



FACULTY OF LAW

**VICTIMS OF SEXUAL VIOLENCE IN ARMED  
CONFLICTS AND THEIR PROTECTION AS  
ASYLUM SEEKERS IN THE EUROPEAN UNION**

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**ABSTRACT:** The following dissertation aims to analyse how the need to provide international protection to victims of conflict-related sexual violence is closely connected to the objectives of the Women, Peace and Security Agenda. In order to do this, conflict-related sexual violence will be conceptualized in an attempt to understand what impact such violence has on both the targeted individuals and their surrounding communities. Moreover, international and European Union legal instruments referring to conflict-related sexual violence and the protection of its victims will be approached, with the objective of gathering an understanding of the legal context and of the objectives established in the Women, Peace and Security Agenda. Following this, the figure of asylum will be reflected upon and how victims of conflict-related sexual violence fit within the minimum qualification criteria of refugees will be analysed both from an international and European Union refugee law perspective. Finally, it will be referenced how granting asylum responds to the obligations established in the Women, Peace and Security Agenda will be referenced, as well as how it is essential to the achievement of all other objectives established in the Agenda.

**Key words:** Conflict-related sexual violence, asylum, United Nations, European Union.

**RESUMEN:** El trabajo que se presenta a continuación tiene como objetivo analizar cómo la necesidad de otorgar protección internacional a víctimas de violencia sexual en conflicto armado está estrechamente vinculada a los objetivos de la Agenda de Mujer, Paz y Seguridad. A tal fin, se procederá a la conceptualización de la violencia sexual en conflicto armado con el fin de entender el impacto que tiene tanto sobre las víctimas como sobre sus comunidades. Además, se realizará una aproximación a los instrumentos legales internacionales y de la Unión Europea que contengan referencias a la violencia sexual en conflicto armado, así como a la protección de las víctimas, con el objetivo de entender el contexto jurídico de la Agenda de Mujer, Paz y Seguridad. A continuación, se analizará la figura del asilo, con el fin de estudiar si las víctimas de violencia sexual en conflicto armado pueden cumplir con los criterios mínimos de cualificación como refugiados tanto desde el punto de vista del Derecho Internacional Público como del Derecho de la Unión Europea. Finalmente, se hará referencia a cómo el otorgar protección internacional a las víctimas de dicha violencia es una obligación establecida en la Agenda y cómo, además, es esencial para el cumplimiento del resto de objetivos.

**Palabras clave:** Violencia sexual en conflicto armado, asilo, Naciones Unidas, Unión Europea.



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## **LIST OF ABBREVIATIONS**

<b>CEAS</b>	Common European Asylum System
<b>CRSV</b>	Conflict-related sexual violence
<b>EU</b>	European Union
<b>HRL</b>	Human Rights Law
<b>IHL</b>	International Human Rights Law
<b>IRL</b>	International Refugee Law
<b>NCRSV</b>	Non conflict-related sexual violence
<b>SCR</b>	Security Council Resolution
<b>SGBV</b>	Sexual and gender-based violence
<b>UN</b>	United Nations
<b>UNHCR</b>	United Nations' High Commissioner for Refugees
<b>UNSC</b>	United Nations Security Council
<b>WHO</b>	World Health Organization
<b>WPS</b>	Women, Peace and Security



## I. INTRODUCTION

In July 2020, the yearly Report of the United Nations Secretary-General on conflict-related sexual violence (CRSV), expressed that “[w]hile the silence has been broken, and the issue has galvanized global attention on conflict-related sexual violence as an obstacle to peacebuilding and recovery, we must never allow these atrocities to persist with impunity, to become entrenched and ‘normalized’ in post-conflict societies” (UN Secretary-General, 2020, p. 5).

Twenty years have passed since the United Nations Security Council (UNSC) Resolution 1325 (2000), which set out to guarantee the protection of women and girls in armed conflict and increase their participation in peace and reconstruction processes. The need to end conflict-related sexual violence was identified as one of the key issues of what has become known as the Women, Peace and Security Agenda. Therefore, the importance of acknowledging the prevalence and persistence of CRSV around the globe and putting a stronger focus on supporting the victims has been recognized and integrated into the efforts of the international community. Nonetheless, hundreds of girls and women still fall prey to acts of CRSV around the globe on a daily basis, for which States cannot cease in their efforts to prevent them, protect the victims and end impunity. (UN Secretary-General, 2020; UN Secretary-General, 2019)

### 1. HYPOTHESIS AND OBJECTIVES

This work is based upon the hypothesis that in order to comply with the goals established in the UNSC Resolutions on Women, Peace and Security (WPS), of ending conflict-related sexual violence (CRSV), ending impunity and protecting the victims, as well as guaranteeing their active participation in peace and reconstruction processes, States need to grant international protection to victims of sexual violence in armed conflicts. Thus, it understands, as will be proven further on, that victims of CRSV fit within the minimum qualification criteria required to be considered a refugee and thus be granted international protection under International Refugee Law (IRL).

Consequently, this dissertation has several objectives. Firstly, it seeks to understand the implications of sexual violence for its victims, their communities and the interrelation of the victims with their respective communities. This will provide a basis on which to prove the need



for international protection. Given the particular nature of sexual violence and the reality in which it takes place, it is important to look at the bigger picture on how and when it is perpetrated in order to comprehend the vast consequences it has for its victims. For this purpose, the literature surrounding the psychological, physical and social implications of sexual violence in armed conflict will be analysed.

Secondly, the international obligations in regard to the protection of women and girls in armed conflict and the elimination conflict-related sexual violence will be referenced and presented, in order to understand its scope and need for compliance. In order to do this, the work will focus on the United Nations Security Council Resolutions on Women, Peace and Security and its implementation by the international community. Given the large numbers of individuals seeking asylum in the European Union (EU) who come from countries in which the presence CRSV has been proven (European Commission, 2019; SVAC Dataset, 2021), the EU's position towards the "Women, Peace and Security Agenda" will be briefly analysed.

Thirdly, the figure of asylum will be reflected upon, shedding light on its universal and regional regulation, with the intent to assess whether this is an appropriate mean to guarantee the protection of victims of sexual violence in armed conflict and respond to their particular needs. For this task, the focus will be laid upon the understanding of who reach the minimum qualification criteria to be considered refugees, the protection they are granted and the scope of said regulation.

Finally, this work will seek to prove how granting asylum is a key factor in order to ensure the remaining objectives established in the Agenda with regard to the elimination of conflict-related sexual violence.

## 2. METHODOLOGY

With regard to the methodology and sources that will be used in this work, we will focus on the UNSC Resolutions on Women, Peace and Security, the documents approved by other United Nations (UN) and EU institutions in regard to CRSV, the doctrine and data regarding said crimes and its victims and the regulation and doctrine surrounding asylum globally and in the EU with a special focus on the CEAS. For this purpose, a teleological approach will be taken to the protection of the victims of conflict-related sexual violence that the international community seeks to achieve. This will be done in order to understand why

granting asylum is necessary in these circumstances and how not providing said protection impacts the remaining objectives established in the Agenda.

### 3. STRUCTURE

In consideration of the objectives gathered *supra*, this work will begin with some brief explanatory notes which seek to lay out a theoretical framework that will shape the arguments provided throughout the dissertation. Following said notes, an attempt will be made at defining conflict-related sexual violence (CRSV) and to make it possible to understand its scope and implications through its conceptualization and the study of the research that is available regarding the victims and the communities in which CRSV is or has been exercised. Moreover, the international legal framework surrounding CRSV will be summarized and the United Nations Security Council Resolutions on Women, Peace and Security will be reflected upon. Additionally, the European Union's implication towards the Resolutions will be explained.

Hereafter, the right to international protection of victims of CRSV will be introduced for which the figure of refugee will be presented so that an assessment can be made on how the victims fit within said definition. Furthermore, how the Common European Asylum System (CEAS) has created its own international protection system will be reflected upon. Finally, how the obligation to grant international protection to victims of CRSV is considered a major component in the achievement of the goals established in the Women, Peace and Security agenda will be elucidated.

### 4. INTRODUCTORY EXPLANATORY NOTES: Conflict-Related Sexual Violence as Sexual and Gender Based Violence<sup>1</sup> and as a tool of war

Prior to beginning the in-depth analysis of the issues at stake, it is important to address the approach that will be taken throughout the dissertation when talking about conflict-related sexual violence (CRSV). International institutions, scholars and international organizations have struggled in their approach of sexual violence in armed conflict. Many, such as the United Nations itself, have considered CRSV as part of the greater phenomenon of Sexual and Gender Based Violence (SGBV). Said argument will, according to the United Nations, sustain that

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<sup>1</sup> Gender will be used as referring to the relationship between men and women on the grounds social or cultural expectations that shapes and defines their respective identities, roles and responsibilities within their communities, therefore not being innate but dependent on each culture. Gender-related issues can affect for that reason both men and women, as well as individuals not fitting within that binomial. (World Health Organization, n.d.; Cheikh Ali, Querton, & Soulard, 2012, p. 11)

although men and boys can become victims of CRSV, given the underlying gender discrimination that is prevalent in many of the areas in which such violence is found, it is mostly women and girls who are targeted. (United Nations Secretary-General, 2019; NSW Refugee Health Services, 2018; Fried, 2003, pp. 91-92) As women are often perceived as “bearers of cultural identity” and their honour is often bound to their sexual interactions and concepts such as that of “purity”, they are mostly the primary target of these acts (Fritz, 2010). This link between honour, sexual integrity and women can be witnessed for example in early International Humanitarian Law, as will be portrayed further on, as rape for example is conceived as an attack onto women’s honour (International Committee of the Red Cross (ICRC), 1949). Thus, efforts have been focused on the protection on women and girls as victims of CRSV, as will be seen in the Women, Peace and Security Agenda, and men and boys as perpetrators.

Nonetheless, SGBV and thus CRSV need to be understood more broadly. As Elizabeth Wood pointed out in her research, women can be perpetrators too and men and boys have often found to be the targeted groups. (Wood, 2006, p. 325) Moreover, it is due to the same gender discriminatory practices that make women the more frequent victim, that men and boys will often refrain from speaking out about the attacks they have suffered, as their manhood could be questioned. (E. Davies & True, 2015, p. 502; Alison, 2007, pp. 86-87) The UN Resolutions have focused on the specific protection of women and girls in armed conflict and the lack of research regarding men makes it difficult to arrive to conclusions. Therefore, although our research will focus on the protection of women as victims of conflict-related sexual violence, it is important to acknowledge the fact that there are male victims. Whilst women and girls do suffer globally of an added particular danger, it is those same structures that lead to both men and women suffering from conflict-related sexual violence. This work is thus inserted into a greater objective of eliminating all forms of SGBV, in which the provisions of International Humanitarian Law, International Criminal Law and International Refugee Law, as well as other International Public Law mechanisms play a key role.

Finally, it needs to be addressed, that the approach that will be taken in this piece of work is that of sexual violence as a tool or weapon of war as articulated in the most recent jurisprudence of international tribunals and truth commissions. Thus, acts of sexual violence, such as rape, are seen as instrumental to armed conflict, perpetuated in an attempt to demoralize, destroy and coerce the enemy, being carried out in a planned and structured manner

against a particular population. (Bastick, Grimm, & Kunz, 2007, pp. 9-10; Buss, 2009) Elucidating whether sexual violence in armed conflict, and the acts that it entails, are used as a tool of war or are just an inevitable consequence of conflict has a strong effect on how the impact and perpetration of said crimes is perceived and the legal consideration it is given. This will be especially important given the variability found in the perpetration of these acts and the difficulties faced when addressing them due to the reluctance of victims to speak in a detailed manner about their experiences and thus, to denounce the perpetrators and end impunity.

## II. SEXUAL VIOLENCE IN ARMED CONFLICTS

### 1. CONCEPTUALIZATION

Sexual violence can take place in all spheres of life, but it deserves special attention when it occurs in the context of armed conflict due to its single nature. It has not been until the end of the last century, that sexual violence in armed conflict has been codified in International Criminal Law within the broader concepts of crimes as crimes against humanity and war crimes. Thus, presently, when referring to conflict-related sexual violence (CRSV), it is important to understand this not only as a violation of Human Rights and International Humanitarian Law but also of International Criminal Law, as will be analysed in this chapter (Vilellas, Urrutia, Royo, & Vilellas, 2016, p. 5). Despite the international community having been aware of the perpetration of these acts of CRSV throughout history, they have often been ignored, only gaining public relevance after the atrocities that took place in the former Yugoslavia since 1991 and Rwanda between 1 January 1994 and 31 December 1994 as a consequence of their exposure within the broader media and their respective *ad hoc* International Criminal Tribunals. (Jiménez Rodríguez, 2012, p. 44) Since then, there has been a greater interest in preventing these crimes and protecting its victims, the latter being the focal aspect of this piece of work.

Before attempting to understand the reasons behind the argument that this thesis sustains, that victims of CRSV deserve to be granted asylum in order to guarantee their protection and achieve the goals of the WPS Agenda, it is important to define “conflict-related sexual violence”. Initially, the most generally accepted definition of sexual violence perpetuated in the context of armed conflict was that provided by the *ad hoc* International Criminal Tribunals that were responsible for judging those that had perpetuated those acts (Viseur Sellers, 2009, p. 5). The International Criminal Tribunal for Rwanda defined “rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. [Therefore, s]exual violence which includes rape, is considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive” (Prosecutor v. Akayesu, 1998, para. 598). Nonetheless, the Tribunal holds that sexual violence “is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact” (Prosecutor v. Akayesu, 1998, para. 688).

The United Nations has developed further definitions throughout the years, leading to a larger scope of actions that are given the consideration of sexual violence in armed conflict. It defines conflict-related sexual violence as any act of “rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict. [...] The term also encompasses trafficking in persons for the purpose of sexual violence or exploitation, when committed in situations of conflict”. (United Nations Secretary-General, 2019, p. 5) Whilst further conceptualizations of sexual violence have been provided by scholars and institutions in many different areas of research (Cohen & Nordås, 2014, p. 419; UN General Assembly, 1998), this work will be limited to the one provided *supra*, as it reflects the multitude of acts that are being perpetuated against the victims that this work refers to.

In general terms, according to the available jurisprudence, as stated in the *Kunarac* case, for a crime to be “conflict-related”, “the armed conflict requirement is satisfied by proof that there was an armed conflict at the relevant time and place” (Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic (Trial Judgment), 2001, para. 413). Furthermore, more specifically, in regard to CRSV, the UN has stated that the aforementioned link that must be established between the acts of sexual violence and an armed conflict can be of a temporal, geographical or causal nature, with two of these being necessary for the act of sexual violence to be “conflict-related”. Such a nexus “may be evident in the profile of the perpetrator; the profile of the victim; in a climate of impunity or State collapse; in the cross-border dimensions; and/or in violations of the terms of a ceasefire agreement” (UN Secretary-General, 2015, p. 1).

As conflicts become more complex, it is important to understand when a conflict is taking place. (Stewart, 2003) According to the United Nations High Commissioner for Refugees (UNHCR), for the purpose of providing international protection, a “‘situation of armed conflict and violence’ refers to situations that are marked by a material level or spread of violence that affects the civilian population. Such situations may involve violence between state and non-state actors, including organized gangs, and violence between different groups in society. Further, such situations may include violence between two or more states, between states and non-state armed groups, or between various non-state armed groups”. (UNHCR, 2016a, p. 1) Once again, although more definitions of armed conflict can be found, such as the specific ones for International Humanitarian Law (IHL) or those that have been used previously

by international courts (CICR, 2008), this will be the one that we will work with, as it refers specifically to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees which conceptualize and outline the rights of refugees in modern International Refugee Law (UN General Assembly, 1951; UN General Assembly, 1967).

Furthermore, it is important to reference how varied conflict-related sexual violence can be. Not only does it include a multitude of acts, as shown *supra*, but its perpetuation and presence vary deeply between regions and conflicts. With growing research interest in the field, many scholars have found it difficult to articulate generalized theories regarding these practices and many issues regarding these practices still remain unanswered. Questions such as whether CRSV takes place as an ongoing practice or whether it is a strategy in conflict, how violence varies within state or non-state actors or who is targeted and for what reasons, are still mostly unresolved. (Wood, 2014) Acknowledging how complex the issue is and more so due to the difficulties that researching this subject pose, is important when approaching the victims and attempting to provide them with the support they need but also when finding ways of ending its perpetuation and the impunity of those who commit these acts.

## 2. IMPACT OF CONFLICT RELATED SEXUAL VIOLENCE

### 2.1. Impact on the victims

In an attempt to make the long-lasting damages conflict-related sexual violence has on its victims visible, both the physical and mental consequences that such practices have on the individuals will be looked at in the following paragraphs. This work is primarily focused on the protection of women and girls as victims of acts of sexual violence in the context of armed conflict, as they are the more frequent target. The fact that women and girls are the predominant victims of these crimes, proves that it is part of a generalized gender-based violence, as pointed out *supra*. Thus, there is a greater emphasis by the international community on the protection of female victims. Nonetheless, I found it important in this section, to also reference the impact it has on male victims as they too fall victim to these acts.

#### 2.1.1. Physical Health

All forms of sexual violence, but especially those perpetrated in the context of armed conflict, have deep physical and psychological consequences on the victims. According to

researchers who have conducted cross-sectional studies among women who have become victims of sexual violence in armed conflicts and the impact of both CRSV and non-conflict related sexual violence (NCRSV) on their health, sexual violence has “greater and more lasting effects” when it is conflict related. (Johnson, et al., 2010, p. 558) Victims of CRSV are more likely to suffer fistulas, “chronic pelvic pain, absence of desire for sexual intercourse, and absence of desire for children” (Dossa, Zunzunegui, Hatem, & Fraser, 2014, p. 10). Therefore, not only is there a great risk of contracting sexually transmitted diseases (STDs) such as HIV/AIDS but also physical injuries which can have severe consequences on women’s reproductive health (Dossa, Zunzunegui, Hatem, & Fraser, 2015, pp. 2201-2202). In most of the conflicts that have taken place in the last decades, medical personnel have found high numbers traumatic fistula cases caused by brutal sexual violence perpetrated in the context of armed conflict even against babies and elderly women. (Bastick, Grimm, & Kunz, 2007, p. 27) The lack of medical infrastructure, which is only augmented due to the situation of conflict, does only exasperate the situation of these victims, whose scars often lead to more substantial health implications due to the lack of proper care (United Nations, 2020, p.18; Bastick, Grimm, & Kunz, 2007, p. 57).

Regarding male victims, research is even more scarce. Some of the most frequent direct consequences of CRSV on men and boys are, apart from the contraction of STDs, “genital injuries, blood in stools, incontinence, abscesses, fissures and rupture of rectum, diarrhoea, acute abrasions of the penis, scrotum or perineum, full or partial castration, significant anal dilatation or scarring and chronic pain. (Kiss, et al., 2020, p. 33). Researchers point out that many of these injuries caused to men and boys go unnoticed when they do decide to denounce the acts of violence they have suffered as health providers mostly focus on anal rape when examining male victims. (Kiss, et al., 2020, p.32)

The difficulty to lead research in the field, due to the tendency of the victims to isolate, hide their injuries and relocate, makes these findings the more impactful as information is scarce but the results appear to be of great gravity (Dossa, Zunzunegui, Hatem, & Fraser, 2014).

### *2.1.2. Mental health*

Although the physical consequences that CRSV can have on its victims are possibly the most visual damages that occur, the psychological impact of sexual violence is much stronger, influencing the victims throughout a much longer period of time, if not forever. All



types of sexual violence have a great impact on the victims. Nonetheless, if said violence takes place in the setting of a conflict or in connection to it, the damages it causes on the victims' psyche are only exacerbated. According to the World Health Organization (WHO), “[p]sychological/mental health consequences include nonpathological distress (such as fear, sadness, anger, self-blame, shame, sadness or guilt), anxiety disorders (including posttraumatic stress disorder, PTSD), depression, medically unexplained somatic complaints, and alcohol and other substance use disorders, as well as suicidal ideation and self-harm”. (World Health Organization, 2011, p. 2) Other studies have found CRSV to cause additional mental health disorders such as nightmares, sleep problems, anxiety disorders or cognitive impairment, as well as antisocial behaviours such as problems engaging in intimate relationships, rage, hostility, emotional withdrawal, detachment or apathy (Kiss, et al., 2020, p. 12).

Regarding the different psychological consequences for men and women, studies have found that whilst female victims tend to display internalized psychological difficulties such as anxiety or depression more frequently, male victims have a greater tendency of developing externalized behavioural patterns. Amongst these we find antisocial behaviours and drug abuse as well as a particular concern regarding their masculinity, sexual orientation and the public opinion. (*ibid*, p. 28) Additionally, women who have suffered CRSV and have become pregnant as a result of the act of violence are more likely to choose abortion if the appropriate procedures were available to them, in contrast to those that suffer NCRSV, challenging their own cultural beliefs in relation to abortion (Dossa, Zunzunegui, Hatem, & Fraser, 2014, p. 10).

## **2.2. Impact on the community**

Having observed the impact that CRSV has on both the physical and mental health of the individuals who suffer it, it is important to point out the impact it has on the relationship of those individual victims with their communities as well as the impact that generalized CRSV can have on specific communities. Nonetheless, it is important to point out the difficulties researchers encounter when attempting to access data, due to the special nature of this violence and the consequent reluctance of the victims and the communities to address it and share their experiences as pointed out previously.

The impact of CRSV on communities is undeniable. Often it is used as an effective tactic directed at disturbing the enemy's morale by committing the acts in public or coercing

relatives into perpetuating them. CRSV clearly affects post-conflict reconciliation greatly by undermining social stability as communities have been destroyed and restraining women's mobility through the fear that has been caused on them, restraining their participation in post-conflict societies. Moreover, the lack of effective prosecution of the perpetrators often lead to coexistence in post-conflict realities of victims and attackers and a lack of trust in the emerging post-conflict state of law. (Goetz, n.d.) Notably, although the sexual violence itself leads to many psychological scars, researchers have found that it is often the consequences it has on the relationship between the survivors and their community which cause greater mental health issues in the long term. (Swaine, 2020; Johnson, et al., 2010)

Both female and male victims of CRSV are often concerned with the possible rejection from their families and communities after the attacks. Many victims will describe how they have been rejected from their own homes and abandoned after the attacks, as they are often blamed for their fate. As an example, women who get pregnant as a result of rape in conflict are often blamed for their pregnancy due to cultural beliefs. (Abdullahi, 2016, p. 71) The impossibility to hide a pregnancy and thus to hide the fact that they have become victims of sexual violence can often lead to ostracisms from their own families and support networks and abandonment of both the woman and the child. Thus, many will seek unsafe abortions and cases have been documented of honour killings, "prosecution of victims for adultery or morality crimes, and even cases where individuals are forced to marry their attackers following incidents of sexual violence" (Sidebotham, Moffatt, & Jones, 2016, p. 247). Children born out of these attacks are often left out of the communities, separated from the mothers and marginalized as "children of the enemy". Most importantly and specifically to the situation of conflict, rejection often occurs out of fear of the families of the enemy returning for their children or women. (Abdullahi, 2016, p. 58) Other factors such as having a fistula after the attacks, for example, led to four times more women being abandoned or repudiated by their husbands or partners, in comparison to those that also suffered CRSV but did not suffer such visual scarring (Dossa, Zunzunegui, Hatem, & Fraser, 2015, p. 2206).

In regard to male victims, they are also often blamed and ostracised from their communities. Infertility, impotence and genital infection caused by CRSV on male victims can also have broader damaging impacts on their communities and families. Moreover, suffering sexual violence, as expressed *supra*, can cause an increase in aggressive behaviour and drug abuse, leaving long-lasting scars on communities in which men tend to be the main

providers to their families. Nonetheless, the psychological impact it has on the victims often leads to a lack of help seeking which only consequently increases the possibility of these outcomes. (Kiss, et al., 2020)

Thus, we can conclude that victims of CRSV often suffer severe long-term consequences as a result of their attacks, these being increased when suffering from physical or psychological scars, as well as when resulting in unwanted pregnancies and the birth of children. With consequences reaching from ostracization and abandonment to the possibility of becoming a victim of honour killings. The danger to which victims are exposed does clearly not find an end with the ceasing of the violence itself. (Koos, 2018) For this reason, local and international authorities need to put a great emphasis on the protection of victims following their liberation or cessation of the attack.

### 3. INTERNATIONAL LEGAL FRAMEWORK FOR THE PROTECTION OF VICTIMS OF SEXUAL VIOLENCE IN ARMED CONFLICT

#### **3.1. Legal and Institutional evolution: Historical Background and legal approach by International Humanitarian Law and International Criminal Law**

Conflict-related sexual violence has been understood for many years as an inevitable by-product of war. Therefore, although it has taken place throughout history, it has not been until the end of the 20<sup>th</sup> century that efforts have been made to criminalize and prosecute sexual violence in conflict as an actual crime and thus, as a preventable action. Since the criminalization of these acts, greater international efforts have taken place in order to guarantee the protection of the victims, the prosecution of the perpetrators and the prevention of the crimes when it is perceived that they could take place in a specific context.

The 1948 Universal Declaration of Human Rights already set the foundation for the protection of victims of sexual violence in armed conflict that will be witnessed throughout the last and the current century. Its Preamble, which recognizes the “inherent dignity” and “inalienable rights of all members of the human family”; Article 2, establishing equal rights and freedoms for all mankind without discrimination; Article 3 which grants all individuals their “right to life, liberty and the security of person”; Article 4, banning all types of slavery; Article 5, prohibiting “torture or [...] cruel, inhuman or degrading treatment or punishment”;

and Article 12, establishing that “[n]o one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation”. (UN General Assembly, 1948) These articles are important as some of the main rights and freedoms that are violated during CRSV are the ones gathered in them. Although they do not expressly address CRSV, they do reflect the mindset that will later on lead to the current legal framework.

In 1949, the four Geneva Conventions were adopted, which have since, together with their two additional Protocols, been considered the foundation of International Humanitarian Law (IHL) and thus, *jus in bello*. The fourth Geneva Convention, relative to the Protection of Civilian Persons in Time of War, recognizes rape and other forms of sexual violence as a violation of IHL when perpetrated in the context of an armed conflict, whether of international or internal nature, establishing that “[w]omen shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault” in its Article 27 (ICRC, 1949). All parties to the conflict ought to respect the provisions of the Conventions and thus the prohibition of the use of sexual violence and all States have the legal obligation to prosecute the perpetrators. Article 75 of the Additional Protocol I further specifies the definition, expressing that “humiliating and degrading treatment, enforced prostitution and any form of indecent assault” is included within the prohibition (UN General Assembly, 1967) and Article 4 of the Additional Protocol II specifically includes “rape” (Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, 1977; ICRC, n.d.a). As such, it can be argued that CRSV is prohibited according to the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War and the more recent additional Protocols. (International Committee of the Red Cross (ICRC), 2014; Ad hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO), 2009). Moreover, it has been accepted that rape and other forms of sexual violence are prohibited under customary international law, applicable in both national and international armed conflicts (ICRC, n.d.b).

As a result of the atrocities that took place in the Former Yugoslavia since 1991, which gained public relevance through the media, the use of sexual violence is understood and witnessed as a weapon of war. CRSV is seen being used as a mean to terrorize and displace the population as part of a genocidal campaign. Sexual violence was carried out systematically, with women and girls being kidnapped, transported into rape camps and raped until pregnancies were ensured. (Bastick, Grimm, & Kunz, 2007) Consequently, on account of the

pressure exercised by the media and the international community, the International Criminal Tribunal for the Former Yugoslavia produced a series of landmark cases that would enable the prosecution of individuals solely for acts of sexual violence as war crimes and crimes against humanity (International Residual Mechanism for Criminal Tribunals, n.d.; Prosecutor v. Anto Furundzija, 1998). Simultaneously, the International Criminal Tribunal for Rwanda produced possibly the most important case regarding CRSV: Prosecutor v. Akayesu, in which CRSV was found as crimes against humanity but most importantly, as a tool of genocide (Prosecutor v. Akayesu, 1998).

These set a new precedent that would represent the first efforts directed at ending impunity for the perpetrators of these acts and their consideration as international crimes (Chenault, 2008). Thus, following the events that had taken place in the Former Yugoslavia and Rwanda, mentioned *supra*, sexual violence was expressly typified in the Rome Statute, which ought to create the permanent International Criminal Court, as both crimes against humanity and war crimes in its articles 7 and 8 (UN General Assembly, 1998). More importantly, given the special nature of the crimes, the Statute established a series of obligations, directed at guaranteeing the protection and respect of the victims, that the Prosecution and the Court need comply with, such as the appointment of special advisors or the establishment of sufficient security measures. (UN General Assembly, 1998; UN Women, 2012).

### **3.2. United Nations Security Council Resolutions on Women, Peace and Security**

Parallel to the effort presented in the previous paragraphs, international declarations were being signed by the international community. Amongst these we find the Declaration on the Elimination of Violence Against Women adopted in 1993 or the Beijing Declaration and Platform for Action which was adopted in 1995 at the fourth UN World Conference on Women in Beijing. (UN Women, 2012, p. 6) The latter has become the primary document defining women's rights within the greater concept of Human Rights as it was the first to recognize the gravity of the effects that armed conflicts were having on women and girls, setting out specific measures that had to be taken to guarantee the protection of their rights. (Solanas, 2015)

Nonetheless, our focus is set on the United Nations Security Council Resolutions (SCR) on Women, Peace and Security (WPS). Prior to addressing the content of the Resolutions, it is

important to clarify that in accordance with Articles 24 and 25 of the UN Charter, the decisions adopted by the UN Security Council are binding to all signatories of said Charter and thus members of the UN (United Nations, 1945).

The aforementioned SCR are nine, adopted between the years 2000 to 2019, which focus on the protection of women and girls in the context of armed conflict. Resolution 1325 (2000), being the first one, reflects extensively upon the impact that armed conflicts have on women and girls in an attempt to guarantee their protection and full participation in the agreements and peace processes. For many authors, the explicit nature of its content, meant the breach of a silence that had surrounded the practices which are referenced *supra* and a transformation of the victims into active members of the reconstruction processes (Mayanja, 2010). This Resolution recognizes “the need to consolidate data on the impact of armed conflict on women and girls” but more importantly, it “[c]alls on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict” and it “[e]mphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for [...] crimes [...] relating to sexual and other violence against women and girls” (UN Security Council, 2000). These provisions will set the foundation for the subsequent specific SCR regarding CRSV, which will be addressed in the following paragraphs: SCRs 1820(2008), 1888 (2009), 1960 (2010), 2106 (2013) and 2467 (2019) (UN Peacemaker, n.d.).

Starting off with the SCR 1820 (2008), in observance of the fact that CRSV can exacerbate armed conflicts, hinder conflict-resolution efforts and remain being exercised post-conflict, the topic is approached with deep concern. Although the UNSC has previously condemned such acts of violence, requesting “the cessation of such acts with immediate effect”, they continue occurring, having “become systematic and widespread” in some situations, “reaching appalling levels of brutality”. It recognizes that “women and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group”. For this reason, it reminds the UN Member States, “that States bear primary responsibility to respect and ensure the human rights of their citizens, as well as all individuals within their territory as provided for by relevant international law”. Thus, it “urges” Member States, amongst others, to “support the development and strengthening of the capacities of national institutions [...] in order to provide sustainable assistance to victims of sexual violence in

armed conflict and post-conflict situations” as well as “regional and sub-regional bodies in particular to consider developing and implementing policies, activities, and advocacy for the benefit of women and girls affected by sexual violence in armed conflict”. (UN Security Council, 2008)

In the subsequent SCR, Resolution 1888 (2009), the UNSC reiterates its preoccupation regarding the continuation of the condemned practices despite having repeatedly called out all parties to cease. It recognizes once again, “that States bear the primary responsibility to respect and ensure the human rights of their citizens, as well as all individuals within their territory as provided for by relevant international law”. It is this Resolution which includes the request for the appointment of a Special Representative which will lead the efforts of the UN in this field “primarily through the inter-agency initiative ‘United Nations Action Against Sexual Violence in Conflict’”. Moreover, States are urged to carry out the necessary changes in their legal and judicial systems in order to ensure that survivors “have access to justice, are treated with dignity throughout the justice process and are protected and receive redress for their suffering”. In the same line, it “[e]ncourages States, with the support of the international community, to increase access to health care, psychosocial support, legal assistance and socio economic reintegration services for victims of sexual violence”, amongst other similar provisions directed at granting a greater protection, ensuring a more effective prevention and guaranteeing the prosecution of those who commit these crimes. (UN Security Council, 2009)

The following SCR on WPS, Resolution 1960 (2010), responds to the report of the Secretary-General of 2010 on the implementation of the previous Resolutions, which expressed the need for a faster implementation of the provisions contained in them as the “collective inability of the international community and national authorities to prevent atrocities such as the mass rapes perpetrated in the eastern Democratic Republic of the Congo” had proven (UN General Assembly, 2010). As such, it expresses the same preoccupation, referencing issues such as the fact that “only limited numbers of perpetrators of sexual violence have been brought to justice, while recognizing that in conflict and in post-conflict situations national justice systems may be significantly weakened”. (UN Security Council, 2010)

Three years, later, the SCR 2106 (2013) is adopted after the publication of the Declaration on Preventing Sexual Violence in Conflict by the G8 foreign ministers that same year. In it, the UNSC recognizes once again the aforementioned issues and calls out on the

international community to take an active position towards ensuring the prevention of these crimes and the protection of the victims in conflict and post-conflict scenarios, as well as the prosecution of the perpetrators. On the same line, it recognizes “that women who have been forcefully abducted into armed groups and armed forces, as well as children, are especially vulnerable to sexual violence in armed conflict and post-conflict situations” Moreover, it appeals to the “importance of providing timely assistance to survivors of sexual violence, urges United Nations entities and donors to provide non-discriminatory and comprehensive health services, including sexual and reproductive health, psychosocial, legal, and livelihood support and other multi-sectoral services for survivors of sexual” amongst others, seeking the support of Member States in the pursue of those efforts (UN Security Council, 2013).

Finally, the most recent SCR regarding CRSV, Resolution 2467 (2019), reaffirms the abovementioned commitments and references the same preoccupations as in previous Resolutions. Being the first WPS SCR that puts a greater emphasis on the legal aspect regarding the protection of the victims and survivors, it sets a relevant foundation for the present work. The UNSC recognizes “the need for a survivor-centered approach [...] and that violations of the obligations on the treatment of victims can amount to serious violations of international law”. Thus, it “[r]ecalls the applicable provisions of international law on the right to an effective remedy for violations of human rights, calls upon Member States to make such effective remedy and assistance available to victims of sexual violence in conflict, and post-conflict situations”. Additionally, it recognizes “that women and girls who become pregnant as a result of sexual violence in armed conflict, including those who choose to become mothers, may have different and specific needs, and noting the connected, distinct, sometimes life threatening and enduring risks and harms often faced by those women, girls and their children born as result of sexual violence in conflict, including economic and social marginalization, physical and psychological injury, statelessness, discrimination and lack of access to reparations” (UN Security Council, 2019).

Consequently, and more importantly, it expresses, for the first time, that “in accordance with international refugee law and international human rights law, as applicable, sexual violence in armed conflict and post-conflict situations may constitute a gender related form of persecution for the purposes of determining eligibility asylum or refugee status”. As such, it “encourages Member States to consider resettlement or local integration support for survivors, to adopt measures to mitigate the risk of sexual violence, to make services available to



survivors, and to provide the option of documenting their cases for future accountability processes” (*ibid*).

All of these Resolutions have set out three fundamental pillars: “participation”, “prevention” and “protection”. Participation refers to the need for women to participate decision-making processes of all levels, as they have been recognized as key agents for peace. Prevention refers to the need to prevent violence against women and girls in armed conflict, as well as other consequences war has on them. Finally, the concept of protection responds to need to protect women and girls as full prevention has yet to be achieved and as a necessary mean to achieve their participation. The binding nature of these Resolutions have made them stand out from other international initiatives directed at ending sexual violence in armed conflict, so much so that Resolution 1325 (2000) is considered a landmark Resolution, that would change the course of international efforts. The gender sensitive approach that it requests in peace-building processes and in the protection of civilians during conflict has been considered one of the greatest achievements of the century in regard to the protection and comprehension of the rights of women and girls during conflict (Scully, 2010, p. 25). Moreover, the pairing of participation and protection has been highly celebrated by female scholars as it considers women as individuals who are capable of agency and whose protection, although needed, can respond to a greater mean of participation. As such they have given legal ground to the consideration that vulnerability and oppression can and does coexist with participation or agency (Holvikivi & Reeves, *Women, Peace and Security after Europe's ‘refugee crisis*, 2020, p. 142).

On another note, given said binding nature, these Resolutions have led to the development of National Action Plans in support of the UN SCR 1325 (2000), with 89 countries having adopted such plans as of December 2020 (PeaceWomen, 2020). Nonetheless, scholars have pointed out the need to emphasize that the applicability of the Resolutions takes place both on an international and internal basis, needing to incorporate its objectives and principles in both international and national policies (Council of the European Union, 2018, p. 21; Holvikivi & Reeves, 2017). Despite this, most National Action Plans have been outwards-looking, focusing on the action outside the national territory through foreign policy, rather than also implementing the Resolutions on a national level (Myrntinen, Shepherd, & Wright, 2020, p. 34).

### **3.3. European Union's approach to the *Women, Peace and Security Agenda***

Article 3 of the Consolidated version of the Treaty on European Union establishes that “[i]n its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, [...] the protection of human rights, [...] as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter”. As such, it sets out a standard of action that will be reinforced in Article 21 of the same Treaty, which requires for the EU to make the protection and promotion of human rights a key aspect of the totality of its policies and in particular of its foreign action policies. (European Union, 2007)

Thus, as CRSV leads to major violations of individuals' human rights, principles of the UN Charter and international law, it can be understood that the EU has a clear position towards the elimination of conflict-related sexual violence. Additionally, the Charter of Fundamental Rights of the European Union establishes a series of rights that will set out a minimum standard for the interpretation of further European law (European Council on Refugees and Exiles & Dutch Council for Refugees, 2014, p. 13). Amongst these rights are the right to physical and mental integrity, the prohibition of inhuman and degrading treatment or torture and the prohibition of slavery, all of these being entrenched in the concept of conflict-related sexual violence and found to be present when such violence is perpetrated (European Union, 2012). The Council of the European Union recognized therefore that the WPS Agenda is universally applicable and must therefore be “systematically implemented by all EU actors and Member States, both in their internal (e.g. domestic, judicial and human resources) and external (e.g. foreign and security, trade, and migration) policies, programmes and actions” (Council of the European Union, 2018, p. 21).

In accordance with this, the European Union can play and is playing a key role in the fight towards the elimination of conflict-related sexual violence given its reach and influence over its Member States as well as the greater international community. It has recognized its responsibility towards the protection and promotion of Human Rights on an international level and has conceived the WPS Agenda as part of said efforts. This has been reinforced recently through the joint statement by the EU High Representative Josep Borell and the UN High Representative on Sexual Violence in Conflict, Pramila Patten (European External Action Service, 2020), or the contribution of two million euros towards the Fund for Survivors of

Conflict-Related Sexual Violence established by the UN (European Commission, 2019). Therefore, it has become the leading regional organization in support of the United Nations Security Council Resolutions on Women, Peace and Security with most of its Member States having developed National Action Plans on the implementation of the necessary measures (Miller, Pournik, & Swaine, 2014, p. 11).

As the European Union has played an active role in supporting the United Nations in its quest to implement the objectives and direct measures established in the WPS Agenda its political and economic actions have been backed by institutional and legislative efforts. Amongst these we find, for example, the EU's Parliamentary resolutions on the situation of women in armed conflicts and their role in the reconstruction and democratic process in post-conflict countries (2005/2215(INI)), on the 10th anniversary of UN Security Council Resolution 1325 (2000) on Women, Peace and Security (2012/C 99 E/12) or on Gender Equality in EU's foreign and security policy which integrate the provisions of the SCRs on WPS gathered *supra*. Moreover, current Council decisions such as the one in support of gender mainstreamed policies, programmes and actions in the fight against small arms trafficking and misuse, in line with the Women, Peace and Security agenda, are further proof of the EU's dedication. This is just to show how the European Union has incorporated the premises of the WPS Agenda into all its actions. According to the Council of the European Union, in regard to “[a]ll EU policy frameworks related to gender equality and women’s empowerment [for example,] are linked with the WPS Agenda, and, therefore, the Agenda must guide how work addressing these issues is organised, carried out and followed up” (Council of the European Union, 2018, p. 23).

### **III. INTERNATIONAL PROTECTION OF VICTIMS OF CRSV**

As mentioned at the end of the previous chapter, the UNSC recognized in its last SCR on WPS, that “in accordance with international refugee law and international human rights law, as applicable, sexual violence in armed conflict and post-conflict situations may constitute a gender related form of persecution for the purposes of determining eligibility asylum or refugee status” (UN Security Council, 2019). In this chapter, the reasons behind the need for such a protection will be analyzed from the perspective of International Refugee Law (IRL) and Human Rights Law (HRL).

This chapter will lay out the need to grant asylum to women and girls requesting international protection on the basis of having become victims of CRSV in their country of origin. In order to do so, the 1951 Convention Relating to the Status of Refugees and its additional 1967 Protocol will be approached as the legal framework in regard to the objectives and requirements of international protection and thus the recognition of the refugee status. Following this, the generalized situation of victims of conflict-related sexual violence will be analyzed in an attempt to display the aforementioned argument.

#### **1. LEGAL FRAMEWORK RELATING TO THE STATUS OF REFUGEES**

##### **1.1. 1948 Universal Declaration of Human Rights**

The Universal Declaration of Human Rights (UDHR) is based upon the “the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. Article 14.1 of the Declaration recognizes that “[e]veryone has the right to seek and to enjoy in other countries asylum from persecution”. Within its ample definition of the concept of refugee, victims of conflict-related sexual violence can see their right to international protection recognized as a basic human right.

##### **1.2. 1951 Convention and 1967 Protocol Relating to the Status of Refugees**

Both the Convention and the Protocol constitute the legal framework in regard to the protection of refugees and thus, establishes who has the right to be granted asylum. It provides the legal ground on which regional organizations and states can build the system of protection that they consider the most convenient, setting thus a minimum standard for when and how to provide what has become known as international protection and that has thus to be complied with.

(UNHCR, 2019) As an international treaty, Article 31 of the Vienna Convention on the Law of Treaties signed in 1969 (Vienna Convention hereinafter) will be the guiding rule of interpretation. (United Nations, 1969)

### *1.1.1. Scope*

Although initially adopted with a temporary limitation to persons fleeing events that took place prior to January 1<sup>st</sup>, 1951, and geographically limited to Europe, the 1967 Protocol introduced a series of amendments that gave the Convention universal coverage for the signatory States to the Protocol (UN General Assembly, 1951). The legal framework on IRL shall thus be applicable to all States Parties to the Protocol “without any geographic limitation” and “irrespective of the dateline I January 1951”, as was originally established in the Convention (UN General Assembly, 1967). Nonetheless, it shall be noted, that some States such as Turkey have kept the geographic limitation which can give rise to conflicts between States when approaching the recognition of refugees (Human Rights Watch, 2000).

### *1.1.2. Definition of “refugee”*

According to Article 1 A (2) of the Convention, a refugee would be a person who as a result of events and “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it” (UN General Assembly, 1951).

The “well-founded fear of being persecuted” has been identified by the doctrine as the key element of the legal concept of “refugee”. According to the doctrine’s “bipartite approach” and following the prescriptions in regard to the interpretation of international treaties provided in the Vienna Convention, there are two elements to this concept, a subjective and an objective one. The subjective element, the state of fear with respect to a specific risk, must be the primary reason for a person to leave their place of origin and every aspect surrounding the asylum seeker’s life has to be taken into consideration when assessing its presence. The objective element on the other hand refers to the situation in the person’s country of origin, which must

be assessed. (Hathaway & Hicks, 2005) There are no universal definitions for the concept “persecution”, thus being accepted as any serious violation of human rights (UNHCR, 2019).

Said well-founded fear must be on the grounds of “race, religion, nationality, membership to a particular social group or political opinion”. This causal link requires the fear to be based on a persecution that is based on at least one of the Convention grounds. Whether the link must be “explicitly established” is seen as part of the whole definition of refugee and depends on the jurisdiction.(UNHCR, 2019, p. 23) With regard as to who perceives the grounds to exist, the UNHCR specially points out that “[a]ttribution of the Convention ground to the claimant by the State or non-State actor of persecution is sufficient to establish the required causal connection”. Moreover, “[i]n cases where there is a risk of being persecuted at the hands of a non-State actor (e.g. husband, partner or other non-State actor) for reasons which are related to one of the Convention grounds, the causal link is established, whether or not the absence of State protection is Convention related”. (UNHCR, 2002b, pp. 5-6). The impossibility to “avail himself of the protection of that country” must nonetheless entail a situation that goes beyond the individual’s will, being possibly caused amongst others by a war that prevents the country from providing the needed protection. (UNHCR, 2019, pp. 26-27) Additionally, although some authors have expressed their disagreement with the lack of inclusion of gender in the Convention’s grounds for persecution, defining International Refugee Law as “gender-blind” (Jurasz, 2016, pp. 84-85), the UNHCR has allowed for ample interpretations of the concepts that are provided, following a holistic approach to the regulation (UNHCR, 2019, pp. 23-25; UNHCR, 2002, p. 5).

### *1.1.3. Protection granted to refugees*

There is a series of rights and guarantees that are attached to the recognition of the status of refugee, with the Convention providing a minimum standard of protection. Primarily, the principle of no-refoulement, granted in Article 33, which determines that “[n]o Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion” (UN General Assembly, 1951). Said principle has also, according to the UNHCR, become embedded in international customary law and thus, is binding to all states, regardless of them having become signatories to the Convention (UNHCR, 1994). Other specific rights that are recognized in

order to provide an appropriate protection are related to their juridical status, the access to employment and welfare (UN General Assembly, 1951).

#### *1.1.4. The spirit of International Refugee Law*

Article 31 (1) of the Vienna Convention, establishes that “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose” (United Nations, 1969). Thus, when approaching the 1951 Convention or the 1967 Protocol which shape the status of refugees, such an approach needs to be taken. The Preamble of the 1951 Convention itself recognizes “the social and humanitarian nature of the problem of refugees”, and thus allows for IRL to be considered as built upon a humanitarian object and purpose (UN General Assembly, 1951). Thus, some authors have considered that when read in respect of its humanitarian nature, its scope should include humanitarian refugees in need of international protection due to the increasingly complicated modern armed conflicts (Jurasz, 2016, p. 80). Thus, falling within the realm of HRL, scholars have referred to the 1951 Convention as the “earliest human rights treaty” (Byrne, 2015), as it seeks to protect individuals from “serious human rights violations” (UN General Assembly, 1951), it should have as its primary goal to ensure the protection of people’s Human Rights. This will be of special importance when referring to other systems that ensure the provision of international protection and denying such protection *infra*.

### **1.3. Refugee Status under European Union Law**

The European regulation on international protection is still in its early stages. Nonetheless, it sets out a series of standards that Member States are slowly incorporating into their internal policies with the long-term objective of configuring a fully encompassing Common European Asylum System (CEAS), in accordance with article 78 of the Treaty on the Functioning of the European Union signed in 2007 (European Union, 2012a). Article 18 of the Charter of Fundamental Rights of the European Union establishes that the “right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union” (European Union, 2012b). Additionally, Article 19.2 of the same legal text recognizes that “[n]one may

be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment” (*ibid*).

In the light of these provisions, for the European Union international protection encompasses both refugee status and subsidiary protection, as per article 2 of the Directive 2011/95/UE on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast). Article 2 (d) defines refugee as “a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply” (Council of the European Union, 2011). The following Articles of the Directive define the concepts used in the definition of refugee and with regard to conflict-related sexual violence, Article 9.2 (a) establishes that “[a]cts of persecution as qualified in paragraph 1 can, inter alia, take the form of: (a) acts of physical or mental violence, including acts of sexual violence”. Although the concept of “gender” is not included within the enumeration of ground of persecution, article 10.1 (d) specifically points out that “[g]ender related aspects [...], shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group”. (*ibid*)

Establishing common qualification criteria has been the first step towards the establishment of a Common European Asylum System (European Parliament, n.d.). The other goal has been to establish a common procedure through which to provide international protection. Said procedure has been laid out in Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection. In comparison to the prior Directive from 2005 (Directive 2005/85/EC), authors have welcomed a more sensitive approach to gender-related issues and the specific needs that might rise from such issues, recognizing the complexity of gender-related claims (Council of the European Union, 2006; Council of the European Union, 2013, para. 32). For the rest of the document, it sets out similar provisions to those of the



Convention and Protocols relating to Refugees but in a more detailed and EU specific manner. Nonetheless, the whole EU legal framework in regard to international protection has been regulated through Directives for which it is in the hands of the States to decide how their content will be transposed into national legislation, without being directly applicable (Cheikh Ali, Querton, & Soulard, 2012, pp. 11-13).

## 2. VICTIMS OF CONFLICT-RELATED SEXUAL VIOLENCE AS REFUGEES: RECOGNITION OF THEIR REFUGEE STATUS

Having looked at the configuration of the concept and protection of refugees, we ought to look at how, when speaking of CRSV used as a weapon or tool of war, victims of such acts of sexual violence do, although not explicitly, implicitly fall within the realm of protection of the Convention. The reasons that need to be taken into consideration to determine whether the minimum standard of qualification as refugees is met will be laid out in the following paragraphs. Each of the aspects of the definition of refugee will be analyzed in relation to victims of CRSV.

### 2.1. “Well-founded fear of being persecuted”

In regard to the “well-founded fear of being persecuted” and in accordance with the Guidelines on International Protection: Gender-Related Persecution within the context of Article 1 A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, produced by the UN Refugee Agency and issued in 2002, “[w]hat amounts to a well-founded fear of persecution will depend on the particular circumstances of each individual case” (UNHCR, 2002b).

As referenced *supra*, the “well-founded fear” can be divided into two elements: the objective element in regard to the foundation of the fear and the fear itself which is subjective and dependent on the state of mind of the individual. The well-founded aspect of it requires for the receiving country to assess the situation in the country of origin in relation to the particular individual so that an objective ground can be found. When conflict-related sexual violence is being used as a tool of war against women and girls and they have become victims of such acts, the objective ground on which the fear is founded is provided. Whether this is taking place can

be controlled through human rights data such as the Sexual Violence in Armed Conflict Dataset (Cohen & Nordås, 2014; Adjin-Tettey, 1997, p. 134).

The fear in itself on the other hand is clearly subjective and requires a much deeper understanding of the person's perception of its own situation. This aspect of the minimum qualification criteria to be a refugee has been criticized by scholars as it is dependent on the individual's perception of threat, which can vary from person to person (Adjin-Tettey, 1997, pp. 130-131; UNHCR, 1989, p. 18). In regard of victims of conflict-related sexual violence it could be argued that as women and girls are often used to the treatment received and so to the violation of their human rights, they often normalize such treatment, therefore not experiencing fear or not to the extent needed if such a bipartite approach is taken. Moreover, cultural differences that make it difficult for women to express fear or the reluctance to speak of the causes of fear, have additionally proven to make the determination of whether there is fear impossible in some situations. This can lead to women being denied refugee status, for which although some women might present identifiable fear, in accordance to the spirit of International Refugee Law and Human Rights Law, this criteria should be considered within the bigger picture of the individual's situation.

With regard to persecution, "International human rights law and international criminal law clearly identify certain acts as violations of these laws, such as sexual violence [...]. In this sense, international law can assist decision-makers to determine the persecutory nature of a particular act. [... R]ape and other forms of genderrelated violence, such as dowry-related violence, female genital mutilation, domestic violence, and trafficking, are acts which inflict severe pain and suffering – both mental and physical – and which have been used as forms of persecution, whether perpetrated by State or private actors" (UNHCR, 2002b). Thus, it can be concluded, that acts of sexual violence within of themselves can be considered a form of persecution for which as long as the risk subsists of returning to become prey to such acts, the possibility of being under a well-founded risk of being persecuted can exist.

Finally, the well-founded grounds for fearing being persecuted, do not cease with the acts of sexual violence themselves, in accordance with the research referenced *supra*. Victims of CRSV can after surviving their attacks become victims of their own communities due to practices such as honors killings, often promoted by the harm caused upon the community through the attacks. Such practices are often increased when suffering long-lasting physical

consequences of the acts of violence or becoming pregnant as a result of them, as the impact on the community acquires a visible representation (Canada: Immigration and Refugee Board, 2003, p. 66). This can lead to women often fearing not only for their wellbeing but that of the children born out of these practices.

## **2.2. “for reasons of race, religion, nationality, membership of a particular social group or political opinion”**

When CRSV is used as a tool or weapon of war, it is used as a mean to cause harm to the enemy group. It has historically been used as a mean to show superiority over the enemy. Sexual violence, different to other forms of violence in war, directed at killing the enemy, is often found to be perpetuated to destroy the opposing group, through its physical and psychological destruction. As can be seen throughout the annual Reports of the UN Secretary-General on conflict related sexual violence, CRSV can be witnessed in most ongoing conflicts as a tool to terrorize, targeting primarily women and girls who belong to specific ethnic or religious minority groups who belong to that enemy that is being targeted (UN Secretary-General, 2020; UN Secretary-General, 2019). One could argue that due to the inherent nature of said sexual violence, taking place in a context of armed conflict, the victims of the attacks will inherently be targeted for reasons of race, religion, nationality, membership of a particular social group or political opinion.

The Judgments produced by the International Criminal Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda, show that acts of sexual violence can be perpetrated as a tool of genocide, when or if “committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such”. In the case of Rwanda, the Court recognized, “that the acts of rape and sexual violence [...], were committed solely against Tutsi women, many of whom were subjected to the worst public humiliation, mutilated, and raped several times, often in public” resulting “in physical and psychological destruction of Tutsi women, their families and their communities” (Prosecutor v. Akayesu, 1998). Said example only proves the reasons for which women and girls might become victims of sexual violence.

However, such a claim can only be made without a doubt when referring to CRSV as a strategy, weapon or tool of war, as in those cases a specific group is targeted and CRSV become

just another tool to attempt to destroy the enemy. The variability of sexual violence carried out in armed conflict nevertheless makes it difficult to establish generalizations (Wood, 2016). Thus, it is important to analyze every case when adhering to a literal interpretation of the article and assess whether the cause of persecution is the belonging to such a protected minority grouping. Examples such as the one of the Democratic Republic of Congo with the case of Bosco Ntaganda would make it difficult to argue that the women and girls who were subjected to CRSV, suffered persecution on the grounds of belonging to a protected group (Prosecutor v. Bosco Ntaganda, 2019). For this reason and acknowledging the frequency of CRSV perpetrated against women and girls, authors and courts have identified the need to include “gender” as a separate protected category (Jurasz, 2016, pp. 82-86) or within the concept of “particular social group”. If this was the case, solely being a woman would be enough justification for being targeted and seeking international protection. In regard to the latter and according to the United States Department of Homeland Security for example, gender can be considered a “particular social group” as “even if the harm of the original rape was not “on account of” a protected ground, societal perception of a rape victim and the social consequences arising from that perception may give rise to a well-founded fear of persecution on a protected ground, most likely membership in a particular social group” (U.S. Citizenship and Immigration Services, 2019, p. 28) (UNHCR, 2016b).

The UNHCR Guidelines on International Protection regarding “Membership of a particular social group” defines such a particular social group as “a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights” (UNHCR, 2002a). The UN Handbook on Procedures and Criteria for Determining Refugee Status additionally includes that when “identifying both the group’s existence and the persecution”, the “historical, social, legal and political realities of the particular society to which the group relates will be relevant”; and that the “existence and persecution of the group and attachment to it will be evidence” but the applicant “will need to demonstrate the risk of individual persecution” (UNHCR, 2016b, p. 2). In regard to the particular scenario of women and girls as victims of CRSV, “sex” is recognized as an “innate characteristic”, as the Gender Guidelines mentioned *supra* also express (UNHCR, 2002b). In order to analyze whether the remaining requirements are met, the contextual realities from which the women are fleeing must be understood and viewed in its totality (UNHCR, 2016b, pp. 3-5). Nonetheless, it can be

concluded that many scenarios in which women and girls become victims of CRSV can be considered as scenarios in which said victims are perceived and thus should be considered as being part of a particular social group.

**2.3. “is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”**

The UN Secretary-General points out in his 2018 Report, that “[i]n the context of the mass migration crisis, sexual violence continued to serve as a driver of forced displacement and a factor inhibiting the return of uprooted communities to their places of origin” (UN Secretary-General, 2018). As pointed out *supra*, victims or survivors of CRSV suffer not only the direct physical and psychological wounds of their attacks but also long-term social consequences. As the UN Secretary-General pointed out in his 2020 Report on Conflict-Related Sexual Violence, there is a generalized phenomenon that keeps victims from reporting the crimes that have been committed against them and receiving the appropriate assistance out of a fear of reprisal, stigmatization and a generalized lack of effective services (UN Secretary-General, 2019).

Impunity has been recognized by the SCR on WPS as a key element of CRSV and an evident element of added difficulty when attempting to address the problem. Often, victims refuse to speak out about their attackers out of fear of the consequences this might have in a situation of the utmost instability, which added to the difficulty of gathering information in a situation of conflict, only magnifies its consequences. Even once victims decide to come out about their attacks, as the International Criminal Tribunal for Rwanda recognizes in *Prosecutor v. Akayesu*, “the cultural sensitivities involved in public discussion of intimate matters and recalls the painful reluctance and inability of witnesses to disclose graphic anatomical details of sexual violence they endured” (Prosecutor v. Akayesu, 1998), making it more difficult for authorities to both identify the presence of CRSV, assess its impact and prosecute the perpetrators.

Nonetheless, when victims do decide to speak out and denounce their attackers, they might suffer greater risks to their lives. The events that took place after the sentencing of those responsible for the crimes of CRSV in the Former Yugoslavia made the international community aware of the magnitude of the risks that the victims faced. Many of the victims

expressed feeling like they “were victimized for a second time as a result of a judicial process in which they could not fully participate”, as they “were subjected to the often painful cross-examination process by the defense”, lacking a victim-centered approach, understanding the impact CRSV has on the victims. (Christine Van den Wyngaert Hon, 2011) Moreover, the fear of victims, who experienced other witnesses being intimidated, attempted to be murdered and murdered under supervision of the Court due to ‘technical’ or ‘practical’ errors and difficulties, does not aid the efforts of ending impunity. (Simons, 2014; Pascual i Lagunas, 2017) If the risk of testifying in front of international courts, with the protection that is expected from these processes is so great, the risks of testifying in the territory where the acts of CRSV are being perpetrated can only be imagined. Additionally, the total exclusion of these crimes in other cases such as that of Sierra Leone by the Special Court for Sierra Leone, although evidence existed that CRSV had been committed (Staggs Kelsall & Stepakoff, 2008), only adds to the general perception of impunity and thus to the lack of perception of the possibility to avail oneself to the protection of one’s own country and its institutions. Thus, according to the UNHCR Guidelines, even when solely addressing the application for asylum, “for victims of sexual violence[...], second and subsequent interviews may be needed in order to establish trust and to obtain all necessary information”, such is the fear and lack of trust that victims experience (UNHCR, 2002b).

Additionally, victims of CRSV often need specialized medical assistance or psychological support. Due to the situation of conflict such help cannot be provided nor found, leading to greater long-term consequences caused by the wounds they have suffered as a result of the attacks. It is for these reasons, that many women and girls see themselves forced to leave their communities in search of protection as a result of the existing situation in their own countries. Therefore, the Executive Committee of the High Commissioner’s Programme “[r]ecommends that refugee victims of sexual violence and their families be provided with adequate medical and psycho-social care, including culturally appropriate counselling facilities, and generally be considered as persons of special concern to States and to UNHCR with respect to assistance and the search for durable solutions” (Executive Committee of the High Commissioner’s Programme, 1993). This proves once again the special nature of CRSV and the special needs of its victims. Although it could be argued that any victim in a scenario of armed conflict lacks the direct access to basic services and the needed attention, it is that very special nature of CRSV that makes the victims so vulnerable.

## **2.4. Additional Difficulties**

In the particular case of victims of CRSV, additional difficulties to their forced displacement are found. When CRSV causes the victims' forced displacement, the danger in which they are often does not cease after leaving their place of origin. History has shown that traditional refugee "safe havens" such as refugee camps, can become places of extreme risks for women and girls, with many of them having become victims of sexual violence in these particular settings. Many authors have focused on the use of sexual violence as a mean of exchanging goods in refugee camps, on the perpetration of sexual violence by security personnel and the presence of human trafficking and prostitution in these locations. (Bastick, Grimm, & Kunz, 2007; UN Secretary-General, 2002, pp. 25-28) According to the 2020 UN Secretary-General Report on CRSV, "[r]efugees and migrants faced heightened risks of sexual violence during flight and in displacement settings, leading to increased recourse to negative coping mechanisms, such as early and forced marriage, and the withdrawal of women and girls from employment and education, as observed in Iraq, the Syrian Arab Republic and Yemen and among the displaced Rohingya community in Bangladesh" (UN Secretary-General, 2020). It is for this reason that the UNSC Resolution 2467 (2019) specifically encourages Member States to consider resettlement of victims of CRSV (UN Security Council, 2019).

## **2.5. Complementary protection v. Asylum status**

Bearing into consideration the diversity of persons in need of international protection and the limitations of the 1951 Convention, a division has been created between "Convention" and "non-Convention" refugees. Convention refugees are granted asylum according to the 1951 Convention, whereas non-convention refugees are also in need of international protection but do not fit in within the Convention's definition, for which a "complementary protection" system has been created in some regions or states. Due to what has been called "war-flaw" in the 1951 Convention for example, which does not expressly include persons fleeing from situations of war within the definition of refugee contained in Article 1 A (2), many states have considered those fleeing from war, incapable of being refugees. The lack of provision in the Convention has made it necessary for individuals to prove a special risk, which can be specifically traced to their particular condition. (Storey, 2012) This has in some cases created a need for "complementary protection". Not having a conclusive definition due to the lack of regulation through international law, it can be understood as an instrument that reliefs asylum

seekers who have failed in their claims under the 1951 Convention from removal when a need for international protection is perceived. Depending on the region, such complementary protection has received different names such as “‘subsidiary protection’, ‘humanitarian protection’ and ‘temporary asylum’” (Mandal, 2005, p. 2). Its complementary comes from its relationship to the Convention and Protocol Relating to the Status of Refugees.

The variability of the conceptualizations of such protection has been considered to lead to confusion. Nonetheless, complementary protection has risen as a response to the gaps that have emerged between the UNHCR mandate and IRL in most recent years. (*ibid*) Although the differences between being granted asylum or complementary protection in some countries might not vary greatly, the lack of an international regulation that provides a generalized conception of its scope as well as its seemingly temporary nature, as it is established as a response to an identified gap in international law, makes it difficult to conclude whether victims of CRSV should fall within its protection. Nonetheless, the fact that, as explained *supra*, said victims can fall within the definition of refugees, should make complementary protection unnecessary when referencing the need to provide victims of CRSV with international protection through the figure of asylum.

## **2.6. International Protection for victims of conflict-related sexual violence in the European Union**

As was set out *supra*, the definition of refugee provided in the Directive 2011/95/EU is very similar to that of the Convention and Protocol Referring to the Status of Refugees. Thus, the same arguments presented throughout the Chapter can be used to argue for the right to be provided refugee status according to European Union Law. The additional specifications made in the Directive, make it even easier to argue for such a protection, as the gender-sensitive approach it takes, allows for victims of conflict-related sexual violence to be given the consideration of members of a particular social group in a more direct manner. Moreover, the fact that sexual violence is specifically recognized in the Directive as a legitimate ground for the fear of persecution, makes the access to the refugee status by victims of CRSV even easier. Thus, the European Union can be considered a frontrunner in the protection against SGBV and thus CRSV. Nonetheless, it is important to remember that the Directive’s transposition into national law is left to each Member State making it difficult to assess whether the qualification



criteria contained in the Directive and its further specifications have been yet accepted and integrated by all States.

### 3. RESPONSIBILITY TO GRANT ASYLUM UNDER THE SECURITY COUNCIL RESOLUTIONS ON WOMEN, PEACE AND SECURITY

As seen throughout this chapter, women and girls who have become victims of CRSV can fall within the definition of refugee and thus can deserve to be granted asylum. Nonetheless, in the context of the argument held in this paper, it is important to understand how granting such asylum is key to achieving the goals of the WPS Agenda laid out in the SCR referenced *supra*. Prior to understanding how said protection is necessary in order to achieve the remaining goals of the WPS Agenda, another important issue needs to be addressed. Scholars have found a lack of focus on victims of CRSV once they leave their territory of origin. National Action Plans often cease to refer to victims upon forced displacement. What has caused this is a question left for international analysts but from a legal standpoint the consequences for victims can be devastating with their needs being left unprotected the holistic approach to the SCR is ignored by those bound to grant protection (Holvikivi & Reeves, 2017).

It could be argued that it is for this reason that the most recent Resolution on WPS, the Security Council expressly sets out the possibility for women and girls in such situations to fall within the definition of refugee, encouraging states “to make services available to survivors, and to provide the option of documenting their cases for future accountability processes” (UN Security Council, 2019). Although this is only expressly referenced in this last Resolution, it can be argued that in order to guarantee other objectives established in previous Resolutions, granting asylum constitutes a necessary mean and that, without guarantee of such protection no compliance with the Agenda can be achieved.

The primary “goals” established in the SCR for the WPS Agenda can be summarized in the need to consolidate data on the impact of armed conflict on women and girls, making women and girls active members of peace and reconstruction processes (“participation”), protect women and girls particularly from acts of CRSV (“protection”) and ending the impunity of those who perpetrate those acts. (UN Security Council, 2000) These objectives, established in the first Resolution on WPS, are repeated and emphasized in the subsequent Resolutions but will to a greater or lesser extent remain the foundation for the Agenda on WPS. All those

objectives are ultimately set out to guarantee the protection of women and girls from the consequences of armed conflict, with a special emphasis on CRSV, promote their participation in decision-making processes, and ensure the procurement of justice when such consequences cannot be prevented.

Granting asylum to women and girls fleeing from situations of CRSV as survivors of such acts, becomes of key importance with respect to the obligation set out in the SCR on WPS. Regarding the first goal on the Agenda, the process of gathering data requires women and girls to feel safe. Due to the very sensitive nature of the attack and the cultural and societal implication it has, which are gathered *supra*, special processes need to be created to address victims and ensure them being able to speak out on their wounds and their attackers (Oliveira, Keygnaert, Oliveira Martins, & Dias, 2018, p. 9). The lack of existence of such systems has led to many centuries of silence regarding the perpetration of CRSV and has made it difficult for researchers to theories on its prevalence, execution and implications. As most authors have pointed out the most difficult aspect of research led with regard to sexual violence is the lack of available data and the constraints victims face to speak out (Cohen & Nordås, 2014, p. 421; De Schrijver, Vander Beken, Krahe, & Keygnaert, 2018; UN Secretary-General, 2014, p. 11). Granting asylum to victims would ensure that they find themselves in a situation of safety that would allow the international community to gather information on the impact of armed conflict on women and girls, but most importantly on the presence and impact of CRSV.

Regarding the second goal of making women and girls active members of the peace and reconstruction processes, granting asylum also becomes a key element to its achievement. Given the situation of lack of security, fear of retaliation and ostracisms and active danger in which many victims find themselves after suffering the attacks, as regarded in the previous chapter, their participation or consultation in official processes is far from achievable (UN Secretary-General, 2014, p. 11). When a victim has to face further sexual violence, reprisal or even murder from the state, non-state actors or their own community and cannot find any protection by the authorities present in their territory, the safety needed to work towards fostering peace is non-existent. Moreover, as the UNSC has recognized itself, the mere existence of CRSV reduces the viability of achieving peace and stability in a territory as the impact it has on the communities has long-lasting effects (UN Security Council, 2000). Thus, granting asylum to victims would not only allow women and girls to actively participate in

peace processes from a situation of safety but would reduce the tensions within the territory of origin, allowing for a faster achievement of peace and reconstruction.

Having analyzed how women and girls as victims of CRSV find themselves included in the definition of refugees provided by IRL makes it unnecessary to reference now, how granting asylum would guarantee the protection of said women and girls, as IRL seeks exactly to provide said protection. Being granted international protection as refugees would put an end to the risk of persecution they are facing from their communities, the State or other non-state actors as they would not be sent back to their place of origin. Moreover, it would mean that victims would be able to receive appropriate care.

In regard to the last general goal of the Agenda on WPS which references the need to end impunity, history has shown the need to grant asylum. In order to end impunity, victims are required to speak up about their attacks and their attackers. With CRSV having been recognized within ICL as gathered in the previous chapter, and the ICC providing a permanent tribunal directed at judging international crimes, the institutional basis is provided. Nonetheless, if victims decided to keep their silence, little can be done to prosecute those responsible for the commitment of these crimes. Therefore, and having seen in situations such as that of the Former Yugoslavia in which witnesses were threatened or murdered as a result of their testimony, with the lack of protective measures preventing them from speaking up (Scully, 2010, p. 23), asylum needs to be granted to those victims that fear being persecuted in their country of origin. Without said international protection, it cannot be guaranteed that victims will feel safe enough to speak up and denounce the perpetrators of some of the most horrid international crimes. Thus, it can be concluded that not only has the last Resolution expressly referenced the possibility to argue for the right to asylum on the grounds of CRSV, but that granting such is essential to achieve the remaining objectives.

Finally, with regard to the EU, it holds a special spot within the fight for the implementation of the principles and objectives of the UN SCR on WPS. Given the position of the European Union as a guiding actor in regard to the promotion and development of the WPS Agenda, however, it has been criticized by scholars for not doing enough within its own territories. The EU's policy with regard to the Agenda has been considered to be too focused on neighboring states and in demand of their participation towards the objectives (Kühhas, et al., 2020). This has prevented them from recognizing how essential granting asylum to

victims of CRSV in its territories is to the goals of the Agenda (Kühhas & Möller, 2020, pp. 13-14). Allowing for such protection in its Member States would position victims of CRSV in a situation of safety which cannot be compared to that of neighboring States and with access to the necessary services to ensure their protection, recovery and capacity to speak out on the crimes they have suffered.

#### IV. CONCLUSION

This dissertation was based upon the hypothesis that in order to comply with the goals established in the UNSC Resolutions on Women, Peace and Security (WPS), of ending conflict-related sexual violence (CRSV), ending impunity and protecting the victims, as well as guaranteeing their active participation in peace and reconstruction processes, States needed to grant international protection to victims of sexual violence in armed conflicts. According to the research presented throughout this piece of work, the hypothesis can be considered proven. In this regard, multiple conclusions can be reached, which respond to the objectives established in the Introduction.

1. With regard to the goals and objectives established in the Women, Peace and Security Agenda, it can be concluded that the protection of victims of sexual violence in armed conflict, both within the territory in which the attacks are taking place and outside of it, is essential. Although the long-term goal can be to fully eliminate such violence, as long as it is being perpetrated in most, if not all, ongoing conflicts the victims ought to be protected. How such protection is carried out can differ from situation to situation, but States cannot turn a blind eye on the victims that find themselves in their territories as the Security Council Resolutions, that contain the provisions of the Agenda, are binding to all UN Member States (United Nations, 1945).
2. In this sense, granting international protection to the victims when they find themselves forcibly displaced from their country of origin becomes key in order to achieve the remaining goals established in the Agenda. Granting the victims asylum, and thus allowing them to not be returned to the territory in which their lives are at risk, allows them to not only receive appropriate care and protection, but to speak up about the violence they have been exposed to. The testimony of the victims has proven essential to the prosecution of the perpetrators, for which in order to achieve the goal of ending impunity for those who perpetrate CRSV, those victims ought to feel protected and away from the risks they might encounter in their country of origin. Additionally, granting said protection, also allows for an active participation in the peace and reconstruction processes, as said participation is often not achieved due to the risks victims encounter in their territories of origin, which often forces them into a situation of silence.

3. Thirdly, it can be concluded that victims of conflict-related sexual violence can in many circumstances, when forcibly displaced, meet the minimum criteria of the definition of refugee established in International Refugee Law, as both history and the doctrine have proven. The implications CRSV has on both the individuals and their communities are of such scope, that the need for international protection arises when the situation is so dire that the individuals that have suffered from such violence have to leave their country of origin. Additionally, the systematic character with which this type of violence is in many circumstances perpetrated, when used as a tool of war, clearly differentiates it from non-conflict-related sexual violence, for which it ought to be approached differently, according to the research gathered *supra*.
4. Nonetheless, with regard to the need to protect the victims, two important remarks need to be made. The first one refers to the very special nature of the attacks the victims have suffered. Given its nature, and as the Security Council itself has recognized in multiple occasions as pointed out *supra*, special attention needs to be paid to the way officials communicate with the victims and their reports are being approached. Similarly, the support that needs to be provided has to cater to the specific form of violence that the victims have been exposed to, for which specialized psychosocial assistance must be provided. In order to guarantee that these observations are accounted for, time needs to be dedicated when interviewing asylum seekers who could be victims of CRSV, and sensibilities need to be understood and acknowledged.
5. On another note, as was expressed at the beginning of the dissertation, many individuals who seek asylum in European Union Member States, are fleeing from countries in which the presence of CRSV has been proven (European Commission, 2019; SVAC Dataset, 2021). Additionally, it has striven to become a leading regional organization in the promotion of the protection of Human Rights around the world. For these reasons, it was important to understand what compromises the EU had taken towards the Women, Peace and Security Agenda. After having seen how the European Union has taken an active stance in promoting the compromises reached in the Agenda, it can be concluded that it is playing an active role in promoting the protection of victims of conflict-related sexual violence but its Member States ought to put a greater focus on the inward application of said protection. This can be translated into the need to guarantee that victims of CRSV are recognized as refugees in EU Member States and granted the needed international protection.

6. Finally, acknowledging that a New Pact on Migration and Asylum has been proposed by the European Commission in September 2020, some remarks ought to be made from a future focused perspective. The changes that are introduced with regard to the Common European Asylum System in the proposals presented with the New Pact should always respect the provisions of the Women, Peace and Security Agenda. For this reasons, changes should be directed at achieving the objectives of the Agenda and thus meet the standards of protection of the victims of CRSV established throughout this dissertation. This implies the need to establish effective systems of analyzing asylum claims that provide the needed attention when approaching topics of such difficult nature. Omitting the presence of specialists in the field and an appropriate communication with asylum seekers would only result in the European Union failing in its efforts to protect those individuals' human rights and accomplish the goals of the Women, Peace and Security Agenda.

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