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25-12-2002

# Examining International Responses to Institutionalized Sexual Violence in Conflict

A Comparative Analysis of Comfort Women, Bosnian War Rape Camps and Sexual Slavery  
in ISIS

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**Abstract:** Based on feminist international relations and strategic rape theory, this research aims to examine the response based on legal frameworks to cases of sexual violence and to assess their effectiveness in addressing institutionalized sexual violence in conflict. The cases that have been analysed are the comfort women in Japan, the Bosnian war rape camps and sexual slavery in ISIS. A comparative historical analysis reveals that legal frameworks are often not effectively used to protect victims during conflicts and when used are only used for prosecution post-conflict. The findings suggest that international frameworks need to be looked at again, to better protect victims and to stop institutionalized violence before it happens.

**Keywords:** Institutionalized sexual violence, legal frameworks, conflict zones, strategic rape, feminist international relations

**Wordcount:**14036

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## 1. Introduction

After World War II, a series of international treaties and conventions were made to protect non-combatants from being targeted. However, as recent history has shown, is that civilians have been the target of violence in war, including the use of sexual violence as a weapon of war. Women are often the target within armed conflicts, as part of the military strategy, as they are child bearers in society. Throughout history, sexual violence as a spoil of war, or to punish a population, has been a common practice. However, there have also been cases where sexual violence has been used as a strategy in war, to actively try to terrorize, assert control or even be used as an ethnic cleansing. “The centrality of sexuality in human life can make the effects of sexual violence especially pernicious, destroying not only the victim themselves but the community to which they belong.” (Sitkin et al., 2019).

After World War II, the Geneva Convention was drafted with laws and rules for armed conflicts. This was to try to prevent other atrocities during wars and to help protect civilians who are caught in the middle of the conflict. However, despite making these rules to protect non-combatants, civilians often became a vulnerable target within war, with sexual violence emerging as a horrific weapon of war. Sexual violence as a strategy of war was not common when the convention was drafted, as well as the understanding of the impact of sexual violence during war. Women became often the target of sexual violence in armed conflicts, with the aim to instil fear and get control. This phenomenon is rooted in constructions of gender and power hierarchies in societies, which means that women are often more vulnerable towards sexual violence as a means of warfare. Sexual violence has also been used to target communities, to destabilize them and to shake their social foundation. In more recent conflicts, institutionalized sexual violence has become more used. This means that a governmental body, with power, set up a system of sexual violence. There are frameworks which criminalize sexual violence within conflict, but the effectiveness of these frameworks is sometimes questioned. This thesis seeks to examine the role and efficiency of international law frameworks, in addressing institutionalized sexual violence. By analysing 3 different cases, the issue of comfort women, the Bosnian rape camps and sexual slavery within ISIS and connecting these with international responses based on legal frameworks, this analysis aims to showcase the complexities of sexual violence and the protection of legal frameworks. By this research, I aim to contribute to the field of human rights, to combat sexual violence within conflict and protect the rights of targeted groups.

## 1.2 Research aim and question

The aim of this research is to look at how legal frameworks respond to cases of sexual violence and to investigate the effectiveness of these frameworks in addressing cases of institutionalized sexual violence within conflict zones.

How have international legal frameworks been used to respond to instances of institutionalized sexual violence within conflict and to what extent have these frameworks been effective in responding to these instances?

## 1.3 Theory

To analyse institutionalized sexual violence within conflict, I will be using the theories of strategic rape and feminist international relations. The theory of strategic rape will help to understand why rape is used as a weapon of war, including the role of power, fear and destabilizing communities and gives reasons behind wartime rape. The term tactical rape relates to when rape is used by a governmental body as a strategy of war. (Fitzpatrick, 2016, p. 5). By employing this theory, this research aims to help look at the cases and the reasons why sexual violence is used in conflict settings. Feminist international relations will help look into responses and international frameworks for institutionalized sexual violence in wartime. Using feminist international relations will help critically look at discourses of wartime rape and looks at victims within these conflicts. (Brown, 2016, p. 46). It will analyse the intersection of gender, power and violence within the field of international relations. It brings a gender perspective within the field of conflict and war, which helps me look at gendered sexual violence within conflict. By applying this theory, this research aims to analyse international responses to institutionalized sexual violence and to assess how effective legal systems and documents are in protecting victims and preventing atrocities.

## 1.4 Method and Material

The method that will be utilised is a comparative historical analysis. This choice allows for the examination of responses to institutionalized sexual violence within conflict and how these responses together with international frameworks, have changed over time in different contexts. By comparing these responses, the study aims to look at trends within

institutionalized sexual violence and tries to look at areas for improvement to address this complex and critical issue.

### 1.5 Outline of the paper

Chapter one provides an introduction to sexualized sexual violence and highlights its historical prevalence and its significance in today's society. This chapter sets out the aim of the paper and introduces the research question and introduces the coming chapters of the method and theory. Chapter two looks at the theories that will help understand the analysis and offers detailed explanations of the following two theories: strategic rape theory and feminist international relations. These theories will provide insights into the complex dynamics of sexual violence within conflict and will help us understand the analysis. Chapter three outlines the methodology of the historical comparative method. This chapter also introduces the chosen case studies and provides an overview of each conflict, as well as the international legal framework that has been chosen to analyse them. Chapter four presents the analysis of the case studies, which are structured around international responses based on the legal frameworks. Drawing on the theoretical framework found in chapter two, it looks at how efficient these responses were in addressing institutionalized sexual violence. Chapter five gives a conclusion to the research and highlights the findings from the analysis. Additionally, this chapter gives recommendations based on what has been learned from the study. Chapter six serves as the reference list, with a comprehensive list of the sources that are cited throughout the paper. This is divided into primary sources and secondary sources.

### 1.6 Delimitations

This study is delimited by the scope of research, which was necessarily small. Three case studies were chosen for their strong connection to the selected frameworks and their common characteristics. While other case studies and legal documents could have been included, the selected ones best aligned with the research objectives and provided a good and structured analysis.

## 2. Theories and conceptual framework

Within this section of the thesis, I will explain the chosen theories to look at the institutionalized use of sexual violence in conflict. First, I will look at the concept of strategic rape within war, which can help understand why institutions use sexual violence as a strategy within war. This theory puts forward that rape is used as a deliberate weapon of war to achieve military objectives. By terrorizing civilian populations, strategic rape is a means of warfare that uses psychological means, next to physical violence, to inflict damage. The next theory that I will explain is feminist international relations, which is an intersectional theory of feminism and international relations. It offers a critical lens through which we can analyse gender within conflict. It looks at power relations, patriarchal structures and intersecting forms of oppression. It highlights the systematic nature of gender-based violence and gives new attention to gender within peacebuilding and conflict resolution. It also gives more perspectives and reasons why sexual violence can be and is used as a weapon in conflict.

### 2.1 Concept of strategic rape

Wartime rape has existed for a long time and can be traced back at least towards the Roman empire. Within modern times, more reports of mass rapes began to exist, with scholars saying that wartime rape increased, became more savage and became more systematic. The term wartime rape refers in this case to patterns of mass wartime rape, in the sense that the numbers of rapes are more increased than during peace times. Strategic rape theory is an important theory to help understand mass wartime rape. This theory represents the fact that rape has become to represent another weapon of war that militaries could use to accomplish strategic objectives. It is used as a tactic, carried out by soldiers within the military. (Gottschall, 2004, p. 131). The term ‘tactical’ or ‘strategic’ rape, refers to rape where it is used by a force of authority, to attack groups or individuals. It targets mostly women and girls. Tactical rape can be used as a means to destroy the social fabric of society, it can be used as a strategy to displace a community and may be used as a weapon for ethnic cleansing or genocide. (Fitzpatrick, 2016, p. 5). The type of rape that is focussed on here is about rape when it is used as a policy or a tactic to try to ensure a military win. It has a negative effect on communities, physical and emotional. Next to this, it has also negative impacts on the economies, culture and social impacts on society. “Tactical rape has been recognised as

having an impact that hinders transitions from conflict to peace and peacemaking, destabilises communities and states and can be a threat to international security.” (Fitzgerald, 2016, p. 13). Wartime rape is in this theory seen as a coordinated and brutally effective weapon of war. To be able to see wartime rape as a strategic move, you can look at the consequences it has on the enemy population. “It is credited with spreading debilitating terror, diminishing the resistance of civilians and demoralizing, humiliating and emasculating enemy soldiers who are thereby shown to have failed in their most elemental protective duties.” (Gottschall, 2004, p. 131). Another effect is that by raping the women of a group, the group may become less coherent, as this often changes the way society is put together. It may also be that the women that are raped may become pregnant, sometimes as a strategy and sometimes just as an extra effect and they often are mentally and physically traumatised and wounded and they sometimes die. If a woman is raped, they may sometimes be outcast from their families. These things all can result in the diminishing of a society or a culture, through sexual reproduction. Theorists often see strategic wartime rape as a genocidal act, as it often annihilates a culture. However, while wartime rape may have consequences as said above, sometimes the results of this strategic rape were not intended but is not unwelcome. (Gottschall, 2004, p 132). Another reason why rape can be used as a strategy is that it often results in a group of people fleeing their territory. “Everyone knows the terror of sexual violence and especially rape and if the rumour in the community is that the coming military force is using it, then the incentive to run will be bigger than if sexual violence was not a suspected tool of war.” (Bitar, 2015, p. 32). Rape with the consequence of pregnancy is in some cases the goal, as it sometimes may mean that women of an ethnic group are not able to continue the legacy of their people, as they will not be considered mothers anymore by their own society, just as children from women who were raped are often not able to be considered a part of their society or culture. (Bitar, 2015, p.31). In some cases, rapes by soldiers had the unintended effect that the population became enraged, rather than cowed. An example of this was during World War II when the Japanese army committed large-scale rapes in Korea and China, where the population became angry. However, this still resulted in a systematic rape system set up by the Japanese government, which eventually still had the same effect of scaring the local population of the countries where the women were taken from.

There are several reasons why an armed group may use rape as a weapon during wartime. One of the reasons is that it brings terror to the targeted group, which may help with them complying in this war, or even running away to try to save themselves. In some cases, rape



has been used as a means to a genocide. One of these cases was in Bosnia, where women were impregnated with the goal of an ethnic cleansing in mind. Another objective may be to motivate the soldiers, to either not rape outside of rape camps, like within the case of comfort women, or to keep them happy and to make them fight better, as well as to create a bond within the soldiers. (Bitar, 2014, p. 32). Within my cases, I will show that all examples can be connected with genocide. It is also seen as a proof of masculinity within the army, to rape is to prove their fellow soldiers of this. This is relevant to the concept of patriarchy. Within a patriarchal society, women often have less status than men, which can result in a permissive circumstance to rape, which makes rape an effective weapon of war. (Clark, 2014, p. 464). However, in a patriarchal society, while it is an effective act of terror, on the other hand in a patriarchal society it could be shown that the men are incapable of protecting their women. To remedy this, the blame goes to the raped person, as they did not protect their sexual integrity for the honour of their families, or future husbands. Thus, if they fail to do so, they are often shunned in their society and have to endure discrimination and rejection of the people within their communities. (Clark, 2014, p. 465). "If patriarchy creates a permissive environment for the commission of rape, nationalism not only reinforces and legitimizes patriarchy but also imbues the crime of rape with a strong symbolic and strategic utility." (Clark, 2014, p. 466). Therefore, this is a reason to specifically target women as a strategy within war, as it undermines the social structures of societies. Women are on the one hand easy targets, who are already seen as a person with lesser rights within a patriarchal society, but even if they are sexually assaulted, this will cause a great deal of damage towards the community.

## 2.2 International relations feminism and sexual violence

International relations in itself are a subject that has not been successful enough to theorise gender, while feminism has had trouble theorising about international relations. So, the connection of the two disciplines to make a new intersection of theorising helps to understand international relations with a perspective on gender and equality. (Brown, 1988, p. 461). In the context of this thesis, the term 'gender' primarily refers to biological distinctions between males and females. Specifically, it is used to explore the dynamics of sexual violence in conflict situations concerning individuals' biological sex and its associated social roles and expectations. In this theory, gender is differently constructed, as it is more focussed on

socially constructed genders. Feminist international relations look with a new view to international relations framework and tries to insert a feminist look within these frameworks. One important part of the discourse of this theory is how it looks at power relations between gender. During the 70s, the first steps towards feminist international relations were set, within the academy and the working field. Research has been done to understand on power relations between men and women and how these power relations are affected by the global economy and political processes. (Thorburn, 2000, p. 2-3). Another reason was that after the Cold War, the field of international relations changed itself, with issues of human rights and migration coming forth. This brought with it that the issues of women came more forward as well and how human rights violations were different for men than they were for women. This meant that women's issues became harder to ignore. Within feminist theory, the state became one of the focusses and how they had control over women's lives and bodies, whereas international relations specifically looked at the state and its frameworks. It was thus logical to combine feminism with international relations, to be able to look at both perspectives. One last reason why feminism became integrated within international relations, was because more women had the chance to become part of the field and were higher political actors than before. (Thorburn, 2000, p. 4). Within feminist international relations, there are three areas where feminism added new direction towards international relations. It looked at the gender specific consequences of international processes, women as actors in international affairs and gender components of foreign policy issues. Next to this, theorists argue that feminist components have helped with migration issues, women's human rights and the gendered division of labour (Thorburn, 2000, p. 5-6). Feminist international relations also instead of looking at only security and safety in the international sphere, it looks more at individual experiences, such as at people, places and other. "They (feminist scholars) distinguish women's role in international politics, investigate how structures and behaviour influence them in the international system and explore ways of reconstructing international relations theory in a gender-neutral way." (Abdulsada Ali, 2023, p. 4)

When looking at feminist international relations and the connection with sexual violence within war, it highlights that conflict has a very gendered nature. Women have often different impacts of war, which can be seen when looking at the numbers of sexual violence within war. While men are also affected, women and girls have way higher numbers of victims of sexual violence within war. They argue that sexual violence is not only something that happens as a byproduct of war, but also is deliberately used as a weapon of war to terrorize

and control the communities. This has often long-lasting consequences for these societies, as it fractures social cohesion and breaks up familial structures. Survivors often have a hard time to connect with their old lives and face stigmatization, have a hard time dealing with their traumas and often do not find support and justice. (Korac, 2018, p. 182). International relations feminism also critiques current frameworks of security and tries to change international relations to find mechanisms to protect individuals within war and how to respond to matters of sexual violence. “Feminist theories on wartime rape have followed this tradition through seeking to critically challenge dominant discourses, gender binaries, fixed victim subjectivities and paradigmatic, one-dimensional narratives that are constructed around the universal rather than diversity of lived victim experiences.” (Henry, 2016, p. 46). They emphasize the need for gender perspectives within peacebuilding and conflict resolutions. For international relations, it also remains a challenge to identify the exact reasons why mass rape is being committed during conflict situations and how international politics reacts to this. Within the topic of war, there also has to be more knowledge about military strategy and how and why they use sexual violence as a weapon of war. (Pankhurst, 2009, p. 157). “Feminist modes of critical explanation explicitly address such issues as the harm done by wartime sexual violence; the importance of recognising it as a political phenomenon; the gendered tropes and justifications that exists around rape in context; the empirical evidence for certain forms of brutality and wrongdoing; the depiction of rape in the media; and the need for collaboration to end rape.” (Kirby, 2013, p. 803). Feminist international relations theory looks to critique different aspects of international relations and how they have missed certain information that is needed to understand why something is happening. Concepts that this feminist perspective looks into are patriarchy, power relations and structural violence. Patriarchy is needed to understand how rape can be permitted in conflict situations and how patriarchy enables a hierarchy to exist. Within this hierarchy, women often have less power and while sexual violence is often done by an individual, systems like patriarchy enable masculinity to be endorsed. Other factors within a patriarchal society that results in men’s likelihood to become sexually violent are sexuality, gender and negative attitudes and beliefs about sex. (Henry, 2016, p. 49). The feminist perspective also looks to understand the challenges of addressing sexual violence within conflict. Legal frameworks often fail to address sexual violence in wartime, which means that victims often get limited justice. (Kreft, 2023, p. 665). The response often may be limited, as they do not have adequate resources, political support or the capacity, which undermines efforts to prevent and respond to sexual violence in conflict. Another thing that has to be addressed is

the cultural stigmas, which results in survivors not coming forward to seek support. To respond to this, new frameworks need to be set up, or relooked at, to overcome these challenges. To overcome this, an intense collaboration needs to be made, with governments, international actors and local communities. By pooling resources, expertise and political will, collaborative efforts can amplify impact, enhance accountability and contribute to lasting change in the fight against sexual violence within conflict. (Kreft, 2023, p. 672).

The central concepts of feminist international relations are:

- Gender and sex roles. Gender is seen within feminist international relations as the socially structured difference between men and women, instead of being based on biological differences. Gender is influenced by power dynamics within societies and social hierarchies. Feminist international relations scrutinize the way that international relations are often revolved around male narratives, thus giving women and other gender identities less thought. “They (feminist scholars) state that gender has always existed in international relations, but the male-centred perspective of international relations neglected it.” (Abdulsada Ali, 2023, p. 4)
- Power. Power is a concept that influences feminist international relations, as power shapes how international relations are being formed. For a long time, this meant that men shaped international relations, as men often held more power and privileges in many communities and states. It shapes how societies are often constructed and often have an asymmetric power relation based on gender. It relates to who has the power to construct gender roles and the power to make decisions within national and international legislations. (Youngs, 2004, p. 76)
- Intersectionality. Feminist international relations recognizes that other social categories, such as ethnicity, race and class could provide other experiences and other oppression or privileges within societies. (Ackerly and True, 2008, p. 156)
- State system. The feminist perspective critiques the patriarchal nature of the state, where women were often excluded from decision making spheres and followed gender regulated roles. They also look at how states often prioritize military power and national security over human welfare. They also prioritize gender inclusion, in decision making processes and the making of laws, nationally or internationally. (Abdulsada Ali, 2023, p. 5)
- War and security. Feminist international relations provide criticism towards the traditional view of international relations towards war and security. Feminists have

started to redefine security, to include more protection towards the growing number of civilians that is affected. “A growing awareness of the gender-specific experiences and needs of women in war and post-war conditions and their exclusion from most of the significant institutions in which ‘security’ is discussed.” (Cockburn, 2013, p. 442). Feminist contributions towards war and security include protection, inclusion and gender perspective.

Rape as a weapon of war can be looked at from a feminist perspective. It was the first theoretical discipline that laid the connection between sexual violence and the history of war. Sexual violence within war can be explained according to feminist international relations in various ways. The most known reason is that it is seen as a weapon of war. The acts may be seen as a military strategy and are often seen in cases of mass rapes within conflicts. The intended goal is often terrorizing and intimidating the enemy. Another reason that is found is that it can be used to reward soldiers, as collective acts of rape may be used to bond a group of soldiers together. It also has the intended effect to release natural urges to have less ‘frustration’, so these feelings do not interfere with military conduct. “The incidence of rape tends to be higher with irregular, undisciplined armies, in wars where there is not a sharp division between military and civilian personnel.” (Pankhurst, 2009, p. 152-153). Another reason why rape happens in war, is that it happens more often when there is an absence of social constraints towards the behaviour of soldiers. Men will act in this way, if they feel like they have enough dominance within a social setting and no one is correcting this behaviour. This concept can be seen in war fronts, but also can be an explanation for violence against a partner. “Men’s sexually violent urges are seen as being biologically and socially driven to such an extent that men have no control over them, almost having the tag ‘natural’.” (Pankhurst, 2009, p. 153). Next to this, masculinity in itself can be seen as a cause for sexual violence within conflict. The term masculinity means behaviour that is categorized and seen in patterns to describe male behaviour. Within conflict situations and the connection to sexual violence, masculinity looks at the violent side of male behaviour. “Rather than changes in masculinity somehow being inevitable with war, some writers emphasise that this change is consciously sought and promoted by political leaders as part of the purposeful strategy of rape as a weapon of war.” (Pankhurst, 2009, p. 154). Within the military, characteristics of aggression and dominant behaviours are more brought forward, specifically in cases where the behaviour of soldiers is also not checked. Women bring a role forward in societies, to encourage male family members to be assertive, dominant and to be brave. When these

behaviours are more encouraged, it is easier for men to fall into this side of their masculinity during military training and conflict.

### 3. Method and material

#### 3.1 Method

Within this analysis, the comparative historical method will be used to analyse three different conflicts and the use of institutionalized sexual violence. The cases used to understand the phenomenon of institutionalized sexual violence, are the comfort women during World War II, the rape camps during the Bosnian War and sexual slavery within ISIS. To examine these cases, I will also look at the responses within international law frameworks. By analysing these cases, this research aims to show how international mechanisms have addressed instances of sexual violence within conflicts and how they have evolved over time.

The comparative historical method is a combination of the comparative method and the within-case method. The comparative method helps analyse differences and similarities and the within-case method looks at causal narrative within cases, the reasons for certain processes and situations. By combining these methods, this method looks to analyse different processes within history and how they are similar or different from one another. (Lange, 2012, p. 6).

The selection of the cases is based on their shared characteristic of institutionalized sexual violence. These cases span in different historical timeframes, to allow for a comprehensive historical analysis of changes in international responses to such violence over time. They were chosen to look at various historical conflicts, with the severity of sexual violence in all of the cases and there are international responses to all. The case of comfort women offers a historical perspective, where international frameworks were not as clear yet about sexual violence within conflict, whereas the Bosnian War provides a more recent example, where frameworks were set into place about sexual violence during war. To round up the cases, ISIS is a contemporary situation of a conflict where sexual violence is taking place and can be used to see how international politics has responded in recent years.

To understand the cases, secondary material has been applied. It provided a clear background into the conflicts and explained the causes and reasoning of sexual violence. This also supplied information about how sexual violence became institutionalized and the reasons why. It gives insight into the nature of sexual violence, the responses of international actors and the historical context. Primary data sources include international legal frameworks. The frameworks that have been chosen to connect the cases with the international responses are the Convention on the Prevention and Punishment of the Crime of Genocide (1948), or the Genocide Convention in short, the Convention on the Elimination of All Forms of Discrimination against Women (1979, CEDAW) and the Convention to Suppress the Slave Trade and Slavery, or short the Slavery Convention, with the additional, more modern, protocol to the Transnational Organized Crime Convention, to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. These legal instruments provide a framework for understanding and addressing instances of sexual violence within conflicts and the use of rape as a strategy of war. The Genocide Convention prohibits acts of genocide, including the use of sexual violence as a weapon of genocide, while CEDAW addresses discrimination against women, including how women are treated within conflict situations. The Slavery Convention and its protocol aims to suppress and punish slavery and trafficking of women, including how sexual violence is connected often with cases of sexual slavery, specifically within cases of institutionalized sexual violence.

While the comparative historical method was chosen for its suitability in analysing historical processes, which would help give a clear understanding of sexual violence within conflicts and international responses, other methodological approaches could have been considered. Other methods that were considered were case studies and quantitative research methods. Case studies would have provided me with detailed insights towards each conflict involving institutionalized sexual violence. Nevertheless, while case studies are part of a comparative historical method, just using case studies would not provide me with information to see how responses differ within different conflicts and if throughout the years things changed. A quantitative research method could have given me information more focussed on patterns and trends within institutionalized sexual violence within conflicts. It would give evidence to support claims about the extent and nature of these conflicts. However, this method would fail to provide me with the necessary background information, which a comparative historical method would provide. A comparative historical analysis was in this research the best fit, as it

provides the necessary information to be able to compare different cases with each other and to see how international politics respond to sexual violence within conflicts.

### 3.2 Material

In this section, I will provide information on the cases chosen for this research, of the comfort women in Japan, the rape camps during the war in Bosnia and Herzegovina and the forced sexual slavery within ISIS. The cases have been chosen, as they provide clear examples of situations within conflict where systematic sexual violence is being used and organized by a governance organisation. The cases have also been chosen as they have all three different cultures and backgrounds and this shows that no matter the aspects of a culture, institutionalized sexual violence is still used as a universal war crime. As the thesis is only able to provide a limited background, this prevents me from giving full information about the conflict and all the causes and consequences. However, the information given here will give enough background to understand and help analyse how systematic sexual violence is being used within conflicts and from there out I will be able to analyse how international laws and treaties have been able to respond, or have failed to.

#### 3.2.1 Japan

During World War II, the Japanese Imperial Army conducted a system of prostitution, called Comfort Stations. They were military brothels where young women were coerced, tricked and abducted to work, as “comfort women”, to provide sexual pleasure to soldiers. In this paper, while talking about the women who were forced to go into sexual slavery by the Japanese army, I will call them comfort women. However, the name is not meant as a way to describe what they did, or to minimize them, but is seen in their historical context to get an understanding about specifically the women who were targeted for this systematic prostitution.

The reason why the Japanese army decided to make this system of comfort stations, was because of the situation in Nanking, which is now commonly known as “the Rape of Nanking”. During this, the Japanese army killed up to about 200.000 Chinese who lived there and the soldiers committed a large-scale rape of women and girls. The atrocities that were done here got international attention which resulted in an outrage from the international



community. To try to protect their image and to not damage their image even more, the Japanese military and government found a solution in the system of comfort stations, brothels that were placed in camps, so soldiers would not have the need any more to rape outside this sexual service. Women from Korea, China and other regions were forced to become comfort women in these stations and to serve the soldiers. “The mere fact that the majority of Comfort Women came from the colonies and not from Japan further revealed the prevailing attitudes of racial superiority and chauvinism.” (Lai, 2002, p. 36). Japan believed themselves to be a superior state and felt they were better than other states. Japanese women were not brought over, except a small number, to serve in these stations, as they were deemed to be the bearers of the next generation of loyal subjects to the emperor. (Lai, 2002. P.36). The idea of sending over Japanese women was to have implications for the soldier’s trust, if their family members, such as wives, children and sisters would have served in the comfort stations.

The comfort system was accepted and legalized through the power of the Japanese Emperor. “As the Emperor and as the supreme commander-in-chief of the Japanese army, navy and Airforce, Emperor Hirohito held the legal basis for absolute power over the sovereignty of Japan.” (Lai, 2002). The legal foundation for the comfort women system came from the Imperial Ordinance No. 51952, which described how women were allowed to be recruited and employed. It was said in this law, that women could be recruited whenever was needed, by people in power, such as governors and school presidents. Another document that was found, was a recruitment memo, which stated that to preserve the honour of the army the task of making comfort stations had to be carried out. It also does not state that women had to be recruited with consent and it does not state that minors were not allowed. (Arigbay, 2003, p. 377). As many households lived in poverty during the occupation, many young women worked to provide extra money for their families. Women were recruited by the beliefs that they were going to do another job for the army to get money for their families, mostly in householding tasks or nursing, but there are also accounts of women who got abducted or kidnapped. Even when told about the comfort stations, many interpreted this nature of the stations differently, as they thought it consisted of caring for wounded soldiers and making other soldiers happy in general ways. (Arigbay, 2003, p. 378). Some women were also sold by their families as a means to repay a debt owed. Other women were forcibly taken, with threats of hurting their families if they did not come with them. It is estimated that between 80.000 and 280.000 women were taken to serve in these stations. (Min, 2003, p. 940).

Within the camps, women were subjected to rape, with testimonies revealing that some were forced to have sex between 10 to 30 times a day. They were confined in small spaces where they were forced to serve the soldiers. Within confinement, they were also tortured in different ways, like beatings, burnings and even stabbings. From these practices, sexual diseases and suicide, many women died in these camps. Even after Japan was defeated in World War II, the comfort women were abandoned and sometimes killed by the Japanese soldiers. (Min, 2003, p. 941; Lai, 2002, p. 38).

Japan tried to justify these stations, to try to rectify other concerns the government had during the war. The first one was the fact that the rapes that soldiers did on a large scale, got negative international attention towards the Japanese government. By making the comfort stations, they hoped to stop the soldiers from trying to seek sexual pleasure outside of these stations and thus stopping the negative attention. Another reason was that there was a possibility that women were sent as spies to get secret information about Japan, in exchange for sexual favours. By taking women from the colonies, they often did not speak the language and were thus isolated from the soldiers around them and not able to spread military secrets.

Furthermore, the establishment of comfort women stations would help prevent anti-Japanese sentiments from forming among the people of the occupied regions. (Arigbay, 2003, p. 377).

Lastly, these comfort stations were to try to stop sexual diseases from being spread, as this happened when prostitutes were sent to the front lines, or if rapes happened on large scale indiscriminately. This resulted in medical costs and made soldiers lose strength. (Arigbay, 2003, p. 377). Confucianism was part of the belief system in Korea, a colony of Japan during World War II. Confucianism as a school of thought, is about loyalty and respect, which resulted in a belief of respect and traditional gender roles. A part of Confucianism meant that women were chaste before marriage, which meant for the Japanese army that most women would not have had sexual intercourse and thus no sexual diseases. This would make Korean women, a good candidate for the comfort stations and as they were colonial subjects, the Japanese believed that Koreans had the responsibility to serve the emperor. (Lai, 2002, p. 37)

The victims of the comfort system were scared to return back to their normal lives, as they were ashamed of what happened to them. They were mentally and physically unwell and often were not able to have a normal life. "Although most eventually got married, many were later divorced early because of their infertility or their husbands' knowledge of their secret past, or they became young widows because of their husbands' much older age." (Min 2003, p. 941).

Scholars have argued that the system of comfort women helped with the genocide of the Korean people during World War II. “The system was analogous to genocide of the Korean people for it uprooted the reproductive capability of young women and it attempted to destroy Korean identity.” (Lai, 2002, p. 38). As Japan felt they had a racial superiority, they made policies to assimilate Korea’s way of life. Some of the policies that Japan imposed were intermarriages between Koreans and Japanese and making Koreans take Japanese names. By making them marry Japanese people, the Japanese authorities ensured that there would not be ‘pure’ Korean children. This can be seen as genocidal, as these policies were aimed at destroying the identities of the Korean people. The comfort system itself can also be seen as a genocidal policy. Within this system, the women were harmed, were prevented from giving birth to their own families and were subjected to physical and psychological harm. By being forced to serve as a comfort woman, they also were exposed to discrimination within their own societies. “In the Confucian society of Korea, where a high value is placed on chastity, the loss of virginity meant greatly reduced prospects for marriage and children for former Comfort Women.” (Lai, 2002, p. 39). Many got sexual transmitted diseases, which could lead to them becoming infertile. There is also information that Comfort Women were forced to undergo operations, to eliminate their menstrual periods, which had long consequences for survivors. “The degrading attitudes, the forced assimilation and the callous behaviour towards the Korean population and especially to the comfort women, shows a systematic genocidal intent on the part of the Japanese.” (Lai, 2002, p. 40).

### 3.2.2 Bosnia

In the 90s, the war in former Yugoslavia broke out. One of the reasons for this were long standing ethnic tensions, specifically towards the Muslim population in Yugoslavia. The roots of this ethnic conflict lay after World War I, when several ethnic groups joined to form one state. A feeling of nationalism within the ethnic groups during the 80s brought these tensions higher. Serbian nationalism brought changes towards the freedom of other groups within the state which resulted in other ethnicities wanting to be separated from them. This resulted in a war between Croatia and Yugoslavia, which ended within a year. After this, Bosnia-Herzegovina declared independence, which resulted in another war between the Serbs, Croats and Muslims in Bosnia. This war lasted around four years. During this war, many war crimes were committed by all parties. However, as the Serbs were the aggressors in the war, they had

the power to commit serious violations of international humanitarian law, with one of these violations being the strategic rape during the war. (Fisher, 1996, p. 105-107)

Many of the atrocities committed within Bosnia by the Serbs, can be seen as an ethnic cleansing. While Croats and Muslims were also abused, these appeared to be perpetrated by individuals and not organized in a plan or policy, as was seen within the Serbian military. The way they did these abuses against the Muslim population, with frequency, intent, the nature and with groups of militaries, results in a reasonable belief that these abuses are part of an ethnic cleansing. "In October 1992 Tadeasz Mazowiecki, the Special Rapporteur appointed by the United Nations Commission on Human Rights, concluded that ethnic cleansing was "a goal of the war, not a consequence"" (Fisher, 1996, p. 108). The Serbs forced non-Serbs to leave their territory, murdered non-Serbs and raped and forced impregnations on non-Serbs, all part of the plan of ethnically cleansing the region.

While all ethnic groups in the area were responsible for sexual violence, the Serbians were responsible for an organized policy for sexual violence as a strategy of war. With permission from the Serbian government body, they were allowed by command to sexually assault Muslim women and were given spaces to do this, in the sense of rape camps. (Sitkin et al., 2019, p. 221). Serbian forces used around a hundred different stations to commit sexual violence. The ages of the Bosnian females who were victims ranged from five to eighty years old. "Many reports state that the perpetrators of rape told their victims that they were ordered to rape them as part of the military campaign to keep the victims and their families from ever returning to the region." (Fisher, 1996, p. 110). Evidence was found that the Serbian military had planned to ethnically cleanse the population and that part of this was using rape as a tool. The following quote was found in a report about strategies. "The DELO reports that the Yugoslav National Army (JNA) Psychological Operations Department in Belgrade developed a plan to drive Muslims out of Bosnia based on an analysis of Muslim behaviour which "showed that their morale, desire for battle and will could be crushed more easily by raping women, especially minors and even children and by killing members of the Muslim nationality inside their religious facilities." (Salzman, 1998, p. 356). This shows that the rape camps were a coordinated policy from the Serbian government and military. Another indication that the rape camps were a coordinated effort came from the fact that there was a pattern found, which would have required cooperation. The first pattern was that sexual violence happened together with looting and intimidation. This was encouraged by local governments. The second pattern was that sexual violence happened during the fighting. This

was seen when the military attacked towns and the forces would then assault and rape the women of the village. A third pattern was that it occurred in the detention centres, where people were sent to after an attack. This happened in different ways, such as bringing women to different locations and either murdering them, or bringing them back, or it happened in front of other people from the detention centres. The fourth pattern was in the established rape camps. Here women were raped and even forcibly been impregnated. The last pattern for sexual violence was the bordello camps. Women here were used as prostitutes for soldiers returning from war and were used to pleasure them. These patterns were found all throughout the war in Bosnia.

As Muslim faith requires commitment and protection of women, as they occupy an important and protected space within society. (Sitkin et al., 2019, p. 221). By targeting the women and assaulting them in public and private atmospheres, they destroyed an integral part of the Muslim faith. It destroyed the women's honour within the society. The use of rape had the intention to shame, humiliate and degrade an entire ethnic group. (Fisher, 1996, p. 108). Other consequences because of the sexual violence were that many had injuries and trauma towards their reproductive systems that resulted in them not being able to have children, other serious body harm and mental trauma, which even ended in death sometimes. Rape was also used as a tactic to scare people into leaving their territory, which thus results in one of the policies of ethnic cleansing.

One of the intentions of these rapes, was to forcibly impregnate the women. They were sexually assaulted until they were pregnant and forced to carry the babies to term by only freeing them when abortion was no longer possible. (Alison, 2007, p.86). Impregnation as a form of genocide could be seen as senseless, as it does create new life. However, forced impregnation is capable of destroying an ethnic group for multiple reasons. First, women may be so psychologically traumatized that they would be unable to connect enough with members of their own group and to have a normal sexual or pregnancy experience. Another possible consequence was that women were not seen as marriageable in society, as they are shamed and degraded, or not able to abide by societal and cultural rules anymore. And lastly, as the women are bearing the children of the aggressors, they are not able to procreate children of their own, which results in fewer children of this ethnic group to be born during this time. (Fisher, 1996, p. 93). "When Serbian forces targeted Muslim women through a policy of systematic, widespread sexual violence they intended to irreparably damage women, their families and the Bosnian Muslim community at large, making the policy

genocidal.” (Sitkin et al., 2019, p. 221). A part of why this is part of an ethnic cleansing, is that within Muslim faith and according to Serbs as well, the ethnicity of a child is seen according to who the father is. So, in the eyes of Serbs and Muslims, the child that was birthed by a Muslim woman would still be a Serb, as the perpetrator was a Serb. Women in these rape camps were checked often by gynaecologists, to see if they were pregnant. “The frequently reported intent of Serbian soldiers to impregnate Muslim and Catholic Croats, the presence of gynaecologists to examine the women and the intentional holding of pregnant women until it was too late to legally or safely procure an abortion all point to a systematic, planned policy to utilize rape and forced impregnation as a form of ethnic cleansing.” (Salzman, 1998, p. 359)

### 3.2.3 ISIS

Within the Islamic State, a similar problem is going on, where women are being kidnapped and sold for among other things sexual slavery. ISIS as a group, is considered a non-state actor and is seen by many states as a terrorist group. Their beliefs are to go back to the early Islam and with this follow the rules of the Islamic book, the Quran, strictly interpreted. (Bitar, 2015, p. 40) In 2014, around 6000 Yazidis, children and women, were kidnapped and it is suspected that at least half of this number is a part of human trafficking. Women who were taken were sorted by their status and age. Older women were executed, while younger women had the chance to be sold, given as gifts to fighters or to be held in rest houses for soldiers. (Al-Dayel and Mumford, 2020).

Since ISIS has launched an attack in 2014 against the Yazidis and took around 6000 of their women and children, the women have been taken as spoils of war and were brought to holding centres, where everything about their life was recorded, such as if they were married, had children, their age and even their beauty was given a grade. From here, they were categorized as gifts, or if they were going to be sold on slave markets. ISIS justifies what they are doing, by the defining the Yazidis as non-believers and a pagan minority. This meant that they saw the Yazidis as the group that was at the bottom. They use their theological beliefs as justification to rape, sell and enslave the women. (Kaya, 2020, p. 632). “The difference is that Muslim women who adhere to ISIS’s ideology have more agency and see their position as an elevation. Yazidi women and girls, who are seen at the lowest level of ISIS’s ‘female’ hierarchy, have no control over any decision and their wellbeing is fully dependent on the

person who claims ownership over them.” (Kaya, 2019, p. 11-12). The Yazidi community has their own gender norms, which focusses on honouring women’s bodies by the family and men around them, which makes what ISIS is doing more horrifying to this group. These gender norms were also used by ISIS to discourage women from going back to their communities when escaping, as they would have dishonoured their values and would even be killed for this.

The crime of ISIS and the women of the Yazidi, is an extreme case, as it looks at sexual enslavement and the way that these women are portrayed as chattel and sold in this way, but also because of the fact that this is part of ISIS official plan. “According to testimonies from witnesses and victims, which were confirmed by United Nations reports, including that of the Secretary-General on Sexual Violence in 2015, this sex trade was an organised process, initiated, organised and supervised by ISIS itself.” (El-Masri, 2018, p. 1052). There were bureaus that dealt with these affairs respectively and there were manuals issued on how to deal with and how to treat the women slaves. In these manuals, it is highlighted that these women were seen as property and that having sex with these women was halal and accepted in the eyes of God. In relation to other examples of sexual slavery, as for example comfort women can be seen as, ISIS did see what they are doing as slavery, as this is the term they use in many documents when talking about this. (El-Masri, 2018, p. 1053). Other proof that what ISIS is doing, is that the sexual slavery was a promise for recruitments. “The promise of sexual access to women and girls was one of ISIS’s recruitment strategies and propaganda materials. ISIS’s ideological propaganda documents not only justify violence but also normalise and institutionalise it.” (Kaya, 2020, p. 642)

Within ISIS itself, gender-based violence and hierarchical structures are part of the identity formation. Built around patriarchy, hyper-masculinity resulted in sexual violence towards women. “Sexual and gender-based violence is part of a spectrum of patriarchal, discriminative and unequal structures, norms and institutions that shape women’s everyday lives and sanction male aggression.” (Kaya, 2020, p. 634). ISIS gendered norms, which are based in religion and ethnic identities, made the objectification of the Yazidi women possible, as part of their beliefs and patriarchal structure in society. One of the reasons why women were a target, was that after the Iran-Iraq war and the Gulf War, the regime became more patriarchal and militant. This resulted in strict and conservative gender norms, which meant that women would be treated differently and were caught between these new and stricter ideas. This resulted in gender violence, with discrimination and gendered violence. Women

were encouraged and pressured to marry early and they were seen as good wives, if they got many children, who could be seen as future soldiers. This reinforced the idea that women's most important role is the bearing of children. Furthermore, rape was used as a means to control people who were not following the newer rules. (Kaya, 2020, p. 641)

Armed groups rely on terror to deal with territories that they control, to keep them in line and they use violence as a means to get this terror. Within conflicts, armed groups are also trying to find ways to sustain their fighting. Ways like violence, looting and kidnapping are used as ways to finance themselves. Within the case of ISIS, the kidnapping and selling of the women and children on the one hand finances them and also helps to inflict terror in the controlled communities.

The use of sexual slavery within ISIS can be compared with the system of Comfort Women, as within ISIS this is also used as a strategy, as if this is not used, soldiers would find alternatives outside of marriage and commit adultery. With sex slaves, this would not count, as they are seen as property. By institutionalizing sexual slavery, they would be able to make sure that the soldiers would not commit sin, as they are saying themselves because of their religion. (Bitar, 2015, p. 63). While it is not confirmed as the goal, the way ISIS has methodologically targeted the Yazidi population, can be seen as genocide. By specifically targeting them and taking the women and children of this societal group, the Yazidi fled, were killed, harmed and were psychologically harmed. "In terms of human suffering, the IS targeted these minority communities, executing thousands and dumping their bodies in mass graves, kidnapping women to be used as sex slaves and forcing many thousands more to flee for their lives." (Isakhan and Shabab, 2020, p. 4). This quote gives an overview of information about what ISIS did to minority group, especially towards the Yazidi population. In 2014, the year that the Yazidi women were kidnapped and sold, many were slaughtered on this same spree. This resulted in many fleeing their homes, with numbers in the 400.000 that were displaced. It is important to note that it is estimated that there are only about 800.000 Yazidi people worldwide. As the Yazidi population was specifically targeted, it can be argued that what happened within ISIS, is a genocide.



### 3.3 Frameworks

In this section, I will highlight the selected conventions which will be used to look at institutionalized sexual slavery and accentuate the articles which are essential to help understand the complex cases. I will then examine how efficient these international frameworks have been in providing a remedy for sexual violence within and after, armed conflict and how they have been utilized throughout the chosen conflicts. Building upon this legal framework, I will explore various international responses. Additionally, while acknowledging the significance of the Geneva Convention, which was drafted in 1949 after the horrific situation of World War II, I have decided not to use this for my analysis. However, within this section, I will still highlight important articles that could be useful to understand sexual violence within conflicts. While it provides a comprehensive framework for parties during conflict and it outlines fundamental principles for the protection of civilians in these conflicts, other frameworks that have been researched provided a more targeted and specific framework for my chosen case studies. The frameworks that I will be using for my analysis are CEDAW, the Genocide Convention, the Slavery Convention and the additional protocol on Human Trafficking. These frameworks provide a closer alignment with what is happening within the chosen cases and these conventions are in some instances used to respond internationally. These frameworks provide a more detailed and contextually relevant approach to understand the complexities of institutionalized sexual violence within armed conflicts.

#### 3.3.1 The Geneva Convention

The Geneva Convention was a document that was drafted just after World War II (1949), as this was a conflict where the rules of war began to change and new laws had to be made to better understand the rules of parties within conflict. The Geneva Convention consists of four parts, the first on the wounded and sick in war, the second part about the wounded and sick on sea, the third part on the prisoners of war and lastly the rules on civilians. To look at sexual violence within war, the fourth part of the Geneva Convention is the most relevant to use. The most important article to look at is article 27, which looks at the treatment of civilians. In it, it is stated that all protected persons are deserving of respect and honour and that they should be humanely treated and should always be tried to be protected within armed conflicts. In this article, the following is stated regarding sexual violence: Women shall be

especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. This article is very relevant for cases of sexual violence within armed conflicts. The other article that is relevant, is article 147, which looks at grave breaches. In this article, it is said that unlawful confinement of a protected person, or the compelling a protected person to serve the hostile Power is part of a grave breach of international laws. This is together with causing serious harm or injury to the body and even wilful killing of protected persons. This article could be used to look at sexual slavery and how victims are targeted in conflict.

### 3.3.2 CEDAW

The Convention on the Elimination of All Forms of Discrimination against Women was adopted on the 18<sup>th</sup> of December in 1979. In article one, it establishes that no distinction should be made on the basis of sex, as men and women are seen on the basis as equal. This counts for human rights and other fundamental freedoms. Based on this, violence within war that is specifically targeted at women may thus be a violation of article one of CEDAW. Often sexual violence, forced marriage or trafficking is a case of violence within conflict that disproportionality affects women more than men. Article 5 calls for the change of social and cultural patterns to eliminate prejudices and practices which are based on the idea of inferiority and superiority of gender. This can be connected to sexual violence in conflicts, which come forth because of cultural standards, for example relating to a strong patriarchal society and power hierarchies. Article six talks specifically about forms of trafficking and the exploitation of sex work of women. Within the cases that I have found, women are being taken and used as a form of prostitution, or other sexual violence.

### 3.3.3 Genocide Convention

The Convention on the Prevention and Punishment of the Crime of Genocide, was adopted on the 9<sup>th</sup> of December in 1948. This article was made just after World War II, when the holocaust provided one of the worst genocides that were known in history. It defines genocide as a crime under international law and it ensures that states that ratified the document help to prevent a genocide from happening, or help punish perpetrators if it does happen. In article two of the convention, it defines what the definition of genocide is. It states that the following acts when committed with the intent to destroy an ethnic, national or

religious group are considered as a genocide. The acts are the killing members of the group, to seriously harm, physically or psychologically, members of the group, to make conditions of life worse for the group with the intent to destruct, imposing measures to prevent births within the group and transferring children to another group without consent. With systematic sexual violence, it can be argued that it meets all five of the conditions of genocide. Victims of sexual assault often die of injuries or get killed. Secondly, survivors of systematic sexual assault are often physically and psychologically harmed, with women having long lasting traumas. Thirdly, as women often have long lasting injuries, they are often not able to participate within their society fully. It often also leads to survivors not wanting to have long sustaining relations and not having children, which can eventually lead to fewer births and eventually the falling of a society. Fourthly, when women are bodily harmed by assaults, such as specific sexual diseases, this can lead women to not be able to have children. In some cases, operations are even used to make sure the women are not able to have children anymore. Lastly, if children are taken away from the assaulted women, this helps with the intent of genocide, as it ends the future genetic line. (Sitkin et al., 2019, p. 220).

#### 3.3.4 Slavery Convention

The Slavery Convention was adopted the 25<sup>th</sup> of September in 1926. Within this convention, it is agreed that slavery is where a person does not have any power and where another has all the power over the right of ownership over this person. As slavery is often seen as forced labour, or the taking away of someone's freedom, sexual slavery is not the first thing that people think about. "However, sexual autonomy is a power attaching to the right of ownership of a person and controlling another person's sexuality is, therefore, a form of slavery." (Argibay, 2003, p. 375). Within this convention, it is understood that every party that is part of the treaty has to help prevent and suppress the slave trade and also abolish it in all forms. This would thus count for sexual violence and forced prostitution in wartime as well.

#### 3.3.5 Additional Protocol

The additional protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, which I will shortly call the additional protocol on human trafficking,

was adopted on the 15<sup>th</sup> of November in 2000. This document is part of the United Nations convention against Transnational Organized Crime, but it also gives more insights into slavery and then specifically sexual slavery. In article 3 of the document, trafficking is described as having someone in a position of vulnerability, by or recruitment or transferring someone under the use of a threat or force, with the means of exploitation. It explains then that exploitations can include the exploitation of the prostitution of others, or other forms of sexual slavery. The convention is sets in work a framework to try to prevent trafficking and exploitation of women and children from happening. They do this by providing a set of laws and set up measures that can be undertaken to ensure trafficking is combatted efficiently.

#### 4. Analysis

Sexual violence within conflicts is a horrific violation of human rights and international law, as it inflicts physical and psychological harm to individuals and has often a consequence of harming a community. For this analysis, it is important to understand that sexual violence has been used to target women, men and children, while most often women are the target. It is also important to note that sexual violence and their targets are often based on an intersection of concepts, such as gender, as women are more often targeted and also religion, ethnicity and more. Systematic sexual violence is a byproduct of the hierarchy of power within a conflict, with institutionalized sexual violence being a product of governments and other leading parties within war. Within this analysis, I will look at how the international frameworks that I have chosen, have been used and utilized within my chosen conflicts. These legal frameworks should provide important mechanisms, to stop sexual violence, or to convict perpetrators of sexual violence within conflict. I have looked at responses by official governments or organizations and documents from legal actions, to see how these legal frameworks have been used to give a response to conflicts where institutionalized sexual violence has happened. I will also try to find if these frameworks have been used to stop or persecute these conflicts. My analysis will be structured by following the cases that I have chosen and connecting responses based on the legal frameworks.

#### 4.1 Responses comfort women

Slavery was one of the first crimes to be made illegal under international law. Officially, Japan had not signed and ratified the 1926 Slavery Convention, but when looked at a case later, it declared that Japan had always prohibited the slave trade. (Argibay, 2003, p 380). As the convention from 1926 was seen as a customary international law at the start of World War II, it would have been binding upon Japan. This convention can be used to look at what happened in Japan, as it used sexual slavery in the system of comfort women. “The actus reus of the crime of sexual slavery is the exercise of any or all of the powers attaching to the right of ownership over a person or depriving a person of sexual autonomy.” (Argibay, 2003, p. 384). In the case of Japan, both forms of autonomy were taken away, like the taking away of their freedom in the sense of movement and being confined to their rooms and then they were forced to perform sexual labour. Thus, the case of the Japanese comfort women can be seen as a violation of international law based on the Slavery Convention.

As the Genocide Convention only got drafted after World War II, to find a connection with the Genocide Convention and comfort women is a task that is not easily done. While there are academic journals which talk about the connection between genocide and the comfort women system, I did not find official reports or documents where this connection is being laid. In other conflicts, the mention of systematic rape systems is connected with genocide.

In an official research rapport for the Economic and Social Council of the United Nations (1998), which looks at the legal liability of the government of Japan for the comfort women system, it is said that only about 25% of women who were forced to be prostitutes have survived the daily abuses in these camps. Furthermore, this document lays other connections with human trafficking and sexual slavery. It is mentioned, that to obtain women for this system they were taken, coerced and kidnapped, with often the use of violence. This can then connect to the additional protocol on Human Trafficking. The system of comfort women can be seen as a clear violation of international laws, based on the Slavery Convention. Women’s autonomy was taken away, their right to free movement and their power was taken away, their freedom to make their own choices. In this document, it is stated that Japan had prohibited slavery under their international laws.

In June of 2015, a document from CEDAW looked at issues regarding comfort women in more recent times. In this document, Japan states that it does not appreciate the comfort women issue being seen as a slavery issue, as during World War II, this was not part of the

original definition of the Slavery Convention. They do say that the grave impact on women this issue had, they are making sure that something on this scale would not be able to happen anymore. However, the Committee of CEDAW expresses concern over Japan's failure to find a solution for the comfort women that would last. So, while after World War II, Japan did accept the moral responsibility of comfort women and have tried to offer reparations, they are still unwilling to see the portrayal of sex slavery within the comfort women issue. There is still a conflicting view going on within Japan.

When persecuting the war crimes of Japan in World War II, the issue of the comfort women was not taken separately, but taken together with other war crimes under inhumane treatment, so for official court cases, sexual violence and any legal document relating to this are not part of the Tokyo trials. While many of the responses have eventually led to the Japanese government paying reparations towards the survivors of the comfort women system, full recognition has still been hard, with Japan still fighting to call the system of comfort women not slavery. It was also hard to hold Japan accountable for their actions, as most of the legal frameworks that have been used did not exist yet. The only document that was recognized during, was the Slavery Convention, which the Japanese government keeps denying had something to do with the system of comfort women.

#### 4.2 Responses Bosnian rape camps

The trial of the war crimes that happened during the war in Bosnia and Herzegovina, was the first international trial that involved also crimes of sexual violence. This was done during the International Criminal Tribunal for the former Yugoslavia, where the situation was being prosecuted. In one of the cases, it was confirmed by a judge, that rape could be used as a tool of genocide. In another case, it was concluded that enslavement can include sexual enslavement, thus the rape camps were seen as part of enslavement of the victims during this conflict. In this specific case, the Kunarac et al case (IT-96-23 & 23/1), 3 men were being prosecuted, as they played a big part in organising the system of the rape camps and how women were taken to these camps. This was also seen as a monumental case, as before this, slavery was often only seen as forced labour and servitude, thus the new definition was broadened with sexual violence. It also found, that someone did not necessarily need to be sold or bought, to be considered slavery. In these tribunals, what happened during the

Bosnian war towards the Muslim population could also be defined as a genocide, thus making use of what is described as a genocide in the Genocide Convention.

Within a case, that was filed in 1993, concerning the Genocide Convention, Bosnia and Herzegovina asked for measures to stop Yugoslavia from committing war crimes. In this legal document, the judges respond and give their judgement based on what Bosnia and Herzegovina brought before them (1996). One of the requests from them was that the judges of the International Court of Justice (ICJ), recognize that what Yugoslavia is doing is a violation of the Genocide Convention. In this case, Yugoslavia has objections about what Bosnia and Herzegovina are asking of the ICJ. One of the objections was that at the time when this case was filed, they had not yet ratified the Genocide Convention and was thus not bound by the rules. However, the ICJ argued back that while they had not ratified this yet, they were already bound by other international laws, which also in part prohibits genocide. So, part of why this ruling was important, was that this meant that genocide is a violation even under other international law, regardless of if they had ratified this treaty. As this case was based on the preliminary objections, this ruling also allowed it to get to the next stage, where Yugoslavia did end up being called responsible for the genocide. This ruling was made on the 11<sup>th</sup> of July 2007.

In a press release in 2020, the UN women's rights committee commented on how victims from sexual violence within the armed conflict of Bosnia and Herzegovina have been neglected for a long time. This is a response that looked back on the effects of sexual violence within conflict situations. According to CEDAW, victims from the sexual violence do not get the support, emotionally and financially and are thus discriminated against. It was found that survivors were often unemployed, had no social support and more than half lived under the poverty line. The committee of CEDAW recommended in this press release to give survivors access to help and reparations on the basis before the law.

The case of the war between Bosnia and Yugoslavia, is a case where legal frameworks were effective as a response, even if the response came after the conflict. Within legal documents and cases, such as the ICJ or the International Criminal Tribunal for the former Yugoslavia, perpetrators were for the first time in history specifically persecuted for their involvement of the institutionalized sexual violence. These cases helped sexual violence be recognized as a grave violation of human rights and international laws. It also helped confirm that sexual violence could be tools for genocide and could be seen as part of slavery. These recognitions

helped acknowledge the devastating effects of sexual violence for victims and their communities and would help with holding perpetrators accountable. The additional protocol on Human Trafficking was not in existence yet during this conflict, this document is not used in official responses. Looking at this protocol, if this document would have existed during this conflict, it could have been used to prosecute the actions of institutionalized sexual violence.

### 4.3 Responses ISIS

In a press statement by the US government (2023), the US declared two ISIS leaders as global terrorists, as they were responsible for the abduction and enslavement of Yazidi women. While it does not mention the official Slavery Convention as seen in international law, they do mention slavery multiple times in the speech. They are holding accountable multiple individuals who were responsible for the abduction of women and the sexual slavery and rape.

In a United Nations press conference (2021), they talked about ISIS and how they committed a genocide against the Yazidi and other war crimes. In this press release, they confirm that there is clear evidence that a genocide was committed by ISIS against the Yazidi as a religious group. One of the types of evidence that was found was that the Yazidi were asked the question to convert or to die. This shows an intent to destroy or mentally the religious group, if they converted, or if they were killed, it is physical destruction of a religious group. Other crimes that were committed were the abduction and other brutal abuses, such as rape and sexual violence, which for many women happened for many years. It was found that the intent of these acts was to permanently destroy women's and children from having families and children, within the Yazidi community. Within this document, it is briefly mentioned as well that women were being sold, however, slavery is not mentioned within this document.

In a trafficking in persons report from the US in 2023, they have a section focussed on what is happening in Syria. The government of Syria does not meet the minimum standards to protect their citizens from forced labour or trafficking. They do not criminalize and persecute traffickers. Children are vulnerable to forced marriages and labour from ISIS and this could result in sexual slavery. Sex trafficking is thus also seen as an exploitation in exchange for resources, such as food or money. These issues are still continued, as women from minority groups are still being targeted to forced marriages and sexual slavery. There are guidelines by ISIS on how to hold and capture women and use them as slaves. While the additional



protocol on Human Trafficking is not used in this report from the US, it does clearly connect, as it looks at how people are being trafficked and used for forced labour, such as fighting and sexual slavery.

In a report for the United Nations (2019), a group of human right organizations gave their findings for the committee of CEDAW. They looked at the documentation of forced and early marriages, where it can be seen that these marriages can be used as a strategy for families to get money or resources. The rapport also looks at trafficking and forced prostitution, however, there is not enough data from the government, which could mean that cases could be more than documented. They also point out that ISIS has used sexual violence as a strategic weapon as part of their ideology. ISIS subjected minorities, including Yazidi and Christians, to human rights violations. The Yazidi women were also subdued to organized rape, sexual slavery and forced marriages. The use of sexual violence was something that was an important point of the policy of ISIS. It was used as a propaganda tool and a system was created to make a profit of kidnapped women and children. This article argues that these atrocities were violations of CEDAW, articles 1-3, 5, 6 and 15.

As the most modern example case in this analysis, all the chosen frameworks are applicable to look at the institutionalized sexual violence. I have found responses, which can be connected to every chosen framework. As this case is still ongoing, it can be hard to find exactly how effective international frameworks have been used. In some national courts, ISIS members have been persecuted, however on international levels, persecutions of ISIS have not happened yet. In 2023, in a German court case, two individuals have been persecuted for the crimes of genocide. There have not been international cases that have legally looked at the institutionalized sexual violence.

#### 4.4 Discussion

While analysing the chosen case studies with the chosen international law frameworks, I found that often these frameworks that are supposed to help prevent or punish sexual violence within war are often not really used. All the chosen legal documents, give in these cases all the chance to prosecute perpetrators or victims. However, this rarely happens. In the case of Bosnia versus Yugoslavia, it can be seen that some of these documents have been used. The Genocide Convention for example has been used in international cases to prosecute

Yugoslavia. Furthermore, the Slavery Convention and CEDAW, while not explicitly mentioning them, can be seen that they have been used, to help prosecute individuals who were responsible for the rape camps in Bosnia. Although, these frameworks are only used after the war and have not been utilised to stop sexual slavery during armed conflicts. This delayed response shows the limitations of legal frameworks to be applied in a timely and effective manner during armed conflicts where sexual violence is used. The analysis thus gives a concerning trend regarding the efficiency of international conventions and legal frameworks to effectively address and prosecute instances of institutionalized sexual violence during armed conflicts. Despite the fact that there are many international frameworks and mechanisms, these are often not used enough or not applied effectively. Furthermore, while trying to look at responses, or utilized legal frameworks, it showed the challenge of finding official responses and legal documents that explicitly use the chosen international conventions. Academic sources often provide a better analysis between the frameworks and the conflicts, whereas official documents often not make explicit references, which results in someone having to make the comparison and connection themselves. Despite the fact that there are multiple treaties and conventions that address sexual violence in armed conflicts, sexual violence keeps coming back and has been in the recent decade even been used as a targeted war tactic within conflicts and has only in some cases been prosecuted or held accountable during the conflict. The international system is aware of the crime of sexual violence, as is seen in the inclusion of this crime in many international conventions. However, there is still a gap in actually implementing these conventions, to hold perpetrators accountable and provide justice for survivors. As conflict often has a gendered nature, which makes for the targeting of women for sexual violence, it is important to look at the frameworks from a feminist perspective, as frameworks as the Genocide Convention, the Slavery Convention and the Geneva Convention were made when women had less visibility within politics.

## 5. Conclusion

The question of this research was to look at how international legal frameworks have been used to respond to instances of sexual violence within conflict and to what extent these

responses have been effective. What was found, was that within the conflict of comfort women, there have not been a lot of international responses based on the frameworks I have chosen, as most frameworks, except slavery, have only been made after World War II. After the issue of comfort women, there has been documentation in relation to slavery. However, this connection has not been used to formally prosecute the government of Japan. On the other hand, Japan has had to pay reparations to survivors, but has faced otherwise no legal action based on the crime of institutionalized sexual violence. The case of the Bosnian rape camps is a more recent case, where 3 out of 4 of the chosen frameworks were in use already. After the war, perpetrators were prosecuted for the crime of sexual violence, which was significant, as this was one of the first cases where sexual violence was seen as part of the definition of slavery and it was recognized that sexual violence could also be used as a strategy within genocide. So, while persecuting, CEDAW, the Genocide Convention and the Slavery Convention have all been used in some way, but not all legal frameworks have been named within these cases. The only downside of this conflict was that only after the war was over, the legal frameworks were used to persecute and there was no clear intervention based on these frameworks during the conflict. For the most recent case of institutionalized sexual violence, we looked at ISIS. In this case, all the frameworks that I have identified as important to understand institutionalized sexual violence have been used. While there is documentation of responses, in relation to the chosen frameworks, there has not been international action or international documentation on this issue to stop it. There is more national documentation, such as from the US government, which frames the institutionalized sexual violence and condemns it. In many of the cases, the legal frameworks have not been able to stop sexual violence from happening and in the case of ISIS and the comfort women issue, it has even been hard to find information that relates to persecuting the perpetrators. So, while there are a lot of frameworks that relate to sexual violence, they have not been proven effective in preventing or ceasing institutionalized sexual violence from happening. The international system is aware of the severity of this war crime, as it has been used and named in multiple conventions. As conflicts have changed after World War II, the question can be asked is if the legal frameworks are still relevant. The Geneva Convention is a good example, as this was based on conflicts that happened during World War II and before this. Nowadays, conflicts involve often non-state actors, there is new weapons that have not been used before, like drones but also cyber-attacks, conflicts are being fought in civilian areas, making civilians often a target. Sexual violence as a weapon of war is something that also comes up more in conflicts now, as civilians are targeted more. Thus, it can be asked if the frameworks

that are supposed to protect civilians from being harmed during conflicts are not relevant anymore in these conflicts. Most of these frameworks are about the protection of targeted groups, so the question that can be asked then is if institutionalized sexual violence should get a new legal framework, that is not addressed from the point of the victim, but from the point of the situation and how often it escapes regulations and frameworks. This could be a recommendation for future research, to look at a possible new framework to address institutionalized sexual violence that would help address the situation as it is going on. More research needs to be done as well, to see if the frameworks can be better to address these conflicts, or if there are other factors that contribute to institutionalized sexual violence having a hard time being persecuted. The research that has been done could be brought over to other war crimes of modern conflicts now, to see if frameworks are still relevant in today's conflicts and can also be used to look at different examples of institutionalized sexual violence in conflict.

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