedish Section, Stockholm, Sweden, SOA 318-1-01, United Nations Archives.

<sup>820</sup> Miller, *Latin American Women*, 124-125.

<sup>821</sup> G. Pope Atkins, *Latin America in the International Political System* (New York: Free Press, 1977), 316.

threat to the hard-won post-war peace; WILPF's ethos and dedication to peace led to their campaigning against this rhetoric and entrenchment in the pre-World War One context and recognised the challenges these posed to peace. For context, in the post-World War Two world, Latin American states were non-interventionists and promoters of human rights, passing the American Declaration on the Rights and Duties of Man at the Bogotá Conference a month before the Declaration of Human Rights at the UN in 1948.<sup>822</sup> Latin American countries emerged after the war as champions of an international human rights system,<sup>823</sup> and as we will explore in this section, women and women's organisations were key entities in this movement.

At the *Primer Congreso Interamericano de Mujeres* (First Inter-American Congress of Women), representatives of women's organisations from nineteen countries in the Americas joined the conference in Guatemala City, all of whom were members of WILPF.<sup>824</sup> Attendees of this Pan-American feminist conference included indigenous women, Afro-Latin American feminists and African American feminists.<sup>825</sup> Along with promoting peace in the Western Hemisphere, at the Guatemalan City conference women were demonstrating the need to have female voices in decision-making on foreign affairs and peace as had been done at the Charter of the United Nations.<sup>826</sup> Human rights, the atomic bomb and the living conditions of citizens were discussed by the delegates of this WILPF conference in Guatemala City.<sup>827</sup> The range of issues women brought to Guatemala City were broad, and whilst many were clearly feminist in their goals (political representation of women), others aimed to promote regional cooperation which did not necessarily take a feminist stance, for example the call to abolish passports and restrictions of regional travel between the Americas.<sup>828</sup> One example of the explicitly feminist discussions in Guatemala City was a committee on 'The Civil and Political Rights of Women, and Her Access to Posts of Responsibility'

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<sup>822</sup> Keck and Sikkink, *Activists*, 85.

<sup>823</sup> Keck and Sikkink, *Activists*, 85.

<sup>824</sup> Miller, *Latin American Women*, 125.

<sup>825</sup> Katherine M. Marino, *Feminism for the Americas: The Making of an International Human Rights Movement*, (Chapel Hill: The University of North Carolina Press, 2019), 226.

<sup>826</sup> Miller, *Latin American Women*, 127.

<sup>827</sup> Miller, *Latin American Women*, 128.

<sup>828</sup> Miller, *Latin American Women*, 129.

chaired by notable Mexican feminist activist Amalia de Castillo Ledón.<sup>829</sup> Amalia de Castillo Ledón would later become a vital ally for Lemkin in promoting the cause of outlawing the crime of genocide amongst sympathetic decision-makers in Latin America, as discussed in this chapter.

Amalia de Castillo Ledón led the creation of feminist groups in post-revolution Mexico in what was distinctly male-dominated public life, promoting women's participation in society and politics.<sup>830</sup> A strong anti-racism advocate, her liberal feminism centred on working women and socio-economic rights.<sup>831</sup> She had participated in the Chapultepec Conference in 1945 in Mexico, also known as the Inter-American Conference on the Problems of War and Peace and would become a founder and the first Chair of the *Comision Inter-Americano de Mujeres* in 1949, the template for the United Nations Commission on the Status of Women.<sup>832</sup> This followed a period in the role of Advisor to the Mexican Delegation to the Second Session of the UN General Assembly in 1947.<sup>833</sup> At the Chapultepec Conference, Amalia de Castillo Ledón, along with leading feminist Minerva Bernardo, reached out to other inter-American feminists with the goal of raising their concerns and aims at the Conference, and promoted international women's rights at the Conference.<sup>834</sup>

Back in Guatemala City, Amalia de Castillo Ledón's committee called upon American countries to comply with the American Declaration on the Rights and Duties of Man in respect of the rights of women.<sup>835</sup> By 1950 Amalia de Castillo Ledón had become an "apostle" of the Genocide Convention, as described by Lemkin in a letter to

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<sup>829</sup> Miller, *Latin American Women*, 130.

<sup>830</sup> Gabriela Cano, 'El "feminismo de estado" de Amalia de Castillo Ledón durante los gobiernos de Emilio Portes Gil y Lázaro Cárdenas,' *Relaciones. Estudios de historia y sociedad* 38, no. 149 (March 2017), 39–69. Translated using Google Translate.

<sup>831</sup> Marino, 'From women's rights to human rights,' in *Women and the UN*, eds. Adami and Plesch, 7.

<sup>832</sup> Miller, *Latin American Women*, 128, 131.

<sup>833</sup> *United Nations*, 'Membership of Committees: Delegation of Mexico to the United Nations,' accessed May 3, 2022, <https://search.archives.un.org/uploads/r/united-nations-archives/b/d/2/bd25cd2c402831dc9d6c8c2ddfa130c1f8060f3aca61089677746785d4d2f43e/S-0472-0083-07-00001.PDF>, 62.

<sup>834</sup> Marino, *Feminism for the Americas*, 192.

<sup>835</sup> Miller, *Latin American Women*, 130.

her thanking her for her advocacy.<sup>836</sup> Lemkin was evidently enamoured with Amalia de Castillo Ledón and her work, later recalling how she was the only blonde Latin American woman he knew and how he would joke about spanking her.<sup>837</sup> By the time Lemkin crossed paths with Amalia de Castillo Ledón, at the UN, in the spring of 1949, she had been a long-time pioneering feminist activist who had contributed to and driven national, regional and international campaigns for women's rights, and with this context in mind it can be argued that this comment by Lemkin is problematic. We already know from Lemkin's memoir that Amalia de Castillo Ledón provided some advocacy on behalf of the Genocide Convention, but there is no research on *what* advocacy and how effective it was. If, as Lemkin states, the Latin American group were at a time the most supportive of the Genocide Convention,<sup>838</sup> how much was this due to the backing of the prominent Amalia de Castillo Ledón and her work in raising the profile of this cause? This chapter will interrogate this.

After her meeting with Lemkin at the UN in the spring of 1949, Amalia de Castillo Ledón wrote to the twenty-one delegates who made up the Inter-American Commission of Women recommending that they speak with their governments to urge them to each sign the Genocide Convention.<sup>839</sup> As President of the Inter-American Commission of Women, she argued that the Genocide Convention was in line with the principles of universal justice and the democratic principles of their organisation. Additionally, in her advocacy letter, she wished the women the greatest success in getting their governments to consider the Genocide Convention before the deadline.<sup>840</sup> Following her advocacy letter to the Inter-American Commission of Women, Amalia de Castillo Ledón wrote to Lemkin on December 26 updating him on

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<sup>836</sup> Letter from Raphael Lemkin to Amalia de Castillo Ledón, January 9, 1950, Lemkin Correspondence, 1950, box 2, folder 3, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>837</sup> Lemkin and Frieze, *Totally Unofficial*, 188.

<sup>838</sup> Lemkin and Frieze, *Totally Unofficial*, 123.

<sup>839</sup> See: Letter from Amalia de Castillo Ledón to Raphael Lemkin, December 26, 1949, and Letter from Amalia de Castillo Ledón, November 28, 1949, Lemkin Correspondence, August – December 1949, box 2, folder 2, Raphael Lemkin Collection (P-154), Center for Jewish History. Translated using Google Translate.

<sup>840</sup> Letter from Amalia de Castillo Ledón, November 28, 1949, Lemkin Correspondence, August – December 1949, box 2, folder 2, Raphael Lemkin Collection (P-154), Center for Jewish History. Translated using Google Translate.

her work to raise the profile of the Genocide Convention in the Commission and with delegates. She had already received replies to her letter from some of the delegates saying they are working actively on this issue; in particular her friend and connection in Cuba, Mariblanca Sabas Aloma, who was a Minister Without Portfolio in the Cuba government in Havana. Aloma assured Amalia de Castillo Ledón that Cuba had already approved their signature for the Genocide Convention.<sup>841</sup> Cuba did, in fact, sign the Genocide Convention two days after Amalia de Castillo Ledón's letter to Lemkin and one month after her letter to the Inter-American Commission on Women, on December 28, 1949.<sup>842</sup> The correlation in this timing does not, of course, lead us to the conclusion that Amalia de Castillo Ledón's letter directly resulted in the ratification of Cuba. However, Amalia de Castillo Ledón's work in raising the profile of the Convention, work which these materials show Lemkin relied on, should not be discounted because there is no clear causal link. As we shall see throughout the next three chapters, the ability of these organisations and women to raise (and keep raised) the profile of the Convention was employed in various ways to varying degrees of success.

In an undated draft letter written by Lemkin he recalled how an international conference of women was held in Guatemala City the week before his writing which "urged the ratification of Genocide Convention."<sup>843</sup> Despite this letter being catalogued as 'Lemkin Correspondence, August- December 1949' in the Center for Jewish History archive, it is suggested here that it was, in fact, drafted earlier in 1947; the international conference of women in Guatemala City which Lemkin refers to is likely to have been the *Primer Congreso Interamericano de Mujeres* which was part-organised by WILPF. There appear to be no other such high-profile international women's congresses in Guatemala City following this where the Genocide Convention could have been raised. Therefore, we can draw from context and from this letter that

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<sup>841</sup> Letter from Amalia de Castillo Ledón to Raphael Lemkin, December 26, 1949, Lemkin Correspondence, August – December 1949, box 2, folder 2, Raphael Lemkin Collection (P-154), Center for Jewish History. Translated using Google Translate.

<sup>842</sup> 'United Nations Treaty Collection,' accessed October 13, 2021, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-1&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=_en).

<sup>843</sup> Draft letter from Lemkin, no date, Lemkin Correspondence, August- December 1949, box 2, folder 2, Raphael Lemkin Collection (P-154), Center for Jewish History.

during this *Primer Congreso Interamericano de Mujeres*, the topic of genocide was raised, and that Amalia de Castillo Ledón advocated for the Latin American women present at the WILPF-sponsored event to support the cause of the Genocide Convention.

## 1948

As debates on the Genocide Convention continued among the members of the Ad Hoc Committee on Genocide throughout 1948, WILPF became increasingly aware and active on the issue of outlawing genocide. In 1948 they did not yet have NGO consultative status at ECOSOC,<sup>844</sup> yet still mobilised around this issue at the UN.

Long-time WILPF members and supporters, Gertrude Bussey and Margaret Tims, would later recall how WILPF National Sections and WILPF's Permanent Consultant at the UN in Geneva Gertrude Baer "made strenuous efforts to secure adoption of the draft Convention on the Crime of Genocide that year [1948]."<sup>845</sup> WILPF sections campaigned over the next year and beyond for governments to ratify the Convention.<sup>846</sup> This coincided with the fact that in March 1948, WILPF was granted ECOSOC Consultative Status.<sup>847</sup> In June 1948 Gertrude Baer wrote to the President of the Commission of Human Rights and its members in New York, on behalf of WILPF, asking the Commission to adopt the Convention and urging ECOSOC to submit the Genocide Convention to the UN General Assembly in September 1948. Baer argued that the fact that genocide was being committed around the world at the time of her writing was illustrative of the need for the Convention without delay.<sup>848</sup>

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<sup>844</sup> 'Herstory,' *WILPF* (blog), accessed October 13, 2021, <https://www.wilpf.org/our-herstory/>.

<sup>845</sup> Bussey and Tims, *Pioneers for Peace*, 201.

<sup>846</sup> Bussey and Tims, *Pioneers for Peace*, 201.

<sup>847</sup> Foster, *Women for All Seasons*, 25.

<sup>848</sup> Letter from Gertrude Baer to the President and Members of the Commission on Human Rights, June 9, 1948, U.S. Committee for a U.N. Genocide Convention Correspondence, January-June 1948, box 2, folder 8, Raphael Lemkin Collection (P-154), Center for Jewish History.

Advocacy continued later in the year; in the minutes of WILPF UK's Executive Committee Meeting of October 5, 1948, genocide was included as an agenda point:

*Genocide. Mrs Castle outlined the different forms genocide might take and gave the main points in the draft convention on Genocide which is due to be considered by the United Nations Assembly now meeting in Paris. She said that if [the] United Nations decide that Genocide is a "grave crime against mankind" a considerable step forward has been achieved. Logically, according to the terms of the convention, the use of weapons of mass destruction, atomic or bacterial, being found to bring about genocide, should also be considered a crime. Thus warfare waged by these means would also stand condemned. The petition which we already signed was then read. It was decided to inform our Government and the General Assembly of the action we have taken.<sup>849</sup>*

The framing of genocide as an additional threat of atomic or biological weapons is a tool which WILPF frequently employs to garner attention from its global supporters, as evidence in this chapter will illustrate.

James Rosenberg, Chairman of the United States Committee for a United Nations Genocide Convention, sought support from the Canadian Section of WILPF in the winter of 1948 in advocating for the Genocide Convention. Despite the Canadian Ambassador to the UN's apparent personal support for the concept of genocide,<sup>850</sup> Canada was one of the countries which had initiated the opposition to the Genocide Convention in 1948.<sup>851</sup> Seeking external support, Rosenberg contacted the President of the Canadian Section of WILPF, Mrs Sheila Young, asking for an urgent cable to be sent by the organisation to the Canadian Delegate to the General Assembly. The disagreements in the Ad Hoc Committee on Genocide on the inclusion of 'political groups' in the definition of genocide was threatening the whole anti-genocide project. Rosenberg was of the opinion that it would be easier to drop this inclusion of 'political groups' from the definition for the sake of the Convention and asked Young to send a

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<sup>849</sup> Women's International League British Section, 'Minutes of the Extended Executive Committee Meeting held on Tuesday, October 5<sup>th</sup> 1948,' Manchester, 3, The Women's Library, LSE, WILPF/1/24. Emphasis in original.

<sup>850</sup> Lemkin and Frieze, *Totally Unofficial*, 140.

<sup>851</sup> Irvin-Erickson, *Raphaël Lemkin*, 8.

cable outlining this to the Canadian Delegate, as well as urging their overall support for the Convention.<sup>852</sup>

Similar advocacy can be seen in the UK. In this section of the chapter, we will see clear examples of “leverage politics” as outlined by Keck and Sikkink; WILPF UK’s lobbying of powerful actors, as well as “accountability politics” seen in the following example.<sup>853</sup> The UK National Section of WILPF was in contact with Sir Hartley Shawcross in 1948, having written to him on the issue of nuclear disarmament in his capacity on the British Delegation to the UN Assembly. His response to WILPF’s correspondence on matters at the UN, in which he said that “His Majesty’s Government will continue ‘with patience and determination’ to seek every possibility of securing agreement on the various outstanding problems which are under discussion at this Assembly.” This was not warmly received by WILPF UK, and they sought more clarification and action from the UK delegation on a number of issues without prejudice and “in keeping with the constructive peace-making aims of the United Nations.”<sup>854</sup>

WILPF’s swift advocacy is evident in WILPF’s UK Section’s Thirty-Third Annual Report in 1948. In this report, the organisation reported how they received news in December 1948 that the British delegation to UNGA was to abstain from voting on the Convention at the Assembly after their initial support. Immediately WILPF’s UK Section sent a telegram to the UK delegation at UNGA and to the Foreign Secretary saying “Women’s International League deplores British abstention Genocide draft. Strongly urges favourable vote Monday Assembly.”<sup>855</sup> The Genocide Convention was ultimately adopted on December 9 with British support, and at the January Executive meeting of the UK Section of WILPF in 1949 there was a resolution passed “expressing satisfaction

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<sup>852</sup> Letter from James N. Rosenberg to Miss Sheila Young, November 15, 1948, [U.S. Committee for a U.N. Genocide Convention] Correspondence, July-December 1948, box 2, folder 9, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>853</sup> Keck and Sikkink, *Activists*, 16.

<sup>854</sup> Women’s International League British Section, ‘Minutes of the Extended Executive Committee Meeting held on Wednesday, November 3<sup>rd</sup> 1948,’ London, 1, The Women’s Library, LSE, WILPF/1/24.

<sup>855</sup> Women’s International League British Section, ‘Thirty-Third Annual Report,’ March 1948 – February, 1949, 6, The Women’s Library, LSE, WILPF/ 2/7.

and urging prompt ratification by the Government.”<sup>856</sup> There is no data in the primary or secondary sources to indicate how influential WILPF’s telegram was in comparison to other factors, however. Despite this, this is a helpful and clear example of Harrington’s feminist social movement analysis; on the one hand are political elites and decision-makers and on the other hand there are collective groups who have limited power but with the ability to communicate their interests.<sup>857</sup>

As well as lobbying the UN and nation states on the cause of outlawing the crime of genocide in 1948, WILPF also organised around trying to ensure other NGOs did not delay the progress of the Genocide Convention. Ruth Gage-Colby, WILPF’s Representative of the United States Section at the UN General Assembly, wrote a letter to fellow NGOs requesting that they not “hamper” the work of the UN on the cause of outlawing genocide, as enshrined in the resolution proposed at the Conference of NGOs on November 22, 1948.<sup>858</sup> This illustrates a different direction for advocacy which targets fellow NGOs to ensure the smooth progress of the Convention, rather than government decision-makers.

## 1949

In 1949, WILPF’s international advocacy on the issue of outlawing the crime of genocide began to expand, building on the awareness-raising of the previous year. At the beginning of the year, WILPF UK catalogued its work over the previous year in the *Thirty Third Annual Report of the British Section*, covering the organisation’s work in the time period between March 1948 and February 1949. In this report they highlighted that, against a backdrop of conflict and assassinations, the UDHR and the Genocide Conventions were “noteworthy achievements” and should be “adequately

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<sup>856</sup> Women’s International League British Section, ‘Thirty-Third Annual Report,’ March 1948 – February, 1949, 6, The Women’s Library, LSE, WILPF/ 2/7.

<sup>857</sup> Harrington, ‘Governmentality,’ 48, 49.

<sup>858</sup> Correspondence from Ruth Gage-Colby, November 1948, [U.S. Committee for a U.N. Genocide Convention] Correspondence, July-December 1948, box 2, folder 9, Raphael Lemkin Collection (P-154), Centre for Jewish History.

publicised.”<sup>859</sup> WILPF UK also passed an internal resolution at the January Executive meeting in 1949 to send the following resolution to H.M. Government:

*This Executive Committee of the Women’s International League for Peace and Freedom, British Section, having noted with satisfaction the support given by Great Britain to the Convention on Genocide at the meeting of the General Assembly of the United Nations, urges H.M. Government to follow this support by prompt ratification of the Convention.*<sup>860</sup>

Beyond this, WILPF UK sent each UK regional branch a suggested letter for them to send on to local newspapers and press on this topic to raise the profile of the crime of genocide in the UK after finding the current press attention lacking. This, they urged, “should be done at once.” One whole page in this 6-page newsletter was devoted to the cause of genocide in February 1949.<sup>861</sup>

In March 1949 WILPF sent a circular letter to all of its members and National Sections with the sub-heading “Action NOW on GENOCIDE.” WILPF once more urged National Sections and members to lobby their governments on the ratification of the Genocide Convention, pointing them in the direction of further reading materials on the subject:

Will you help to bring about signature and ratification by as many UN member states as possible? Could you see the presidents and influential members of your Parliament and in particular those who work in the offices of your Government and in the parliamentary Committees which deal with the matter? You will certainly find

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<sup>859</sup> Women’s International League for Peace and Freedom British Section, ‘Thirty-Third Annual Report, March 1948 - February 1949,’ The Women’s Library, LSE, 327.1720601 WOM.

<sup>860</sup> Women’s International League British Section, ‘Monthly News Sheet,’ (February 1949) The Women’s Library, LSE, WILPF/2009/15/5/1.

<sup>861</sup> Women’s International League British Section, ‘Monthly News Sheet,’ (February 1949) The Women’s Library, LSE, WILPF/2009/15/5/1.

among teachers, educators, writers, artists, peace workers and others, groups eager to join in this work.<sup>862</sup>

WILPF called upon all their National Sections to urge their governments to sign or ratify the Convention for it to enter into force.<sup>863</sup> This call to National Sections was reiterated in the *Pax International* edition for September - November 1949, which stated: "The WILPF takes cognizance of the need for twenty signatories to the Convention on the Prevention and Punishment of the Crime of Genocide, in order to give it the force of international law. We urge each Section to work for its prompt ratification."<sup>864</sup> Similarly, in the summer of 1949 a letter from WILPF was sent to ECOSOC regarding their concerns about the signing and ratification of the Convention on Genocide.<sup>865</sup>

A possible reflection of WILPF UK's influence in this regard is the questioning of the then-UK Secretary of State for Foreign Affairs, Ernest Bevin MP, on why the UK has not ratified the Convention.<sup>866</sup> In the UK Parliament's Commons Chamber on October 19, 1949, Bevin was asked by Woodrow Wyatt MP, a Labour MP, and Grenville Janner MP,<sup>867</sup> a Jewish Labour MP who would become long-time advocate for protection

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<sup>862</sup> 'LOWUN International News No 2/1949,' Women's International League for Peace and Freedom, March 1949, [U.S. Committee for a U.N. Genocide Convention] Correspondence, 1949-1951, box 2, folder 10, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>863</sup> 'Xlth International Congress of the Women's International League for Peace and Freedom, at Copenhagen, Christiansborg Castle, August 15th-19th, 1949,' accessed October 13, 2021, [https://0-search-alexanderstreet-com.catalogue.libraries.london.ac.uk/view/work/bibliographic\\_entity%7Cbibliographic\\_details%7C1523099#page/67/mode/1/chapter/bibliographic\\_entity%7Cdocument%7C1523766](https://0-search-alexanderstreet-com.catalogue.libraries.london.ac.uk/view/work/bibliographic_entity%7Cbibliographic_details%7C1523099#page/67/mode/1/chapter/bibliographic_entity%7Cdocument%7C1523766), 66.

<sup>864</sup> Women's International League for Peace and Freedom, *Pax International WILPF* (Jan 1940), The Women's Library, LSE, WILPF /2009/15/3/3, 8-9.

<sup>865</sup> Women's International League for Peace and Freedom, 'Report of the work of the Women's International League for Peace and Freedom with the United Nations in Geneva from the International Congress in Paris, France, July 1952 until the WILPF XIIIth International Congress, Birmingham, July 1956,' The Women's Library, LSE, WILPF/2009/9/1, 32.

<sup>866</sup> UK Parliament, 'United Nations Convention (Genocide), Parliamentary Debates, House of Commons, Wednesday October 19, 1949,' accessed October 13, 2012, [https://hansard.parliament.uk/Commons/1949-10-19/debates/6899bcab-94c5-4242-b7ad-5d9803f5f018/UnitedNationsConvention\(Genocide\)](https://hansard.parliament.uk/Commons/1949-10-19/debates/6899bcab-94c5-4242-b7ad-5d9803f5f018/UnitedNationsConvention(Genocide)).

<sup>867</sup> Whilst this thesis documents some of Janner's work to raise the profile of genocide in the UK Parliament, it would be remiss to ignore subsequent allegations of historic sexual abuse claimed to have been committed by Janner whilst he was a sitting MP – some allegedly occurring within the timeframe under research in this thesis. Lord Janner died before his trial and his family protest his innocence. See: BBC News, 'Janner sexually abused children for 33 years, public inquiry hears,' accessed May 20, 2022, <https://www.bbc.co.uk/news/uk-35765395>; The Guardian, 'Lord Janner child sexual abuse inquiry

against the crime of genocide, about the UK's ratification of the Convention.<sup>868</sup> As we shall see shortly, Janner and WILPF join together in their aim for UK ratification; whilst current data does not give an indication of whether Janner was already an ally of WILPF at the time of this particular Parliamentary Question, it is only the second mention of genocide in a UK Chamber. Given their overlapping goal it could be possible that WILPF's UK branch and Janner were working together by late 1949 to achieve this goal.

Looking beyond the UK in 1949, the Canadian delegation to the UN was lobbied by Baer to support the Convention.<sup>869</sup> Canada signed the Convention on November 28, 1949, although did not ratify it until September 1953.<sup>870</sup> Similarly, the Danish Section of WILPF lobbied the Danish government to ratify the Convention,<sup>871</sup> which it signed on September 28, 1949 and ratified less than two years later.<sup>872</sup> Then-UN Secretary General, Mr Trygve Lie, personally thanked WILPF for their contributions to the new United Nations in a letter to WILPF's Copenhagen Conference in 1949. This, and the content of this message, indicate the international status and influence of WILPF at the time.<sup>873</sup> Lie's sentiment, that WILPF was "strongly engaged in the important task of disseminating information on the United Nations' principles and activities throughout the world" was shared by then-ECOSOC President Mr James Thorn, who also wrote to the Congress about how "[t]he women of the world have an intimate concern with these problems of economic and social maladjustments and with the problems of

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begins,' accessed May 20, 2022, <https://www.theguardian.com/uk-news/2020/oct/12/lord-janner-child-sexual-abuse-inquiry-begins>.

<sup>868</sup> 'United Nations Convention (Genocide) - Wednesday 19 October 1949 - Hansard - UK Parliament.'

<sup>869</sup> 'Xlth International Congress of the Women's International League for Peace and Freedom, at Copenhagen, Christiansborg Castle, August 15th-19th, 1949,' 100.

<sup>870</sup> 'United Nations Treaty Collection.'

<sup>871</sup> 'Xlth International Congress of the Women's International League for Peace and Freedom, at Copenhagen, Christiansborg Castle, August 15th-19th, 1949,' 107.

<sup>872</sup> 'United Nations Treaty Collection.'

<sup>873</sup> 'Xlth International Congress of the Women's International League for Peace and Freedom, at Copenhagen, Christiansborg Castle, August 15th-19th, 1949,' 19.

peaceful endeavour.”<sup>874</sup> WILPF also added their signature to the group of 140 NGOs urging the General Assembly to adopt the Convention.<sup>875</sup>

To return to WILPF UK, this National Section publicly supported the adoption of the Genocide Convention. Their advocacy centred on interweaving the crime of genocide with the use of atomic bombs and biological weapons, which was a core campaign of theirs at the time.<sup>876</sup> At the time that the Convention had been approved by the Legal Committee, WILPF UK had published an article titled ‘Genocide – New Name, Old Crime’ in its monthly newsletter. This article detailed the creation of the Convention through the Ad Hoc Committee, as well as historical examples of genocide such as Carthage and the Holocaust. The text of Article II of the Convention, acts of genocide, was reproduced by WILPF in this article, and then linked to the detonation of the atomic bomb in Hiroshima. Within the framework of transnational advocacy developed by Keck and Sikkink, we can see elements of the ‘framing’ method, or symbolic politics, being deployed by WILPF.<sup>877</sup> Broadly, WILPF’s main advocacy at the time was around atomic weapons and the threat they posed in both testing and use. By framing atomic weapons within the act of genocide, WILPF was able to draw on a familiar advocacy cause without the need to create a separate advocacy cause: “atomic warfare is bound to involve genocide.”<sup>878</sup> In order to realise a world without atomic weapons, this article argued, the outlawing of genocide at the United Nations is key.

WILPF UK followed this article with an update on WILPF’s actions to support the adoption of the Genocide Convention. In this article WILPF recalled its support for a petition sent by the US Committee for a United Nations (of which Lemkin was a representative) urging the completion of the Convention by the Paris Assembly. WILPF

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<sup>874</sup> ‘Xlth International Congress of the Women’s International League for Peace and Freedom, at Copenhagen, Christiansborg Castle, August 15th-19th, 1949,’ 19.

<sup>875</sup> ‘Xlth International Congress of the Women’s International League for Peace and Freedom, at Copenhagen, Christiansborg Castle, August 15th-19th, 1949,’ 19.

<sup>876</sup> Women’s International League, British Section, Monthly News Sheet, February 1949, The Women’s Library, LSE, WILPF/2009/15/5/1

<sup>877</sup> Keck and Sikkink, *Activists*, 3.

<sup>878</sup> Women’s International League, British Section, Monthly News Sheet, February 1949, The Women’s Library, LSE, WILPF/2009/15/5/1

also received a communication from Lemkin on December 2, 1948, updating them on the fact that the UK – despite appearing supportive only a few weeks earlier – was now withdrawing support for the Convention. Reproduced in WILPF UK’s monthly newsletter, Lemkin asked to “[p]lease help urgently by approaching Foreign Office and cabling your delegation in Palais Chailiot Paris; every hour counts.” Taking Lemkin’s urgency, WILPF UK sent the swift telegram discussed in the previous 1948 section of this chapter:

*Women’s International League deplores British abstention Genocide draft, strongly urges favourable vote Monday Assembly.*<sup>879</sup>

### **WILPF’s Triennial Congress**

In 1949 WILPF hosted their Triennial Congress in Denmark, in the Christansborg Castle in central Copenhagen. Ninety-four delegates and over 200 visitors from Austria, Czechoslovakia, Denmark, Finland, France, Germany, UK, India, the Netherlands, Norway, Sweden, Switzerland and the USA gathered for a five-day congress between August 12 – 19.<sup>880</sup> This Congress was billed as an opportunity to build networks and share ideas among the women.<sup>881</sup>

In the lead-up to this Congress, WILPF’s International Liaison Officer and Permanent Consultant to the UN, Gertrude Baer, had been laying the groundwork for advocacy on the Genocide Convention, in order to present the topic to international delegates at the Copenhagen Congress. The task ahead for advocates of the Genocide Convention around the world was ratification. Five months before WILPF’s Triennial Congress got underway in Copenhagen, in March 1949, Baer wrote to Lemkin in New York asking repeatedly for information and blurb on the Genocide Convention in order

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<sup>879</sup> Women’s International League British Section, ‘Thirty-Third Annual Report,’ March 1948 – February, 1949, 6, The Women’s Library, LSE, WILPF/ 2/7.

<sup>880</sup> Women’s International League, British Section, Monthly News Sheet, October 1949, The Women’s Library, LSE, WILPF/2009/15/5/1.

<sup>881</sup> Women’s International League for Peace and Freedom, *Pax International WILPF*, Sept – Nov, 1949, The Women’s Library, LSE, WILPF /2009/15/3/3.

to meet WILPF's conference deadline.<sup>882</sup> Lemkin must have sent through the information as nine days after her letter, Baer again wrote to Lemkin thanking him for the information, and more importantly, she wrote:

*I have urged all our National Sections to work for signature and / or ratification of the Convention, and went into all the details you so kindly advised.*<sup>883</sup>

As recorded in WILPF's published record of this Congress, WILPF was extremely active on the topic of genocide throughout 1949 in addition to urging ECOSOC to submit the Convention to the UN General Assembly in September as we have seen earlier in this chapter in Baer's letter of June 1948. Throughout the year, it is recorded that WILPF and its National Sections signed petitions and sent letters and cables in support of the Genocide Convention, and even interviewed country delegates to the UN about the crime of genocide.<sup>884</sup> WILPF also reached out to Dr Herbert Vere Evatt, President of the second part of the Third UN General Assembly, to ask him to appeal to governments present at the UN to ratify the Convention, although there is no mention of whether this was successful.<sup>885</sup>

Immediately following the Copenhagen Congress, Gertrude Baer again wrote a letter to Dr Evatt asking him to urge ratification of the Convention at the opening of the Fourth Session, containing similar sentiments to her letter of March that same year.<sup>886</sup> Dr Evatt spoke in his address at the opening of the Fourth Session about the

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<sup>882</sup> Letter from Gertrude Baer to Raphael Lemkin, March 19, 1949, Lemkin Correspondence, February-July 1949, box 2, folder 1, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>883</sup> Letter from Gertrude Baer to Raphael Lemkin, March 28, 1949, Lemkin Correspondence, February-July 1949, box 2, folder 1, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>884</sup> 'XIth International Congress of the Women's International League for Peace and Freedom, at Copenhagen, Christiansborg Castle, August 15th-19th, 1949,' accessed October 13, 2021, [https://0-search-alexanderstreet-com.catalogue.libraries.london.ac.uk/view/work/bibliographic\\_entity%7Cbibliographic\\_details%7C1523099#page/67/mode/1/chapter/bibliographic\\_entity%7Cdocument%7C1523766](https://0-search-alexanderstreet-com.catalogue.libraries.london.ac.uk/view/work/bibliographic_entity%7Cbibliographic_details%7C1523099#page/67/mode/1/chapter/bibliographic_entity%7Cdocument%7C1523766), 66.

<sup>885</sup> 'XIth International Congress,' 66.

<sup>886</sup> 'XIIth International Congress of the Women's International League for Peace and Freedom, August 4-8, 1953,' The Women's Library, LSE, WILPF/2009/9/1, 39.

need for “early ratification of the Convention against Genocide.”<sup>887</sup> Although Baer does stop short of claiming credit for this mention by Evatt, citing the possibility of many other organisations advocating for the same, she does suggest that WILPF members ask Presidents of the present and upcoming General Assemblies to draw attention to the Convention. This point made by Baer is vital to highlight as many other organisations were lobbying to raise the profile of the Genocide Convention at the same time as WILPF and the IAW and ICW. Therefore, in Baer’s sentiment, it is not possible to attribute success to any single organisation. Citing states which are yet to ratify, such as USA, the UK, Sweden, Denmark and Canada, Baer called upon the “active members” in those countries to put pressure on their governments through “members of Parliaments, leaders of parties and organisations, editorials in newspapers and periodicals, public meetings etc. in favor [sic] of ratification.”<sup>888</sup> Baer encouraged a two-way flow of information about the status of ratification between WILPF Executive and WILPF National Sections, with the reminder that only six more ratifications were required for the Convention to be entered-into-force.

## 1950

Lemkin remained in contact with Baer and WILPF into 1950, when he continued to ask for help of WILPF’s network of women on the ratification of the Genocide Convention. He wrote on January 8, 1950:

*May I appeal again to your help?*

*We need again a strong appeal to your members to move on ratifications. Once it is easier to move for a concrete goal would you kindly inform your branches that we are trying now to implement the resolution of the General Assembly of December 3, 1949 by obtaining*

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<sup>887</sup> ‘XIIth International Congress of the Women’s International League for Peace and Freedom, August 4-8, 1953,’ The Women’s Library, LSE, WILPF/2009/9/1, 39.

<sup>888</sup> ‘XIIth International Congress of the Women’s International League for Peace and Freedom, August 4-8, 1953,’ The Women’s Library, LSE, WILPF/2009/9/1, 39.

*finalisation of 15 ratifications by April 1, 1950. Please do not be afraid of this relatively close term. Many ratifications are already far advanced and a few pushes will easily finish the job.*

*We need also the adherence of Italy, Switzerland, Monaco, Lichtenstein, Portugal, Finland. Could you help in these countries?*

*Enclosed you will find the text of the resolution. For your information no further action is necessary in Australia, Iceland, Ethiopia, Ecuador and Norway.<sup>889</sup>*

A month later on February 1, 1950, WILPF co-sponsored an event in Washington D.C. called “Genocide is mass murder! And there is no law against it!” at which Lemkin spoke alongside Mr Adrian S Fisher who was a Legal Advisor at the Department of State. On the panel at this event were Mrs Marion Elliott from the National Council of Negro Women, and Mrs Alexander Stewart from WILPF.<sup>890</sup> There is a particularly relevant and interesting overlap here – the National Council for Negro Women also co-founded WILPF’s *Primer Congreso Interamericano de Mujeres*, August 21-27, 1947, explored earlier in this chapter.<sup>891</sup> This suggests that, through WILPF, Lemkin had access to a greater network of other organisations. Although the author could find no additional information about what was discussed at this meeting, the title of the event suggests that the ratification of the Genocide Convention was the central theme of this discussion in Washington D. C.. In a letter to Dr Jeanna Eder of the International Council of Women in Switzerland on January 8, 1950, Lemkin noted that the hearing on the US Senate on ratification will begin later that month or in February.<sup>892</sup> It is possible to infer from this, therefore, that the event in Washington D.

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<sup>889</sup> Letter from Raphael Lemkin To Gertrude Baer, January 8, 1950, Lemkin Correspondence, 1950, box 2, folder 3, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>890</sup> Public Meetings Notices, 1949-1950, box 2, folder 6, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>891</sup> Miller, *Latin American Women*, 126.

<sup>892</sup> Letter from Raphael Lemkin To Dr Jeanna Eder, January 8, 1950, Lemkin Correspondence, 1950, box 2, folder 3, Raphael Lemkin Collection (P-154), Center for Jewish History.

C., co-sponsored by WILPF, would potentially have been a satellite advocacy event to those hearings.

The WILPF UK Section Report on their activities from March 1949 to February 1950 reports that on the topic of outlawing genocide:

*Throughout the year the Executive has continued to press the Government to sign and ratify the Genocide Convention. A letter was received from the Government stating that the position was obscure and that legal investigations were being carried out. Further pressure will be brought to bear.<sup>893</sup>*

The following year, WILPF UK Section's report on activities from March 1950 to February 1951 included details of their advocacy on the Convention:

*We pressed the Government many times to give their reasons for not signing or ratifying the Genocide Convention. We also wrote to Mr Janner, M.P. for Leicester, who had raised this question several times in the House. In his reply, Mr. Janner referred us to the answer given to him in the House on November 20<sup>th</sup>. "H.M. Government must take into consideration, and are therefore carefully studying, the effects of the reservations (attached by certain signatures to the Convention) in the light of the debates on the subject in the Sixth Committee of the General Assembly, and the subsequent reference of the whole question to the International Court of Justice. At the same time I must remind my Hon. Friend of the implications which our accession to the Convention might have on our traditional policy of granting asylum to political refugees. These present considerable difficulties and are still being studied by experts". The matter is still being watched.<sup>894</sup>*

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<sup>893</sup> Women's International League British Section, 'Thirty-Fourth Annual Report,' March 1949 – February, 1950, The Women's Library, LSE, WILPF/ 2/7, 11.

<sup>894</sup> Women's International League for Peace and Freedom British Section, 'Thirty-Fifth Annual Report. March 1950 – February 1951,' The Women's Library, LSE, WILPF/ 2/7, 16.

As it transpired, according to internal UK Home Office and Foreign Office memos housed in The National Archives, the UK Government had become increasingly concerned with how the Genocide Convention would impact the UK's ability to grant political asylum, as well concerns it would interfered with the UK's death penalty, still in force in the UK at the time.<sup>895</sup> We can now see in UK Government records that Janner, WILPF's ally, would continue to advocate for UK ratification. Internally, the UK Government became increasingly aware of how embarrassing it had become that the UK had not ratified the Convention; internal government memos from 1955 describe how the "indecision over the last seven years is both undignified and politically inconvenient."<sup>896</sup> More specifically, Janner's continued questions and lobbying can be seen as a particular cause for awkwardness by the UK Government.<sup>897</sup> The "optics" of the continuing questions, according to internal documents, were causing embarrassment,<sup>898</sup> especially when ratifications began to come in "thick and fast" later in the 1950s.<sup>899</sup>

## 1951- 1952

In the years 1951 to 1952, there is no record in the archives of WILPF's activism on the cause of outlawing genocide. Perhaps this is because the Convention entered into force in January 1951, or perhaps due to WILPF's advocacy attentions increasingly focused on preventing atomic testing and the threat of nuclear war. Undisputedly both of these factors must have contributed to the existence of such a gap in WILPF's advocacy during these two years. What is particularly interesting in this absence however, is that WILPF did not seek to monitor compliance of the Convention among countries; despite using the Convention as an advocacy tool to draw attention to

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<sup>895</sup> Letter from Mr E. R. Warner, 'Convention on Genocide: UK Accession,' February 18, 1955. FO 371/117436. UN 1643/4, The National Archives.

<sup>896</sup> Joint Home Office/Foreign Office Cabinet Memo, 'Genocide,' no date, FO 371/117436, The National Archives.

<sup>897</sup> Letter from Mr E. R. Warner, November 1, 1955, FO 371/117436, UN1643/13, The National Archives.

<sup>898</sup> Letter from R. S. Swann, March 22, 1956, FO 371/123717, The National Archives.

<sup>899</sup> Internal Foreign Office documents, FO 371/117436; FO 371/123717, The National Archives.

human rights abuses, there is no evidence to suggest a continuing engagement with the Convention. As we can see, this is similar with the IAW and the ICW. Following the requisite ratifications for the Convention to enter-into-force, there is a lack of interest in further ratification and compliance. Furthermore, there is no evidence of interest by these international women's organisations in having rape and sexual violence recognised by the Convention.

## 1953

Similar to 1951-1952, there are not many records to show WILPF's activities on outlawing the crime of genocide in 1953. By this point, the organisation's main focus internationally was the threat of nuclear war. Genocide features only twice more in the WILPF records at this time. The first was when the Convention was used by WILPF's Swedish Section in 1953 in its appeal to WILPF's Executive Committee to urge the UN to investigate the fate of the Baltic Peoples in Soviet Russia describing it as a genocide.<sup>900</sup> The second feature was when WILPF sent a report on genocide to ECOSOC, titled *Report of the work of the Women's International League for Peace and Freedom with the United Nations in Geneva*. This report, however, is only referenced in the archival materials and not reproduced, and therefore it is not possible to determine whether it is a broad overview of how WILPF worked at the UN or specifically in 1953 on genocide.<sup>901</sup> Unfortunately the data in the documents does not expand.

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<sup>900</sup> 'XIIth International Congress of the Women's International League for Peace and Freedom, August 4<sup>th</sup>-8<sup>th</sup>, 1953,' The Women's Library, LSE, WILPF/2009/9/1, 84.

<sup>901</sup> Women's International League for Peace and Freedom, 'Report of the work of the Women's International League for Peace and Freedom with the United Nations in Geneva from the International Congress in Paris, France, July 1952 until the WILPF XIIIth International Congress, Birmingham, July 1956,' The Women's Library, LSE, WILPF/19/32, 31.

## Conclusion

This chapter explored the work of WILPF on the Genocide Convention, using archived and published documents to illustrate their history of dedication and advocacy on the topic. This chronological chapter drew data mainly from The Women's Library archives at LSE but also the Center of Jewish History and The National Archives in order to build a picture of this history. It sought to answer the research question: in what ways were women influential in the adoption and ratification of the Convention? With regards to WILPF, we can see their role in organising joint events on the crime of genocide as well as raising the profile of the Convention in their own events across the globe, in addition to the curation of relationships in national parliaments illustrated in the case of WILPF UK. The advocacy efforts by WILPF UK and Mr Janner MP in questioning the UK's ratification of the Convention was shown in this chapter to have been a cause for concern by government ministers who were mindful of the optics.

Perhaps with regards to WILPF's influence it is possible to conclude that this influence lies in gaining attention for the cause and maintaining pressure on key individuals to prevent outlawing genocide slipping from the agenda. This chapter argued that this was a key feature of WILPF's work. WILPF's advocacy on the topic of genocide was targeted towards many actors, from the United Nations itself, to other NGOs and its own National Sections and regional branches. The impact of their advocacy can also be seen dotted throughout the main history of the creation of the crime of genocide. Looking closely at the work of Amalia de Castillo Ledón, for example, illuminates a different, untold, history of the crime of genocide in which the work of women's organisations is celebrated. By showcasing these documents, this chapter furthered the argument of the existence of an under-researched female history.

## Chapter 9 - “Can we women unite to stem the tide?” – International Alliance of Women

### Introduction

The International Alliance of Women, or IAW, was founded in Washington in 1902 under the name International Alliance of Women for Suffrage and Legal Citizenship, changing its name to the International Alliance of Women in 1926.<sup>902</sup> In the period of time under research, the main advocacy focus for the IAW was women entering the workforce and the subsequent impacts on the workplace and for women, and advocating on the evidenced lack of women in decision-making positions. At the international level, IAW was also vocal about the topic of human rights and equal rights for the sexes.

As we will see, IAW also helped to raise the profile of the crime of genocide amongst its global membership, advocating amongst members for ratification of the Convention. IAW’s presence at the UN as an NGO was consistent during this time; most ECOSOC meetings from 1949 to 1952 were attended by at least one IAW representative.<sup>903</sup> Vitally, IAW also took seriously their NGO role within the UN with observer status within ECOSOC, both as an organisation which sought to influence change at the UN and to learn from others at the UN and information-sharing with its own membership. Evidence shows that IAW was cognisant of the need to mainstream women’s rights. A report on the IAW’s cooperation with the UN, presented in 1947, noted that there was a tendency for women’s rights to be considered under the auspices of the Status of Women Commission, and men’s rights to be considered by the Human Rights Commission.<sup>904</sup>

Demonstrating an awareness of the role of information-sharing in successful advocacy at the UN, Dr Hanna Rydh, IAW President and successor of Margery Corbett

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<sup>902</sup> International Alliance of Women, ‘What Is IAW,’ accessed November, 19, 2021, <https://www.womenalliance.org/what-is-iaw/>.

<sup>903</sup> International Alliance of Women, ‘Report of the Sixteenth Congress, Naples, September 11<sup>th</sup> – 19<sup>th</sup>, 1952,’ Sixteenth Triennial Congress, 1952, The Women’s Library, LSE, 2/IAW/1/C/11, 43.

<sup>904</sup> International Alliance of Women, ‘Minutes of the Board meeting of IAW held in Stockholm, April 28 to May 2, 1947,’ The Women’s Library, LSE, 2/IAW/1/B/1/8, 5

Ashby, discussed the important role of the IAW at the UN during the IAW's Sixteenth Triennial Congress in 1952:

*The participation in an international organization does not mean only the right to put before an international body questions concerning our own national problems. It means as much to learn to know the points of view of other people, and to make them known at home.*<sup>905</sup>

Lemkin wrote a 1947 article how IAW Sweden section supported the Genocide Convention, potentially as a result of Dr Hanna Rydh's support of the concept.<sup>906</sup>

As with WILPF, members of the IAW suffered throughout World War Two as a result of their commitment to advocacy. The first meeting of the IAW Congress after the war, held in 1946, began with a standing moment of silence for colleagues who died during the war; IAW women died during the conflict such as Rosa Manus, who was a member of the IAW, Senator Frantiska Plaminkova, and Madame Siminska from Poland who reportedly died so her daughter could escape the country.<sup>907</sup> Frantiska Plaminkova was IAW's Vice President and co-founder, and had resided in Copenhagen.<sup>908</sup> She was imprisoned and tortured in 1939, released and then subsequently arrested again as a member of the Czech resistance and was shot.<sup>909</sup> Rosa Manus was well-known for her work with the IAW, and she was imprisoned in many concentration camps before finally being transported to the female-only Ravensbrück camp, where she was then transferred to Auschwitz and killed in the gas chambers.<sup>910</sup> The IAW branch in Holland reported that one staff member in its

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<sup>905</sup> International Alliance of Women, 'Report on the Sixteenth Congress,' 74.

<sup>906</sup> Raphael Lemkin, 'Genocide as a Crime under International Law,' *The American Journal of International Law* 41, no. 1 (1947), 149.

<sup>907</sup> Margery Corbett Ashby Dame, *Memoirs of Dame Margery Corbett Ashby* (Horsted Keynes: 1996), 203.

<sup>908</sup> 'Františka Plamínková (1875-1942), Czech Feminist and Patriot,' Nationalities Papers, 25, no. 1, March 1997, *Cambridge University Press Online*, accessed June 1, 2022, <https://www.cambridge.org/core/journals/nationalities-papers/article/abs/frantiska-plaminkova-18751942-czech-feminist-and-patriot/0EE7D0B7B0D2693AE0A2D62193F468C4>.

<sup>909</sup> International Alliance of Women, 'International Alliance of Women, Report of the Fourteenth Congress, Interlaken, August 10-17, 1946,' The Women's Library, LSE, 2IAW/1/c/09, 42; 'Františka Plamínková (1875-1942).'

<sup>910</sup> See: 'International Alliance of Women, Report of the Fourteenth Congress, Interlaken, August 10-17, 1946,' The Women's Library, LSE, 2IAW/1/c/09, 42; 'International Alliance of Women, Report of the Fifteenth Congress, Amsterdam, July 18th – 24th, 1949,' The Women's Library, LSE, 2/IAW/1/c/10 1949-

headquarters was also taken as a political prisoner and shot.<sup>911</sup> The Deputy Mayor of Prague, Mrs Palentova, was quoted in a news article in the *New York Times* reporting on this Congress how she was forced to do hard labour under Nazi occupation, which she also recalled to Lemkin later in Geneva as he remembers in his autobiography.<sup>912</sup> Notably also, the Lord Mayor of Prague had been killed by Nazis, which undoubtedly would have incited fear for Deputy Mayor Palentova.<sup>913</sup> These deaths are important to revisit in this chapter for two reasons. Firstly, the point made in the previous chapter stands to be made again here; giving these women of IAW the respect for these sacrifices which was not necessarily afforded them at the time by those outside the organisations. The conceptualisation of women's organisations as "woolly" did an injustice to the scope and breadth of women's international organisations and further downplays their work. Secondly, as we seek to reconceptualise the history of genocide, writing women back into the narrative, these examples of high-level IAW women being victims in the Holocaust show how close the organisation's recent history was wrapped-up with genocide before Lemkin. The personal cost of genocide was known among IAW women.

This chapter will explore the advocacy efforts of the IAW on outlawing the crime of genocide. This chapter posits that the IAW was influential in its advocacy with its global membership in raising and maintaining the profile of the Convention. As with Chapter 8, this chapter will demonstrate how Lemkin identified IAW as a key ally in the efforts to recognise genocide as a crime, and how this transnational advocacy network promoted and advocated this cause. This chapter will begin with an in-depth examination of the work of IAW President Margery Corbett Ashby, and how she personally took up the cause of outlawing the crime of genocide for the IAW to begin

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1952, 58; Letter from A. Stern-Mets to Margery Corbett Ashby, November 28, 1945, The Women's Library, LSE, 2MCA/C/3.

<sup>911</sup> 'Report of the Fourteenth Congress,' 60.

<sup>912</sup> 'WOMEN DELEGATES ARRIVE FOR PARLEY: Leaders From 56 Nations to Open International Assembly Up-State on Sunday,' *New York Times*, October 11, 1946: 36, accessed June 1, 2022, <https://www.proquest.com/historical-newspapers/women-delegates-arrive-parley/docview/107431508/se-2?accountid=13042>; Lemkin and Frieze, *Totally Unofficial*, 125.

<sup>913</sup> *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, June 25, 1946 – July 8, 1946*. Volume XVII, 192. Available at The Library Of Congress: [https://www.loc.gov/rr/frd/Military\\_Law/NT\\_major-war-criminals.html](https://www.loc.gov/rr/frd/Military_Law/NT_major-war-criminals.html), accessed January 28, 2022.

lobbying. It is argued that Margery Corbett Ashby's connection with India's Vijaya Lakshmi Pandit (a fellow IAW member) was of great use to Lemkin in the early years of recognising genocide as a crime at the UN. Following this, and mirroring the previous chapter, this chapter proceeds chronologically. It examines internal records of meetings and letters, as well as public records and reports such as annual reports, conference reports and the IAW's newsletter publication *Jus Suffragii* to build-up a picture of the extent of the work which this organisation dedicated to the cause. For example, the IAW periodically published pamphlets on international conventions which relate to women, which consistently featured up-to-date information on the Genocide Convention along with current information on which countries have signed the Convention and which have yet to ratify it.<sup>914</sup>

This chapter contends that because of the passion of Margery Corbett Ashby, the cause of outlawing the crime of genocide became a cause for the IAW's global membership. Furthermore, this chapter illustrates how the IAW understood women to be particularly impacted by acts of genocides but not in relation to sexual violence or rape. The point is made in this chapter that the IAW did not lobby on sexual violence and rape as components of the crime of genocide in their advocacy on ratification.

### **President of the IAW: Margery Corbett Ashby and genocide**

Dame Margery Corbett Ashby was a founding member of IAW and its second President, serving from 1923 to the Interlaken Conference in August 1946 when Dr Hanna Rydh took over the Presidency.<sup>915</sup> Margery Corbett Ashby was a British women's rights activist, who (prior to the period of time under research) had been active before and after World War One. During a trip to post-World War One Cologne, she had been moved to lobby the UK's War Office to prevent sexual relations between soldiers and women in order to lower venereal disease transmission.<sup>916</sup> On threat of

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<sup>914</sup> International Alliance of Women, 'Digest of the position of International Conventions related to the Status of Women,' February 1961, The Women's Library, LSE, 2IAW/1/e/2/2/1, 15-16; International Alliance of Women, 'Digest of the position of International Conventions affecting Women as Women,' August 1958, The Women's Library, LSE, 2IAW/1/E/2/1, 11-12.

<sup>915</sup> 'Dame Margery Corbett Ashby,' accessed January 13, 2022, <https://www.britannica.com/biography/Margery-Corbett-Ashby>.

<sup>916</sup> Harrington, *Politicization*, 63.

local activism from women's and church groups, organised by Margery Corbett Ashby, the War Office allowed for members of a Women Police Service to prohibit entry of women at the Cologne station should they be suspected of seeking sexual relations with the soldiers.<sup>917</sup> Margery Corbett Ashby's feminist philosophy was rooted in the liberal notions of individual freedom and choices,<sup>918</sup> and she later declared it a point-of-pride that her name appeared in Hitler's Black Book of potential targets in Nazi-occupied UK.<sup>919</sup> Interestingly, Margery Corbett Ashby was also aware of the damages of FGM, and viewed it as demonstrating the large gap in respect of men and respect of women.<sup>920</sup> She worked to outlaw the practice at the Status of Women Commission Meeting in Geneva in April 1952, and was present at the drafting of the UDHR.<sup>921</sup>

Before now, this prior relationship between Lemkin and Margery Corbett Ashby has not been explored in detail, however documents from Margery Corbett Ashby's personal collection, housed in The Women's Library archives at LSE, illustrate their work together on the topic of genocide from Margery Corbett Ashby's standpoint, rather than that of Lemkin. In her memoirs, it is clear that Margery Corbett Ashby was unsure about the details of how the Genocide Convention was to be created; she wrote for example that Lemkin wanted genocide to become an addition to the International Conventions of the Red Cross' Geneva Conventions.<sup>922</sup> However, archival evidence and recollections in memoirs illustrate how Margery Corbett Ashby, as President and then former President of the IAW, was a vital ally for Lemkin throughout the campaign for the Genocide Convention, as this chapter will demonstrate. Margery Corbett Ashby's account in her memoir of her initial interaction with Lemkin began with the statement that "[i]t is very seldom that women are present where political decisions are taken, but once I found myself in a position where I was able to help."<sup>923</sup>

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<sup>917</sup> Harrington, *Politicization*, 63.

<sup>918</sup> Miller, 'Geneva,' 228

<sup>919</sup> Corbett Ashby, *Memoirs*, 201; Forces War Records, 'Hitler's Black Book - Information for Mrs Corbett-Ashby,' accessed September 1, 2021, <https://www.forces-war-records.co.uk/hitlers-black-book/person/2742/mrs-Corbett-ashby>.

<sup>920</sup> Corbett Ashby, *Memoirs*, 208.

<sup>921</sup> Adami, *Women and the Universal Declaration*, 112; Corbett Ashby, *Memoirs*, 208.

<sup>922</sup> Corbett Ashby, *Memoirs*, 205.

<sup>923</sup> Corbett Ashby, *Memoirs*, 204.

Margery Corbett Ashby's interest in outlawing the crime of genocide began before August 1946 and she was in contact with Lemkin about genocide even before their first recorded meeting in October 1946 in his memoir.<sup>924</sup> They had previously known each other from London, according to Lemkin.<sup>925</sup> In this section of the chapter, a letter exchange between Margery Corbett Ashby will be examined in relation to the relationship between Margery Corbett Ashby and Lemkin, and the discussions on Margery Corbett Ashby assisting ratification.

In a letter dated August 29, 1946, from Lemkin to Margery Corbett Ashby, Lemkin wrote:

*I am so happy that you kindly agreed to work for this matter. It is such an inspiration to see that such an idea is shared by persons of such great intellectual nobility as you.*<sup>926</sup>

This letter was a follow-up from the conversation Lemkin had with Margery Corbett Ashby the previous day, August 28, in which Margery Corbett Ashby had suggested that existing institutions were more practical in their ability to handle genocide cases than a new international court in the Hague, as suggested by Lemkin.<sup>927</sup> Despite these differing opinions on the institutions responsible for outlawing the crime of genocide, Lemkin welcomed Margery Corbett Ashby's suggestion that she write an open letter to the *London Times* to raise the profile of genocide and the topic of a permanent court, and Lemkin was going to send her *Axis Rule* and Nuremberg documents.<sup>928</sup> Lemkin finished the letter by telling Margery Corbett Ashby that he would update her after his meeting with UNESCO's Professor Huxley, and asked whether she could connect him with anyone in Paris whilst he is there.<sup>929</sup> There is no evidence in the archives of a reply.

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<sup>924</sup> Lemkin and Frieze, *Totally Unofficial*, 123.

<sup>925</sup> See: Lemkin and Frieze, *Totally Unofficial*, 123; Irvin-Erickson, *Raphaël Lemkin*, 153.

<sup>926</sup> Letter from Raphael Lemkin to Margery Corbett Ashby, August 29, 1946, The Women's Library, LSE, 7MCA/C/23.

<sup>927</sup> Letter from Lemkin to Corbett Ashby, August 29.

<sup>928</sup> Letter from Lemkin to Corbett Ashby, August 29.

<sup>929</sup> Letter from Lemkin to Corbett Ashby, August 29.

Following this exchange of letters, Margery Corbett Ashby and Lemkin would cross paths later that year at the UN. Margery Corbett Ashby was approached by Lemkin at the UN General Assembly in New York who was seeking support for his fledgling theory of genocide, and she subsequently reached out to her long-time friend Vijaya Lakshmi Pandit of India for help on the issue of genocide.<sup>930</sup> As Morgan wrote in relation to lobbying at the UN, it “usually takes place in the hallways and coffee lounges of the UN” as was the case in this instance.<sup>931</sup> We see here a reflection of the importance of personal relationships between individuals Morgan indicates as vital to lobbying at the UN, as discussed in Chapter 1 of this thesis.<sup>932</sup> In response, Vijaya Lakshmi Pandit sent the leader of the Indian delegation to meet with Margery Corbett Ashby and Lemkin to discuss the Genocide Convention.<sup>933</sup> With this connection made, Margery Corbett Ashby continued to persuade women of the IAW to back calls for a Genocide Convention.

Lemkin’s account of this meeting with Vijaya Lakshmi Pandit is similar, as he recalls the frantic hunt for signatures for the General Assembly Resolution on Genocide in 1946.<sup>934</sup> However, he describes discussing genocide directly with Vijaya Lakshmi Pandit, before she signed it.<sup>935</sup> Lemkin would later credit Margery Corbett Ashby for this connection, as we will see below. Margery Corbett Ashby helped to make the connection between Lemkin and Vijaya Lakshmi Pandit, which subsequently led to the Indian signature of the Resolution, the third and final one needed. Lemkin would later write in an article that he had “deep gratitude” to Vijaya Lakshmi Pandit and the other signatories of the Resolution for their initial sponsorship.<sup>936</sup> Beyond this,

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<sup>930</sup> The interesting point is made by Abtahi and Webb that India, Cuba and Panama as the initial signatories of the Declaration were not European countries who had been a part of the Holocaust, see: Abtahi and Webb, ‘Secrets and Surprises,’ 301.

<sup>931</sup> Morgan, *Transforming Law*, 41.

<sup>932</sup> Morgan, *Transforming Law*, 41.

<sup>933</sup> Corbett Ashby, *Memoirs*, 205.

<sup>934</sup> Lemkin mis-remembers Corbett Ashby as President of the World Alliance of Women, rather than the International Alliance of Women. This error has not been addressed or corrected in either Frieze’s work or Irvin-Erickson’s work.

<sup>935</sup> Lemkin and Frieze, *Totally Unofficial*, 123.

<sup>936</sup> Lemkin, ‘Genocide as a Crime,’ footnote 8, 149.

Vijaya Lakshmi Pandit remained a strong advocate for the Genocide Convention at the United Nations.

Later that month, Lemkin sent Margery Corbett Ashby a copy of the UNGA Draft Resolution and Report on Genocide which was dated December 6, 1946.<sup>937</sup> An interesting observation can be made in this document, the section on comparing the crime of genocide to other crimes is underlined as such: “it was not necessary to compare genocide to other crimes such as piracy and traffic in women, as had been suggested in some of the proposals before the Sub-Committee.”<sup>938</sup> This is relevant as it shows Lemkin’s displeasure at the Convention drafting discussions’ repeated comparison between the trade in women and children and the Genocide Convention, a common refrain during the drafting as outlined in Chapter 4.

In a letter before Christmas in 1946, Lemkin thanked Margery Corbett Ashby “again and again” for her dedication to the cause of outlawing genocide, from helping to get the Resolution passed to placing the issue of genocide on the agenda at IAW meetings.<sup>939</sup> He wrote that he almost killed himself trying to talk to the lawyers from each of the delegations before the passing of the Resolution.<sup>940</sup> Dr Hanna Rydh was particularly helpful in the passing of the Resolution; Dr Rydh had cabled the Swedish delegation in the name of IAW to ask for their support and had also encouraged the Swedish delegation to cable Trygve Lie to raise the profile of the Resolution.<sup>941</sup> Going forward, Lemkin wrote that he believed that outlawing the crime of genocide was a “noble mission” for women around the world, and he hoped that women’s organisations around the world would persuade their governments to support the cause of outlawing genocide, particularly in national parliaments. Margery Corbett Ashby was urged by Lemkin in this letter to share copies of the Resolution among IAW

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<sup>937</sup> A/C.6/120, ‘United Nations General Assembly, Sixth Committee: The Crime of Genocide Draft Report and Proposed Resolution Adopted by Sub-Committee 3, 6 December 1946,’ The Women’s Library, LSE, 7MCA/C/23.

<sup>938</sup> A/C.6/120, ‘United Nations General Assembly, Sixth Committee: The Crime of Genocide Draft Report and Proposed Resolution Adopted by Sub-Committee 3, 6 December 1946,’ The Women’s Library, LSE, 7MCA/C/23.2.

<sup>939</sup> Letter from Raphael Lemkin to Margery Corbett Ashby, December 19, 1949, The Women’s Library, LSE, 7MCA/C/23.

<sup>940</sup> Letter from Lemkin to Corbett Ashby, December 19, 1949.

<sup>941</sup> Letter from Lemkin to Corbett Ashby, December 19, 1949.

members in England and abroad, and Lemkin was keen to stay in touch with her on the topic of genocide.<sup>942</sup>

As we can see in the record discussed below in this chapter, the IAW did indeed share this Resolution amongst its global membership in early 1947. The relationship between Lemkin and Margery Corbett Ashby continued at least until late 1948. In October 1948,<sup>943</sup> when the UN meetings on the creation of the Genocide Convention were in full-flow, Margery Corbett Ashby and Lemkin were both in Paris and Lemkin wrote to Margery Corbett Ashby asking for a meeting.<sup>944</sup> There is no data in the archives to illuminate on the subject of this meeting, however.

## 1946

Following the end of World War Two and the creation of the United Nations, evidence in the archives illustrate how, in 1946, the IAW began to shape how it would interact with the newly formed UN and its institutions and solidified their core advocacy focuses. The women who comprised the IAW had been successful advocates for women's votes and had previously worked with the League of Nations. Engaging with the UN was therefore well within the capabilities of the IAW, and in 1946 we see how the IAW worked effectively with the UN. This section on IAW activities in 1946 provides a broader overview of its goals at the new UN. Also in this chapter, the broader feminist aims of the IAW will be discussed in order to provide context.

The IAW's overriding goal was the inclusion of women's rights in the UN's developing norm-setting, and the inclusion of women in the UN's workforce. In August 1946 the IAW held their Fourteenth Congress in Interlaken in Switzerland where these goals were reaffirmed. At Interlaken, they asked governments to ratify the UN Charter and promote women's political rights in their countries.<sup>945</sup> Additionally at the Congress the IAW strongly re-affirmed women's rights, equality between the sexes, and the

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<sup>942</sup> Letter from Lemkin to Corbett Ashby, December 19, 1949.

<sup>943</sup> This was just after Ikramullah's statement to the Committee.

<sup>944</sup> 'Correspondence to Corbett Ashby, October 28, 1948,' Lemkin Correspondence, 1948, box 1, folder 19, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>945</sup> International Alliance of Women, 'Report of the Fourteenth Congress, Interlaken, August 10-17, 1946,' The Women's Library, LSE, 2IAW/1/c/09, 14.

importance of the economic position of the housewife. In her address to the Congress, Margery Corbett Ashby declared the desire to have more women in positions of power.<sup>946</sup> Further, at the Interlaken Congress, the first since the beginning of the war, the IAW strongly reiterated the need for equal pay for equal work. This point was illustrated by drawing attention to the work women had undertaken during the war, not dissimilar to the argument for women's suffrage following World War One.<sup>947</sup> IAW also promoted equality within a marriage, noting that marriage should not restrict a woman's right to salaried work: "the under-payment of women leads to a lowering of the whole standard of the workers and to an under-valuation of women as persons and citizens with wide and undesirable social consequences."<sup>948</sup>

The organisation also called for adequate childcare for families who want to work, and the sharing of domestic responsibilities so to lighten the load on women.<sup>949</sup> IAW's strong feminist goals continued to inform the work undertaken at the UN. Whilst the IAW's broader advocacy of women's economic inclusion is beyond the scope of this thesis, the reiteration of their revolutionary feminist aims informs how the IAW approached the concept of genocide, and how it informed the approach taken by Lemkin to argue the case for outlawing genocide with the IAW and its members.

One of the resolutions passed at the Interlaken meeting in 1946 on the traffic of women noted that, although "acts of prostitution are anti-social" they are the matter of decision for men and women and therefore should not be a legal offence. That being said, they did declare that the UN should ratify the treaty on trafficking women, and linked prostitution to venereal diseases.<sup>950</sup> This is purely an interesting overlap with the previous chapter on obscenity and moral debasement, and provides a female perspective on this topic, and it is interestingly similar to the male perspective in Chapter 5 of this thesis. IAW also raised at Interlaken the horrific crimes against the Jews during the Holocaust and noted how there were still many Jews still in

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<sup>946</sup> International Alliance of Women, 'Report of the Fourteenth Congress,' 6.

<sup>947</sup> International Alliance of Women, 'Report of the Fourteenth Congress,' 14.

<sup>948</sup> International Alliance of Women, 'Report of the Fourteenth Congress,' 15.

<sup>949</sup> International Alliance of Women, 'Report of the Fourteenth Congress,' 16.

<sup>950</sup> 'Programme of the Fourteenth Congress, Kursaal, Interlaken, Switzerland, August 10-17, 1946,' The Women's Library, LSE, 2IAW/1/C/09.

concentration camps despite the war ending.<sup>951</sup> IAW records provide a relevant illustrative example of the IAW using new international norms as a framework to raise human rights concerns in relation to the Jewish population. The IAW called for UN action on this issue of people still residing in concentration camps.<sup>952</sup> In this early example, we can see IAW's advocacy taking the shape of what Keck and Sikkink call "accountability politics," namely holding those in power to account for previously stated principles;<sup>953</sup> IAW sought to hold the UN accountable for the plight of those still residing in concentration camps long after the war had ended.

## 1947

As with WILPF, we can see the IAW's growing interest with genocide begin in 1946 and 1947 as they began to observe this new concept being seriously debated within the UN. While a majority of IAW's advocacy on outlawing genocide comes later, these early years help trace the inception of this advocacy as it comes organically by virtue of IAW's presence and standing within international fora.

By 1947 the IAW was monitoring activities within the UN and reporting back to its members around the world. The IAW began to raise the profile of the crime of genocide with their global membership in early 1947, around the time when the UN Secretary General and ECOSOC debated where the responsibility for fleshing out the Genocide Convention should sit.<sup>954</sup> As early as February 1947, the IAW reproduced a whole section of the Resolution on Genocide, as adopted two months earlier, in their international journal *International Women's News*.<sup>955</sup> This article was purely a reproduction, and there was no comment or recommendation attached to the article, although we can assume that Margery Corbett Ashby's letter exchange with Lemkin and his request to share information on the Declaration, discussed earlier, could have

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<sup>951</sup> 'Report of the Fourteenth Congress,' 19-20.

<sup>952</sup> International Alliance of Women, 'Fourteenth Congress of the International Alliance of Women, Interlaken, August 1946, Text of the resolutions as adopted,' (Fourteenth Triennial Congress, 1946) The Women's Library, LSE, 2/IAW/1/C/9.

<sup>953</sup> Keck and Sikkink, *Activists*, 16.

<sup>954</sup> Schabas, *Genocide in International Law*, 59.

<sup>955</sup> International Women's Alliance, *International Women's News*, February 1947, Vol. 41, No. 5, The Women's Library, LSE, 2IAW/1/G, 56.

played a part in this reproduction. Following on from this initial sharing of information with its membership, IAW advocacy went further. In the spring of 1947, the IAW had reached out to the UN in support of outlawing genocide; in the minutes of the Board meeting of IAW held in Stockholm, April 28 to May 2, 1947, it is recorded that the IAW “had sent a telegram in support of the adoption of the Assembly of a resolution making genocide (mass murder of sections of any population) an international crime, and that this resolution had been adopted.”<sup>956</sup>

## 1948

Margery Corbett Ashby and the IAW’s advocacy on outlawing genocide built on these developments throughout 1948. In April 1948 in *International Women’s News*, Margery Corbett Ashby penned an article titled ‘Genocide’ in which she highlighted the role of the Delegation of India to the United Nations Vijaya Lakshmi Pandit in introducing the Genocide Resolution to the General Assembly after an appeal by the IAW.<sup>957</sup> The article updates the IAW membership on the progress of the draft Convention on Genocide at the United Nations, as well as next steps for its submission. Several fundamental questions relating to the question of genocide were voiced in this article:

*The principle [sic] political questions are as follows:-*

- 1. What human groups should be protected? Should all human groups, whether racial, national, linguistic, religious or political, be protected or only some of them.*
- 2. Should the notion of “physical genocide”, “political genocide”, and “cultural genocide” be accepted or only some of them?*

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<sup>956</sup> International Alliance of Women, ‘Minutes of the Board meeting of IAW held in Stockholm, April 28 to May 2, 1947,’ The Women’s Library, LSE, 2/IAW/1/B/1/8.

<sup>957</sup> Margery Corbett Ashby, *International Women’s News*, April 1948, Vol. 42, No. 7, The Women’s Library, LSE, 2IAW/1/G, 100.

3. *Should the Convention aim only at the punishment of acts committed by rulers or also of acts committed by private individuals and officials?*

4. *Should jurisdiction be given to international tribunals to deal with acts of genocide?*<sup>958</sup>

As we can see, these questions mirror those same questions being debated by the Ad Hoc Committee on Genocide as recorded in the *Travaux Préparatoires*. Margery Corbett Ashby wrote in this article how these questions must be answered by ECOSOC, should they hold-up the progress of the Convention. The article concludes with a call to all National Sections of the IAW to “discuss this question possibly with other national groups interested, to send it their [sic] conclusions to their Governments for transmission to their delegate to the Economic and Social Council.” Margery Corbett Ashby ended the article with this question to readers: “Each month seems to bring greater intolerance and persecution to new groups of people. Can we women unite to stem the tide?”<sup>959</sup>

The flow of advocacy on the Convention continued. An administrative letter from the IAW Secretary, Katherine Bompas, to Julia Stewart (Liaison Secretary of the World Federation of the United Nations Association) on June 28, 1948, was in reply to a letter dated June 22, on the topic of the Genocide Convention. This letter from Bompas is more of an administrative letter, outlining the procedures of engagement of IAW. However, in this letter, the support of IAW on the cause of genocide is reiterated, and noted that some advocacy on genocide has already been done by the IAW, although it does not go into further detail.<sup>960</sup> Additionally, a brief update on the progress of Genocide at the UN was given to IAW members in the September 1948 issue of *International Women’s News*: “a strong resolution on Genocide at the end of

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<sup>958</sup> Corbett Ashby, *International Women’s News*, 100.

<sup>959</sup> Corbett Ashby, *International Women’s News*, 100.

<sup>960</sup> Letter from Katherine Bompas to Julia Stewart, June 28, 1948, [U.S. Committee for the U.N. Genocide Convention] Correspondence, January – June 1948, box 2, folder 8, Raphael Lemkin Collection (P-154), Center for Jewish History.

the report [following the Third Session of the Human Rights Council] urged action on the subject by the Economic and Social Council”.<sup>961</sup>

## 1949

By 1949 Margery Corbett Ashby had resigned as IAW President, handing over the reins to Dr Hanna Rydh<sup>962</sup> taking on the position of Honorary President of IAW whilst Dr Rydh was President.<sup>963</sup> The support of IAW for outlawing genocide did not wane however. On the contrary, the archival documents illustrate how IAW increased their support and information-sharing around the Convention in 1949.

In their January 1949 issue of the *International Women's News*, the IAW was recorded as being “glad to announce some progress” on the topic of genocide, that the Sixth Committee had adopted a Nineteenth Article Draft Convention on Genocide and updated the membership on the two new resolutions on Genocide which were adopted (on the role of the International Law Commission in the drafting of the Convention, and the application of the Convention to dependant territories).<sup>964</sup> The point was made in this article that the IAW was “the first international body to press for the Assembly to take up the outlawry of mass murder” referring to the signature of Vijaya Lakshmi Pandit on the genocide resolution.<sup>965</sup> Later in 1949, *International Women's News* once again updated its readers on the progress of the Genocide Convention, noting that although twenty-six states had signed the Convention only three had ratified as of July. This article then continued on to list the countries which have ratified and signed.<sup>966</sup>

At their Fifteenth Congress, held in Amsterdam in 1949, the IAW reported that “[w]e launched the declaration against Genocide in the [UN] Assembly through the

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<sup>961</sup> *International Women's News*, September 1948, Vol. 42, No. 11, The Women's Library, LSE, 2IAW/1/G, 165.

<sup>962</sup> Corbett Ashby, *Memoir*, 204.

<sup>963</sup> 'International Alliance of Women,' Pamphlet, The Women's Library, LSE, 2/IAW/1/C/09.

<sup>964</sup> International Alliance of Women, 'Genocide,' *International Women's News*, Vol. 43, No. 4 (January 1949), available at The Gerritsen Collection, 6.

<sup>965</sup> International Alliance of Women, 'Genocide,' 6.

<sup>966</sup> International Alliance of Women, 'Genocide,' 12.

good offices of Vijaya Lakshmi Pandit and can warmly congratulate ourselves on the Declaration now adopted.”<sup>967</sup> This was recollecting again that it was Margery Corbett Ashby who made the introduction between Lemkin, who was seeking signatures for the Declaration on Genocide, and IAW ally Vijaya Lakshmi Pandit who signed the declaration on behalf of India in New York in 1946. In this congress report, IAW resolved to continue to concentrate on the “[s]tudy and support of the Convention on Genocide in order to secure its ratification by the different countries.”<sup>968</sup> The IAW went on to state that “The Alliance has an historical interest in these two outstanding accomplishments at the United Nations. As far back as 1942, the Alliance was instrumental in drafting a resolution, passed by the Liaison Committee at the time, which incorporated the broad principles of both the Declaration of Human Rights and the Genocide Convention.”<sup>969</sup> IAW also strongly called for more women in positions of decision-making at the UN,<sup>970</sup> continuing their main cause of increasing the number of women in the workforce and in decision-making positions.

As the IAW looked forward, beyond 1949, to their engagement with the UN, advocacy on outlawing genocide crystallised into a key component of their work. The IAW programme for the years 1949-1952 included, as part of the IAW initiative to “work for lasting world peace through the United Nations,” their commitment to continuing “study and support of the draft Convention of Genocide in order to secure its adoption by the General Assembly of the United Nations.”<sup>971</sup>

## 1950

True to their commitment, the IAW’s advocacy on outlawing genocide continued into 1950. The sharing of information about progress in the UN was a key method of advocacy adopted. This is akin to Keck and Sikkink’s theory of “information

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<sup>967</sup> International Alliance of Women, ‘International Alliance of Women, Report of the Fifteenth Congress, Amsterdam, July 18th – 24th, 1949,’ The Women’s Library, LSE, 2/IAW/1/c/10 1949-1952, 20.

<sup>968</sup> International Alliance of Women, ‘Report of the Fifteenth Congress,’ 52.

<sup>969</sup> International Alliance of Women, ‘Report of the Fifteenth Congress,’ 77.

<sup>970</sup> ‘Report of the Fifteenth Congress,’ 79-80.

<sup>971</sup> International Women’s Alliance, *International Women’s News*, Vol. 43, No. 11 (September 1949), The Women’s Library, LSE, 2IAW/1/G, 157.

politics” of generating and sharing information (on the crime of genocide) with where it would have the greatest impact (IAW’s global membership, including those in countries which have yet to ratify).<sup>972</sup> This theme is particularly strong throughout this ‘1950’ section of the chapter as the Genocide Convention opened to states for ratification and the subsequent drive to secure the twenty accessions and ratifications required.

In the March 1950 edition of *International Women’s News*, the IAW updated its readers once more on the progress of outlawing genocide at the United Nations, emphasising once again that the very progress of the Convention was due to Vijaya Lakshmi Pandit’s initiative in the first instance, recalling the 1946 Declaration signature by India. In this article, IAW calls upon their National Sections to urge their governments for ratification, noting that they have already sent invitations to countries and asking members in Finland, Iceland and Italy in particular to “put pressure on their governments.”<sup>973</sup> Continuing this theme to update members of the IAW on the progress of the Genocide Convention, *International Women’s News* published an extensive article penned by then-former President Margery Corbett Ashby on the status of the Convention in the October edition of the newspaper.<sup>974</sup> This detailed and informed article outlined several reasons why the Convention should be ratified, each reason appealing to a group of peoples such as the religious, people of small nations, peace-loving people, economists, and labour groups.<sup>975</sup> Most notably amongst these groups targeted in this article is women:

*Women’s groups are concerned with the fact that women are in the first line of attack by genocide, especially when it assumes biological forms, such as sterilisations or breaking up of families. Women’s organisations helped in 1948 in Paris to include paragraph “E” in*

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<sup>972</sup> Keck and Sikkink, *Activists*, 39.

<sup>973</sup> International Women’s Alliance, *International Women’s News*, Vol. 44, No. 5 (March 1950), The Women’s Library, LSE, 2IAW/1/G, 64.

<sup>974</sup> Margery Corbett Ashby, ‘Memorandum on the Ratification of the Genocide Convention,’ *International Women’s News*, October 1950, Vol. 44, No. 12, available at The Gerritsen Collection, 155-156.

<sup>975</sup> Corbett Ashby ‘Memorandum on the Ratification,’ 155.

*Article II of the convention<sup>976</sup> which deals with kidnapping of children and which now covers the case of 28,000 Greek children kidnapped from Greece.<sup>977</sup>*

The inclusion of sterilization in this article is a notable anomaly given that this is absent from women's advocacy elsewhere. The mention of "biological forms" in this article was, we can assume, intended to indicate further crimes encompassing sexual violence and other gendered harms related to biological techniques of genocide as discussed in Chapter 4. This connection between women and biological techniques of genocide, as a method of garnering attention and support for the Convention, is relevant. It is relevant as this is not a point of advocacy often raised by other women's organisations. Margery Corbett Ashby's article then recommended clear actions to be taken by the IAW members: push for Parliamentary ratification of the Convention through the Ministry of Foreign Affairs or through members of Parliament to advocate the Ministry of Foreign Affairs; reach out to the Ministry of Justice to advocate for the Convention to speed-up the process; approach leaders of political parties and committees to expedite the ratification (and avoid making genocide a one-party issue); advocate for public statements of support for the Convention from leading political figures; raise the profile of the Convention through writing to newspapers; and finally to update the IAW on the actions the members have taken.<sup>978</sup>

## 1951

As with WILPF, we can see that after the Genocide Convention entered into force, there was a decline in engagement and advocacy on this issue and a pivot towards concerns of nuclear warfare. There was an update on the ratification of the Convention in *International Women's News*:

*Following the deposit of the instruments of ratification or the number of ratifications provided for the entry into force of the Genocide*

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<sup>976</sup> (e) Forcibly transferring children of the group to another group.

<sup>977</sup> Corbett Ashby, 'Memorandum on the Ratification,' 155.

<sup>978</sup> Corbett Ashby, 'Memorandum on the Ratification,' 155-156.

*Convention, the Convention will enter into force on January 12,  
1951.*<sup>979</sup>

Beyond this however, advocacy waned. IAW protested in 1952 “particularly against all means of mass destruction which threaten the civil population including atomic and bacteriological warfare,”<sup>980</sup> and took a stand against issues such as unequal pay, FGM, political participation and education alongside their promotion of human rights and dignity.<sup>981</sup> We see no specific engagement on the topic of outlawing genocide from 1951 onwards. As with WILPF, it is observable that there was no further attempt by the IAW in seeking further ratifications or monitoring compliance of this Convention. There was no call from these women’s organisations for the institution of a criminal court which would prosecute crimes under the Convention.

## **Conclusion**

By showcasing materials relating to the work of the IAW and its members, this chapter provided further evidence supporting the argument that a female history of the creation of the Genocide Convention exists. As with WILPF, the IAW’s global reach proved to be a great asset to Lemkin and the cause of outlawing genocide. More specifically, the ally he found in Margery Corbett Ashby has been shown in this chapter to be indisputably vital to the outlawing of genocide at the UN. Not only did Margery Corbett Ashby introduce Lemkin to Vijaya Lakshmi Pandit, the third and final signature on the Declaration which commenced the discussions of the Genocide Convention, she was also clearly personally passionate about the issue of genocide. This is understandable given the suffering of IAW members during the Holocaust, but also is illustrative of her wider work on equality and dignity.

We see similar advocacy strategies between the IAW and WILPF in how they deployed a range of methods to raise the profile and call for action on the Genocide

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<sup>979</sup> International Alliance of Women, ‘United Nations Genocide Convention,’ International Women’s News, January 1951, vol. 45, no. 3, The Women’s Library, LSE, 2IAW/1/G. Translated using Google Translate.

<sup>980</sup> International Alliance of Women ‘United Nations Genocide Convention,’ 32.

<sup>981</sup> International Alliance of Women ‘United Nations Genocide Convention,’ 32.

Convention. This chapter has detailed similarities such as continuous awareness raising within and outside the organisation through information sharing, as well as the allyship of key influential organisation members to push for the Convention.

To answer the research question of the extent to which women were influential in the adoption and ratification of the Convention, this chapter provides data; a clear link between IAW President Margery Corbett Ashby and the commencement of the journey of outlawing genocide at the UN was exposed in this chapter when Margery Corbett Ashby introduced Lemkin to Vijaya Lakshmi Pandit. This is a clear incidence of great influence the IAW had in the history of the Convention. Margery Corbett Ashby's personal relationship with Lemkin, in addition to her devotion to the cause, ensured the IAW would become a useful tool for Lemkin. This chapter illustrated different advocacy techniques employed by the IAW to gain traction, although unlike WILPF in the UK there is no data in the materials of IAW influence within national parliaments. Whilst this advocacy is difficult to measure definitively, this chapter asserts that the IAW indisputably lent its international reach to the Convention.

## Chapter 10 - “May it soon be ratified!” - International Council of Women

### Introduction

The International Council of Women, or ICW, was founded in Washington D.C., USA, in 1888 by Susan B. Anthony and fellow American feminists.<sup>982</sup> At its inception, there were fifty-three National Councils of the ICW, each representing different countries with overarching goals of women’s rights, equality and peace.<sup>983</sup> A presence within the League of Nations, the ICW worked closely with its successor the United Nations and was subsequently given ECOSOC consultative status.

As with WILPF and IAW, we can see in historical documents that national sections of the ICW were also victims during World War Two. The *Women Under Axis Rule* report written by Allied countries recorded that women’s organisations in Norway, such as the National Council of Norwegian Women, ICW’s national section, their Executive Council all resigned when the Nazis appointed their own controller.<sup>984</sup> This report also later makes the broad point that when Luxembourg was invaded, “all women’s organisations, whether sports associations, social bodies or other institutions, were dissolved, and all their movable and immovable property was confiscated for the benefit of the Germans.”<sup>985</sup>

As we will see in this chapter, comparatively there is less archival data on the activism of ICW on the cause of outlawing the crime of genocide than with WILPF or IAW. As a US-based organisation, some archival materials remain beyond the reach of the author (see ‘methodology’ in Chapter 2). This chapter will draw out themes similar to the previous two chapters on the different advocacy strategies employed by ICW. However, in this chapter the point is made that the ICW breaks-the-mould in drawing attention to the role of sexual violence against women and girls, in particular the term “breeding”. The argument is made that this is the first time sexual violence is so

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<sup>982</sup> International Council of Women, ‘International Council of Women (ICW): History,’ accessed May 3, 2022, <http://www.icw-cif.com/01/03.php>.

<sup>983</sup> ‘International Council of Women (ICW): History.’

<sup>984</sup> United Nations, *Women*, 13.

<sup>985</sup> United Nations, *Women*, 11.

explicitly mentioned in the archival materials from these organisations during this time period. This chapter draws out similar themes as with the previous chapters on the advocacy on the removal of children as an act of genocide by the ICW. As with Chapters 8 and 9, this chapter will follow a chronological structure, in order to build a picture of how this organisation and its members were allies to the Genocide Convention.

### **Philadelphia Conference, 1947**

This chapter begins at the ICW conference in Philadelphia in 1947. Although references to genocide are few in this conference, it does provide an important indication of the organisation's work and the work of its members. For example, ICW member from Ireland and pioneering female lawyer and lecturer, Professor Frances Moran, attended the Nuremberg Trials to witness the proceedings, noting how the Nazis looked "so ordinary, like men who had sat up all night in a third-class railway carriage."<sup>986</sup> At the commencement of the Conference, there was a pause of remembrance for Mrs Plaminkova who, as we saw in Chapter 9, was tortured and subsequently killed by the Nazis.<sup>987</sup> Mrs Plaminkova was a well-known figure among international women's organisations, and before her execution was fondly dubbed "Madame Plam".<sup>988</sup> At this conference, Mrs Plaminkova was honoured with a memorial service and organ recital, and a record of the conference noted how "tears were shed by women from many lands, united in honouring a very great personality whose memory is keenly alive today in our hearts."<sup>989</sup>

On the occasion of this Conference, UN Secretary-General Trygve Lie sent a letter to ICW President Dr Jeanne Eder thanking the organisation for its work and

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<sup>986</sup> International Council of Women, 'International Council of Women: The Philadelphia Conference,' (November 1947), The Women's Library, LSE, 5ICW/B/13 Philadelphia 1947, 6; R.V. Heuston quoted in Matthew Russell, 'Moran, Frances Elizabeth,' *Dictionary of Irish Biography*, accessed January 16, 2023, <https://www.dib.ie/biography/moran-frances-elizabeth-a5958>.

<sup>987</sup> International Alliance of Women, 'International Alliance of Women, Report of the Fourteenth Congress, Interlaken, August 10-17, 1946,' The Women's Library, LSE, 2IAW/1/c/09, 42.

<sup>988</sup> 'Františka Plamínková (1875-1942).'

<sup>989</sup> 'The Philadelphia Conference,' 4.

iterating the “important work of your great organisation, which has rendered, is rendering and will continue to render, invaluable service to the United Nations.”<sup>990</sup>

The ICW made broad commitments at this Conference to help states and people “make the United Nations and its agencies powerful ways and means of establishing safe, progressive and noble civilizations,”<sup>991</sup> and made recommendations for states to ratify the UN Conventions, although did not specifically single-out the Genocide Convention.<sup>992</sup> At this Philadelphia Conference however, we can see the organisation’s framework for advocacy on women in conflict: ICW’s Moral Welfare committee proposed a particularly relevant resolution at this Conference:

*Considering that among war crimes affecting civilian population in occupied countries, two especially affecting women were committed on a mass scale, crushing physically and morally thousands of lives.*

- 1. Criminal assaults against girls and women (including violations and forcible detention in brothels) and,*
- 2. An organized system, unprecedented in history, of using youths and young girls for compulsory breeding of children.*

*The I.C.W. urges the United Nations, the International Red Cross and all national and international bodies concerned to draft a convention and work for an international agreement expressing the utmost moral condemnation of such crimes and ensuring the adequate punishment of criminals found guilty of these offenses.*<sup>993</sup>

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<sup>990</sup> Letter is reproduced in: ‘International Council of Women: The Philadelphia Conference,’ November 1947, The Women’s Library, LSE, SICW/B/13 Philadelphia 1947, 8.

<sup>991</sup> Letter from Laura Dreyfus-Barney, August 1947, Paris, ‘Postwar Conference of the International Council of Women held at Philadelphia, September 4-12, 1947: Report of the Peace and International Relations Committee of the International Council of Women,’ The Women’s Library, LSE, SICW/B/13 Philadelphia 1947.

<sup>992</sup> International Council of Women, ‘Programme for the first Post-War Conference of the International Council of Women, September 5th to 12th, 1947,’ (November 1947), The Women’s Library, LSE, SICW/B/13 Philadelphia 1947, 8.

<sup>993</sup> International Council of Women, ‘Proposed by the Moral Welfare Committee,’ The Women’s Library, LSE, SICW/B/13 Philadelphia 1947.

This is the first explicit statement by an international women's organisation which so forcibly draws attention to sexual violence experienced by women, rather than the broader biological methods of genocide. The resolution also went beyond this to note the act of using women and girls for "breeding". This is similar to the ICW's Peace Committee during World War One which raised the profile of "the horrible violation of womanhood that attends all war."<sup>994</sup> The use of women for "breeding" as noted here is also focussing on the biological abilities of women similar to those espoused in the drafting of the Convention as discussed in Chapter 4. In this resolution, the Moral Committee links forced prostitution and rape to a moral (and physical) destruction, as we have seen in Chapter 5 of this thesis.

Although framed within war crimes, this resolution and in particular this statement on breeding, is core to genocide and the gendered harms experienced by women in genocidal contexts. The reference to the morally crushing nature of these crimes also fits within the original scope of moral techniques of genocide and the moral debasement as we have come to understand these acts. This resolution also called on drafters of any UN convention to recognise these vulnerabilities of women, the first time we see an international women's organisation requesting this recognition directly in this way. The same time this resolution was being passed by the ICW in Philadelphia, the drafting of the Genocide Convention was underway.

Another declaration made at the Philadelphia conference stated that the ICW "condemns the crimes committed against humanity and against the dignity of the individual in the unsettled condition" in World War Two, and "considers the recognition and guarantee of human rights as an essential condition for the maintenance of peace and for the establishment of the rule of law," and that women of the world should encourage peaceful resolutions to aggressive wars.<sup>995</sup> Again, we see the concept of dignity, and how this can be taken away, reflected in this ICW resolution.

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<sup>994</sup> Harrington, *Politicization*, 55.

<sup>995</sup> International Council of Women, 'Declaration' (Philadelphia, 1947), The Women's Library, LSE, 5ICW/B/13 Philadelphia 1947.

Another resolution at this conference eventually did note the Genocide Convention. This resolution was proposed by Peace and International Relations Committee in Philadelphia:

*The International Council of Women in conference assembled in Philadelphia, September 5-12, unequivocally [sic] supports the principle of the proposed international agreement to be presented to the United Nations General Assembly at Lake Success later this month for a Convention for the Prevention and Punishment of Genocide by an International Criminal Tribunal.*

*With the adoption of this Convention it urges its national councils to work in their respective countries for prompt signature and ratification.<sup>996</sup>*

Scribbled notes at the bottom of this resolution document in The Women's Library archives at LSE note "genocide= physical, biological, cultural. Dayton Beach, Florida; National Council of Negro Women, Miss Kussell spoke at it." The National Council of Negro Women, as we have seen in the previous WILPF chapter, collaborated with WILPF on events relating to genocide in Washington D.C.,<sup>997</sup> and here we see potential evidence of another collaboration on the cause of outlawing the crime of genocide among these groups. There was no further evidence available in the archives or elsewhere to enlighten us on this meeting however. This provides an interesting insight into one of the core features of these women's organisations; they did not work in isolation on the cause of outlawing genocide. This presents a challenge when attempting to establish the extent of influence of these women (a research question of this thesis) as there were many organisations working to ensure the success of a Convention sometimes with women's organisations but often in isolation. Whilst this presents a challenge, we can still showcase the influential actions of these women's organisations.

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<sup>996</sup> International Council of Women, 'Proposed by Peace and International Relations Committee,' The Women's Library, LSE, 5ICW/B/13 Philadelphia 1947.

<sup>997</sup> Public Meetings Notices, 1949-1950, box 2, folder 6, Raphael Lemkin Collection (P-154), Center for Jewish History.

This resolution was reproduced in a letter to Julia Stewart, Liaison Secretary of the World Federation of the United Nations Association, in June 1947 following the conference in Philadelphia. In this letter, ICW President Dr Eder informed Julia Stewart that a copy of the same letter and enclosed ICW resolution was sent to President of ECOSOC and Lebanon's representative at the Genocide Convention drafting sub-committee Charles Malik. As we have already seen in the previous chapter on the *Travaux Préparatoires*, Lebanon was heavily involved in discussions on gendered harms in the Genocide Convention, from measures intending to prevent births within a group to procreation. There is the potential that Dr Eder had already identified the representative as a key ally as a result. Dr Eder also sent a copy to Mr John A. F. Ennals, Secretary General of World Federation of United Nations Associations.<sup>998</sup>

## 1948

Throughout 1948, the ICW continued to advocate for the Convention and more specifically on the act of removing children from a group. An article in the ICW's international newsletter, *International Council of Women Bulletin*, in May 1948 highlighted the plight of women and children in Greece, noting explicitly that “[w]e all know that in war, women and children are in special and grave danger,” although it situates the situation in Greece firmly within human rights violations and crimes against humanity, rather than within the crime of genocide.<sup>999</sup> In this, we see the recognition that women have different vulnerabilities and should be afforded different protection. These concerns of the removal of Greek children were ultimately re-framed as genocide a year later in September 1949, when the ICW declared it happy with the inclusion of the removal of children as an act of genocide: “The Greek women’s moving appeal has thus found its conclusion in an international convention.

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<sup>998</sup> Letter from Jeanne Eder, The President of International Council of Women, to Miss Julia Stewart, World Federation of United Nations Associations, June 14<sup>th</sup>, 1948, [U.S. Committee for a U.N. Genocide Convention] Correspondence, January-June 1948, box 2, folder 8, Raphael Lemkin Collection (P-154), Center For Jewish History.

<sup>999</sup> International Council of Women, ‘International Council of Women Bulletin,’ Vol. XXVI, No. 1 (May 1948), The Women’s Library, LSE, 5ICW/P/011, box 42, 21.

May it soon be ratified!”<sup>1000</sup> The focus on the removal of children, in particular Greek children, was also evident in Chapter 9 of this thesis on the IAW. It is, importantly, one of the only gendered acts of genocide around which these organisations rallied to lobby for ratification. We saw briefly in Chapter 9 a mention from IAW of sterilization and biological techniques broadly as acts of genocide.

Speaking of women’s organisations broadly, this method of genocide was not as widely adopted as a point of advocacy as the removal of children was (although as discussed in this chapter, the ICW did raise this outside the framework of genocide). Could this be as a result of an avoidance of contemporaneously contentious topics, such as sexual violence, by these groups as suggested by Harrington as stemming from the politicisation of sexual violence during World War Two?<sup>1001</sup> Or, if we draw on the themes from Chapter 4 and 5 of the lack of female representation in decision-making positions and the pervasive conceptualisations of women as mothers and caregivers by those in decision-making positions, perhaps the act of removing children and sterilization were the only acts around which these women could organise? If a patriarchal international criminal legal system casts woman as mothers and caregivers, to challenge this by seeking a different recognition of women and gendered harms in the law could arguably be challenging. Furthermore, if we bring in a decolonial lens, it can be argued that sexual violence and gendered harms are understood differently to women from different cultures – the “local peculiarities of women” as Ní Aoláin describes it.<sup>1002</sup> The broad church of the ICW perhaps would have found it a challenge to appeal to its members to lobby on such issues as abortion, rape, or obstacles to marriage; these gendered harms represent different challenges to different women around the world and was more politically-charged in the post-war world.<sup>1003</sup> Whereas the removal of children as an act of genocide presents a distinctly non-political, less contentious, harm. It is possible that the ICW saw the value of this act of genocide as

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<sup>1000</sup> International Council of Women, ‘International Council of Women Bulletin,’ Vol. XXVII, No. 2/3 (September 1949), The Women’s Library, LSE, 5ICW/P/011, box 42, 39.

<sup>1001</sup> Harrington, *Politicization*, 89.

<sup>1002</sup> Ní Aoláin, ‘Learning the Lessons,’ 280.

<sup>1003</sup> Harrington, *Politicization*, 89.

appealing to their global bases, more so than other politicised and contested gendered harms.

The September 1948 edition of *International Council of Women Bulletin*, contained a comprehensive review of genocide as presented at the United Nations over three pages. The article cited Lemkin as the originator of the term, as well as listing familiar historical genocides such as the Hereros, Jews and the Romans in the pre-Christian era. The article proceeded on to discuss intent and motive of acts of genocide as a key component of the crime, as well as listing the acts of genocide to include (alongside mass killings) the restriction of births, segregation of the sexes and transfer of children, as well as the forms of cultural genocide.<sup>1004</sup> There is nothing to suggest that the ICW sought clarification on these gendered terms, however. This is perhaps just a reproduction of Lemkin's theory, and there is no evidence that the ICW rallied around, for example, the restricting births' as an advocacy point for the Genocide Convention despite awareness of such acts as "breeding" seen previously in this chapter. The exception, as we see, is the removal of children.

The support of the ICW for the Genocide Convention at the Philadelphia Conference was reiterated in this article before it was stated that the:

*ICW from its earliest years has always pressed for the rule of law (arbitration) so that the place of the use of force (war), and the passing of this convention would be another step to the establishment of law in world relations.*<sup>1005</sup>

In this article, it was also shared that the U.S. Committee for the United Nations Genocide Convention had reached out to the ICW asking for their help in communicating with respective governments to urge strong support for the adoption of the Convention and avoid further delays in its codification. "All National Councils would do well to consider this matter and take action, if possible, in accordance with the Philadelphia resolution on Genocide," this article stated, before continuing "[t]here

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<sup>1004</sup> International Council of Women, 'International Council of Women Bulletin.' Vol. XXVI, No. 3 (September 1948), The Women's Library, LSE, 5ICW/P/011, box 42, 9.

<sup>1005</sup> International Council of Women, 'International Council of Women Bulletin.' Vol. XXVI, No. 3 (September 1948), The Women's Library, LSE, 5ICW/P/011, box 42, 10.

is need of strengthening the attitude of some delegates towards the Convention.”<sup>1006</sup> Further, the article shared that in July 1948 the Biennial Convention of the National Federation of Business and Professional Women’s Club in the US passed a resolution outlawing the crime of genocide and shared this resolution with other ECOSOC-affiliated NGOs, asking the US delegation to the UN to have “courageous leadership” on the topic of the Genocide Convention.<sup>1007</sup> Lastly, this article highlighted a final action taken by the ICW on the topic of outlawing genocide. This was the signing of a petition presented by the USA Committee for the United Nations Genocide Convention to the UN General Assembly urging adoption of the Convention at the Third Session of the UN General Assembly. The article finished with a reproduction of the petition above which includes the equation of the Genocide Convention with the outlawing of trade in women and children.<sup>1008</sup>

In a letter from Lemkin to the ICW President Dr Jeanna Eder in November 1948, Lemkin thanked the organisation members for their help with the Genocide Convention, and for its support for the petition in support of the Convention.<sup>1009</sup> He informed Dr Jeanna Eder that the Convention faced opposition from delegates, particularly Britain and Belgium. In doing so, Lemkin asked for her help, to be in touch with her connections in these countries to advocate for a support of the Convention with the country representatives.<sup>1010</sup> There is no evidence in the archival materials to suggest that Dr Jeanna Eder either did or did not lobby her connections following Lemkin’s letter. With regards to Belgium however, we see in Lemkin’s letters how he leveraged specifically the ICW on this country’s ratification; a letter sent by Lemkin the following year (1949) to a Marc Somerhausen requested Marc to ask his wife, leader of the ICW’s Belgium National Council of Women, to urge Belgium’s ratification of the

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<sup>1006</sup> International Council of Women, ‘International Council of Women Bulletin,’ Vol. XXVI, No. 3, September 1948, The Women’s Library, LSE, 5ICW/P/011, box 42, 10.

<sup>1007</sup> International Council of Women Bulletin,’ Vol. XXVI, No. 3, September 1948, The Women’s Library, LSE, 5ICW/P/011, box 42, 11.

<sup>1008</sup> International Council of Women Bulletin,’ Vol. XXVI, No. 3, September 1948, The Women’s Library, LSE, 5ICW/P/011, box 42, 12.

<sup>1009</sup> Letter from Lemkin to Dr Eder, November 11, 1948, Lemkin Correspondence, 1948, box 1, folder 19, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>1010</sup> Letter from Lemkin to Dr Eder, November 11, 1948, Lemkin Correspondence, 1948, box 1, folder 19, Raphael Lemkin Collection (P-154), Center for Jewish History.

Genocide Convention.<sup>1011</sup> Mrs Somerhausen presumably agreed and lobbied the Belgium government, as Lemkin sent her a letter in January 1950 thanking her for the work of the Belgium Council of Women on genocide and for a resolution on genocide and asking for more assistance with attaining Belgium's ratification of the Convention.<sup>1012</sup>

In June 1950 Lemkin received a copy of a communication from ICW's Mrs Connie Sporborg to a Dorothy Lewis, which informed Dorothy Lewis that Connie Sporborg will be on the UN broadcast radio, *UN Today*, in which she spoke about her work on the Genocide Convention's ratification. This recording would then be shared with the National Council of Women, the national chapters of ICW.<sup>1013</sup> Connie Sporborg was another vital ally of Lemkin's; from conspiring with him on the best seating plan for their networking on genocide,<sup>1014</sup> to informing him of the success of lowan women's work on lobbying on genocide and upcoming publications,<sup>1015</sup> and later in 1951 speaking herself on the topic of outlawing genocide at a conference.<sup>1016</sup> She also appears to be an 'apostle' of the Convention.

## 1950

As we can expect, 1950 onwards saw a decrease in advocacy on the topic of outlawing genocide from the ICW, although not completely. In March 1950, the ICW outlined a 'Program of Action on Genocide' in its *Bulletin* newsletter, which was sent to the ICW by Lemkin. This programme began with a brief explanation and update on the

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<sup>1011</sup> From Lemkin to Marc Somerhausen, November 19, 1949, Lemkin Correspondence, August-December 1949, box 2, folder 2, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>1012</sup> From Lemkin to Mrs M Somerhausen, Lemkin Correspondence, 1950, box 2, folder 2, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>1013</sup> Correspondence from Dorothy Lewis to Constane Sporborg, June 30, 1949, [U.S. Committee for a U.N. Genocide Convention] Correspondence, 1949-1951, box 2, folder 10, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>1014</sup> Telegram from Mrs William Dick Sporborg, General Federation of Women's Club, U.S. National Commission of UNESCO, Lemkin Correspondence, August-December 1949, box 2, folder 2, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>1015</sup> Telegram from Mrs Sporborg, January 10, 1950, Lemkin Correspondence, 1950, box 2, folder 3, Raphael Lemkin Collection (P-154), Center for Jewish History.

<sup>1016</sup> Correspondence from Mrs William Dick Sporborg, February 18, 1951, Lemkin Correspondence, 1951, box 2, folder 4, Raphael Lemkin Collection (P-154), Center for Jewish History.

situation of the Convention as it was in the UN in March 1950. The remainder of this programme identified countries in which no action was needed on the Convention (Australia, Norway, Iceland, Ethiopia, Ecuador, Panama, and Guatemala), countries which only ratification was necessary and which should be pushed to do so through their Members of Parliament, countries which had neither signed nor ratified: “[t]heir governments should be asked to accede either by act of government or by act of government confirmed by act of parliament,” and finally non-members states which should be asked to accede.<sup>1017</sup> This is the evidence for ICW’s advocacy in 1950 on the Genocide Convention.

## 1951

We see in 1951 an increase in interest in the Genocide Convention, potentially as a result of the ICW’s Triennial Conference held that year in Athens. As may be expected given the lobbying of the Greek representative on removing children as an act of genocide seen in the *Travaux Préparatoires*, this subject featured heavily in this ICW’s Conference. For example, at this conference there were resolutions which called for the return of the abducted Greek children, although making no specific reference to genocide.<sup>1018</sup> Recalling Chapter 5 of this thesis on prostitution and morality and the influence of early women’s organisations in this narrative, at their 1951 conference the ICW called for ratification of Convention on Suppression of Prostitution and Traffic in Persons.<sup>1019</sup> There was an additional resolution from the Standing Committee on Moral Welfare requesting states ratify the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others as it was adopted by the UNGA on December 2, 1949.<sup>1020</sup>

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<sup>1017</sup> International Council of Women, ‘International Council of Women Bulletin,’ Vol. XXVII, No. 6 (March 1950), The Women’s Library, LSE, 5ICW/P/011, box 42, 16.

<sup>1018</sup> International Alliance of Women, ‘Resolutions adopted by the International Council of Women at its triennial Meeting, Athens, March / April 1951,’ The Women’s Library, LSE, 5ICW/B/14 Athens 1951, 2.

<sup>1019</sup> International Alliance of Women, ‘Resolutions adopted by the International Council of Women at its triennial Meeting, Athens, March / April 1951,’ The Women’s Library, LSE, 5ICW/B/14 Athens 1951, 10.

<sup>1020</sup> International Council of Women, ‘International Council of Women; Executive Committee, 2 April 1951, Resolutions’ (1951), The Women’s Library, LSE, 5ICW/B/14 Athens 1951.

Specifically on the topic of genocide, the record of the ICW's 1951 conference outlined prior advocacy efforts of National Women's Councils to get their states to ratify. The National Women's Council in Great Britain reported that between 1951-1954 they had made representations to the Prime Minister on the subject of outlawing genocide.<sup>1021</sup> Germany's National Women's Council also reported that "steps are planned to be taken to urge ratification of the Genocide Convention."<sup>1022</sup> Greece also supported ratification,<sup>1023</sup> and the Australian National Section also urged ratification on numerous occasions.<sup>1024</sup>

In the ICW's report on activities from 1951-1954, there was a section titled 'Genocide' which is a compilation of the group's advocacy on the Convention, listed in chronological order:

*26.9.49 – ICW asked to urge signature of various countries*

*26.9.49 – Message sent to national councils of women of Belgium, Canada, Denmark, Great Britain, Greece, Holland, New Zealand Sweden.*

*13.10.49 – New Zealand writes that they have urged their Government to ratify*

*21.1.50 – Several copies of printed Genocide Convention requested from the UN Information Center, Geneva, to be sent to national councils of countries not members of UN: Switzerland, Finland, Italy, requesting them to urge their governments to sign and ratify.*

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<sup>1021</sup> International Council of Women 'Report on the activities of affiliated National Councils of Women, 1951-1954 (based on national reports according to scheme 1953/CONF/2)' (1954), The Women's Library, LSE, 5/ICW/B/15 Helsinki 1954, 5.

<sup>1022</sup> International Council of Women 'Report on the activities of affiliated National Councils of Women, 1951-1954 (based on national reports according to scheme 1953/CONF/2)' (1954), The Women's Library, LSE, 5/ICW/B/15 Helsinki 1954.

<sup>1023</sup> International Council of Women 'Report on the activities of affiliated National Councils of Women, 1951-1954 (based on national reports according to scheme 1953/CONF/2)' (1954), The Women's Library, LSE, 5/ICW/B/15 Helsinki 1954, 5.

<sup>1024</sup> International Council of Women 'Report on the activities of affiliated National Councils of Women, 1951-1954 (based on national reports according to scheme 1953/CONF/2)' (1954), The Women's Library, LSE, 5/ICW/B/15 Helsinki 1954, 4.

*9.2.51 – Ratification by Brazil, Canada, Greece, Sweden urged.*

*11.2.52 – Message forwarded to above-mentioned councils of women, and some information received from Liaison Officer.*

*11.3.52 – Now Canada*

*8.4.52 – Now Greece replied that they had taken steps with their governments.*

*16.8.52 – Another urgent message forwarded to Greece.*

*28.7.53 – Appeal received from Prof. Lemkin to further ratification and prevent adoption of Nationalist Chinese amendments.*

*Forwarded in a circular to all national councils of women. Several replies received by 30 Sept. 1953.<sup>1025</sup>*

A report from the International Headquarters activities from 1951-1954 also reiterated that some National Councils “undertook action, others reported that their government had already taken the necessary action.”<sup>1026</sup>

## **1953**

There is a gap in the archives of evidence of ICW advocacy in 1952, although there is an increase in advocacy in 1953. An urgent letter sent in August 1953 to the Presidents of the National Women’s Councils included:

### *3. Genocide Convention.*

*Promoters of the Genocide Convention, in the signing and ratification of which, by their governments, many of our NWCs [National Women’s Councils] have been instrumental, are worried about a proposal circulated by Nationalist China among countries having*

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<sup>1025</sup> International Council of Women ‘Report on the activities of affiliated National Councils of Women, 1951-1954 (based on national reports according to scheme 1953/CONF/2)’ (1954), The Women’s Library, LSE, 5/ICW/B/15 Helsinki 1954, 15

<sup>1026</sup> International Council of Women, ‘Report from the Headquarters 1951-1954, Helsinki 1954,’ The Women’s Library, LSE, 5/ICW/B/15 Helsinki 1954, 5.

*ratified, to revise the official Chinese text of the Convention. By the 69 alterations proposed are in some cases of a substantive nature and are dangerous because any change in the Chinese text has legal validity for the official texts. A restriction would be introduced in the definition of genocide to the effect that it must be committed in a ruthless or cruel manner. The new text would re-define the term "genocide" identifying it with human groups in general instead of specific groups: genocide is being confused with homicide. The Chinese proposal tends to limit genocide to war crimes.*

*Governments should be urged to reject the proposal. Now is the time to fortify the Convention through new ratifications.*

*Mr Herbert Evatt, President of the UN General Assembly 1948/9, writes in the New York Times of July 1953: "A multilateral treaty like the Genocide Convention, having been ratified by so many parliaments after tremendous effort, should not be lightly thrown back into the area of disputation."*

*The Genocide Convention was created to punish the crime of genocide in times of war and peace. Acceptance of the Chinese changes would paralyze all efforts to prevent this crime against humanity. May we ask our NCWs once more to use their influence with their governments in order to have the Convention ratified or to prevent adoption of the Chinese proposals.<sup>1027</sup>*

The ICW Executive Committee met at the University of Reading, UK, in 1952, where they mentioned genocide as having many interpretations and that it "can take human thoughts and emotions as well as human lives."<sup>1028</sup> The link between Greek children being kidnapped and genocide was made by a Mme Antoniades at this

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<sup>1027</sup> Letter from ICW President and Secretary to National Women's Councils, August 1953, The Women's Library, LSE, 5ICW/B/15 Helsinki 1954, 1953/NC/5. Emphasis in original.

<sup>1028</sup> International Council of Women, 'Executive Committee, Minutes of the Meeting held on Wednesday morning, September 10th at 9.30am in Zoology Room, University of Reading,' The Women's Library, LSE, 5ICW/C/02/06 EC 1940s – 1950s, 1952.

Executive meeting, who proposed a resolution on preventing the removal of children.<sup>1029</sup> This resolution was adopted unopposed. Additionally, within the National Council circular letters is information on which countries, as of July 1952, had ratified and signed the Convention.<sup>1030</sup> We also see further evidence of advocacy within ICW's UK section. A note in the minutes of the Standing Committee meeting of the UK's ICW National Council noted their receipt of a letter from the ICW headquarters about genocide: "The President read that portion on Genocide and Cttee [sic] agreed to recommend that C of M should consider the matter."<sup>1031</sup>

## Conclusion

This chapter has demonstrated the work of the ICW raising the profile of the Genocide Convention. The data shows that, comparatively, it was not as wide-reaching or potentially influential as WILPF or the IAW. However, we did see explicit condemnation of using women and girls to "breed" and the particular vulnerabilities of women in conflict. This contrasts to less engagement from WILPF and IAW on these potentially more controversial topics. Whilst evidence in the UK and digital archives suggest this advocacy was not as comparably broad as WILPF and IAW's, this group of women were still called upon by Lemkin to engage their global network for the success of the Genocide Convention. This chapter sought to answer the research question of the extent of influence this organisation had in the success of the Convention.

As with WILPF, the ICW was influential in national parliaments, such as Belgium, and utilised the placement of National Sections to push for ratification of the Convention. It continued to do so throughout the period of history under research. Unlike WILPF, we do not see in this chapter an example of quick information politics, or the generation and sharing of credible information in an immediate form of

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<sup>1029</sup> International Alliance of Women, 'Minutes of the Executive Committee, Friday, September 12, 1952 at 8pm,' The Women's Library, LSE, 5ICW/C/02/06 EC 1940s – 1950s, 1952.

<sup>1030</sup> 1952/NC/5/Annex 1 'Convention on the Prevention and Punishment of the Crime of Genocide,' The Women's Library, LSE, 5ICW/C/04.

<sup>1031</sup> International Council of Women, 'National Council of Women of Great Britain, Meeting of the Standing Committee on ICW, Wednesday 16th September, 1953,' The Women's Library, LSE, 5ICW/D/07/03.

advocacy.<sup>1032</sup> Of course the ICW did share accurate information about the Convention, but it was not relied upon to do so urgently as WILPF was. Furthermore, the available data shows that the ICW did not have one, single, influential individual who could be called upon to effect change (leverage politics),<sup>1033</sup> unlike WILPF's Amalia de Castillo Ledón or IAW's Margery Corbett Ashby. It is possible to conclude therefore that, although ICW did much to keep the profile of the Convention raised, it perhaps was not as influential as WILPF or the IAW.

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<sup>1032</sup> Keck and Sikkink, *Activists*, 16.

<sup>1033</sup> Keck and Sikkink, *Activists*, 16.

## Conclusion and reflections

### Conclusion overview

The original theory of genocide was developed in the shadow of the Holocaust by Raphael Lemkin who drew on his own experiences and the work of his peer, Vespasian Pella, to outlaw this new crime. The subsequent creation of the Genocide Convention was motivated by an international drive to prevent atrocities like the Holocaust and to hold perpetrators accountable. The International Military Tribunal at Nuremberg brought the details of Nazi atrocities to wider global attention, and provided a springboard for the new theory of the crime of genocide to be launched into the consciousness of those within the new United Nations system. Historians and genocide scholars cite Lemkin who emerged in this new UN system as the perennial champion of outlawing genocide, hawkishly seeking support even in the face of great opposition. Ultimately successful in getting genocide recognised as a crime, Lemkin took his personal experience and tragedies of the Holocaust and built, with help from peers, an enduring legacy in the crime of genocide.

This thesis asks what happens if we ask the woman question of this history of the creation of the theory of genocide and the Genocide Convention? Preliminary research showed indicators that women were valuable allies to the Genocide Convention and that the drafters of the Convention were, in part, cognisant of acts of genocide against women. Using the feminist theory that women's histories have gone under-researched, this thesis expanded these initial indicators and researched in greater depth the female history. Far from understanding women as just victims of genocide, this thesis aimed to bring female activism back into the history of the creation of the theory and crime of genocide, to re-centre global female activism on the ratification of the Convention. This thesis additionally sought to understand how gender intersected with genocide in the minds of those who created the term and subsequent Convention. Whilst the history of the creation of the theory of genocide and the Genocide Convention has, as noted, been built around Lemkin, this thesis brings in additional voices and perspectives into this history, challenging accepted perceptions and resituating women in this history. The thesis sought answers to four

specific research questions: to what extent did the theoretical predecessor of genocide, 'barbarism', recognise gendered harms and women's unique vulnerabilities? How were gendered harms understood by Lemkin and incorporated into his genocide theory? Were these gendered harms included and potentially removed from the Genocide Convention? Finally, in what ways were women influential in the adoption and ratification of the Genocide Convention?

### **Methodological and theoretical grounding, and existing literature**

This thesis adopted a feminist methodological and theoretical lens. This informed both the subject of research (women and the conceptualisation of women in the history of genocide) as well as analysis. In addition to the author's feminist leanings, the justification for adopting this feminist methodological and theoretical framework was twofold. First, the primary justification was the absence of a feminist analysis of the history of the creation of the theory of genocide and the Genocide Convention which explored the female history. This was to address the gap in existing knowledge. Second, a pillar of feminist methodological framework is the desire to right wrongs, which in this thesis is the male-centric history of the creation of the theory of genocide and the Genocide Convention and to write women back into this history. The wealth of female history and evidence of women's dedication to the cause of outlawing genocide is under-discussed in the current history. This gap is evidenced in the literature review in this thesis.

The concept of gendered harms experienced by women was adopted. Gendered harms were understood herein as a broader conceptualisation of harms occurring due to women's unique vulnerabilities resulting from gender norms and patriarchal hierarchies. This broadened the scope of analysis beyond the widely acknowledged rape and sexual violence to include other harms which are perhaps less explicit. The adoption of gendered harms, as opposed to a sole focus on sexual violence, enabled this research and analysis in Chapters 2 to 5 of this thesis to explore other terms which related to harms experienced by women in genocides, such as 'enfeeblement'. Gendered harms allowed the researcher to cast a wider net in

collecting data to analyse, particularly in Chapter 4 on the *Travaux Préparatoires*, but also beyond, such as examining Pella's acknowledgement of the vulnerabilities experienced by women as a result of societal norms in Chapter 2.

Existing academic literature in the field of feminist international criminal law and international law more broadly has been influential in the design of this research. This body of literature, as detailed in this thesis, questions the male-dominated sphere of international (criminal) law, and aims to bring to light the biases resulting from this domination. The conceptualisations of women, the role of women in society and how this is reflected in international law to the detriment of women, informed the design of this thesis by applying it to this history. The male-centric dynamics identified by the existing feminist international law literature, such as themes of conceptualising women only as caregivers or mothers, is clearly identifiable throughout this thesis.

This thesis drew on existing literature from multiple disciplines, and their contribution to this area of research is discussed in detail in Chapter 1. Notably, the influence on this thesis of literature and historic research on female participation at the United Nations. This body of literature showcased additional negligence of this female history in international affairs such as the creation of the Universal Declaration of Human Rights, where female influence has been under-researched until recently. Some of these recent publications suggest that these feminist examinations of women throughout histories is a growing trend in this field of historical analysis. This literature provided a useful example and framework for this thesis. Notwithstanding this contribution, this review of the literature identified gaps which this thesis sought to fill, illustrated by the lack of engagement in genocide studies on the female actors and organisations appearing throughout records. Perhaps this is most exemplified in the mis-recording of the IAW's name in the original account by Lemkin, which failed to be corrected in subsequent, more recent, literature as highlighted in Chapter 1. This academic context and feminist methodology informed the development of the research questions, which evidenced the female-shaped gaps in the history of the creation of the theory of genocide and the Genocide Convention.

## The concept of genocide and gendered harms

The first research question of this thesis asked: to what extent did the theoretical predecessor of the theory of genocide - 'barbarism' - recognise gendered harms and women's unique vulnerabilities? In order to track the development, or lack thereof, of understandings of gendered harms experienced by women during genocides, this thesis sought to understand this dimension in the origins of the theory of genocide. In doing so, it became possible to measure later understandings of gendered harms. Chapter 2 explored the early formation of the theory of genocide in the theory of barbarism and how its creator, Vespasian Pella, conceptualised gendered harms. This chapter did, indeed, uncover evidence that Pella understood the particular vulnerabilities of women both in peacetime and in war. He worked to legislate for the protection of women nationally and, although World War Two prevented him from doing so internationally, evidence suggests that this would have been the case. Pella's publications discussed in Chapter 2 evidence his cognisance of specific harms such as rape and forced abortion, as well as economic uncertainty. The central importance of social order in Pella's writings was a relevant discovery, as this formed a basis, later, of Lemkin's acts of moral genocide. Through the process of data collection for this chapter, this research unexpectedly uncovered Pella's activism on women's rights in Romania and around the world at the turn of the Century, and the potential influence of his mother, a remarkable academic and activist. Furthermore, this research uncovered a noteworthy overlap in histories in Pella's work alongside the Romanian section of the International Council of Women, which was unexpected.

As barbarism became adopted by Lemkin and formed a pillar of his new theory of genocide, this thesis explored Lemkin's conceptualisation of gender and genocide through an examination of his published and unpublished works, archived materials and correspondence. Chapter 3 exposed how Pella's awareness of gendered harms was replaced with Lemkin's more legislatively-grounded understanding of women in genocide, as Lemkin analysed Nazi policies in occupied Poland to formulate his theory. This chapter drew on Lemkin's works to examine how, as Lemkin's theory developed, so too did his conceptualisation that the gender-genocide nexus revolved mainly around women's biological ability to reproduce. In this chapter, we were able to

understand how he conceptualised women and gendered harms, and it became clear through his legal interpretations of Nazi policies that biological techniques of genocide (pregnancy, forced sterilization and rape) and the physical reproduction of the group was paramount. This research illustrated how Lemkin's understanding of the female experience in genocide was of the women-as-mothers-and-caregivers paradigm and did not extend beyond this. Whilst broader gendered harms and vulnerabilities were understood by Pella and arguably included, to some extent, in the theory of barbarism, the conceptualisation of women-as-mothers-and-caregivers is central to Lemkin's formation of genocide theory.

By using a feminist lens this chapter was able to expose the fact that the sources which Lemkin drew from to formulate his theories on women and genocide were male. Historical accounts of rape and sexual violence which Lemkin cited were from men, and the historical accounts' fetishization of the crime of rape was problematised in this chapter. It appears from the data that Lemkin did not seek advice from women on crimes relating to women. Therefore, this chapter exposes the problematic conceptualisations of gendered harms as understood by Lemkin and included in his theory of genocide, as to answer the second research question of this thesis.

Momentum behind Lemkin's new theory of genocide gradually developed into calls for a Genocide Convention, and Chapter 4 of this thesis analysed how gender manifested (both explicitly and implicitly) within the drafting of this Genocide Convention. Throughout this chapter the data reveals that Lemkin's conceptualisation of women, established in the previous chapter, endured during the drafting of the Genocide Convention. This chapter sought to answer the third research question of whether gendered harms were included or removed during the drafting process. Furthermore, this chapter, in part, sought to answer the fourth research question on the influence of women in this history, concluding that despite one speech by Shaista Ikramullah, there appears to be very little evidence of female influence in the creation of the Convention. The main text used in Chapter Four was the comprehensive compilation of documents by Abtahi and Webb, *The Genocide Convention: The Travaux Préparatoires*. On the initial reading of the texts in these two volumes, gendered

harms were identified and then categorised into explicitly gendered harms (such as rape, sterilization) and gendered harms which are less explicitly gendered although arguably potentially gendered (such as enfeeblement of a group, mutilations). This research also used the transcripts of the Nuremberg trials to illustrate how these gendered harms were committed. It also helped us understand how less-explicit gendered harms, such as moral debasement, were used in international criminal law at the time in order to uncover the potential meaning and deployment of these euphemisms.

As the *Travaux Préparatoires* and additional contemporaneous documents were combed for mentions of gender or gendered harms, a number of relevant recurring themes were identified and collated for this chapter. The key findings in this chapter were broader in scope than initially envisaged during the preliminary research. The primary key finding was how understandings of gendered harms often remained unchanged; there was no development in how the drafters conceptualised these harms. Whilst an initial hypothesis for this chapter was to trace any development in how the drafters recognised gender and women's vulnerabilities as women (rather than solely mothers or caregivers), it became clear that this was not possible. Instead, an analysis of the entrenched conceptualisations proved to be more illuminating. Furthermore, key findings included exposing evidence of misunderstandings of forced abortions which, when contextualised by the national abortion restrictions in countries whose representatives were drafting the Convention, was considered unsurprising. The disconnect between how biological experiments could be (and were) gendered was also a particularly interesting finding, when contrasted in particular with the evidence provided at Nuremberg. The missing connection between many gendered crimes such as forced sterilization and death was also a key finding.

Perhaps the most surprising revelation in these texts was that rape was not discussed by the drafters of the Convention. It was posited in this chapter that this was perhaps mirroring the disinclination to discuss this crime by Prosecutors at Nuremberg, or perhaps hidden in the euphemisms deployed throughout the drafting of the Genocide Convention. Another notable surprise was the acceptance by the drafters, with no recorded disputing, that forced abortion was the same as the removal of

children "in the eyes of the mother." This was problematised and deconstructed through a feminist lens. Additionally, this chapter sought to understand the representation of the genders by the drafters by counting the references made to each gender and the context of these references. Illustrated in this analysis is the clear delineation of conceptualisation of men as decision-makers and holders of rights and women primarily as victims and associated with biological reproduction and caregiving to a greater extent than men. The example of the Refugee Convention served as a comparison of how ahead-of-its-time the Genocide Convention was in terms of gendered harms, despite these flaws. Overall, the data collected in Chapters 2 to 4 illuminates how women and women's rights and gendered harms were perceived by decision-making and influential men.

During the research for these first chapters of this thesis, ill-defined but arguably gendered euphemisms such as moral techniques of genocide, moral debasement, and obscenity in relation to the crime of genocide repeatedly appeared in the texts. Therefore, Chapter 5 took these references as they appeared in Lemkin's work and in the *Travaux Préparatoires* and sought to understand their contemporaneous meaning and the extent to which they were potentially used as euphemisms for gendered harms. This research explored the conceptualisation of prostitution at the time and how this related to the treatment of prostitutes by the Nazis; how were morals and sex understood in society at the time, and how did this permeate into the concept of genocide? What gendered elements were included in the moral techniques of genocide? These were questions which the research for this chapter attempted to answer with the help of the Nuremberg transcripts and other historical documents. Through this, this research demonstrated how elements of moral degradation and debasement in relation to genocide were predominantly gendered and steeped in patriarchal notions of women, chastity, and modesty, but also how there were non-gendered elements of these actions in Lemkin's writings such as lack of respect for community leaders and forced starvation. These similar themes were explored in relation to obscene materials as mentioned in the texts. This chapter sought to gather evidence to understand how obscene materials were understood, and what role obscenity played in genocides. Of particular interest here was how radical feminist Catherine MacKinnon unknowingly applied Lemkin's notion of obscene

materials as a moral technique of genocide to the use of sexual violence in the former Yugoslavia.

At the core of this chapter was to understand this notion of moral debasement and whether it was gendered. The evidence illustrated that is a broad concept with humanity at its centre; to seek the moral debasement of a group would be to take away people's humanity through multiple forms including gendered harms. This chapter initially sought to understand the concept as it appeared in Saudi Arabia's draft text of the Convention and in Lemkin's notion of moral techniques of genocide in order to answer the second and third research question of gendered harms included in Lemkin's theory of genocide and in the Convention. It then became an exploration into the perceptions of morality and women more broadly.

### **Women's fight for the Genocide Convention**

As Chapters 2 to 5 of this thesis drew from the male-dominated history, the second half of the thesis was solely female-centric. Chapters 6 to 10 sought to answer the final research question of the extent to which women were influential in the success of the Genocide Convention. The contribution of women to the success of the Genocide Convention has gone formerly unresearched, and this thesis begins this research by focussing on three international women's groups as well as the female activist and politician Shaista Ikramullah, and how they were relied upon and became passionate advocates for the cause of outlawing genocide. Each of these chapters in this section began with a broad history of the subjects being analysed, and exposed the individual and collective experiences during genocides. The women's organisations during World War Two and the Holocaust experienced persecution both as a result of their work and their individual identities, and Shaista Ikramullah witnessed the intercommunal violence during the partition of India. As with Lemkin, these women suffered losses during genocides and as a result sought peace, in part, through a ratification of the Convention. This was a key finding in each of these chapters, as these experiences clearly informed the later advocacy on peace broadly and the Genocide Convention more specifically.

The three international women's organisations studied in turn were the Women's International League for Peace and Freedom (WILPF), the International Alliance of Women (IAW), and the International Council of Women (ICW). These three women's groups had global reach, with national or regional supporters and sections from around the world as well as influence in international and national institutions. As we saw in the documents, these groups often mobilised on the cause of outlawing genocide; sharing information about the progress of the Convention and asking members from specific countries to lobby their governments for ratification. This form of information-sharing and advocacy was similar between these groups.

From archival exploration it became clear that these activities were both crucial and complementary to Lemkin's own lobbying. It was IAW President, Margery Corbett Ashby, a personal advocate for outlawing genocide, who introduced Lemkin to Vijaya Lakshmi Pandit, an IAW-supporter and Indian delegate to the UN, who provided the final signature Lemkin needed on the first Genocide Declaration for it to go on to be considered further. It was WILPF's Amalia de Castillo Lédon who was the Convention's champion in the Latin American block, using her extensive networks to rally nations and Latin American feminists in ratifying the Convention. Finally, it was Shaista Ikramullah who stood before the drafters and then the UN General Assembly and proclaimed her support for the Convention, drawing on her experiences of genocide in pre-partition India, and seeking-out informal networks to foster support for the Convention. The networks beyond these key actors and the instrumentality of these connections in advocating for the Convention were showcased; how these networks were employed and their advocacy techniques. These chapters uncovered and analysed how these women's organisations formed alliances within countries, such as the UK, with decision-makers, and how they continued to do so in an environment which was hostile to their advocacy. Illustrated throughout the archival documents discussed herein were veins of hostility or dismissal towards these women and organisations which illustrate this point. In spite of this, internal documents were found which evidence how calls for ratification of the Convention eventually became increasingly embarrassing for governments.

## Women advocating for women?

One particularly interesting element of the data provided in the preceding chapters of this section is the broad absence of women and women's organisations lobbying for more recognition of gendered harms (as contemporarily understood) in the Genocide Convention. There are several instances when these women and organisations recognised how genocide impacts women differently to men. Most notable is the act of genocide of removal of children in genocide. This was a common theme in how these organisations raised the profile of the crime of genocide as a concern within their membership to gain internal interest. Sexual violence against women and girls was raised by the ICW in relation to conflict, naming forced detention in brothels and the "using of youths and young girls for compulsory breeding of children" as particular concerns for the Moral Welfare Committee at the 1947 Philadelphia Conference.<sup>1034</sup> The ICW also later noted that women and children are particularly at-risk during war.<sup>1035</sup> Beyond this, however, there is no data in the archives showcased in this thesis to suggest that these women's organisations advocated explicitly on the topic of sexual violence or gendered harms in conflict in relation to the Genocide Convention. Furthermore, there was no evidence to suggest that they sought to champion women's rights during the drafting of the Convention, as was done during the drafting of the UDHR.

It was suggested in these chapters that one reason for this absence could be that in order for these women and women's organisations to be taken seriously by the predominantly male decision-makers who formed their advocacy targets, they could not adopt this stance. These women operated in environments hostile to them, being designated "woolly," "emotional," and only as mothers rather than rights-holders.<sup>1036</sup> It is posited in these chapters that the decision was made not to advocate on this topic

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<sup>1034</sup> International Council of Women, 'Proposed by the Moral Welfare Committee,' The Women's Library, LSE, 5ICW/B/13 Philadelphia 1947.

<sup>1035</sup> International Council of Women, 'International Council of Women Bulletin,' Vol. XXVI, No. 1 (May 1948), The Women's Library, LSE, 5ICW/P/011, box 42, 21.

<sup>1036</sup> See: 'Cessation of Tests: Urge suspension of United Kingdom Nuclear Tests,' from Women's International League for Peace and Freedom to 10 Downing Street,' dated 17 December 1957, The National Archives, E212/701, FO 371/129282; Lemkin and Frieze, *Totally Unofficial*, 180; Chapter 4 of this thesis.

of sexual violence or gendered harms as a result of these multiple factors analysed in these chapters. As Harrington writes, there was the prevailing opinion the sexual violence had been politicised during the war, as was the case following the war.<sup>1037</sup> Within these women's organisations, occasionally discussions of rape and sexual violence also exposed racism, as was also discussed in these chapters. These internal and external tensions around the topic of sexual violence could potentially answer the question of the absence of their advocating on gendered harms within the wording of the Genocide Convention. Additionally, Skard suggests that resistance to women's advocacy which was perceived as "feminist" was often met with greater resistance.<sup>1038</sup> It was argued in these chapters that this provides more context as to why these women and women's organisations did not advocate explicitly for the gender in the Genocide Convention or amongst their own supporters.

### **Can we measure the success of these women?**

The core argument of Chapters 6 to 10 was that there was a female presence in this history of the success of the Convention, and that the extent of this influence should be explored. This section of the conclusion will explore some of the main themes in the second section of the thesis, and reflect on this research which shines a light on this female history. As activism is inherent in the feminist unveiling of counter narratives, ensuring that these names do not remain silent,<sup>1039</sup> this has been an essential aspect of this section.

Chapter 6 to 10 showcased the forms of advocacy these women gave to the Genocide Convention, and illustrated to a certain extent the success of this advocacy. To begin the discussion of measuring the potential successes and influences of these women, first there should be a brief problematising of the nature of the sources and context. Evidence of tangible successes attributable to advocacy efforts of these

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<sup>1037</sup> Harrington, *Politicization*, 89.

<sup>1038</sup> Skard, 'Introductory note,' in *Women and the UN*, eds. Adami and Plesch, XVII.

<sup>1039</sup> Adami, *Women and the Universal Declaration*, 3, 6.

women and organisations are often found only in the archives of these organisations; that is to say, there is one singular source, not corroborated in a second set of materials housed, for example, in the CJH or The National Archives. Singular uncorroborated account of events is, to an extent, less reliable than accounts cited in multiple documents, although it should not discount these materials, as we will now discuss. This section of the thesis is grounded in a theory that this history went unrecorded by the mainstream history, and used archival materials specifically from women and women's organisations *because* this history was not recorded elsewhere. By nature of the male-dominated history of the creation of the theory of genocide and the Genocide Convention it is necessary to draw on the female-curated archives to build this female history. Contextually, therefore, it is unsurprising that there is little corroboration of women's claims to successes in other archives. In short, a lack of corroboration of female successes in male-centric documents is unsurprising and should not discount these recorded successes. If the work of these women is undocumented beyond their own records, then we can assume that the success of this work will not be documented as well. Whilst we must remain critically aware of problems arising from single-source claims, this should not necessarily result in their dismissal. It is important, also, to remain vigilant of the fact that women and women's organisations were not the only proponents of outlawing genocide during this period. Religious groups and law societies, as well as special interest groups such as the United States Committee for a United Nations Genocide Convention, were also strong advocates and lobbyists for the Convention. Whilst this thesis' feminist methodological lens strives to uncover the work of women in this history, it is important to maintain objectivity. This thesis does not seek to misattribute and over inflate the work of women and women's organisations but to provide a complementary history.

Chapters 6 to 10 provide evidence that women's organisations sought to influence the minds of decision-makers on the topic of the Genocide Convention to answer the fourth research question. Given the caveats above, it is difficult to definitively state the scale of influence these women had on the adoption and ratification of the Genocide Convention. It was identified that, in order to understand the influence of these women, it would be required to conduct country-specific archival research in order to evidence a change in national policies as a direct result.

The research in this thesis, therefore, showcases the UK-specific examples of this evidence throughout the chapters in order to showcase the impact of these advocacy efforts. The author welcomes similar research in other countries.

## Final reflections

A brief final reflection of this research centres on the need for 'different' histories to be explored. This thesis seeks to contribute evidence and analysis to genocide studies, which supports calls to open this history to other stories. By problematising the existence of one, singular, history we are able to cast a wider net and expand the areas of research.

The author has found, throughout this research, that it is a profound shame that the work of these women and women's organisations have been academically unresearched. Furthermore, the exploration of the *Travaux Préparatoires* illustrates the conceptualisation of women and the harms experienced by women in genocides, and provides important context to the work of the women's organisations. The uncovering of this female history is inherently activist in nature, and sits alongside recent academic research also providing the a complimentary feminist history.

Further research in archives such as the All-India Women's Conference archives in central New Delhi, to explore the work of this organisation on the Genocide Convention, and the Romanian National Archives, to seek out information on Pella's early work and the influence of his liberal parents, will potentially yield new information to complement the research herein. The scope for further research in this academic field, signposted throughout this thesis, is exciting.

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