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Security, Gender and Post-Conflict Reconstruction: The Need for a "Woman Question" When Engaging in Reconstruction

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ABSTRACT

In the field of post-conflict reconstruction, gender-related issues are mostly analyzed through a legal or a development paradigm. These conditions, coupled with a general disinclination by the international community—the industrialized, western countries—to challenge cultural norms, whether real or imagined, allows for a security-first and/or a security-development nexus to take precedence regarding post-conflict reconstruction. This paper advances the argument that by viewing gender issues as existential to the security of a state transitioning out of conflict, as opposed to viewing gender as a development or a legal issue, makes it possible to engage in real reconstruction, which means addressing the gender bias that dominates many societies.

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INTRODUCTION

Two decades have passed since the Committee for the Elimination of Discrimination against Women issued General Recommendation No. 19, (1992), defining gender-based violence as a form of discrimination against women. The recommendation, coupled with changes in international criminal law,[1] fortified the resolve to end the culture of impunity that had existed in respect to gender-based violence [2] in times of conflict. [3] Alongside the aforementioned changes issues such as the empowerment of women also began to receive more attention, resources and interests, due to recognition that women experience conflict differently than men, especially as many post-Cold War conflict victims were targeted because of their sex,[4] leading to the possibility of gendercide.[5] In 2006, Kofi Annan in his capacity as UN Secretary-General declared:

> [W]omen are every bit as affected as any man by the challenges facing humanity in the twenty-first century – in economic and social development, as well as in peace and security. Often, they are more affected. It is, therefore, right and indeed necessary that women should be engaged in decision-making in every area, with equal strength and in equal numbers… there is no policy for progress more effective than the empowerment of women and girls. Study after study has taught us that no other policy is as likely to raise economic productivity, or to reduce infant and maternal mortality. No other policy is as sure to improve nutrition and promote health

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[1] The Security Council had itself recognized that "sexual violence in conflict zones is indeed a security concern… [and that] sexual violence profoundly affects not only the health and safety of women, but the economic and social stability of their nations." Secretary of State Condoleezza Rice quoted in Maggie Farley, *U.N. Deems Sexual Attacks a Security Issue*, L.A. TIMES, June 20, 2008. <http://articles.latimes.com/2008/jun/20/world/fg-violence20>

[2] Gender-based violence does not cover all forms of violence directed at women, but only violence that stems from how one views women's role in society. Rashida Manjoo and Calleigh McRaith, *Gender-based Violence and Justice in Conflict and Post-Conflict Areas*, 44 CORNELL INT'L L.J., 11 (2011); Nancy Felipe Russo and Angela Pirlott, *Gender-Based Violence Concepts, Methods, and Findings*, 1087 ANNALS OF THE NEW YORK ACAD. OF SCI., 178 (2006).

[3] Inger Skjelsbaek, *Sexual Violence in Times of War: A New Challenge for Peace Operations*, 8 INT'L PEACEKEEPING 69 (2001).

[4] The conflicts of the post-Cold War period are not driven by traditional political ideology (liberalism, Marxism, socialism) but by ethnic hatred, genocidal intentions, greed, religion, and so on. In these conflicts, the overall aim is the destruction of the enemy, which encourages the targeting of women through systematic killing the women or rape, as rape leads to expulsion or murder. KARL CORDELL AND STEFAN WOLFF, ETHNIC CONFLICT: CAUSES, CONSEQUENCES, RESPONSES (2010); Catherine A. MacKinnon, *Crimes of War, Crimes of Peace*, 4 UCLA WOMEN'S L.J. 59 (1993-1994);

[5] Adam Jones, *Gendercide and Genocide* 2 J. GENOCIDE RESEARCH, 185(2000); Oystein Gullvag Holter, *A Theory of Gendercide*, 4 J. GENOCIDE RESEARCH, 11 (2002).

– including the prevention of HIV/AIDS. No other policy is as powerful in increasing the chances of education for the next generation. And I would also venture that no policy is more important in preventing conflict, or in achieving reconciliation after a conflict has ended.[6]

Post-conflict reconstruction literature grapples with epistemological questions as to whether post-conflict reconstruction is about the physical rebuilding of the society, the attainment of justice for victims or the transformation of the society, which includes changing social and cultural norms and how they are viewed and defined.[7] These epistemological gaps means that gender and gender issues either do not receive sufficient attention within the field of post-conflict reconstruction,[8] or they are used as part of an anecdotal-based approach to shock an audience into action.[9] Another reason for the lack of progress stems from a desire to avoid accusation of neo-colonialism, leading donors to accept indigenous misogynist practices, especially when and if recipients evoke religion or culture to defend the indefensible. [10] Finally, a weak enforcement mechanism permits impunity, inequality, discrimination and violence to

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[6] Kofi Annan, "No Policy for Progress More Effective Than Empowerment of Women, Secretary-General Says in Remarks to Woman's Day Observance," United Nations press conference, March 8, 2006, <http://www.un.org/News/Press/docs/2006/sgsm10370.doc.htm>; Lindsay Stark and Alastair Ager, *A Systematic Review of Prevalence Studies of Gender-Based Violence in Complex Emergencies*, 12 TRAUMA VIOLENCE ABUSE 127-134 (2011).

[7] Fionnuala Ni Aolain and Michael Hamilton, *Gender and the Rule of Law in Transitional Societies*, 18 MINN. J. INT'L L. 385-386 (2009); Susan Muller Okin, *Feminism and Multiculturalism: Some Tensions*, 108 ETHICS 661 (1998).

[8] News reports as to the plight of women in many post-conflict societies attest to this general observation. See for example, Owen Bowcott, *Afghanistan Worse Place in The World for Women, But India in Top Five*, GUARDIAN, June 14, 2011, at p. 19; Jeffrey Gettleman, *Congo Study Set Estimate For Rapes Much Higher*, N.Y. TIMES, May 11, 2011, at p. A4; Tracy E. Higgins and Rachel P. Fink, *Gender and Nation-Building: Family Law as Legal Architecture* 60 ME. L. REV., 375 (2008).

[9] In his 2002 State of the Union address, President Bush declared, "The last time we met in this chamber, the mothers and daughters of Afghanistan were captives in their own homes, forbidden from working or going to school. Today women are free, and are part of Afghanistan's new government. And we welcome the new minister of women's affairs, Dr. Sima Samar." *The State of the Union Address*, GUARDIAN Jan. 30, 2002, <http://www.guardian.co.uk/world/2002/jan/30/usa?INTCMP=SRCH>; [last visited March 15, 2012]

[10] The infamous Afghan Hazara Marriage Law also captures this dichotomy as when President Karzai needed to form political alliance, women's rights were sidelined with very little if any criticism from western policymakers. Barbara Bedont and Katherine Hall-Martinez writing about the Rome Statute negotiations note how the Women's Caucus for Gender Justice faced opposition from some anti-choice groups based in the United States and Canada and from delegations representing states in which religion is part of the political system. These delegations argued that the ideas of the Women's Caucus were a threat to their religious beliefs. Barbara Bedont and Katherine Hall-Martinez, *Ending Impunity for Gender Crimes under the International Criminal Court* 6 BROWN J. WORLD AFF., 67 (1999).

continue, as the international community—the industrialized, Western countries—fails to address the pervasiveness of structural violence[11] and the genderized nature of society.[12]

This conceptual paper strives to offer a schema illustrating the link among gender, post-conflict reconstruction and security. It will be argued in this paper that incorporating gender within the polysemous concept of national security the importance of gender and gender issues is raised. Moreover, such an approach permits if not encourages the adoption of extraordinary measures that challenge socially constructed, anachronistic practices, norms and boundaries that fall within the private realm—whether custom-based, religious, cultural and/or legal that some then use as an excuse to defend discriminatory practices. Infusing gender issues into a national security paradigm in a post-conflict setting means making gender an existential issue, which in turn places gender at the heart of the reconstruction discourse.[13] This approach is not only just, but is also practical mainly because:

> [C]onflict often leaves more women alive than men, skewing the population and forcing women to lead their households and to take on other leadership roles simply because of the absence of the men who used to play those roles. Thus even if a

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[11] Structural violence refers to social injustice. It focuses on inequalities, wrong, alienation and exploitation that exist in society. Johan Galtung, *Violence, Peace, and Peace Research*, 6 JOURNAL OF PEACE RESEARCH 167 (1969).

[12] This includes the industrialised world, where discriminatory practices and inequality continues, though not to the same degree as in the non-western world. Thus, for example reportedly, only one-in-10 board members in the European Union are women, ensuring that in the current rate it would take at least 50 years before there is gender parity on company boards. Jerzy Buzek and Viviane Reding, *Women in the Boardroom*, N.Y. TIMES, Feb. 28, 2011<http://www.nytimes.com/2011/03/01/opinion/01iht-edbuzek01.html>. See also Charles Arthur, *EU Plans Tough Quota to Put Women in the Boardroom*, GUARDIAN, March 4, 2012, at p. 25; Tom McCarthy, *Women Make Gains in Boardrooms Worldwide by US Still Lags Behind*, GUARDIAN, March 8, 2012, <http://www.guardian.co.uk/society/2012/mar/08/equality-usa>.

[13] Professor Geoffrey L. Smith offers an example as to how an issue's importance intensifies once a national security label is attached to it, as he argues that to deal with the perceived Soviet threat and communism "[t]he men who built the US security state joined with allies in corporate, religious, scientific, medical, and academic circles to ostracize domestic groups deemed harmful to national safety by identifying them with the terrible 'Other'." Geoffrey S. Smith, National Security and Personal Isolation: Sex, Gender, and Disease in the Cold-War United States, 14 INT'L HISTORY REV., 308 (1992). Arnold Wolfers has pointed out that during the Cold War, whenever policymakers, scholars and/or publicists wished to be taken seriously they would use national security to gain widespread support for their policies and ideas, even if they intruded into the private realm. Arnold Wolfers, "National Security" as an Ambiguous Symbol, 67 POL. SCI. Q., 481 (1952). This trend has arguably continued with the end of the Cold War. The FBI for example has focused more of its attention on national security issues than on ordinary crime. Charlie Savage, *F.B.I. Focusing on Security Over Ordinary Crime*, N.Y. TIMES, Augt. 24, 2011, at p. A16.

country does not want to involve its women in the transition process, their involvement may just be a fact of the circumstances, and any hindrance to women taking on these responsibilities can be detrimental to the country's transition. For these reasons, it is in a transitioning country's best interest to take a redistributive, equality-based approach, even if equality as a principle has no inherent value for that country.[14]

The paper is divided into five main sections, followed by a conclusion. It begins with a review of feminism that highlights how the discourse over women's rights and gender has evolved. The aim is to recognize that many of the issues affecting societies transitioning out of conflict existed in Western societies where turning to culture, religion or social norms, society defended discriminatory practices, claiming that they fell within the private realm. However, over time and mainly due to the work of feminists, change occurred. This therefore suggests that similar changes could take place in societies transitioning out of conflict, as long as there is a willingness to challenge discriminatory practices. Section II reviews how the academic discipline of Security Studies addresses gender. Security Studies lacks a strong gender focus because society views gender as a male concept due to the close associations between security and masculinity and militarization, making the subject-matter phallocentric in nature.[15] This bias ensured that gender and the "women's question" did not play a role in the epistemological and the ontological discussion in respect to "security." Consequently, by not having a presence in the security realm, whether in developed or in transitioning societies, women's disadvantaged position is further accentuated.[16] In other words, one recognises that societies provide those in the security sector with many privileges and honours and women form a tiny minority within this field (in transitioning societies, women are barely visible when it comes to

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[14] Sharanya Sai Mohan, *The Battle after the War: Gender Discrimination in Property Rights and Post-Conflict Property Restitution*, 36 YALE J. INT'L L., 467 (2011). Mala Htun and S. Laurel Weldon looking at family law across the world argue that the decision by some countries such as Morocco,Turkey, and Botswana to change their family law legislation had meant that "virtually overnight, catapulting them from the group of most discriminatory countries to among the least." Mala Htun and S. Laurel Weldon, *State Power, Religion, and Women's Rights: A Comparative Analysis of Family Law*, 18 IND. J. GLOBAL LEGAL STUD., 147 (2011).

[15] Laura Sjoberg astutely points out that the number of women reaching influential positions in international security policymaking is rare. Secondly, she notes that when women assume such position they are identified by their gender. Laura Sjoberg, *Introduction to Security Studies: Feminist Contributions*, 18 SECURITY STUD., 184 (2009).

[16] This is developed from the work of Galia Golan who looked into the effect of the military on the position of women and women in Israel. Galia Golan *Militarization and Gender: The Israeli Experience*, 20 WOMEN'S STUD. INT'L FORUM, 115, (1997); CYNTHIA ENLOE, MANEUVERS: THE INTERNATIONAL POLITICS OF MILITARIZING WOMEN'S LIVES (2000).

the security field). The end of the Cold War led to the development of a new approach to Security Studies known as human security, which focuses on individual security and a desire to enhance security through social and economic empowerment supported by legal and judicial reforms. Human security therefore has a more of a development stance;[17] however, gender issues are generally placed under a specific set of programs, accentuating a gender divide. [18] The section concludes by reviewing how feminism is seeking to establish itself within Security Studies. This would have a positive effect on post-conflict reconstruction, as it would help to enhance the understanding of the concept of "security," which can no longer be seen through a traditional lens or human security. Section III reviews the way the international community has come to engage in state building and highlights that due to the way security is viewed. It is argued that the approach of the international community remains genderized—bias against women— as the interventionist philosophy strives to, keep, maintain, build and if necessary enforce the peace,[19] all of which are security focused. At the same time, the section also seek to illustrate how the UN, recognizing that a security-first approach was insufficient has adopted an approach calls for security considerations with development (security-development nexus), as befitting the human security paradigm. Section IV appraises the way post-conflict reconstruction has dealt with gender and gender related issues. By using the law and the approach that is known as social welfare system, post-conflict reconstruction studies only accentuate traditional gender roles as they too fail to address structural issues. The lack of structural reform may also explain why when gender issues face security or geopolitical consideration, the latter takes precedence, as society whether one refers to the transitioning one or to the international one is dominated by men and their conception of security and reconstruction.[20] Section V

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[17] A More Secure World: Our Shared Responsibility, Report of the High-Level Panel on Threats, Challenges and Change, UN Doc. A/59/565, (2004), <http://www.un.org/secureworld/report.pdf> (accessed March 25, 2012); In Larger Freedom: Towards Development, Security and Human Rights for All, Report of the Secretary- General, UN Doc. A/59/2005 & annex (2005), <http://www.un.org/largerfreedom/contents.htm> (accessed March 25, 2012).

[18] This manifests itself in gender mainstreaming and the notion that women are peaceful. This observation is developed from Dianne Otto, *The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade*, 10 MELB. J. INT'L L. 11 (2009).

[19] ALEX J. BELLAMY AND PAUL D. WILLIAMS, UNDERSTANDING PEACEKEEPING (2010); Andrew Cottey, *Beyond Humanitarian Intervention: the New Politics of Peacekeeping and Intervention*, 14 CONTEMP. POL., 429 (2008); Muzaffer Ercan Yilmaz, *UN Peacekeeping the Post Cold War Era*, 22 INT'L J. WORLD PEACE 13 (2005); Alex J. Bellamy, *The 'Next Stage' in Peace Operations Theory?* 11 INT'L PEACEKEEPING, 17 (2004).

[20] Alexander, the director of USAID's Office of Afghanistan and Pakistan Affairs, when asked why USAID changed its $140 million land reform program in Afghanistan, which was supposed to promote women's rights by helping them attain land rights, answered, "The women's issue is one where we need hardheaded realism. There are things we can

and the conclusion seek to highlight the need for a security-gender nexus when it comes to post-conflict reconstruction, as only through the infusion of gender and gender issues within a post-conflict setting, do these issues become alleviated in terms of priorities and funding. Consequently, discussions over gender are as important as the building of a national military, police force or government. Gender awareness becomes essential to the survival of society.[21] Associating gender with security also ensures that donors and recipients find it impossible to vacillate on the promotion of gender equality, gender mainstreaming and gender rights in a post-conflict setting, unlike when national security is invoked, ideas, policies and agendas receive more attention. By incorporating a feminist understanding that stems from recognizing the private–public divide, it becomes possible to engage in more effective post-conflict reconstruction, as well as ending the iniquitous approach to reconstruction The benefit that would come from such a mind change is better reconstruction and fundamentally the improvement in the lives of millions of women.

I. FEMINISM – A HISTORICAL REVIEW

Feminist scholarship is inimitable, elaborate, sophisticated and contentious.[22] In the nineteenth-century, feminism sought to address gender divisions to allow women to enter the public realm. Thus, the early feminists challenged the espousal, adoption and enforcement of laws that established and maintained separate spheres—private and public—for men and women. An important element in the way men defended this state of affairs was through benevolent paternalism, arguing that women needed the protection of men from life, society and/or, ironically, other men. In the words of US Supreme Court Justice Joseph P. Bradley:

> Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The Constitution of the family organization, which is founded in the divine ordinance as well as in the nature of

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do, and do well. But if we become unrealistic and overfocused… we get ourselves in trouble." According to *The Washington Post*, a senior US government official noted, "Gender issues are going to have to take a back seat to other priorities". Rajiv Chandrasekaran, *In Afghanistan, U.S. Shifts Strategy On Women's Rights As It Eyes Wider Priorities*, WASH POST, March 6, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2011/03/05/AR2011030504233.html>.

[21] Lene Hansen looking at honor-killing in Pakistan argues that by adopting a security terminology it becomes an existential threat, making it imperative to find a solution to it. Lene Hansen, *The Little Mermaid's Silent Security Dilemma and the Absence of Gender in the Copenhagen School*, 29 MILLENNIUM – J. OF INT'L STUD., 293 (2000).

[22] Martha Chamallas *Past as Prologue: Old and New Feminisms*, 17 MICH. J. GENDER & L., 157 (2010-2011). SANDRA HARDING, THE SCIENCE QUESTION IN FEMINISM (1986).

things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interest and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. So firmly fixed was this sentiment in the founders of the common law that it became a maxim of that system of jurisprudence that a woman had no legal existence separate from her husband, who was regarded as her head and representative in the social state, and, notwithstanding some recent modifications of this civil status, many of the special rules of law flowing from and dependent upon this cardinal principle still exist in full force in most states.[23]

The women's suffrage movement challenged this conception by seeking to attain not only political and civil rights, but also political representation, as a mean to bring about change in society. The philosophical undermining of the movement was that change would occur when women attained full access to mainstream society. [24] Their activism was successful as it expanded the franchise to incorporate women; it altered education standards; and, ended many social norms that kept women in the private world. The tumultuous 1960s encouraged the development of new feminist theories that challenged many of the first-generation feminist views as to how to attain equality. The liberal feminists focused on the law as a means to rectify the disparities between men and women. In other words, feminists argued for legislation and their enforcement.[25] The 1980s saw a new brand of feminism with the introduction of cultural feminism and radical feminism. Such feminists offered a new conception of society and viewed the relationship between men and women through different paradigms.[26] The cultural feminists took a biological approach that posited there are physiological differences between men and women that allow women to look at life and society in a different way, leading to the assumption that "[W]omen's behavior is instinctive and not learned. The inclusion of women in foreign policy decision making, therefore, would

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[23] *Bradwell* v. *Illinois* 83 U.S. (16 Wall.) 130 (1873).

[24] TRACY A. THOMAS AND TRACEY JEAN BOISSEAU, INTRODUCTION: LAW, HISTORY, AND FEMINISM 1-29 (Tracy A. Thomas and Tracey Boisseau (ed.) FEMINIST LEGAL HISTORY; ESSAYS ON WOMEN AND LAW, 2011).

[25] Ruth Bader Ginsburg, *Gender and the Constitution*, 44 U. CIN. L. REV., 1, (1975); Ruth Bader Ginsburg, *Sex Equality and the Constitution*, 52 TUL. L. REV., 451, (1977-1978); Ruth Bader Ginsburg and Barbara Flagg, *Some Reflections on the Feminist Legal Thought of the 1970's*, 1989 U. CHI. LEGAL F., 9 (1989).

[26] Compare for example, CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (1982); and CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND Law (1987).

alter policy output – not women's nature, which is biologically determined."[27]

Radical feminist discourse identified masculinity and its effect on society, in that through the establishment of masculine and feminine roles, society, dominated by men, devalues women through sex.[28] The outcome of this was an acknowledgment of the way society values the labor of women. By viewing gender as socially constructed, a greater understanding of how society devalues feminine products and ideas is attained.[29]
The 1990s saw a new strand of feminism that was anti-essentialist and/or intersectional, encouraging a non-Western view of feminism. Those feminists looked at other important dimensions of womanhood, such as identity, race, ethnicity, sexual orientation and interconnections with gender. This development further highlighted the complexities that surround feminism, as until the 1990s, the discipline reflected a Western understanding of women's issues.[30] Christine Sylvester writing about the tensions in feminist security studies notes,

> To enable rather than dominate difference, many Western feminists began to refrain from indicting cultural practices they would once have deemed misogynist, and from speaking critically about difficult gender relations that a majority of women in other cultures might accept. Respect for cultural difference admirably lowered the volume on Western feminism, but, over time, it also left some culturally rebellious feminists isolated and rendered dangerously insecure by the very local practices that Western feminists were trying to accommodate.[31]

Ultimately, however, despite the many differences, the tie that binds the feminist movement is a concern with the historical and contemporary exploitation of women and their weakened position when contrasted to men in society. Consequently, feminist discourse identifies the terms—women and gender—through distinctive lenses. [32] Their approach is

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[27] Mary Caprioli, *Gendered Conflict*, 37 J. PEACE RESEARCH, 52 (2000).
[28] Alix Kates Shulman, *Sex and Power: Sexual Bases of Radical Feminism*, 5 SIGNS 590, (1980).
[29] J. Ann Tickner asserts that due to this approach feminists understand and define gender "in the symbolic sense, as a set of variable but socially and culturally constructed characteristics-such as power, autonomy, rationality, and public-that are stereotypically associated with masculinity." J. Ann Tikner, *You Just Don't Understand: Troubled Engagements between Feminists and IR Theorists*, 41 INT'L STU. Q., 614 (1997).
[30] Martha Chamallas, *Past as Prologue: Old and New Feminisms*, 17 MICH. J. GENDER & L., 158 (2010-2011).
[31] Christine Sylvester, *Tensions in Feminist Security Studies* 41 SECURITY DIALOGUE, 610 (2010).
[32] Dianna Otto, *The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade*, 10 MELBOURNE J. INT'L L., 11, (2009).

generally associational, as the focus becomes of understanding either how society treats a woman as a distinct person and/or as part of society, ensuring that they seek to understand how women interact with society on an individual basis and/or as a distinctive group. Thus, although feminism is incredibly difficult to define, it is a concept that encompasses an ideology and a sociopolitical movement that offers a critical analysis of male privilege and female subordination within any given society. Therefore, feminism "opposes women's subordination to men in the family and society, along with men's claim to define what is best for women without consulting them;" while it also "offers a frontal challenge to patriarchal thought, social organization, and control mechanism."[33]

A. The Private, Public Divide: "The Personal is Political"[34]

There are a number of endogenous and exogenous factors that explain why gender, gender issues and women's issues have had such a limited impact on post-conflict reconstruction. The main reason is the existence of a public–private divide that ensures that everything becomes genderized, from the way society views women to the way society approaches conflict.

Adopting the private–public divide allows feminist legal scholars to not only highlight how men are able to keep women out of the realm where decision making occurs, but also emphasis that because men control territory, the use of force and socioeconomic power, men direct international relations, which lies at the heart of international efforts at post-conflict reconstruction.[35] Feminist legal scholars therefore stress the importance of acquiring rights—mainly civil and political—though they also accept that due to male dominance, obtaining rights is insufficient as they are given within a genderized framework,[36] as even when rights are won, they are not enforced as opponents claim that enforcing these rights means entering the private realm, which they argue should be beyond the control of the state and the international community. This is closely linked with the second realm that feminist legal discourse identifies: the private sphere associated with the home and family, which has remained very much under the purview of men and makes this realm crucial to those advocating an end to discriminatory practices. Mala Htun and S. Laurel Weldon looking into family argue "Unfortunately, family laws in most of

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[33] Karen Offen, *Defining Feminism: A Comparative Approach*, 14, SIGNS, 151 (1988).

[34] Catharine A. MacKinnon, *Feminism, Marxism, Method and the State: An Agenda for Theory*, 7 SIGNS: J. OF WOMEN IN CULTURE & SOC'Y., 515, 535 (1982).

[35] HILARY CHARLESWORH AND CHRISTINE M. CHINKIN, THE BOUNDARIES OF INTERNATIONAL LAW (2000); Hilary Charlesworth, *Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations*, 18, HARV. HUM. RTS J., 1 (2005); Hilary Charlesworth and Christine Chinkin, *The Gender of Jus Cogens*, 15 HUM. RTS. Q., 63, (1993); Hillary Charlesworth, *The Gender of International Institutions*, 89 PROC. ANN MEETING AM. SOC'Y INT'L. L., 79 (1995).

[36] Hilary Charlesworth, Christine Chinkin and Shelley Wright, *Feminist Approaches to International Law*, 85 AMER. J. INT'L L., 613 (1991).

the world tend to maximize men's power over women and limit women's ability to make decisions and take independent action." [37] Karin Yefet, when writing on divorce in Pakistan, states, "[D]omestic life represents the sphere in which women across the globe tend to be the farthest from attaining equality, and subordination in the home serves as a springboard to women's subjugation in almost all conceivable spheres."[38] Over time, the international community has come to recognize a number of fundamental rights that emphasize the right to family and the right of an individual to manage and live within their one's cultural norms and ideals.

The existence of a private–public division is arguably more obvious in non-Western societies, where religion, culture and neocolonial allegations permit ruling elites—men—to demand that the international community not become involved in what the elites deem private. [39] Susan Okin's challenges the way political philosophy has not only ignored gender and women's issues, but helped in their marginalization.[40] Okin persuasively showed that discriminatory practices often exist in non-Western societies under the guise of multiculturalism, with the adherents of such practices claiming that their opposition to reform stems from their desire to uphold their cultural rights and identities. The reality, however, is that the minority groups within the culture often endure hardship under the system. Okin perceptively declared, "This situation of private rights violations is exacerbated by the fact that 'respecting cultural differences' has increasingly become a euphemism for restricting or denying women's human rights."[41] Therefore, it has become more important to look at the real root of the "cultural claim" as it pertains to women's issues, as far too often, what creates the cultural claim is a desire to keep women in a subservient position.[42]

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[37] Mala Htun and S. Laurel Weldon, *State Power, Religion, and Women's Rights: A Comparative Analysis of Family Law*, 18 IND. J. GLOBAL LEGAL STUD., 145 (2011).
[38] Karin Carmit Yefet, *Constitution and Female-Initiated Divorce in Pakistan: Western Liberalism in Islamic Garb*, 34 HARV. J.L. & GENDER 555 (2011).
[39] Muna Ndulo, *African Customary Law, Customs and Women's Rights*, 18 IND. J. GLOBAL LEGAL STUD., 87 (2011); Astri Suhrke, *Reconstruction as Modernisation: The 'Post-Conflict' Project in Afghanistan*, 28 THIRD WORLD Q., 1291 (2007).
[40] SUSAN MULLER OKIN, WOMEN IN WESTERN POLITICAL THOUGHT (1979); SUSAN MULLER OKIN, USTICE, GENDER AND THE FAMILY (1989).
[41] Susan Moller Okin, *Feminism, Women's Human Rights, and Cultural Differences*, 13 HYPATIA, 36 (1998); Susan Moller Okin, *Feminism and Multiculturalism: Some Tensions*, 108 ETHICS, 661 (1998).
[42] This is best seen when it comes to Islam and women's rights, were far too often Islamic principles are used to justify the oppression of women. Azizah al-Hibri, *Islam, Law and Custom: Redefining Muslim Women's Rights*, 2 AM. U. J. INT'L L. & POL'Y., 1 (1997).

II.   SECURITY STUDIES: TRADITIONAL SECURITY, HUMAN SECURITY
       & GENDER

A. *Traditional Security (National Security)*

The evolutionary nature of society has meant that as new threats emerge, the concept of national security changes. In the initial post-Second World War period, military security was at the heart of what became known as national security. To that end, the field of Security Studies concentrated on the state and its need to protect itself against threats without specifying what the threats were and how to guard against them. This had two important consequences: making the state the dominant actor in international relations [43] and militarizing national security, which previously had been associated with social and economic policy.[44] That is, since 1945, the militarization of society had increased, possibly because for much of the twentieth century, a state of conflict prevailed in international relations, due to the state of affairs between the Soviet Union and the United States. Moreover, the period also saw a heightened sense of nationalism, which had close association with militarization.[45]

These issues have remained prevalent thought it could be argued that 9/11 highlighted how invisible women continue to be in times of national crises—even in the so-called enlightened western world. Charlesworth and Chinkin note that the individuals that determined the response to 9/11 were President George Bush, Secretary of State Colin Powell, Secretary of Defense Donald Rumsfeld, and Attorney General John Ashcroft. Significantly, Condoleezza Rice, the head of the National Security Council had a very limited role. When turning to New York, the images that dominated were of Mayor Giuliani, "[t]he firemen, the police officers, the rescue workers who raised the United States flag in the wreckage." They add in respect to the UN that three days after the attacks, President Bush appointed John Negroponte as the US representative to the UN. Negroponte had four deputies all of whom were men. The American

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[43] KENNETH N. WALTZ, THEORY OF INTERNATIONAL POLITICS (1979); STEPHEN M. WALT, THE ORIGINS OF ALLIANCES (1987); HEDLEY BULL THE ANARCHICAL SOCIETY: A STUDY OF ORDER IN WORLD POLITICS (1977).

[44] Mark Neocleous, *From Social to National Security: On the Fabrication of Economic Order*, 37 SECURITY DIALOGUE, 363 (2006).

[45] Yasmin Tambiah in her study of Sri Lanka's armed conflict with the Tamil Tigers concludes that militarization was instrumental in entrenching gender performances and heteronormative notions. She writes, "Sexual behaviors take on exaggerated meaning in the context of nationalist struggle. They are further burdened as markers of legitimate national membership when armed conflict becomes an expression of nationalism. In these schemes, the female body is especially vulnerable to being scripted as bearing the potential for treachery through sexual activity or related representation of the body as through dress. Under militarization, the Sri Lankan state and the LTTE as a formation aspiring to state power have increased their modes of surveillance in the interest of the nation's security. Security itself is articulated primarily in militarized terms." Yasmin Tambiah, *Turncoat Bodies: Sexuality and Sex Work under Militarization in Sri Lanka*, 19 GENDER & SOCIETY 258 (2005).

engagement with foreign heads of state was generally with men. According to Charlesworth and Chinkin, "One of the few women leaders courted in the coalition building, President Megawati Sukarnoputri of Indonesia, was presented as unreliable and erratic because of her doubts about participating in the coalition."[46]

The concept of national security is clearly subjective due to a number of interconnected factors. First, national security deals with state's perception of its security in the sense of its survival in an anarchical world. To that end, threats are perceived as existential and are predominately of a military nature. The state, therefore, must develop a response to threats, whether in the shape of domestic programs that challenge subversive elements, expansive defensive policies that include an accelerated arms programs, as well as the articulation of how it would respond if attacked. To that end, following 9/11, the Bush Administration, opted to interpret the concept of preemptive self-defense, in terms of what amounts to an imminent threat in a very expansive way:

> The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.[47]

The second element affecting the discussion over national security is the identification of interests, values and power that the states deem to uphold.[48] These largely reflect male values. Professor Galia Golan, who pioneered work on the gendered nature of Israeli society, captured this situation. Golan pointed to the importance that society places on male children and on those that serve in the military.

> A country in a state of war, by necessity or custom, values the male child above the female. The male is our potential defender; he may be called upon to make the ultimate sacrifice for our benefit and safety; he has a special, critical role to play in and for our society… In addition, the presumed superior qualities developed in the course of a military career, coupled with the status accorded the professional soldier in a country at war, provide privileged positions for the ex-military man upon

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[46] Hilary Charlesworth and Christine Chinkin, *Sex, Gender, and September 11,* 96 AM. J. INT'L L. 600, 601 (2002).

[47] *The National Security Strategy of the United States of America*, September 2002, available at <http://merln.ndu.edu/whitepapers/USnss2002.pdf> (accessed March 7, 2012)

[48] Ken Booth, *Security and Emancipation*, 17 REV. INT'L STUD., 318 (1991); Geoffrey S. Smith *National Security and Personal Isolation: Sex, Gender, and Disease in the Cold-War United States*, 14 INT'L HISTORY REV., 307 (1992).

> his return to civilian life—advantages unavailable to women. Coming out of the professional army, men are "parachuted" into senior positions in business, administration, government, and especially politics. The ex-general is extolled and admired not only for his devotion but for qualities of leadership, organization skills, assertiveness and any number of other traits associated with high rank.[49]

Finally, traditional security discourse is deeply rooted within "high politics" and power formulation, which further ensures that national security as a military concept takes precedence over everything else—economics, development and social policy have to serve the security (military) agenda.[50] Thus, under this formula, leaders for example demand that the State (the people) make sacrifices, which normally fall on the social and economic sectors in order to attain "security." The case of Pakistan and its decision to attain nuclear capability is a prime example such thinking, as the program began in the 1970s under Zulfikar Ali Bhutto who declared that should India develop a nuclear program, Pakistan would follow, even if Pakistanis would need to eat grass and leaves.[51]

In sum, the militarization of national security beyond keeping it within the purview of men also ensured a strong phallocentric outlook, in terms of its language and structure, as contemporary societies follow the Greek model of the citizen warrior. This has led to the equation of manliness, especially in a security setting with citizenship, as J. Ann Tickner points out, "In the U.S., military service has been a mark of first class citizenship and was an important rationale for the National Organization for Women's support for allowing women into combat positions in the military." [52] Sandra Whiteworth correctly writes, "When feminist scholars and activists first began to engage with both the academic and policy practitioners of global

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[49] Galia Golan, *Militarization and Gender: The Israeli Experience*, 20 WOMEN'S STUD. INT'L FORUM, 117 (1997).

[50] See for example, LAURA NEACK ELUSIVE SECURITY: STATES FIRST, PEOPLE LAST (2007); Keith Krause and Oliver Jütersonke, *Peace, Security and Development in Post-Conflict Environments*, 36 SECURITY DIALOGUE, 447 (2005).

[51] Bhumitra Chakma, *Road to Chagai: Pakistan's Nuclear Programme, Its Sources and Motivations*, 36, MODERN ASIAN STUD., 871 (2002). Another example is Israel, which as Michael Barnett shows adapts its social and economic policies to ensure that it had the military strength to tackle potential threats. Michael Barnett, *High Politics is Low Politics: The Domestic and Systemic Sources of Israeli Security Policy, 1967-1977*, 42 WORLD POL., 529 (1990).

[52] J. Ann Tickner, *Feminist Responses to International Security Studies*, 16 PEACE REV., 43-44 (2004); Galia Golan, *Militarization and Gender: The Israeli Experience*, 20 WOMEN'S STUD. INT'L FORUM, 117 (1997).

politics, the idea that feminist thought might contribute to thinking about international security was sometimes met with hostility or ridicule."[53]

B. Human Security

The end of the Cold War required a reexamination of national security, as threats to states and citizens emerged from unconventional sources,[54] leading to new scholarships on security based on individuals and specifically the need to combat "fear" and "want."[55] These two vague concepts facilitated the development of human security, which is concerned with human rights, defined through international treaties and conventions.[56] Human security has led to the demand that individuals need to feel secure—this refers to the notion of "freedom from fear," which in turn call for political, civil and judicial reform. The concept of "freedom from want" refers to socioeconomic security, which makes development initiatives essential because they combat poverty, hunger and misery, as arguably these are the reasons that men turn to violence.[57] According to the United Nations Development Program:

> The concept of human security stresses that people should be able to take care of themselves: all people should have the opportunity to me e t their most essential needs and to earn their own living. This will set them free and help ensure that they can make a full contribution to development - their own development and that of their communities, their countries and

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[53] SANDRA WHITWORTH, SECURITY STUDIES: AN INTRODUCTION 103 (Paul D. Williams ed. 2009); CAROLINE KENNEDY-PIPE CONTEMPORARY SECURITY STUDIES 108 (Alan Collins ed., 2nd ed. 2010).

[54] Lloyd Axworthy, *Human Security and Global Governance: Putting People First*, 7 GLOBAL GOVERNANCE 19 (2001); MARY KALDOR HUMAN SECURITY: REFLECTIONS ON GLOBALIZATION AND INTERVENTION (2007).

[55] U.N. DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1994, at 24 (1994), <http://hdr.undp.org/en/reports/global/hdrl994/chapters/>; Sadoka Ogata and Johan Cels, *Human Security: Protecting and Empowering People*, 9 GLOBAL GOVERNANCE 273 (2003); Kofi Annan "Two Concepts of Sovereignty," *ECONOMIST*, Sept. 18, 1999, pp. 51-52.

[56] One could argue for example that Art. 1.3 of the UN Charter lies at the epicenter of human rights as it calls for "[p]romoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;" U.N. Charter art. 1, para. 3.

[57] "A More Secure World: Our Shared Responsibility," *Report of the Secretary-General's High-level Panel on Threats, Challenges and Change* (New York: United Nations Department of Public Information, 2004) <http://www.un.org/secureworld/report2.pdf>; "In Larger Freedom: Towards Security, Development and Human Rights For All," *Report of the Secretary-General of the United Nations*, March 21, 2005 [A/59/2005] Lisa Denney, *Reducing Poverty With Teargas And Batons: The Security-Development Nexus In Sierra Leone*, 110 AFRICAN AFF., 275 (2011); Derek McDougall, *The Security-Development Nexus: Comparing External Interventions and Development Strategies in East Timor and Solomon Islands*, 6 ASIAN SECURITY 170 (2010).

the world, Human security is a critical ingredient of participatory development.[58]

Kraus and Jütersonke, building on the UNDP definition, identify the notion of "freedom from fear" with the Human Security Network, (HNS) whose focus rests with "removing the use, or threat, of force and violence from people's everyday lives" while the "freedom from want," stems from a Japanese vision that identifies human security as being "about ensuring basic human needs in economic, health, food, social and environmental terms."[59] Rolf Schwarz adds, "Common to both conceptions is that threats to citizens in reality often emanate from predatory rulers, from corrupt judges and, in short, from the state itself. Reshaping state–society relations thus becomes an end in itself, an end that is justified in the name of establishing or re-establishing human security. This liberal approach is guided by a universal understanding of human liberty, human dignity and human freedom."[60]

An important aspect in the "freedom from want" paradigm is the connection between economic insecurity, which refers to income security generally attained through productive and remunerative work,[61] and gender. In many transitioning societies, economic insecurity is pervasive as the conflict destroyed the infrastructure, which not only refers to the general economy, but also to homes, roads and other facilities. Women's economic security is further compromised because men dominate the sphere, which means that they are the ones who will receive work first. Secondly, social and cultural norms could affect women's abilities to find work, as women may be prevented from leaving their homes because of cultural norms or partaking in certain types of work,[62] not to mention

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[58] U.N. DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1994, at 24 (1994), < http://hdr.undp.org/en/reports/global/hdrl994/chapters/>.

[59] Keith Krause and Oliver Jütersonke, Peace, Security and Development in Post-Conflict Environments, 36 SECURITY DIALOGUE 457 (2005). See also the statement by Thomas Gruber, the Swiss chargé d'affaires at the Swiss Permanent Mission to the UN to the Security Council on behalf of HNS. *Swiss Statement on behalf of the Human Security Network*, Thomas Gruber, the Swiss chargé d'affaires at the Swiss Permanent Mission to the UN, Permanent Mission of Switzerland to the United Nations, New York, Feb. 23, 2012. <http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/intorg/un/redeun/securi .Par.0079.File.tmp/20120223%20e%20only%20WPS%20HSN.pdf>; (accessed April 1, 2012).

[60] Rolf Schwarz, *Post-Conflict Peacebuilding: The Challenges of Security, Welfare and Representation*, 36 SECURITY DIALOGUE 436 (2005).

[61] U.N. DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1994, at 25 (1994), available at http://hdr.undp.org/en/reports/global/hdrl994/chapters/.

[62] The Taliban prevented women from leaving their home and working in certain fields. Anastasia Telesetsky, *In the Shadows and Behind the Veil: Women in Afghanistan under the Taliban Rule*, 13 BERKELEY WOMEN'S L.J. 293 (1998); Amnesty International Country Report, *Women in Afghanistan: The Violations Continue* (June 1997) <http:/Iwww.annesty.orglailib/aipub/1997/ASA31100597.htm>. (accessed April 4, 2012)

owning property, which in itself is a violation of international law.[63] The final aspect is that many of these transitioning societies are agrarian, and social and cultural norms reject or prevent women from owning land, further undermining their economic security.[64]

C. Gender and Security

The shortcomings of the state (power)-centric and the human security paradigms in respect to gender are that the focus is either on preserving interests and values [state (power)-centric] or their fulfilment (human security). This may explain the lack of a gendered approach to security matters, as men dominate the public sphere. Moreover, different epistemologies and ontologies have made the situation more complex.[65] Feminism's conception of security and insecurity is distinctive, as its core interest is the marginalization of women in society—whether on a domestic or an international setting. The acknowledgement of the marginalization enabled scholars to emphasize that women experience conflict differently.[66] Consequently, instead of claiming their position within Security Studies, feminism and peace studies have opted to examine how conflict and post-conflict situations affect women. In doing so, their approach is case-specific.[67] However, the post-9/11 period has only emphasized an even greater need to incorporate gender into the security discourse as the military campaigns in Iraq and Afghanistan, "…have highlighted how gender and issues of gender affect security, locally, nationally, and globally."[68] To that end, the HNS position in 2012

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[63] See for example, International Covenant for Civil and Political Rights, G.A. Res. 2200 (XXI), U.N. Doc. A/6316 (Dec. 16, 1966); Shana Hofstetter, *The Interaction of Customary Law and Microfinance: Women's Entry into the World Economy*, 14 WM. & MARY J. WOMEN & L. 337 (2007-2008).

[64] Aparna Polavarapu, *Procuring Meaningful Land Rights for the Women of Rwanda*, 14 YALE HUM. RTS. & DEV. L.J., 105 (2011).

[65] Tickner for example writes "[t]o scholars trained in conventional scientific methodologies, feminist approaches appear to be atheoretical—merely criticism, devoid of potential for fruitful empirical research." J. Ann Tickner, *You Just Don't Understand: Troubled Engagements between Feminists and IR Theorists*, 41 INT'L STUD. Q., 611, 612 (1997).

[66] Christine Chinkin has argued that rape in war is not an issue of chance, nor is it even a question of sex, but rather a question of power and control that comes from the nature of the masculine nature of the international system. Christine Chinkin, *Rape and Sexual Abuse of Women in International Law*, 5 EUROPEAN J. INT'L L., 326 (1994). See also SANDRA WHITWORTH, SECURITY STUDIES: AN INTRODUCTION 103-115 (Paul D. Williams ed. 2009); CAROLINE KENNEDY-PIPE CONTEMPORARY SECURITY STUDIES 107-120 (Alan Collins ed., 2nd ed. 2010).

[67] See for example, Lynne L. Manganaro and Amy L. Poland, *For Better or Worse? Gender and Perceptions of Formal and Informal Justice Systems in Afghanistan*, 22 WM. & CRIM. JUSTICE, 2 (2012); Teresa Doherty, *Developments in the Prosecution of Gender-Based Crimes-The Special Court for Sierra Leone Experience*, 17 AM. U. J. GENDER SOC. POL'Y & L., 327 (2009).

[68] CAROLINE KENNEDY-PIPE CONTEMPORARY SECURITY STUDIES 107 (Alan Collins ed., 2nd ed. 2010).

has been "Security is not a "men's issue" it is a "gender issue" and women must be involved in it, in its inception and also as part of the ranks. The "gender perspective" must be part of the reform and the training of the security forces."[69]

III. THE INTERNATIONAL COMMUNITY AND STATE-BUILDING

State-building refers to the rebuilding of states and societies into functioning, liberal-based states that would pose no threat to their own people or the international community. The aim is the construction of a pluralist, consociational political system that includes a fair and free electoral system, a market-oriented economic system, a socially mobile society and an honest and effective judicial system supported by a strong and efficient police.[70]

When the international community began engaging in state-building, the focus lay with establishing security (state, regional, local and individual) as defined through a neoliberal lens. This approach was based on two key assumptions: First, drawing on the gender bias of those engaged in state-building, the focus was on what these men perceived was the key institution in the making of a strong and stable state: the military. Therefore, much attention was placed on security. A second assumption, drawing from the previous one, presumes that without physical security, the ability of a society to develop and build an economy, general infrastructure, the rule of law and effective governance, becomes impossible.[71] These two assumptions are closely linked to the way the international community approached the challenge of state-building. That is, the 1990s ushered in the era of state-building, in which the international community, led by Western states, expressed a willingness to engage in the rebuilding of states affected by conflicts, civil wars, revolutions and governance mismanagement.[72] At the core of the new interventionist

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[69] *Swiss Statement on behalf of the Human Security Network*, Thomas Gruber, the Swiss chargé d'affaires at the Swiss Permanent Mission to the UN, Permanent Mission of Switzerland to the United Nations, New York, Feb. 23, 2012. <http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/intorg/un/redeun/securi .Par.0079.File.tmp/20120223%20e%20only%20WPS%20HSN.pdf>; (accessed April 1, 2012).

[70] JAMES DOBBINS ET. AL. THE UN'S ROLE IN NATION-BUILDING: FROM THE CONGO TO IRAQ (2005); Michael Barnett, *Building a Republican Peace*, 30 INT'L SECURITY 87 (2006).

[71] In the 2003 European Union Security Strategy, noted, "Security is a precondition of development. Conflict not only destroys infrastructure, including social infrastructure; it also encourages criminality, deters investment and makes normal economic activity impossible." "A Secure Europe in A Better World: European Security Strategy," *EU High Commissioner for the Common Foreign and Security Policy*, (Brussels: Council of the European Union, December 12, 2003), p. 3. <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/reports/76255.pdf>.

[72] In the 1990s, the United Nations led and supported complex peacekeeping operations in a number of countries Mozambique (United Nations Operations in Mozambique,

philosophy was a sense of liberal triumphalism that arguably led Western countries to feel vindicated that their ideology and way of life led to the end of the Cold War.[73] The first Gulf War accentuated the sense of a new era for international law,[74] as typified by President George H. Bush. On March 6, 1991, in a statement before Congress in respect to war in Kuwait, President Bush said:

> The recent challenge could not have been clearer. Saddam Hussein was the villain, Kuwait the victim. To the aid of this small country came nations from North America and Europe, from Asia and South America, from Africa and the Arab world, all united against aggression…Our uncommon coalition must now work in common purpose to forge a future that should never again be held hostage to the darker side of human nature.[75]

In 1992, the United Nations welcomed Boutros Boutros-Ghali, the UN's first African secretary general. This proved incredibly important in developing the involvement of the international community in state-building because Boutros-Ghali helped capture the imagination of the international community with his lauded *An Agenda for Peace*.[76] This Security Council-inspired document identified a new commitment from the international community toward achieving the ideals of the UN Charter. [77] An integral feature of this new commitment was the reconstruction of societies where insecurity was pervasive, leading to a definition of state-building as "external actors participating actively in, or

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ONUMOZ), Cambodia (United Nations Transitional Authority in Cambodia, UNTAC), Somalia (United Nations Operation in Somalia, UNOSOM), Haiti, (United Nations Mission in Haiti, UNMIH) and so on.

[73] This is best captured by FRANCIS FUKUYAMA, THE END OF HISTORY AND THE LAST MAN (1992).

[74] Christopher Greenwood, *New World Order or Old? The Invasion of Kuwait and the Rule of Law*, 55 MOD. L. REV., 153 (1992).

[75] In the speech, President Bush also called on Americans to continue to engage in encouraging positive change leading the president to identify four challenges and how Americans would help the people of the Middle East address them. *AFTER THE WAR: THE PRESIDENT; Transcript of President Bush's Address on End of the Gulf War*, N.Y. TIMES, March 7, 1991. <http://www.nytimes.com/1991/03/07/us/after-war-president-transcript-president-bush-s-address-end-gulf-war.html?pagewanted=all&src=pm>;
Anthony Lake, *Confronting Backlash States*, 73 FOREIGN AFF., 45 (1994); G. John Ikenberry, *Why Export Democracy?* 23 THE WILSON QUARTERLY 56 (1999).

[76] *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping: Report of the Secretary General,* U.N. GAOR, 47th Sess., U.N. Doe. A/47/277 (1992).

[77] Boutros Boutros-Ghali, *Global Leadership after the Cold War*, 75 FOREIGN AFF., 86 (1996); Anne-Marie Slaughter, *The Liberal Agenda for Peace: International Relations Theory and the Future of the United Nations*, 4 TRANSNAT'L L. & COMTEMP. PROBS., 377 (1994).

attempting to reshape, the polities of another country."[78] The UN, through *An Agenda for Peace*, defined state-building as "post-conflict peace-building—action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict."[79] Due to Boutros-Ghali and the support of key members of the Security Council, the UN's agenda in the mid-1990s was promotion of democracy, with democracy defined loosely, as a means to enhance international peace and security, which also entailed greater emphasis on respecting and promoting human rights in international relations.[80] It also called for a new social and economic agenda as part of the new way that the UN was going to engage with those societies transitioning out of conflict. Boutros-Ghali claimed:

> The responsibilities of the United Nations in the field of social and economic development are central to the purposes and principles of the charter: first, because the maintenance of international peace and security is inextricably entwined with economic and social progress and stability; and second, because the promotion of social and economic progress is a specific task given to the United Nations by the charter.[81]

Second, Boutros-Ghali argued that with the end of the Cold War, there was a new appreciation for a multilateral approach in resolving conflict and general tensions that may develop into conflict. The new approach entailed greater emphasis on United Nations involvement in international relations. In the words of Boutros-Ghali, "The machinery of the United Nations, which had often been rendered inoperative by the dynamics of the Cold War, is suddenly at the center of international efforts to deal with unresolved problems of the past decades as well as an emerging array of present and future issues." [82] This new approach necessitated a greater level of activism by the organization, whether through the Security Council, the General Assembly, the Office of the Secretary-General or the various UN organs and Specialized Agencies. Boutros-Ghali's successor, Kofi Annan, in a 1998 report to the Security Council, expanded on Boutros-Ghali's vision arguing that what was needed when rebuilding states was not only national institutions, election monitoring, rehabilitation and reintegration program and human rights promotion, but:

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[78] Keith Krause and Oliver Jütersonke, *Peace, Security and Development in Post-Conflict Environments*, 36 SECURITY DIALOGUE, 450 (2005).

[79] *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping: Report of the Secretary General,* U.N. GAOR, 47th Sess., U.N. Doe. A/47/277 (1992), para. 21.

[80] Boutros Boutros-Ghali, *Democracy: A Newly Recognized Imperative*, 1 GLOBAL GOVERNANCE 3 (1995).

[81] Boutros Boutros-Ghali, *Empowering the United Nations*, 71 FOREIGN AFF., 96 (1992).

[82] Boutros Boutros-Ghali, *Empowering the United Nations*, 71 FOREIGN AFF., 89 (1992).

> [R]econciliation and demonstrating respect for human rights;
> fostering political inclusiveness and promoting national unity;
> ensuring the safe, smooth and early repatriation and
> resettlement of refugees and displaced persons; reintegrating
> ex-combatants and others into productive society; curtailing
> the availability of small arms; and mobilizing the domestic and
> international resources for reconstruction and economic
> recovery. Every priority is linked to every other, and success
> will require a concerted and coordinated effort on all fronts.[83]

In sum, these two UN secretary generals helped shape the way the United
Nations, and therefore the international community, came to approach the
notion of state-building by taking a didactic and comprehensive view of
what was needed. However, what was clearly missing in the discourse was
a specific focus on women and gender, as when it came to state-building
and post-conflict reconstruction, the focus was on establishing or
rebuilding state institutions, without specific attention being placed on the
specific needs of women.[84] Thus, over time, the international community
and donor states came to appreciate that in order to rebuild states after
prolonged conflict, security and development had to be address
simultaneously, encouraging the emergence of a security-development
nexus.[85] In the following four subsections, an analysis of the way the
international community has approached the challenge of reconstruction is
offered, concluding with the role of Security Council Resolution 1325 and
whether it helped push the "women's question" to the forefront.

A. The Security-First Approach

The end of the Cold War encouraged a doctrinal shift in military thinking,
as militaries transformed the way they operated by no longer solely

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[83] *The Causes of Conflict and the Promotion of Durable Peace in Africa*, Report of the
Secretary-General to the UN Security Council, UN Doc A/52/871-S/1998/318, (April 16,
1998),   para.   63,   para.   66.
<http://www.un.org/ecosocdev/geninfo/afrec/sgreport/index.html> (accessed March 12,
2012).

[84] Christine Chinkin and Hilary Charlesworth, *Building Women Into Peace: The
International Legal Framework*, 27 THIRD WORLD Q., 938 (2006). In a 2011 article,
David Kilcullen, a former senior counter-insurgency adviser to General David Patraeus
and Secretary of State Condoleeza Rice, Dr. Greg Miller, former adviser to President
Paul Kagame of Rwanda and to General Sir David Richard and Jonathan Oppenheimer, a
director of De Beers, critique the way aid and post-conflict reconstruction is pursued,
applied and promoted. However, women and the issue of assistance to women is not
tackled in the paper. David Kilcullen, Greg Miller,Jonathan Oppenheimer, *Quiet
Professionals*, 156 THE RUSI JOURNAL, 100-107 (2011).

[85] The 2002 National Security Strategy emphasizes the importance of defense, diplomacy
and development, making it clear that the "three Ds" are central for national security. *The
National Security Strategy of the United States of America*, September 2002,
<http://merln.ndu.edu/whitepapers/USnss2002.pdf>. (accessed March 7, 2012).

focusing on engaging in combat. These operations known as Military Operations Other than War (MOOTW) were military operations, as even though they did not call for traditional military action—combat—they still required the military to be involved.[86] Thus, due to this change the security sector—military and police—became the major recipient of aid.[87] This arguably occurred because the major actor in reconstruction is the military.[88] Within the field of post-conflict reconstruction, a "security-first" approach involves policies on disarmament, demobilization and reintegration (DDR).[89] The military dominance of the reconstruction process underlines the genderized nature of the security-first scholarship, as the focus is with men due to the assumption that the fighters must be demobilized, disarmed and reintegrated as a means to ensure the peace. Consequently, little thought was given as to how to reintegrate women into the society. Megan MacKenzie's study of the DDR program in Sierra Leone underlined this as she argued, "The DDR program in Sierra Leone effectively (re)constructed female soldiers as 'wives,' 'camp followers,' or

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[86] *Joint Doctrine for Military Operations Other than War*, June 1995. <http://www.fs.fed.us/fire/doctrine/genesis_and_evolution/source_materials/dod_joint_ops_doctrine.pdf>. (accessed March 7, 2012); Peter Andreas and Richard Price, *From War Fighting to Crime Fighting: Transforming the American National Security State*, 3 INT'L STUD., REV., 31 (2003).

[87] President Bush in the 2002 National Security Strategy declared, "As humanitarian relief requirements are better understood, we must also be able to help build police forces, court systems, and legal codes, local and provincial government institutions, and electoral systems." *The National Security Strategy of the United States of America*, September 2002, available at <http://merln.ndu.edu/whitepapers/USnss2002.pdf>; (accessed April 4, 2012)

[88] Looking at the situation in Afghanistan, the investment in the Afghan National Army and the Afghan National Police exceeds by far any other sector. In Afghanistan in 2011, for example, the NATO Training Mission-Afghanistan (NTM-A) established in 2009 with the purpose of supporting indigenous industries to supply uniforms, equipment, and services to the Afghan military and police has a budget of around $10 billion. It is abundantly clear that the Afghan National Security Force (ANSF) claims the bulk of the aid that the country receives. Kenneth Katzman, *Afghanistan: Post-Taliban Governance, Security, and U.S. Policy*, CONGRESSIONAL RESEARCH SERVICE, February 6, 2012 [RL30588] <http://www.fas.org/sgp/crs/row/RL30588.pdf>. (accessed March 7, 2012).

[89] The United Nations Department of Peacekeeping Operations (DPKO) has engaged in DDR since the 1990s. Initially, the focus was on combatants that are present in military structures. However, the due to new types of conflicts, DPKO has shifted its DDR approach to include the community as a whole. Writing about Mozambique and the DDR program, MuMullin concludes "Mozambique's experience with reintegration demonstrates that a prolonged and generous subsidy can placate and disperse the majority of demobilized soldiers, but is less capable of preventing certain combatants from threatening stability in the state and region, or of diluting the ability of political leaders to use incomplete reintegration to stir up old grievances." Jeremy McMullin, *Reintegration of Combatants: Were the Right Lessons Learned in Mozambique?* 11 INT'L PEACEKEEPING 625, 640 (2004)

'sex slaves' in order to desecuritize them and to distinguish them from securitized male soldier subjects."[90]

B. Social-Economic Development

The second element in state-building is social and economic change involving immediate relief-based operations, and/or long-term sustainable infrastructure development. Within this approach, which has numerous different epistemological roots, a specific focus is discernible in respect to women, as it is recognized that programs that focus on women are important when it pertains to sustainable development.[91] A 2001, World Bank report highlights the general benefits that a society enjoys once women fully participate in the economic system, stating,

> The toll on human lives is a toll on development—since improving the quality of people's lives is development's ultimate goal. But gender inequalities also impose costs on productivity, efficiency, and economic progress. By hindering the accumulation of human capital in the home and the labor market, and by systematically excluding women or men from access to resources, public services, or productive activities, gender discrimination diminishes an economy's capacity to grow and to raise living standards.[92]

However, the approach is undermined by the willingness of donors to participate in continued genderization was development programs generally begin with men and the desire to ensure that men are gainfully employed.[93] Concomitantly, the international community also pursues some programs that explicitly target women. Although this is

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[90] Megan MacKenzie, *Securitization and Desecuritization: Female Soldiers and the Reconstruction of Women in Post-Conflict Sierra Leone*, 18 SECURITY STUD., 243 (2009).

[91] Marina Ottaway, *Rebuilding State Institutions in Collapsed States*, 33 DEV. & CHANGE 1001 (2002); Stephen Knack, *Does Foreign Aid Promote Democracy?* 48 INT'L STUD. Q., 251 (2004); Mark Duffield, *Governing the Borderlands: Decoding the Power of Aid*, 25 DISASTERS, 308 (2001); Maria Stern and Joakim Öjendal, *Mapping the Security--Development Nexus: Conflict, Complexity, Cacophony Convergence?* 41 SECURITY DIALOGUE, 5 (2010).

[92] WORLD BANK, ENGENDERING DEVELOPMENT THROUGH GENDER EQUALITY IN RIGHTS, RESOURCES, AND VOICE 10-11 (2001) http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2001/03/01/00009494 6_01020805393496/Rendered/PDF/multi_page.pdf> (accessed March 23, 2012); Shana Hofstetter, *The Interaction of Customary Law and Microfinance: Women's Entry into the World Economy*, 14 WM. & MARY J. WOMEN & L., 337 (2008).

[93] This was seen for example in Kosovo were it was decided by the UN Interim Administration Mission in Kosovo that women who became heads of their households would not be able to drive tractors, necessitating the hiring of men for that purpose. Chris Corrin, *Post-Conflict Reconstruction and Gender Analysis in Kosova*, 3 INT'L FEMINIST J. POL., 81 (2000).

commendable and emphasis a commitment to improve the condition of women in post-conflict situation, it also help identify women as a specific group that requires extra attention and assistance, which in effect means the continued maintenance of the private-public divide.[94]

C.Security-Development Nexus

The security-development nexus takes the position that a society needs development assistance, but without a security formula, development becomes impossible, as donors cannot provide the necessary assistance in areas that are insecure.[95] The development aspect of the approach begins with the political sphere because a core aim of intervention and/or reconstruction is the recognition that the society lacks a neoliberal political system. This is why a common feature in the reconstruction process is the adoption of a written constitution.[96] For example, in Afghanistan and Iraq, major changes occurred within the political system as the international community played a major role in assisting Iraqis and Afghans restructure their political system along more liberal lines. This affected women as the newly reconstituted political system demanded female representation. In

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[94] Ellen Zuckman and Susanna Dennis and Marcia Greenberg examination of the World Bank Post-Conflict Reconstruction investment indicate that although women receive assistance, the assistance does not address structural shortcomings, which in effect means the continuation of discriminatory practices. Ellen Zuckman and Susanna Dennis with Marcia Greenberg, *The Gender Dimension of Post-Conflict Reconstruction: The World Bank Track Record*, GenderAction, (2007) <http://www.genderaction.org/images/Genderaction%20PCR%20June2007.pdf >. (accessed March 24, 2012); Tsjeard Bouta, George Frerks and Ian Bannon, *Gender, Conflict and Development*, THE WOLRD BANK (2005), < http://www.iiav.nl/epublications/2005/gender_conflict_and_development.pdf >. (access March 24, 2012).

[95] A good example of this are the Provincial Reconstruction Teams (PRTs) in Afghanistan, which have a three-fold agenda: improve security so that that social and economic reconstruction programs can be developed and established, extend the reach of the Afghan government based in Kabul, and facilitate reconstruction in the provinces. Touko Piiparinen, *A Clash of Mindsets? An Insider's Account of Provincial Reconstruction Teams*, 14 INT'L PEACEKEEPING, 143 (2007); Matthew Jackson and Stuart Gordon, *Rewiring Interventions? UK Provincial Reconstruction Teams and 'Stabilization'*, 14 INT'L PEACEKEEPING, 647 (2007); Nik Hynek and Jan Eichler, *The Czech Provincial Reconstruction Team in Afghanistan: Context, Experiences and Politics*, 10 DEFENSE STUD., 405 (2010); Kenneth Holland, *The Canadian Provincial Reconstruction Team: The Arm of Development in Kandahar Province*, 40 AMERICAN REVIEW OF CANADIAN STUD., 276 (2010); George Dimitriu and Beatrice de Graaf, *The Dutch COIN Approach: Three Years in Uruzgan, 2006-2009*, 21 SMALL WARS & INSURGENCY, 429 (2010).

[96] Kirsti Samuels for example writes "Constitution-making after conflict is an opportunity to create a common vision of the future of a state and a road map on how to get there. The constitution can be partly a peace agreement and partly a framework setting up the rules by which the new democracy will operate." Kirsti Samuels *Post-Conflict Peace-Building and Constitution-Making*, 6 CHI. J. INT'L L. 663 (2005-2006); Jennifer Widner, *Constitution Writing in Post-Conflict Settings: An Overview*, 49 WM. & MARY L. REV. 1513 (2007-2008).

Iraq, electoral law requires that each party nominate at least one-third female candidates in its party list. In Afghanistan, electoral law mandates that twenty-seven percent of the seats in the lower house be reserved for women—two seats in each of the thirty-four provinces.[97] These changes, however, took place without substantive structural changes in that the system remained eschewed against women who had to contend with cultural and historical norms that had dictated how they live. Consequently, women continue to be viewed through a male-oriented lens, which means that the inclusion of women into mainstream society remains dependent on how men feel about the change. This becomes clear when looking at the essence of non-discriminatory international norms, as typified in the Universal Declaration of Human Rights, the International Covenant on Civil and Political and the International Covenant on Economic, Social and Cultural Rights. The right has to be measured against the right of men.[98] This may explain why the process has not been successful, as even in conflicts where women played an important role, they were expected to return to their "traditional roles."[99] Victoria Bernal, who wrote about Eritrean women fighters, noted how once the conflict ended, the women were required to return to their traditional role:

> In the field, young revolutionaries were conforming to the culture of the EPLF; now they are pressured to conform to civilian society, and many do. But for men fighters, this means reclaiming positions of authority within their families and enjoying male privileges such as freedom from domestic work. For women fighters, civilian culture means a burden of domestic labor and familial responsibilities for which their life in the field did not prepare them. Their sense of frustration is palpable even when left unspoken.[100]

In sum, the traditional approach to post-conflict reconstruction is highly gender specific; it wants men to give up their weapons and have gainful and meaningful employment, but when it came to women, the policies and programs are specific and tailored to what is perceived to be what women need or want, though often with limited interaction with women.

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[97] Mona Lena Krook, Diana Z. O'Brien and Krista M. Swip, *Military Invasion and Women's Political Representation*, 12 INT'L FEMINIST J. OF POL., 66 (2010).

[98] Hilary Charlesworth, *What are "Women's International Human Rights"?* Rebecca J. Cook (ed.) HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVE, 58 (1994).

[99] Melanie M. Hughes, *Armed Conflict, International Linkages, and Women's Parliamentary Representation in Developing Nations*, 56 SOCIAL PROBLEMS, 174 (2009) Tracy E. Higgins and Rachel P. Fink, *Gender and Nation-Building: Family Law as Legal Architecture* 60 ME. L. REV., 375 (2008).

[100] Victoria Bernal, *Equality to Die For?: Women Guerrilla Fighters and Eritrea's Cultural Revolution*, 23 POLAR: POL. & LEGAL ANTHROPOLOGY REV., 65 (2000).

D.The United Nations, Women, Gender and State-Building: UNSCR 1325

As the United Nations revised its agenda and outlook when the Cold War ended, feminist activism on the international scene reached unprecedented levels. For example, the 1995 Beijing Platform for Action, which built on the 1985 Third World Conference on Women in Nairobi and Boutros-Ghali's *An Agenda for Peace* and culminated with the unanimous adoption of Security Council Resolution 1325 on October 31, 2000, was described as "highly significant because it is the first time the Security Council has devoted an entire session to debating women's experiences in conflict and post-conflict situations."[101] The Beijing Conference served as a watershed in the campaign for gender equality, as it recognized the inherent inequalities that exist in society, necessitating and calling for structural reform. Thus, the activism of the 1990s sought to address the genderized nature of international politics, as the conflicts had a strong sexual element to them: combatants specifically targeted women as part of their military campaigns.[102] The Beijing Platform for Action sought to address such issues as violence against women, forced abortions, female genital mutilation, sexual harassment, domestic violence and many other inequalities.[103] In other words, there was a clear emphasis on women existing as victims. This encouraged the international community to concentrate on biology, as opposed to seeing the social construction of gender and the societal implication that comes with associating gender with sex.[104] Consequently, the approach that was taken when the UN approached state-building and the position of women within transitioning societies was two-fold: First, there was a desire to protect women,

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[101] Carol Cohn, Helen Kinsella and Sheri Gibbings, *Women, Peace and Security Resolution 1325*, 6 INT'L FEMINIST J. POL., 130 (2004).

[102] See for example Elizabeth Rehn and Ellen Johnson Sirleaf, *Women, War, Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-Building* (UNIFEM Report, Progress of the World's Women, Vol. 1, 2002), <http://www.unifem.org/resources/itemdetail.php?ProductlD= 17>. (accessed March 7, 2012).

[103] Fourth World Conference on Women, Beijing, China, Sept. 4-15, 1995, Beijing Declaration and Platform for Action, ¶¶ 16-17, U.N. Doc. A/CONF.177/20/Rev.1; <http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf> (accessed March 23, 2012); Elizabeth F. Defeis, *The United Nations and Women—A Critique*, 17 WM. & MARY J. WOMEN & L. 395, (2011).

[104] Commenting on the South African Truth and Reconciliation Commission, Lyn Graybill argues that due to the way the Promotion of National Unity and Reconciliation Act (1995) was drafted "Millions of ordinary people, especially women, who suffered from the structural violence of apartheid but who were not victims under this narrow definition will not receive any compensation." She adds, "When the media covered women witnesses, the focus was on what they wore. Even their tears went unreported; it was the image of men weeping that legitimized the suffering and made headlines… Women's interest in speaking out was further eroded by both the Commission's and media's portrayal of them as "secondary victims," which perhaps gave them the impression that their own stories were unimportant." Lyn Graybill, *The Contribution of the Truth and Reconciliation Commission toward the Promotion of Women's Rights on South Africa*, 24 WOMEN'S STUD. INTE'L FORUM, 4, (2001).

perpetuating the age-old notion of defining gender through sexual identification with specific roles—it is the duty of men to protect women. Second, the policy sought to end discriminatory practices through the adoption of neoliberal laws that demand the inclusion of women in the public sphere. UN Security Council resolution (UNSCR) 1325 clearly highlighted these visions because the resolution, while recognizing the need to prevent conflict, emphasized the need to protect women and ensure their participation. However, Laura Shepherd in her analysis of UNSCR 1325 points out,

> In UNSCR 1325, I identify constructions of gender that assume it largely synonymous with biological sex and, further, reproduce logics of identity that characterized women as fragile, passive and in need of protection and constructions of security that locate the responsibility for providing that protection firmly in the hands of elite political actors in the international system,…[105]

The dominance of gender mainstreaming[106]—an abstract concept that calls for taking gender seriously when engaging in international relations—has further genderized the approach to state-building. This is because gender mainstreaming encourages a development-centric methodology towards reconstruction as it seeks equality legislation coupled with the allocation of resources to address and combat gender inequality.[107] This may explain why Helen O'Connell, a 30-year NGO sector veteran claimed, "[i]t can be said that the opportunities opened up in peacebuilding and statebuilding for securing gender equality and equity, such as the negotiations around

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[105] Laura J. Shepherd, *Sex, Security and Superhero(in)es: From 1325 to 1820 and Beyond*, 13 INT'L FEMINIST J. POL. 506 (2011).

[106] Gender mainstreaming emerged in the 1970s in relation to education and the need to address discriminatory practices in classrooms. When the UN adopted the first 'Decade for Women,' women were identified as a special interest group within the development sphere that needed special attention. Mary Daly defines gender mainstreaming as an approach that "…seeks to institutionalize equality by embedding gender-sensitive practices and norms in the structures, processes, and environment of public policy." Mary Daly, *Gender Mainstreaming in Theory and Practice*, 12 SOCIAL POLITICS, 435 (2005). Hilary Charlesworth, *Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations,* 18 HARV. HUM. RTS. J., 1-18 (2005).

[107] These legislative measures are promoted through a masculine setting. The experience of women in the 2003 Afghan constitutional Loya Jirga provides a good example of how the discourse remains dominated by men. Of the 502 delegates 103 were women and the 9-member Drafting Committee included two women. However, the opportunities for women to effect any substantive change was greatly limited because men dominated the Jirga, women were prevented from speaking or had their microphones switched off. Mona Lena Krook, Diana Z. O'Brien and Krista M. Swip, *Military Invasion and Women's Political Representation*, 12 INT'L FEMINIST J. OF POLITICS 68-69 (2010).

the peace agreement, the political settlement and in building gender-responsive service provision, have been missed."[108]

IV.GENDER, WOMEN AND POST-CONFLICT RECONSTRUCTION

The humanitarian interventions of the post-Cold War period increasingly adopted a judicial element as they strove to attain justice for the victims of the conflict either through a retributive or restorative justice formula.[109] The emergence, therefore, of transitional justice refers to a "conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes."[110] Accompanying the debate over justice was also the notion of reconstruction—helping the society attain lasting peace.

Four principal approaches are discernible in respect to the way gender and women's issues are represented in the post-conflict reconstruction literature. One approach emphasizes the importance of gender equality and/or gender neutrality when thinking about post-conflict reconstruction. In this paradigm, gender is immersed in the larger state-building process. [111] A second approach highlights the need for women's participation in the transition process, as well as their continued involvement in rebuilding the country.[112] These approaches resonate with those pointing to the poor representation of women in domestic and international law, which they assert has a gender bias that helps ensure that international norms fail to lead to equality. [113] The third type of scholarship centers on the adoption of domestic legislation as a means to foster gender equity.[114] A fourth approach calls for a campaign to end the

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[108] Helen O'Connell, *What are the Opportunities to Promote Gender Equity and Equality in Conflict-affected and Fragile States? Insights from a Review of Evidence*, 19 GENDER & DEVELOPMENT 456 (2011).

[109] Leslie Vinjamuri and Jack Snyder *Advocacy And Scholarship In The Study Of International War Crime Tribunals And Transitional Justice*, 7 ANN. REV. POL. SCI., 345-362 (2004); CARLOS S. NINO RADICAL EVIL ON TRIAL (1996).

[110] Ruti G. Teitel, *Transitional Justice Genealogy*, 16 HARV. HUM. RTS. J., 69 (2003).

[111] Naomi R. Cahn, *Women in Post-Conflict Reconstruction: Dilemmas and Directions*, 12 WM. & MARY J. WOMEN & L., 338 (2006); Mona Lena Krook, Diana Z. O'Brien and Krista M. Swip, *Military Invasion and Women's Political Representation*, 12 INT'L FEMINIST J. OF POLITICS 66 (2010); Thomas Carothers, *The Rule of Law Revival*, 77 FOREIGN AFF., 95 (1998).

[112] Naomi R. Cahn, *Women in Post-Conflict Reconstruction: Dilemmas and Directions*, 12 WM. & MARY J. WOMEN & L., 338 (2006).

[113] Hillary Charlesworth, *The Gender of International Institutions*, 89 AM. SOC'Y INT'L L. PROC., 79 (1995). Charlesworth notes that there was only one woman – Gisele Côté-Harper – on the International Commission on Intervention and State (there were 11 men) and four women on the Secretary-General High Level Panel. Hillary Charlesworth, *Feminist Reflections on the Responsibility to Protect*, 2 GLOBAL RESPONSIBILITY TO PROTECT 240-241 (2010).

[114] Naomi R. Cahn, *Women in Post-Conflict Reconstruction: Dilemmas and Directions*, 12 WM. & MARY J. WOMEN & L., 338 (2006); Penelope Andrews, *Leaning to Love*

culture of impunity in respect to sexual violence. This scholarship focuses on international norms relating to violence against women, whether it is in respect to establishing them or implementing them.[115]

With respect to transitional justice and gender, it was only with the formation of the *ad hoc* tribunals that meaningful discussions over sexual violence, women and conflict really developed, as the general view was that sexual violence was an assault on the honor or virtue of women. This was made clear by the fact that violence against women came under such established international legal mechanisms as the Genocide Convention, the Torture Convention, breaches of the Geneva Conventions, etc. [116] However, it also meant that the way violence is measured is not as a violent act against the victim (woman) but rather as a violent act against a woman's role, status and sex in society. [117] In other words, male belligerents used women and the way society viewed women to punish and hurt one another. The International Criminal Tribunal for Rwanda (ICTR) offered a break with past practices when it categorized sexual violence as an international crime.[118] This led to a substantive shift in the way the international community addressed violence against women[119]

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after Learning to Harm: Post-Conflict Reconstruction, Gender Equality and Cultural Values, 15 MICH. ST. J. INT'L L., 42 (2007).

[115] Naomi R. Cahn, *Women in Post-Conflict Reconstruction: Dilemmas and Directions*, 12 WM. & MARY J. WOMEN & L., 338 (2006); Mona Lena Krook, Diana Z. O'Brien and Krista M. Swip, *Military Invasion and Women's Political Representation*, 12 INT'L FEMINIST J. POL., 66 (2010).

[116] Rhonda Copelon, *Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law*, 46 MCGILL L. J. 217 (2000-2001); Hilary Charlesworth and Christine Chinkin, *The Gender of Jus Cogens*, 15 HUM. RTS. Q., 63 (1993).

[117] Rhonda Copelon persuasively argues that prior to the 1990s sexual violence in war was, largely invisible, being viewed as a private matter or a product of war. The Lieber Code, the Hague Convention and the Geneva Conventions allowed sexual violence to enter the discourse but it was seen as an offence against "family honour and rights" as opposed to seeing sexual violence and specifically rape as an act of violence. Rhonda Copelon, *Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law*, 46 MCGILL L. J. 220-222 (2000-2001).

[118] *Prosecutor v. Akayesu*. Case ICTR-96-4-T, ICTR Judgement September 2, 1998. Akayesu was convicted of genocide, incitement to commit genocide and seven counts of crimes against humanity. Initially, gender-related crimes were not part of the charges but witness testimonies led to new investigations an amended indictment. Prosecutions of individuals accused of international crimes began to appear in domestic jurisdictions in the US in the 1980s with such cases as *Filartiga* (1980) and *Demjanjuk* (1985). Beth Stephens, *The Civil Lawsuit as a Remedy for International Human Right Violations against Women*, 5 HASTINGS WOMEN L. J., 143 (1994).

[119] Under the Rome Statute, a war crime need not occur only when there is a war as it is also applicable in an internal armed conflict. Article 8.2(e). Significantly, during the Nuremberg Trials and Tokyo, sexual violence was not addressed, with rape not named in either the Nuremberg or Tokyo charters or charged as a separate offence. Rhonda Copelon, *Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law*, 46 MCGILL L. J., 220 (2000).

and children. [120] Thus, increasingly, international criminal law has expanded its understanding of sexual violence to address a host of issues, such as forced marriages, consent, sexual slavery and command responsibility, especially in respect to joint criminal enterprise. [121] This development has encouraged societies transitioning out of conflict to allocate time and resources to address the legacy of sexual violence. [122]

A. *The Legal Approach to Post-Conflict Reconstruction*

The legal approach to post-conflict reconstruction—post-conflict justice— has not lived up to many hopes, as the approach has numerous shortcomings. However, before addressing these, it is beneficial to point out that there have also been some positive developments, both on the domestic and the international level. On the domestic front, there have been attempts to introduce constitutionally based rights for minorities that define what rights are and also what the government's duties and obligations are toward its citizens. On the international level, the major development has been the recognition of sexual violence as an international crime, [123] raising the possibility of prosecutions based on sexual abuse, but more significantly has been the demand for constitutional changes that adopt principles of equality. Conversely, there are also some major shortcomings with the legal approach, particularly because in many of the societies transitioning out of conflict, the legal system is often at its infancy and suffers from corruption and other systematic problems.

1.   Constitutions as a Means to Protect Women's Rights

A number of societies transitioning out of conflict have adopted constitutions or they have reformed their constitutions to fit the image of a neoliberal society, as well as make them compatible with international norms and conventions. [124]

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[120] Augustine Park persuasively shows that girls and what they endure in a conflict and post-conflict situation have been treated as an addendum when it comes to post-conflict reconstruction. Augustine S. J. Park, *'Other Inhumane Acts': Forced Marriage, Girl Soldiers and the Special Court for Sierra Leone*, 15 SOCIAL & LEGAL STUDIES, 315 (2006).

[121] Navanethem Pillay, *Sexual Violence: Standing by the Victim*, 42 CASE W. RES. J. INT'L L., 459 (2009); Valerie Oosterveld, *Atrocity Crimes Litigation Year-in-Review (2010): A Gender Perspective*, 9 NW. J. INT'L HUM. RTS., 3255 (2011).

[122] See for example, Colleen Duggan, Claudia Paz y Paz Bailey and Julie Guillero, *Reparations for Sexual and Reproductive Violence: Prospects for Achieving Gender Justice in Guatemala and Peru*, 2 INT'L J. TRANSITIONAL JUST., 192 (2008).

[123] Article 7(1)(g) places "Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity,". Sexual violence can also be a crime against humanity and a war crime (Article 8(2)(b)(xxii).

[124] See for example, Article 22 of the Afghan Constitution declaring "The citizens of Afghanistan – whether man or woman – have equal rights and duties before the law.";

The changes that have come with the new constitutions have been substantial in that they declare a commitment to ensure not only equality, but also a commitment from the state to provide such services as education to women.[125] These changes at times challenge cultural, religious and normative values of the society, as they cover such issues as sovereignty, rights, balance of power, and institutions. They are adopted because they are seen as essential by the transitioning society in ensuring that the international community accepts the new state. Often, the most controversial aspect of the constitution, besides who participates and the manner of one's participation in the constitution-making process, are the issues affecting women's rights, whether what are women's rights or their level of representations within the political system. The latter issues are the ones that are most likely to challenged traditional values,[126] and are therefore the ones that face the most resistance. This is why Andrea Fischer-Tahir writing about post-2003 Iraq notes that when it comes to women's representation "The female quota remains controversial, and is regularly the subject of debates in the media before and after elections."[127] To that end, a common theme in a number of constitutions of societies transitioning out of conflict is the adoption of constitutionally mandated quotas for women.[128] In some cases, a substantive increase in women's representation has occurred, which has led to positive social, economic, political and cultural changes, as seen in the case of Rwanda where an increase in the number of women parliamentarian has facilitated not only

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Article 20 of the Iraqi constitution states Iraqi citizens, men and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office." Point 10 of the Preamble of the Rwanda Constitution asserts that the people of Rwanda are "Committed to ensuring equal rights between Rwandans and between women and men without prejudice to the principles of gender equality and complementarity in national development." RWANDA CONST. 2003, <http://www.rwandahope.com/constitution.pdf>.

[125] Article 44 of the Afghan Constitution declares, "The state shall devise and implement effective programs for balancing and promoting of education for women." The post-genocide Rwandan constitution introduced the principle of equal ownership of property, something that was not available before. Article 29 declares, "Every person has a right to private property, whether personal or owned in association with others." RWANDA CONST. 2003, < http://www.rwandahope.com/constitution.pdf>. For a fuller discussion about property rights in post-genocide Rwanda see Aparna Polavarapu, *Procuring Meaningful Land Rights for the Women of Rwanda 14* YALE HUM. RTS. & DEV. L.J., 105 (2011).

[126] See for example, Angela M. Banks, *Challenging Political Boundaries in Post-Conflict States*, 29 U. PA. J. INT'L L., 105 (2007-2008); Jennifer Widner, *Constitution Writing in Post-Conflict Settings: An Overview*, 49 WM. & MARY L. REV. 1513 (2007-2008).

[127] Andrea Fischer-Tahir, *Competition, Cooperation and Resistance: Women in the Political Field in Iraq*, 86 INT'L AFF., 1389 (2010).

[128] Lisa Baldez for example notes that most of the countries in the top 20 spots on the Inter-Parliamentary Union's (IPU) have some form of a gender quota. Lisa Baldez, *The Pros and Cons of Gender Quota Laws: What Happens When You Kick Men Out and Let Women In?* 2 POLITICS & GENDER 102 (2006).

better interaction between the legislature and voters but also a more women-friendly agenda.[129]

B. *The Shortcomings of the Legal Approach*

The legal approach has a number of shortcomings when it comes to addressing gender and post-conflict reconstruction. One such shortcoming was that sexual violence has to operate under the established international criminal legal system, allowing the androcentric system to prevail. This rises from the dominance of men within domestic and international politics, which is why international institutions repeatedly fail at women issues [130] and gender mainstreaming, which although demanding the incorporation of gender equality terminology, has had limited success.[131] When dealing with sexual violence in an international tribunal setting, the evidence of the abuse tends to be constrained by the process, limiting what women can say, as there are time constraints, resource issues, as well as a desire not to offend, as the information could be harmful for the state, the community and/or the individual.[132] Doris E. Buss wrote:

> The Rwanda Tribunal's record on prosecuting sexual violence is disappointing. The Tribunal has largely failed to charge individual accused with sexual violence crimes, or, where these charges are included in the indictment, the Office of the Prosecutor (OtP) has either not pursued them at trial, or pursued them unsuccessfully.[133]

The Rwandese *gacaca* courts failed women who had been victims of sexual violence because the aim of the courts was "…to reveal the truth of what happened, eradicate the culture of impunity, speed up the pace of trials and promote national unity and reconciliation on the basis of Rwandan customs."[134] In other words, the courts sought reconciliation

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[129] Clare Devlin and Robert Elgie, *The Effect of Increased Women's Representation in Parliament: the Case of Rwanda*, 61 PARLIAMENTARY AFF., 237 (2008). Devlin and Elgie however also point out that in terms of policy output, the success has been more limited.

[130] Hilary Charlesworth, *The Gender of International Institutions*, 89 PROC. ANN MEETING AM. SOC'Y INT'L. L., 79 (1995).

[131] Caroline Moser and Annalise Moser, *Gender Mainstreaming since Beijing: A Review of Success and Limitations in International Institutions*, 13 GENDER & DEV. 11 (2005).

[132] Patricia Wald, former judge at the ICTY recounts the many challenges that exist when it comes to judging international crimes. Patricia M. Wald, *Judging War Crimes*, 1 CHI J. INT'L L., 189 (2000). See also Navanethem Pillay, *Sexual Violence: Standing by the Victim*, 42 CASE W. RES. J. INT'L L., 459 (2009).

[133] Doris E. Buss, *Rethinking 'Rape as a Weapon of War'*, 17 FEMINIST LEGAL STUD., 151 (2009).

[134] Susan Thomson and Rosemary Nagy, *Law, Power and Justice: What Legalism Fails to Address in the Functioning of Rwanda's Gacaca Courts*, 5 INT'L J. TRANSITIONAL JUST., 7 (2011); Karen Brounéus, *Truth-Telling as Talking Cure? Insecurity and*

within society, allowing them to ignore sexual violations. Karen Brounéus' important field study highlighted that the women who testified at the Rwandese *gacaca* courts endured harassment and severe psychological stress before they gave their testimonies, as well as during and after the hearings.[135] This, coupled by the fact that men dominate most societies, explains why there is a systemic under-enforcement of women's legal rights in post-conflict societies.[136] Another principal shortcoming of the criminalization approach has been a systematic failure to recognize the effect that the conflict has had on women. South Africa offers a good example, as the impact of apartheid on women was manifestly different from how it affected men, and its legacy continues to be felt even though apartheid ended almost two decades ago.[137]

C. Social Service Justice: An Alternative to Post-Conflict Reconstruction

A social services justice approach differs from the legal approach, the security-first and the security-development nexus, as its aim is to address structural–social bias through institutional changes within the state and the society.[138] Justice, as a moral and as a right, lies at the epicenter of social services justice; it recognizes the dichotomy that exists regarding sexual violence and its victims. Social justice services identifies that there is a need to provide justice for the individual and not just to the society. This may entail a retributive or a restorative system, which calls for major development work, as in many societies transitioning out of conflict, a well-functioning legal system, is a long-term objective. Second, social services justice ensures that society recognizes what the victim has experienced and therefore wants to provide remedies and/or assistance.

Retraumatization in the Rwandan in the Gacaca Courts, 39 SECURITY DIALOGUE, 55 (2008).

[135] Karen Brounéus, *Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan in the Gacaca Courts*, 39 SECURITY DIALOGUE, 67-68 (2008).

[136] Fionnuala NíAoláin and Eilish Rooney, *Underenforcement and Intersectionality: Gendered Aspects of Transition for Women*, 1 INT'L J. TRANSITIONAL JUST., 338 (2007).

[137] Penelope Andrews argues that the reasons for the lack of women representation within the South African judicial system stem from: 1. Apartheid, which ensured unequal distribution of resources between white and black South Africans. 2. The nature of the profession, which remains masculine in numbers and orientation. 3. The general attitude of South African society, which has a strong patriarchal and masculine culture. Penelope E. Andrews, *The South African Judicial Appointments Process*, 44 OSGOODE HALL L.J., 571 (2006).

[138] Christine Bell, Colm Campbell and Fionnuala Ní Aoláin, *Justice Discourses in Transition*, 13 SOCIAL & LEGAL STUD., 305 (2004); Naomi R. Cahn, *Women in Post-Conflict Reconstruction: Dilemmas and Directions*, 12 WM. & MARY J. WOMEN & L., 335 (2006); Niamh Reilly, *Seek Gender Justice in Post-Conflict Transitions: Towards A Transformative Women's Human Rights Approach*, 3 INT'L J. L. IN CONTEXT 155 (2007).

> While social services justice necessarily includes possible
> reparations programs as longer-term remedies or as
> possibilities when perpetrators are known and accept
> responsibility, it is also concerned with the more immediate,
> and often desperate status of the victims. As such, social
> services justice refers to the potential short- and long-term
> services, social, economic, and medical, that can be provided
> to victims. These services may apply to situations broader than
> the individual perpetrator and victim, and beyond specific
> losses caused by violence. For example, social services justice
> could provide protection for women who may not have
> directly experienced sexual violence themselves, but who live
> in continuing fear of it.[139]

The social services justice calls for a multi-sectoral approach that
necessitates the involvement of governments, communities, civil society
organizations, individuals and international institutions to work together to
help provide the victims of sexual violence with the justice that they
deserve. Social services justice, however, has a number of disadvantages.
One example is its desire to establish new institutions and mechanisms to
address women's experiences in post-conflict situations, where political
realities severely hamper its application. First, transitional societies lack
the means and often the willpower to foster substantive institutional
changes. There are many domestic opponents that reject widespread
reform, claiming that it would undermine the delicate balance attained by
cease-fire or peace agreements, in which many of the actors that fought in
the conflict remain. In other words, the individuals responsible for the
carnage are now entrusted with maintaining the peace. Second, societies
transitioning out of conflict tend to revert to previous misogynistic
practices and ideals as a way to ensure peace. The initial focus is on
making sure that the combatants are successfully demobilized,
demilitarized and reintegrated. Should such focus be placed on women, it
would mean diverting limited resources, alienating the male combatants
and causing cultural pressures.[140] Concomitantly, donors are reluctant to
do more than what they deem necessary, as their interest lies in ensuring
that the costs of the reconstruction are kept to a minimum, as is their real
involvement—whether it is in terms of being in the state or in providing
the assistance.[141]

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[139] Naomi R. Cahn, *Beyond Retribution and Impunity: Responding to War Crimes of Sexual Violence*, STAN. J. C.R. & C.L., 249 (2005).

[140] The United States offers a good example of this, as when the Second World War ended, the women who had kept the economy and specifically the war effort going were expected to abandon their positions and assume their traditional roles, as their jobs had to go to the returning American GIs. WILLIAM H. CHAFE, THE UNFINISHED JOURNEY: AMERICA SINCE WORLD WAR II (2011).

[141] Megan J. Ballard provides an interesting critique of post-conflict property restitution arguing that at times western states impose these remedies because it serves their

V.A GENDER-SECURITY NEXUS IN THE POST-9/11 PERIOD

Fostering a gender-security nexus stems from recognition that the current approach to post-conflict reconstruction fails to take into consideration the full impact that discriminatory gender practices have on the security of the state, whether on an epistemological and/or ontological level. As a result, the interests of the state—what the state needs—are not explored fully. One example is the fiscal loss that occurs because by not allowing women to fully participate in the public economic system, society loses the trade and skills that women have.[142]

To introduce a gender-security nexus requires a two-step process. First, the realization must occur that exclusionary or discriminatory policies undermine the interest of the state as they prevent the utilization of all of its resources. Second, acceptance must occur that gender is generally socially constructed, which means that it is possible to change. Put simply, unless the language changes, gender-biased legislation, or the imposition of pressure to get women to return to their "traditional roles," would give way to traditional security formulations that focus on power and the need to seek peace—or the avoidance of violence—at all costs. It is only by accepting that traditionally structured socially constructed gender values tend to encourage violence and undermine social and economic progress that society can fully transition out of conflict. There is evidence to indicate that when the defense of a "woman's honor"—a socially constructed norm—pervades a society, feuds become more pervasive and bloody as the conflict becomes emotive and symbolic. This is because the violence is not about the women, but rather about the honor of the men.[143] Ultimately, the inclusion of gender into national security discourse means that gender equality is interlinked with the survival of the state, as only by addressing structural misogynistic attitudes the existential threats to the state is removed.

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purposes and interests, as opposed to those of the indigenous community. Megan J. Ballard, *Post-Conflict Property Restitution: Flawed Legal and Theoretical Foundations*, 28 BERKELEY J. INT'L L., 462 (2010).

[142] Jerzy Buzek, President of the European Parliament and Viviane Reding, Vice-President of the European Commission and EU Justice Commissioner cite a Goldman Sachs report that claims that closing the gender gap in Europe could boost the euro zone's gross domestic by up to 13 per cent. Jerzy Buzek and Viviane Reding, *Women in the Boardroom*, N.Y. TIMES, Feb. 28, 2011, <http://www.nytimes.com/2011/03/01/opinion/01iht-edbuzek01.html>.

[143] Kundsen's ethnographic study of the inhabitants of the Palas Valley in Northern Pakistan highlights this, as a number of the feuds are gender-based – a woman's honor was impinged, which demanded retribution. The feuds as a result could and do last for decades preventing development and growth. ARE KNUDSEN, VIOLENCE AND BELONGING: LAND, LOVE AND LETHAL CONFLICT IN THE NORTH-WEST FRONTIER OF PAKISTAN (2009); STUART J. KAUFMAN, MODERN HATRED: THE SYMBOLIC POLITICS OF ETHNIC WAR (2001).

CONCLUSION

Post-conflict reconstruction clearly exhibits widespread and systemic failures in addressing gender, which is why Katherine M. Franke correctly stated, "In different ways, and by different means, rebuilding post-conflict societies is almost inevitably a process of re-masculinization."[144] This is largely due to the androcentric nature of society. There is sufficient evidence to indicate that societies transitioning out of conflict often engage in cosmetic legal reform to address gender-based violence, or simply opt out of their obligations by asserting that such issues fall under the private sphere or come under the guise of cultural norms, making them sacrosanct. To remedy the situation, it becomes necessary to reject the liberal and cultural feminist argument about femininity and recognize that men define themselves as subjects and women as objects. [145] This necessitates a new approach in which power has to be redefined and viewed as relational, which is why Security Studies scholar Heidi Hudson argued "A feminist redefinition of power in relational terms, where the survival of one depends on the well-being of the other, would not only enhance women's security but also that of men, who are similarly threatened by the conventional gendered approach to security."[146]

National security lies at the foundation of post-conflict reconstruction. Its aim is to make the society that is transitioning out of conflict as strong and as stable as possible. Those engaged in the process therefore seek to strengthen the interests and values of states as well as address the human security aspects of its population. This is why it is important to determine what the values of the state are, what the threats are and what measures are needed to address these elements. Gender traditionally has not penetrated this level of the discourse, existing very much within the framework of development and/or human rights. Seeing gender as a national security issue means that cultural arguments and donor parsimoniousness are challenged, making it harder to claim that one is trying to provide security while ignoring an existential matter. A genderized national security approach to post-conflict reconstruction requires recognizing what the structural features are within the state that permits gender discrimination, followed by the adoption of policies that systematically remove these attitudes, even if it requires challenging cultural and religious practices that uphold these types of ideals.

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[144] Katherine M. Franke, *Gendered Subjects of Transitional Justice*, COLUM. J. GENDER & L., 824 (2006).

[145] Rosalind Dixon *Feminist Disagreement (Comparatively) Recast*, 31 HARV. J.L. & GENDER 281-282 (2008); Alix Kates Shulman, *Sex and Power: Sexual Bases of Radical Feminism*, 5 SIGNS 603-604 (1980).

[146] Heidi Hudson, *'Doing' Security As Though Humans Matter: A Feminist Perspective on Gender and the Politics of Human Security*, 36 SECURITY DIALOGUE 156 (2005).