Beyond Duality: 
A New Vision of Gender Justice & 
Collective Consciousness in 
International Law

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Declaration

The research reported in this thesis is my own and has not been submitted for a higher degree at any other institution

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DEDICATION

This thesis is dedicated to my mother Anne, my father Ross, and my husband, Alex. You have all helped me to imagine, start, persist through, and finish this endeavour.

To Mum and Dad, thank you for inspiring my love of learning. Thank you for believing in me. Thank you for everything.

To Alex, you are the perfect integration of masculine and feminine consciousness. Thank you for loving me. This is for you.

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Finally, to Raphael, I was pregnant with you during the last year of the thesis and submitted it when you were three months old. You have changed me in ways that I could never have predicted, and you have taught me so much in such a short time. I love you.
This research uses psychological and sociological theory to conduct an original analysis of the narratives, themes and values of gender in international law. The thesis conceptualises international law as a reflection of the ‘global personality,’ which is a socially constructed ‘collective self’ possessing conscious and unconscious material. The thesis combines the sociology of human consciousness model of Burns and Engdahl with Jungian theories of the collective unconscious to create a Collective Self Theoretical Framework. This theoretical framework is used to establish that the global community constitutes a collective self or agent with conscious and unconscious aspects. The conscious material of the global collective self manifests itself in the external facts of public international law (multilateral conventions, declarations, tribunals and international organisations), whereas the unconscious material of the global collective self manifests itself in the underlying narratives, destructive patterns and paradoxes of international law. As such, the thesis forms a new theory of public international law as an expression of the conscious and unconscious dynamics of the global collective self.

By way of case study, the thesis analyses the relationship between masculine and feminine consciousness in the global collective self. This relationship is given expression in contemporary international laws, which expose the conscious and unconscious material of global gender dynamics from 1945 to the present. The thesis shows that since the foundation of the United Nations, the pursuit of gender justice has focused on the creation of ‘women’s rights’ in international law. This approach assumes that men and the public sphere are intrinsically empowered, while women and the private sphere are intrinsically disempowered. This gender narrative conflates men with a masculine consciousness (the primary, empowered, public sphere) and women with a feminine consciousness (the
secondary, devalued private sphere). This unconscious split between masculine and feminine consciousness is evident in international laws and organisations specifically relating to women, and international laws relating to gender-based violence in armed conflict.

The thesis concludes that the narratives and language of gender in international law must be transformed in order to integrate masculine and feminine consciousness in the global collective self. The thesis suggests that it may be necessary to explicitly give men private sphere rights, and to incorporate men in international gender organisations as corrective mechanisms to reach authentic gender justice. Furthermore, the thesis argues that it is necessary to recognise same-sex couples in international law, as the concept of masculine and feminine consciousness applies to both men and women. The ultimate objective of the thesis is to create awareness of the impact of unconscious narratives in international law, and the importance of bringing collective consciousness to the values that underpin gender.
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Chapter One: Introduction

“In the history of the collective as in the history of the individual, everything depends on the development of consciousness” (Carl Jung, 2003 [1953], p. 179).

“International law needs...to draw more freely upon the knowledge and insights of all disciplines, some of which, such as psychology, sociology, linguistics and comparative religion, despite their deep relevance to international law, have tended to be neglected” (Christopher Weeramantry, 2003, p. xiv).

Thesis Overview

Throughout my interdisciplinary research into global society, international law, and gender justice, three groups of questions persisted and became the basis for this thesis:

1. **On global society**: can collective identities be analysed using psychological and sociological methods in the same way as individual identities (as ‘selves’ with distinct and dynamic personalities that contain conscious and unconscious elements)?

2. **On international law**: is there a connection between the phenomenon of international law and the conscious and unconscious (unnamed and unrepresented) material of collective selves?

3. **On gender justice**: what narrative is gender justice based upon; what influences the women’s rights movement in international law, and has this movement brought us closer to gender justice?

This thesis therefore uses psychological and sociological concepts to engage with the concept of a collective self, the theory of international law, and the global response to gender justice. The thesis is based upon the premise that collectives, like individuals, can be understood as ‘selves’ or ‘agents’ with personalities that contain conscious and unconscious aspects. In the collective self, the individual is situated between the collective consciousness and collective unconscious, at ‘the midpoint of psychic life’ (Colman in Papadopoulos, 2006, p. 154).
The thesis argues that the global community is constituted by a diverse range of socially constructed collective selves: partnerships, families, organisations, corporations, institutions, regions and nation-states. Like Russian babushka dolls, collective selves are all versions of the same fundamental model, all ultimately enclosed within one global collective self. In this context, a collective self is defined as a community, however small or large, that shares collective representations, forms of reflectivity and unconscious material. It will be shown that since the foundation of the United Nations (‘the UN’), all of the different collective selves throughout the world have connected to form an emergent global collective self through increasingly homogenous modes of communication, finance, transport, and law. The global collective self is commonly referred to as the global or international community.

The global collective self is therefore constructed as an autonomous collective self constituted by inter-subjective knowledge and meaningful practices (discourses, narratives and institutions). It is argued that this emergent global collective self exists in a symbiotic relationship to public international law. As such, this work shows that the narrative and language of public international law is a reflection of both the collective consciousness and unconscious material in the global collective self. In turn, the global collective self is influenced and transformed by the events of international law.

I. Terminology

In relation to the terminology adopted in this thesis, there is a crucial distinction between the terms collective self, collective consciousness and the collective unconscious. It is important to clarify these terms because they will be used extensively throughout the thesis. The collective self or agent refers to the totality of all conscious and unconscious
processes that occur in the collective. However the collective Self (with a capitalised ‘S’) refers to the goal of integration, when unconscious material is made conscious and the authentic ‘Self’ is realised.

Collective consciousness encompasses all aspects of the collective that have been named and recognised by the collective (the aspects of which the collective is aware). The collective consciousness can also be understood as the collective ego. As Hall and Nordby write, “consciousness is the only part of the mind that is known directly…” (1999 [1973], p. 33).

Finally, in this thesis, the collective unconscious refers to those aspects of collective life of which the collective is unaware or unable to understand. Until they are actively brought to consciousness, these aspects of the collective self remain unnamed and unrepresented, though they impact heavily upon collective life, for example in the form of archetypes, shadow material, unconscious narratives, and recurring negative patterns and dualities.

II. A Psycho-Social Approach

Based on a wide-ranging review of collective self theories (which are outlined in Chapter Two), the thesis adopts a psycho-social approach in order to develop and analyse the concept of a collective self. The psycho-social approach focuses upon the union of the psychological and the sociological in human affairs, and refers to “social scientific writings that integrate two spheres of human reality: the psychic and the social” (Cavalletto, 2007, p. 1). There is a large body of research locating the origins of human consciousness in the social world. This research has been developed by sociologists and social psychologists working in the tradition of George Herbert Mead (1934, 1956). The

Based on this research, the thesis adopts the ‘sociology of human consciousness’ model of Burns and Engdahl (1998a, 1998b, 2003) in order to argue that the global collective self operates as the public mind of the global community. According to this model, the collective self is defined as:

“A group or population of individuals (or collective agents as members) that possesses or develops collective representations of itself: its values and goals, its structure and modes of operating, its strategies, developments, strengths and weaknesses” (Burns and Engdahl, 1998a, p. 67).

In this way, a collective self is understood as a social and reflective activity, formed through language, collective representations, institutional and cultural arrangements, self-conceptions, and self-reflectivity. Burns and Engdahl analyse the concept of collective consciousness by beginning with collective realities, which consist of community, language, language-based communication, institutional and cultural arrangements, collective representations, self-conceptions, and self-referentiality (Burns and Engdahl, 1998a, p. 67). Burns and Engdahl (1998a, p. 68) note that “while consciousness is typically an umbrella term for a variety of different phenomena,” in this context it refers to “socially based cognitions, representations and reflective processes, based on language, collective representations, and the capabilities of discursive reflection” (1998a, p. 69).

According to the sociology of human consciousness model, all human groups and institutions form a collective self that exhibits consciousness: partnerships, families,
corporations, nation-states, international organizations and the international politico-legal system. A collective exhibits consciousness because it “monitors its activities, achievements and failures, and reflects on itself as a defined and on-going collective being” (Burns and Engdahl, 1998a, p. 67). Accordingly, the term collective consciousness is used to encompass all collective processes entailing reflection. This includes meta-awareness (being aware of possessing awareness), which is expressed through language-based processes of communication, representation and reflection. This thesis also adopts the view that “consciousness is, above all, a type of reflective activity (observing, monitoring, judging ‘self’, among other things) that is encoded in language, and generated in conversations about collective and individual selves” (Burns and Engdahl, 1998a, p. 68).

It is argued that although each collective self is a conscious and dynamic entity in its own right, all collective selves ultimately culminate in the emergent, evolving global collective self, which is the focus of this thesis. The global collective self is directly shaped by all of the individuals in the international community who participate in institutions and processes at the global level. These institutions include nation-states, international organisations, for example the UN, international courts such as the International Court of Justice (‘the ICJ’) and the International Criminal Court (‘the ICC’), non-governmental organisations (‘NGOs’), universities, policy institutes, and various media outlets.

While the ‘sociology of human consciousness model’ sheds light on the nature of collective consciousness, this thesis argues that it fails to offer sufficient detail in relation to the unconscious material that is stored by the collective self. Burns and Engdahl merely refer to unconscious collective material as that which is un-represented and un-named by
the collective (Burns and Engdahl, 1998a, p. 68). This is considered to be a significant gap in this model. As an attempt to fill this perceived gap, this thesis develops a new framework that also utilises concepts from analytical psychology as they give a language and substance to unconscious material.

Accordingly, the new theoretical framework formed in the thesis combines the sociology of human consciousness model and analytical psychology.¹ The thesis draws on the theories of psychiatrist Carl Jung and post-Jungians as a fruitful source of hypotheses about how the collective unconscious is expressed in gender justice in international law. Using Jungian theory, the thesis suggests that it is useful to conceive of collective selves as possessing a conscious ego and unconscious material such as archetypes, ‘shadow’ material and defence mechanisms. This thesis represents the first scholarly attempt to apply Jungian theory to international law.

The central argument of the thesis is that public international law is shaped by an evolving and emergent global collective self. As such, there are two factors that form global reality: the dynamics of collective selves and external facts. The thesis argues that the dynamics of collective selves are co-constitutive in shaping external facts. This means that a collective self constructs and communicates collective representations in the form of discourses, narratives, values, norms, attitudes, expectations and goals, and the external facts are the culmination of such representations, for example, conventions, protocols, institutions, armed conflicts and sanctions. Therefore, the external facts of public international law are emanations from and reactions to the global collective self.

¹ Analytical psychology is also referred to as Jungian psychology, and was developed as a collection of theories by Swiss psychiatrist Carl Gustav Jung (1875-1961). Jungian psychology seeks to describe the totality of psychological processes, both conscious and unconscious (Jacobi, 1999 [1942], p. 19).
The feedback relationship between the collective self and external facts is “dynamic, flowing from the past through the present to the future in a process of ceaseless self-creating” (Allott, 2003, p. 29). In the unfolding of this relationship between the collective self and external facts, our ‘collective reality’ is created, consisting of an interaction between conscious and unconscious values and beliefs on the one hand, and political and legal principles and institutions on the other. The collective self therefore plays a significant role in the creation of our collective reality, though this role is often overlooked. Accordingly, in order to understand international law, it is crucial to understand the conscious and unconscious dynamics of the global collective self that shape it.

Therefore, the central objective of this thesis is to show that public international law interacts and co-creates with an evolving global collective self. In order to construct this new theory of public international law, the thesis develops a theoretical framework that combines the sociology of human consciousness model and Jungian theory. While this theoretical framework may appear to involve abstract concepts, this thesis suggests that the dynamics of collective selves “impinge upon the details of our daily lives far more directly than the things we may think to be most urgent…” (Berman, 1981, p. 22). This is because collective selves are co-creative in the construction of the external facts that comprise collective reality. It will be shown that ‘real world’ outcomes (external facts) such as profit margins, staff productivity, Presidential elections, immigration policies, multilateral negotiations, and armed conflicts are all intrinsically linked to the nature of the collective self. The collective self is ultimately a palpable “concept that can shape institutions and inform policy choices” (Hehir, 2002, p. 38). It will be argued that one of the defining features of the global collective self is its duality between conscious and
unconscious material. Accordingly, the concept of duality is strongly reflected throughout international law, and one of the primary dualities is the masculine and feminine consciousness.

III. Case Study: Gender Justice in International Law

By way of case study, the thesis applies the Collective Self Framework to engage with the external facts, themes and narratives of gender justice in international law. The thesis argues that there is a split between masculine and feminine consciousness inherent in the global collective self that is given expression through international law. The case study shows that men have traditionally symbolised the masculine consciousness and the inherently powerful public sphere in international law, whereas women have traditionally symbolised the feminine consciousness and the inherently vulnerable private sphere in international law. As such, men have been conflated with masculine consciousness and women have been conflated with feminine consciousness. Thus, the thesis suggests that corrective international laws relating to ‘women’s rights’ are linked to a matrix of conscious and unconscious factors in the global collective self. It will be argued that the ongoing challenges in the experience of gender justice, for example, inequality and sexual violence in armed conflict, are associated with the unconscious (unnamed or unrepresented) material of the global collective self.

The thesis argues that despite the conscious intentions of international law to create gender justice and equality, it has in fact perpetuated gender duality and division. Since the latter half of the twentieth century, feminist theory\(^2\) and international laws have

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\(^2\) Chapter Six demonstrates that feminist theory is not one unified theory, but represents a range of different approaches to gender relations.
identified the primacy of men and the exclusion of women from the public sphere as a key source of suffering and division in the global community. In a 1991 *American Journal of International Law* article, Hilary Charlesworth, Christine Chinkin and Shelley Wright argued that:

“the structures of international lawmaking and the content of the rules of international law privilege men; if women's interests are acknowledged at all, they are marginalized. International law is a thoroughly gendered system” (pp. 614-615).

Indeed, this thesis takes as a given that due to innate biological tendencies and/or culturally and socially constructed gender categories, masculine and feminine qualities have historically been attributed to males and females respectively. As a result of this attribution, men have tended to dominate and symbolise the public, mental objective collective life (masculine consciousness) and women have tended to dominate and symbolise the private, emotional subjective life (feminine consciousness).

According to Jungian theory, all individuals need access to both masculine and feminine consciousness\(^3\) and to the public and private spheres in order to lead an integrated life (Kast in Papadopoulos, 2006, pp. 113; 117-118). In this way, males and females are the same. In fact, in this way, people of all races, all religions, all orientations and all languages are the same. As such, both sexes (not just women) and both the private and the public spheres have suffered from this original split of consciousness between men and women: men and the public sphere suffered as a result of their exclusion from feminine consciousness, and women and the private sphere suffered as a result of their exclusion from masculine consciousness. Yet international laws and institutions have adopted a narrative of treating women as victims because they were ‘left out’ of the public sphere.

\(^3\) In Jungian theory, the masculine consciousness is referred to as ‘animus’ and ‘Logos’ and the feminine consciousness is referred to as ‘anima’ and ‘Eros’ (Jung, 1982, p. 65).
In the process of fixing the gender division by granting women public sphere rights, the exclusion of men from the feminine private sphere has been ignored, and the devaluing of feminine consciousness has been ignored. This approach of only granting rights to women and encouraging women into the public sphere has had four significant consequences. It has:

(i) Categorised women as archetypal victims;
(ii) Ignored the needs of men to access the feminine consciousness;
(iii) Glorified the public sphere; and
(iv) Diminished the significance of the private sphere.

In essence, women have been treated as the silent victims of history and have accordingly been granted masculine, public sphere rights, while a man’s right to feminine consciousness and the private sphere has not yet been fully acknowledged. Moreover, in the process of giving women access to the public sphere, there is an inherent assumption that the public sphere itself is a perfect system, and would not be improved or transformed by the unique contribution of the feminine consciousness (in men and women). As such, distinctly feminine qualities were not invited into the public sphere, and the private sphere remains devalued and silent. This thesis will suggest that it is optimal for individual and collective selves to work towards equal expressions of masculine and feminine consciousness, rather than subscribing to role identities that may be based upon anachronistic traditions and archetypes.

The thesis further argues that the split between the conscious, powerful masculine consciousness and the unconscious, vulnerable feminine consciousness is an archetype of the other dualities and fragmentations that divide the global community, as demonstrated
Table 1.1: The Conscious/Unconscious Duality Projected onto other Dualities

<table>
<thead>
<tr>
<th>Conscious</th>
<th>Unconscious</th>
</tr>
</thead>
<tbody>
<tr>
<td>Men</td>
<td>Women</td>
</tr>
<tr>
<td>Masculine</td>
<td>Feminine</td>
</tr>
<tr>
<td>Public sphere</td>
<td>Private sphere</td>
</tr>
<tr>
<td>Culture</td>
<td>Nature</td>
</tr>
<tr>
<td>Developed (Western, Global North)</td>
<td>Developing (Eastern, Global South) nation-states</td>
</tr>
<tr>
<td>Colonisers</td>
<td>Indigenous peoples</td>
</tr>
<tr>
<td>Racial majorities</td>
<td>Racial minorities</td>
</tr>
</tbody>
</table>

It will be shown that each binary opposition in international law resembles the themes and identities of the fundamental conscious/unconscious duality. International law seeks to correct these imbalances by using multilateral treaties, declarations and resolutions to ‘empower’ and bring consciousness to the unconscious entities, for example, women, the environment, indigenous peoples and racial minorities. Using the case study of gender justice, this thesis engages with the psycho-social meanings underneath the masculine/feminine duality in international law, and how these meanings are linked to collective unconscious material.

IV. Hypotheses

The thesis therefore examines the following hypotheses:

(i) That the ‘collective self’ exists as a separate and useful analytical category in psycho-social theory;

(ii) That collective selves possess a personality with distinct conscious and unconscious aspects that can be analysed using the sociology of human
consciousness model and Jungian theory;

(iii) That the global collective self exists as the culmination of other collective selves, for example, institutions, organisations, nation-states, and regions;

(iv) That the global collective self co-creates international realities in conjunction with what this thesis terms ‘external facts’: nation-states, cultures, religions, international relations and international laws. This is similar to the concept that an individual self (encompassing their consciousness and personality) co-creates reality with the external facts of their life: their family, occupation, nationality, and life events;

(v) That the relationship between masculine and feminine consciousness in the global collective self is expressed in the narratives of gender justice in international law; and

(vi) That the split between masculine and feminine consciousness in international law can be transformed by integrating unconscious material in the global collective self.

V. Research Questions

On the basis of the hypotheses outlined above, the thesis is framed according to the following range of questions:

(i) Is the concept of a ‘collective self’ or a ‘collective personality’ supported by psychological and/or sociological theory?

(ii) Can theories of the collective self be applied in order to theorise about public international law?

(iii) What is the ontology of public international law, and what is its relationship to the global collective self?
(iv) What is masculine and feminine consciousness, and how are these types of consciousness made manifest in the international law relating to women?

(v) What effects do masculine and feminine consciousness have on the pursuit of gender justice in international law?

(vi) How is the relationship between masculine and feminine consciousness expressed through gender-based violence in armed conflict?

(vii) How does the global community process its unconscious material, and what effect does this have on the international law relating to gender justice?

These questions are at the heart of the inquiries in this thesis.

**Outline of Thesis Chapters**

The remainder of this Chapter provides an overview of the Collective Self Theoretical Framework and its application to gender justice in international law. It also presents the meta-theory and methodology applied in this thesis.

Chapters Two to Five create the theoretical foundation and framework for analysis of the global collective self. Chapter Two provides a background to the theory of a collective self in philosophy, sociology and social psychology. This chapter is an overview of seminal collective self theories; its purpose is to situate the concept of the collective self in a broad interdisciplinary context.

Chapter Three introduces the sociological and psychological models that will be combined to analyse the collective self in this thesis. This chapter firstly analyses the
sociological model used to conceptualise the global community as a collective self: the sociology of human consciousness model. The chapter then explores the Jungian approach to collective theories, and whether it is useful to apply Jungian theories of the collective to international law. The chapter critically analyses the sociological and psychological models separately, and examines whether the models can be usefully joined. It concludes that the two models are complementary and can be combined to create an effective psycho-social framework with which to analyse the collective self.

Chapter Four presents the Collective Self Theoretical Framework for analysing each group identity as a collective self. It will be shown that each collective self has two primary parts: collective consciousness and the collective unconscious. The sociology of human consciousness model and Jungian theories give language and substance to the conscious and unconscious material in a collective self, including archetypes, complexes, defence mechanisms and the shadow material of the group. After outlining the framework, the chapter examines the organizing principles of the collective consciousness. These principles are a part of the Jungian path to individuation (integration), and include synchronicity, homeostasis and the transcendent function.

Chapter Five is the link between the theoretical aspects of the thesis and the case study. It applies the Collective Self Theoretical Framework to analyse the role of public international law in the global collective self. The chapter argues that the global collective self exists in a co-constitutive relationship to public international law. This chapter creates a new theory of public international law as a manifestation of the global collective self, with expressions of collective consciousness and the collective unconscious material. Therefore, international law is a reflection, or barometer of the level of conscious
awareness in the global self. As such, international law can only fulfil its objectives if the
global self is able to process it unconscious material. The chapter contrasts this theory
with existing ontological analyses of public international law, in order to show that those
theories do not adequately explain its nature.

Chapters Six to Nine comprise the case study of the thesis. Chapter Six introduces the
case study: the masculine/feminine duality and gender justice in international law. This
chapter analyses the conscious orientation of the global self’s approach to the female and
feminine in contrast with the male and the masculine in international law. It establishes
that in international law, gender justice is framed as ‘women’s rights.’ The chapter
provides an overview of collective representations in relation to women’s rights contained
in the narratives of the UN Charter, the International Bill of Human Rights, the
Convention on the Elimination of All Forms of Discrimination Against Women (1979)
(‘the CEDAW’), the Optional Protocol to the CEDAW (1999) (‘the CEDAW-OP’), and
the work of the Commission for the Status of Women and the CEDAW Committee,
including its jurisprudence and recommendations.

Chapter Seven analyses the unconscious, unnamed, and unrepresented material of the
global collective self in relation to gender justice. The chapter specifically explores how
the split between masculine and feminine consciousness has been expressed in

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4 Charter of the United Nations, opened for signature 26 June 1945, 1 UNTS xvi (entered into force 24
October 1945).
5 The International Bill of Human Rights comprises the Universal Declaration of Human Rights, adopted on
10 December 1948, UN Doc. A/RES217 A (III); the International Covenant of Civil and Political Rights,
opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); and the
International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966,
993 UNTS 3 (entered into force 3 January 1976).
6 Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature 1
7 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women,
international law. The main objective of contemporary international law regarding gender justice has been to give women access to the masculine public sphere. However this chapter argues that women’s access to the public sphere is still influenced by masculine consciousness. As such, while women increasingly have legal and social access to the public and private spheres, men and women are still bound by traditional ‘masculine, public sphere’ expectations. At the same time, men have not been encouraged by international law to embrace the feminine consciousness of the private sphere. As a result, the ‘feminine consciousness’ in the private sphere still remains disempowered and unconscious.

The chapter also examines the negative language of international law that maintains a victim consciousness in women. For example, the phrase in the title of the CEDAW and the CEDAW-OP: ‘The Elimination of All Forms of Discrimination Against Women’ constructs males as perpetrators and females as victims of discrimination. This analysis of the unconscious language in women’s rights explores power narratives of masculine consciousness over feminine consciousness in the collective self. Thus, despite the conscious intentions of international law to create gender justice, this chapter argues it has in fact perpetuated gender dualities. It also investigates the archetype of the ideal woman according to international law, and the constructs of women that the Convention creates.

Chapter Eight continues the theme of identifying the unconscious material of gender justice in international law. It analyses the sexual atrocities committed in the course of armed conflicts, arguing that this constitutes an example of the ‘shadow material’ of gender justice in international law. This chapter examines the phases of engagement between international law and the shadow material. Phase One occurred prior to 1945,
where gender-based violence (‘GBV’) in armed conflict was acknowledged as a crime in international humanitarian laws, though not confronted as such when it did occur. Phase Two was a response to the trauma of World War I and World War II, and lasted from 1945 until the 1990s. This Phase involved strong collective representations prohibiting GBV, yet with no prosecutions, including at the Nuremberg and Far East Tribunals. Phase Three occurred after the genocides in the former Yugoslavia and Rwanda, with the creation of ad hoc tribunals, the ICC and other hybrid tribunals to prosecute GBV. The jurisprudence and statutes of the International Criminal Tribunal for the Former Yugoslavia (‘the ICTY’), the International Criminal Tribunal for Rwanda (‘the ICTR’) and the ICC are examined by reference to conceptualisations of GBV, the definition of rape, and rules of procedure and evidence specifically relating to sexual assault trials. This phase also includes additional policy instruments in international law such as declarations, Special Rapporteurs and Security Council resolutions. This 3-phase response has culminated in the current normative legal framework prohibiting GBV during armed conflicts. The global collective self remains in the third phase of engagement with the shadow.

Chapter Nine is the final section of the case study. It focuses upon the ways in which the unconscious material of gender justice can be *consciously* integrated in order to empower the masculine and feminine consciousness in international law. The chapter is divided into

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two sections: first showing that despite the 3-phase collective engagement with shadow material in international law, GBV persists as a central aspect of armed conflicts. It is therefore necessary for the unconscious shadow to be consciously integrated in the global collective self, and the first section suggests ways in which international law can facilitate a new stage of integration of the masculine/feminine shadow. In this section, the act of GBV is constructed as an archetypal crime, where the *gendered feminine in men and women* is abused and violated by the *gendered masculine in men and women*, regardless of the sex of the perpetrator and victim. The chapter shows that women can be perpetrators and men can be victims of sexual violence during armed conflict, which is only beginning to be acknowledged in the literature of international humanitarian law. This chapter further suggests that GBV may be linked to the destruction of the feminine that occurs in the recruitment and training of soldiers. As such, while it is palpably necessary to prosecute individuals for sexual violence against women during armed conflicts, it is just as crucial to transform the collective consciousness in relation to the masculine/feminine duality.

The second section of this chapter particularly focuses upon the ways that the narrative and goals of international law can be utilised to empower the masculine and the feminine. It examines how a new narrative of masculine and feminine consciousness can be more broadly integrated in international law in the following ways:

(i) Incorporating the experience of men into the narrative of existing gender organisations such as UN Women and the Commission on the Status of Women;

(ii) Considering CEDAW reservations and State Reports as unfolding relationship narratives;
Adapting the language of gender conventions; and

Amending the CEDAW to acknowledge the rights of men to the private sphere in international law.

The purpose of these changes is to draw attention to the split between masculine and feminine consciousness in the public and private spheres, and to empower the private sphere by affording men ‘rights’ to gender equality.

Chapter Ten reviews the hypotheses and research questions of the thesis, and provides the key conclusions of the work, which can be grouped into three categories:

(i) The Collective Self Theoretical Framework;

(ii) The relationship between the global collective self and public international law; and

(iii) Implications for gender justice in public international law.

The chapter then outlines the original contributions of the thesis, and the potential applications of the Collective Self Theoretical Framework to other collective dynamics within public international law, as scope for further research in this area. It concludes that the Collective Self Framework can be applied to the analysis of nation-states and to international laws relating to indigenous peoples. The thesis ends with final observations about the relationship between the global collective self and public international law.
As shown in Figure 1.1, the Collective Self Theoretical Framework attributes conscious and unconscious characteristics to the collective, which are explored in the following overview.

I. The Collective Consciousness (Ego)

In the thesis, the collective consciousness of the collective self (the ego) refers to the collective representations and forms of reflectivity that the collective self engages in. Most individuals and collectives identify completely with their outer interactive life (ego), believing that this encompasses the totality of who they are. This is because
“the ego is the subject of all personal acts of consciousness…The ego is a kind of mirror in which
the psyche can see itself and become aware” (Jung in Stein, 1998, p. 15).

The ego is the centre of consciousness, and it consists of the collective identity, the
collective personality, and the persona.

A. Collective Representations as the Focal Point of Consciousness

The collective identity is created and sustained by its collective representations. The
concept of collective representations was introduced by sociologist Emile Durkheim, as:
“socially constructed complexes of concepts and symbols that are applied to objects, events and
situations, including the collective agent itself, other agents, and their interaction” (Burns and
Engdahl, 1998a, p. 75).

Collective representations are essentially agreed upon narratives and descriptions for the
group. The medium of collective representations is predominantly language (Burns and
Engdahl, 1998a, p. 75). Examples of collective representations include scientific models,
religious dogma or a set of political policies. Such representations ultimately form a
‘narrative identity,’ which is “the internal, dynamic life story that an [ego] constructs to
make sense of [its] life” (Bauer, McAdams and Pals, 2008, p. 81).

For Litfin, the collective narrative identity is the most defining signifier of a culture or
civilisation; it is the story it tells itself about the place of humans in the cosmos. Litfin
states that the collective narrative identity frames a culture’s daily life, its rituals and
modes of reproducing itself, its language and art, its forms of political organisation and
economic practice (Litfin, 2003, p. 29). The narrative identity becomes so intrinsic to the
collective identity that it is woven into cultural, social and legal patterns, because our
view of ourselves “directly affects how we view and construct reality” (Holland, 1998, p. 15).
The narrative identity therefore shapes the collective’s subjective sense of its
conscious identity (‘who it is’). This frames the articulation of past and future in the collective self (‘where it has come from and where it is going’).

**B. Self- Reflectivity as the Collective Personality**

If the collective identity frames past and future, the collective personality is situated in the present. The collective personality participates in forms of reflectivity. Reflectivity is a primary type of consciousness; it is based on a shared code and a particular language that is used to talk about the collective and its various activities, including its inner states and processes, and changes in these (Burns and Engdahl, 1998a, p. 70). Self-reflectivity involves a “collectivity conceptualising and reflecting on its values and goals, its conceptual framework, its organisation and its repertoire of strategies and practices…” (Burns and Engdahl, 1998a, p. 70). The important aspect of reflectivity is that it includes an assessment of the collective, and the capacity to possibly adapt or transform it. In modern societies, this type of reflectivity occurs through social science research, mass media reporting and discussions, and political and legal discourse.

Reflectivity is clearly an ego activity because it requires the presence of conscious awareness. As Stein writes, “The term ego refers to one’s experience of oneself as a center of willing, desiring, reflecting and acting” (Stein, 1998, p. 15). As such, the collective ego reflects upon and reacts to the day-to-day events in the collective context, including thoughts, intuitions, feelings, and sensations as well as values and norms espoused by the collective (‘what is happening’). This includes the actions and decisions of particular nation-states, individuals and organisations that constitute the emergent global collective self.
C. Persona: The Outward Face
Jung referred to the persona as the mask that allows the collective Ego to be expressed to the outside world. He wrote, [the persona is] “a complicated system of relations between the…consciousness and society…a kind of mask” (Jung, 1982, p. 91). The persona is associated with the roles that an individual or collective self adopts in the world, as Jung observed: “The persona is that which in reality one is not, but which oneself as well as others thinks one is” (Jung, 1950, p. 61). Sommers-Flanagan et al. describe the purpose of the persona as enabling us “to hold our inner selves together while interacting with the diverse distractions, temptations, provocations, and invitations the world offers us” (2004, p. 117). It is the coherent facade that the Ego crafts for the outside world to make a definite impression upon others and to conceal the true nature of consciousness. The persona allows the collective self to develop an ongoing and coherent identity.

II. The Collective Unconscious
As the framework above shows, the collective self is not limited to a conscious ego and conscious orientation. If that was the case, obligations assumed in multilateral treaties would be realised, and nation-states would not engage in acts of aggression contrary to the UN Charter. In reality, the collective also possesses unconscious material. As Hauke points out,

“The concept of a mind, or spirit or ‘will’ outside of, and beyond, the everyday ‘conscious’ mentality of human beings seems – as far as we can tell– to have existed across cultures and throughout human history” (in Papadopoulos, 2006, p. 54).

The unconscious of both an individual and a collective is “the receptacle that contains all those psychic activities and contents which are incongruous” (Hall and Nordby, 1999 [1973], p. 35) with the ego orientation. It is often experienced as an underlying perception that something is wrong without knowing what or why, or can be played out as recurring,
unwanted patterns of drama or conflict. Stein writes, “The unconscious includes all psychic contents that lie outside of consciousness, either temporarily or permanently” (1998, p. 16). However the unconscious is not wholly negative. Jung recognised “the creativity of the unconscious in that [it] may influence our conscious thinking and that it is often ‘truer and wiser’” [than the conscious mind] (Hauke in Papadopoulos, 2006, p. 66). As such, unconscious material is extremely potent, because it holds all of the material—whether positive or negative—that is repressed by the ego.

From a sociological perspective, unconscious material is interpreted as what is *unnamed* by the collective self. Burns and Engdahl write, “Unnamed objects and processes are experienced differently from those that are named and reflected upon within a cultural cognitive system,” (1998a, p. 81) and are linked to *severe limitations or distortions in reflectivity*. Therefore, the material that the collective is unable or unwilling to reflect upon becomes unconscious. This may occur for one or more of the following reasons:

(i) There is a failure to “acquire tools of language essential to learning and developing collective representations”; or

(ii) The agent is “unable or unwilling to engage in reflective processes” as “its activities are largely habitualized and beyond reflective attention, or its members are totally involved in practical activities and lack time and resources to devote to reflective processes”; or

(iii) The “agent experiences deep anxieties associated with, and a reluctance to engage in, self-reflective activities” (Burns and Engdahl, 1998a, p. 81).

As a result of being unable or unwilling to reflect on any given events or experiences, the unconscious material carried in the collective is comprised of the following factors.
A. Personal/Cultural Unconscious Resistance

In the Jungian framework, the first layer of the unconscious “contains information that has been forgotten or repressed but that might be made conscious again, under the right circumstances” (Sommers-Flanagan and Sommers-Flanagan, 2004, p. 116). This unresolved and repressed unconscious material forms complexes. Complexes are “thoughts, feelings and memories that group themselves into dynamic clusters, which function like sub-personalities” (Stevens, 1990, p. 15) or “split-off psychic fragments with a semi-autonomous existence” (Tacey, 2006, p.3). In the last two decades, theorists have adapted Jung’s theory of personal complexes, and used the theory to analyse the psychological nature of conflicts occurring in groups and cultures. Joseph Henderson carved out a cultural space between the personal and archetypal aspects of psychological experience, which he called ‘the cultural level’ of the psyche, with social, aesthetic, spiritual and philosophical dimensions (1984). Samuel Kimbles then integrated these two theories (the complex and the cultural psyche) and formulated the ‘cultural complex.’

Cultural complexes operate in a similar way to individual complexes, and are based on “repetitive, historical group experiences which have taken root in the cultural unconscious of the group” (Singer and Kimbles, 2004, p.7). These experiences are generally associated with “trauma, discrimination, feelings of oppression and inferiority at the hands of another offending group…” (Singer and Kimbles, 2004, p.7). Examples of cultural complexes are the ongoing conflicts between Israel and Palestine, North and South Korea, and Russia and Chechnya. These conflicts are so engrained at the cultural level of the psyche that they become an element of cultural identity, even for children who may never have directly encountered members of the other culture (Bar-Tal, 2000).
B. Collective Unconscious Patterns

According to the theoretical framework, the next layer of the unconscious is made up of archetypes, and particularly the shadow archetype, symbols and mythologies. Archetypes are a principal feature of the collective unconscious. Archetypes are primordial ideas, common to all humankind, that are expressed through ‘archetypal’ images. They are linked to innate modes of perception and describe universal symbols that evoke meanings of basic human experiences (Hyde and McGuinness, 1999, p. 172) including the hero, the soldier, the victim and the prostitute. It is necessary to incorporate archetypes into any application of Jungian theory, because Jung believed that archetypes formed part of the collective unconscious and were manifested in myth, symbol, art and religion (Hamilton, 2008, p. 233). The shadow archetype plays a particularly important role in the unconscious, as it is the compensatory response to the persona: it refers to the aspect of the psyche that directly contradicts the ego identity (Sommers-Flanagan and Sommers-Flanagan, 2004, p. 118).

C. Syzygy: The Inward Face

As discussed earlier in the chapter, Jung maintained that all individuals carried masculine and feminine principles in their psyche (Sommers-Flanagan and Sommers-Flanagan, 2004, p. 118). He called this the anima/animus syzygy, whereby for the male, the feminine principles remained unconscious, and for the female, the masculine principles remained unconscious. This thesis argues that in the collective self, the syzygy refers to the distribution of power among particular stakeholders in the global community, such as humans versus the environment, the masculine orientation versus the feminine orientation, and majority races versus racial minorities.
III. The Framework Applied to Gender Justice

In the thesis, the Collective Self Theoretical Framework will be applied to the split between masculine and feminine consciousness in public international law. There are collective representations and forms of reflectivity that are unique to gender justice, which are indicated in the framework in Figure 1.2 below. All levels of collective selves (international organizations, nation-states and their citizens, non-government organizations, corporations, the media, and other political actors) form and shape the global collective self in relation to gender justice. These concepts will be developed in the case study of the thesis, from Chapters Six to Nine.

![Figure 1.2: The Collective Self Theoretical Framework & Gender Justice](image)
Meta-theory and Methodology

This section addresses the meta-theoretical and methodological aspects of the thesis.

Meta-theoretical considerations such as ontology and epistemology are central to legal research, because as Kurki and Wight point out,

“meta-theoretical positions direct, in a fundamental way, the manner in which people theorize, and indeed, ‘see’ the world…[They] have deep, if often unrecognized, consequences for social analysis” (2007, p. 15).

This thesis is interdisciplinary, whereby “an issue is approached from a range of disciplinary perspectives integrated to provide a systemic outcome” (Lawrence in Brown, Harris and Russell, 2010, p. 4). The following analogy recounted by Maharishi Mahesh Yogi\textsuperscript{11} demonstrates the necessity of research at the macro level:

“If one looks at a tree and notices that all the leaves and flowers are withering, it may seem like a hopeless task to attend to each of these individually—a task that could easily exhaust all of one’s available resources. Such a situation inspires one to seek a more fundamental approach. In the case of a tree, the approach would be to locate an aspect of the tree that is more fundamental than its external expressions—the underlying level of nourishment, or the sap. By attending to that more fundamental level, the entire structure of the tree and all its diverse components are nourished, and a state of vitality and wholeness is restored” (summarized by Hagelin, 1992, p. 113).

This thesis creates a framework for understanding the ‘tree’ of the global collective self, and in particular, the ‘branch’ of gender justice.

The thesis is qualitative in nature, and utilises an interpretive, constructivist theoretical philosophy. It is interpretive because:

\textsuperscript{11}Maharishi Mahesh Yogi (1914-2008) was an Indian spiritual leader and the founder of transcendental meditation.
“interpretive researchers start out with the assumption that access to reality (given or socially constructed) is only through social constructions such as language, consciousness and shared meanings” (Myers, 1997 quoting Boland, 1985).

This can be contrasted with a positivist approach, whereby reality is taken as given, and as independently verifiable using measurable properties external to the observer (Myers, 1997). The interpretive philosophy is compatible with constructivist methods, which consider agents and actors to be fundamental in the constitution of reality; and that reality is not necessarily given (Schwandt, 1998, p. 222). Constructivists maintain that “existing rules and institutions help shape not just our behaviour, but also the very world we live in” (Klabbers, 2002, p. 34). Taken together, interpretive and constructivist approaches allow for the central role of collective selves and collective consciousness in the formation and transformation of reality. Using this interpretive, constructivist philosophy of qualitative research, this thesis seeks to uncover collective self theories from the social sciences that highlight the central role of consciousness and unconscious material.

Accordingly, this thesis applies theories from sociology, international relations and analytical psychology to international law without subscribing to one particular discipline. This is because all of these theories, broadly thought to fit within the social sciences, are relevant to the analysis of the global collective self. Much of the research in this thesis is predicated upon the benefits of integrating different research traditions, and in fact, international law lends itself readily to an interdisciplinary approach to the study of law. McConville and Hong Chui describe international law as a non-doctrinal approach “of studying law in the broader social and political context with the use of a range of other methods taken from disciplines in the social sciences and humanities” (McConville and Hong Chui, 2007, p. 5). They write,
“The merits and relevance of using other disciplines such as sociology, political science, economics, psychology, history and feminism as aids to legal research have been widely recognised” (McConville and Hong Chui, 2007, p. 5).

As such, this thesis has deliberately chosen to embark upon an interdisciplinary route, as it is important to acknowledge all of the sub-fields that have a bearing on the field with which the thesis is concerned.

The research design adopted is an in-depth narrative case study, using collective self theories to investigate gender justice in the context of international law. The case study analyses the conscious and unconscious influences on gender justice. This method illuminates the role of collective consciousness in the construction of gender justice. The evidence to inform the construction of the case study includes analysis of multilateral treaties and declarations in women’s rights law, feminist theories, and the jurisprudence of the ICTY, ICTR and the ICC in prosecuting gender-based violence in armed conflict.

The theoretical framework developed in the thesis can be considered explanatory, critical and normative. It is explanatory in the sense that it attempts to locate the causal role played by the collective self in the international laws relating to gender justice, and on the basis of this analysis, draws conclusions and predictions aimed at exercising control. It is critical because it identifies particular aspects of the international system that are not functioning well or ‘unconscious.’ It is also normative and teleological as it indicates an alternative future or mode of operation that does not currently exist, but might be brought into being (Kurki and Wight, 2007).
I. The Research Context & Countertransference

Considering that the theoretical framework for this research draws heavily upon analytical psychology, it is also necessary to introduce a significant aspect of Jung’s methodology and epistemology: countertransference. This is a depth psychology concept developed by Sigmund Freud (1910), and it refers to the analyst’s entangled relationship with his or her client/subject. In essence, countertransference occurs when the unconscious of the analyst is activated by their interaction with the subject: “In such cases the patient represents for the analyst an object of the past onto whom past feelings and wishes are projected” (Reich, quoted in Casement, 1990, p. 177). Jung warned against “cases of countertransference when the analyst really cannot let go of the patient...both fall into the same dark hole of unconsciousness” (1968, p.157-159). The analyst engages in countertransference when they become overly connected to the client (via an overly negative or positive reaction).

This is relevant for academic purposes, as there appears to be an epistemological consensus that the beliefs of the researchers and academics are immaterial, and that objective research can be carried out by a detached and neutral analyst. This amounts to a presumption that the researchers are intrinsically separate from the subjects of their analysis and detached from their relationship to the collective self. However this approach has two problems. Firstly, if academics ignore their unconscious material, then surely their unconscious material influences the meta-theory of their research. As such, the epistemological, ontological and methodological assumptions that are made are often the result of the theorist’s unconscious aspects: archetypes, fears, mythologies and patterns of behaviour. Furthermore, academics and researchers are all subject to the collective
representations of reality that contain conscious and unconscious material. Charles Whitehead (2008, p. 8) makes the same point in different language:

“…(1) the scientist’s choice of empirical experiment, (2) the commonsensical assumptions the scientist brings to the empirical experiment, and (3) the scientist’s interpretation of the empirical result, are not in the least empirical, but are culturally embedded, and subject not only to personal bias, but also conditioned by that taken-for-granted and never-critically examined set of collective assumptions which frame the prevailing world view (paraphrasing Bourdieu, 1972).

Secondly, if the findings reached by researchers are expressed in inaccessible and remote language, the value that they may have in transforming the collective self is compromised. In 1979, Lindblom and Cohen observed that “suppliers and users of social research are dissatisfied, the former because they are not listened to, the latter because they do not hear much they want to listen to” (p.1). Philip Allott also discusses specialization in the modern university, whereby:

“the realm of the mind is partitioned into ever-smaller intellectual territories, each an island unto itself, protected by the territorial sea of its own exclusionary academic method and discourse” (2003, p. 18).

Therefore, the context of the researcher is crucial. It is argued that the theorist’s frame of mind is significant in terms of the construction of the information that they are analysing. Even in quantitative analysis, the elements that are given preference in the research reflect the subjectivity and the intersubjectivity of the researcher. It is accordingly recommended that academic researchers should attempt to uncover and make transparent their conscious and unconscious reasons for undertaking particular research.

As such, in the remainder of this introductory chapter, I disclose some of the personal and collective, conscious and unconscious assumptions that frame my reality and my
relationship to the masculine and the feminine in the collective self. This use of personal
story-telling is a key method of analytical psychology and third-wave feminism:

“The technique explores the social world each woman inhabits through her speaking of it, through
comparison with other women's experiences, and through women's experiences of each other in the
group itself” (Becker and Bowman, 2001, p. 22).

I am a 30 year-old, Caucasian Australian woman. This PhD emerged as part of a personal
quest for uncovering an empowered feminine consciousness, which was in some ways
conscious, and in many others, unconscious. At university, I completed undergraduate
degrees in law and arts (politics and international relations). During my university studies,
I developed a deep interest in the work of Carl Jung and analytical psychology. At this
time, I founded a business called ‘Open Your Eyes Seminars,’ where from 2004-2011, I
gave seminars to high school students about masculine and feminine identity, body image,
and the portrayal of men and women in the media.

At the conclusion of my degrees, I was admitted as a solicitor, and completed the
Graduate Program as a criminal prosecution lawyer employed by the Office of the
Director of Public Prosecutions (the DPP) in New South Wales. During this time, I was
often assigned to cases involving sexual assaults against women. These assignments were
made because I was a young female, and there was an expectation that I could more
readily communicate with the female sexual assault victims about their experiences. This
had a profound impact on my perception of women’s rights, and the meaning of justice
and healing for those women who have been intimately abused. While I was working at
the DPP, I completed a Graduate Diploma in Integral Life Coaching, which was based on
Jungian psychology and taught by a clinical psychologist. The combination of experience
as a criminal lawyer and my exposure to Jungian theory stimulated in me a desire to
pursue graduate study, as I wanted to research the possibility that collectives are subject to the same conscious and unconscious drives that individuals are, and what role law might play in this process.

I returned to university to complete a Masters in International Law and International Relations. I began to develop ideas of how Jungian psychology might be applied to the international political and legal systems to aid collective transformation. This led me to undertake a PhD in International Law and gender justice. I wanted to discover the impact of unconscious material upon the pursuit of women’s rights. This is the narrative of my conscious orientation (my outer interactive life) in relation to my research.

In addition to my conscious narrative, I have attempted to become aware of my unconscious reasons for undertaking this research. While I am potentially unaware of much of the contents of my unconscious (by its very definition), I have sought to bring as much awareness as possible to my own unconscious material as a necessary part of my research. I did not feel that I could pursue research about unconscious collective drives with integrity if I did not also simultaneously work to uncover my own unconscious material.

I am aware that in the course of applying a Jungian analytical framework to the global collective self, I have been able to undergo some form of psychic initiation into mature adulthood by making this PhD journey. This inner and outer, conscious and unconscious rite of passage led me to my choice of case study—women’s rights and gender justice in international law. Upon reflection, I see that the case study is symbolic of the unsettled relationship between masculine and feminine in my own self. My masculine orientation
has always been associated with my relationship to the world (striving for academic and institutional achievement) whereas my feminine orientation has been associated with nurturing relationships with myself, my creativity, and others (in building self-awareness and empowerment). The unpredictable roller-coaster of the PhD with its torments and triumphs was often terrifying from the perspective of my masculine and my feminine consciousness.

Yet over the course of my PhD I have attempted to integrate more feminine elements into my masculine striving for worldly achievement, and more masculine elements in my nurturing of self, others and the world. In so doing, I have transformed both. This quest has led me to the realisation that the individual and collective feminine can only be empowered when it is integrated with the masculine; and the masculine can only be empowered when it is integrated with the feminine. Over the course of my PhD, I was married and my husband and I welcomed our first child (a son, Raphael) on 3 August 2012. This symbolism of masculine and feminine integration has unfolded beautifully alongside the conclusions of the PhD.

I hope that the countertransference that I have experienced with the subject of my analysis (gender justice and the transformation of the feminine) has been transformed into a source of healing for the global collective self. To you, the reader, I would like to express my gratitude for your witnessing of my life experience and research.
Chapter Two: Collective Self Theory in Context

As this thesis develops a psycho-social theory of collective selves, it was necessary to conduct extensive research into a range of existing collective self theories. This chapter provides a background to the concept of a collective self in philosophy, sociology, and social psychology. This chapter is an overview of the seminal works on collective self theory; its purpose is to situate the concept of the collective self in a broad interdisciplinary context.12

For as long as humans have conducted their social life in groups, theorists, analysts and philosophers have attempted to understand the nature of, and to create analytical categories for, the global collective. A broad range of such theories has evolved in the disciplines of philosophy, sociology, social psychology, politics and international relations, variously describing the collective identity as the group mind, herd mentality, the collective conscience, cultures, civilisations, the group self, collective memories, collective traumas and collective emotions. Among the theories that have been developed, there are a limited number that recognise the unnamed and unrepresented (unconscious) elements of the collective, in addition to the overt and named aspects of collective identity. These theories support the concept of the global community that this thesis

advances; a global collective self that is dynamic, susceptible to unconscious influences and separate from the systems it has created. The first section of this chapter provides a brief review of the theories in the social sciences that seek to establish the presence of a collective self with consciousness and unconscious elements. Specifically, the section examines some perspectives from philosophy, sociology and social psychology on the concept of a collective consciousness. These include Plato and Plotinus’ concepts of a world soul, Hegel’s Weltgeist (World Spirit), Pierre Teilhard de Chardin’s noosphere, Sri Aurobindo’s psychological stages of human society, Jean Gebser’s dimensions of consciousness, Hofstede and Inglehart’s global values, Giddens’ reflexive modernisation, Durkheim’s collective conscience, and the theory of organicism.13

The Collective Self in Philosophy

I. The Collective Self in Philosophy: Socrates and Plato

The first references to a global collective identity can be found at the foundations of Western philosophy. In a number of Plato’s writings he observed the presence of a transcendent collective self, which he referred to as the ‘world soul.’ Socrates and Plato constructed a model of the universe whereby the universe itself was a living creature, and all sentient beings that existed on the universe shared the same basic characteristics, and operated according to the same principles. The following dialogues contain the Ancient Greek concept of the microcosm and macrocosm, which is the theory that one pattern or prototype is reproduced at different levels of functioning in the cosmos. In this typology,

“man was seen as a microcosm, a complete equivalent of the world in miniature” (Jung, 1936, para. 550). Plato introduced the theory of a living world in the *Timaeus*, which sets out his cosmology (Cornford, 1997 [1935]). Plato writes:

“We may say that the world became a living creature truly endowed with soul and intelligence by the providence of God” (*Timaeus*, 30a-b).

The *Timaeus* then ends with the phrase:

“the cosmos…being itself a visible Living Creature embracing all the visible creatures” (*Timaeus*, 92c).

Morrow interprets Plato’s *Timaeus* thus:

“…We are told that soul is present throughout the cosmos, not merely in man and in the celestial bodies, but also as an all-embracing world soul” (1950, p. 162).

For Plato, the cosmic soul is granted by the *demiurge* (the one who created the Universe and used the Forms to give it order) upon creation of the cosmos (Skrbina, 2005, p. 41).

Plato held that a God made the world to be a living creature, which possessed a soul and intelligence. Therefore in *Timaeus* Plato constructs the world in its entirety as one visible animal, comprehending within itself all other animals (Russell, 2004 [1946] p.143).

Furthermore, in Plato’s *Philebus*, the following dialogue occurs between Socrates and his interlocutor, Protarchus:

“Socrates: May our body be said to have a soul?

Protarchus: Clearly.

Socrates: And whence comes that soul, my dear Protarchus, unless the body of the universe, which contains elements like those in our bodies but in every way fairer, had also a soul? Can there be another source?

Protarchus: Clearly, Socrates, that is the only source” (*Philebus*, 30 B).

Plato further argued that the nature of the state, or polity, was derived from the nature of the individual. He said,
“Is it not, then, said I, impossible for us to avoid admitting this much, that the same forms and qualities are to be found in each one of us that are in the state? They could not get there from any other source” (The Republic, 435 e).

Clearly Socrates and Plato saw evidence of the same patterns of functioning in the different levels of social existence: the individual, the polity and the ‘world soul.’ Later philosophers would replace the word ‘soul’ with psyche, then mind, and finally, consciousness. These dialogues containing Plato’s interpretation of cosmology and the nature of reality are among the earliest links between the microcosm (individual) and macrocosm (political systems and the global community). Clearly the excerpts do not construct a useful or comprehensive cosmological model in rational or scientific terms, but they are significant in terms of the trajectory of ancient and medieval thought they later inspired (Russell, 2004 [1946], p.147).

II. The Collective Self in Philosophy: Plotinus and Neo-Platonism

The world soul concept was revived by Neo-Platonism, a school of philosophy that emerged in the 3rd century. Neo-Platonic theories were originally intended to preserve the philosophy of Plato, but contained significant enough departures from Platonic philosophy as to warrant a new school (Clark, 2001, p. 50). Plotinus was instrumental in the Neo-Platonist movement through his essays, which Porphyry converted into the Enneads, the classical document of Neo-Platonism, containing the primary teachings (Russell, 2004 [1946] p. 271). The Enneads deviate from the Platonic dualistic theory of ideas, and in its place, describe a simplistic universal hierarchy of light and darkness, including ‘The One,’ ‘nous,’ the ‘world-soul,’ ‘human souls’ and ‘matter’ (Skirbekk and Gilje, 2001, p.98). According to the Enneads, the nous, the world soul, human souls and matter all emanate from The One, in a hierarchy beginning with nous and ending with matter at the lowest level of being. This was among the earliest work relating to stages of
sociocultural development, claiming that the human race was able to expand its consciousness to ultimately transform into a higher mind.

For Plotinus, the world-soul is the subject of progressive evolution. It is “entirely creative and thus inclines upward towards what is superior…” (MacDonald, p. 117). Plotinus writes:

“The so-called world-soul has never taken part in lower activity but, unaffected by evils and in a state of contemplation, oversees what is below it and at the same time stays fixed in what is above” (Enneads, 4.8.7).

Plotinus wrote that the individual was required to transcend his or her ego in order to connect with the world soul:

“the goal is to liberate the soul from its mortal frame (the body), so that the personal soul can experience the all-encompassing union with the world-soul” (Skirbekk and Gilje, 2001, p. 98).

Paradoxically, to connect with the world-soul, the Enneads encouraged people to look within rather than focusing externally:

“when we look within we see nous, which is divine, while when we look without we see the imperfections of the sensible world” (Russell, 2004 [1946], p. 279).

With Neo-Platonism, we see an attempt to clarify the view of an omnipresent consciousness. Plotinus’ *Enneads* have inspired more religious theology than ideas about the collective consciousness. In fact, Neo-Platonism was soon co-opted with much early Christian thought to form the basis of Christian teaching (Russell, 2004 [1946], p. 270). However we eventually see the references to soul and *nous* in Platonic and neo-Platonic thought being replaced with references to consciousness in later philosophy. Neo-Platonism is included in this section as it provided the simplistic templates that would later inspire philosophers such as the German Idealists.
III. The Collective Self in Philosophy: German Idealism & Hegel’s Weltgeist

German Idealism was a philosophical movement that developed in Germany in the late 18th and early 19th centuries. It includes the work of Immanuel Kant, Johann Gottlieb Fichte, Arthur Schopenhauer, Friedrich Von Schelling and Georg Wilhelm Friedrich Hegel, among others (Americks, 2000, pp. 1-2). In a philosophical context, idealism maintains that human experience is ultimately based on the perceptions and experience of the mind; that the mind is the main source of the knowledge, comprehension, and structure of our experience. In essence, for idealists, the mind is primary, and exists prior to external realities (Reinhardt, K.F., 1998, p. 500). This thesis subscribes to idealism in the sense that it considers the collective consciousness (mind) to be a primary source of global experience, which is derived from and shaped by the collective self. The psychology of Carl Jung was heavily influenced by German idealism, which is particularly evident in concepts such as the collective unconscious and universal archetypes. This section explores the philosophy of Hegel, to the extent that he acknowledged a form of collective consciousness, which is progressively evolving.¹⁴

Of the German Idealists, Hegel (1770-1831) was the proponent of the philosophical school known as Absolute Idealism, which is the doctrine that “all things are appearances of the universal, divine idea” (1991 [1830], para. 24A). According to this philosophy, human existence can only be understood by reference to an all-inclusive whole (for example, a collective self). Hegel referred to the collective self as the weltgeist, which

¹⁴ Von Schelling, a German idealist, also developed Plato’s concept of a world soul, and his philosophy divided nature into three stages: the organic, the inorganic and the universal. For Schelling, the universal nature was the world soul, which connected nature with human consciousness (1942, p. 84). Schelling focused upon the interplay of opposites in the development of consciousness, and particularly the relationships between conscious and unconscious, and nature and spirit (Douglas, 1997, p. 23). In his work, Von der Weltseele (On the World Soul) (1798), Schelling argued that there existed a “pervasive, all-animating, material but imperceptible universal soul…” (Vassanyi, 2011, p. 7). Schelling’s philosophy can best be considered as a natural philosophy, or a precursor to concepts such as the Gaia hypothesis. He is included in this note due to his influence on Carl Jung, particularly in the development of the collective unconscious and archetypes (Douglas, 1997, p. 23).
translates as ‘world spirit.’ He considered the world spirit to be the fundamental reality, whose journey towards self-knowledge leads to the ‘Absolute Idea.’ The Absolute Idea constitutes the ‘whole’ in all of its complexity, and the culmination of history’s evolution (Scruton, 2001, p. 201). Absolute Idealism thus has important overlaps with this thesis, because both argue that there is a collective self that is fundamental in the creation of global realities, and that social structures such as international law are reflections of collective dynamics.

Hegel developed a theory of history based on Absolute Idealism, whereby:

“The History of the world is none other than the progress of the consciousness of Freedom ... Itself is its own object of attainment and the sole aim of Spirit” (Hegel, 1822).

Scruton interprets this theory of history and its symbiotic relationship to world events:

“the progress of spirit towards self-discovery is reflected in the epochs of civilized life. (Each ‘moment of consciousness’ therefore has its parallel in the history of mankind...)” (2001, p. 209).

Therefore, according to Hegel’s theory of history, stages of history unfold with the same logic as a dialectic, with the epoch and the dialectic in opposition towards the other, until the final ‘end of history’ when the world spirit is realized fully for the first time.

Accordingly, the:

“prime mover of history is spirit and the ‘material’ circumstances of mankind (sic), including the mastery over nature and the economic relations that permit it, result from the ‘cunning of reason’ as it unfolds in dialectical stages” (Scruton, 2001, p. 210).

Thus, for Hegel, the dynamics of the collective self provide the impetus for stages of history to unfold, and in turn, the collective self is transformed to higher consciousness.

Hegel was the first to interpret world history as developing in a series of stages, from primitivism to absolute knowledge (McIntosh, 2007, p. 161). Holland interprets Hegel’s
theory of history in the following way:

“All the upsets, triumphs, and disasters of world history were understood to be no more or less than necessary episodes in the Weltgeist’s coming-to-be” (2000, p. 104).

Therefore, history is not a series of random events or coincidences. In Hegel’s Philosophy of History (2007 [1899]), he traces world history from China, India and Persia to Ancient Greece and Rome, through to the Enlightenment and the French Revolution, writing,

“All every world’s worldview was both a valid truth unto itself and also an imperfect stage in the larger process of absolute truth’s self-unfolding” (Hegel quoted in Tarnas, 1993, p. 380).

For Hegel, ultimate reality is timeless, and time is an illusion created because we are unable to perceive the whole at once (Russell, 2004 [1946], p. 665). Hegel is echoing Plato and Plotinus in the sense that they all perceive the world soul/mind/spirit to be realizing itself through the course of history and the development of humanity’s consciousness. Hegel writes:

“All everything that from eternity has happened in heaven and earth, the life of God and all the deeds of time simply are the struggles for Spirit to know itself, to make itself objective to itself, to find itself, be for itself, and finally unite itself to itself; it is alienated and divided, but only so as to be able thus to find itself and return to itself. Only in this manner does Spirit attain its freedom” (Hegel, 1825-6, trans. E S Haldane, 1892-6).

Hegel is an extremely important influence for the theory in this thesis of a collective self that is growing in consciousness throughout stages of history. This unfolding of consciousness is strongly evident in the development of international law whereby since the creation of modern international law in the form of the UN in 1945, the global collective self has become more conscious, and as a result, more connected, and more self-aware. Another philosopher who advocated the notion of a progressively evolving collective self was Pierre Teilhard de Chardin.
IV. Pierre Teilhard de Chardin’s Noosphere

Pierre Teilhard de Chardin (1881-1955) was a French philosopher and paleontologist who developed Vladimir Vernadsky’s concept of the noosphere (Birx, 1972). The noosphere was Teilhard’s term for the conscious collective self. In his work, *The Future of Man* (1964), he described it thus:

“In the passage of time a state of collective human consciousness has been progressively evolved which is inherited by each succeeding generation of conscious individuals, and to which each generation adds something. Sustained, certainly, by the individual person, but at the same time embracing and shaping the successive multitude of individuals, a sort of generalized human superpersonality is visibly in the process of formation on the earth. It seems that where Man is concerned the specific function of education is to ensure the continued development of this personality by transmitting it to the endlessly changing mass: in other words, to extend and ensure in collective mankind a consciousness which may have already have reached its limit in the individual” (2004, [1964], pp. 23-24).

In explaining the noosphere, Teilhard devised a theory of evolutionary thresholds, which included the:

(i) Physiosphere or Geosphere: containing all primordial particles prior to life (lithosphere, hydrosphere, atmosphere and stratosphere);

(ii) Biosphere: relating to the emergence of life;

(iii) Noosphere: the psychosocial layer of evolution (McIntosh, 2007, p. 173) or the realization of consciousness in humanity.

Teilhard was also a clear proponent of progressive evolution. He argued that all life is subject to the same striving towards higher consciousness: ‘the Omega Point,’ which constituted a kind of utopian attractor (1969). The Omega Point constitutes the maximum organized complexity of consciousness. We can see in Teilhard’s theories an emphasis on
the progressive evolution of the collective consciousness, and that the world is subject to the same evolutionary drives as all living beings.

Consciousness was central to Teilhard’s philosophy. He argued that the noosphere existed in a transpersonal mind-field; an infinitely complex global consciousness created by human thought and culture (1947). He wrote:

“…we find ourselves in the presence, in actual possession of the superorganism we have been seeking, of whose existence we were intuitively aware. The collective mankind which the sociologists needed for the furtherance of their speculations and formulations now appears scientifically defined…It may be said, speaking in very general terms, that in asserting the zoological nature of the Noosphere we confirm the sociologists’ view of human institutions as organic.” (2004, [1964], p. 155).

Teilhard considered the Noosphere to be a dynamic superbody with its own circulatory and nutritional systems.

Interestingly, the concept of the noosphere has also been acknowledged in international legal scholarship. Anthony D’Amato writes that the international law system “exists and functions in the world’s noosphere” (2005, p. 340). De Chardin advanced an integrated vision of the world based on a renewed perspective on ecology writing,

“"The Age of Nations is past. The task before us now, if we would not perish, is to build the Earth” (1969, p. 7).

His theory is included here as he was an important stepping-stone in the formation of later integral philosophies.

V. The Collective Self in Philsophy: Sri Aurobindo’s Stages of Human Society

Sri Aurobindo (1872-1950), born Aurobindo Ghose, was an Indian philosopher and integral theorist writing in the period 1915-1950. He was also strongly involved with the
Indian nationalist movement (Sri Aurobindo Archives, 2003). Aurobindo advanced a vision of the future of international society based on a theory of progressive evolution. This vision was closely linked to the role of international law, and was articulated in a number of his works, *The Human Cycle* (1979) [1916-1918], *The Ideal of Human Unity* (1999) [1915-1918], *The Life Divine* (1949), and *War and Self-Determination* (1962) [1915-1918]. Aurobindo was influenced by the work of German social historian Karl Lamprecht, who was a pioneer in terms of his interdisciplinary work in social sciences, analyzing the environment, psychology and law in his study of history. In setting out humanity’s stages of development, Lamprecht wrote:

> “above the development of the nations, there stands the universal unfolding of a great, singular development of humanity” (Lamprecht in Pickering, 1993, p. 342 [1909, 638]).

According to Breisach,

> “Lamprecht himself stipulated psychological forces as the basic forces in all of history. But they derived from the collective psyche of every nation and not from the idiosyncratic forces of individual psyches” (2007, p. 279).

Sri Aurobindo was interested in how consciousness manifests itself in collective political and legal life. For Sri Aurobindo, human society needed to transcend collective egoism in order to reach a state of human unity. He saw a central role for international law in the process of human evolution, as he considered that global democracy and a future world state were inevitable. In relation to the progressive evolution of the collective consciousness, Sri Aurobindo:

> “identified the distinct psychological stages through which human society has evolved, namely, symbolic, typal, conventional, individualist, and subjective” (B.S. Chimni, 2006, p. 197).
The symbolic stage describes human society in its “primitive beginnings” where the group is “always religious and actively imaginative in its religion,” strongly influenced by the Gods (Sri Aurobindo, 1999 [1916-1918], p. 7).

The typal stage “creates the great social ideals which remain impressed upon the human mind even when the stage itself is passed” (Sri Aurobindo, 1999 [1916-1918], p. 11). This stage is characterized by a focus on philosophy and the formation of moral and ethical standards. The next stage is the conventional stage, whereby:

“the external supports, the outward expressions of the spirit or the ideal become more important than the ideal” (Sri Aurobindo, 1999 [1916-1918], p. 11).

This stage creates systems that are based upon the social ideals,

“to formalize, to erect a system of rigid grades and hierarchies…to subject thought to infallible authorities…” (Sri Aurobindo, 1999, [1916-1918], p. 13).

This stage in many respects overlaps with Weber’s stage of rationalism, which envisages the formation and dominance of bureaucracy (Schluchter, 1985).

However according to Sri Aurobindo, the conventional stage is then inevitably displaced by the individualist stage, because the conventional becomes corrupt and

“devoid of real sense and intelligence…existing only mechanically by fixed idea, by the force of custom, by attachment to the form” (Sri Aurobindo, 1999, [1916-1918], p. 15).

The perceived failure of the society to provide inspiration and security leads individuals to turn inward in the individualist stage,

“to become a discoverer, a pioneer, and to search out by his individual reason, intuition, idealism, desire, claim upon life or whatever other light he finds in himself the true law of the world and of his own being” (Sri Aurobindo, 1999, [1916-1918], p. 13).

Yet Aurobindo argued that the individualist stage must ultimately proceed to the universal:
“For the effort of the individual soon shows him that he cannot securely discover the truth and law of his own being without discovering some universal law and truth to which he can relate it” (Sri Aurobindo, 1999, [1916-1918], p. 28).

This is where the concept of international law becomes pertinent. In relation to these stages, Sri Aurobindo acknowledged in his work The Human Cycle: the Psychology of Social Development the emergence of a “cosmopolitan, international sentiment” (1999, [1916-1918], p. 550) in the mid twentieth century.

Sri Aurobindo referred to the collective consciousness as the Supermind. In reference to the collective consciousness, he wrote,

“It lies not in its physical, economic, or even cultural life which are only means and adjuncts, but in something deeper whose roots are not in the ego, but in a Self…” (Sri Aurobindo, The Human Cycle, Pondicherry: Sri Aurobindo Ashram, [1970] pp. 46-47).

Sri Aurobindo considered consciousness to be the driving force behind the evolution of human society. He defined consciousness as

“…an organizing self-knowledge omnipresent in the universe and… the source and keeper of law in the world” (Varma, 1990, p.9).

This reference to law is interesting because Aurobindo locates the regulation (‘source and keeper’) of law in the world in the supermind, a form of transcendent consciousness.

Accordingly Sri Aurobindo understood consciousness as the primary substance throughout the cosmos, writing:

“Consciousness is the fundamental thing in the universe — it is the energy, the motion, the movement of consciousness that creates that universe and all that is in it- not only the macrocosm but the microcosm is nothing but consciousness arranging itself” (1993, [1930], p. 45).

Sri Aurobindo referred to the highest potential of the collective consciousness as the Supermind, which he argued was the source of all consciousness on earth, and yet is also
present and active on the earth (Sri Aurobindo, 1993, [1935] pp. 396-397). This echoed Plato’s concept of a living conscious earth, which was also seeking to become self-conscious (a collective consciousness subject to progressive evolution). International legal scholar B.S. Chimni notes that Sri Aurobindo increasingly became focused on the “spiritual quest of the individual than on collective struggle to bring about social transformation” (2006, p. 199). As a result, Aurobindo’s contribution to international law theory has largely been overlooked, though this thesis maintains that his work is an extremely useful influence.

VI. Jean Gebser’s Dimensions of Consciousness

Jean Gebser (1905-1973) was a cultural philosopher and integral theorist who was focused upon the evolution of human consciousness. Like Hegel and Sri Aurobindo, Gebser saw structures of consciousness reflected in historical phases or mutations of international society. He coined the phrase ‘integral consciousness,’ which referred to “an advanced human condition in which all major forms of consciousness were integrated into a single unified experience” (Combs, 2009, p. 3). His work The Ever-Present Origin (1949) was specifically concerned with the unfolding consciousness in humanity. He created dimensions of consciousness to describe historical stages, which included the archaic, vital-magical, psychic-mythical, mental-rational, and integral structures (Gebser, 1985 [1949], p. 42). According to Gebser, each dimension of consciousness contains various characteristics that combine to shape different cultures and their worldview (Arneson, 2007, p. 195). Gebser writes that all cultures will all inevitably go through the stages and a clear development can be recognised, though not all at the same time. The structures of development are characterized by the following:
Little is known about the *archaic* structure, as it relates to the development of animal experience to human consciousness (Combs, 2009, p. 3);

The *magical* structure embraces a worldview based on magical thinking, such as Native American stories of the world being created through the singing and dancing of the Coyote and the Silver Fox (Combs, 2009, p. 3);

The *mythical* structure uses grand narratives (such as creation stories in the world’s religions) to answer the great questions of life such as ‘why I am here?’ and ‘where do I go when I die?’ (Combs, 2009, p. 3);

The *mental-rational* structure “seeks rational answers to these questions, proceeding by discursive thought and scientific investigation, e.g. the universe is said to have been created in a monumental big bang approximately 14 billion years ago, and so on” (Combs, 2009, p. 3).

The *integral* structure of consciousness brings all of these modes together to produce a holistic worldview, seeking to unite the magical and the rational, the mythical and the scientific (Combs, 2009, p. 3). As Feuerstein notes, “the integral consciousness unfolds in and through freedom from the ego” (1997, p. 189).

Each stage marks a fundamentally different way of experiencing reality, and each new stage subsumes (transcends and includes) the last. Following Gebser’s model, Feuerstein currently places international society in the *mental-rational* structure of consciousness, which began at some point between 10 000-500 BCE (during the time of Socrates and Plato) and was reinforced during the Renaissance (1997, p. 182). Therefore, the mental-rational structure includes the capacities of all other preceding structures, such as the archaic, magical and mythical (Feuerstein, 1997, p. 185). Yet, Feuerstein notes that:
“Most, if not all, of the social problems we face today are the direct result of the rational consciousness, which is inherently defective. For it is ego-fixated and experiences the world as basically hostile or antagonistic... Its abstractedness from the living dimension of the world makes possible problematic developments such as mindless consumerism, overproduction, rampant technology, and cynical politics” (1997, p. 185).

Gebser contended that the usefulness of terms such as ‘history’ and ‘evolution’ was limited, because they are merely representative of the mental-rational consciousness structure in which we currently find ourselves: this consciousness structure is characterized by “a linear understanding of time, anchored in a ‘beginning’ and moving in some sense towards an ‘end’ (Lachman, 2003, p. 235). Yet according to Gebser, we are on the threshold of a consciousness shift towards the integral structure.

Interestingly, Gebser distinguishes between latency and transparency in his analysis. Latency refers to what is concealed: “it is the demonstrable presence of the future” (Gebser, 1986, p. 6), as it contains the potential for the future stages of consciousness. Transparency (diaphaneity) refers to what has been revealed: it is the form of manifestation (epiphany) of the integral (Gebser, 1986, p. 6). This thesis argues that the latency/transparency duality in the unfolding of consciousness has much in common with the conscious and unconscious aspects of the collective consciousness: the conscious ego represents what is currently revealed (transparency), whereas the unconscious is a symbol both of what has been concealed and what potential lies in the collective consciousness (latency). For Gebser, the process of integrating latent and transparent, unconscious and conscious, is the unfolding of Spirit.

This section has provided a brief overview of the relevant theories throughout Western philosophy that have advanced the notion of a progressively evolving, conscious
The next section introduces the sociological theories that have attempted to create a similar construct of collective identity.

**The Collective Self in Sociology**

I. The Collective Self as ‘Mental Programs’

Dutch sociologist Geert Hofstede has conducted extensive research into collective values (with ‘collective’ variously referring to nations, organisations, and corporations). Based on his findings, Hofstede created the cultural dimensions theory, whereby he differentiates between cultures based upon a number of variables including equality/inequality, collectivism/individualism, masculinity/femininity and indulgence/restraint. He concludes that individuals are all “collectively programmed” by the “transfer of collective mental programs” (2001, p. 4). He writes,

> “Societies, organizations, and groups have ways of conserving and passing on mental programs from generation to generation with an obstinacy that is often underestimated” (Hofstede, 2001, p. 3).

Hofstede’s research built on the work of other sociologists. French sociologist Pierre Bourdieu developed the concept of *habitus*, which is analogous to a collective mental program. It refers to:

> “something non-natural, a set of acquired characteristics which are the product of social conditions and which, for that reason, may be totally or partially common to people who have been the product of similar social conditions...[and] being a product of history, that is of social experience and education, it may be changed by history, that is by new experiences, education or training (which implies that aspects of what remains unconscious in *habitus* be made at least partially conscious and explicit)” (Bourdieu in Hillier and Rooksby, 2005. p. 45).

John Searle similarly developed the concept of the *Background*, which refers to “the invisible structure of social reality” (1995, p. 7). Searle observed that
“Symbolic devices—such as words, expressions, discourses—represent something beyond themselves rather than merely those aspects of natural languages such as infinite regenerative capacity, the presence of illocutionary force indicating devices, quantifiers, and logical connectives (Searle, 1995, p. 10).

He observes that the symbolizations, defined by social rules including conventions and traditions, are collectively recognised, or public (Searle, 1995, p. 66). In Ideology and Utopia (1936), sociologist Karl Mannheim refers to a false consciousness, whereby a society’s particular reality, based on an ideology inherited from the past, may not correspond with the new reality within which the society must exist. Each of these sociologists acknowledges the unnamed ‘programs’ that form a collective.

Sociologist Ronald Inglehart participated in the World Values Survey and the European Values Survey, conducted by social scientists from forty countries on five continents (Macintosh, 1998, p. 452). The survey engages with global attitudes such as self-expression, choice, rationalism, religiosity, patriotism, and materialism. The results of the survey have led Inglehart to conclude that society develops through various stages. He writes,

“Modernization goes through two main phases, each of which brings distinctive changes in people’s worldviews. The Industrial Revolution was linked with a shift from traditional to secular-rational values, bringing bureaucratization, centralization, standardization and the secularization of authority. In the post-Industrial phase of modernization, a shift from survival values to self-expression values, brings increasing emancipation from both religious and secular-rational authority. Rising mass emphasis on self-expression values makes democracy increasingly likely to emerge” (Inglehart, 2006, p. 115).

These conclusions are supported by the survey’s postmaterialism scale, which indicates a:
“worldwide trend away from concerns with material well-being toward a postmaterialist value system that emphasizes the free expression of ideas, greater democratization, and the development of more humane societies” (Macintosh, 1998, p. 452).

The survey findings are useful from the perspective of this thesis, because they come to the same conclusions as the ‘collective mind’ philosophers outlined above: that global society is subject to an inevitable trajectory of development. It is argued that the presence of a progressively evolving collective self is compatible with the survey’s empirical findings. Yet the World Values Survey attribute this to the desire for freedom as a universal human aspiration, which is capable of being realized through economic development. In contrast, this thesis asserts that the trajectory of international development is related to the unfolding of the collective consciousness.

II. The Evolving Collective Self in Sociology

Reflexive modernization is a contemporary sociological term developed by Anthony Giddens, Ulrich Beck and Scott Lash that perhaps acknowledges the growing self-consciousness of international society. It refers to the increased collective and institutional reflexivity exhibited by modern societies (Giddens, Beck and Lash, 1994). Reflexivity is “the increasing capacity of agents to reflect on structure” (Burns and Engdahl, 1998, p. 82) and can be divided into cognitive, normative and aesthetic (judgmental) types of reflexivity (Giddens, Beck and Lash, 1994). Burns and Engdahl observe the institutionalized reflexivity:

“embodied in social and political commentary and social science research, public discourses and assessments- especially in democracies with well-established public discussion…an institutionalized free press and autonomous social research” (1998, p. 82).

It is argued that reflexive modernization may be a sociological term for the increased self-consciousness and self-awareness being demonstrated by the collective.
The existence of an evolving collective self is also supported by the sociological theory of *organicism*, which is “the tendency to treat a social system as a real, tangible object” (Castellani and Hafferty, 2009, p. 8). Organicist sociologists, such as Durkheim and Pareto, conceive of society as having many of the properties of the human being: it is “emergent, self-constituted, bounded, environmentally responsive and functionally differentiated” (Castellani and Hafferty, 2009, p.8). Therefore, organicist sociological theory views society as a social organism: constantly “evolving, growing, changing and developing, all the while seeking balance, order, homeostasis and cohesion” (Castellani and Hafferty, 2009, p.8). This echoes the idea of society as a self, with all of the attributes of consciousness.

The collective self concept was relevant to Durkheim’s theories of the collective conscience and mechanical solidarity. Durkheim also analysed how societies progressed through certain stages of development. Durkheim sought to establish the source of solidarity in modern society, with solidarity conceptualized as trust, reciprocity and moral obligation (Seligman, 1992, p. 121). In formulating his theories, Durkheim distinguished between mechanical and organic solidarity. Mechanical solidarity arises from likenesses and shared norms among individuals (a collective conscience). Durkheim defined the collective conscience as “the totality of beliefs and sentiments common to the average citizens of the same society” (1933 [1893], p. 79). It consists of “a system of segments homogenous and similar to each other” (Durkheim, 1933 [1893], p. 60-61). The collective conscience dominates through a shared adherence to customs, norms and values. Durkheim referred to this as ‘solidarity by similarities’, and believed that mechanical solidarity was the hallmark of primitive societies with a strong focus on collective punishment and responsibility (1933 [1893]).
However according to Durkheim, as the society inevitably grew and became more pluralistic in the philosophical sense (representing systems that recognize more than one ultimate principle), it was then characterized by organic solidarity; which results from the division of labour and differentiation (and a resulting dependency on others) (Durkheim, 1933 [1893], p. 175). Moral and economic regulation becomes more salient, with mutual reliance arising from specialization. The specialization associated with the division of labour means that individuals carry out distinctive yet interrelated tasks, and therefore individuals are tied to each other because of the interdependence of their tasks (Hurst, 2000, p. 24). Durkheim championed the division of labour as being “the chief source of social solidarity, and at the same time, the foundation of the moral order” (1933 [1893], p. 401). For Durkheim it is a moral phenomenon because it tempers the selfish, egoistic tendencies of individuals (Hurst, 2000, p.33).

While Durkheim acknowledges the presence of a collective conscience and the evolution of society, this does not necessarily resonate with the collective self, which is the subject of this thesis. Durkheim considers the collective conscience as the epitome of a traditional, primitive society, which will evolve into a more sophisticated society bound by the division of labour. In contrast, the global collective self in this thesis is constantly reflecting the thoughts, behaviours, decisions and policies of the nations, organisations and citizens of the world. Moreover, Durkheim does not acknowledge the unconscious aspects of the collective conscience. His theories are presented here to avoid any confusion between the concepts of the collective conscience and the collective consciousness. The next section analyses two collective self theories from social psychology that are relevant to the thesis.
The Collective Self in Social Psychology

In social psychology, the ‘collective self’ refers to the fact that individuals “seek to achieve self-definition and self-interpretation (i.e., identity) in…terms of group membership” (Sedikides and Brewer, 2001, p. 1). Sedikides and Brewer write,

“The collective self is achieved by inclusion in large social groups and contrasting the group to which one belongs (i.e., the in-group) with relevant out-groups. That is, the collective self contains those aspects of the self-concept that differentiate in-group members from relevant out-groups. The collective self is based on impersonal bonds to others derived from common (and oftentimes symbolic) identification with a group” (2001, p. 2).

The two theories that are most relevant to understanding the collective self in social psychology are social identity theory and social categorization theory. Social identity theory:

“is a social psychological analysis of the role of self-conception in group membership, group processes, and intergroup relations…The approach is explicitly framed by a conviction that collective phenomena cannot be adequately explained in terms of isolated individual processes or interpersonal interaction alone…” (Hogg in Burke, 2006, p. 111)

Originally developed in the early 1970s by Henri Tajfel to understand the prejudice, discrimination and intergroup conflict of World War II and its aftermath, social identity theory has become “one of mainstream social psychology’s most significant general theories of the relationship between self and group” (Hogg in Burke, 2006, p. 111). Tajfel defined social identity as “the individual’s knowledge that he belongs to certain social groups together with some emotional and value significance to him of this group membership” (Israel and Tajfel, 1972, p. 292). According to this theory, the group or collective is defined in terms of individuals’ self-conceptions as group members. Turner observes that social identity theory:
“considers that individuals structure their perception of themselves or others by means of abstract social categories, that they internalize these categories as aspects of their self-concepts, and that social-cognitive processes relating to these forms of self-conception produce group behaviour” (in Tajfel, 1982, p. 16).

Turner distinguishes between an individual’s personal identity and an individual’s social identity. Self-descriptions that “denote one’s membership of various formal and informal social groups, i.e. social categories such as sex, nationality, political affiliation, religion and so on” refer to the concept of social identity. In contrast, self-descriptions “such as feelings of competence, bodily attributes, ways of relating to others, psychological characteristics, intellectual concerns, personal tastes and so on” refer to an individual’s personal identity (Turner in Tajfel, 1982, p. 18). As such, this social psychology model explains how individual perceptions of social identity give rise to collective selves and group behaviour. Hogg notes,

“A group exists psychologically if three or more people construe and evaluate themselves in terms of shared attributes that distinguish them collectively from other people” (in Burke, 2006, p.111).

Tajfel and Turner distinguish between interpersonal and inter-group behaviour, whereby the interpersonal interaction is determined by individual characteristics and the inter-group interaction is determined by “respective memberships of various social groups or categories, and not at all affected by the interindividual personal relationships between the people involved…” (Tajfel and Turner, 1979, p. 34). In relation to an analysis of the collective self (group) at the level of the global collective self, social identity theory would examine the self-conceptions of individuals that identify as members of a ‘global community.’ There is social identity theory research that seeks to measure the content and consequence of identifying with ‘humankind.’ In a 2008 study, Nickerson and Louis surveyed the various attitudes, feelings and behaviours of 242 Australian students and
activists towards asylum seekers. Interestingly, participants who identified strongly as members of ‘humankind’ were significantly more welcoming to asylum seekers, and those who identified strongly as ‘Australians’ were more welcoming when they also identified strongly as members of humankind (2008, p. 796). This suggests that when individuals identify strongly with the global collective self (‘humankind’), they are more likely to identify positively with other human individuals, regardless of their race, sex or religion.

Turner notes that the “mere perception of belonging to a social category is sufficient for group behaviour. The minimal conditions for group-belongingness do not seem to include cohesive interpersonal relations” (in Tajfel, 1982, p. 23). This would suggest that a salient global collective self can exist despite the absence of cohesive interpersonal relations throughout the global community.

Social categorization theory or self-categorization theory is an offshoot of social identity theory (Perdue et al., 1990). It “seeks to explain how individuals become unified into a group and capable of collective behaviour” (Turner et al., 1987), and accordingly, when a particular personal or social identity becomes salient. This occurs when a particular identity (personal or social) or a particular social identity becomes salient. Social categorization or self-categorization refers to the process of individuals taking themselves as objects and categorising, classifying or naming themselves in particular ways in relation to other social categories or classifications (Stets and Burke, 2000, p. 224).

According to Turner and Reynolds, self-categorization theory:

“is a theory of the nature of the self that recognizes that perceivers are both individuals and group members, explains how and when people will define themselves as individual and group entities and its implications, and examines the impact of this variability in self-perception (‘I’ to ‘we’) for

Both the social identity theory and the self-categorization theory constitute an attempt to reconcile personal psychology with the membership of individuals in social groups. In these models, human beings are therefore simultaneously individuals and group members. Indeed, at any one time, human beings have the potential to identify either as an individual or a group member depending on the principles of fit-based salience (for example, the demands of the context, or the nature of the identity threat). Brewer writes, “Through the processes of self-categorization and group identification, an individual’s sense of self and self-interest become inextricably tied to group interests and group welfare” (in Kruglanski, Van Lange, and Tory Higgins, 2012, p. 84). This reinforces the salience of the collective self.

Therefore, social identity theory and self-categorization theory represent the approach of social psychology to ‘collective selves.’ Both theories “capture the socially embedded, situated, shared, social, group-located properties of human beings” (Turner and Reynolds in Kruglanski, Van Lange, and Tory Higgins, 2012, p. 400). The collective self, in the case of the global collective self, operates “at the superordinate level, where self is defined as a human being in contrast to other lifeforms” (Turner and Reynolds in Kruglanski, Lange, and Higgins, 2012, p. 403).

In the social psychology models, the ‘unconscious’ aspects of the collective self present as ‘below the level of awareness’ processing, such as automatic stereotyping, in-group favouritism or bias, or out-group prejudice (for a discussion of prejudice in social psychology, see Perdue et al., 1990 and Brown, 2010). For example,
“When people or objects are categorized into groups, actual differences between members of the same category tend to be perceptually minimised and often ignored in making decisions or forming impressions” (Gaertner, Dovidio, Nier, Ward and Banker, in Prentice and Miller, 1999 p. 176).

An ongoing issue in social identity theory is whether different levels of collective self can become salient via contextual processes (of comparative and normative fit) according to the same mechanisms as for any other type of social identity (at any level of abstraction). For example, can the superordinate level of identity (human individuals as members of the global community versus other lifeforms, such as plants or animals) become as salient as other, less abstract levels of group identity such as familial or national identity? It remains a point of contention in social psychology as to whether social identities are ordered in a hierarchy from least abstract (for example, as a family member) to most superordinate (for example, as a member of the human race) (Hogg, Terry and White, 1995). It will become clear in the next chapter that these theories helped to inform the theoretical model adopted in this thesis.

Conclusions

This chapter has situated the theory of a collective self in an interdisciplinary context. It showed that collective self theory has been approached from three different perspectives in the humanities: philosophy, sociology, and social psychology. From the foundations of Western philosophy, the concept of a conscious collective self has been the subject of intense analysis and research. Interestingly, these three main disciplinary approaches arrive at the same conclusion; that the global community can be understood as a conscious collective identity that transcends the sum of its parts. The following chapter introduces and integrates two specific theories (from sociology and analytical psychology) that are responses to the concept of a salient collective self.
Chapter Three: A Psycho-Social Approach to Collective Selves

“Our claim is that the group is posited by its members as the subject of experiences and actions in virtue of a narrative account which ties distinct phases and elements together into a coherent story...Thus, in the relation between formulating and communicating, on the one hand, and receiving or accepting a narrative account, on the other, the group achieves a kind of reflexive self-awareness as a ‘subject’ that is analogous to what we found in the individual” (Carr, 1986, p. 155).

In the course of researching a variety of collective self theories, two specific theories were located that are directly relevant to the thesis. One is taken from sociology and the other from analytical psychology. This chapter presents these sociological and the psychological models for analysing a collective as a ‘self’ or ‘agent.’ The first part of the chapter introduces the sociological model used to conceptualise the global community as a collective self: the sociology of human consciousness model. This model explains how collective representations and narratives form the basis of ‘collective consciousness’ and how individuals are defined in relation to the collective. The chapter then explores the Jungian approach to collective theories, and explores whether it is useful to apply Jungian theories of the collective to public international law. The chapter critically analyses the sociological and psychological models separately, and explores whether the models can be usefully joined. It concludes that the two models are compatible, and can be combined to create an effective psycho-social framework with which to analyse the collective self.

A Sociological Theory of Collective Selves

As established in the introductory chapter, this thesis adopts a sociological theory of collective consciousness, referred to as the sociology of human consciousness model. This model is used to develop a theory of collective selves and public international law. The sociology of human consciousness model was inspired by the work of George Herbert Mead, who is considered to be one of the founders of social psychology (Cook, 1993). In Mind, Self and Society, Mead wrote, “social psychology is especially interested in the
effect which the social group has in the determination of the experience and conduct of the individual member” (1934, p. 1). Mead theorised that individuals formed their identities through the internalization of society via human interaction and communication (Walter Buckley, 1996; Norbert Wiley, 1994). He reasoned that the analysis of collective processes could help us to understand the consciousness and identity of individuals. The sociology of human consciousness model develops this idea further, through the work of sociologists Walter Buckley (1996), Norbert Wiley (1994), Tom Burns (1987, 1997, 1998a, 2003, 2004), Erik Engdahl (1998a) and Nora Machado (2003). All of these researchers use the theories and methodologies of sociology in order to understand human consciousness. The aim of the model is “to focus on social dimensions of the experience of consciousness, and to propose a theoretical language for conceptualizing those dimensions” (Burns and Engdahl, 1998a, p. 68).

The sociology of collective consciousness model is derived from social rule system theory, which:

“provides an approach to the description and analysis of institutions such as family, bureaucracy, markets, political systems, and science – major orders in modern societies…It is a theory that analyzes the links between particular institutional arrangements on the one hand, and social action and social interaction, on the other” (Burns in Flam and Carson, 2008, p. 58).

Social rule system theory notes that human social activity is “organised and regulated by socially produced and reproduced systems of rules” (Burns and Flam, 1987). These rules and procedures bring order to all groups of people, “their cultural forms, institutions, and practices: language, customs and codes of conduct, norms, laws, and the social institutions such as family, community, economic organization, and government” (Burns and Engdahl, 1998a, p. 71). At a macro level, culture is understood as “a complex of rule and symbol systems shared by members of a particular social population” (Burns et al.,
1985; Burns and Flam, 1987; Burns and Dietz, 1992b; 1997; Machado, 1998; Carson, 2004; Flam and Carson, 2008). At the level of the individual, culture translates into “roles, norms, strategies, and social grammars,” for example, voting in democratic bodies (Burns in Flam and Carson, 2008, p. 59). Social rule system theory is thus an effective umbrella theory for understanding the interactions between actors and institutions in different kinds of social rule systems, such as norms, laws, regulations, taboos, traditions and customs.

As one of the offshoots of social rule system theory, the sociology of human consciousness model analyses the concept of individual consciousness by beginning with collective realities. These consist of community, language, language-based communication, institutional and cultural arrangements, collective representations, self-conceptions, and self-referentiality (Burns and Engdahl, 1998a, p. 67). So, for example, each individual is primarily identified and self-described according to their participation in various collectives: a family, an organisation, a nation-state and ultimately the global community. Through an individual’s participation in collective processes, they learn to reflect on their self, their conduct, orientations and attitudes. Therefore, individual consciousness is illuminated and given meaning through collective phenomena, such as language and collective representations. According to Turner and Whitehead,

“The concept of collective representations, as developed by Durkheim, refers to the often crucial components of human life that have meaningful existence only because we agree that they do – such as customs, money, religion, cosmology, language, games, laws, power structures and artistic genres” (2008, p. 43).

The premise of the model is that an individual forms an identity and self-description based on their participation in collective processes (Burns and Engdahl, 1998a, p. 68). There is a significant emphasis on language in the development of human consciousness.
Indeed, in *The Semiotic Self* (1994) Wiley argued that the self can be understood as an internal conversation; a ‘trialogue’ in which the present self (‘I’) talks to the future self (‘you’) about the past self (‘me’).

This is a useful model with which to understand the nature of human consciousness, because:

“while biology and cognitive processes are obviously important in understanding consciousness phenomena, there is a great deal about consciousness which cannot be understood without consideration of language, communication, collective reflectivity, and other collective phenomena” (Burns and Engdahl, 1998a, p. 83).

This anti-reductionist model does not “totally reject mechanistic and reductionist approaches” to understanding consciousness, but it rejects “the idea that a complete explanation can be formulated on the basis of underlying physical, chemical, neurological, hormonal, or psychological factors and processes” (Burns and Engdahl, 1998a, p. 68). Thus, the sociological approach attempts to *bring society in* to the understanding of how individuals construct meaning and identity in their lives.

The model connects the individual construction of consciousness with the consciousness possessed by collective institutions and agents, as there is an interplay between individual and collective selves. Thus, according to the sociology of consciousness model, all human groups and institutions form a collective self, (families, corporations, nation-states, and international organizations) and these collective selves demonstrate evidence of consciousness. In defining *consciousness*, Burns and Engdahl note “consciousness is typically an umbrella term for a variety of different phenomena,” and create a three-level model to distinguish between “various states of awareness from reflectivity” (Burns and Engdahl, 1998, p. 68). The three-level model includes:
(i) Physical or material processes: a medical understanding of consciousness relates to being alive, awake and aware of one’s surroundings (Goldman in Block, Flanagan and Güzeldere 1997, p. 111). The physical processes of this type of consciousness are biological, neurophysiological and cognitive, “much of which operates outside of human awareness and reflection” (Burns and Engdahl, 1998, p. 69).

(ii) Sentience and phenomenological processes: in this context, consciousness refers to a state of subjective phenomenal awareness and reflexivity (Goldman in Block, Flanagan and Güzeldere 1997, p. 112). This relates to one’s immediate, personal awareness, by focusing direct attention upon an object or situation. According to Schneider and Velmans, “anything that we are aware of at a given moment forms part of our consciousness, making conscious experience at once the most familiar and most mysterious aspect of our lives” (2007, p. 1). Perhaps in this context a broad definition of consciousness may be subjective awareness, or “what it is like to be…” (Blackmore, 2003, p.23). Used in this way, consciousness is a living entity’s subjective experience at a particular time. It is impossible to define consciousness more specifically because we do not yet have the scientific resources to describe what is an essentially subjective experience (Tassi and Muzet, 2001).

(iii) “Socially based cognitions, representations and reflective processes, based on language, collective representations, and the capabilities of discursive reflection” (Burns and Engdahl, 1998, p. 69).

The final form of consciousness ((iii) above) will be applied in this thesis. Therefore, the term collective consciousness will be used to denote the socially-based cognitions,
representations and reflective processes to which all individuals within the collective participate, characterized by processes entailing reflection (meta-awareness, or awareness of awareness), including language-based processes of communication, representation and reflection. The thesis also adopts the view that “consciousness is, above all, a type of reflective activity (observing, monitoring, judging ‘self’, among other things) that is encoded in language, and generated in conversations about collective and individual selves” (Burns, 1998a, p. 68).

In sum, the model shows that collective selves on all levels:

> “families, communities, administrative organizations, or states, are social agents and can be considered to possess agential capabilities: to think, judge, decide, act, reform; to conceptualize self and others as well as self’s actions and interactions; and to reflect” (Burns and Engdahl, 1998a, p. 73).

Collective selves are conscious because they possess powers, make choices and act purposively. They have an identity, a name, particular values, “defined social relationships, procedures, and the capacity to make collective choices, determine goals or intentions, and to take collective action” (Burns and Engdahl, 1998a, p. 74). Shibutani refers to collectives as ‘social worlds’ that each form a universe “where institutional arrangements or particular social organization facilitates anticipating the behaviour of others and in generating regularised responses” (1961, pp. 136-137). In this way, a collective self adopts consistency in its identity and behaviour. Keck and Sikkink refer to this type of collective self as a transnational advocacy network:

> “actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services” (1998).

In practice, the sociological model views collective consciousness as:
“a cultural cognitive frame carried by members of a community [that] provides common knowledge: conceptions, definitions, meanings, and practices that are not only the basis for inter-subjectivity but the basis for collective discourse and reflection…” (Burns and Engdahl, 1998a, p. 69).

Burns and Engdahl define culture as “a complex of rule and symbol systems shared by members of a particular social population”15 (1998, p. 71). However a more comprehensive definition of culture is provided by Mesoudi, as:

> “the body of information, such as knowledge, beliefs, attitudes, norms, skills, etc., that is passed from individual to individual via social learning/cultural transmission, is stored in brains or artifacts (e.g. books), and may be expressed as behavior (sic), language or artifacts (e.g. tools). This is contrasted with information that is passed on genetically in DNA, and information that is recreated or rediscovered independently in each individual (through individual or asocial learning)” (2007, p. 35).

This echoes international law scholar Philip Allott’s argument that every society has a theory of itself; whereby “Over time they construct an idea or image, an analytical construct – theories of what the principles of the society are” (2005, p. 257). Evidence of collective consciousness or a society’s theory of itself can be found in language, collective representations, conceptions of self, and self-reflectivity (Burns, 1998a, p. 67). Self-reflectivity processes are “institutionalized in modern societies in the form of social science research, mass media reporting and discussions, and political discourse and are central to critical and transformative processes” (Burns and Engdahl, 1998a, p. 70). Individuals and collectives become “makers and users of rules and symbols, propagating, interpreting, and transforming them” (Burns and Engdahl, 1998a, p. 71).

This section has shown that the sociology of human consciousness model has much to offer in terms of understanding collective identity and collective will, particularly

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15 “These consist of sets of context-dependent and time-specific rules that organise perception, evaluation and judgment, and social action and interaction” (Burns and Engdahl, 1998 fn. 8, p. 71).
regarding the conscious aspects of the collective self (collective representations and self-reflectivity). However in relation to the ‘unconscious’ aspects of collective selves, the model refers to this as ‘oppressive reflectivity’, or that which is un-represented and unnamed by the collective (Burns et al., 2003; Burns and Engdahl, 1998a, p. 81). The model argues that there is a continual interplay –a dialectic– between the named and the unnamed in the collective self (adapted from Lotman, 1975). With unconscious material, Burns et al. acknowledge that:

“…unrecognized or poorly defined problems cannot be dealt with…Reflective and problem-solving powers may then be distorted, the generation of alternatives and varieties narrow and largely ineffective, and social innovation and transformation misdirected and possibly self-destructive (Burns et al., 2003).

While this is an informative indication of the effect of unconscious material on collective selves, this thesis submits that there is more analysis to be performed. As such, the next section outlines the necessity of the psycho-social approach.

**A Psycho-Social Approach**

In the course of analysing the sociology of human consciousness model, it is apparent that there are some distinct overlaps with analytical psychology. In fact, the theories and methodologies of sociology reach many of the same conclusions as the theories and methodologies of analytical psychology, albeit using different language. The following table indicates some of the conceptual commonalities:
As such, this thesis concludes that the sociology of consciousness model and the structure of the psyche in analytical psychology create a useful combination with which to analyse the collective self, for several reasons. Firstly, as has been demonstrated, the sociological model offers compelling analysis for how collective selves are formed and sustained as language communities. However, while the sociological approach creates a comprehensive conceptual framework for understanding the *formation* of a collective self, the Jungian structure of psyche attributes *personality* to the collective self, to the extent that the collective self is thought to have a coherent character. This transcends the notion of collective self as merely a collection of individuals, and in fact, constructs the collective self as a separate and autonomous agent.

Secondly, as referred to above, the sociological model does not provide enough detail regarding the creation, substance and processing of unnamed and unrepresented material in the collective self. The Jungian structure of the psyche provides a multi-faceted treatment of unconscious material, giving language and substance to phenomena such as archetypes, cultural complexes, defence mechanisms and the significance of symbols and
mythology. However, as will be shown, the Jungian explanation for how a collective self is formed is based on spurious and unscientific reasoning, for instance, the soil of a country determining the nature of the collective psyche. Accordingly, while the Jungian model is a useful source of hypothesis about collective selves, the theory of analytical psychology has connotations of mysticism and as such can encounter credibility problems (see, for example, Parker’s criticisms of Jungian thought in Hook, Kiguwa and Mkhize’s *Introduction to Critical Psychology*, 2004, p. 147). The challenges of the sociological model are the strengths of the Jungian model, and vice versa. The following section critically analyses the approach of analytical psychology to collective processes and collective identity.

**Analytical Psychology & Collective Selves**

“Every so often in the history of ideas, an individual makes a contribution of such outstanding importance that a whole intellectual discipline becomes identified with his name” (Stevens, 1990, p.3).

Analytical psychology is the branch of depth psychology created by Carl Jung (1875-1961), and since his death in 1961 it has been adapted and transformed by ‘post-Jungians’ (Samuels, 1985). As the father of analytical psychology, Jung has been internationally acclaimed as a psychiatrist, psychologist, analyst and philosopher (Douglas, 1997, p.17). However Jung has simultaneously been disregarded as “unscientific, mystical and speculative” (Tacey, 2006, p.1). As Tacey observes, it is difficult for disciplines based on the scientific method to evaluate Jung’s contribution to human psychology. This is because *clinical psychology* is concerned with the “rationally explicable” (Tacey, 2006, p.1) and studies and treats all states of mind and all forms of behaviour, whether normal or abnormal (Stevens, 1990, p.8). In addition, psychiatry is a specialty within the medical profession and treats a variety of mental illnesses (Stevens, 1990, p. 8). Clinical
psychology and psychiatry adopt objective scientific methods to understand and regulate conscious thought, emotions and human behaviour, whereby the human mind is conceived as a structured system for handling information (Eysenck and Keane, 2005, pp.1-3). In contrast, Jung’s phenomenology \(^{16}\) explored the causes of unconscious behaviour, such as dreams, active imagination, mythology, archetypes and symbols (Tacey, 2006, p.1). Many of Jung’s theories have proved to be rather prescient. As Samuels points out, “Where interest in Jung has swung away from the arcane and esoteric aspects to an examination of the clinical applicability of his ideas, he is revealed as a surprisingly modern thinker…” (1985, p. 9). In general, Jungians work with whatever is at the forefront of the psyche’s experience, and maintain “respect for what is encountered; respect for what is unknown, for what is unexpected, for what is unheard of” (Hart in Young-Eisendrath and Dawson, 1997, p. 89). Due to Jung’s symbolic and theoretical (as opposed to empirical) style, it is perhaps most useful to approach his work as one would approach philosophy, broadly defined as a “search for ultimate truth” (Holmes, 2009, p.1). It must be noted here that Jungian psychology was originally designed for individual analysis, and Jung developed his cross-cultural and collective theories at a later time (as discussed below).

Since Jung’s death in 1961, Jungians have split into three factions: the classical Jungian school, the archetypal school and the developmental school. These classifications were formulated by Samuels (1985, pp. 15-22). Each school has preferred methods in their analytical work. The classical Jungians embrace the method of analysis introduced directly by Jung, whereby analytic work is an ongoing process of discovery in which the

\(^{16}\) The contemporary use of the term ‘phenomenology’ was adopted by several philosophers and sociologists who sought to develop “a science of phenomena that would clarify how objects are experienced and present themselves to our consciousness” (Spinelli, 2005, p.6). In psychology, phenomenology refers to the data of consciousness, or the methodology utilised in order to determine what is ‘knowable.’
unconscious is made conscious (Hart in Young-Eisendrath and Dawson, 1997, p. 89). Classical Jungian analysis “sees the analytic work as one of ongoing mutual discovery, making conscious the unconscious life and progressively releasing a person from meaninglessness and compulsion” (Hart in Young-Eisendrath and Dawson, 1997, p. 89). Classical analysts believe that the goal of an individual’s life is to extract control from the ego, anima, animus and shadow into the hands of the Self (Hart in Young-Eisendrath and Dawson, 1997, p.89).

The school of archetypal psychology was developed by James Hillman in the late 1960s and early 1970s. This new approach was outlined in his work, *Re-Visioning Psychology* (1975a). The archetypal approach considers archetypal imagery to be paramount in the development of the psyche. Hillman wrote, “At the most basic level of psychic reality are fantasy images. These images are the primary activity of consciousness…Images are the only reality we apprehend directly” (1975b, p. 174). Archetypal psychology metaphorises (deliteralises) the ego and focuses on the soul and the deepest patterns of psychic functioning: “the fundamental fantasies that animate all life” (Moore in Hillman, 1991). For Hillman, the imagination is primary and constitutive (Vannoy Adams in Young-Eisendrath and Dawson, 1997, p.105). Hillman observes the psyche at work in imagination, myth, fantasy and metaphor. Adherents to this school view the Self as an archetype, though not the central archetype.

The developmental school is associated with Michael Fordham, and integrates traditional Jungian analysis and object relations theory, as developed by Melanie Klein, a Freudian psychoanalyst (Solomon in Young-Eisendrath and Dawson, 1997, pp.124-125). This approach acknowledges psychological stages in the development of personality rather
than the attainment of the conscious Self, which for classical Jungians will occur at different times in different individuals (Hart in Young-Eisendrath and Dawson, 1997, p.89). Additionally, Arnold Mindell developed Process-Oriented Psychology in the early 1980s. Mindell has applied this psychology to ‘Worldwork,’ which is an experiential method used to heal group identities, including multicultural group work. Depending on the approach adopted, the analyst uses various techniques with the subject (Mindell, 2000).

This thesis adopts the general approach of the classical school, to the extent that it views existence as a process of releasing unconscious material and giving direction of the personality to the Self (rather than the ego). However this thesis does acknowledge the importance of some insights of the archetypal school, whereby archetypal imagery is considered to be primary and paramount. In spite of this adherence to the classical approach, it is not necessary to wholly adopt the theories of one school. As Samuels notes, “Following Bion (1965), we may call this the post-Jungian vertex, implying an overall point of view or perspective” (1985, p. 18). It must also be noted that this thesis concentrates on Jung’s collective theories and the structure of the psyche. It does not set out to comprehensively apply every aspect of analytical psychology. The following section introduces Jung’s theories of the collective.

I. Jung’s Theories of the Collective

As a psychologist, Jung dealt specifically with individuals. Yet as a philosopher, Jung was passionately concerned with collective dynamics such as politics and international relations. Though Jung was not specifically a social psychologist, he developed the
pioneering concept of the collective unconscious, and was intellectually engaged with all of the elements of collective life. As Douglas notes,

“Tracing the specific major sources of analytical psychology from the vast body of Jung’s learning is a complicated task because it requires a knowledge of philosophy, psychology, history, art and religion” (in Young-Eisendrath and Dawson, 1997, p. 22).

Jung was inspired by the seminal works of philosophers such as Kant, Schopenhauer, Nietzsche and Goethe, all of whom developed theories of collective life (Douglas in Young-Eisendrath and Dawson, 1997, pp. 22-23).

As such, beyond Jung’s clinical work with individuals, Jung sustained a probing interest in collective dynamics and the political movements that shape world history. In his clinical psychiatric and psychological work, Jung consistently observed the same symbolic patterns of behaviour in the many individuals he treated, and noticed that these patterns were also evident in the collective. Though Jung did not create an explicit model of the collective psyche, he theorised that it was possible to extrapolate his model of the individual psyche to the level of the collective (see, in particular, Jung’s last major writing on politics, The Undiscovered Self, 1957). This led Jung to work with the concept of national, racial and universal psychologies, based on the idea that collectives, like individuals, possessed a psyche- with conscious and unconscious aspects. Ketola writes,

“Jungian theories open up the individual, organizational and societal personality and give opportunities to expand it horizontally and vertically. The Jungian prospective quality of the psyche is illustrated by three levels of unconscious – personal, cultural and collective” (2008, p. 199).

While most theorists agree that a collective has a unique identity based on the sum of its parts, Jung argued that the collective itself had a separate psychic existence. As such, Jung
identified the presence of ‘collective psyches,’ which were comprised of groups of people who were connected by synchronistic historical or geographical circumstances. In developing this idea, Jung claimed that there were different strata of experiences in the collective unconscious in racial and national layers, and that a ‘universal collective psyche’ existed. Jung’s approach, to a great extent, involved projecting patterns of individual psychology from clinical cases onto nations (Lewin, 2009, p. 91). He also drew upon his personal confrontation with the unconscious mind (Pietikainen, 2007, p. 102). Accordingly, Jung observed that both individual and collective psyches were based on a similar structure. He wrote: “The psyche of a people is only a somewhat more complex structure than the psyche of an individual” (1991 [1928-1931], para. 175). Jung also saw the same psychological behaviours reproduced in both individual and collective psyches:

“What is true of humanity in general is also true of each individual, for humanity consists only of individuals…What is called ‘will’ in the individual is called ‘imperialism’ in nations; for all will is a demonstration of power over fate…” (1990, [1917/1926/1943], para. 74).

Similarly, Jung wrote,

“An epoch is like an individual, it has its own limitations of conscious outlook…this blind collective need results in good or evil, in the salvation of an epoch or its destruction” (Jung, 1986 [1930], 153).

Based on his unique insights into the nature of the collective, Jung sought to apply a symbolic approach to collective pathology, in order to cultivate a deeper understanding of political problems. Accordingly, Jung approached collectives as though they were capable of ‘treatment’:

“One can study the symptomatology of such a public movement exactly as a doctor would study the symptomatology of a certain disease; one can make the assumption that the nation is something like a person, that the whole nation is one human being who is shaken by peculiar psychological spasms…” (1998 [1930-1934], p. 970-971).
Jung’s strata of collective experience is reflected in this image by Jolande Jacobi. In terms of the relationship between the nation and humanity, Jung situated the national psyche in the wider context of a universal collective. Jung asserted that there is “a collective psyche limited to race, tribe, and family over and above the ‘universal’ collective psyche” (1928, para. 235). The ‘Psychic Genealogical Tree’ was depicted in this diagram with Carl Jung’s express approval. Jung postulated that the mythologies of a collective psyche, as a projection of its collective unconscious, would shape the course of its history. His well-known essay, Wotan (1936), focused on the collective psyche of Nazi Germany, which he
argued had been “infected…[by] one man who is obviously possessed” (CW 10, p. 185).

In relation to Nazism, Jung wrote,

“Today you can judge better than you could twenty years ago the nature of the forced involved. Can we not see how a whole nation is reviving an archaic symbol, yes, even archaic religious forms, and how this mass emotion is influencing and revolutionising the life of the individual in a catastrophic manner? The man of the past in us is alive today to a degree undreamt of before the [First World] war, and in the last analysis what is the fate of great nations but a summation of the psychic changes in individuals?” (Jung, 1936, para. 97).

Jung recognized a culture’s historical residue as shaping its current experience: “No collective problems have arisen just today, our conditions are thoroughly historical…if a problem is collective, it is historical…” (Jung, 1984 [1928-1930], p. 64).

These excerpts are intended to broadly convey Jung’s theory of collective psyches, rather than to capture every statement he made on the topic. In any event, we are left with the question: is Jung’s theory an insightful approach to collective identity, or does it represent an anachronistic and inappropriate attempt to extend individual psychology to the collective? On the one hand, the theory allows for the symbolic examination of the sources of conflict within and among nations, rather than an analysis of the symptoms of conflict. However only a few post-Jungians have taken up the theme of cultural psyches and cultural complexes in their work, and Singer explains the primary reason for this:

“Jung’s ill-timed foray into discussions about national character and especially the German psyche in the 1930s (Jung 1936/1970) effectively stopped further detailed consideration of differences among groups of people on the basis of race, ethnicity, and tribal/national identities by Jungians, who were deeply wounded and limited by the charges of anti-Semitism against Jung and his followers. After World War II and the Holocaust, few wanted to take up the subject of “national character” or cultural complexes for fear of being tainted by allegations of discrimination or, far worse, of contributing to justification of genocide” (Thomas Singer with Catherine Kaplinsky,
Despite this, many modern writers have since artfully applied Jung’s theory to collective case studies. Helton Godwin Baynes was Jung’s apprentice for many years and was the first to apply Jung’s theory of the collective unconscious and the national shadow. In his work *Germany Possessed* (1941) Baynes portrayed Germany as a nation possessed by a power fantasy that it was trying to realize, with Hitler as the conduit or medium giving voice to the dream. According to Baynes, Hitler was transported by the collective unconscious of the German people (Spielvogel, 1988, p.136).

Jerome Bernstein applied Jungian theory to the psychology of Soviet-American partnership in *Power Politics* (1989). Bernstein is a Jungian analyst who used analytical psychology to understand the imperative of collective survival at the conclusion of the Cold War. Bernstein’s work is extremely useful as he was also concerned with “transpersonal collective political dynamics” (Whitmont in Bernstein, 1989, p. ix). According to Bernstein, “Jung…formulated the theories which would enable us to develop a specialized science of archetypal psychology for the treatment of governments and nations and their destructive impulses...” (1992, p. 23). Bernstein’s thesis is that there were unconscious psychological motivations behind the actions of the US and the then Soviet Union during the Cold War. As the two nations were not aware of these motivations, they were not able to take them into account. In this work, Bernstein maintains that unconscious dynamics are extremely powerful forces behind foreign policy, and are invariably projected onto other individuals, groups and nations. Bernstein also applied Jung’s collective theories in ‘Beyond the Personal: Analytical Psychology Applied to Groups and Nations’ (1992) as a chapter in *Carl Gustav Jung: Critical*
Bernstein encourages Jungians to apply analytical psychology to institutions as well as individuals, because dysfunctional institutions can actually undermine the survival of the species. His ideas are directly relevant to this thesis however Bernstein is more concerned with species suicide through activities such as the use of nuclear weapons and war than with women’s rights in international law.

The most recent work applying Jung’s collective theory is Nicholas Lewin’s *Jung on War, Politics and Nazi Germany: Exploring the Theory of Archetypes and the Collective Unconscious* (2009). Lewin is a military historian and a Jungian analyst. His work is extremely informative because he critiques Jung’s theories of the collective unconscious and archetypes and then reformulates these theories through a post-Jungian lens. This is useful for the purposes of this thesis because Lewin confronts many of the shortcomings of Jung’s theories of the collective without losing their essence, thereby retaining the proverbial baby whilst discarding the bathwater. This is the typical approach of ‘post-Jungians.’ Lewin then applies this reformulation to Nazi Germany, proving that with a postmodern reconfiguration Jung has relevance in this era. This is particularly effective, because Lewin adapts the work of Jung and applies it directly to a country, thus fusing Jungian thought with international identity.

In addition to the works of Lewin, Baynes and Bernstein that explicitly apply Jungian theory to collective case studies, there are more generalized political works by Irene

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Assessments edited by Renos Papadopolous. Bernstein writes,

“It seems to me that Jung, and subsequently many of his followers, confused the problem of the individual’s need to find his (sic) personal truth through individual struggle, with the problem of treating collective institutions which threaten the freedom and survival of the individual…”

(Bernstein in Papadopolous, 1992, p.22).
Claremont de Castillejo, Lawrence Alschuler, Walter Odajnyk, Andrew Samuels and Arthur Mindell. Although none of these texts applies Jung’s theories to the global or a specific nation-state collective, each confirms distinct advantages of using Jung’s theories as a lens through which analytical psychology can be applied to the international community. As Jung’s theories have not yet been fully integrated into social science theory, these texts are an indication that it is a viable approach.

In 1973, Irene Claremont de Castillego wrote *Knowing Woman: A Feminine Psychology*. In this work, she observes the presence of the national shadow. Whereas the personal shadow is “the part of the psyche which could and should become conscious, yet of which we are unaware” (de Castillego, 1973, p.29), the national shadow refers to the parts of a state’s psyche of which the state is unaware. According to de Castillego, the national shadow usually results in unconscious projection onto other countries. This work also suggests that Jung’s theory of different ‘psychological types or functions’ could be applied to states. This theory dictates that people, organisations and states will often conform to a particular mode of relating with the ‘Other,’ for example, extroversion, introversion, thinking, feeling, sensation and intuition. Baynes similarly pointed out that certain states may use one of their psychological functions more consciously than others (Baynes, 1941).

Andrew Samuels is internationally renowned for his work combining Jungian thought with collective dynamics. He is a Professor of Analytical Psychology at the University of Essex, a psychotherapist and political consultant. He has written several seminal texts on the subject of Jung. He was the first scholar to analyse the usefulness of Jungian theory for political analysis. For purposes of this thesis, there are two that are most instructive:
The Political Psyche (1993), and Politics on the Couch: Citizenship and the Internal Life (2001). In The Political Psyche, Samuels applies depth psychology to political theory and practice. Samuels sees the intersection of depth psychology and politics as necessary because in his view, the political tasks of modern democracy are comparable to “the psychological tasks of modern therapy and analysis” (Samuels, 1993, p.4). Samuels asserts that both pursuits involve:

“a fight between consciousness, liberation and alterity on the one hand and suppression, repression and omnipotent beliefs in final truths on the other…The government signifies the ego, the citizens signify constellations of object relations, social problems signify psychopathology” (Samuels, 1993, p.4).

These connections opened the door for Jungian theory to have academic applications in the postmodern era.

In The Political Psyche Samuels further identifies the significant problem of psychological reductionism, whereby the analyst who approaches a collective cultural and political process “as if it were an individual or even a baby…deploys a version of personality development couched in judgmental terms” (Samuels, 1993, p.9). Self-fulfilling prophecies and retrospective analyses are the pitfalls of this type of research because the analyst’s starting point is the psychological theory or symptom. Accordingly the analyst looks for the material to prove the theory, rather than looking for a theory to explain the material. As Samuels comments, “If we set out to demonstrate the projection of archetypal patterns, such as projection of the shadow, they will seem to leap out at us” (Samuels, 1993, p.9). This is an important issue for the research in this thesis, however this will be circumvented through a dedicated case study and a concentrated focus on international laws and jurisprudence as evidence for psychological patterns and unconscious narratives in the collective self.
In *Politics on the Couch* (2001) Samuels develops the concept of collective psychology further. He asks, “Where do new political ideas come from? How are they carried within a culture? How do they acquire form and spread?” (2001, p. 64). In answer to his questions, Samuels identifies the concept of political forms:

“units of understanding and action within a society that combine the effects of ideology, narratives of emotional experience and eventual organizational structure. I see such forms as having a purpose or goal, and also as having a much less tangible, more hermeneutic function.” (2001, p. 64).

While Samuels rejects the concept of teleology (purposeful evolution), he contends that there may be a strong argument for social vitalism, based on psychology, whereby living organisms are organized by purposeful, mind-like principles (Samuels, 2001, p. 66). He refers to this as teleonomy, a term coined by Richard Dawkins, “to link Darwinism and the notion of final causes or purposes” (Samuels, 2001, p.66). It is the argument of this thesis that Samuels’ combination of ‘political forms’ that are subject to ‘social vitalism’ is another way of describing the concept of a collective self subject to progressive evolution. In relation to a project exploring national psychologies, he concedes, “It is not easy to make a psychological analysis of politics because every element in our culture is undergoing fragmentation and Balkanisation” (Samuels, 2001, p.21). Beyond this however, Samuels suggests a possible reason why this kind of project has not yet been undertaken:

“Liberal suspicions of the seductive but negative appeal of nationalism, have, quite understandably, delayed serious attempts to explore whether or not separate nations actually display identifiable and intelligible psychological characteristics” (Samuels, 2001, p. 186).

In spite of this, Samuels sees that if psychology does have a role to play in resolving conflict between or within nations, then it is necessary to be aware of national
personalities. He draws an analogy with a marriage therapist who needs to understand both parties before he or she can assist in conflicts within the whole marriage. Samuels further argues that applications of analytical psychology to nations will be concerned with images of political types based on Jung’s typology (Samuels, 2001, p. 31). Though this approach has academic merit, the problem remains that the analyst inevitably has their own perspective, prejudices and history (Samuels, 2001, p. 189). This can be overcome in two ways: by either attempting to preserve academic objectivity or, by openly acknowledging one’s inherent biases at the outset. This thesis has adopted the latter approach. This thesis creates more of a space for international law theory so the thesis is not confined to purely psychological reflection.

The final relevant work that applies Jungian theory to collective dynamics is Murray Stein’s analysis of collective individuation in The Principle of Individuation (2006). Stein asks, ‘Is it useful to apply a [Jungian] perspective to the political and economic dynamics that underlie the movements of world history?’ (2006, p. 190). As a case study, Stein considers the relationship between North and South America from the perspective of individuation. He writes,

“In general, one can suppose that whenever two cultural groups with differing attitudes meet and polarize around certain defined values, beliefs, and perceptions, each based on particular historical traditions and cultural complexes, a potential for cultural individuation is going to emerge” (Stein, 2006, p. 190).

Stein makes some fascinating observations about the history of the Americas from a Jungian perspective that also apply to the creation of international law. He observes,

“All the nations of the Americas were created from actions taken by European peoples who, in their own way, were largely unconscious of their shadow motives and of the implications of their actions for the future. They settled, invaded, conquered, and often plundered the territories that
today peoples of basically European stock call home…A shadow of entitlement and aggressiveness, therefore, is woven deeply into the fabric of all their original identities. Since the inhabitants of the Americas now live on lands that were taken away from their previous occupants, an element of conscious or unconscious guilt inhabits all identities that claim the title ‘American…’ The denial of this past amounts to cultural repression of the collective shadow” (Stein, 2006, p. 191).

This analysis is an example of the way in which Jungian theory can shed light on collective dynamics. These cultural dynamics are inextricably linked to the way that international law – often seen as a symbol of Westernisation and imperialism – (Anghie, 2005) is responded to in various cultural contexts. Pietikainen describes Jung as a utopian writer, because of his “imaginative application of his own archetypal theory to ideas that are related to personality transformation (individuation) and an ensuing cultural regeneration” (2007, p. 95).

The applications of Jungian theory to collective case studies that have been discussed show that Jungian psychology is a viable and indeed fruitful source of hypotheses in relation to international law. Yet in spite of these compelling applications, there are some inherent problems with Jung’s collective theories that have thus far prevented it from being integrated into mainstream thought on collective identity and collective will.

II. The Challenges of Jung’s Collective Psyche Theory

The key problems with Jung’s theory of national psychologies are relatively self-evident when viewed within a materialistic, mechanistic worldview. Firstly, Jung made unverified and mystical claims about national psychologies evolving out of a combination of soil and native culture. He contended, “the soil of every country holds [a] mystery…there is a relationship of body to earth” (CW 10, para. 19). In 1918, Jung argued that the Americans
confirmed this hypothesis: “The mystery of the American earth” had changed the physiognomy of the American citizens such that the skull and pelvis measurements of second-generation Americans were becoming ‘indianized’ (CW 10, para. 18; Samuels, 1993, pp. 287-290). Jung was unable to physically locate or provide evidence for a separate collective psyche beyond the soil and culture of a race or nation. Jung’s disparate case evidence, intuitive style, and lack of sustained, systematic studies made claims such as these seem farfetched and baseless.

A second problem with Jung’s theory stemmed from the fact that creating personalities for entire races, tribes and nations is conducive to racism and destructive forms of nationalism, including ethnocentrism and fascism. Furthermore, the ‘national psychology’ theorist is inevitably prone to judge nations (including his or her own) through the lens of personal or national prejudice and an idiosyncratic historical perspective. Indeed, after Jung proposed the collective psyche theory (and differentiated between the ‘Aryan’ and ‘Semitic’ unconscious during the National Socialist era in Nazi Germany) he was widely accused of anti-Semitism (Samuels, 1993, pp. 287-316). Moreover, Dalal (1988, pp. 263-279) concluded that Jung was, in fact, a racist based on Jung’s writings about Africans. This thesis argues that Jung’s collective theories were misinterpreted in this regard. Far from being racist, Jung was attempting to make compelling sociological and philosophical arguments about unique cultural characteristics. The fact that Jung was formulating his theories in the political storm of the 1930s charged them with controversy.

17 Jung’s study of Jewish psychology was one of many anti-Semitic charges brought against him, which Jung rigorously defended. For a detailed account, see Samuels, A. (1993) *The Political Psyche*, Chapter 12: pp. 287-316.
Another pertinent criticism of Jung’s collective theories, as related to nation-states, is that they are unable to explain generational change and transnational processes such as globalization (and the patterns associated with it, including mass migration and international travel). In fact, such multicultural processes that have intensified in the current era may now preclude any sense of national unity in terms of cultural identity. Some writers have even argued that globalization has diffused national cultures to the point where the notion of citizenship has become too complex to define (see contributions to Held and McGrew, 2003). Indeed, in *The Birthright Lottery* (2009), Ayelet Shachar likens citizenship in affluent countries to a form of property inheritance, arguing that nations need to expand their membership boundaries “beyond blood and soil.”

Therefore, it is challenging to argue that static collective identities even exist, and contemporary political and sociological identity theorists assert that cultural homogeneity is impossible in a globalized world. Ettin maintains that “the technologically-driven, economically-motivated, symptom-centered, and socially-deconstructed postmodern world” (2000, p.2) cannot be homogenous. As Rowley and Weldes observe, if the nation-state possesses a unitary identity, other identities within the nation-state “must be marginalized, silenced or denied” (Rowley and Weldes in Cox and Stokes, 2008, p.192). Bacevich further points out that the homogeneity of American culture is a mythology that was debunked from the 1950s onwards in favour of a creed recognising the legitimacy of “all values, all artistic traditions, all moral codes, all religions, and all lifestyles” (2002, p. 83).

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18 It must be noted however that Shachar’s work is motivated by a desire for global distributive justice, and is not argued on social psychological grounds.
All of these criticisms of Jung’s theory are justified, and as such explain why it has not been widely adopted in collective identity theory. It is clear that Jung’s collective theories presupposed cultural homogeneity, which is no longer tenable in a globalised world. Yet in the face of these seemingly insurmountable criticisms, we are still left with collective identities that share synchronistic histories, physical space, memories, traumas, values, a collective unconscious, mythologies and a common destiny. This paper argues that Jung’s theory has much to offer if it is reconstructed in a contemporary light.

Accordingly, this thesis argues that Jung’s conception of a collective psyche, which possesses a conscious ego and unconscious aspects, is useful. The psycho-social approach differs from Jung’s approach in many respects: the location and evolution of the collective consciousness, the racist overtones inherent in the theory and the cultural homogeneity it presumes. Christopher Hauke’s *Jung and the Postmodern: the Interpretation of Realities* (2000) recommends this kind of post-Jungian, postmodern reading of Jung. Hauke explains that Jungian theory is appropriate for postmodern analysis because “complexity, ambiguity and contradiction are hallmarks of the postmodern” (Hauke, 2000, p.8). According to Hauke, Jungian theory is designed to challenge the splitting tendency of modernity: rational versus irrational, collective versus the individual, human versus nature, mind versus matter, and conscious versus ‘unconscious’ (Hauke, 2000, p.2). Jung created theories to understand not only the individual but also the individual’s context. Hauke contends that this is why Jung is perfectly suited to the postmodern realm and thereby refutes the claim that the psychological writing of Jung is “…anachronistic, archaic and mystic” (Hauke, 2000). Henri Ellenberger (1970) described analytical psychology as a form of hermeneutics – the art or science of interpretation (quoted in Stevens, 1990, p. 267). As such, this thesis adapts Jungian theory about the collective in a
hermeneutic, post-Jungian style. As has been discussed, while the majority of Jung’s theories were developed in relation to individual psychology, he also formulated utilitarian collective theories that focused specifically on the collective psyche at the level of culture and society.

Conclusions

It is the argument of this thesis that since the foundation of the UN in 1945, all of the collective selves in the global community have begun to participate in an emergent identity: the global collective self. More than the sum of its parts, this global collective self has unique collective representations, self-reflectivity, a persona, values, archetypes and symbols. This chapter has situated the central argument of this thesis in a theoretical context. This thesis adopts the construction of a collective self as a language community formulated by Burns et al in the ‘sociology of human consciousness model.’ It also utilises a post-Jungian reading of collective psyches, and the Jungian structure of the psyche, with the global community constituted by an ego and unconscious material. In the following chapter, the collective self framework is introduced, and integrated with fundamental aspects of Jungian psychology, such as the collective unconscious, synchronicity, complexes, archetypes and individuation.
Chapter Four: The Collective Self Theoretical Framework

“Collective consciousness is not an esoteric potential removed from daily life. It is a natural aspect of existence that presents itself in practical ways throughout life— in relationships, classrooms, organizations, communities, nations, and in humanity as a whole” (Elgin, 1997, p. 11).

This chapter presents the Collective Self Theoretical Framework for analysing each human group as a collective self. As explained in the previous chapters, this framework is designed for application to all levels of collective selves: the family, the corporation, the nation and the global community. The chapter argues that the dynamics of collective selves (values, beliefs, complexes, archetypes and dualities) are instrumental in the formation of collective reality. The premise of the thesis is that it may be useful to approach the global community as a Collective Self, with public international law as one of its primary relationships. This means that all problems and outcomes in the global community, including public international law, are influenced by the dynamics of the global collective self.

As established in the previous chapter, the collective self framework is constructed using a combination of the sociology of human consciousness model and theories of analytical psychology. As will be shown, the collective self has two primary parts: collective consciousness and the collective unconscious. The nature of the collective self is illuminated by the sociology of human consciousness model. To complement the sociological approach, Jungian theories give language and substance to the conscious and unconscious material that culminate in a collective self, including archetypes, complexes, defence mechanisms and mythologies of the group. After outlining the framework, the chapter will examine the organizing principles of the collective consciousness. These principles are a part of the Jungian path to individuation, and include synchronicity, homeostasis and the transcendent function.
The Collective Self Theoretical Framework

In order to engage with public international law and its role in the global community, this thesis introduces a ‘Collective Self Theoretical Framework,’ based upon a combination of the sociological model and the Jungian model for analysing the collective self. This framework is presented as Figure 4.2 on the following page. According to the framework, all human groups and institutions form a collective self: partnerships, families, corporations, nation-states, international organizations and the global community (as shown below in Figure 4.1). Therefore, each collective depicted in Figure 4.1 is considered to be an autonomous social agent.
I. The Collective Self

In this framework, the term ‘Collective Self’ refers to the totality of conscious and unconscious processes in any particular collective. This view of the self is consistent with the sociology of human consciousness approach and with Jungian theory. The sociology of human consciousness approach defines the collective self as:

“A group or population of individuals (or collective agents as members) that possesses or develops collective representations of itself: its values and goals, its structure and modes of operating, its strategies, developments, strengths and weaknesses” (Burns and Engdahl, 1998a, p. 67).

Burns and Engdahl argue that collective selves are conscious and dynamic entities: “A collective monitors its activities, achievements and failures, and reflects on itself as a
defined and on-going collective being” (1998a, p. 67). Therefore, a collective self is understood to be a social agent and a language community. While this ‘collective self’ framework was created for application to macro cultures such as organisations or nation-states, it has not as yet been applied to analyse the global community as a separate collective self. This thesis attempts to conduct this level of analysis.

In Jungian literature, “the Self is capitalized to distinguish it from the everyday usage of ‘self’, as in ‘myself,’ ‘himself’ and so on” (Tacey, 2006, p. 47). Thus, in analytical psychology, Jung wrote of the Self:

“I call this centre ‘the self’ which should be understood as the totality of the psyche. The self is not only the centre but also the whole circumference which embraces both conscious and unconscious; it is the centre of this totality, just as the ego is the centre of consciousness” (1944, para. 41).

As Jungian analyst David Hart explains, the Self is the regulator and motivator of all experience occurring in the psyche:

“As the basis and underpinning of [the psychic] process, Jung assumes the existence of a ‘Self,’ that is, of a unified whole of which the conscious ego is only one essential part. The rest is comprised of an unconscious, limited and unknowable by definition, which makes itself ‘known’ in all kinds of ways – by dreams, hunches, behavior, even accidents and synchronistic events. Since the total personality is seeking to come to realization and consciousness, it may be assumed– and is often borne out by experience– that the Self is the great regulator and promoter of psychological wholeness” (Hart in Young-Eisendrath and Dawson, 1997, p. 91).

The Self is used in thesis to refer to the whole of the collective experience. It is the container of both the collective consciousness and the collective unconscious, and seeks to integrate and develop them. It is the uterus to the ovum and the sperm; but then it is also transformed into the child that results from their union. The Self can be viewed as the central concept of Jung’s psychology because “it is the goal towards which the process of individuation strives. It represents psychic wholeness and the process by which self-
division may be healed” (Colman in Papadopoulos, 2006, p. 153). Individuation can therefore be described as “coming to Selfhood” or “Self-realization” (Jung, 1928, para. 266). As Jung observed, the Self therefore represents the beginning and end of psychic development:

“Conscious and unconscious…complement one another to form a totality which is the Self. According to this definition the Self is a quantity that is supraordinate to the conscious ego. It embraces not only the conscious but also the unconscious psyche, and is therefore, so to speak, a personality which we also are” (Jung, 1928, para. 274).

Though the collective consciousness – the ego – appears to be the most prominent component of the collective self (because it is directly recognised and named), it will become clear that “the ego is but a small part that the psyche as a whole uses to consciously relate to itself and the outer world” (Hauke, 2000, p. 56). The contents of the unconscious are also extremely powerful as they represent the unknown, the unnamed and the unreflected. The Self incorporates both of these expressions, and the goal of experience becomes the attainment of the Self, as a mid-point between consciousness and unconsciousness:

“This centre of personality no longer coincides with the ego, but with a point midway between the conscious and the unconscious. This would be a point of a new equilibrium, a new centring of the total personality, a virtual centre” (Jung, 1928, paras. 364-365).

The Self is inherently enigmatic, because it can never be consciously known. Jung states: “the conscious mind can form absolutely no conception of this totality because it includes not only the conscious but also the unconscious psyche, which is, as such, inconceivable and irrepresentable” (Jung, 1948 [1942], para. 230). Though the Self is never fully knowable or ‘experiencable,’ through the conscious ego, Colman notes that there are certain ways of approaching it:
“Jung studies ‘empirical manifestations’ of the self, its archetypal symbols, as a means of gaining ‘clues’ as to its essential nature which, nevertheless, remains inherently out of reach. At the same time, the nature of these symbols and the numinous, mystical experiences with which they are associated produce a sense of wholeness (totality) which is unarguable and self-validating” (Colman in Papadopoulos, 2006, p. 157).

This is the paradox of the Self: though it is unknowable, one benefits from attempting to know it. Colman writes that the Self is glimpsed through numinous, mystical experiences that bring about a sense of wholeness. This type of experience is “the result of a shift in centre from the ego (which is the centre of consciousness) to the self (which is the centre of conscious and unconscious)” (Colman in Papdopoulos, 2006, pp. 157-158). For collective selves, numinosity may be experienced through collective forms of ritual. Jung believed that “the numinous could derive from countless sources and religious traditions, from mythologies, cosmologies, esoteric systems, and arts and sciences. Moreover, he believed that the numinous is present, at least potentially, in common experience and can be felt and made known through meaningful coincidence, synchronicity, and an ‘inner’ relationship with the facts of the world” (Tacey, 2006, p. 89).

Secular rituals express “the existence of social relationships …or ideas or values which are inherently invisible most of the time” (Moore and Myerhoff, 1977, p. 14). Thus secular rituals may be an apt way for the collective to experience the numinous by transcending the unconscious. In adopting this interpretation of the Self, we can see that although the collective self can never be known in its totality, developing an understanding of the ‘collective self’ phenomenon is a worthwhile activity.

II. The Individual in the Collective Self

In terms of the role of the individual in the collective self, Jung wrote, “The individual stands, as it were, between the conscious part of the collective psyche and the
unconscious part” (1916, para. 507). The individual is therefore situated at “the midpoint of psychic life” (Colman in Papadopoulos, 2006, p. 154) in the collective self. It is argued that the psychic experience of the individual and the collective selves are analogous, and that individuals and collectives are connected through their access to the collective unconscious. This means that it is impossible to disentangle or separate individuals and collectives, and that individuals have no social or cultural meaning outside of the collectives to which they belong. Additionally, collectives have no meaning outside of the individuals that comprise them. Therefore, the individual self can never be extricated from its relationship to, and participation in collective selves, such as sex, national identities, or the global community. As Zinkin argues, “the Self only comes into existence through interaction with others” (1991, p. 6) and Young-Eisendrath asserts that the Self has to be discovered “within a context that includes culture, language and other persons (and Hall, 1991, p. xii). This approach acknowledges that “the reality of both the world and the self is not given but is always self-constructed within a particular social and relational context” (Colman in Papadopoulos, 2006, p. 167). Such postmodern readings of Jung provide the connection between the sociological and psychological approaches.

Therefore the collective self refers to the entirety of a group experience, both conscious and unconscious. While the collective self can never be fully understood by the collective, it represents the goal of individuation, and of reconciling the dualities.

The Collective Consciousness (Ego)

I. The Collective Consciousness in the Sociological Model

Both the sociology of human consciousness model and the Jungian model are in agreement about the nature of collective consciousness, although each clearly highlights
either the sociological or psychological aspects. In the sociological model, language is paramount in the construction of collective consciousness, in the form of collective representations and self-reflectivity. In contrast, the Jungian approach uses identity consolidation and persona construction to analyse the nature of ego consciousness.

In the model developed by Burns and Engdahl, the two key concepts that explain collective consciousness phenomena are collective representations and self-reflectivity, both of which are language based (1998a, p. 75). According to the model, the collective self is created and sustained by its collective representations. French sociologist Emile Durkheim developed the concept of collective representations, which are “socially constructed complexes of concepts and symbols that are applied to objects, events and situations, including the collective agent itself, other agents, and their interaction” (Burns and Engdahl, 1998a, p. 75). They are basically agreed upon narratives and descriptions for the group. The medium of collective representations is predominantly language (Burns and Engdahl, 1998a, p. 75). Through its collective representations, a collective articulates:

(i) Its characteristics;
(ii) What (and how) this agent perceives, judges, or does;
(iii) What it can (and cannot) do; and
(iv) What it should do (or should not do).

Examples of collective representations include scientific models, religious dogma or a set of political policies (Burns and Engdahl, 1998a, p. 75). These are ways that the collective has consciously agreed on its identity and personality. Burns and Engdahl observe that:

“common rules provide an intersubjective and collective basis for members of a group or collectivity to answer a number of key questions such as: what is going on in this situation; what kind of activity is this; what are the things being done; why are these things being done; who is
who and who must do or can do what; what are their positions or relation to one another?” (Burns and Flam, 1987; Goffman, 1974; Harre and Gillett, 1994, p. 20).

Collective representations therefore provide a means for individuals and collectives to acquire and sustain identities over time, and to regulate their day-to-day experiences.

According to the sociological model, the other major aspect of consciousness in a collective self is reflectivity. Reflectivity refers to the way in which the collective consciousness reflects upon its experience, and the quality of this reflection. As Burns and Engdahl note,

“There are innumerable examples of contemporary collective reflectivity: extending from considerations of global economic and financial developments; the emerging role, power and problems of global communications and their local impacts…global overpopulation… Numerous reports, studies, and commentaries are part of the processes of collective reflectivity, criticism, and reformation of modern institutions, and practices” (1998a, p. 82).

Through self-reflectivity, a collective monitors its activities, its achievements and failures, and also analyzes and discusses itself as a defined and developing collective agent (Burns and Engdahl, 1998a). It is a primary type of consciousness; it is based on a shared code and a particular language that is used to talk about the collective and its various activities, including its inner states and processes, and changes in these (Burns and Engdahl, 1998a). Self-reflectivity involves a “collectivity conceptualising and reflecting on its values and goals, its conceptual framework, its organisation and its repertoire of strategies and practices…” (Burns and Engdahl, 1998a, p. 70). The important aspect of reflectivity is that it includes an assessment of the collective, and the capacity to possibly adapt or transform it.
The nature and quality of collective reflectivity is determinative of whether the collective is able to process unconscious material. Where the collective reflectivity processes are probing, thorough, rigorous, accurate and inclusive, the collective will be better able to bring unconscious material into consciousness and move forward. In contrast, where the collective reflectivity processes are superficial, inaccurate, limited, or oblivious to unconscious dualities in the global community, the collective will amass unconscious material—which will eventually be experienced as problems or traumas in the world—and remain stuck in its development of consciousness. Therefore, the veracity of self-reflectivity in any collective self will determine its ability to navigate through a diverse range of experiences. This is where the model establishes the presence of consciousness, because:

“Collective interaction processes provide an ongoing context for self-referential discourses about the collectivity’s values, goals, problems, strategies, options, choices, developments, principles of organization and development…In this sense, there is a consciousness among the membership of the collective self and its core or identifying elements” (Burns and Engdahl, 1998a, p. 77).

It has been shown that the key elements of collective consciousness in the sociological model are collective representations and self-reflectivity. The next section examines the interpretation of collective consciousness (ego) in analytical psychology.

II. The Collective Consciousness (Ego) in Analytical Psychology

In applying Jung’s model of the individual psyche to the collective, the collective consciousness (ego) plays two primary roles. It is both “the focal point of consciousness” and “the bearer of personality” (Stevens, 1990, p. 30). As the focal point of consciousness, the collective ego becomes the shared sense of purpose and identity. It:
“carries our conscious awareness of existing, together with a continuing sense of personal identity. It is the conscious organizer of our thoughts and intuitions, our feelings and sensations, and it has access to those memories which are unrepressed and readily available” (Stevens, 1990, p. 30).

In this way, it may be said that the collective ego can be effectively understood as the development and expression of a collective’s sense of itself. As Nordby and Hall note,

“The ego is the name Jung uses for the organization of the conscious mind; it is composed of conscious perceptions, memories, thoughts and feelings. Although the ego occupies a small portion of the total psyche, it plays the vitally important function of gatekeeper to consciousness” (1999 [1973], p. 34).

Jung observed that conscious awareness manifests itself in individuals through the four mental functions or ‘types of consciousness’: thinking, feeling, sensation and intuition (Beebe in Papadopoulos, 2006, pp. 130-149). These functions are “characteristic orientations assumed by the ego in establishing and discriminating [a self’s] inner and outer reality” (Beebe in Papadopoulos, 2006, p. 130).

It may be that certain collectives are more dominant in one of the functions because their individual members happen to be dominant in that function. For example, universities as collective selves are perhaps dominant in the thinking function, because universities tend to attract individual staff members who are dominant in the thinking function. Likewise, a particular family as a collective self may be dominant in the feeling function because its members are dominant feelers. It is clear that bigger and more diffuse collective selves such as nation-states or the global community are more heterogeneous in their psychological expression, because they have a larger population of members.

As the bearer of personality, the ego is the centre of consciousness as it mediates between the demands of the shadow and of the outside world (Jung, 1982, pp. 95-96). “It stands at
the junction between inner and outer worlds” (Stevens, 1990, p. 30). The ego is therefore analogous to a screen that separates the unconscious from the outside world. The ego functions by perceiving what is acceptable to be admitted to consciousness, and by choosing what to express to the outside world. The ego has a powerful role in the consciousness, because it simultaneously perceives meaning, and is a primary expression of the Self. However Jung believed that “the task of the ego is to transform itself by integrating as many contents of the unconscious as possible, in which case it begins to function as an ancillary organ of the Self” (Tacey, 2006, p. 17). Since the ego resists the wholeness that comes from integrating the unconscious and transforming into the Self, Jung believed that the ego needed to be “criticized and put in its place, especially nowadays, when knowledge and so much that happens in society is used to bolster the ego in its limited view of the world” (Tacey, 2006, p. 91). The next section outlines how the collective consciousness is regarded in this thesis.

III. The Collective Consciousness in this Thesis

Based on a combination of the ideas of sociology and analytical psychology, the framework of this thesis constructs the collective consciousness (ego) as the conscious and aware experience of the collective self. The conscious experience is reflected in social devices such as language, collective representations, self-conceptions and self-reflectivity (Burns and Engdahl, 1998a) and psychological urges such as the consolidation of identity and the construction of a persona (Alschuler in Young-Eisendrath and Dawson, 1997, p. 286). As Wiley writes, the compelling nature of values and their symbols comes from the power of the collective consciousness (Wiley, 1986, p. 4). Therefore, the collective consciousness represents:
(i) *The collective identity:* this includes the collective’s subjective identity, which is based upon the theory that the collective self develops and maintains about its place in the world through identity-related cognition: discourses, narratives, stated value systems and norms espoused by the collective (collective representations). The collective identity is also related to the nature of the collective self’s coherent, ongoing relationships with others and day-to-day actions and decisions; and

(ii) *The collective personality:* this refers to the way in which, and the degree to which, the collective is able to self-reflect on a regular basis. This occurs through collective processes such as legal and political institutions such as parliaments and courts, academic research, sociocultural awareness, and mass media.

In essence, the collective consciousness relates to the collective self’s identity and personality according to itself, which is clearly contingent upon the extent of its self-awareness. Most individuals and collectives identify completely with their consciousness (ego), believing that this encompasses the totality of who they are. It has been established that this is not the case, and that the Self represents the totality of psychic processes in an individual or a collective. Jung argued that the ego was “being pushed around like a figure on a chessboard by an invisible player” (the self) (Jung, 1928, para. 250). Jung also compared the ego/self relationship to the earth (ego) revolving around the sun (Self) (1928, para. 405). However a vast majority of individuals and collective selves are made secure through identifying wholly with their ego, or conscious experience (Edinger, 1960, p. 3). This means that in most cases, the collective’s sense of itself is confined to its identity, personality, past experience and expected future. As such, the collective consciousness (ego) represents the dominant narrative of each collective self. The next
section presents the passive narrative of the collective self: the collective unconscious. As the Collective Self framework above shows, the collective self is not limited to collective consciousness. It is clear that individual and collective selves also possess unconscious material, which represents the thoughts, behaviours or actions that are inconsistent with conscious attitudes or intentions.

The Collective Unconscious

I. The Collective Unconscious in Sociology

As outlined in Chapter Two, the concept of the collective unconscious has been utilised in the work of a range of sociologists. In the sociology of human consciousness model, the ‘collective unconscious’ refers to material that is unnamed or unrepresented in the collective self:

“Numerous events, interactions, and developments go unobserved, and therefore cannot enter into the collective consciousness and reflective processes” (Burns and Engdahl, 1998a, p. 81).

Burns and Engdahl observe the difference between collective consciousness and the collective unconscious, as due to a process of ‘naming’:

“Unnamed objects and processes are experienced differently from those that are named and reflected upon within a cultural cognitive system” (Burns and Engdahl, 1998, p. 81).

In the sociological model, the unconscious aspects of the collective cannot be identified or represented as a result of severe limitations or distortions in reflectivity because:

(i) There is a failure to “acquire tools of language essential to learning and developing collective representations”; or

(ii) The agent is “unable or unwilling to engage in reflective processes” as “its activities are largely habitualized and beyond reflective attention, or its
members are totally involved in practical activities and lack time and resources to devote to reflective processes”; or

(iii) The “agent experiences deep anxieties associated with, and a reluctance to engage in, self-reflective activities” (Burns and Engdahl, 1998, p. 81).

Therefore, according to the sociological model, unconscious material is stored in the collective self because:

“Social groups have a variety of mechanisms of selective attention, reframing, re-interpretation, and outright repression of disturbing and or dissonant information, thus contributing to bias, distortion, half-truths, rationalizations, lying and illusion, which block or distort effective attention to critical problems and … the realization of greater awareness and consciousness” [emphasis added] (Burns and Engdahl, 1998a, pp. 81-82).

In this excerpt, there are some interesting overlaps between sociological observations about unconscious material in the collective self and the Jungian ‘collective unconscious.’ The sociological model concludes that the collective self needs to constantly reflect upon and process its experiences, and where this reflectivity is hindered or avoided, there will be a build-up of unconscious material in the collective self.

Burns and Engdahl highlight the role of:

“social scientists, social commentators, journalists, writers and other ‘intellectuals’” in “examining and discussing ways in which a modern society– or modern institutions and practices– function or fail to function, possibly specifying some of the factors underlying success or failure, and contributing to proposals for reform” (1998a, p. 82).

This means that academics and other socially engaged individuals are vital in the processing of unconscious material in the collective self. The process of social analysis takes place by identifying an area of success or failure in a collective self, reflecting on and researching the reasons for such success of failure, and offering suggestions for its maintenance or overhaul.
It has been shown that in the sociology of human consciousness model, unconscious material is identified as that which is unnamed or unrepresented by the collective self. This unnamed material is often incompatible with collective ideas about what is acceptable, and is thus relegated to ‘unconsciousness.’

II. The Personal/Cultural Unconscious in Analytical Psychology

In relation to the unconscious, Sigmund Freud, an early mentor and collaborator of Carl Jung, wrote:

“The oldest and best meaning of the word ‘unconscious; is the descriptive one; we call the psychical process unconscious whose existence we are obliged to assume- for some such reason as that we infer it from its effects-, but of which we know nothing” (Freud, 1964 [1932-33], vol. XXII, p. 70).

In analytical psychology, Jung identified two layers to the unconscious: the personal/cultural unconscious and the collective unconscious (Hauke, 2000, p. 56). The first layer of the unconscious is the ‘personal unconscious,’ which contains all of the psychic activities and contents that are incongruous with the conscious orientation that is specific to a particular individual or collective self. A collective self also has a ‘personal’ unconscious. However in the context of a collective self, it is perhaps more appropriate to refer to the ‘personal’ unconscious as the ‘cultural’ unconscious, because the term ‘personal’ is associated with individuals rather than collectives.

In describing the content of the personal/cultural unconscious, Jung observed:

“Everything of which I know, but of which I am not at the moment thinking; everything of which I was once conscious but have now forgotten; everything perceived by my senses, but not noted by my conscious mind; everything which, involuntarily and without paying attention to it, I feel,
think, remember, want, and do; all the future things which are taking shape in me and will sometime come to consciousness; all this is the content of the unconscious” (1934, para. 270).

Another excerpt by Jung illustrates the nature of the personal/cultural unconscious, which:

“consists firstly of all those contents that became unconscious either because they lost their intensity and were forgotten or because consciousness was withdrawn from them (repression), and secondly of contents, some of them sense-impressions, which never had sufficient intensity to reach consciousness but have somehow entered the psyche” (Jung, 1927, para. 321).

These descriptions point to the potentially infinite and immeasurable nature of the unconscious mind. The personal/immediate unconscious therefore, in Jungian terms, is essentially the repository for repressed material deriving from the personal biographical details of an individual (Hauke in Papadopoulos, 2006, p. 65) or collective. The contents of the personal/cultural unconscious can be benign, for example, the name of an acquaintance whom one rarely sees is stored in the personal unconscious. Yet the personal/cultural unconscious can also store repressed and potent material such as traumatic memories from one’s childhood (Hall and Nordby, 1999 [1973], pp. 35-36). In relation to the contents of the personal/cultural unconscious, Jung wrote, “we must include all more or less intentional repressions of painful thoughts and feelings” (1934, para. 270). According to Jung, these thoughts and feelings in the personal/cultural unconscious are grouped into functional units referred to as ‘complexes.’

A. Complexes & Cultural Complexes

Jung formulated the theory of complexes in the course of his psychological theorising. Complexes are “thoughts, feelings and memories that group themselves into dynamic clusters, which function like sub-personalities” (Stevens, 1990, p. 15) or “split-off psychic fragments with a semi-autonomous existence” (Tacey, 2006, p.3). One example is a ‘God complex’ whereby an individual exhibits certain ‘Godlike’ attributes, and “he believes
himself (sic) to be God’s prophet or even God himself, and that only he can reveal the paths of righteousness and salvation to mankind” (Hall and Nordby, 1999 [1973], p. 43). Another example is a beauty complex, where an artist, such as Van Gogh, obsessively sought beauty in the world and in his art (Hall and Nordby, 1999 [1973], p. 37).

In the last two decades, theorists have adapted Jung’s theory of personal complexes, and used the theory to analyse the psychological nature of conflicts occurring in groups and cultures. Joseph Henderson first carved out a cultural space between the personal and archetypal aspects of psychological experience, which he called ‘the cultural level’ of the psyche, with social, aesthetic, spiritual and philosophical dimensions (1984). Samuel Kimbles then integrated these two theories (the complex and the cultural psyche) and formulated the ‘cultural complex.’ Thomas Singer and Samuel Kimbles produced the seminal work on this concept. Their edited volume *The Cultural Complex: Contemporary Jungian Perspectives on Psyche and Society* (2004) applies Jung’s theory of complexes to understand the psychology of group conflict, thus engaging the cultural level of the psyche (or, the collective cultural unconscious).

Cultural complexes operate in a similar way to individual complexes, and are based on “repetitive, historical group experiences which have taken root in the cultural unconscious of the group” (Singer and Kimbles, 2004, p.7). These experiences are generally associated with “trauma, discrimination, feelings of oppression and inferiority at the hands of another offending group…” (Singer and Kimbles, 2004, p.7). According to San Roque, “Large groups or nation states develop a collective shared ‘complex’ or repetitive patterns of behaviour and attitude which become established as part of the culture. A complex may be harmful, maladaptive and even self destructive. The complex seems to be particularly apparent and virulent around race, ethnic difference, cultural or religious positions and environmental
In ‘Symbols and Individuation in Global Politics’ (2010), Singer notes that:

“cultural complexes are every bit as real, every bit as formative, every bit as ubiquitous and every bit as powerful in their emotional impact on individuals and groups as personal complexes. They exist in the psyche of the individual and also in the psyche of the collective.”

According to Singer (in Stein, 2010, pp. 28-29), the characteristics of a cultural complex are as follows:

“1. Complexes express themselves in powerful moods and repetitive behaviours. A highly charged emotional or affective reactivity is their calling card.

2. They resist our most heroic efforts at consciousness and they remain for the most part, unconscious.

3. They accumulate experiences that validate their point of view and create a storehouse of self-affirming, ancestral memories.

4. Personal and cultural complexes function in an involuntary, autonomous fashion and tend to affirm a simplistic point of view that replaces more everyday ambiguity and uncertainty with fixed, often self-righteous attitudes to the world.

5. They have archetypal cores, that is, they express typically human attitudes that are rooted in primordial ideas about what is meaningful, making them very hard to resist, reflect upon and discriminate.”

Examples of cultural complexes are the ongoing conflicts between Israel and Palestine, North and South Korea, and between colonisers and the indigenous in many nation-states. These conflicts are so engrained at the cultural level of the psyche that they become an element of cultural identity, even for children who may never have directly encountered members of the other culture (Bar-Tal, 2000). It is argued that the global community has developed a cultural complex in relation to the natural environment, whereby humans have come to see it as a natural predator or enemy, and thus have developed an innate desire to dominate it, rather than to co-exist with it. It will be argued that cultural
complexes are evidence of the unconscious material belonging to collective selves.

Additionally, in the Jungian structure of the psyche there are two dualistic complexes that are active in the individual and the collective. These are the persona/shadow opposition, and the syzygy (anima/animus) opposition, which will be outlined as follows.

B. The Persona/Shadow Opposition

The conscious ego (identity and personality) is expressed to the outside world through what Jung referred to as the Persona, which is “a complicated system of relations between the individual consciousness and society…a kind of mask” (Jung, 1982, p. 91). According to Jung,

“[the persona] is a functional complex that comes into existence for reasons of adaptation or personal convenience, but is by no means identical with the individuality” (1921, para. 801).

The persona is associated with the roles that a consciousness adopts in the world. As Jung observed, the persona is the “outward attitude that is oriented toward the external world of collective consciousness” (Colman in Papadopoulos, 2006, pp. 153-154). The persona has connotations of artificiality, as Jung writes: “The persona is that which in reality one is not, but which oneself as well as others thinks one is” (Jung, 1950, p. 61). As Stevens notes,

“the persona is the ‘packaging’ of the ego: it is the ego’s public relations…responsible for advertising to people how one wants to be seen and reacted to. It simplifies relationships, oils the wheels of social intercourse and avoids the need for lengthy explanations and introductions” (1990, p. 42).

John and Rita Sommers-Flanagan note the importance of the persona, arguing that it enables us “to hold our inner selves together while interacting with the diverse distractions, temptations, provocations, and invitations the world offers us” (2004, p.
It is the coherent facade that the individual self and the collective self craft for the outside world to make a definite impression upon others and to conceal the true nature of consciousness (Sommers-Flanagan, 2004, p. 117). Clearly, the persona allows one to function and adapt to society, however it also leads to the repression of certain qualities that are considered unacceptable or distasteful. These repressed qualities form the shadow.

The shadow is comprised of all of the qualities opposite to those contained in the persona. “Consequently,” writes Stevens, “these two aspects of the personality complement and counterbalance each other, the shadow compensating for the pretensions of the persona, the persona compensating for the antisocial propensities of the shadow” (1990, p. 43). It is fundamentally necessary to make the persona/shadow duality conscious, as Jung wrote, “Everyone carries a shadow, and the less it is embodied in the individual's conscious life, the blacker and denser it is” (Jung, 1938, para. 93). Tacey writes: “The more an individual or group strives for light, the longer and darker is the shadow that is cast” (2006, p. 55). It is also essential for the persona/shadow relationship to be balanced: if the persona is too dominant, the individual or collective becomes shallow and conformist, obsessed with what others think. Conversely, if the shadow is too dominant, this can lead to antisocial behaviour such as criminality or psychopathy (Stevens, 1990, p. 43). Jung believed that the shadow should not be avoided, because although it contained repressed material, it also contained:

“dark springs of instinct and intuition” which “mere reasonableness, propriety and the orderly course of bourgeois existence could never call awake, all those creative forces which lead man onwards to new developments, new forms and new goals” (Jung, 1918, paras. 20-26).

Casement observes that individuals and collective selves have personae and shadows:
“Apart from the personal shadow there is also the collective shadow of which history provides many examples. The most notorious example from the twentieth century was the projection of collective shadow by the Nazis into the Jews, who could then be portrayed as inferior or evil beings to be exterminated…The phenomenon of shadow also varies from one culture to another so that what is unacceptable in the United States may not be in Japan” (in Papadopoulos, 2006, p. 96).

Fordham supports this view, writing: “The shadow contains, besides the personal shadow, the shadow of society…fed by the neglected and repressed collective values” (1978, p. 5). The ‘Shadow’ represents polarity: dark to light, negative to positive, and chaos to order (Hamilton, 2008, p. 233). Jung advises that becoming aware of and processing the individual or collective persona/shadow duality is a required step on the path to individuation, or Self-realisation. The other fundamental duality in the individual and the collective self is the anima/animus syzygy, which is described below.

C. Anima/Animus Syzygy

Jung maintained that all individuals carried masculine and feminine principles in their psyche (Claremont de Castillejo, 1973, 73-77). He called this the anima (soul)/animus (spirit) syzygy, or union of opposites, whereby for the male, the feminine principles (anima) remained unconscious, and for the female, the masculine principles (animus) remained unconscious (Claremont de Castillejo, 1973, 73-77). The anima represents the “inner attitude that is oriented towards the internal world of the collective unconscious” (Colman in Papadopoulos, 2006, p. 154). Jung writes:

“The animus and the anima should function as a bridge, or a door, leading to the images of the collective unconscious, as the persona should be a sort of bridge to the world” (1961, para. 392).

In relation to the difference between the animus and the anima, Jung observed:

“If I were to attempt to put in a nutshell…what it is that characterises the animus as opposed to the anima, I could only say this: as the anima produces moods, the animus produces opinions…The
animus is the deposit, as it were, of all woman’s ancestral experiences of man— and not only that, [animus] is also a creative and procreative being... Just as a man brings forth his work as a complete creation out of his inner feminine nature, so the inner masculine side of a woman brings forth creative seeds which have the power to fertilise the feminine side of man” (Jung 1966 [1928], para. 331).

These statements about animus and anima have been criticised for perpetuating anachronistic gender role identities. As Tacey notes, “some of what [Jung] took to be archetypal, and given by life, was in fact stereotypical and conditioned by society” (2006, p. 69), and “Jung’s insights need to be resituated …with greater awareness of individual difference, gender fluidity and moral relativity” (Tacey, 2006, p. 71). Accordingly, post-Jungians have adapted the theory to argue that “men and women each have both an anima and an animus” [emphasis added] (Kast in Papadopoulos, 2006, p. 116). The anima or animus, if left unconscious, can behave as complexes or as archetypal images. For example, an individual may have a father complex that develops into her unconscious animus. If this remains unconscious, she may project her animus onto external ‘masculine’ figures such as her husband, her teachers, or a political leader. This can happen for the male in reverse (that is, his mother complex becomes his unconscious anima which he projects onto external ‘feminine’ figures). Therefore, Kast notes that “individuation requires not only the integration of anima and animus but also a separation from one’s parental complexes” (in Papadopoulos, 2006, p. 123). The animus archetype represents the stereotypical masculine, whereas the anima archetype symbolises the stereotypical feminine. For Jung, “the animus corresponds to ‘masculine consciousness’ (logos) and the anima to ‘feminine consciousness’ (eros)” (Kast in Papadopoulos, 2006, p. 127). If each individual and collective self possesses both an unconscious animus and an unconscious anima (Gordon, 1993), then the goal is to make both the nature of the
masculine and the nature of the feminine conscious. This applies regardless of whether
the masculine and the feminine are idealised or disparaged in the unconscious. Either
way, the anima/animus syzygy is still unconscious. In their highest potential, the animus
(logos) is power and cognition, and the anima (eros) is connectedness, love,
unconditionality and magic (Tacey, 2006, p. 65). Jung referred to the integration of the
anima/animus into consciousness as the “masterpiece of analysis” (Jung, 1934, paras. 61-
64). This thesis argues that in the collective, the unconscious anima/animus syzygy refers
to the relationship between entities at the sociocultural level, such as the masculine
consciousness versus the feminine consciousness, and majority cultures versus cultural
minorities, developed nation-states versus developing nation-states and colonisers versus
indigenous peoples.

This section has outlined the extent of the personal/cultural unconscious in individual and
collective selves. The next section presents Jung’s concept of the collective unconscious.

III. The Collective Unconscious in Analytical Psychology

In addition to the personal unconscious, Jung observed that there was a deeper, and more
universal, layer to the personal/cultural unconscious. Jung became the first theorist to
identify this second element of the unconscious: the collective unconscious. This theory
served to distinguish Jung among his contemporaries and give him worldwide fame in
psychological circles from the 1930s onwards. As Stevens writes,

“Jung’s announcement of his collective unconscious hypothesis was one of the truly momentous
events in twentieth-century psychology, yet it was not generally recognised as such, nor have its
implications begun even now to be adequately appreciated” (Stevens, 1990, pp. 35-36).

In introducing the collective unconscious, Jung wrote:

“In addition to our immediate consciousness, which is of a thoroughly personal nature and which
we believe to be the only empirical psyche...there exists a second psychic system of a collective, universal and impersonal nature which is identical in all individuals...It consists of pre-existent forms, the archetypes, which can only become conscious secondarily and which give definite form to certain psychic elements” (Jung, 1936, para. 90).

The collective unconscious was defined by Jung as:

“the part of the psyche that is not a personal acquisition and has not been acquired through personal experience. Its contents have never been in consciousness- they are not repressed or forgotten- and they are not acquired, but owe their existence to a form of heredity” (Hauke in Papadopoulos, 2006, pp. 66-67).

Therefore, the collective unconscious is “a phylogenetic inheritance of the human psyche amassed over aeons of human evolution” (Hauke, 2000, p. 56). Jung considered the collective unconscious to be acquired by an individual’s participation in collective processes such as culture, society, language and religion. Hauke observes that:

“the collective unconscious was derived through aeons of repetition of cultural imagery and experience that, despite differences in detail, remains typically human with recognisable common qualities and meanings” (Hauke, 2000, p. 59).

Jung argued that each individual and collective self contained layers of the personal and collective unconscious. In contrast to the personal or cultural unconscious, the collective unconscious is not related to or the result of personal or cultural experience. The collective unconscious is universal and stems from the socio-cultural evolution of the species, and whereas the personal or cultural unconscious is made up of complexes, the collective unconscious consists of archetypes. For Jung, the collective unconscious constituted the blueprint of life patterns for each human and collective to follow. Hauke writes:

“the collective unconscious is a record in, and of, the psyche of humankind going back to its
remotest beginnings just as we still have ancestral traces in our body morphology and our ‘reptilian brain’” (Hauke in Papadopoulos, 2006, pp. 67-68).

However, Jung insisted that the collective unconscious is not static:

“[It is not] a dead deposit, a sort of abandoned rubbish heap, but a living system of reactions and aptitudes that determine the individual’s life in invisible ways...the archetypes are simply the forms which the instincts assume. From the living fountain of instinct flows everything that is creative; hence the unconscious is not merely conditioned by history, but is the very source of the creative impulse” (Jung, 1927, para. 339).

In describing the nature of the collective unconscious in an individual, Jung wrote:

“The form of the world into which he is born is already inborn in him as a virtual image. Likewise parents, wife, children, birth, and death are inborn in him as virtual images, as psychic aptitudes. These a priori categories have by nature a collective character; they are images...and are not individual predestinations. We must therefore think of these images as lacking in solid content, hence as unconscious. They only acquire solidity, influence, and eventual consciousness in the encounter with empirical facts...They are, in a sense, the deposits of all our ancestral experiences, but they are not the experiences themselves” (1916, para. 300).

Therefore the collective unconscious “is a reservoir of latent images, usually called primordial images” or archetypes (Hall and Nordby, 1999 [1973], p. 39). It is necessary to incorporate archetypes into any application of Jungian analysis, because Jung believed that archetypes formed part of the collective unconscious and were manifested in myth, symbol, art and religion (Hamilton, 2008, p. 233).
A. Archetypes

In the Jungian framework, the collective unconscious is comprised of archetypes.\textsuperscript{19} The concept of archetypes can be traced back to the writing of Plato, who created the concept of ‘Ideas’ or ‘Forms’ in the books of *The Republic* (Pappas, p. 212). Jung acknowledged Plato in his writing, describing archetypes as “active living dispositions, \textit{ideas in the Platonic sense}, that preform and continually influence our thoughts and feelings and actions” [emphasis added] (1936, para. 154). For Plato, Ideas or Forms were products of the abstract, pure non-material world, and constituted universal fundamental reality. This is in contrast to the material world of change experienced through sensation, which represents an illusion (Pappas, 2003 [1995], pp. 212-214). Plato maintained that eternal Forms or Ideas manifested themselves in material objects. One example Plato gave was the Form of Beauty, which is abstract and applies to all beautiful things. Though the individual manifestations of Beauty may be diverse—a beautiful person, sunset, or flower—the Form itself never changes (Myss, 2007). This distinction between Forms and the illusory material world inspired Jung’s analysis of archetypes and the collective unconscious. The crucial overlap between Platonic forms/ideas and Jungian archetypes is that they transcend culture, race and time (Stevens, 2002, p. 45). In this sense, they are universally collective.

For Jung, humans have ‘innate propensities’ for language, relationships, roles and significant rituals such as initiation and rebirth, which are given collective expression through mythology, religion, legends, fairy tales, dreams and nightmares (Stevens, 2002, p. 49). For Jung, these propensities were developed over millions of years in response to:

\textsuperscript{19} The concept of archetypes has been likened to Levy-Bruhl’s \textit{mythological motifs}, Hubert and Mauss's \textit{categories of the imagination}, and Adolf Bastian's \textit{primordial thoughts} (Vannoy Adams, 1996, p. 59).
“physical events in the environment and produced the mythological material out of a participation mystique where the separation of subject and object is not distinct. And it is not the physical phenomena— the thunder or clouds or earthquakes— that remains in the psyche but ‘the fantasies caused by the affects they arouse’” (Jung in italics, 1927, para. 331, quoted in Hauke in Papadopoulos, 2006, p. 67).

As a result, Stevens writes,

“Jung remained convinced that far from being a tabula rasa, a blank slate passively submitting to the inscriptions of life’s lessons, humans are born with numerous predispositions for perceiving, feeling, behaving and conceptualizing in specific ways” (Stevens, 2002, p. 50).

Archetypes are therefore the principal feature of the collective unconscious. Archetypes are primordial ideas, common to all humankind, that are expressed through ‘archetypal’ images. They are linked to innate modes of perception and describe universal symbols that evoke meanings of basic human experiences (Hyde and McGuinness, 1999, p. 172). People living in different cultures and times “are united by these archetypes in the sense that there are universal human experience that are structured by them” (Pietikainen, 2007, p. 99).

Stevens writes of the relationship between the collective and personal/cultural unconscious:

“When an archetype is successfully activated, it accrues to itself ideas, percepts and emotional experiences associated with the situation or person responsible for its activation, and these are built into a complex which then becomes functional in the personal unconscious” (Stevens, 1990, p. 32).

For Jung, archetypes manifested themselves in psychological patterns derived from historical roles in life, such as the mother (with a pattern of nurturing and comfort), child (with a pattern of innocence and rebirth), and the trickster (with a pattern of deception,
lying and trouble-making) (Jung, 2003 [1953]). Other archetypes include the father (with a pattern of the authority figure who is stern and powerful), and the hero (with a pattern of the champion, defender and rescuer). Archetypes can also refer to ‘archetypal’ events or situations that apply to everyone, regardless of their sex, ethnicity or era, including initiation, spirit and rebirth (Jung, 2003 [1953]). There is also an archetypal ‘shadow’, which:

“represents an encounter with evil… [and] the contents of the personal unconscious or shadow are merged with the archetypal contents of the collective unconscious and bring the latter into consciousness with them when the shadow is activated” (Casement in Papdopoulos, 2006, p. 98).

Therefore each archetype has positive and shadow aspects. It has been shown that the collective unconscious consists of a dynamic set of patterns referred to as archetypes. The archetypes affect all individuals and collectives universally, with no temporal or geographical limits.

The personal and the collective unconscious (complexes, the shadow, the persona, the anima/animus and the archetypes) are often erroneously perceived to be threatening features of the psyche. However this is not necessarily the case. It is simply that

“What is not consciously developed remains primitive and regressive and may constitute a threat” [emphasis added] (Whitmont, 1969, p. 17). On this point, Jung notes that the unconscious is only threatening to the extent that it remains repressed:

“The unconscious is not a demoniacal monster, but a natural entity which, as far as moral sense, aesthetic taste, and intellectual judgment go, is completely neutral. It only becomes dangerous when our attitude to it is hopelessly wrong. To the degree that we repress it, its danger increases. But the moment the [psyche] begins to assimilate contents that were previously unconscious, its danger diminishes” (Jung, 1974, p. 100).

Therefore the unconscious is not necessarily negative; it merely consists of all of the psychic contents that individuals and collectives have deemed to be worthless or
unacceptable. As such, unconscious material is extremely potent, because it holds all of
the material—whether positive or negative—that is repressed from consciousness.
Unconscious material is often experienced as an underlying feeling or perception, and
according to Jungian theory, the unconscious can be played out in dreams, synchronicity,
or recurring patterns of drama or conflict. These descriptions point to the potentially
infinite and immeasurable nature of the unconscious mind. The next section summarises
how the unconscious material of the collective will be treated in this thesis.

IV. The Collective Unconscious in this Thesis

In an attempt to merge the insights of analytical psychology and sociology, this thesis
treats the collective unconscious as the inner psychic life of the collective, or what is
unnamed or unrepresented in the collective self. In the framework developed in this
thesis, the inner psychic life of a collective contains repressed material in the form of:

1. Cultural complexes;
2. The persona/shadow duality;
3. The animus/anima syzygy; and
4. Archetypes that are expressed through symbols and mythologies.

Since unconscious material is often repressed, it is often in contrast to the conscious
orientation of the collective self. As such, the unconscious life of a collective is often
related to the aspects of its existence that do not seem to be congruous with the stated
objectives of its collective consciousness (ego). It is only identified by recurring,
systemic, unwanted patterns of drama or conflict. Unconscious material is linked to the
perception that something is wrong without knowing why it is continuing, or how it can
be resolved. The following principles of Jungian theory explain how individual and collective selves operate.

Organising Principles of the Collective Self

This final section provides an overview of certain analytical principles of Jungian theory that will later be applied in the case study of this thesis. According to analytical psychology, individual and collective selves are subject to the following organising principles on the path to individuation: synchronicity, homeostasis and the transcendent function.

I. The Individuation Process

Individuation is the central Jungian concept, which refers to the full realization and wholeness of the individual and collective Selves through the integration of unconscious material (Stein, 2006). According to Kast,

“the goal of individuation is to become more and more who we really are, distinct from others and yet in relationship to others. This process is a series of confrontational dialogues between us and the world, the human beings to whom we are related and bound and the inner world of the complexes and the archetypes” (in Papadopoulos, 2006, p. 114).

For Stein, “individuation means creation, destruction, eternal re-creation – an ongoing process whose faraway goal is maximum wholeness through the union of opposites in consciousness” (2004, p. 262). In short, it is the process of an individual or collective self becoming fully conscious.

The path towards individuation is the focus of analytical psychology. Individuation is best described as “the lifelong development of personality…the process of becoming the personality that one innately is potentially from the beginning of life” (Stein in
Rather than representing a foregone conclusion of development, individuation symbolises the integration of unconscious material, and the outcomes that flow from that integration. This is not a straightforward process, as Tacey writes,

“The whole of Jung’s theory of individuation can be seen as a management of conflict and opposition. Whether we refer to the shadow, the anima or animus, the father or mother, the trickster, or any other archetype, all greet the ego as formations of psychic energy that at first seem opposed to the ego’s direction” (2006, p. 80).

In the Jungian model, individuation is the highest potential of the self. The goal of individuation is “knowing oneself as completely as possible, or Self-consciousness. In modern terminology it would be called expanding consciousness” (Nordby and Hall, 1999 [1973], p. 34). As such, “individuation includes the expansion of ego consciousness” (Alschuler in Young-Eisendrath and Dawson, 1997, p. 283). This means that as a collective is able to become conscious and assimilate an increasing amount of experiences, the collective becomes more individuated. In reflecting on the process of individuation, Allott writes:

“It implies that conscious behaviour is intrinsically repressive of something, that mental life is necessarily a struggle and it seems to define sanity (or what was once called ‘happiness’) as some sort of successful integration of the conscious and unconscious aspects of the mind…” (Allott, 2003, p. 29).

Stevens notes that in promoting the individuation process, “Jung is not advocating individualism— which is merely the arrogant assertion of the ego” (Stevens, 1990, p. 199). In fact, Jung wrote, “individuation means precisely the better and more complete fulfilment of collective qualities which are invested in the Self” (1928, para. 267). The process of individuation is thus central to the thesis because it is concerned with the
fundamental nature of development in a collective self.

II. Synchronicity

Jung defined the concept of synchronicity as “a meaningful coincidence,” or “a coincidence in time of two or more causally unrelated events which have the same or similar meaning” (1952, paras. 827 and 849). For Jung, synchronicity constituted “the expression of an acausal orderliness dependent upon archetypal functioning” (Stevens in Papadopoulos, 2006, p. 89). Therefore, according to Jung, the behaviour of an archetype— as a primordial, universal pattern— at the individual level is mirrored by the behaviour of an archetype at the collective level. Main writes, “Synchronistic events indicate that meanings experienced psychically can also non-projectively be experienced outwardly” (Main in Papadopoulos, 2006, p. 314). An example of synchronicity is when a person is being spoken or thought about and then they ring on the phone, or “when a door slams at the same moment as one reads of a door slamming in a novel. The Western mentality dismisses such coincidence as meaningless, but life reaches beyond the significance of mere causality” (Stevens, 1990, p. 266). When applied to the collective self, the concept of synchronicity means that certain collective events occur at particular times in order to promote the cause of individuation. An example of synchronicity at the collective level would be the Arab Spring, whereby several nation-states in the Middle East embarked upon revolutionary protests and demonstrations for democratic reform at the same time (commencing December 2010).

III. Homeostasis

In addition, Jungian theory states that each collective self operates according to the principle of homeostasis, or equilibrium, whereby the conscious and unconscious
elements form a symbiosis. Therefore, where there is an excessive amount of unconscious material, there will be a minimal amount of conscious material and where there is a moderate amount of conscious material there will also be a moderate amount of unconscious material and so forth. Jung wrote,

“the psyche is a self-regulating system that maintains its equilibrium just as the body does. Every process that goes too far immediately and inevitably calls forth compensations, and without these there would be neither a normal metabolism nor a normal psyche” (Jung, 1974, p.100).

The ultimate state of wholeness for a collective consciousness occurs when the unconscious material is fully integrated into the collective consciousness, and therefore the conscious and the unconscious become whole and form the Self. The collective consciousness, like an individual psyche, seeks the reconciliation of conscious and unconscious aspects, to be integrated into the Self. It is argued that international law is a primary vehicle for the collective self to resolve repetitive and irrational patterns in the international sphere. Therefore, a major role of international law is to sort through and attempt to regulate the unconscious material in the collective unconscious. Where there is excessive unconscious material, it will be thrust into the external life of the collective as problems, dramas or traumas. Unconscious images arise “as carriers of messages which are lacking –at times dangerously lacking– in consequence of the one-sided views and convictions of consciousness” (Whitmont, 1969, p. 27). Thus, where there is an imbalance in the psyche, or, for the purposes of this thesis, the collective consciousness, the unconscious offers images in a compensatory or complementary way in order to bring about homeostasis. Therefore, the resolution of the tension between the conscious ego and the unconscious is necessary before any other political, legal and environmental imperatives can be achieved. The homeostasis of the self is also linked to the transcendent function.
IV. The Transcendent Function

According to Jung, the transcendent function is characterised as follows:

“If a union is to take place between opposites like spirit and matter, conscious and unconscious, bright and dark, and so on, it will happen in a third thing, which represents not a compromise but something new” (Jung, 1955, p. 536).

Alschuler observes, “when a person is caught in the tension between consciousness and the unconscious, according to Jung, by holding onto this tension a symbol may emerge that transcends the conflict” (2006, p. 65). Holding onto the tension indicates that one gains psychic awareness of the conflict between consciousness and the unconscious, but does not act immediately (unconsciously) in response to this conflict. Rather, one patiently waits until the power or force is withdrawn from the conflict, and the conflict is made fully conscious. This means that the original conflict does not disappear but is “reshaped at another level where opposites become compatible” (2006, p. 65). An example of this at the collective level could have been the terrorist attacks of September 11, 2001 in the United States. Rather than responding unconsciously and impetuously by beginning wars in Afghanistan and Iraq, the United States government could have spent some time becoming conscious of who was responsible for the attacks and why. Over ten years later, the United States and many other nation-states around the world are still mired in these wars when there could perhaps have been a more ‘conscious’ solution. The transcendent function does not mean that one does nothing, or that one reacts in haste. The transcendent function is the third way that arises only after one has gained consciousness in relation to the problem. This allows us to read Proust in a new way: “We are healed from suffering only by experiencing it to the full” (2006 [1922] p. 886). The transcendent function is based upon the concept of Hegelian dialectical change, whereby epochs and events unfold with the same logic as a dialectic, with the epoch and the dialectic in opposition towards the other, until the final ‘end of history’ when the world
The spirit (integration of unconscious material into the Self) is realized fully for the first time (Solomon, 1994, p. 77).

**Conclusions**

This chapter has presented the collective self framework that forms the foundation of this thesis. The framework applies to all collective selves, which are conscious and dynamic socially constructed entities such as nation-states, ethnic groups, religions, corporations, organisations, families and partnerships. The framework is based upon a combination of the sociology of human consciousness model and the Jungian model of analytical psychology. These models distinguish between collective consciousness and the collective unconscious material. In the framework, collective consciousness is characterized by the collective identity and personality, which is expressed through collective representations and self-reflectivity. In contrast, unconscious material is defined as that which is unnamed or unrepresented in the collective and this is characterized by cultural complexes, the persona/shadow duality, the animus/anima syzygy, and archetypes that are expressed through symbols and mythologies. In the Jungian model, conscious and unconscious material is subject to the following organising principles: individuation, synchronicity, homeostasis and the transcendent function. In the remainder of the thesis, this framework will be applied to public international law, and particularly to the concept of gender justice. The framework will be used in order to understand the nature of collective unconscious material that is influencing the pursuit of gender justice, and whether and/or how this unconscious material can be processed. In particular, the following chapter argues that the global community forms a global collective self, with conscious and unconscious material, that is subject to the individuation process.
Chapter Five:
Applying the Collective Self Framework to International Law

After setting out the psycho-social models for the collective self theory in Chapter Three, and the Collective Self Theoretical Framework in Chapter Four, the thesis now explores how the framework can be applied to public international law. This chapter shows that the Collective Self Theoretical Framework usefully illuminates the conscious and unconscious material of public international law. In the process of applying the collective self framework, this chapter seeks to establish a new theory of public international law.

The bridge between the collective self framework and public international law is the concept of the *global collective self*. The global collective self is the culmination and intersecting point of the diverse range of collective selves in the international community. It specifically reflects the collective will and values of the nation-states. The foundation of the UN in 1945 was a powerful symbol of a variety of different collective selves throughout the world connecting to form an autonomous, socially constructed *global collective self*, with independent and binding laws, courts, institutional fora and language. This global collective self has become increasingly ‘conscious’ through the homogenising forces of globalisation, which produce standardised modes of communication, finance, transport, and law (Levine, 2010, pp. 159-160). Nation-state sovereignty is increasingly being challenged, with global cooperation on the environment, trade, international criminal law and the concept of the responsibility to protect (ICISS Report, 2005).

The global collective self is therefore conceptualised in this thesis as a socially constructed collective self constituted by inter-subjective knowledge and meaningful practices. It is argued that this global self exists in a co-constitutive relationship to public
international law. This chapter conceives public international law as one manifestation of the global collective self, with expressions of collective consciousness and the collective unconscious material. Other manifestations of the global collective self include international relations, religions and cultures. Therefore, the position of this thesis is that public international law expresses the collective consciousness of the global collective self in the form of:

- Collective representations (international laws, declarations, conferences, recommendations, meetings, and speeches); and
- Reflective processes, such as court proceedings, academic research, and the activities of mass media that consider and assess whether the conscious agenda is being realized.

However public international law is also influenced by the unconscious material of the global collective self, for example:

- Cultural complexes;
- The persona/shadow complex;
- The anima/animus syzygy; and
- Archetypes.

It is therefore argued that the phenomenon of public international law is inextricably linked to collective identity formation and collective values in the global collective self. Accordingly, engagement with international law often involves collective analyses of psychological and sociological identity. It is argued that a theory of public international law as a manifestation of a ‘conscious’ global self is able to explain the inherent complexities, dichotomies and dualities of international law.
This chapter begins by exploring the theoretical context for this theory of public international law. It provides a review of the seminal approaches to the theory of public international law. There are no existing theories of public international law that acknowledge the role of the global collective self, collective consciousness or unconscious collective material. However this thesis maintains that all existing theories are valid interpretations of international law, and reflect the diverse range of perspectives that are possible in relation to a complex phenomenon. If hundreds of people are looking at a large monument from different angles, each observer will highlight different aspects of the monument from their unique perspective. Notwithstanding, this chapter concludes that a new, ‘holistic’ theory of public international law is necessary to acknowledge the role of collective consciousness and the collective unconscious in the global collective self.

The Theory of International Law

This thesis is concerned with the phenomenon of contemporary public international law, which is deemed to have commenced in 1945 with the foundation of the United Nations. The thesis acknowledges that public international law has evolved over many centuries, and is based upon the concepts of state sovereignty and consent, which were codified in the Treaties of Westphalia (1648) and the Treaties of Utrecht (1713) (Reus-Smit in Baylis, Smith and Owens, 2008, pp. 281-285). However it is beyond the scope of this thesis to analyse the pre-UN history of public international law because the thesis considers the global collective self to have palpably manifested itself in the institutions of the UN, and the UN Charter. Prior to the formation of the UN, the global collective self was developing its consciousness, however this consciousness was fragmented and disconnected. The post-UN structure of public international law is amenable to
ontological analysis because of its common language (multilateral treaties), narrative and institutions.

Since the creation of the UN in 1945, public international law has been analysed from many different perspectives. What is it? Whose interests does it serve? Has it been effective in meeting the goals of the UN Charter? Does it shape or reflect the international community? Indeed, does an international community even exist? In an address to the 2011 Australia and New Zealand Society of International Law Annual Conference, Charlesworth noted that international law is unique among other legal disciplines because of its constant existential crises. As such, determining the ontology of public international law is an extremely complex process, as Rosalyn Higgins writes:

“When we ask ‘What is international law?’, we are in fact asking several questions. We are asking: What is its nature? Is it a body of rules? To whom does it apply? Who ‘regulates’ the application of international law? Why should anyone comply with it? Where is international law to be found?” (Higgins, 1994, p. 2).

It is crucial for this thesis to clarify the ontology of public international law in order to establish common understandings of its nature, to be explicit about the assumptions that are being made in the thesis, and to separate the theory and the practice of public international law.

I. The Two Paradoxes of International Law

In the course of finding ontological categories for public international law, it becomes clear that it contains irreconcilable patterns, tendencies, and compulsions. It is the argument of this chapter that there are two inherent paradoxes in international law that existing ontological categories do not adequately explain: the process paradox and the identity paradox. The *process paradox* relates to the fundamental inconsistency of
international law: while international law effectively regulates international society in many ways, it concurrently fails in other fundamental ways. The identity paradox is associated with the national and transnational roles of international law; it simultaneously represents the unilateral will of nation-states, and the collective will of the global community as an emergent separate identity.

Even a cursory analysis of international law reveals the process paradox. On the one hand, public international law regulates the material life of the world efficiently and effectively: aeroplanes fly internationally, nation-states set up and abide by free-trade agreements, women are afforded equal opportunities in many countries, goods and services are exchanged across borders, citizens of one nation-state are able to live and work in other nation-states, post is sent between nation-states, and people in one country have access to raw materials from another. This level of cooperation inspires idealists to maintain that humankind is “naturally cooperative, sharing and loving” (Steiner, 1980, p. 335), and that we should cultivate an international system “based on international law and organization” (Steiner, 1980, p. 336).

On the other hand, international law routinely fails to compel or prevent actions that symbolise the worst of the international system and humanity, for example, armed conflicts, genocide, nation-states refusing to allow refugee applicants to land on their shores, climate change, and unequal trade policies. The gravity of such events in the public imagination often leads to theoretical conclusions that nation-states only care about power, and that international law is ineffective. These are ‘realist’ arguments and Miriam Steiner observes that according to realists, humankind is by nature “aggressive, exploitative and selfish” (Steiner, 1980, p.335). Accordingly, a realist will recommend a
political “balance of power to keep states in line” (Steiner, 1980, p.336) rather than a system influenced by international law.

According to Corbett, international law fails to prevent grave injustices in the global community because of the absence of common values in the global community. He writes:

“What is principally missing is the measure of agreement on supreme common values, the sense of community, loyalty, and mutual tolerance which within the State make compulsory institutions bearable” [emphasis added] (1959, pp. 273-274).

J.L. Brierly has also written extensively on the nature of public international law. He makes sense of the process paradox inherent in international law by dividing the international community into two spheres. He writes,

“…the paradox of the international society is that, whilst on the material side it is far from primitive, and therefore needs a strong and fairly elaborate system of law for the regulation of the clashes to which the material interdependence of different states is constantly giving rise, its spiritual cohesion is, as we have already seen, weak, and as long as that is so the weakness will inevitably be reflected in a weak and primitive system of law” (Brierly in Harris, 2004 [1963], p. 3).

This excerpt is interesting in that Brierly explains the paradox of international law by dividing the law into two streams: law for the material aspects of international life and law representing the spiritual cohesion of international life. This thesis seeks to use the notion of ‘spiritual cohesion’ as a springboard, in order to analyse what affects spiritual cohesion in the global community.

The process paradox is linked to the other central paradox of public international law: the identity paradox. This refers to the fact that international law simultaneously plays out in
the geographical and cultural territory of both national and transnational identities. On one hand,

“The scope of international law has increased significantly throughout the twentieth century. It now pervades international relations and national political and legal systems…[it] is a mechanism for distributing power and resources in the international and national communities” (Charlesworth and Chinkin, 2000, p. 1).

On the other hand, many theorists argue that due to the concept of sovereignty, public international law is often constructed as a highly complex and sophisticated voluntary system that lacks the enforcement capacities of ‘real law.’ This perspective was summarised by Corbett, who claimed:

“The reserved domain and the whole legal concept of sovereignty correspond to the fact that the State remains in the hearts and minds of men the highest center of human authority and chief guardian of the most treasured values…the State continues to be for practical purposes the chief end of man. So long as this is so, whatever their covenants or declarations, governments will not assume in practice a position of general subjection to a law of nations” (1959, pp. 273-274).

For Corbett, the State is the apex of authority and identity, and Corbett’s argument places ‘the hearts and minds’ of the nation-state collective as primary in determining the bindingness of international law. However Corbett was writing in 1959 and Brierly in the early 1960s (the nation-state era). Since then, there has been a palpable transnational shift towards the global community as an emergent collective of values, ‘spiritual cohesion’ and common interests. There is now clear evidence of nation-states increasingly combining their collective will in order to combat transnational problems in relation to crime, climate change and terrorism. According to Hermann Mosler (1980), two elements are necessary for the existence of an international legal community:

(1) “The fact that a certain number of independent societies organised on a territorial basis exist side by side, and
(2) The psychological element in the form of a general conviction that all these units are partners mutually bound by reciprocal, generally applicable, rules granting rights, imposing obligations and distributing competences” (Mosler, 1980, p. 2). Undoubtedly, both of these elements are present in contemporary international society. Indeed, Mosler argued that these elements were present when he was writing in 1980. Transnational problems increasingly require cooperative responses, and non-state actors such as international organisations and institutions such as the ICC are gaining prominence. Leonard notes, “the ICC exemplifies the ceding of authority, by states to international regimes” (2005, p. 206). As international institutions and regimes form a collective, a global identity emerges as a separate entity that is more than just the sum of its parts.

II. Is International Law ‘Law’?

Underpinning the process and identity paradoxes of international law is the fundamental question of whether international law actually constitutes law. Indeed, a lot of international legal commentary concentrates on the fact that it is not ‘law’ in the strict sense, and much analysis of international law pivots on how it is defined and conceptualized. In his treatise on international law, Oppenheim declared, “Almost from the beginning of the science of the Law of Nations the question has been discussed whether the rules of International Law can be called legally binding” (1905-1906, p. 4). Similarly, D’Amato has written,

“Many serious students of the law react with a sort of indulgence when they encounter the term international law… But it cannot be true law, they maintain, because it cannot be enforced: how do you enforce a rule of law against an entire nation, especially a superpower such as the United States or the Soviet Union?” (1985, p. 1293).

This argument was borne out in the case of Military and Paramilitary Activities in and
against Nicaragua (Nicaragua v. United States of America, Jurisdiction and Admissibility, 1984 ICJ Rep. 392 June 27, 1986) in which the ICJ ordered the US to pay reparations to Nicaragua and the US blocked enforcement of the judgment through the UN Security Council (herein UNSC).

Oppenheim defines law as “a body of rules for human conduct within a community which by common consent of this community shall be enforced by external power” and defines community as the body of a number of individuals more or less bound together through such common interests as create a constant and manifold intercourse between the single individuals (1905-1906, p. 8). Clearly, for Oppenheim, international law is not ‘law’ because it lacks the enforcement by an external power. It is also questionable whether Oppenheim views international society as comprising a ‘community.’ Morgenthau argued that public international law was best understood as a contractual system, writing:

“Most rules of IL formulate in legal terms identical or complementary interests. It is for this reason that they generally enforce themselves, as it were, and that there is generally no need for specific enforcement action. In most cases in which such rules of international law are actually violated despite the underlying community of interests, satisfaction is given to the wronged party either voluntarily or in consequence of adjudication…” (1993 [1948], pp. 312-313).

However this neo-realist argument views the global sphere as a “competitive struggle for survival in an anarchic international system in which international law, international organizations, and morality have but scant influence” (Joyner, 2006, p. 251). The basic point to convey is that the status of international law ‘as law’ is blurred. As a result of this uncertainty about whether international law fits into the category of ‘law,’ many theorists have developed different interpretations of the ontology of international law.
III. The Ontology of International Law

As a result of these irreconcilable paradoxes in public international law, its ontology has been heavily contested in the scholarship. Accordingly, theorists have created several alternative ontological categories: as universal reason codified in principles (Grotius, 1631), international customary law or international ethics (Brierly, 1963), an international form of contract law (Morgenthau, 1948), a normative system (Higgins, 1994), a dynamic process of reaching agreement among conflicting sovereign states (Tunkin, 1974), an ideology or an institution, for example, the UN, the ICJ or the International Criminal Court (see Scott, 1994 and 2004). In his seminal work, *The Function of Law in the International Community* (1933), Lauterpacht examined the relationship between international law and international politics, and particularly the role of nation-state sovereignty. He concluded that no event was exclusively ‘political’ or ‘legal’ and that most matters arising between states were accordingly justiciable in international arbitration. Lauterpacht viewed international law as founded on the impartiality of international lawyers, judges and arbitrators, who could “interpret the law so that everyone’s vital interests were secured” (Koskenniemi in Lauterpacht, 2011 [1933], p. xliii). Lauterpacht wrote,

“There is substance in the view that the existence of a sufficient body of clear rules is not at all essential to the existence of law, and that the decisive test is whether there exists a judge competent to decide upon disputed rights and to command peace” (2011 [1933], p. 432).

Koskenniemi has argued that international law is “a structure of argumentative moves and positions” and that “all legal practice is a ‘politics of law’” (2001 [1989], p.1). Kofi Annan refers to international law as “the language of global society” (2000, p. 11). Other theorists have endorsed the view of international law as language, categorising this theory as “a neo-New Haven approach” (Wessel, 2010).
Even those scholars who claim to avoid theory and focus on the practice of international law (such as the late Ian Brownlie) implicitly adopt a positivist ontology, whereby:

“The modern positivist recognizes the externally limited nature of sovereignty if there is to be any international law at all, so he is not fazed by the lack of an Austinian sovereign for the international legal order. Equally, he recognizes the limits of legal language as a vehicle for automatic, self-applying rules and acknowledges, therefore, a creative role for the law-applier…” (Warbrick, 2000, p. 626).

Shirley Scott attempts to address the ontological complexity in her definition of international law, as:

“a system of rules, principles and concepts that govern relationships between states and increasingly international organisations, individuals and other actors in world politics” (2004, p.1)

Yet this definition is still predicated upon the fact that international laws govern relationships between states, where many realists in international relations theory would argue that international law is, in fact, irrelevant or secondary in terms of inter-state relations. In this vein, Morgenthau claimed that the international laws that do exist are based upon the principle of reciprocity and sovereignty, which “is not at all inconsistent with a decentralized, hence weak and ineffective, international legal order” (1954, p. 288).

According to Brierly, “It has often been said that international law should be classed as a branch of ethics rather than of law” (in Harris, 2004, p. 1). Brierly likens international law to a system of customary law,

“upon which has been erected, almost entirely within the last two generations, a superstructure of “conventional” or treaty-made law, and some of its chief defects are precisely those that the history of law teaches us to expect in a customary system” (Brierly, 1963, in Harris, 2004, p. 3).

Yet interestingly, Brierly notes that the problem is not the absence of an enforcement capacity in public international law. In fact, he points to the acceptance of law in the collective that gives the law credibility. He observes:
“...the weakness of the international law lies deeper than any mere question of sanctions. It is not the existence of a police force that makes a system of law strong and respected, but the strength of the law that makes it possible for a police force to be effectively organised. The imperative character of law is felt so strongly and obedience to it has become so much a matter of habit within a highly civilised state that national law has developed a machinery of enforcement which generally works smoothly, though never so smoothly as to make breaches impossible. If the imperative character of international law were equally strongly felt, the institution of definite international sanctions would easily follow” [emphasis added] (Brierly, in Harris, 2004, p. 3).

In the language of this thesis, Brierly is interpreted as saying that international law is influenced by the collective will; and that if the collective has a strong enough conviction on a particular issue, then public international law will reflect that conviction.

IV. The Functions of International Law

Another theoretical approach that is used to conceptualise the ontology of international law is functionalism, although it is a wide-ranging theory and has different interpretations depending upon the discipline in which it is applied.20 To broadly speak of functionalism is to draw on “constructs such as system, context, situation, role, function and relationship” (Johnston, 1988, p. 19). It is useful to analyse the functions of international law because this acknowledges that the international system is characterised by interdependencies and paradoxes, and not by absolutes. Functionalism also recognises that international law continues to serve a function even when states violate it, for example in the case of the use of force, by placing limits on how a war may be conducted (Rochester, 2006, p. 78).

20 Compare, for example, Slaughter Burley (1993, pp. 205-239) and the work of functionalist and neo-functionalist sociologists such as Talcott Parsons and Jeffrey Alexander.
From the perspective of functionalism, the ontology of international law is explained in relation to the functions that it performs in the international system. The primary role performed by international law is its provision of law, defined as the rules and substance of positivist legal argument. It is argued that violations do not render international law ‘un-binding’ or diminish its role. Rather, it has the opposite effect, according to a judgment of the ICJ:

“If a State will defend its conduct by appealing to exceptions or justifications within the law itself…the significance of that attitude is to confirm rather than weaken the rule” (Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits) (1986) ICJ Rep 14 at [186]).

The second role performed by international law is the provision of a communicative function and institutional fora. According to Kratochwil, “international law provides a common language and framework for the exchange of claims in the argumentative process between States” (1989, p. 35). The communicative function is intricately connected to the binding character of international law due to its determinacy and validity in international relations, as distinct from ethics or morality for example (Onuma, 2003, p. 27). When there is a collective decision to be made or course of action to be taken in the international community, it is spoken in the ‘international law language’ by reference to ‘the UN Charter’, ‘custom’, ‘resolutions’, ‘prohibitions’, ‘authorisations’ and ‘vetoes’. The use of this language emphasizes the significance of international law as the common denominator of predictable State behaviour and induces parties “to move in certain directions…towards the settlement of conflicts” (Onuma, 2003, p. 27). International law also provides an institutional forum for debates, diplomacy and decision-making. These fora are made manifest in the UNGA, the UNSC, the ICC and the ICJ. These institutions derived from international law have validity for a majority of nation-states as the fora in which international problems are communicated.
An additional role played by international law according to functionalism is the intermeshing of national and international bureaucracies. This concept is drawn from the work of Slaughter Burley (1993, pp. 205-239). An example of this intermeshing is the several international agencies and organisations involved in the routine negotiations of women’s rights in public international law, for example UN Women, the CEDAW Commission, the Commission on the Status of Women, and the UN Human Rights Council. These international organisations are required to work closely with national bureaucracies to facilitate information exchange. Further, such international agencies play an integral role characterised by relative neutrality, acting on behalf of, yet also in place of, national bureaucracies.

Functionalists also point to the symbolic roles played by international law that contribute to its multi-dimensional ontology. The first symbolic role is a value-declaratory function. Whereas the communicative function is explicit and based on shared language, the value-declaratory function is implicit, and based on “shared understandings” of the common future of states (Onuma, 2003, p. 30). This function speaks to the normative aspirations of states to create a peaceful cooperative world and urges states to ratify treaties to this end. The value-declaratory role is a somewhat hidden yet significant function of the human rights law regime, because it admits that while there will be violations, the shared understanding of the regime is to prohibit violations where possible. Functionalism therefore maintains some perspective in terms of acknowledging the roles of international law: its inability to prevent violations is not representative of its overall trajectory towards preventing and healing violations in the future. This is how functionalism explains the process paradox.
According to functionalists, the final symbolic role performed by international law is its legitimating function. It is commonly acknowledged by political and legal theorists that states seek to justify their actions by reference to international law (White in Coady and O’Keefe, 2005, pp. 38-39). While realism, positivism, and functionalism offer a comprehensive ontology of public international law in relation to the routine roles that it plays in the international community, this thesis argues that they do not address two hard questions:

(i) How is the identity of the international community conceptualized; and
(ii) How does one make sense of the dichotomies and dualities in public international law?

V. The Inadequacies of International Law

Ontological categories of international law have also been created to acknowledge its inadequacies. New Approaches to International Law (NAIL) encompasses a diverse range of peripheral scholars that question and engage with the foundations of international law. These scholars have formed clusters such as critical legal studies, feminist theory, Third World approaches to International Law, postcolonial legal studies, New Approaches to International Economic Law and critical race theory (Skouteris, 2012).

Third World Approaches to International Law (TWAIL) refers to a critical approach to international law theory that analyses the opposition between international law and colonisation. Anghie points to the imperial character of international law, “animated by ‘the civilizing mission’- the project of governing non-European peoples” (2005). This argument has specifically been made in relation to women’s rights; that women’s rights as enshrined in CEDAW represent relativistic Western feminism, and that they have been

B.S. Chimni, in his article ‘Third World Approaches to International Law: A Manifesto,’ (2006) argues that international law is a tool of recolonisation. In this context, Chimni uses the term recolonisation

“to indicate…the reconstitution of the relationship between State and international law so as to undermine the autonomy of third world States and to the disadvantage of its peoples” (2006, p. 3).

According to Chimni, this is happening because:

“International law is playing a crucial role in helping legitimize and sustain the unequal structures and processes that manifest themselves in the growing north-south divide. Indeed, international law is the principal language in which domination is coming to be expressed in the era of globalization. It is displacing national legal systems in their importance and having an unprecedented impact on the lives of ordinary people” (2006, p. 3).

Feminist legal theorists have also developed theories of international law based upon its shortcomings. Feminists criticize the patriarchal nature of legal language, and argue that international law is based on the assumption that men are the norm, and women are a deviation from the norm. Charlesworth and Chinkin’s The Boundaries of International Law: a Feminist Analysis (2000) represented “the first study applying a feminist analysis to a general overview of international law, rather than just examining discrete areas where international law has a specific impact on women” (Phuong, 2002).

Other feminists in international law have studied gendered narratives, such as rescue, helplessness and victimization, both at the level of individuals and at the level of states. For example, Anne Orford traces the existence of such narratives in relation to military intervention (1999; 2002). Orford writes,
“...the desire to intervene militarily in cases of crisis is a product of the deeper narratives and flows of meaning within which texts about intervention are inserted. The narratives of the new interventionism create a powerful sense of self for those who identify with the hero of the story...these narratives operate not only in the realm of state systems, rationality and facts, but also in the realm of identification, imagination, subjectivity and emotion” (1999, p. 679).

According to Orford, these ‘deeper narratives’ and ‘flows of meaning’ are disseminated through everyday language, media reports and political soundbites (1999, p. 682). These narratives and stories “create worlds inhabited by characters such as states, foreign capital and international organizations, with whom the readers of these stories are invited to identify” (Orford, 1999, pp. 682-683). Orford’s work on narratives is directly relevant to this thesis as it demonstrates the way in which unconscious material can be transmitted, and gives support to the idea of an “amorphous international community” (Orford, 1999, p. 680).

Janet Halley has argued that feminists themselves may advertently or inadvertently perpetuate unhelpful gendered narratives. Halley identifies the ‘Injury Triad,’ as the basis of feminist analysis in international law which is “female injury + female innocence + male immunity” (2008, p. 324). Feminists assume that women are innocent in the creation of their injuries and presume that men are responsible. This removes agency from women and reinforces the male perpetrator/female victim binary, which is at the heart of women’s rights law.

Halley critiques what she refers to as governance feminism in the development of international criminal law. Halley describes governance feminism as:

“the incremental but by now quite noticeable installation of feminists and feminist ideas in actual legal-institutional power. It takes many forms, and some parts of feminism participate more
effectively than others... Feminists by no means have won everything they want – far from it – but neither are they helpless outsiders. Rather, as feminist legal activism comes of age, it accedes to a newly mature engagement with power” (2006, p. 340).

In essence, Halley observes “a fascinating infiltration of specifically feminist activism into generalist forms of power-wielding” (2006, p. 343). As examples of governance feminism, Halley refers to the ad hoc criminal tribunals (the International Criminal Tribunals for Rwanda and the former Yugoslavia) and the elimination of consent as a defence to genocidal rape (2008, p. 78). Halley suggests that feminists may no longer be able to critique the international system as though they are still on the outside looking in. This is because feminists have become integrated into the power structure that they once criticised. As Rosenblum observes, “This anti-identitarian impulse is correct insofar as strict adherence to identity may lead to unintended consequences” (2011, p. 102).

The contributions of Charlesworth, Chinkin, Orford and Halley are a sample of the seminal works of feminist international lawyers. As will be shown in the following chapter and throughout the case study, a wide variety of feminist approaches to international law have engaged with its masculine structure and nature.

Critical legal theorists also come under the NAIL umbrella. It is beyond the scope of this thesis to analyse all critical legal scholars, however there are two that are directly relevant to this thesis: David Kennedy and Nathaniel Berman. Kennedy and Berman have both drawn on psychology and sociology in their analysis of international law, and are attentive to the role played by language in the formation of law. David Kennedy analysed the nature of language and discourses in international law in his early work. He wrote, “Language is neither simply a system of names for tangibles nor a system of value. Rather it is a shared and largely unconscious structure which both controls and permits communication by the
Kennedy claims that every discourse “generates dark zones, silences or represses certain aspects, makes impossible the formulation of certain questions” (Contreras and De La Rasilla, 2008, p. 782). As such, the language of international law must be deconstructed because according to Kennedy, “international law discourse is a conversation without content – a ritualized exchange which avoids confronting the very question it purports to address (1980, p. 376). In The Dark Sides of Virtue, Kennedy argues that international human rights law is “riddled with hidden risks, costs and unintended consequences” (2004, pp. 3-35, paraphrased by Rosenblum, 2011, p. 103). One example Kennedy offers is where human rights treaties are watered down in an attempt to attract the largest number of signatories (2004, pp. 24-25). His work challenges the ontology of international law and he is considered one of the fathers of the NAIL movement (see the publication, New Approaches to International Law: The European and the American Experiences, 2013, edited by Beneyto and Kennedy).

Nathaniel Berman is another NAIL scholar whose work is relevant to this thesis because he uses psychoanalysis and cultural studies to analyse the paradoxes and contradictions contained in international laws and discourses (Berman, 2011). He uses the concepts ‘passion,’ ‘fantasy,’ ‘desire’ and ‘ambivalence’ to deconstruct discourses about nationalism and colonialism and to “envisage a treatment of nationalist conflicts” (Delcourt, 2008). In his analysis, he pinpoints collective agency and unconscious repetition of nationalist claims (Berman, 2011). Berman’s work has similarities with this thesis because he attempts to uncover the unconscious impulses inherent in international
law and international lawyers, although the focus of his analysis is nationalism.\textsuperscript{21}

\textbf{VI. International Law: Post-Ontology?}

Finally, it is necessary to note that Thomas Franck has argued that international law has evolved into a mature legal system whose fundaments no longer need to be analysed. Indeed, in his book, \textit{Fairness in International Law and Institutions} (1995), he claimed that international law had reached a “post-ontological era” (p. 6). Prost and Clark interpreted Franck’s comment as follows:

“International lawyers, in his view, have become emancipated from the constraints of defensive ontology and need no longer feel obliged to justify and prove the existence of “their” law. With the reality and positivity of international law as an accepted proposition, Franck submits, they are now free to end the cycle of doubt and introspection that has for so long inhibited their discipline” (2006, p. 341).

Similarly, Slaughter has written, “International legal rules, procedures, and organizations are more visible and arguably more effective than at any time since 1945” (1993, p. 205). However this thesis has used a diverse range of theories in international law to demonstrate that the ontology of public international law is far from settled. One needs only to read the Review Essay Symposium on Philip Allott’s \textit{Eunomia} and \textit{The Health of Nations} (2005), which includes comments from many illustrious members of the international law profession, to realise that international law has not overcome its existential crisis. In fact, the ontology of international law is currently facing a new existential challenge in the form of fragmentation. As Prost and Clark describe,

“Whilst it is no longer questioned in terms of its existence as a legal order worthy of the name, it is, nonetheless, challenged as regards its unity. Faced with the contemporary explosion of legal

\textsuperscript{21} Two other NAIL scholars who write at the intersection with international relations are Ryan Goodman and Derek Jinks. Goodman and Jinks do not subscribe to the idea of an international community though they are included here because they utilise sociological techniques in their analysis: see their co-edited publication (with Andrew K. Woods), \textit{Understanding Social Action, Promoting Human Rights} (2012).
norms, increasing normative specificity, the proliferation of international organizations and the
multiplication of international tribunals, some have highlighted the risk of “fragmentation” of
international law into a more or less coherent set of “normative islands” constituted by partial,
autonomous and perhaps even “self-contained” legal sub-systems” (Prost and Clark, 2006, p. 342).

In fact, in 2002, the International Law Commission (herein ILC) prepared a study group
on the Fragmentation of International Law, and produced a report in 2006. It is beyond
the scope of this chapter to analyse the nature and extent of fragmentation of international
law, however it is sufficient to make the point that the ontology of international law
remains unsettled.

A New Theory of International Law

Up to this point, this chapter has argued that the ontology of public international law is
essentially contested. However, despite all of the existing ontological categories for public
international law, this thesis argues that none manages to encapsulate the complexities of
its true nature. Furthermore, no theories adequately explain the paradoxes inherent in
international law. It is also interesting to note that in all of the existing ontological
categories, theorists focus solely upon the effects and consequences of international law
(for example, conventions, resolutions, court proceedings, armed conflict, trade boycotts)
and do not consider the causes or influences on international law (for example, collective
identity and collective will). Thus, existing theories of international law are developed by

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22 See the conclusions of the report at:
23 The discipline of international relations is similarly difficult to categorize from an ontological perspective,
and several theories have been developed to explain the international system, including (neo-) realism,
(neo-) liberalism, social constructivism, Marxism and feminism. Ontologically, international relations
theorists have primarily grappled with the agent-structure problem. This refers to whether individuals as
agents have the capacity to freely make their own choices, or whether patterns in the system— the structure—
limit or influence such choices (Wendt, 1999). Many notable theorists have approached international
relations from the agent-structure question (see, in particular, Wendt, 1999 and Wight, 2006).
treating its outcomes as primary, and then making secondary inferences about human nature.

This thesis argues that the nature of international law is inextricably linked to the nature of the global community. Therefore any ontology of international law must be bound up with an ontology of the global community. As such, this thesis offers an alternative ontological category for public international law, which is essentially a theory of collective global existence. It is argued that ontological uncertainties in international law continue to exist because the global collective self is not acknowledged in the theory of public international law. Accordingly, international law is presumed to involve the interplay of static entities lacking in consciousness. As such, theorists tend to approach international structures as though they are fixed, unresponsive and insensitive, only altered and transformed through the grassroots efforts of agents.

The work of Philip Allott is one exception in this regard. Philip Allott is Professor Emeritus of International Public Law, University of Cambridge. In his works Eunomia: New Order for a New World (1990/2001) and The Health of Nations: Society and Law Beyond the State (2002), Allott constructs a grand theory of international society, with the self-proclaimed aim of creating “a new total view of society and law” (1990, p. xlvi). Allott insists that law must be understood in the context of society, and thus, international law must be understood in the context of international society.

He uses a social constructivist method to argue that “human society is a product of human imagination and sense of possibility” (Knop, 2005, p. 315). For Allott, “the international system itself is nothing other than a structure of ideas” (1990, p. xlv). Throughout his
work, Allott makes constant comparisons between the psychology of the individual and the collective; personifying the collective and collectivising the individual. He also acknowledges the unconscious material in the collective, writing,

“the idea of an unconscious level within the human mind, which is surely confirmed by our own introspection and experience, seems to imply that we have within us, as the ultimate source of our behaviour, a sort of hidden god or demon, wilful and inscrutable, acting as an ultimate explanation both of the need for social and moral order and of our relentless propensity to violate social and moral order. And, since the public mind of a society flows out from and back to the private minds of society-members, we may expect that human societies will reproduce on a large scale the structural characteristics and hence the pathological potentialities of the mind of the individual human being” (2002, p. 29).

It is clear that this thesis has some distinct overlaps with Allott’s analysis. Both approaches highlight the connection between the individual and collective mind, and the conscious and unconscious motivators of behaviour. These connections are then applied to international law. However Allott adopts Freud’s interpretation of consciousness, while this thesis adopts the Jungian approach to consciousness. Yet across the range of psychological approaches, both the Freudian and Jungian approaches are similar, and come under the umbrella of ‘depth psychology’ as they represent unique interpretations of the unconscious. For instance, Allott observes that in the Freudian scheme,

“it is the past which dominates the whole process [of consciousness], a past which is remembered or repressed or imagined…A society has a specific relationship to its past. At any particular time, its own self-understanding, its own theory of itself, includes an idea of its own history, partly remembered, partly repressed, partly imagined” (Allott, 2002, p. 29).

In Allott’s article, ‘The Concept of International Law’ (1999) he directly connects the nature of international law to the nature of the international collective, writing: “the state

24 He writes, for example: “When social psychopathology takes the form of collective fantasy-thinking, repressing the unthinkable, believing the unbelievable, then social psychotherapy may be impossible if society succeeds in suppressing all alternative thinking” (Allott, 2002, p. 30).
of international law at any one time reflects the degree of development of international society” (p. 31). He further writes, “Law establishes possible futures for society, in accordance with society’s theories, values and purposes” (p. 31). The approach of this thesis has the following fundamental assumptions about international law in common with Allott’s philosophical approach:

(i) That it is a product and reflection of international society; that

(ii) That international society has conscious and unconscious elements; and

(iii) International society is constructed by the theory that the global collective develops of itself.

At a symposium to mark Allott’s retirement as Chair of International Public Law at Cambridge in 2004, he commented:

“In Eunomia I postulate the idea that societies have a theory of themselves. Over time they construct an idea or image, an analytical construct – theories of what the principles of the society are. To a very perceptive insider and perhaps to a slightly less perceptive outsider, it is possible to identify the theory of a society, which then means that most things in the society become deductive. And this is what ‘clashes of civilization’ seem to be about: they are clashes about the theory of a society, theocratic or democratic or whatever” (2005, p. 257).

The most significant question that Allott asks about international law is the following:

“Now, since international society is the direct opposite of national societies only in that it cannot have, as they have, a diversity of theories, this raises the very interesting question of what the theory of international society is (or could be). Is it merely an aggregate, or is it merely the theory propagated by the most powerful member of international society – or members – or is it something else? Could it possibly emerge, as in national societies? Could international society produce a theory from within itself? I argue that international society did produce a theory of itself, which is the structure we are so familiar with…” (2005, p. 258).
He contends that international law is a “universal social phenomenon— or, rather, legal systems seem to be, and to have been, a characteristic feature of social organization” (2003, p. 36). Ultimately, Allott is a utopian, believing that:

“as the emerging international society of the new century comes to be understood as a society, by human beings in general and by holders of public-realm social power in particular, international law will at last be enabled to act, at the global level, as an effective agent of human self-empowering and self-perfecting…in accordance with society’s highest values” (2002, p. 153).

I. International Law as a Reflection of the Global Collective Self

Building upon Allott’s work, this thesis attempts to take the next step and uncover the conscious and unconscious theories of international society that have been developed by the global collective self. As such, like Allott, this thesis argues that public international law is in fact a manifestation of a collective self that is alive, conscious, changing and malleable. And yet, unlike Allott, this thesis argues that the ever-present paradoxes of process and identity in the international system are simply indicative of the tensions between the conscious and unconscious aspects of the collective self. In fact, these dichotomies are evidence of dynamism and ‘aliveness.’ Ontologically, therefore, public international law is a dynamic product of an evolving and autonomous global collective self, which explains why it is difficult to find an adequate category or compartment for it. Therefore, this thesis develops a new theory of public international law that attempts to represent these unique characteristics.

II. A Co-Creative Relationship between the Global Self & International Law

The central argument of this thesis is that the global collective self co-creates and constructs global reality with the external facts of international life: international law, international relations, cultures and religions. In this thesis, ‘external facts’ are defined as
the outward aspects of reality, which are a culmination of the interplay between individual and collective selves. In the context of international law, examples of external facts include conventions, optional protocols, international conferences and negotiations, bilateral agreements, the jurisprudence of international courts, decisions to use force, and trade embargoes. The relationship between the collective self and external facts is undeniably co-creative. This means that the conscious and unconscious material of the global collective self reacts and interacts with external facts of international law. External facts exist in a constant interplay between the collective consciousness of international law (its objectives, expressed in laws, agreements, courts, and policy instruments) and the unwanted recurring patterns (unlawful behaviour and violations of agreements). In particular, the unconscious material of the global collective self (cultural complexes, shadow material and archetypes) is related to persistent violations of international law. Therefore, the collective self and its external facts are inextricably connected to one another, like the relationship of an individual self to the external facts of his or her life (their job, their relationships and their nationality).

*Figure 5.1: The Relationship between Collective Selves & External Facts*
As a result of this symbiotic relationship between the global collective self and international law, this thesis argues that the conscious objectives of the collective self will only be met if the collective self is able to become aware of and work through its unconscious material. If the collective self continues to repress its unconscious material, it will continue to attract the same recurring and unwanted patterns in international law. In collective and individual selves that are dominated by unconscious material, existence becomes a process of fumbling through the dark, one unconscious decision after the next.

Therefore, this thesis argues that international law is an external fact of international life: a manifestation of the global collective self. Other external facts of international life include sovereign states, cultures, religions, international relations and international laws. This argument is compatible with both the sociological and the Jungian position. In this sense, the power of international law is related to the dynamics of the collective self at any given time. Jungian analyst Hart observes:

“Although we seem to be governed by external powers…the true dominants of psychological and spiritual life are centers of energy and imagery working on us from within, and projected onto the world around us…Projection pulls us into the world, so convincingly that it is easy to think we are totally shaped by that world.” (Hart in Young-Eisendrath and Dawson, 1997, p. 90).

Psychiatrist Roger Walsh supports this argument. Walsh is Professor of Psychiatry, Philosophy, and Anthropology at the University of California at Irvine, and author of *Staying Alive: the Psychology of Human Survival* (1984). Walsh argues that the problems –external facts– of international society (for example, ecological destruction, overpopulation and resource depletion) are “symptomatic of wounds in our individual and collective minds” (1994, p. 120). He writes,
“These global symptoms reflect and express the faulty beliefs and perceptions, fears and fantasies, defenses and denials, that shape and misshape our individual and collective behavior… Our collective crises mirror our collective consciousness” (Walsh, 1988, p. 2).

Walsh applies the methods of psychiatry to the state of the global community, finding evidence of dysfunctional collective thoughts, beliefs and assumptions, collective defence mechanisms and social and psychological immaturity.

Thus far, this thesis has developed a new theory of international law as an external fact of international life, which co-creates ‘reality’ with the global collective self. The following section explores how the dualities and dichotomies of the collective self are directly linked to the dualities and dichotomies of international law. In this way, international law is akin to a mirror for the global collective self.

III. The Dualities of International Law

If international law is a mirror for the global collective self, then the dualities of international law are a reflection of the dualities in the global collective self. This is an important point, because it is argued that the resolution of dualities in the global collective self will, in turn, resolve the dualities of international law, and vice versa. Identifying dualities is a critical step in the individuation process. Alschuler writes, “The theory of opposites, including their conflict and tension, is a cornerstone of Jungian psychology” (2006, p. 65). This is because the individuation process is characterised by the reconciliation of opposites:

“The individuation process itself is energized by a tension of various opposites: between consciousness and the unconscious, ego and shadow, personal and collective, spirit and nature, and so on” (Alschuler, 2006, p. 65).
As such, the Self-realisation –individuation– of individual and collective selves comes about through the reconciliation of psychic dualities or opposites (conscious/unconscious, individual/collective, masculine/feminine and particular/universal) (Colman in Papadopoulos, 2006, p. 154). Jung writes that the “differentiation of the self from the opposites” can bring relief (healing) from inner conflict (1950 [1921], para. 174). At the level of the collective, Samuels argues,

“We have to explain how oppositions such as…black/white, female/male, thinking/feeling actually work on the cultural level. What kind of profound split in humanity and human ideation is being carried by these opposites? What can we learn from fantasies of bringing them together in some kind of conjunction?” (1993, p. 329).

By way of case study, the remainder of this thesis works with the duality of masculine and feminine in the global collective self, which is also played out in international law.

**Conclusions**

This chapter has introduced a new theory of international law, based on the collective self framework. According to this thesis, international law is conceived as an ‘external fact’ of international life, which co-creates ‘reality’ with the global collective self. In this way, international law is created in relationship to a conscious and dynamic social agent that also possessed unconscious material. It is argued that this theory explains the complexities, paradoxes and inherent dualities of international law. To contextualise this approach, this chapter provided an overview of the seminal approaches to theory in international law. This overview analysed the process and identity paradoxes of international law, the variety of ontological categories for international law, and whether international law in fact constitutes law. It was concluded that the only other compatible theory with the approach of this thesis is one developed by Philip Allott, author of *Eunomia: New Order for a New World*, and *The Health of Nations*. 
The chapter utilised the new theory of international law to make a connection between the inherent dualities in the global collective self and the inherent dualities in international law. For example, the collective consciousness in the global self equates to the explicit objectives of international laws, whereas the collective unconscious is linked to the persistent violations and paradoxes of international law.

The remaining chapters of this thesis apply this theory of international law to the case study of gender justice. It analyses the dualities of the international law relating to males and females, as males have been traditionally associated with masculine consciousness, while females have been associated with feminine consciousness.
Chapter Six: Case Study Part One
The Conscious Material of Gender Justice in International Law

“The human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels, and the eradication of all forms of discrimination on the grounds of sex are priority objectives of the international community” (para. 18, Vienna Declaration and Program of Action, 1993).

The previous chapter developed the theory of international law as an expression of the global collective self. Based on this theory, this chapter introduces the case study of the thesis, which explores the relationship of international law to gender justice.25 The remainder of the thesis examines how gender justice is formed, transformed and disseminated in the global community. This case study is concerned with how international law relates to the female and the feminine in contrast to the male and the masculine. It examines how the sexes are treated differently in international law, and whether this difference actually translates into gender equality or discrimination. The collective self framework will be used in order to understand:

(i) The nature of collective consciousness in gender justice;
(ii) The unconscious material that influences the pursuit of gender justice; and
(iii) Whether and/or how this unconscious material can be processed.

As the first section of the case study, this chapter considers the conscious agenda of the approach to gender justice in public international law. The collective consciousness of gender justice is characterized by the perception that women have traditionally suffered from different forms of discrimination, and have consequently suffered from gender

25 This chapter demonstrates that gender justice in international law is framed as the pursuit of women’s rights to non-discrimination and equality with men. As defined by the World Health Organization (2012), ‘sex’ refers to the biological and physiological characteristics that define men and women, whereas gender refers to ‘the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women’ (2012). This thesis conceptualises gender justice as the equal empowerment of masculine and feminine consciousness in the international community.
inequality. As such, this perception has translated into a movement for ‘women’s rights’ in international law. Through a variety of legal mechanisms, women have been granted access to the public sphere through collective representations such as the UN Charter and the International Bill of Human Rights, the Commission for the Status of Women, the CEDAW, the creation of the CEDAW Committee and the CEDAW-OP. The chapter provides an overview of the thematic trajectory of women’s rights in international law since the creation of the UN. This constellation of activities is considered by this thesis to constitute the ‘collective consciousness’ of international law in relation to the status of women.

The Collective Self & Gender Justice in International Law

Figure 6.1 below indicates how the collective self framework is applied to gender justice in international law. Throughout the remaining chapters, this case study will explore the conscious and unconscious aspects of the relationship of international law to gender justice. It will consider how it has been constructed; how it has unfolded; what material is conscious, and what material has been repressed.
I. The Collective Consciousness (Ego) of Gender Justice in International Law

The collective consciousness (ego) of gender justice in international law relates to the conscious and aware experience of gender issues in the global collective self. According to the collective self framework, the conscious experience is reflected in social devices such as language, collective representations, self-conceptions and self-reflectivity (Burns and Engdahl, 1998a) and psychological urges such as the consolidation of identity and the construction of a persona (Alschuler in Young-Eisendrath and Dawson, 1997, p. 286).

The collective consciousness is expressed through collective representations and self-reflectivity, which are presented in the following sections.

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*Figure 6.1: The Collective Self Theoretical Framework & Gender Justice in International Law*
II. Collective Representations of Gender Justice in International Law

The collective representations and dominant narrative identity of international law in relation to gender justice is founded on the traditional division of men and women between the male public sphere and the female private sphere. As a result of this division, women were formally denied access to the public sphere in national laws. The collective consciousness in relation to gender justice is articulated by Charlesworth and Chinkin:

“Although its forms differ significantly across societies and cultures, the phenomenon of women’s subordination is found worldwide. Throughout the world women are economically, socially, politically, legally and culturally disadvantaged compared with similarly situated men” (2000, p. 4).

Throughout history, in every nation-state around the world, women have been legally prohibited from voting, holding public office, owning property, making autonomous decisions about marriage and family planning, and accessing certain forms of education and employment (see Lerner, 1979; and Cook, 1994). In 1911, women were entitled to vote in only two nation-states (UN Women, 2011b). As recently as September 2011, women in Saudi Arabia were given the right to vote and run as candidates in municipal elections from 2015 (Reuters, 25 September 2011). Saudi Arabia was the final nation-state to remove an explicit legal prohibition against women’s political involvement.

In addition to the lack of civil and political rights for women, the global collective self has now become conscious of the fact that women have also been denied protection of the unique and occasionally vulnerable aspects of their bodies, with violence against women –including honour killings and maimings– a common occurrence, and adequate reproductive healthcare often lacking in many regions (see Nussbaum, 2005, pp. 167-183; Meetoo and Mirza, 2007, pp. 187-200; and Gijsbers Van Wijk, Van Vliet, and Kolk, 1996, pp. 707-720). In fact, prior to the creation of the UN, the life experience of women
in many respects was considered to be private, or at least a matter for national laws. Accordingly, ‘public sphere’ rights and protections for women in the global collective self were non-existent for much of history, until the late nineteenth century, when many nation-states began to acknowledge the role of women in the public sphere (Ramirez, Soysal and Shanahan, 1997, pp. 735-745).

This historical denial of public sphere rights for women has been linked to endemic discrimination against women. Discrimination in this context is defined as “the denial of equal enjoyment of rights” (Kramarae, 2000, p. 396). Kramarae writes that women have historically been affected by direct discrimination, indirect discrimination and systemic discrimination. Direct discrimination occurs when women are disadvantaged merely because of their sex; indirect discrimination occurs “when policies or practices that appear to be gender-neutral have the effect of discriminating against women,” and systemic discrimination “refers to the whole range of gender-based assumptions and expectations that form part of the socialization and education process” (2000, pp. 396-397). Based on this systemic discrimination against women, the concept of gender justice was framed as the pursuit of women’s rights to non-discrimination and equality with men.

Today, in many nation-states, these forms of discrimination against women and lack of access to the public sphere continues in the following ways:

(i) Across the globe, women are poorly represented in leadership roles in the context of formal political institutions and business (Krook and Childs, 2010);
(ii) Women “perform multiple roles in productive labour, paid and unpaid, that are not reflected in official measures of economic activity” (Heyzer in Schuler, 1995, p.x);

(iii) Women are victims of violence or the threat of violence in almost every area of life, including slavery, trafficking, forced detention, forced prostitution, female infanticide, sterilization and domestic violence (Edwards, 2011);

(iv) Women are specific targets of sexual and gender-based violence (SGBV) during armed conflicts (Askin, 2003);

(v) Women in many nation-states are subject to “harmful and sometimes life-threatening traditional practices, rooted in long-held cultural assumptions and/or religious beliefs” (Heyzer in Schuler, 1995, p.x); and

(vi) Women are more likely than men to live in poverty, endure a poor quality of life, and earn less for the same work (Charlesworth and Chinkin, 2000, pp. 5-10).

According to a Trustlaw poll, the world’s most dangerous countries to be a female in 2011 are Afghanistan, Congo, Pakistan, India, and Somalia. In the poll, two hundred and thirteen gender rights experts evaluated several critical factors as part of the poll methodology, which included six key risks: sexual violence, non-sexual violence, cultural or religious factors, discrimination and lack of access to resources, and trafficking.

The poll’s findings contain the following statistics in relation to gender justice. In Afghanistan, 87% of women are illiterate; one in eleven Afghan women has a chance of dying in childbirth; and 70–80% of Afghan women face forced marriage. In the Congo, 1,152 women are raped every day; 57% of pregnant women are anaemic; and women cannot sign legal documents without their husbands’ authorization. In Pakistan, more than
one thousand women and girls are victims of honour killings every year; 90% of women experience domestic violence in their lifetimes; and women earn 82% less than men. In India, 50 million girls were killed in the past century in the practice of female infanticide or foeticide; approximately 100 million women and girls are estimated to be victim of human trafficking; and 44.5% of girls are married before the age of 18. Finally, in Somalia, 95% of girls face genital mutilation mostly between the ages of 4 and 11; only 7.5 percent of parliamentary seats are held by women; and only 9 percent of women give birth in a health facility (Trustlaw, 15 June, 2011). In the face of this global picture of female oppression and discrimination, and many statistics such as these, feminist theories emerged to make sense of gender inequalities.

III. Collective Representations as Feminist Theory in International Law

From the eighteenth century onwards, individual and collective selves came to realise that women did not need to be confined to their ‘private’ territory; women could access the public sphere and have this access legally protected. During this time, there were grassroots movements for women’s suffrage, education, guardianship of children after divorce and legal majority in the US, Sweden, France, Great Britain, Denmark, Norway, and Australia (LeGates, 2001). These campaigns were the priorities of the retrospectively coined ‘first-wave feminism,’ as women began to articulate their denial of access to the public sphere. Notable first-wave feminists include Mary Wollstonecraft (1792), Marie Stopes (1918) and Simone de Beauvoir (1949). This thesis suggests that these expressions were the result of the awakening of feminine consciousness in the global self, and that feminism and the suffragette/women’s rights movements evolved in response to this nascent expression of collective consciousness. As such, the public sphere divisions
between men and women have been at the foundation of many feminist approaches to the theory of international law, which will be described below.

It is argued that feminism was a fundamental step in the collective consciousness relating to gender justice, because women collectively needed a surge of energy to enter masculine territory and the public sphere. This surge of energy emerged from the individual consciousness of many individuals, and particularly those feminist suffragettes engaged in transnational work, such as Jessie Street and Eleanor Roosevelt (Street, 2004). Their energy came in many forms: anger, volatility, passion, resentment, enthusiasm, emancipation and excitement. All of these collective emotions were essential in the leap for women from the private sphere into the public sphere, and young women in various parts of the world who now automatically enter the public sphere without question are undoubtedly the beneficiaries of the feminist project.

The various strands of feminism are outlined as follows (as summarized by Lansink, 2010, p. 2). Liberal feminism works toward the formal equality of men and women by “dismantling legal barriers to women being treated like men in the public sphere” (Charlesworth in Cook, 1994, p. 63). This approach has informed the approach of international law relating to women, for example the Convention on the Political Rights of Women (1953)26 and the CEDAW (1979). These conventions will be analysed further in the chapter. In contrast, radical feminism “explains women’s inequality and subordinate role in society as the product of domination by men” (Lansink, 2010, p. 2). Radical feminism critiques international law because men are the yardstick for women’s status,

and MacKinnon argues that “social relations between men and women are organized so that men may dominate and women must submit” and the law “keeps women out and down by preserving a hierarchical system based on gender” (1987, p. 45). In adopting a radical feminist approach, MacKinnon advises that we must look “for that which we have been trained not to see…and [identify the invisible]” (1987, p. 45). For radical feminists, the source of women’s oppression is patriarchy, and they argue that the patriarchal system cannot be reformed, but must be overturned (Tong, 2009, p. 4).

Socialist and Marxist feminists claim that “it is impossible for anyone, especially women, to achieve true freedom in a class-based society, where the wealth produced by the powerless many ends up in the hands of the powerful few” (Tong, 2009, p. 4). Such feminists focus on class struggle and the exploitation of women’s labour, arguing that the source of women’s oppression is capitalism (Tong, 2009, p. 4).

Cultural or relational feminism calls for a revalidation of ‘typical’ female values, and argues that feminine approaches such as caring, cooperation and nonviolence are the answer to many problems of government (Lansink, 2010, p. 2), however this has been criticized as an essentialist theory that takes the innate differences between men and women as pre-determined (Taylor and Rupp, 1993).

Postmodern feminism appears to be a response to all of the other ‘feminisms’ in the sense that it “rejects ‘grand’ narratives and universalist explanations of oppression while focusing on difference, the specific and local, and analysis of legal texts.” (Lansink, 2010, p. 2). Postmodern feminists such as Judith Butler (1990) argue that sex is constructed through language. Other responses to the grand narratives of feminism include third world
feminism, critical race feminism, and African feminism/womanism, which emphasise the relationships between gender and race, economic exploitation, poverty and imperialism. According to Lansink, “African feminism and womanism is a broad and holistic approach that does not situate itself in opposition to men, but is based on the participation of women and men, collaborating to fight racial and other forms of oppression and poverty” (2010, p. 2).

Finally, eco-feminism is a movement that reveals the parallels between feminism and environmentalism. Eco-feminists show that the characteristics that define the masculine/feminine duality (independence versus dependence, control versus anarchy and power versus passivity) are also evident in the relationships between the Global North and the Global South, colonizing and indigenous cultures and cultures and the natural environment. As a result, eco-feminists argue that international law has adopted the same thematic approach of victimising women, the indigenous, the Global South and nature. Ecofeminism is founded upon a perceived connection between women and nature that is derived from a shared history of oppression by a patriarchal society (Ruether in Adams, 1993).

As Lansink indicates, feminist theories in international law can also be located according to the three waves of feminism. The first wave feminists aimed at achieving formal equality between women and men according to standards of neutrality and sameness. The second wave of feminism focused on specific issues affecting women such as those relating to child care, pregnancy and sexual harassment. Finally, “third wave feminism philosophically relates to postmodernism, and moves beyond the differences between women and men to address other dualities of race, class, sexual orientation, religion,
culture and similar issues” (Lansink, 2010, p. 2). This belief of course leads to the inevitable conclusion “that female subordination is rooted in a set of customary and legal constraints that blocks women’s entrance to and success in the so-called public world” (Tong, 2009, p. 2).

IV. Collective Representations as ‘Women’s Rights’ in International Law

Since the foundation of contemporary international law, the granting of public sphere rights of women has been a conscious objective. It must be noted that contemporary international law has never formally discriminated against women, although many feminist scholars have argued that women have been invisible in its creation. For example, Charlesworth and Chinkin argue that:

“the absence of women in the development of international law has produced a narrow and inadequate jurisprudence that has, among other things, legitimated the unequal position of women around the world rather than challenged it” (2000, p. 1).

Nevertheless, it is clear that international law was heavily influenced by liberal feminism. The preamble to the UN Charter states that one of the objectives of the UN is:

“To reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”

Further, Article 1(3) of the UN Charter states that the UN aims

“To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”

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27 This approach to ‘contemporary women’s rights in international law’ does not ignore the work of women’s groups and suffragettes during the nineteenth century and the World Wars, for example, the International Congress of Women, lobbying for women’s rights in the League of Nations and the National Women’s Party of the US (Charlesworth and Chinkin, 2000, pp. 15-16).

28 As of August 2012, the UN has 193 members.
The UN also ensured that there would be equal representation of men and women in its principal and subsidiary organs in Article 8 of the Charter:

“The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.”

Since the first General Assembly of the UN, women’s rights have been a focus in international law. During the first session of the UN General Assembly in London, on 12 February 1946, Eleanor Roosevelt, a United States delegate, read an ‘An Open Letter to the women of the world from the women delegates and advisers at the first Assembly of the United Nations.’ The letter said:

“We call on the Governments of the world to encourage women everywhere to take a more active part in national and international affairs, and on women who are conscious of their opportunities to come forward and share in the work of peace and reconstruction as they did in war and resistance.”

The letter also urged women:

“to recognise that the goal of full participation in the life and responsibilities of their countries and of the world community is a common objective toward which the women of the world should assist one another.”

This consciousness of women’s access to the public sphere was also evident in the United Nations Commission on the Status of Women (the CSW), which was established in 1946 to monitor the situation of women globally and to promote women's rights. The aim of CSW was and is to prepare recommendations and reports to the Council on promoting women's rights in political, economic, civil, social and educational fields (the public

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29 The letter was signed by Mrs. Eleanor Roosevelt (United States), Mrs. M. Lefaucheaux (France), Miss Minerva Bernardino (The Dominican Republic), Mrs. Dalen (Norway), Mrs. Verwey (The Netherlands) and twelve other women delegates to the General Assembly.

30 By the United Nations Economic and Social Council by resolution 11(II) of 21 June 1946.
sphere). The Commission also makes recommendations to the Council on urgent problems requiring immediate attention in the field of women's rights. During its first session, the CSW articulated the following objective:

“To raise the status of women, irrespective of nationality, race, language or religion, to equality with men in all fields of human enterprise…” (E/281/Rev.1, 25 February 1947).

The *Universal Declaration of Human Rights* (‘the UDHR’) was adopted by the General Assembly in 1948, and it recognises the equality of men and women in its initial articles. Article 1 states:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Interestingly, the rights of women and other ‘minority’ groups were acknowledged in the same article, which suggested that their collective experience of oppression was homogenous. According to Article 2:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” [emphasis added].

The UDHR led to the first international legal agreement created solely for women: the *Convention on the Political Rights of Women (1953)*. This Convention was concerned with women’s suffrage, and was designed to provide equality of political representation for men and women. The Convention was necessary to allow women to access the public

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31 ECOSOC Resolution establishing the CSW, E/RES/2/11, 21 June 1946.
sphere, considering that in 1945 only twenty-five of the original fifty-one UN member-states allowed women equal voting rights with men (CSW, 2005, p. 5). The language of the Convention continues the theme of liberal feminism, with men used as the benchmark for women’s rights and freedoms. According to Article 1:

Women shall be entitled to vote in all elections on equal terms with men, without any discrimination [emphasis added].

Article 2 states:

Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination [emphasis added].

Article 3 similarly maintains:

Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination [emphasis added].

This Convention was followed by other women-specific international law documents with a similar theme:

(i) The Convention on the Nationality of Married Women (1957), which removed a husband’s nationality as a wife’s reference point for nationality;

(ii) The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962), which ensured full and free consent for marriage and a minimum age for marriage; and

(iii) The Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1965).

These agreements were considered to be “the first international agreements on women’s

rights in relation to marriage that were adopted by the UN” (CSW, 2005, p. 5).

Additionally, the Convention on Discrimination in Education (1960) removed women’s barriers to education by requiring member-states in Article 3 to:

(a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education; and

(b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions.

These Conventions all shared a strong theme of granting the existing public sphere rights of men to women. This was the conscious approach to gender justice, which involved raising the status of women to the status of men. The International Bill of Human Rights adopted this approach to gender justice with the inclusion of the rights of women and other minorities. Article 2(1) of the International Covenant on Civil and Political Rights (1966) (‘the ICCPR’) provides the same clarification:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status [emphasis added].

Article 3 of the ICCPR indicates that the Convention will be applied to men and women equally:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Furthermore, Article 26 of the ICCPR provides:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The *International Covenant on Economic, Social and Cultural Rights (1966)* (‘the ICESCR’) also adopts this attitude to the rights of women, as stipulated in Article 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Similarly, Article 7 of the ICESCR explicitly protects the right of women to have equal pay for work of equal value:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value *without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work* [emphasis added].

With a growing corpus of international law relating to women, Hevener recognised that women’s rights law fell into three analytic categories: protective, corrective and non-discriminatory (1986). She argued, “The protective category describes exclusionary provisions which reflect a societal concept of women as a group which either should not or cannot engage in specified activities” (1986, p. 71). Examples of protective treaties

include the *Convention Concerning Night Work of Women Employed in Industry* (1948), and the third *Geneva Convention (1949)* that demands different treatment for female prisoners of war (Charlesworth and Chinkin, 2000, p. 213). “The corrective category “[alters and improves] specific treatment that women are receiving, without making any overt comparison to the treatment of men in the area” (Hevener, 1986, p. 72). Examples of corrective provisions include the *Convention for the Suppression of the Traffic in Women and Children* (1947), or the abovementioned *Convention on the Nationality of Married Women*. Finally, Hevener states that the non-discriminatory category “rejects the concept of women as a separate group. It reflects the idea of equal treatment between men and women” (1986, p. 172). Examples of non-discrimination provisions are found in the *UN Charter* and the *International Bill of Rights*.

During the 1960s and 1970s the collective consciousness continued to expand. This became evident as the feminist movement gathered momentum, and women’s rights became a separate regime in international law; not merely a correction or addition to existing conventions such as the UN Charter, the ICCPR and ICESCR. Yet

> “Although these instruments reflected the growing sophistication of the UN system with regard to the protection and promotion of women's human rights, the approach they reflected was fragmentary, as they failed to deal with discrimination against women in a comprehensive way…Thus, the General Assembly, on 5 December 1963, adopted its resolution 1921 (XVIII), in which it requested [UN ECOSOC] to invite the CSW to prepare a draft declaration that would combine in a single instrument international standards articulating the equal rights of men and women” (UN, 1999).

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41 See articles 14, 16 and 49 of the *Geneva Convention (III) relative to the Treatment of Prisoners of War*, opened for signature 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950).
This led to the creation of the *Declaration on the Elimination of Discrimination against Women (1967)*, which was adopted by the General Assembly on 7 November 1967.

While the Declaration lacked the force of a binding treaty, it asserted in Article 1 that:

“Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity.”

Article 2 called for all appropriate measures to be taken to “abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women.” The Declaration also restated obligations contained in previous treaties, such as those pertaining to civil and political rights, marriage, family, and education. The statements of equality in marriage contained in Article 6 and employment in Article 10 were quite controversial at the time (UN, 1999).

In response to, and as a part of, this expansion of consciousness in women’s rights, the General Assembly declared 1975 as the International Women’s Year and 1976-1985 as the UN Decade for Women (United Nations, 2011). During this period, after much activity from the CSW and world conferences, the keystone agreement of women’s rights in international law was established: the *Convention on the Elimination of All Forms of Discrimination Against Women (1979)* (‘the CEDAW’). The CEDAW was adopted by the General Assembly on 18 December 1979, opened for signature on 1 March 1980, and entered into force on 3 September 1981. This Convention was specifically created to give force to the norm of non-discrimination in relation to women. According to the United Nations Treaty Collection, as of mid-2012, the CEDAW has near universal membership.

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with 187 parties. The seven UN member states that have not ratified or acceded to the convention are Iran, Nauru, Palau, Somalia, Sudan, Tonga, and the US. ‘Discrimination against women’ is defined in Article 1 of the Convention as:

“Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

Articles 2 and 3 make it clear that the aim of CEDAW is to allow women to access the public sphere in the same way as men. Article 2 commences as follows:

“States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle…”

Articles 2(b)-(g) of the CEDAW are concerned with the use of law to transform the status of women in the public sphere. In Article 3, States Parties agree to:

“take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men [emphasis added].

The philosophy of liberal feminism is evident in these articles. It presumes that the system itself does not need correcting, and that gender justice will be achieved by granting women equal legal rights to men.

In the remainder of the Convention, the CEDAW also protects women from:

(i) Prejudices, discriminatory customs, and gender stereotyping (Article 2(f) and Article 5); and

(ii) Trafficking and exploitation through prostitution (Article 6);

The CEDAW entitles women to equality in political and public life (Articles 7-8), equality regarding nationality (Article 9), equality in education (Article 10), equality in employment (Article 11), equality in health care (Article 12), equality in economic life, sport and culture (Article 13), equality before the law (Article 15) and equality in marriage and family relations (Article 16). Some feminists expressed their discomfort with these norms of women’s rights law, with Charlesworth in particular writing, “the international prohibition on sex discrimination promises equality to women who attempt to conform to a male model, and offers little to those who do not” (in Cook, 1992, p. 64). This means that the measure of ‘equality’ as constituted in international law, is still a male one (Charlesworth in Cook, 1992, p. 64). The problem with this approach to equality is that “international law is constructed upon particular male assumptions and experiences of life where ‘man’ is taken to represent the ‘human’ (Charlesworth and Chinkin, 2000, p. 17). Despite these misgivings, this was the picture of gender justice in 1979: feminists and international law fighting for women’s rights and equality in the global collective self. As of 2012, 187 nation-states are legally obliged to adopt the philosophical and practical objectives of the CEDAW: the CEDAW mission.\footnote{It must, however, be noted that fundamental reservations to the CEDAW have been made by several states parties, which have been argued to undermine the object and purpose of the treaty: http://www.un.org/womenwatch/daw/cedaw/reservations.htm} The next section examines the self-reflectivity that emerged after the CEDAW.
Conscious Reflectivity in Women’s Rights

The potency of the CEDAW indicated that the collective consciousness in the global collective self had become sufficiently developed to create monitoring mechanisms for women’s rights in international law. As such, the CEDAW represented the first binding international law document in women’s rights that contained in-built reflective mechanisms. It is argued that this signalled a significant shift in consciousness, when collective representations became sufficiently consistent and embedded that they were able to form reflective processes to monitor their progress. As stated in previous chapters, reflectivity is:

“based on a shared code, a particular language, collective representations, and capabilities and skills of representing and talking about ‘self’ and its various activities, including its inner states and processes, and changes in these” (Burns and Engdahl, 1998a, p. 70).

In essence, reflectivity is an effective way for a collective to absorb experiences and interactions, and to avoid being overwhelmed by unconscious material. This chapter argues that monitoring mechanisms in international law constitute a clear example of collective reflectivity in the global community.

Reflectivity of the CEDAW is ensured in Part V of the treaty. Part V establishes a Committee, and stipulates the form and procedure of the reflection conducted by the Committee. The CEDAW Committee was established by Article 17(1) of CEDAW:

“For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women” [emphasis added].

This is an interesting article because it stipulates that the individuals who are fit for reflection of the global collective self must be “experts of high moral standing and competence in the field covered by the Convention” [emphasis added]. The experts are
elected by States Parties, and consideration must be given to “equitable geographical
distribution and to the representation of the different forms of civilization as well as the
principal legal systems.” It is argued that the global collective self, through the medium of
international law, is expressing the prerequisites for quality reflectivity.

The nature of the reflectivity is provided for in Article 18. States Parties undertake to
submit reports on the legislative, judicial, administrative or other measures which they
have adopted to give effect to the Convention:

(a) Within one year after the entry into force for the State concerned; and
(b) Thereafter at least every four years and further whenever the Committee so
requests.

Byrnes and Freeman note,

“The reporting procedure provides an international forum where the government is on display
globally and nationally, and provides the occasion for a UN-designated group of experts to make
targeted substantive recommendations on steps that must be taken to advance women’s equality
(2012, p. 12).

After considering the reports, the CEDAW Committee issues ‘Concluding Observations’
that “evaluate the adequacy of measures adopted to give effect to CEDAW and makes
recommendations for improving the protection and promotion of women’s human rights”
(Australian Human Rights Commission, 2011). In addition, by virtue of Article 24, States
Parties undertake to adopt all necessary measures at the national level aimed at achieving
the rights enshrined in the Convention. Another reflectivity measure in CEDAW is the
interstate complaint procedure in Article 29, which allows two or more State parties to
refer disputes about the interpretation and implementation of CEDAW to arbitration, and
if the dispute is not settled, it can be referred to the International Court of Justice. This
mechanism was the subject of many reservations and has not as yet been utilised (UN,
Minor notes that despite this range of reflectivity mechanisms, the CEDAW reflectivity in the 1980s and 1990s was initially limited and thus ineffectual, because:

(i) There were restrictions on CEDAW Committee meeting times each year;
(ii) The CEDAW was dependent on nation-state self-reporting, which was inherently unreliable;
(iii) The CEDAW Committee did not make formal recommendations to states parties; and
(iv) The CEDAW Committee was unable to pronounce a state party in violation and unable to order a remedy for violation (1994, p. 137).

I. Complaints Procedures in Women’s Rights

Prior to the CEDAW-OP, there were forms of redress in international law that were available to women whose rights had been infringed. For example, there is the Commission for the Status of Women (CSW) communications process, whereby any individual, NGO, or group may submit communications in the form of complaints, appeals, or petitions to the CSW relating to alleged violations of human rights that affect the status of women in any country in the world.47 According to the CSW, “These communications are used in order to identify emerging trends and patterns of injustice and discriminatory practices against women” (UN Women, 2011). Furthermore, the Special

Rapporteur on Violence Against Women\(^\text{48}\) has established procedures to seek information from governments concerning specific cases of alleged violence.

There are additional complaints procedures available to women through other human rights conventions. The *First Optional Protocol to the International Covenant on Civil and Political Rights*\(^\text{49}\) (‘the ICCPR-OP’) allows individuals whose countries are party to the ICCPR and the Protocol to submit written communications to the UN Human Rights Committee.\(^\text{50}\) Individuals can claim that their rights under the ICCPR have been violated if they have exhausted all domestic remedies. In the case of *Broeks v the Netherlands*,\(^\text{51}\) the Human Rights Committee decided that Article 26 of the ICCPR prohibits discrimination against women in law or in fact in any field regulated by public authorities and that the scope of Article 26 is not limited to civil and political rights.

In *The Mauritian Women Case*,\(^\text{52}\) the Human Rights Committee found that a Mauritian law that deported foreign husbands and not foreign wives of Mauritian citizens made an adverse distinction on the grounds of sex on the right to be free from arbitrary and unlawful interference with family and was therefore in breach of the ICCPR (UN, 2009).

In the case of *Avellanal v Peru*,\(^\text{53}\) Ms. Avellanal complained to the Human Rights

\(^{48}\) Appointed in 1994 by resolution 1994/45 of the Commission on Human Rights. Her mandate was renewed by resolution 1997/44 of the Commission.


\(^{50}\) See ‘Human Rights Committee,’ site accessed 13 July 2012, [http://www2.ohchr.org/english/bodies/hrc/](http://www2.ohchr.org/english/bodies/hrc/).


Committee because the Peruvian Supreme Court held that she was not entitled to sue the tenants in apartments that she owned for overdue rent because she was married, and under the Civil Code, only husbands could represent matrimonial property. The Committee found that the Peruvian law led to Ms Avellanal being denied equality before the courts and thus constituted discrimination on the ground of sex. The Committee argued that Peru was under an obligation to take effective measures to remedy the violations of the ICCPR suffered by Ms Avellanal (UN, 2009). These cases are examples of the way in which legal reflectivity in women’s rights has been used to give women access to the public sphere rights of men.

Women are also entitled to use reflectivity procedures under the following international conventions, provided the authors of the complaints have exhausted all available means of seeking redress at the domestic level, and their governments are parties to the convention:

(i)  *The Convention on the Elimination of All Forms of Racial Discrimination (1966)*\(^{54}\) (Article 14);

(ii) *The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)*\(^{55}\) (the communications procedure in Articles 21-22 and the inquiry procedure in Article 20);

(iii) *The Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006)*\(^{56}\) (the communications procedure in Article 1 and the inquiry procedure in Article 6);

(iv) *The International Convention on the Protection of the Rights of All

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\(^{55}\) *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).

Despite these extensive complaints mechanisms in the UN network, between 1979 and 1999, there was no specific framework for women to seek redress under the CEDAW in relation to issues of gender justice. As such, on 6 October 1999, the General Assembly adopted the CEDAW-OP: the *Optional Protocol to the Convention on the Elimination of*

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57 Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, opened for signature 18 December 1990, 2220 UNTS 3.
58 Established by ECOSOC Resolution 5/1 of 18 June 2007, replacing the previous 1503 Procedure of the UN Commission of Human Rights.
The CEDAW-OP was a measure that was designed to strengthen the CEDAW normative system. Yet it was also designed to acknowledge the vast differences in women’s experience, and to encourage women from different nation-states to use international law as a vehicle through which to escape oppression. The CEDAW-OP was adopted in order to give the CEDAW Committee— the body that monitors States parties’ compliance with the Convention— competence to receive and consider complaints from individuals or groups within its jurisdiction.

In Article 2, the CEDAW-OP provides for a Communications Procedure, which allows either individuals or groups of individuals to submit individual complaints to the Committee. Communications may also be submitted on behalf of individuals or groups of individuals, with their consent, unless it can be shown why that consent was not received. Complaints must concern a country that is a party to the protocol. In considering complaints, the Committee is empowered to confidentially bring a communication to the attention of the State Party, provided the complaint has consented to disclosure of their identity to the State Party. The State Party is given six months to provide a written explanation or statement to the complaint.

Article 8 of the CEDAW-OP establishes an inquiry procedure that allows the CEDAW Committee to initiate a confidential investigation where it has received reliable information of grave or systematic violations by a State Party of CEDAW rights. If necessary, the Committee may visit the territory of the State Party with the consent of the State Party. Any findings, comments or recommendations will be transmitted to the State

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Party concerned, to which it may respond within six months. Article 9 establishes a follow-up procedure for the Committee. After the six-month period referred to in Article 8, the State Party may be invited to provide the Committee with details of any remedial efforts taken following an inquiry. As of mid-2012, the CEDAW-OP has 104 parties. Of the parties, Bangladesh, Belize, Colombia and Cuba have opted out of the Inquiry Procedure.

The CEDAW-OP was an interesting development in the international law relating to women, because it created a nexus of reflectivity between individuals and international law. This established a connection between individuals and the global collective self. Not only were nation-states urged to adopt the CEDAW mission, but the CEDAW-OP gave individual women in nearly all nation-states around the world a chance to identify and realise themselves through the lens of the CEDAW regime. However the CEDAW-OP is limited because it lacks compelling sanctions and penalties for non-compliance, though this is the case with all of the complaint mechanisms of human rights law. The following section outlines how the reflectivity processes of the CEDAW-OP have been utilised.

II. The Quality of Reflectivity: CEDAW Committee Cases

Since entering into force on 22 December 2000, the CEDAW-OP has been used by individuals to complain about violations of CEDAW in the form of gender-based violence, preventable maternal mortality, forced sterilization, a prohibition against headscarves, sex trafficking, paid maternity leave, denied access to contraceptives and gender stereotyping in a rape trial (Australian Human Rights Commission, 2011). As of

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60 For up-to-date records of signatures, ratifications and accessions, see the United Nations Treaty Collection: <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en>
the end of December 2011, the CEDAW Committee has considered complaints in seventeen individual communications submitted under the CEDAW-OP. Of these, eight complaints were inadmissible due to one of the following reasons:

(i) The facts of the complaint predated the entry into force of the CEDAW-OP for the State Party concerned, for example Muñoz Vargas and de Vicuña v Spain\(^{61}\) and Salgado v United Kingdom of Great Britain and Northern Ireland\(^{62}\).

(ii) The individual author of the complaint did not exhaust all domestic remedies for redress prior to complaining to the CEDAW Committee, for example B. J. v Germany\(^{63}\), Rahime Kayhan v Turkey\(^{64}\), Zhen Zhen Zheng v The Netherlands\(^{65}\), N.S.F. v United Kingdom of Great Britain and Northern Ireland\(^{66}\), and Dayras et al. v France\(^{67}\).

(iii) The individual author/s of the complaint lacked the quality of victims within the meaning of Article 2 of the CEDAW-OP, which provides that authors of complaints must be “victims of a violation of any of the rights set forth in the [CEDAW] Convention,” for example G.D. and S.F. v France\(^{68}\).

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In one complaint (Nguyen v The Netherlands⁶⁹), a majority of the CEDAW Committee found that no violation had occurred because the Netherlands’ decision to offer Nguyen one form of maternity leave and not another fell within its discretion under the CEDAW, and did not amount to discriminatory treatment of the author of the complaint.⁷⁰

In the remaining eight complaints, the CEDAW Committee found that violations of the CEDAW had occurred. Two cases against Hungary are outlined as follows. In A.T. v Hungary,⁷¹ A.T. submitted a communication claiming that she had been subjected to regular, severe domestic violence and serious threats from her common law husband, and that Hungary had failed to protect her against that violence. One of the serious incidents of violence had occurred after the entry into force of the CEDAW-OP for Hungary, which the author argued was part of a “clear continuum of regular domestic violence” (para. 3.6, Comm. 2/2003). The CEDAW Committee found that:

“The author has been battered by this same man, her former common law husband. She has been unsuccessful, either through civil or criminal proceedings, to temporarily or permanently bar L. F. from the apartment where she and her children have continued to reside. The author could not have asked for a restraining or protection order since neither option currently exists in the State party. She has been unable to flee to a shelter because none are equipped to accept her together with her children, one of whom is fully disabled. None of these facts have been disputed by the State party and, considered together, they indicate that the rights of the author under articles 5 (a) and 16 of the Convention have been violated” (CEDAW Committee, para. 9.4, Comm. 2/2003).

Based on the finding of a violation of CEDAW, the CEDAW Committee recommended

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⁷⁰ A dissenting opinion of Committee members, Naela Mohamed Gabr, Hanna Beate Schöpp-Schilling and Heisoo Shin argued that this denial of two source of maternity leave may constitute indirect discrimination based on sex.
that Hungary:

(a) Take immediate and effective measures to guarantee the physical and mental integrity of A. T. and her family; and
(b) Ensure that A. T. is given a safe home in which to live with her children, receives appropriate child support and legal assistance as well as reparation proportionate to the physical and mental harm undergone and to the gravity of the violations of her rights (para 9.6, Comm. 2/2003).

The Committee also made general recommendations for Hungary to take general measures such as:

(a) Respect, protect, promote and fulfil women’s human rights, including their right to be free from all forms of domestic violence, including intimidation and threats of violence;
(b) Assure victims of domestic violence the maximum protection of the law by acting with due diligence to prevent and respond to such violence against women (para 9.6, Comm. 2/2003).

In Szijjarto v Hungary,\textsuperscript{72} the author of the complaint alleged that she had been sterilized without her full and informed consent, in violation of the CEDAW. The sterilization occurred in the context of an emergency caesarean of the author’s stillborn baby. The author of the complaint had signed a form on the operating table, while she was disoriented and vulnerable, without understanding the meaning of the Latin term ‘sterilization.’ Despite the fact that the sterilization occurred prior to the entry into force of the CEDAW-OP for Hungary, the author argued that the effects of the sterilization were of an ongoing, continuing character. The CEDAW Committee agreed with the author because of the irreversible nature of the operation. The Committee found that the author’s rights under Article 10 (h), Article 12 and Article 16 of CEDAW had been violated because of the:

(i) The “permanent deprivation of the author’s reproductive capacity,”

(ii) The “failure of the State party, through the hospital personnel, to provide appropriate information and advice on family planning” and

(iii) The “failure of the State party to ensure that the author gave her fully informed consent to be sterilized” (paras 11.2-11.4).

The Committee recommended that Hungary compensate the author “commensurate with the gravity of the violations of her rights” (para. 11.5). The Committee also made the following general recommendations to Hungary:

(i) To take further measures to ensure that women’s reproductive health rights are known and adhered to by all relevant personnel in public and private health centres, including hospitals and clinics;

(ii) To review domestic legislation on the principle of informed consent in cases of sterilization and ensure its conformity with international human rights and medical standards, including the Convention of the Council of Europe on Human Rights and Biomedicine (“the Oviedo Convention”) and World Health Organization guidelines. In that connection, consider amending the provision in the Public Health Act whereby a physician is allowed “to deliver the sterilization without the information procedure generally specified when it seems to be appropriate in given circumstances.”

(iii) To monitor public and private health centres, including hospitals and clinics, which perform sterilization procedures (excerpts from para. 11.5, Comm. 4/2004).

This case represented “the first time an international human rights committee has held a government accountable for failing to provide necessary information to a woman to enable her to give informed consent to a reproductive health procedure” (Goldie, 2009, p. 20).

The exact nature of the recommendations in these cases is provided to demonstrate the
extent of the CEDAW Committee’s jurisdiction where a violation of the CEDAW has occurred. Clearly the power of the CEDAW Committee is limited to urging the State party in question to take certain actions, but the recommendations are useful from the perspective that they identify specific ways in which a State party can improve its gender justice. In response to the Committee recommendations in A.S. v Hungary, Hungary acted in 2008 by amending the Public Health Act to improve the provision of information and procedures to obtain consent in cases of sterilization. In 2009, Hungary announced that it would compensate AS for the sterilization operation (Goldie, 2009, p. 21).

Two Austrian communications concerned complaints of domestic violence that led to the deaths of the victims. In Goekce v Austria and Yildirim v Austria, the Committee found that Austria had committed violations of CEDAW because the two women in these separate cases had been killed by their husbands after a long period of violence.

“Goekce was subjected to physical violence and threats of violence over a period of at least three years, culminating in her fatal shooting by her husband…[and] Yildirim involved a similar tale of extended abuse, including threats of physical violence which culminated in the murder of a woman by her husband” (Byrnes, 2008, p. 521 and 526).

The complaints were made to the CEDAW Committee on behalf of the women’s living descendants by two Austrian NGOs (the Vienna Intervention Centre Against Domestic Violence and the Association for Women’s Access to Justice) that had assisted with the women prior to their deaths. The two women had sought, and been denied, adequate assistance from Austrian law enforcement agencies and courts.

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In both cases, the Committee held that while Austria had a comprehensive model to address domestic violence,

“the establishment by a State party of legal and other remedies to address domestic violence must be supported by State actors who adhere to the State party’s due diligence obligations” (para. 3.13, Comm. 17/2008).

In these cases, the police and the Police Prosecutor were aware of the dangers posed by the subjects’ husbands, and failed to respond to the subjects’ calls for help and protection. As such, the Committee found in these cases that the subjects’ rights to life and to physical and mental integrity were violated. The Committee provided a wide range of systemic recommendations for Austria to implement in relation to incidents of domestic violence, including: stronger implementation of existing legislation; the effective prosecution of perpetrators of domestic violence; better coordination among law enforcement officials and the cooperation of officials with NGOs; and the introduction of training programmes and education on domestic violence for those involved in the legal system (para. 12.3, Goekce v Austria). The Committee did not make a recommendation that Austria provide compensation to the families of Yildirim and Goecke.

These cases demonstrate the clear nexus between the individual and international law, whereby an international human rights Committee can hold a State accountable for acts of its officers that undermine the rights of individuals:

“Under what has become known as the concept or test of ‘due diligence,’ the Women’s Committee holds states responsible for ‘private acts’ if they fail to act with due diligence to prevent violations of rights, or to investigate and punish acts of violence, and to provide compensation” (Edwards, 2011, p. 167).

In response to the Committee’s recommendations, Austria introduced a series of policy measures to improve the responses of authorities to incidents of domestic violence.
The remaining cases where the CEDAW Committee found that a violation by a State party had taken place are summarized as follows:

(i) In *Vertido v The Philippines*, the author of the complaint was raped by her colleague, and the Filipino legal system allowed the case to remain at the trial level from 1997 to 2005 before a decision was reached, with the defendant acquitted. The CEDAW Committee found that “for a remedy to be effective, adjudication of a case involving rape and sexual offences claims should be dealt with in a fair, impartial, timely and expeditious manner” (para. 8.3, Comm. 18/2008). The Committee further found that the acquittal of the defendant was based on gender stereotypes and myths about rape and rape victims. As such, the Philippines government was in violation of the CEDAW.

(ii) In *V. K. v Bulgaria*, the author of the complaint was subject to years of abuse and domestic violence by her husband. The CEDAW Committee found that Bulgaria had violated CEDAW in its inadequate treatment of V.K., which was based on stereotyped notions of domestic violence, and women’s roles in marriage and the private sphere. The Committee also found that the unavailability of domestic violence shelters for women constituted a violation of CEDAW.

(iii) In *Abramova v Belarus*, the author of the complaint was placed in detention for five days after her arrest for “minor hooliganism” as a result

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of hanging blue ribbons and posters in order to draw attention to an upcoming European March. The author claimed that she was subjected to inhuman and degrading treatment and that detention in a cold cell amounted to torture. The Committee agreed that detention facilities that do not address the specific needs of women constitute discrimination, as per Article 1 of the CEDAW (para. 7.5, Comm. 23/2009). The Committee recognized “that the author of the communication suffered moral damages and prejudice due to the humiliating and degrading treatment, the sexual harassment and the negative health consequences suffered during detention” (para. 7.8, Comm. 23/2009).

(iv) In Teixeira v Brazil, the subject of the complaint died as a result of complications arising from a stillbirth when the subject was six months pregnant. The complaint was made by the subject’s mother. The author argued that Brazil failed to ensure access to quality medical treatment during delivery, thereby violating the subject’s right to life. The Committee agreed that the subject had been denied the subject adequate medical care in connection with her pregnancy, which subsequently led to her death. Brazil argued that the inappropriateness of the service was not imputable to it, but to the private health-care institution that provided the medical services. In response, the Committee noted that “the State is directly responsible for the action of private institutions when it outsources its medical services and that, furthermore, the State always maintains the duty to regulate and monitor private health-care institutions” (para. 7.5, 78 Teixeira v. Brazil, Communication No. 17/2008, U.N. Doc. CEDAW/C/49/D/17/2008 (2011).
Comm. 17/2008). Further, Brazil failed to provide adequate judicial protection for the subject’s family to seek redress after the event. All of these cases demonstrate the willingness of the CEDAW Committee to overcome stereotypical notions of a ‘woman’s role,’ and to encourage States parties to prevent discrimination against women at all levels. Although the CEDAW Committee is not empowered to compel States to act, the active participation of States in the complaints and in the implementation of Committee recommendations indicates that States recognize the integrity of the procedures. The relatively small number of complaints thus far makes it difficult for precedents to have been established, although one precedent may be that States are responsible for ensuring that their officers/actors carry out their due diligence obligations in gender justice. These principles have also been highlighted in the Inquiry Procedure and General Recommendations of the CEDAW Committee.

III. CEDAW Committee: Inquiry Procedure

In addition to the consideration of communications and complaints, the CEDAW Committee has also completed one inquiry procedure relating to systematic violations of the Convention in Mexico.⁷⁹ A joint request for this inquiry was made to the CEDAW Committee on 2 October 2002 by Casa Amiga, (a rape crisis centre in Ciudad Juarez, Mexico) and Equality Now (a US women’s NGO). This request was based on the widespread abduction, rape and murder of women in Ciudad Juarez from 1993 onwards. Mexico became a party to the CEDAW-OP on 15 March 2002. While many of the incidents of violence against women had occurred prior to the entry into force of the CEDAW-OP, the request argued that “the violations persisted and had continuing effects

on the victims” (Australian Human Rights Commission, 2002). In response to the request, the CEDAW Committee argued that the allegations were sufficiently grave as to warrant an inquiry.

In January 2005 the CEDAW Committee issued its final report. It found Mexico in violation of Articles 1-3, 5, 6 and 15 of the CEDAW, which relate to a woman’s right to non-discrimination, freedom from wrongful gender stereotyping, right to equality with men in all fields, freedom from trafficking and exploitation of prostitution, and equal legal rights in civil matters, contracts, property ownership, freedom of movement and choice of residence. According to the CEDAW Committee, Mexico also violated the Declaration on the Elimination of Violence Against Women (1993) and its General Recommendation 19, regarding violence against women. The Committee observed that the violence against women in Ciudad Juarez violated women’s basic human rights as:

“the most radical expression of gender-based discrimination. [The acts] represent a structural situation and a social and cultural phenomenon deeply rooted in customs and mind-sets…founded in a culture of violence and discrimination that is based on women’s alleged inferiority, a situation that has resulted in impunity” (quoted in Cook and Cusack, 2010, p. 166).

The acts in question were not isolated cases of violence, rather they “represented a structural situation rooted in customs and mindsets” (Goldie, 2009, p. 27). The Committee targeted Mexico’s attempts to adhere to CEDAW, finding that:

“While there is now a greater political will…to deal with discrimination and violence…the policies adopted and the measures taken…have been ineffective and have fostered a climate of impunity and lack of confidence in the justice system…Even the campaigns aimed at preventing violence…have focused not on promoting social responsibility, change in social and cultural patterns of conduct of men and women and women’s dignity, but on making potential victims responsible for their own protection by maintaining traditional cultural stereotypes” (CEDAW Committee quoted in Cook and Cusack, 2010, p. 166).
This inquiry recognized the link between sociocultural patterns and gender-based violence. The Committee made general recommendations that Mexico:

(i) Implement policies to prevent and combat violence, and programmes to restore the social fabric; and

(ii) Thoroughly investigate the crimes and punishment of the perpetrators, including punishing the negligence and complicity of public authorities in the murders and disappearances of women (Goldie, 2009, p. 28).

The Committee also acknowledged in its recommendations that Mexico needed a holistic gender perspective to transform the embedded traditional stereotypes of men and women that were maintained by its agents and officers. Cook and Cusack argue that the CEDAW Committee could have used this Inquiry as an opportunity to “identify the operative gender-based stereotypes that facilitated gender-based violence against women in Ciudad Juarez” (2010, p. 167). To this end, Cook and Cusack note that the CEDAW Committee could have reflected on the specific “attributes, characteristics and roles ascribed to the women of Ciudad Juarez” (2010, p. 167) for a more comprehensive and meaningful analysis of gender stereotyping. Nevertheless the first Inquiry of the CEDAW Committee was a “significant development in international women’s rights law” (Cook and Cusack, 2010, p. 167). While progress remains slow, Mexico has taken steps to respond to the Committee recommendations, enacting the General Act on Equality Between Men and Women in 2006, and the General Law on Women’s Access to a Life Free From Violence in 2007, and creating the Special Attorney’s Office to monitor investigations into femicide (Goldie, 2009, p. 29). Despite these legal actions, it will take time for the cultural stereotypes to be transformed, and violence against women in Mexico “remains socially pervasive” (Goldie, 2009, p. 29). In the meantime,
“The CEDAW Committee and other international and regional bodies have criticized Mexico for its ongoing failure to take adequate measures to address the situation of violence and the prevailing culture of impunity, and continue to monitor Mexico’s efforts in this regard closely” (Australian Human Rights Commission, 2011, p. 40).

The Committee is in the process of actively considering whether to institute an inquiry into the ban on artificial contraceptives in Manila City, the Philippines. This process has involved an initial request by Filipino NGOs in June 2008 and three supplemental requests in October 2008, April 2009 and July 2010 (Engender Rights, 2010).

IV. CEDAW Committee: General Recommendations

In addition to its consideration of State Reports, individual communications and inquiry procedures, the final aspect of reflectivity carried out by the CEDAW Committee is the drafting of general recommendations, as per Article 21(1) of the CEDAW. These recommendations were used initially to make suggestions to States based on the implementation of the Convention and the consideration of State reports. These recommendations were brief and examples of these early recommendations include General Recommendation 1 of 1986, which instructed States on the timing requirements for reporting, and General Recommendation 2 of 1987, which instructed States on the structure and submission of reports. Recommendations 3 and 4 of 1987 urged states to:

"effectively to adopt education and public information programmes, which will help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality

80 Unlike other human rights bodies, both the CERD and CEDAW Committees refer to their general comments as ‘general recommendations.’
81 Article 21(1) states:
1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.
of women”;


Since the Committee’s tenth session in 1991, the recommendations have been used to shed light on the application of specific provisions of the CEDAW (Division for the Advancement of Women, UN, 2009). Throughout the 1990s, general recommendations on thematic issues were adopted. For example:

(i) Violence against women (General Recommendation 19 of 1992);
(ii) Equality in marriage and family relations (General Recommendation 21 of 1994);
(iii) Equality in political and public life (General Recommendation 23 of 1997).

The most recent recommendations relate to:

(i) Women migrant workers (General Recommendation 26 of 2008);
(ii) Older women and the protection of their human rights (General Recommendation 27 of 2010); and
(iii) The Core Obligations of States Parties under Article 2 of the CEDAW (General Recommendation 28 of 2010). In this recommendation, the CEDAW Committee observe the difference between the terms ‘sex’ and ‘gender,’ acknowledging the complexity of the gender justice matrix:

“The term “sex” here refers to biological differences between men and women. The term “gender” refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. This social
positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community” (para. 5, General Recommendation 28 of 2010).

The Committee considers the CEDAW to be a dynamic document, and to this end, urges States parties to disseminate recommendations widely to all branches of Government, civil society, including the media, academia and human rights and women’s organizations and institutions (CEDAW/C/GC/28). These recommendations, combined with the consideration of communications and inquiries, form the basis of the CEDAW Committee’s work.

**The Persona of Women’s Rights**

As established in Chapter Four, the persona relates to the material that an individual or a collective promotes as its identity to others. Therefore, the persona (self-image) of gender justice refers to the coherent facade that representatives of the global collective self craft for the outside world to make a definite impression upon others and to conceal the true nature of consciousness (Sommers-Flanagan, 2004, p. 117). As Stevens notes,

> “the persona is the ‘packaging’ of the ego: it is the ego’s public relations…responsible for advertising to people how one wants to be seen and reacted to. It simplifies relationships, oils the wheels of social intercourse and avoids the need for lengthy explanations and introductions” (1990, p. 42).

In the international law relating to gender justice, the persona is evidently expressed as the movement for women’s rights. The persona is therefore embodied by individuals and groups who have the stated aim of working towards the equality, empowerment, protection and advancement of women. These ‘persona roles’ are played by:
- UN agencies working on gender issues (particularly UN Women and the Commission for the Status of Women);
- Gender-related departments in the ICTY, the ICTR and the ICC;
- Academics, feminist scholars and journalists (including web-loggers) working in gender-specific areas;
- Women-specific NGOs; and
- Civil society organisations, such as the Beijing Women’s Council, and the International Law Association’s Committee on Feminism and International Law.

While the ego and the collective consciousness as a whole produce the overarching themes and laws of women’s rights, the persona engages itself in the conferences, processes and research that occur on the periphery, to inspire such laws and themes. For example, the World Conferences on Women (1975-1995), and the resulting Beijing Declaration and Platform for Action, the policy of gender mainstreaming in the UN, the International Law Association’s report on gender and nationality (2000), the Civil Society Advisory Group on Women, Peace and Security, and the analysis of feminist legal scholars. The specifically targeted persona of ‘prohibiting and preventing sexual violence against women during armed conflicts’ is similarly expressed through the work of Special Rapporteurs on Violence Against Women, UN Women, NGOs, aid workers, academics, and journalists.

Conclusions

This chapter has provided an overview of the collective consciousness in relation to gender justice in international law. It has been shown that the collective consciousness of women’s rights has been expressed through collective representations such as feminist theory and international law, and reflective processes of international law such as
communications/complaints procedures and State reporting. The foundational collective representations of women’s rights in international law are the CEDAW and the CEDAW-OP. These collective representations have led to a wide body of law and reflective jurisprudence in relation to women’s rights that attempt to create equality for men and women in the public sphere.

Yet despite these considerable developments in international law, the current consciousness of women’s rights in international law is that there is much work to be done in order to achieve the goal of ‘gender justice.’ According to UN Women,

“all too often women are denied control over the bodies, denied a voice in decision-making and denied protection from violence” (UN Women, 2011b, p. 2).

Significant problems facing women in nation-states around the world include vulnerable employment, domestic violence, sexual violence in armed conflicts, and pervasive discrimination. We can compare this rhetoric with the consciousness of feminists in the early 1990s:

“International human rights law has not yet been applied effectively to redress the disadvantages and injustices experienced by women by reason only of their being women. In this sense, respect for human rights fails to be “universal.”” (Cook, 1992, p. 3).

It is evident that the tone of women’s rights has not changed dramatically in the last two decades, although the work of gender justice seems to be more specifically targeted (for example addressing specific problems of labour and violence) as opposed to the universal problem of women’s oppression. The following chapters suggest that although women in many nation-states have been embraced as equal members of the public sphere, the goal of gender justice is yet to be realised because of the unnamed, unconscious material in the global collective self.
Chapter Seven: Case Study Part Two
The Unconscious Material of Gender Justice in International Law

“No human being should be forbidden the sense of wholeness that comes from combining his or her masculine and feminine sides” (Tong, 2009, p. 2).

“Part of the activism around women's rights is: ‘Let’s prove that women are as good as men.’ But the other side is you should look at the fact that men can be weak and vulnerable” (Dr. Chris Dolan, quoted in Will Storr, 2011).

“…Western culture is still a dualistic patriarchy that values thinking over feeling, material wealth over spiritual, scientific fact over intuitive knowledge, men over women…” (Fox, 2008, p. xii).

“The evil within ourselves is experienced first of all through projection. Since the idea of possessing evil qualities is abhorrent, we ‘project’ these qualities upon those around us who are ‘more or less suitable objects’” (Jung, 1918, para. 41).

The previous chapter focused on the conscious material of the global collective self in relation to gender justice. This chapter explores the unconscious (unnamed and unrepresented) material of the global collective self in relation to gender justice. It argues that the global collective self has a considerable amount of unconscious material regarding the relationship between the masculine and the feminine, which has, in turn, shaped the pursuit of gender justice. The chapter argues that an unconscious split between masculine and feminine consciousness has manifested itself in international law. It was established in the previous chapter that the main objective of contemporary international law regarding gender justice has been to give women access to the masculine public sphere, and to protect women in the public sphere (for example in relation to reproduction and detention). This chapter argues that while women may now have legal access to the public and private spheres, men and women are bound by a traditional masculine, public sphere consciousness, and the feminine private sphere remains disempowered and unconscious. As such, the overarching narrative of gender justice in international law is to empower women by removing them from a feminine consciousness, and ensuring access to the masculine consciousness of the public sphere. This further devalues the feminine consciousness for men and women. Thus, despite the conscious intentions of international
law to create gender justice, it has in fact perpetuated the split between masculine and feminine consciousness. This argument is made according to the following points:

(i) It is taken as a given that due to innate biological tendencies and/or culturally and socially constructed gender categories, masculine and feminine archetypes (ideal types which form the masculine and feminine consciousness) have historically been attributed to males and females respectively. As a result of this attribution, men have tended to dominate and symbolise the public, mental objective life (the archetypal masculine sphere) and women have tended to dominate and symbolise the private, emotional subjective life (the archetypal feminine sphere);

(ii) The public masculine life leads to outcomes such as public power, security, territory, social identity and the capacity to meet one’s physical needs, whereas the private feminine life leads to outcomes such as unconditional love, and nurturing emotional and spiritual connections with oneself, with others, with children, community, and with nature. According to Jungian theory, all individuals need access to both masculine and feminine consciousness and to the public and private spheres in order to lead an integrated life (Kast in Papadopoulos, 2006, p. 113; pp. 117-118). In this way, males and females are the same;

(iii) As such, both sexes (not just women) and both the private and the public spheres have suffered from this original division of masculine and feminine consciousness. This is because as a result of this division, men have traditionally only been able to access the masculine public sphere, and women have only been able to access the feminine private sphere. Accordingly, both the public and the private spheres remain
disempowered, because the empowered masculine and the empowered feminine can only co-exist when there is no division or suppression of the Other;

(iv) However in the narrative of international law, the exclusion of women from the public sphere was identified as the primary problem, rather than the split between masculine and feminine consciousness. Feminist theory and international laws have only attempted to rectify the disempowered feminine as the source of suffering and division in the global community. The masculine consciousness of the public sphere was presumed to be intrinsically empowered. Moreover, in the process of giving women ‘rights’ and access to the public sphere, the exclusion of men from the emotional and subjective private sphere has been overlooked;

(v) This approach of only granting rights to women and encouraging women into the public sphere has had the effect of further disempowering the feminine by victimizing women, ignoring the emotional and intuitive needs of men, glorifying the public sphere and diminishing the significance of the private sphere. In short, women were granted public sphere rights while a man’s equal right to the private sphere has not yet been fully acknowledged or even articulated; and

(vi) In the process of giving women access to the public sphere, there was an assumption that the public sphere itself was a perfect system, and would not be improved or transformed by the unique contribution of feminine consciousness. As such, distinctly feminine qualities were not invited into the public sphere, and the private sphere remains devalued and silent.
Woven into these discussions is an examination of the unconscious, unnamed, and unrepresented material in international law, which encompasses the unsettled dualities between male and female; masculine and feminine. This unconscious material in international law includes the archetypal constructs of women as victims and men as controller/dominators, the hidden meanings in the language of international law, and the unconscious devaluing of the private sphere. The chapter concludes that although the global collective self has sought to grant women public sphere rights, it appears that this represents only one part of the integration project between the masculine and feminine, which requires the following:

(i) Access of women to the public sphere and to masculine consciousness;
(ii) The transfer of feminine consciousness into the public sphere;
(iii) Access of men to the private sphere and to feminine consciousness; and
(iv) The transfer of masculine consciousness into the private sphere.

Ideally this process of access and transfer would have happened in a simultaneous transformation, but it appears to be happening in a linear way. Therefore this chapter argues that existing women’s rights law is one aspect of a much wider project in the global collective self of processing and integrating unnamed and unrepresented dualities between the masculine and feminine.

The Masculine & Feminine Consciousness in International Law

The masculine and the feminine consciousness represent one of the primary dualities in the global collective self that is clearly reflected in public international law. As Charlesworth observes:

“One technique for identifying and decoding the silences in international law is paying attention to the way that various dichotomies are used in its structure. International legal discourse rests on a
series of distinctions; for example, objective/subjective, legal/political, logic/emotion, order/anarchy, mind/body, culture/nature, action/passivity, public/private, protector/protected, independence/dependence. Feminist scholars have drawn attention to the gendered coding of these binary oppositions— the first term signifying “male” characteristics and the second “female.” Like many other systems of knowledge, international law typically values the first terms more greatly than their complements” (1999, p. 382).

This thesis adds one more dichotomy to the structure of international law: conscious/unconscious. The conscious and unconscious aspects of the collective self perpetually manifest themselves as opposites or dichotomies in the global community. This dichotomy corresponds to the masculine and feminine consciousness, with the respective archetypes of ‘masculine’ and ‘feminine’ provided in the table below to clarify the meaning of the terms.

<table>
<thead>
<tr>
<th>Masculine Consciousness</th>
<th>Feminine Consciousness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traditionally associated with the male sex and confined to the public sphere</td>
<td>Traditionally associated with the female sex and confined to the private sphere</td>
</tr>
<tr>
<td>Objective</td>
<td>Subjective</td>
</tr>
<tr>
<td>Politico-Legal</td>
<td>Community oriented</td>
</tr>
<tr>
<td>Logic (logos in Jungian psychology)</td>
<td>Emotion (eros in Jungian psychology)</td>
</tr>
<tr>
<td>Order</td>
<td>Anarchy</td>
</tr>
<tr>
<td>Mind</td>
<td>Body</td>
</tr>
<tr>
<td>Culture</td>
<td>Nature</td>
</tr>
<tr>
<td>Power</td>
<td>Vision</td>
</tr>
<tr>
<td>Action</td>
<td>Passivity</td>
</tr>
<tr>
<td>Public</td>
<td>Private</td>
</tr>
<tr>
<td>Protector</td>
<td>Protected</td>
</tr>
<tr>
<td>Independence</td>
<td>Dependence</td>
</tr>
</tbody>
</table>

*Table 7.1: Characteristics of Masculine and Feminine Consciousness*
It is argued that in the narrative of international law, masculine consciousness has been dominant, one-sided and unbalanced in the public sphere. Masculine consciousness is expressed through collective representations about characteristics of the group/society/global community; what (and how) this group perceives, values, judges, or does; what it can (and cannot) do; and what it should do (or should not do) (Burns and Engdahl, 1998a). In international law, this unbalanced masculine consciousness has manifested itself in organizing principles such as survival through power; security against threats to that power; the acquisition and protection of territory; control and development of territory through productivity and technology; and status in the global community. Masculine consciousness is solution-orientated and focused on the future. In the international system, this narrative has produced:

(i) International organizations with unequal structures and top-down hierarchies such as the UN with the all-powerful permanent members of the Security Council;

(ii) Gross inequalities in the global community, with nation-states that have amassed power through economic wealth or military capacity, and those that have not;

(iii) A disregard for, and a desire to control, the natural environment through the exploitation of land and water, the use of pollutants and pesticides, drilling for oil and natural resources, and space travel; and

(iv) The exploitation of communities that are considered to represent the feminine consciousness because they have not embraced the masculine consciousness, such as women, indigenous peoples and colonial or poor nation-states.
Masculine consciousness is associated with the “public world of politics, government and the state” whereas the feminine consciousness exists in the private sphere of “home, hearth, and family” (Charlesworth, 1999, p. 382). In relation to the characteristics of masculine consciousness, Tong adds: “assertiveness, aggressiveness, hardiness, rationality, or the ability to think logically, abstractly and analytically, ability to control emotion” (2009, p. 3). Tong also includes the following attributes in the list of the feminine consciousness: gentleness, modesty, humility, supportiveness, empathy, compassion, tenderness, nurturance, intuition, sensitivity and unselfishness (2009, p. 3). These qualities are also associated with particular universal archetypes that have become part of the expectations in the global collective self towards males and females. It will be shown that archetypes of women in international law include the vulnerable victim and the prostitute (as an archetype of the sexualised female body).

In relation to the terms ‘masculine’ and ‘feminine,’ Jungian analyst Katherine Bradway points out,

“Although the terms male and female are used in a single sense that is readily understood, the terms masculine and feminine are used in two overlapping senses: to identify the psychological traits and the range of behavior associated with being a male or a female, and to denote principles or patterns that are experienced as opposing or complementary sides of individuals irrespective of their gender” (in Stein, 1984, pp. 279-280).

In order to move beyond what can be perceived to be gender stereotyping, Bradway suggests using other non-gendered language to define the gender polarities, such as left-brain or right-brain, or the Eastern polarity of yang and yin (in Stein, 1984, pp. 280-281). However, this thesis persists with the terms masculine and feminine because international law is still heavily influenced by this binary opposition. The terms masculine and feminine in this thesis are used in both senses; on the one hand, international law engages
with the masculine/feminine duality as a way to understand the behaviour of males and females, and this must be acknowledged. Yet on the other hand, this thesis advocates a shift in our understanding of masculine and feminine consciousness, whereby individuals and groups integrate these qualities into a singular life experience.

This thesis takes as a given that throughout history, by reason of biology and/or socially constructed gender categories, the archetypal qualities of the ‘masculine’ and ‘feminine’ consciousness have been universally allocated to males and females respectively.\textsuperscript{82} Charlesworth and Chinkin reflect:

“Historically, the formation of the European nation-state depended on a sexual division of labour and the relegation of women to a private, domestic, devalued sphere” (2000, p. 56).

Yet it is beyond the scope of this thesis to consider the potential origins of the masculine/feminine divide: this thesis is interested in the symbolic meanings and consequences underneath this duality in international law, and how this duality expresses the unconscious material of the global collective self. It is, however, relevant to note that in the division of the feminine child-bearing/home and nature-care/community building and the masculine hunter/gathering/protection of tribe, men and women were allocated ‘territory’ in the global collective self.

The argument of this chapter is that men, women and the global collective self have come to place more value on the masculine territory and masculine consciousness than the feminine territory and feminine consciousness. As a result, the feminine territory—the private sphere—has become devalued and demeaned, and this has been reflected in

\textsuperscript{82} Perhaps we can attribute this to the fact that until relatively recently, humans have never lived long enough to be able to experience both the public and private spheres to their full extent, and that by reason of biology and physiology, women were assigned the territory of the private sphere (child-bearing and child-rearing, care of home and nature, and community building) whereas men were assigned the territory of the public sphere (hunting, gathering and physical protection of the tribe).
international law. The Jungian approach maintains that all individual and collective selves benefit from integrating and expressing both masculine and feminine consciousness.\textsuperscript{83} Indeed it appears to be self-evident that all individuals would benefit from a balanced combination of logic and emotion; security and nurturance; culture and nature; independence and dependence; assertiveness and gentleness. Therefore, it is argued that the division of masculine and feminine consciousness between males and females has been \textit{detrimental for both sexes}.

As such, the masculine/feminine duality has confined both sexes to the disempowered masculine or the disempowered feminine consciousness. This is because the masculine and the feminine are symbiotic: one depends on the other for its optimal functioning, and each uses the other as its \textit{raison d'être}. In this paradigm, the masculine consciousness (in each individual and collective self) can only be empowered or engage in authentic action because it is inspired by the nurturing and balanced vision of the empowered feminine consciousness (in each individual and collective self). Similarly, the empowered feminine can only nurture and inspire because it is protected by the security and power of the empowered masculine. The empowered masculine works for the best circumstances of the physical survival of the individual and the collective, while the empowered feminine works towards the best circumstances of emotional, psychological and spiritual well-being for the individual, the collective, and nature. Both inspire the work of the other, and in so doing, create new life and a vision for the future.

\textsuperscript{83} According to Jung’s anima/animus dichotomy, a male psyche has an unconscious inner feminine expression, and a female psyche has an unconscious inner masculine expression (Tacey, 2006, pp. 64-65). Jung identified masculinity and femininity as fundamental principles of the human psyche in all individuals: “coexisting and complementary (if at times conflicting) cosmic forces, similar to the interplay of yin and yang in Taoist philosophy” (Tacey, 2006, p. 65). This thesis takes issue with Jungian theory on this point: men do not necessarily have an unconscious feminine expression, and women do not necessarily have an unconscious masculine expression. However in the global collective self, the masculine is conscious and the feminine is unconscious.
Until the advent of feminism, males and females culturally divided masculine and feminine qualities between the sexes, creating rigid stereotypes and role identities for men and women. It is argued that for most of history the empowered masculine and the empowered feminine were divided among men and women respectively, in the form of relationships and marriage. The next section examines how international law has responded to the masculine and the feminine. As Charlesworth and Chinkin reflect, “a variety of distinctions, ostensibly between ‘public’ and ‘private,’ shape international law and…many of them have gendered consequences that need to be evaluated” (2000, p. 57).

**Unconscious ‘Gender Justice’ in International Law**

In response to the masculine and feminine duality, international law has sought to create gender justice by allowing women access to the rights of men and to the public sphere. It is argued that this approach has led to collective awareness of the oppression of women (as ‘victims’), and collective unconsciousness in relation to the experience of men. Men were assumed to be dominant controllers, and thus did not need any assistance or attention from international law or global civil society. This male perpetrator/female victim binary is identified by Darren Rosenblum in his article, ‘Unsex CEDAW, Or What’s Wrong with Women’s Rights’ (2011). Rosenblum argues that CEDAW “cannot succeed…in creating gender equality if it continues to focus so narrowly and exclusively on women” (2011, p. 100). Rosenblum’s problem with CEDAW is that women’s lives cannot fundamentally be improved until “being a ‘woman’ or a ‘man,’ or for that matter one of the many other sexes that exist, means less in terms of social, legal and political standing” (Rosenblum, 2011, p. 104). Like this thesis, Rosenblum takes issue with the narrative or framing that underpins CEDAW. He notes, “CEDAW’s focus excludes men, women who are not victims and all other sexes” (2011, p. 105). He argues that we need to
see CEDAW “for what it is: a sometimes useful tool of international law that’s emphasis on ‘women’ reinforces the sex binary” (2011, p. 105). This male/female binary approach in international law has had conscious and unconscious impacts, as demonstrated in the figure below.

Figure 7.1: The Collective Self & Gender Justice in International Law

I. The Unconscious Masculine & the Gendered Roles of Men

This thesis argues that the relationship of the global collective self to the experience of men is a silent one that has largely been ignored in the human rights discourse. This is a confronting argument because Caucasian, Anglo-American, Christian men have been
historically privileged as the dominant race/language/religion/sex in the global community, and it is challenging to be persuaded that they have been denied attention in the human rights narrative. Yet much of the contemporary scholarly literature in society and culture now argues that the collective experience of ‘White masculinity’ has been invisible (see, for example, Robinson, 2000; Kimmel, 1996; and Kegan Gardiner, 1995). This means that the monopoly of white men on power ironically rendered them collectively free from analysis or scrutiny, particularly in human rights discourse, which was founded upon the empowerment of victims or minorities. The ‘rights of men’ were considered to be aligned with the grand narrative of international law, which was concerned with peace and security, world trade, nuclear weapons and sovereign states. As Robinson argues in her book, *Marked Men: White Masculinity in Crisis,*

“Masculinity and whiteness retain their power as signifiers and as social practices because they are opaque to analysis, the argument goes; one cannot question, let alone dismantle, what has been hidden from view…To be unmarked means to be invisible—not in the sense of hidden from history but, rather, as the self-evident standard against which all differences are measured: hidden by history” [emphasis added] (2000, p. 1).

In contrast, women, the colonized, or enslaved were the “organically marked bodies” which were the symbolic Other to the “fictive rational self of universal, and so unmarked, species man, a coherent subject” (Robinson, 2000, p. 1). The consequence of this construct is that marked bodies (women, the indigenous and the enslaved) were identified as ‘different’ whereas unmarked bodies (white, Christian males) were unidentified and thus ‘normal.’ The complexity of the ‘multiple masculinities’ of men is only now beginning to be discovered (see, in particular, Connell, 2000).

The argument of this chapter is that while women have historically been denied access to the masculine public sphere consciousness, this denial and discrimination has been
profoundly identified, named, and thus made conscious in the collective self. In contrast, men have simultaneously been denied access to the feminine private sphere consciousness, and this has been largely ignored in the collective self. Men’s denial of access to ‘feminine territory’ has been actualized in the following ways:

(i) Firstly, men have traditionally been expected to spend the majority of their lifetime working, achieving and providing for (immediate and extended) family in the increasingly competitive public sphere. According to the Australian Bureau of Statistics, in 2003 in couple families with children aged under 15 years, fathers were more likely than mothers to be employed (91% compared with 62% respectively) and more likely to be employed full-time (84% compared with 24%) (ABS, 2006). Fathers also perform twice the regular amount of overtime than mothers (ABS, 2006). This disparity is also reflected in unequal ages of eligibility for the aged pension. In Australia and the UK, in 2012, men still qualify for the aged pension later than women. In the UK, the gap between men and women used to be five years, and is in the process of being changed to parity by 2017 (http://www.pensionsadvisoryservice.org.uk/state-pensions/state-pension-age-calculator). The Australian example is shown in the table below:

<table>
<thead>
<tr>
<th>Born</th>
<th>Women eligible for Age Pension at age</th>
<th>Men eligible for Age Pension at age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 1 July 1935</td>
<td>60</td>
<td>65</td>
</tr>
<tr>
<td>From 1 July 1935 and 31 December 1936</td>
<td>60.5</td>
<td>65</td>
</tr>
<tr>
<td>From 1 January 1937 and 30 June 1938</td>
<td>61</td>
<td>65</td>
</tr>
<tr>
<td>From 1 July 1938 and 31 December 1939</td>
<td>61.5</td>
<td>65</td>
</tr>
<tr>
<td>From 1 January 1940 and 30 June 1941</td>
<td>62</td>
<td>65</td>
</tr>
<tr>
<td>Period</td>
<td>Male Eligibility</td>
<td>Female Eligibility</td>
</tr>
<tr>
<td>-------------------------------------------------</td>
<td>------------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>From 1 July 1941 and 31 December 1942</td>
<td>62.5</td>
<td>65</td>
</tr>
<tr>
<td>From 1 January 1943 and 30 June 1944</td>
<td>63</td>
<td>65</td>
</tr>
<tr>
<td>From 1 July 1944 and 31 December 1945</td>
<td>63.5</td>
<td>65</td>
</tr>
<tr>
<td>From 1 January 1946 and 30 June 1947</td>
<td>64</td>
<td>65</td>
</tr>
<tr>
<td>From 1 July 1947 and 31 December 1948</td>
<td>64.5</td>
<td>65</td>
</tr>
<tr>
<td>From 1 January 1949 to 30 June 1952</td>
<td>65</td>
<td>65</td>
</tr>
<tr>
<td>From 1 July 1952 to 31 December 1953</td>
<td>65.5</td>
<td>65.5</td>
</tr>
<tr>
<td>From 1 January 1954 to 30 June 1955</td>
<td>66</td>
<td>66</td>
</tr>
<tr>
<td>From 1 July 1955 to 31 December 1956</td>
<td>66.5</td>
<td>66.5</td>
</tr>
<tr>
<td>From 1 January 1957</td>
<td>67</td>
<td>67</td>
</tr>
</tbody>
</table>

*Table 7.2: Age Eligibility for Pensions in Australia*


(ii) Men perform multiple roles in relation to providing for the basic physical needs of family that are not reflected in official measures of economic activity, such as the maintenance of the home and property and the care of children during non-paid work hours.

(iii) Men have traditionally been expected to participate in serious and often life-threatening violence in the course of professions such as the police force or the military, and violent contact sports.

(iv) Men are over-represented as casualties of armed conflict and were the only subjects of conscription laws in many nation-states during the World Wars and the Vietnam War, including in Australia and the US.

(v) Men continue to be forced by law to perform compulsory military service and thus compelled to ‘learn violence’ in many nation-states, such as China, Austria, Denmark, Greece, Norway, Russia, Singapore and Turkey, among many others.
Due to high expectations in relation to public sphere work and masculine gender roles, men have traditionally been prevented from developing deep and nurturing emotional bonds with themselves and with others. This stereotype of masculine consciousness has been referred to as ‘hegemonic masculinity’ because “there are relations of hierarchy, for some masculinities…are subordinated or marginalized” (Connell, 2000, p. 10). For example, as a result of their historical denial of access to the private sphere and feminine ways of being, a majority of men have been disconnected from discussing their emotional and intuitive states, experiencing the day-to-day joys of friendship and parenthood, and from developing deep emotional connection with their children. Men are accordingly poorly represented as stay-at-home fathers and as sole carers of friends and family. The Australian Bureau of Statistics estimates that less than 1% of fathers are stay-at-home fathers, even though Australian women make up 45% of the workforce (ABS, 2003). In addition, “Of the 1.7 million couple families with children aged 0–14 years in June 2003, there were 57,900 (or 3.4%) families where the father was not employed while mothers worked either full-time or part-time. A further 108,100 (or 6.3%) couple families with children aged less than 15 years had neither parent working” (ABS, 2003).

Expectations of men in public life have been enshrined in private understandings and assumptions of a ‘man’s role’ as strong and invulnerable. Fox writes,

“men are rarely rewarded, and often mocked, for openly expressing their deepest feelings of joy, sensitivity, and pain…many men carry wounds inside they would rather forget or put aside than admit are there” (2008, p. xii).
It may be relevant that in a majority of nation-states (both developed and developing), men suicide at a higher rate than women (World Health Organization, 2011). This could be due to the fact that women often fail in their suicide attempts, using pills or cutting themselves, whereas men shoot or hang themselves (Fox, 2008, p. xiv). Yet in Australia, the male suicide rate is three times higher than that of females, with 16 suicide deaths per 100,000 males in 2008 and the female rate is at around five suicide deaths per 100,000 (ABS, 2010). In response to US statistics that adolescent boys commit 86% of all suicides, Joan Ryan has written,

“It occurred to me that if 86% of adolescent suicides were girls, there would be a national commission to find out why. There’d be front-page stories…and non-profit foundations throwing money at sociologists and psychologists to study female self-destruction. My feminist sisters and I would be asking rightly, “What’s wrong with a culture that drives girls, much more than boys, to take their own lives? So why aren’t we asking what’s wrong with a culture that drives boys, much more than girls, to take their own lives?” (Quoted in Fox, 2008, p. xiv).

(viii) Men are often overlooked as sole parents in legal decisions regarding custody of children. This is reflected in Australian statistics: of the 3.9 million children aged less than 15 years in 2003, 80% lived with both a father and mother, 2% were in lone father families and 18% were in lone mother families (Australian Bureau of Statistics, 2003).

(ix) In many nation-states, men (including many neo-natal boys) are subject to traditional practices such as circumcision. Milos and Fayre argue that circumcision is occasionally harmful and could be a denial of human rights
The World Health Organisation estimates that approximately one in three boys under the age of 15 is circumcised, and in June 2012, a court in Cologne, Germany declared that circumcision violated a child’s “fundamental right to bodily integrity” (Day, 2012).

The objective of this chapter is not to construct men as victims, or to argue that men have suffered in the same ways, or to the same extent, as women. It is also not suggested that there is one type of masculinity to which all men subscribe. In fact, Connell demonstrates that it is more apt to speak of ‘masculinities’ (2000, p. 29). It is simply argued that men have been conflated with a masculine consciousness, and have been socially, politically and legally confined to masculine territory (and hence denied access to the private sphere) just as women were socially, politically and legally confined to feminine territory, and formally excluded from the public sphere. Yet while we can clearly and consciously point to evidence of women’s legal exclusion from the public sphere, men’s exclusion from the private sphere has been subtler, and perhaps even ‘unconscious.’ Men’s exclusion from the private sphere is not evident in international laws; but then women’s exclusion from the public sphere was similarly never evident in international law. In both cases, the legal sanctioning of the public/private sphere division has occurred in the context of national laws and policies that have supported traditional gender roles. International human rights law has therefore been typically used as a remedial tool to correct the inadequacies of national legal systems.

84 This approach has been supported by recent grassroots ‘intactivist’ movements in California to ban circumcision (Sydney Morning Herald, 30 April 2011).
II. The Private Sphere as ‘Private’

The reason women were denied public rights for so long was because the private sphere was considered to be a private place. This meant that:

“the state [could] devolve some of its powers to centres of authority in the private sphere that may have no concern with the unequal position of women or indeed may have an interest in maintaining it, such as the family, religious institutions, the education system, business, finance and the media” (Charlesworth and Chinkin, 2000, p. 57).

This approach of legal non-interference with the private sphere relegated wrongs such as domestic violence, systemic discrimination and sexual violence during armed conflicts to the silent past. Yet this is the same reason that men still cannot access their private rights: because the private sphere is considered to be a private place, free from legal interference. For most of history, the women could not leave it. And for most of history, men could not get in. As such, men have historically been disempowered in their experience of the feminine consciousness in just as many ways that women have been disempowered in their experience of the masculine consciousness. In any case, this thesis argues that both men and women have, to the same extent, been expected to fill traditional and rigid gender roles.

Accordingly, the process of ‘gender justice’ requires that men as well as women should be given unfettered legal and social access to both the public and private spheres. However, in the context of modern international law, only women have been treated as being disempowered, and as a result, only women’s rights have been championed in the context of ‘gender justice.’ In the call for women’s rights to the public sphere, men’s rights to the private sphere were not acknowledged. This not only includes human rights conventions and declarations, but also academic analysis and NGO campaigns.
Existing human rights applicable to men do not sufficiently support their access to the private sphere. For example, Article 24 of the UDHR (1948) provides, ‘Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay,’ and Article 7(1) of the Convention on the Rights of the Child (1989)\(^{85}\) states: ‘The child shall have…as far as possible, the right to know and be cared for by his or her parents’ [emphasis added]. Both articles are unclear in their entitlements, and neither of these articles encourage men to deviate from traditional gender roles, whereas laws concerning women’s rights encourage women to deviate from their traditional gender roles. Accordingly gender justice in international law creates a power hierarchy whereby the masculine public sphere is presumed to be more empowered than the feminine private sphere.

The process of men accessing the private sphere has been constructed in private relationships, private conversations, and private vulnerabilities. Accordingly, when the access of men to the private sphere has been legally recognised, it is in the form of a private contract, often considered a ‘goodwill gesture’ by businesses, universities and other organisations, for example through paternity leave entitlements. Increasingly, nation-states are beginning to recognise certain entitlements such as paternity leave. However these private contracts are in contrast to a recognised human right. Perhaps, therefore, international law could consider conventions on the rights of fathers to spend equal time with their children, or the right to paternity leave, or the rights of men to refuse to engage in military service or for men’s bodies to be free from violence in armed conflict.

This thesis suggests that the experience of men has been ancillary in international law because women have been constructed as archetypal victims, and men have been constructed as archetypal controllers and dominators. Rosenblum reflects, “CEDAW’s urge to ‘eliminate all forms of discrimination against women’ frames women as victims of discrimination by an unspecified person or group, impliedly men” (2011, p. 158). This construction is consistent with the project of feminism, which according to feminist philosopher Elizabeth Grosz, is:

“a reaction to the overwhelming masculinity of privileged and historically dominant knowledges, acting as a kind of counterweight to the imbalances resulting from the male monopoly of the production and reception of knowledges” (1990, p. 332).

In contrast to this statement, it is argued that females have had access to the power of private, emotional, subjective knowledge, as much as males have accessed the power of public, mental, objective knowledge. It is now time to withdraw the boundaries that prevented men and women from accessing either masculine or feminine consciousness. This thesis proposes the potentially revolutionary idea that in international law there are no victims, and there are no perpetrators. In fact, the problem lies in the existence of duality and division. As such, the answer to this challenge is not to hurriedly ‘restore’ the legal rights of men so that they can be equal to women in the private sphere. The only solution that will overcome duality is to work towards the integration and acceptance of masculine and feminine; public and private spheres; men and women. Any project that is focused on ‘gender justice’ must acknowledge the traditional roles of both men and women, and the consequences of such roles. However, the feminist project was forced to work towards the rights of women only, because of the way in which the private sphere was traditionally devalued.
III. The Focus of Feminism & International Law

In reflecting upon all of the feminist theories outlined in the previous chapter, this thesis proposes that the feminist movement was unconscious to the extent that all of its energy was directed at men, when it could have been directed at the dominance of masculine consciousness in the public sphere, and the presence of duality. In concentrating its attention on the power of men, and blaming men for the confinement of women to the private sphere, all forms of feminism unconsciously inflated males and masculine power.

The women’s rights conventions in international law continued the theme of men granting rights to women. This reinforced the unsettled power dynamic between male and female, masculine and feminine. ‘Women’s rights’ gave women the same kind of rights as men, whereas they should have been merely focused upon giving women unfettered access to the public sphere. The fact that men are used as a reference point is superfluous and undermining, and had the effect of perpetuating the original problem, which was the perception that men had dominated women. Simone de Beauvoir wrote,

“Representation of the world, like the world itself, is the work of men; they describe it from their own point of view, which they confuse with the absolute truth” (1953, p. 143).

It is argued that this is an ironic statement, because through the medium of international law, we actually observe women fighting to have access to the representations and entitlements of men. In no way are the masculine representations or entitlements themselves the subject of any critique or reflection by women. Yet men could equally argue that representation of the private world is the work of women; women describe the feminine private sphere (in the words of de Beauvoir) ‘from their own point of view, which they confuse with the absolute truth.’ This is an easy illusion to fall into for men and women, considering that an entire sphere of existence was once entrusted to each particular sex.
It was natural for feminists to identify men and patriarchy as the reason for the oppression of women. However feminists could consciously have targeted the split between masculine and feminine consciousness as the true adversary, and in so doing, could have retained the power of the private sphere. Furthermore, all of the feminist theories are based on the presumption that men have experienced a fundamentally better path of existence than women. It is argued that all of the ‘feminisms’ do not take into account the unnamed and unrepresented experiences of men in their exclusion from the feminine private sphere (the anima consciousness). As a result, all theories are based on an assumption that only women have suffered in their exclusion from masculine characteristics and the public sphere. This thesis is not proposing that women have not suffered in their denial from the public sphere: the suffering of these entities has been made abundantly clear in the collective consciousness. This thesis is suggesting that division and denial is always detrimental for all entities, at all times. As such, when one particular entity attempts to prove that it is the only one that has suffered—and uses condemnation to push against its adversary—such condemnation merely continues the divisions that were being fought against in the beginning. This approach of condemning and dividing has been taken up in some of the feminisms and by international law; inherently setting men and women; masculine and feminine (and thereby, culture and nature; Global North and Global South) in opposition to one another, rather than working together towards integration.

Thus, although men and women have both suffered from being denied access to the private or public spheres, the conscious narrative of human rights law and feminist theory is that women, the Global South, indigenous people and nature are the only victims who have been excluded from an empowered life experience. It must be noted that both men
and women have engaged in this narrative, and this explains why the goal of gender justice in international law is to raise the status of women to equality with men. This ‘feminine as the archetypal victim’ construct is inextricably linked to the belief that men dominate and control the female experience of life, and thus men need to ‘let women in’ or ‘grant women access’ to human rights and protection. This dynamic is also associated with the archetypes of women as prostitutes, and women as mothers, as both of these archetypes are based on the female relationship to the Other (the man or the child). We can observe the archetypal pattern of women as victims and men as controllers played out as women needing and demanding acknowledgment of their equality with men in the masculine, public sphere. In contrast, protection of men in international law is based on ‘masculine’ archetypes in relation to other men, for example the man as warrior protected by international humanitarian law, or the man as hunter/gatherer protected by international trade law.

The previous chapter showed that women have been recognised by international law through the channels of specific laws, institutions, and through participation in the creation, administration and enforcement of such laws and institutions. However the relationship between masculine and feminine remains unsettled. It is argued that this is because of the unprocessed unconscious material that still remains due to the duality between masculine and feminine consciousness. It is thus now timely for feminist theory and international law to realise that men/the masculine/the public sphere are not the true adversary. Men and the masculine are merely a smokescreen for the adversary. The real adversary is the split between masculine and feminine consciousness.
IV. The Power of the Feminine & the Private Sphere

The women as victims and men as controller/dominators construct is imbued with many unconscious assumptions about the nature of power and empowerment. The construct is based upon the assumption that power exists solely in the public (masculine) sphere, and that the private sphere is devoid of power. As the public (masculine) consciousness has been made the seat of power in the narrative of the global collective self, men are perceived to be intrinsically empowered, and women are considered to need extrinsic access to such power. Therefore men (as controllers of the public sphere) must bestow access to power upon women. As such, most scholars of public international law advocate that women need to be ‘allowed to participate’ to the fullest extent in the public sphere.

Alice Edwards, author of *Violence Against Women Under International Law* writes,

> “Women must therefore continue to play by men’s rules, all the time slowly chipping away at the walls of the house around them and questioning the system from within. No other strategy has succeeded for any other minority group” (2011, p. xiii).

However this thesis argues that the effect of this approach is that it elevates the masculine approach to being the only systemic way to achieve positive change, and in so doing it completely demeans and diminishes the intrinsic power of the private sphere. In adopting this belief, one must also believe that females are intrinsically disempowered, because they are traditionally the controllers of the private sphere, which carries little or no power with it. This construct is depicted below in Figures 7.2 and 7.3.
In the process of ‘granting women rights’ the masculine public sphere has not taken the opportunity to incorporate the insights of the feminine private sphere, nor has it been encouraged to. The feminine consciousness (in men and women) often has a very different experience of the public sphere, and may have very different qualities to offer, if
men and women are invited to use them. In granting women the right to enter an unchanged public sphere, rather than transforming the public sphere to accommodate the feminine consciousness, a unique opportunity for knowledge exchange is being overlooked (for example, the feminine consciousness is relationship-oriented and may seek to nurture relationships or develop flexible working practices in the public sphere as a primary priority). In merely attempting to achieve women’s sameness with men, the opportunity of integrating the public and private spheres has been missed. This thesis argues that the CEDAW and the CEDAW-OP articulated the ideal role for women: to be like men and to attempt to dominate the public sphere. As Charlesworth notes, “The promise of equality as “sameness” as men only gives women access to a world already constituted” (in Cook, 1994, p. 64). Rosenblum argues, CEDAW “is not accurate because the real sex and gender engagements must include men, women who are not victims, and transgender people” (2011, p. 193). Similarly, this thesis proposes that the oppositions between the masculine and the feminine in the global collective self have not been healed by victimising women and granting them men’s rights. This is because authentic power involves an equal balance in each individual of masculine and feminine qualities, and each individual participating equally in the public and private spheres.

In elevating women to membership of the public sphere and disregarding the private sphere, the global community gave birth to an awareness in the global collective self that the position of women and the private sphere was intrinsically inadequate. Both men and women colluded in this fallacy. This undermined thousands of years of feminine consciousness and wisdom developed in the private sphere (by men and women) in relation to knowledge, intuition, teaching, care of children and nature, healing and depth of relationships. Interestingly, the same attitude of ‘granting the victims access’ into an
unquestioned, unchanged, and often hostile masculine public sphere has also been adopted with indigenous people, and minority races, ethnicities and religious orientations in international law. This approach has occasionally meant that subgroup rights which provide unequal treatment and protection as subgroup members are often better than individual rights which give apparent equal rights in a hostile unchanged public sphere (Nolan, 2008). It is therefore argued that in the granting of rights to women and other minority groups, the dualities between men/women, indigenous/colonisers, races, religions, ethnicities and orientations have *unconsciously* been perpetuated.

For example, there are substantive overlaps in how international law treats women and how international law treats indigenous peoples. The dichotomy between men and women mirrors the dichotomy between colonisers and indigenous peoples, although in the case of indigenous peoples, colonisers are charged with “ethnic chauvinism” (Anaya, 1996, p. 75). Unconscious projection occurs whereby indigenous peoples project ‘the masculine consciousness’ onto colonisers, and colonisers project ‘the feminine consciousness’ onto indigenous peoples. Indigenous peoples are often regarded as archetypal victims with colonisers cast as archetypal controller/dominators. This is in spite of the fact that colonisers may have deeply suffered as a result of losing a spiritual connection to and kinship with the cycles of nature, or from losing deep connections to community. It is argued that the principle of non-discrimination in the women’s movement is comparable to the principle of self-determination in the indigenous movement as an attempt to empower the perceived victim. As the indigenous sphere is devalued via an equality-driven quest to give indigenous people merely the same rights as non-indigenous people, the dominating culture loses the benefit of indigenous knowledge, particularly in relation to care of community and the spiritual connection to nature and the land.
V. The Unconscious Language of the Female/Feminine in International Law

In the pursuit for positive change in gender justice in international law, the importance of language can often be overlooked, due to its powerfully transformative role. Bonita Meyersfield recognises the ‘expressive value’ of international law, which:

“[gives] a name to forms of harm that fall outside the ambit of established legal principles…and expanding the legal categories of objectionable conduct…The expressive function of international law consists in its articulation of norms, the process by which a conceptual boundary is drawn around specific conduct and prohibited” (Meyersfield, 2010, p. 266).

Edwards also acknowledges:

“the value of international human rights law as a common language reflecting universal values, and as a shared legal system that articulates basic standards of a life with dignity” (2011, p. xii).

She continues: “The language of human rights can still be a powerful force for change, representing as it does a (relatively) universal language in which to frame grievance” (Edwards, 2011, p. 6). Engle Merry has similarly written,

“Human rights documents create the legal categories and legal norms for controlling violence against women, but the dissemination of these norms and categories depends on NGOs seizing this language and using it to generate public support or governmental discomfort” (2006, p. 71).

The Special Rapporteur on violence against women identified rights-based claims by women as an important strategic tool “as this language offers a recognised vocabulary for framing social wrongs” (Special Rapporteur 2006 Report n35, para 29, quoted in Meyersfeld, 2010, p. 267). These writers give public international law a central role in shaping the language, and thereby the global understanding of how to treat the female and the feminine.

However this thesis argues that international law has not paid significant attention to the importance of language and that as a result, the language of international law in relation to gender justice is, to a great extent, misconceived. In relation to women accessing the
public sphere, the language of international law is consistently constructed in a negative way, and is thereby focused upon the eradication of that which is unwanted in the global community. It is argued that the negative language of international law is not benign. On the contrary, every time it is spoken or written, it reinforces the behaviour and values that are unwanted in the global collective self. Philosopher of language Ernst Cassirer argues that an unconscious grammar of experience lies underneath language, and that language is filled with non-rational thought processes that make up cultures (1946). In this light, the unconscious relationship between masculine and feminine is reflected in the language of international law.

For example, the phrases in the titles of the Declaration on the *Elimination of Violence Against Women* (1993), and the Convention on the *Elimination of All Forms of Discrimination Against Women* (1979). Unconscious material is also evident from these phrases because they emphasize the power of the public sphere, and reinforce the disempowerment of women. These phrases construct males as aggressors and females as victims, as though males need to be controlled in their innate tendency to discriminate against women, and women need to be protected from this innate tendency that renders women defenceless and helpless.

Articles 2 and 3 of CEDAW make it clear that its aim is to allow women to access the public sphere in the same way as men. Article 2 commences as follows:

> “States Parties *condemn* discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women…”

[emphasis added].

It is argued that the term ‘condemn’ in this Article sets an aggressive, unconscious and divisive tone in the Convention. Articles 2(b)-(g) of the CEDAW are concerned with the
use of law to transform the status of women in the public sphere. However the articles persistently use negative language for example ‘prohibiting all discrimination,’ ‘refrain from engaging in any act or practice of discrimination against women,’ ‘take all appropriate measures to eliminate discrimination against women,’ ‘take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women,’ and ‘to repeal all national penal provisions which constitute discrimination against women.’

For the purposes of this thesis, this is unconscious language because it is focused on what is to be eradicated rather than focusing on the desired outcomes. With awareness of the true state of gender relations in the public and private spheres, perhaps the Convention may have applied to men and women alike, and the article could have used language such as: ‘States parties seek to transform the status of men and women such that either may be able to freely access any political, economic, social, cultural, civil or any other field.’

Articles 2(b)-(g) of the CEDAW are concerned with the use of law to transform the status of women in the public sphere. However the articles persistently use unconscious, negative language such as ‘prohibiting all discrimination,’ ‘refrain from engaging in any act or practice of discrimination against women,’ ‘take all appropriate measures to eliminate discrimination against women,’ ‘take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women,’ ‘to repeal all national penal provisions which constitute discrimination against women.’ It is argued that this approach has had the paradoxical effect of perpetuating the divisions in gender relations because it involves the constant articulation of what is unwanted in gender divisions, which keeps women in
victim consciousness.

In addition to the language focusing on what is unwanted, the language of international law has also betrayed the identity of the drafters as white, male, Caucasian, Christian, English-speakers. For example, Article 1(3) of the UN Charter states that the UN aims to:

“To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” [emphasis added].

Though this article superficially presumes to champion the rights of women and other minorities, it is odd that the phrase ‘without distinction as to race, sex, language, or religion’ needs to be added after the terms ‘for all.’ It is argued that this constitutes an implicit admission that Caucasian men who speak English and are of a dominant (perhaps Christian) religion are bestowing rights upon women and other minority groups, and that the rights of women and minority groups are not intrinsic. Thus through the UN Charter, international law in the modern imagination was conceived with the assumption that the rights of women needed to be on par with the rights of men. Access of women to the public sphere was therefore granted by the masculine consciousness, in a masculine way (a set of logical, objective rules). An alternative strategy could have been for both men and women to acknowledge that were both sexes had been previously excluded from certain spheres of life, and that both sexes needed to renegotiate their identities in order to access a holistic life experience. In contrast, the UN treated women as though they had never existed until international law granted them existence.

Arguably, the question of women’s access to the public sphere should not have been
framed as a ‘human right,’ because human rights are universal entitlements that belong to every person, by virtue of being human (Donnelly, 2003, p. 1). Therefore in terms of human rights law, it may have been optimal to create a convention on the right of all people to...[insert equal right for men and women here], as opposed to a particular convention bringing women ‘up’ to the status of men.

Furthermore, this thesis argues that the language of international laws in relation to women have had the unforeseen effect of encouraging women to be like men, in the sense of existing entirely in the public sphere. The thrust of international laws in relation to women is to remove all institutional barriers to the public sphere for women. It therefore promotes an agenda that is imbued with the archetypal constructs that glorify masculine qualities: objective, logical, methodical, scientific, power and prestige seeking. This philosophical approach to women’s rights is thus problematic because the Western approach to the masculine and feminine clearly favours the masculine public sphere, and this attitude is being exported to the rest of the world through the medium of international law. The unconscious narrative of the Western relationship to the masculine and feminine inherently devalues the feminine, and thus tries to ‘let the female in’ to masculine qualities and masculine structures, while continuing to leave the feminine and the private sphere out.86

This thesis argues that the language of international law needs to be focused on the desired outcomes in gender justice. For instance, if international law authentically desires equality for men and women, or protection of the male and female body, then it should

86 This glorification of the masculine and devaluing of the feminine is also apparent in the relationships between developed and developing countries, whereby developed countries are treated as the benchmark according to which developing countries should aspire.
focus on creating a Convention on the Intrinsic Equality of All People, or a Declaration on the Sanctity and Protection of the Human Body. This thesis argues that the language of international law must consistently be focused on the ultimate objectives, in order for the conscious agenda to be realized. However we can see from the defence mechanisms below that the language of the global collective self is often subject to unconscious dynamics.

VI. Defence Mechanisms & Gender Justice

This section argues that collective selves, like individuals, utilise defence mechanisms in order to protect the ego consciousness from experiencing unconscious material that is perceived to be threatening by the ego (Bennett, 2006, p. 31). In his work, Staying Alive (1984), psychiatrist Roger Walsh shows that common psychodynamic defence mechanisms also apply to collective life. He writes,

“The defence mechanisms that appear particularly relevant to a discussion of global issues include repression, denial, projection, intellectualisation and rationalisation” (Walsh, 1984, p. 37).

Repression and denial involve blocking threatening material from entering consciousness. This occurs collectively when the majority cannot maintain an awareness of the true state of the world, and thus, abdicate personal responsibility for their role in creating the global collective self. In a state of denial, Walsh writes, we deny “not only the state of the world but our role in producing it” (1984, p. 37). Attitudes associated with repression and denial are: ‘it's really not that bad,’ or ‘it will all work out somehow’ (Walsh, 1984, p. 37).

Many individuals are susceptible to these beliefs in relation to gender justice on personal and collective levels.

Projection is a second common defence mechanism that is linked to denial. Laughlin writes of projection, “What we deny in ourselves we tend to attack in others” (Laughlin,
McAfee writes, “projection is the defence of imagining a mental phenomenon as an actual phenomenon, often by locating it in some object or person other than oneself” (2008, p. 72). According to Walsh, “We use the mechanism of projection to attribute to others the unacknowledged aspects of our self-image and motives” (Walsh, 1984, p. 37). In particular, when the Shadow is exposed within a psyche, that psyche often projects the Shadow externally because it cannot manage it internally (Moores, 2005).

It is interesting to consider projection in relation to gender relations. In fact, the original split between masculine and feminine was the result of a projection, whereby men projected their feminine qualities onto women, and women projected their masculine qualities onto men. In the course of seeking women’s rights, men have projected their unconscious helpless victim onto women and women have projected their unconscious dominator/controller onto men. As it has been argued, men unconsciously identify with the helpless victim because they are still unable to access the feminine consciousness. However this remains unconscious and unnamed material because it is not yet culturally acceptable for a man to take possession of his vulnerability, so men continue to project the helpless victim onto women. In 1932, M. Esther Harding wrote of the effect of the projection of anima onto women. She considered it to be “a cultural problem, that men project their anima onto women, and women behave as they are supposed to behave as a result of this projection” (Kast in Papadopoulos, 2006, p. 121).

In contrast, women project their animus (masculine consciousness) onto men, because women unconsciously identify with the dominator/controller. Yet women are collectively unconscious about the dominator/controller archetype because culturally women have been constructed as victims. This interplay of projection is represented in the figure.
below. It may be the case that what women are accusing men of (discrimination and inequality) is actually being perpetrated by the women; and what men are attempting to protect and save women from (violence, expectations and coercion) actually renders men vulnerable. To add another dimension, this thesis argues that these masculine/feminine projections are also projected onto other dualities in the global collective self, for example in the relationships between humans and nature; colonisers and indigenous people; and the Global North (developed nation-states) and the Global South (developing nation-states).

![Figure 7.4: The Interplay of Projection Between Masculine & Feminine Consciousness](image)

A further defence mechanism of rationalisation involves the use of logical explanations to dehumanise the ‘other,’ whereby individuals and/or collectives create excuses to remain detached from a person, group or situation (Walsh, 1984, pp. 38-39). Examples of excuses include ‘we can’t afford to help,’ or beliefs such as ‘there’s no other way’ or ‘our national security or identity will be threatened.’ As Walsh points out, ‘the most extreme examples of rationalisation involve dehumanisation in which the enemy is seen as ‘not really
human’ or as an ‘animal’” (1984, p. 38). Rationalisation is common in dualities between men/women; Global North/Global South; and culture/nature, whereby one half of the duality claims to be profoundly different from the other half so as to make the other half incomprehensible. In fact, rationalisation is often what sustains the duality and division. For example, women claiming to not understand what men want and vice versa, the Global North believing that the Global South deserves poverty because “they have too many children” or “they are too lazy to work” (Walsh, 1984, p. 38); the Global South believing that people in the Global North have no problems, or humans rationalising their exploitation of nature in order to feed people or to give shareholders good returns.

Rationalisation is linked to the concept of cognitive dissonance, which is “the existence of nonfitting relations among cognitions,” (Festinger, 1957, p. 3) or, the discomfort that occurs when individuals are forced to hold two conflicting beliefs simultaneously. For example, when a person holds an opinion that is clearly contrary to an accepted public opinion, the discomfort that results from not being consonant with the accepted public opinion is referred to as cognitive dissonance. To reduce the dissonance, the person rationalises their opinion by criticising the public opinion originally sought (Festinger, 1957). In this situation, dissonance is reduced by using rationalisation to change one’s beliefs. In relation to the masculine/feminine duality, this thesis proposes that men experience cognitive dissonance when they seek access to the private sphere (their emotional subjective life), but find that this desire conflicts with cultural notions of ‘hegemonic masculinity’ as being invulnerable and stoical. As a result of this cognitive dissonance, men use rationalisation to criticise the private sphere as powerless and not ‘the real world.’
Rationalisation and cognitive dissonance are linked to the final relevant defence mechanism in relation to gender relations and duality: intellectualisation.

Intellectualisation is extremely common in legal systems generally and in international law, “where emotionally charged issues are thought of or discussed in abstract emotionless terms” (Walsh, 1984, p. 39). International law has attempted to avoid the discomfort of integrating the masculine and the feminine by focusing on statistics, facts and logic, and through the creation of dense and complex laws and institutions. This has the effect of working around problems rather than directly confronting them. Due to the defence mechanism of intellectualisation, international law is extremely inaccessible to the majority of people in the global community, including those it was originally designed to help. International law is the domain of the educated, and the well-resourced.

VII. The Ideal Woman in International Law

Based on existing laws and policy instruments, the vision of gender justice in international law attempts to remove all institutional barriers to women’s equality with men. Therefore, the ideal woman in international law has unfettered access to the private and public spheres through voting, political participation, employment, equal pay, and equal entitlements. This woman is also free from violence and discrimination, and has access to adequate education and healthcare. This vision of the ideal woman imagines a world with equal representation and participation of men and women in political, legal and economic institutions. As a result, there is a contemporary drive in international law towards the equal participation and representation of women in law and politics (female decision-making). This objective of gender justice is presumably premised upon the fact that if women participate in the public sphere, then this participation will automatically integrate the feminine consciousness into the public sphere.
This argument is made in relation to existing international law initiatives. Articles 7 and 8 of CEDAW (1979) relate to the participation of women in the public sphere. They provide as follows:

“Article 7
States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:
(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8
States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.”

Other international law agreements, including the Convention Concerning Discrimination in Respect of Employment and Occupation (1958)\(^{87}\) similarly provide for the engagement of women with the public sphere. In Article 2, it states:

“Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.”

The Convention further states in Article 1(a)-(b) that the term discrimination includes:

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“(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers’ and workers’ organisations, where such exist, and with other appropriate bodies.”

Of the eight Millennium Development Goals, Goal 3 is ‘to promote gender equality and to empower women.’ The targets associated with these goals are as follows:

“Target 3a: Eliminate gender disparity in primary and secondary education preferably by 2005, and at all levels by 2015:
3.1 Ratios of girls to boys in primary, secondary and tertiary education
3.2 Share of women in wage employment in the non-agricultural sector

Furthermore, three out of six principal focus areas of the UN Entity for Gender Equality and the Empowerment of Women (UN Women) are:

(i) Peace and security: “women must be at the centre of peace talks and post-conflict reconstruction” (UN Women, 2011);

(ii) Leadership and participation: “Across all areas of life, whether in political bodies or corporate boardrooms, women have a limited say in the decisions that affect them. Quotas and other special measures open more space for women’s participation” (UN Women, 2011) and

(iii) Economic empowerment: “Women lag far behind men in access to land, credit and decent jobs. The multiple barriers that prevent women from seizing economic opportunities must be abolished” (UN Women, 2011).
It is clear that the vision for women in international law is to be as engaged in the public sphere as men are. Indeed, on 19 September 2011, a “high-level gathering of women political leaders called ‘Women’s Political Participation – Making Gender Equality in Politics a Reality,’” was held to mark the 66th session of the UN General Assembly (UN News Centre, 2011). In all of the media releases about this event, the phrase ‘high-level’ was used to describe the event or gathering. This is interesting, and arguably unconscious language indicating that ‘high-level’ women are politically engaged at the highest level of masculine public sphere power. At this event, Michelle Bachelet, Executive Director of UN Women, gave a speech stating:

“We are bound by a common goal – to open the way for women to participate in all decisions affecting the development of our world, at the global, regional, national and local levels...By making full use of half the world’s intelligence – the intelligence of women – we improve our chances of finding real and lasting solutions to the challenges that confront us” (Bachelet, quoted in UN News Centre, 2011).

These developments in international law are interesting from the perspective that women were considered to participate fully in the life and responsibilities of their countries only by taking a more active role in national and international affairs. Surely private sphere activities continue to be a form of active participation in the life of one’s country, albeit a less ‘visible’ form. These policy initiatives reveal that even the female champions of women’s rights in fact believe that women are intrinsically disempowered when they are confined to the private sphere (while men are not intrinsically disempowered when they are confined to the public sphere). These collective representations of women’s status perpetuate the belief that women are irrelevant until participating in the public sphere, and they use the status of men as the standard for women’s lives and women’s rights.
While the participation of women in the public sphere is clearly necessary for a global society based on the principle of equality, it is not sufficient to argue that a feminine consciousness is automatically brought into the public sphere simply through the participation of women. It is argued that when women become immersed in the public sphere it often means that they wholly adopt a dominant masculine consciousness. Rather than bringing an ethic of care and nurturing into the public sphere, women are encouraged to compete for survival, security, territory and power. In this context, care and communication are often considered secondary to productivity and professionalism.

Furthermore, it is argued that the policy of gender mainstreaming does not engage with feminine consciousness because it reinforces the differences between men and women. Gender mainstreaming was defined in the UN Report of the Economic and Social Council for 1997 as:

“the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality” (UN Doc. A/52/3.18 September 1997).

The concept of gender mainstreaming in the United Nations system dictates that:

“Issues across all areas of activity should be defined in such a manner that gender differences can be diagnosed - that is, an assumption of gender-neutrality should not be made…Gender mainstreaming also requires that every effort be made to broaden women's participation at all levels of decision-making” (UN Doc. A/52/3.18 September 1997).

This thesis argues that this international law narrative of female participation and gender mainstreaming will not, in and of itself, lead to the integration of feminine consciousness.
The problem with conflating women and feminine consciousness in international law is that once women are brought out of the ‘devalued private sphere’ into the public sphere, women are immersed in a masculine consciousness and the private sphere (feminine consciousness) remains devalued.

Accordingly, this chapter argues that the vision of equal participation in the public sphere will only achieve a limited form of gender equality, whereby men and women are equal within a masculine consciousness. This vision will not necessarily achieve gender justice, because participation in the public sphere only encourages men and women to connect with the masculine consciousness. As such, although women have entered the public sphere, the process of integrating the power of the feminine consciousness into public life has been inhibited. Moreover, these policies are based upon the assumptions that:

(i) Men and women are fundamentally different, with men unable to represent the feminine, and women unable to represent the masculine; and

(ii) Women are all the same, in all nation-states, such that every woman’s life would benefit from being engaged in public life.

The concept of equal participation and representation in the public sphere is predicated on the idea that the activities of the private sphere lack inherent power and value. The consequence of this is that men and women are encouraged by the international law vision to spend a majority of their time in the public sphere: studying, working, and earning money. As a result, the feminine private sphere is being increasingly devalued to the point where it is outsourced to external helpers, or confined to the leftover moments of the day or week. This chapter argues that the vision of the ideal woman in international law actually resembles the masculine in its disempowered state, because the current conscious
agenda of international law encourages women to be strongly engaged in the public sphere, with little or no regard for their feminine orientation. This ironically encourages women to replicate the status of men, and perpetuates the disempowerment of the feminine.

The CEDAW/UN vision of gender justice consciously imagined a world where the masculine and feminine work together in the public sphere. As such, in the nation-states of the world where the CEDAW/UN vision has been most enthusiastically embraced and implemented, men and women have both come to embody the masculine consciousness, and the feminine has been further diminished. Ultimately, the campaign for women to be engaged in the public sphere has not addressed the ongoing devaluing of the feminine consciousness. The preferred goal is to overcome the split between masculine and feminine consciousness, and to integrate a feminine consciousness into the public sphere and a masculine consciousness into the private sphere.

**Conclusions**

This chapter has argued that international law has unconsciously perpetuated the split between masculine and feminine consciousness through its overall approach of glorifying the masculine public sphere and keeping the feminine private sphere devalued and silent. This unconscious material in gender relations (archetypes, unconscious language and defence mechanisms) has created the following patterns in international law:

- The archetypal pattern of women as victims and men as controllers that used the status of men as the standard according to which women should be treated;
- The negative, unconscious language in the relevant laws and declarations that focused on what was unwanted in the female experience, rather than what is
desired; and
- The conflation/projection of masculine qualities on to men and feminine qualities onto women.

From the foundation of the UN, there has been an assumption in international law that power is inherently masculine, and that therefore for women to ‘be empowered’ is for them to reach equality with men, and to be acknowledged by or participate in the public (masculine) sphere in some way. As such, women were ‘empowered,’ or restored to the level of men through several laws, including the UN Charter, the International Bill of Rights, and myriad other declarations and recommendations. The chapter concludes that the global collective self exists in a state of paradox in relation to the status of men and women. On the one hand, feminism and international law are based upon the assumption that women have been the only victims of gender divisions in their exclusion from the private sphere. This assumption is reflected in the UN Charter, the International Bill of Rights, and the CEDAW which all have near universal membership. This means that nearly every nation-state on earth has consciously agreed to elevate women to the public status of men and to eliminate discrimination against women. On the other hand, the exclusion of the gendered masculine from the private sphere has been virtually unnoticed and unmentioned in international law for two reasons. Firstly, men have been constructed as archetypal controller/dominators, so the collective self has unconscious of men’s disempowerment. Secondly, the private sphere has been traditionally devalued by men and women, and so for men to be excluded from the private sphere has not been considered as a denial of a human right.
This chapter has argued that the unsettled nature of global gender justice is in fact symbolic of the split between masculine and feminine consciousness in the global collective self. Jung “described the relationship between the ego and the unconscious as a power struggle” (Alschuler in Young-Eisendrath and Dawson, 1997, p. 281; Jung, CW 9, paras. 522-523; CW 7, paras. 342 and 381). This chapter concludes that the public and private spheres need to be consciously transformed in order to integrate the masculine and feminine into both. Integration calls for a more gendered feminine, rather than a more female experience of international law and a more gendered masculine, rather than a more male experience of the private sphere. This gives men and women the freedom to experience both the masculine and feminine within, and the masculine and feminine spheres of consciousness. This further allows for a subjective experience of international law, which is necessary because:

“The lens through which international law is viewed reflects the viewer’s preferences and prejudices – including those structured around national, geo-political, racial, ethnic, class and gender matrixes” (Lansink, 2010, p. 1).

In the following chapter, this thesis continues to examine the unconscious material of gender justice in its relationship to international law. The next chapter specifically analyses the ‘shadow’ of gender justice in international law.
Chapter Eight: Case Study Part Three  
The ‘Shadow’ of Gender Justice in International Law

“One does not become enlightened by imagining figures of light, but by making the darkness conscious” (Carl Jung, 1967, p. 265).

“And, so, what is a woman? The woman is the mother of a nation. He who rapes a woman rapes an entire nation” (UN Interviewee, _The Greatest Silence: Rape in the Congo_, A Documentary by Lisa Jackson, 2008).

This chapter continues the theme of identifying the unconscious material of gender justice in international law. It specifically explores the _unconscious shadow_ of gender justice. In analytical psychology, Jung refers to the ‘unconscious shadow’ as all of the repressed material that violates the conscious orientation of the Self and stands in stark contrast to the persona (the public, external mask of the Self). As Ketola notes,

> “since humans generally strive to develop their conscious egos towards a good self-ideal, their shadows store a great number of subconscious aggressive counter-reactions” (2008, p. 201).

In relation to uncovering ‘shadow material’ in the global collective self, this thesis suggests that flagrant and shocking human rights abuses often indicate the presence of a considerable amount of shadow material that needs to be processed. This could be described as the broader unconscious material of international law. Given the focus of this thesis on gender, this chapter argues that the unconscious shadow of gender in the global collective self is exposed in sexual atrocities and gender-based violence (GBV) committed during armed conflicts. These crimes represent the intersection of gender justice and international humanitarian law.

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88 This choice of shadow material is directly linked to the case study of gender (masculine and feminine consciousness) in the global collective self. This shadow material of GBV clearly highlights how the narrative of international law has evolved in relation to masculine and feminine archetypes since the foundation of contemporary international law. There are myriad other examples of shadow material in the global collective self, which encompasses acts that directly violate the stated (conscious) aims of (near universal) international law. These include acts of aggression that violate the prohibition on the use of force in article 2(4) of the _UN Charter_ (1945) and human rights abuses such as acts of genocide that violate the _Genocide Convention_ (1949) and the _Rome Statute_ (2007).
The chapter analyses how the narrative of modern international law has progressed in response to this shadow material. It particularly examines how international law has developed and supported the evolution of collective consciousness in relation to sexual violence during armed conflict. It will be shown that this evolution has occurred in three distinct phases:

(i) **Stage One: Repression and Silence (prior to 1945)**

During this stage, the global collective self responded to the shadow material of sexual violence in armed conflict through collective repression and silence. During this time, the global collective self lacked the necessary resources, networks and technology (consciousness) to confront the shadow. It is argued that this stage, to a great extent, involved the collective ‘unconsciousness’ of the shadow. Some minimal action in international law was taken in the early twentieth century to address sexual violence in armed conflict, for example, The Hague Convention No. IV concerning the Laws and Customs of War on Land (1907).

(ii) **Stage Two: Collective representations (1945-1990s)**

The trauma of the human rights abuses and mass rapes that occurred during World War II forced the global collective self to acknowledge the scale of sexual atrocities that occurred during armed conflicts. After this war, the global collective self developed the awareness that the shadow of collective violence could only be overcome with consciousness and action. The United Nations was formed in 1945, and as consciousness grew in relation to the atrocities of armed conflict, myriad collective representations were created in the form of international conventions, declarations, recommendations, policy instruments and conferences in an
attempt to eradicate the shadow material. Particular examples include the Geneva Conventions of 1949, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974), and the Additional Protocols to the Geneva Conventions (1977). However during this time the global self was more focused upon the shadow of humanity (in the evils of war and genocide), and the need for human rights, rather than the need for gender justice. As such, there were no prosecutions for sexual violence at the Nuremberg Tribunal or the Tribunal for the Far East.

(iii) **Stage Three: Self-reflectivity (1990s-present)**

This new stage was activated, once again, by traumas to the global collective self: the genocides and sexual abuses in the former Yugoslavia and Rwanda. In witnessing these atrocities, the global collective self had the connections and technology to become conscious of the nature of sexual violence during armed conflict, and the inadequacy of existing collective representations. As a result, self-reflectivity emerged in order to consider and reflect on the ongoing global response to this shadow material. In relation to sexual violence in armed conflict, self-reflectivity developed in the form of the statutes and jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Court (ICC) and other hybrid criminal tribunals. These courts provide support for the conscious orientation of the global self through in-built legal reflective mechanisms pertaining to the body in armed conflict. Such mechanisms include protective measures for victims, and targeted rules of procedure and evidence. The reflective mechanisms attempt to ensure that the
collective consciousness is dynamic and responsive to developments in the global self.

This chapter details the three phases of the international law response to sexual abuses in armed conflict: from repression, to collective representations, and self-reflectivity. These phases demonstrate the link between developments in international law and the expansion of collective consciousness in the global collective self.

I. Terminology

This chapter is concerned with gender-based sexual violence in the context of armed conflict. Gender-based violence (GBV) is used:

“as an umbrella term for any harmful act that is perpetrated against a person’s will, and that is based on socially ascribed (gender) differences between males and females” (The Interagency Standing Committee’s Guidelines for Gender-based Violence, 2005).

This thesis explores GBV perpetrated against civilians by soldiers during armed conflicts which can encompass genocidal acts, forced marriage, forced impregnation, forced abortion, sexual slavery, rape, forced prostitution, trafficking, and the intentional spread of sexually transmitted diseases, including HIV/AIDS.

As to the term ‘armed conflict,’ this thesis adopts the 2010 definition of the International Law Association’s (ILA) ‘Final Report on the Meaning of Armed Conflict in International Law,’ whereby a situation of armed conflict depends on the satisfaction of two essential minimum criteria, namely:

a. The existence of organized armed groups;


In addition, the International Committee of the Red Cross (‘the ICRC’) has stated that international armed conflict is defined as “exist[ing] whenever there is resort to armed
force between two or more States” and non-international armed conflicts are:

“protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State [party to the Geneva Conventions]. The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organisation.” (ICRC, ‘How is the Term ‘Armed Conflict’ Defined in International Humanitarian Law?’ March 17, 2008).

The next section provides an overview of the relationship between armed conflict and the shadow material of gender.

The Shadow of Masculine & Feminine Consciousness

It was established in Chapter Four that according to analytical psychology, the contents of the persona and the shadow form a diametrical opposition in the Self. Whereas the persona is the outward mask that the ego uses to convey itself to the outside world, the shadow consists of the material that the ego seeks to repress or eradicate from the Self (Casement in Papadopoulos, 2006, p. 94). Therefore, the shadow relates to the incongruent or anomalous material that an individual or collective consistently attempts to eliminate or dissociate from the self.89 Of the development of shadow material, Jung wrote:

“…all the impulses, thoughts, wishes, and tendencies which run counter to the rational orientation of daily life are denied expression, thrust into the background, and finally fall into the unconscious. There all the things which we have repressed and suppressed, which we have deliberately ignored and devalued, gradually accumulate and, in time, acquire such force that they begin to influence

89 In applying Jungian theory to the ‘shadow’ elements of corporations, Ketola has examined the many and varied neurotic and borderline characteristics of companies, such as withdrawal, dependency, narcissism and paranoia, and pinpointed their origins in psychological defences such as isolation, regression, omnipotent fantasies and projection (Ketola, 2008, p. 200). She identifies the psychopathic characteristics of many large corporations - such as unconcern for others’ feelings, disregard for others’ safety, dishonesty and lying to one’s own advantage, inability to feel guilt and unwillingness to observe the laws and norms of society (Ketola, 2008, p. 200). It is argued that these aspects of shadow are also evident in the global collective self.
According to Jungian theory, the path to integration and Self-realisation is often initiated by a confrontation with shadow material, which the ego experiences as an external trauma. This is because the trauma of the exposed shadow is often the extreme event that prompts individuals and collectives to seek change (Casement in Papadopoulos, 2006). The collective shadow is often uncovered during armed conflicts, because it is composed of all the drives that run counter to the conscious orientation of the self. Jungian theorists have argued that, in general, wartime behaviour is an extreme manifestation of the behaviour exhibited during peacetime, with archetypes and compulsions that normally lie in the unconscious shadow activated by the chaos and trauma of war (see, for example, Lewin, 2005; Lewin, 2009; Stevens, 2005; and Hillman, 2005). In particular, Stevens writes:

“War brings out both the best and worst in us. It mobilizes our deepest resources of love, compassion, courage, cooperation, and self-sacrifice; it also releases our capacities for xenophobia, hate, brutality, sadism, destruction, and revenge…War frees people from routine and the need to be responsible for their actions” (2005, p. 5).

It is, accordingly, the argument of this thesis that armed conflict exposes the extremities of the split between masculine and feminine consciousness, just as conflict tends to expose and exaggerate the underlying shadow impulses in any collective self, whether it is a partnership, a corporation or a nation. Thus, armed conflict is an extreme combination of the distorted gendered masculine and the vulnerable gendered feminine, which ultimately stems from the shadow of the collective self. This is outlined in Tables 8.1 and 8.2:
Conscious Masculine: Conflated with men in international law

Unconscious Masculine: Projected onto women in international law

Shadow Masculine Consciousness

Strong protector/hunter/warrior, seeking survival, power and security in the public sphere

Vulnerable and in need of nurturance

Shadow protector/hunter/warrior: violent, vengeful, abusive, torturing (for example, the murdering soldier in armed conflict)

<table>
<thead>
<tr>
<th>Conscious Feminine: Conflated with Women in International Law</th>
<th>Unconscious Feminine: Projected onto men in International Law</th>
<th>Shadow Feminine Consciousness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vulnerable and disempowered; relegated to a ‘secondary’ sphere of influence: home and family</td>
<td>Strong, independent and powerful in the public sphere</td>
<td>Shadow victim: abused, defenceless, helpless body (for example, the civilian body in armed conflict)</td>
</tr>
</tbody>
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**Table 8.1: States of Masculine Consciousness**

**Table 8.2 States of Feminine Consciousness**

**Shadow Phase One: Repression and Silence (pre-1945)**

In the context of armed conflict since the beginning of recorded history, it is undeniable that the civilian body—as a symbol of the gendered feminine—has had a long history of sexual abuse and torture that has been largely ignored by the global community.

According to Maier,

“The ancient cultures understood that the rape of women belonging to the enemies’ family was a method to weaken the foe, a reward of winning the battle, and stealing foes’ property by enslaving and owning them” (2011, p. 146).
The UN Division for the Advancement of Women states, “Sexual violence during armed conflict is not a new phenomenon. It has existed for as long as there has been conflict” (1998, p. 2). Leatherman writes,

“…sexual violence in armed conflict has been part of the spoils of war from time immemorial. It has carved a path of humiliation and destruction, turning the lives of women and girls into the currency of chattel and slaves…” (2011, p. 1).

In Against Our Will: Men, Women and Rape (1975), Susan Brownmiller outlines accounts of rape and other sexual violence that have been committed during armed conflicts throughout history. Brownmiller shows that although the devastating effects of armed conflict upon women have long been recognised, until 1945, the global community did not take action to prevent or punish sexual crimes against the female body during armed conflict. Copelon reflects,

“When war is done, rape is comfortably filed away as a mere and inevitable ‘by-product,’ a matter of poor discipline, the inevitable bad behaviour of soldiers revved up, needy, and briefly ‘out of control’ (in Peters and Wolper, 1995, p. 197).

Although GBV in armed conflict prior to 1945 was widespread, it was prohibited in international law. For example, there were:


The Hague Convention No. IV concerning the Laws and Customs of War on Land (1907) provided in Article 46 of its annexed regulations:

“Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.”

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90 International Conferences (The Hague), Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907, site accessed 2 April 2012: <http://www.unhcr.org/refworld/docid/4374cae64.html>
This law is considered to encompass the crime of rape against both men and women and has attained the status of customary international law.\textsuperscript{91}

This was the extent of the international law prohibition against sexual atrocities committed during armed conflict prior to 1945. After World War I, the War Crimes Commission of 1919 found extensive evidence of sexual violence including rape and forced prostitution, particularly against women in Belgium and France by the German army. However “efforts to prosecute failed miserably” (De Brouwer, 2005, p. 5; Askin, 1997, pp. 42-45). These and other human rights abuses of the First World War led to attempts to create a League of Nations,\textsuperscript{92} but it is argued that the global self lacked the requisite consciousness (in the form of networks, technologies, resources and collective will) to sustain this institution.

Despite the prohibitions of sexual violence in international humanitarian law, GBV was also systematic and pervasive in the lead-up to, and during World War II. Fitzpatrick notes,

“…the mass rapes of women during the war for independence in Bangladesh, the systematic rape of women suspected of complicity in the insurgency in Kashmir, and the belated but growing scandal concerning the ‘comfort women’ who were abducted and forced into prostitution by the Japanese Army during the Second World War…[reveals] the dimensions of the problem” (in Cook, p. 548).

However rape was not prosecuted by the International Tribunals at Nuremberg, or by the Military Tribunal in Tokyo (Copelon in Peters and Wolper, 1995, p. 197). Charlesworth

\textsuperscript{91} This law is gender neutral and therefore applies to both female and male victims of GBV committed during armed conflict (Report of the Special Rapporteur on Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflict, 1998, para. 60).

\textsuperscript{92} See The Covenant of the League of Nations, 28 April 1919, site accessed 3 May 2012: http://avalon.law.yale.edu/20th_century/leagcov.asp
and Chinkin argued that “international law has responded more readily to the harms typically sustained by men than to those directed against women” in times of conflict (2000, p. 251).

From the perspective of this thesis, this inaction in response to sexual violence during these international armed conflicts can be understood as a lack of shadow consciousness in the collective self. This means that the global collective self only had the resources to repress or ignore shadow material. This reflects a particular stage in individual and collective consciousness, whereby the ego is unwilling or unable to confront the shadow. However,

“[r]epression of shadow elements does not destroy them. Indeed, whenever the shadow is deprived of a conscious outlet, it is ‘transformed into something essentially baleful, destructive and anarchical’” (Woolpert et al., 1998, p. 236 quoting Odajnyk, 1976, p. 59).

Woolpert et al. continue:

“The common, albeit unhealthy method of coping with repressed material is projection: the futile effort to banish it...by externalizing it. However, denial and projection also cause the shadow to grow larger and darker...In political communities it can express itself in collective violence, corruption, fanaticism, authoritarian submission, and moral decay” (1998, p. 236).

The collective shadow is often projected onto a cultural group that is portrayed as ‘inferior beings’ (Casement in Papadopoulos, 2006). This chapter suggests that in this context, the collective shadow of the masculine consciousness (destruction, violence and hatred) was projected on to ‘feminine’ civilians, who were then treated as inferior beings whose bodies could be abused and violated. However because the resolution to World War I did not diffuse the shadow through expanded consciousness (collective representations, institutions and self-reflectivity) it ‘grew larger and darker’ in the form of World War II.
It is therefore submitted that the dynamics of the collective self, and its level of consciousness, are directly linked to the nature and narrative of international law. This is evidence of the symbiosis between the collective self and international law. The next section shows that the collective self reached a new level of consciousness in relation to shadow material after the trauma of World War II (1939-1945).

**Shadow Phase Two: Collective Representations 1945-1992**

The second phase of collective engagement with the shadow of GBV in armed conflict emerged after World War II, with the trauma of shadow material giving rise to new forms of consciousness. According to Jung,

> “the individuating process invariably starts off by…becoming conscious of [the] shadow, which is experienced at first as the inferior personality made up of everything that does not fit with conscious demands” (Casement in Papadopoulos, 2006, p. 96).

The aftermath of the Second Sino-Japanese War in 1937 and World War II exposed the estimated two hundred thousand Japanese ‘comfort women,’ the Rape of Nanking and other mass rapes, which drew the attention of the global collective self to the scale of sexual violence during armed conflicts (Askin, 2004; Copelon in Peters and Wolper, 1995, p. 197). While there were no immediate prosecutions for rape in the Nuremberg trials or in the Tribunal for the Far East, article 6 (c) of the Charter of the International Military Tribunal at Nuremberg, article 1 (c) of the Allied Control Council Law No. 10, and article 5 (c) of the Charter of the International Military Tribunal for the Far East identified sexual violence against women, including rape, as a war crime within the general prohibition of “inhumane acts committed against any civilian population” in the traditional formulation of crimes against humanity. It is interesting to note that civilian men and women are distinguished in these laws, with the concept of GBV against males not acknowledged as a crime.
This thesis argues that after World War II the consciousness of the global community expanded to the extent that new collective representations were created in the context of international humanitarian law. Through the creation of institutions such as the UN (and the International Court of Justice) and collective representations such as the Geneva Conventions in 1949, there was a clear realization that the global collective self needed concerted action to prevent the suffering of World War II from ever recurring. This was clear from the preamble to the UN Charter:

“We, the peoples of the United Nations, determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind.”

From the foundation of the UN until the early 1990s, sexual violence during armed conflict was strongly prohibited by international humanitarian law, which encompasses the laws and customs of war: particularly the Geneva Conventions (1949) (GCs), Additional Protocols to the Geneva Conventions I and II (1977) (APs) and customary law (Green, 1993). This phase of international law treated civilian men and women (the gendered feminine) as ‘objects of special respect,’ in particular need of protection during armed conflict, and related the female body to honour and dignity. This approach reflected the dynamic of the civilian as embodying the fragile and delicate feminine consciousness in the private sphere. Interestingly, the feminine was transformed from the object of shadow projections, and was now treated as inherently vulnerable. Masculine, public sphere means (conventions, protocols and declarations) were now used in an attempt to protect the gendered feminine from the distorted masculine in armed conflict.

I. Protecting the Gendered Feminine in Armed Conflict

The first convention specifically protecting the gendered feminine from GBV during
armed conflicts was the fourth Geneva Convention (1949) (GC IV). According to Article 27:

“Civilians are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault…” [emphasis added].

In addition to the protections enshrined in Geneva IV, GBV against women was similarly prohibited by the Additional Protocols (APs) to the Geneva Conventions (1977). In Chapter Two of AP I, entitled ‘Measures in Favour of Women and Children,’ Article 76 (1) provides:

“Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault” [emphasis added].

Interestingly, the AP II of 1977 (relating to non-international conflicts) does not distinguish between males and females in its protection for civilians. However the same language of ‘respect’ and ‘honour’ is used. Article 4 (1) provides:

“All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction…” [emphasis added].

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93 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, opened for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950).
95 Article 4(2) states: “Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph I are and shall remain prohibited at any time and in any place whatsoever: (a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as
This thesis has argued that analysing the narrative and language of international law can
determine how the global collective self relates to and values the object of the law. While
it is clear that rape and sexual violence were prohibited by international humanitarian law
prior to the 1990s, there was an in-built mechanism that prevented the laws against GBV
from being enforced. Articles 146 and 147 of GC IV set out a crucial qualification in
relation to the prosecution of war crimes. The universal jurisdiction of all States to
prosecute a State or individual for a war crime only operates in the case of a grave breach
of the *Geneva Conventions* (1949), or a serious violation of other IHL (which includes the
Hague Conventions and the APs of 1977). The issue, from 1949 until the 1990s, was thus
whether sexual violence and rape constituted a grave breach or serious violation of IHL.
The answer to this question affected whether redress can be sought internationally or only
in the State in which the abuse occurred. The expression ‘grave breaches’ according to
Article 147 in GC IV includes:

- wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing
great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful
confinement of a protected person, compelling a protected person to serve in the forces of a hostile
Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in
the present Convention, taking of hostages and extensive destruction and appropriation of property,
not justified by military necessity and carried out unlawfully and wantonly.

It is arguable that the categories are sufficiently broad and generic to encompass sexual
abuse (Khusalani, 1982) however in 1993 the UN limited grave breaches to ‘systematic’
cruel treatment such as torture, mutilation or any form of corporal punishment;
(b) collective punishments;
(c) taking of hostages;
(d) acts of terrorism;
(e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape,
enforced prostitution and any form or indecent assault;
(f) slavery and the slave trade in all their forms;
(g) pillage;
(h) threats to commit any or the foregoing acts” [emphasis added].
rape and abuse (Vienna Declaration, 1993). It is argued that this constraint was an indication that while the global collective self was conscious enough to explicitly prohibit sexual violence during armed conflict, the prosecution of such crimes was still a challenge. A ‘serious violation’ of the Protocols has been held to be a violation that breaches a rule protecting important values and which involves grave consequences for the victim (Delacic Judgment, ICTY, 1998). The prohibitions of attacks against the civilian population are considered to constitute customary international humanitarian law and thus apply to all States parties to a conflict (Tadic Decision of ICTY Appeals Chamber, 2 October 1995). Therefore, prior to the 1990s, although individual instances of sexual violence during armed conflicts were violations of IHL and international customary law, they were not prosecuted as grave breaches of IHL. In fact, they were not prosecuted at all.

In addition to the prohibitions in international humanitarian law prior to the 1990s, GBV was also prohibited by the Convention on the Prevention and Punishment of the Crime of Genocide (1948) (‘the Genocide Convention’). In some contexts, sexual violence during armed conflicts can be understood as an instance of genocide, which is prohibited by Article II of the Genocide Convention. In the Convention, genocide is defined as:

“any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical

96 The position of the International Committee of the Red Cross (ICRC) at the Rome Conference in 1998 was that these categories of breaches could be interpreted to encompass rape and sexual abuse (Kittichaisaree, 2001).

destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group.”

Therefore, GBV can constitute an act of genocide under Article 2(b), 2(c) or 2(d) if the act is committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.\(^98\)

The *Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974)*\(^99\) was another collective representation created in response to the expansion of consciousness in relation to the GBV shadow. Article 4 of the Declaration provides:

“All efforts shall be made by States involved in armed conflicts, military operations in foreign territories or military operations in territories still under colonial domination to spare women and children from the ravages of war. All the necessary steps shall be taken to ensure the prohibition of measures such as persecution, torture, punitive measures, degrading treatment and violence, particularly against that part of the civilian population that consists of women and children [emphasis added].

The language of this article is interesting because firstly it assumes that civilian men do not need primary protection in emergency and armed conflict. Secondly it assumes that women and children are not necessarily considered to be a part of the war; and that that

\(^98\) *The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984) (1465 UNTS 85) was also developed during this time period. It prohibits “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” This prohibition applies to periods of armed conflict, and thus extends to GBV against male and female civilians against GBV.

they can actually be spared from ‘the ravages of war.’ In fact, in many armed conflicts, including in the former Yugoslavia, Rwanda and the Congo, sexual violence was used as a targeted and systematic method of warfare, directed at men, women, and children in order to simultaneously undermine the masculine and feminine enemy (Askin, 2004; Baaz and Stern, 2009).

This thesis conceives these new laws developed from 1949 to the early 1990s as a clear example of international law reflecting the growing consciousness of the global collective self. It is argued that the trauma of the Second World War led the global collective self to become conscious of the injustices faced by civilians during armed conflicts, and this led to widespread changes in international law. This is consistent with the theme of ‘crisis and trauma as opportunities for growth,’ which is sustained throughout the thesis.

II. The Language of Collective Representations 1945-1992

The collective representations that were developed in international law from 1945 onwards still reflected the remaining unconscious material in the form of entrenched attitudes towards men, women and the private sphere. It is argued that these international laws prohibiting sexual violence against women during conflict used unconscious language that continued to disempower the gendered feminine. Some observers of these laws have taken issue with the language that is used, with sexual violence of the female body associated with attacks on ‘female honour.’ On this point, Askin notes that rape and sexual abuse in international humanitarian law is unfortunately linked with crimes of honour or dignity as opposed to crimes of violence, thereby perpetuating the stigma and detrimental stereotypes associated with rape, and concealing the violent nature of the crime (Koenig and Askin, 2000). Gay MacDougall, Special Rapporteur on Systematic
Like practices during armed conflict, similarly writes,

“...the notion of rape as a violation of honour, rather than as an act of violence, obscures the violent nature of the crime and inappropriately shifts the focus toward the imputed shame of the victim and away from the intent of the perpetrator to violate, degrade and injure”


Further, the articles in GC IV and AP I use the term *shall* rather than *must*:

recommending, rather than demanding, that actors protect civilians. Hevener argues that this language is framed so as to charge States with an obligation, when what is needed is an absolute assertion of all women’s right to be free from sexual attack and abuse (Hevener, 1986).

The point to be made about the collective representations in international law formed during this time is that the global collective self considered sexual violence to be an attack or outrage on a woman's dignity. These laws reinforce the notion of women as embodying the gendered feminine victim. Accordingly, through the medium of international law, the feminine during armed conflict was treated in the same way as it was treated during peacetime, whereby the essence of the feminine – motherhood, childbearing and community – was portrayed as an added vulnerability in armed conflicts for women only. Feminist theorists have argued that the language of these Articles is problematic because they are mounted as protective provisions. As Tickner observes,

“certain people (usually gendered feminine) are being protected by certain others (always gendered masculine)…This protector/protected relationship is one of inequality: those who are protected lack agency or ability to provide for their own protection” (in Dallmeyer, 1993, pp. 271-272).

Charlesworth has also argued that the provisions assume:

“that women should be protected from sexual crimes because they implicate a woman’s honour, reinforcing the notion of women as men’s property, rather than because they constitute violence.
This proprietary image is underlined by the use of the language of protection, rather than prohibition of the violence” (1999, p. 386).

It is argued that the language is couched in protection of honour because of the unique perception of the feminine. As Mazurana observes, “Women and girls are often viewed as cultural bearers and reproducers of ‘the enemy’ and become prime targets” (2010, p. 12). The female body is often symbolic of the community, which represents the feminine private sphere, as Radhika Coomaraswamy notes: “to rape a woman is to humiliate her community” (1992, p. 49). Seifert also argues that patterns of war crimes against women have cultural functions:

“They destroy the physical and psychological existence of the women concerned and, moreover, inflict harm on the culture and collective identity of the whole group, ethnicity, or nation under attack” (1996, p. 35).

Mazurana adds,

“Women are also targeted as mothers, where their heightened vulnerability to torment and torture because of their maternal responsibilities, roles, hopes and attachments is exploited” (Mazurana, 2010, p. 12, paraphrasing Walker, 2009).

It is clear that the laws prohibiting GBV in armed conflict from 1945 to the early 1990s were imbued with the narrative of gender in international law at the time. The next section explores how, in response to new traumas, the global collective self transformed from the prohibition to the prosecution of sexual violence.

**Shadow Phase Three: Self-Reflectivity From 1992**

While GBV in armed conflict was clearly prohibited in international law prior to the 1990s, it is alarming that until the establishment of the ICTY in 1993, no one had ever been tried for rape as a war crime. In fact, it wasn’t until 2001 that the first conviction by
an international criminal tribunal exclusively for a crime of sexual violence occurred in
the ICTY case of *Kunarac, Kovac and Vukovic*[^100] (Stemple, 2009, p. 642). This was in
spite of the violations arising out of the conflicts during World War II, Vietnam and the
Bangladesh-Pakistan War (Jarvis, 2003). As such, sexual violence in armed conflict has
been described as “one of history’s great silences” (UN Special Rapporteur on Violence
Against Women quoted in Durham and Gurd, 2005, p. 67). However the silence that
lasted for so long in relation to the issue of sexual atrocities in armed conflict came to an
end after the massacres in the former Yugoslavia and Rwanda. The systematic abuse of
civilians was directly associated with the wartime strategy of the ethnic cleansing in
Rwanda and the former Yugoslavia (Ray, 1997). The particular violations perpetrated
against civilians during these conflicts included:

(i) Public and private rape and sexual abuse (International Human Rights
Group, 1994);

(ii) Forced prostitution and sexual enslavement (Ray, 1997, p. 795);

(iii) Sexual mutilation (Green, 2002);

(iv) Forced pregnancy and forced motherhood (International Human Rights
Group, 1994);

(v) Forced incest (Stemple, 2009).

Between 20,000 and 50,000 women were raped during the war in the former Yugoslavia
in the early 1990s (Haddad, 2011, p. 110). ‘Rape camps’ were set up,

“where women and girls were forcibly enslaved in abandoned schools, sports centres, and cafes to
be continually raped, sometimes impregnated, and if impregnated, forcibly detained until labour to
prevent abortion and deliver ‘Serb children’ (Ministry of Foreign Affairs, Copenhagen, 1993,

According to Ray, this was a “carefully conceived and effective war strategy” of the Serbian war effort, and “not isolated incidents of soldiers gone astray” (1997, p. 801).

During the Rwandan genocide it is estimated that between 250,000 and 500,000 women were raped in one hundred days and that approximately 20,000 children were born as a result of rape (United Nations Radio, 2009). Soldiers from the Hutu tribe infected with the HIV virus systematically raped women and girls from the Tutsi tribe, with “the objective being to inflict a slow and lingering but certain death on the Tutsi” (Machel, quoted in Ray 1997, n. 20). Various explanations for the gendered sexual abuses as a war strategy include boosting soldiers’ morale, humiliating the male enemy by undermining their marriages, tainting bloodlines of the enemy, and infecting enemy women with disease (Askin, 2003). The scale of these abuses made it clear that the existing laws of war in the early 1990s needed to be enforced.

When reports of the sexual violence in the former Yugoslavia and Rwanda entered the collective consciousness, resolute action was taken to confront it for the first time in international law. The global collective self finally developed self-reflective prosecution measures to confront the shadow material. As Edwards notes,

“It was not until the 1990s that violence against women featured seriously on the agenda of the international community” (2011, p. 7).

In the language of this thesis, this statement could be re-phrased as:

‘It was not until the 1990s that the global collective self became conscious of repressing the unconscious shadow in the form of violence against the feminine, and decided to develop self-reflective mechanisms in order to confront it.’

Arguably the collective consciousness was fertile for expansion at this particular time because of the decades of work that had been carried out by feminists on rape and gender

In terms of an immediate response, Security Council resolution 798 of 18 December 1992 called for detention camps for women in the former Yugoslavia to be immediately closed stating that the Council was “appalled by the massive, organized and systematic detention and rape of women, in particular Muslim women, in Bosnia and Herzegovina” and “strongly [condemned] these acts of brutality.” Yet although violence against women was gathering awareness in the collective consciousness, it was not until the statutes and jurisprudence of the ICTY and the ICTR in the 1990s that sexual violence during armed conflict was prosecuted as a war crime, a form of genocide and as a crime against humanity. As such, international law only became conscious of enforcing the laws against sexual violence against women after the genocides in the former Yugoslavia and Rwanda. It is argued that this is an example of trauma leading to expanded consciousness.

From the 1990s onwards, the conscious narrative of public international law in relation to GBV in armed conflict was strengthened to protect all civilians from all forms of harm, and to prosecute all perpetrators. GBV now ranks among the grave breaches of international humanitarian law, and the global collective self has consciously created a strong normative legal framework in the form of:

(i) The Statute of the International Criminal Tribunal for the former Yugoslavia (1993);
(ii) The Declaration on the Elimination of Violence Against Women (1993);
(iii) The Statute of the International Criminal Tribunal for Rwanda (1994);
(iv) The Rome Statute of the International Criminal Court (1998);
(v) Security Council Resolutions 1325 (2000), 1820 (2008), 1888 (2009), and 
1889 (2009); and

(vi) Other general and specific documents protecting the human rights of 
women during armed conflict.101

It is argued that when the conscious narrative of international law changes, there is a 
corresponding shift in the ‘external facts’ of international law, for example in the creation 
of treaties, declarations, tribunals, Security Council resolutions, General Assembly 
resolutions and the appointment of Special Rapporteurs. This constitutes evidence of 
growing collective consciousness in the collective self.

The ICTY, as a subsidiary body of the UN Security Council, was the first international 
court to prosecute sexual violence as a war crime, with Chief Prosecutor, Justice Richard 
Goldstone commenting, “Rape has never been the concern of the international 
community. We have to deal openly with these abuses” (quoted in Simons, 1996). The 
ICTY was also the first international tribunal to prosecute and convict individuals with 
command responsibility for rape as a form of torture and as a crime against humanity, 
while the ICTR was the first criminal tribunal to prosecute both rape and systematic rape 
as acts of genocide. The ICTY was established by Security Council Resolution 827 of 25 
May 1993, and the ICTR was established by Security Council Resolution 955 of 8

101 This thesis also acknowledges the existence of certain hybrid tribunals set up to prosecute war crimes in 
Sierra Leone, Cambodia, East Timor, Iraq and Lebanon, but does not analyse their jurisprudence in this 
chapter. As an example of a hybrid tribunal, the Special Court for Sierra Leone was set up in response to the 
civil war in Sierra Leone by the United Nations and the Sierra Leone government. According to Security 
Council Resolution 1315 (2000) the mandate of the Special Court is “to prosecute persons who bear the 
greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law 
committed in the territory of Sierra Leone since 30 November 1996.” The Special Court’s Statute provides 
that sexual violence against women can be prosecuted as a crime against humanity (article 2(g)), and as a 
war crime (article 3(e)). By way of Article 14, the Special Court adopted the Rules of Procedure and 
Evidence of the ICTR. The first Chief Prosecutor of the Special Court stated that he would be making 
gender crimes the ‘cornerstone’ of his prosecution strategy (Girwal, 2011, p. 5).
The work of the ICTY and the ICTR represented a paradigmatic shift in the way in which wartime violations against women were confronted by the global collective self, particularly in regard to conceptualisations of sexual violence and Rules of Procedure and Evidence. Special attention was paid to gender issues in the ICTY, with the Office of the Prosecutor (OTP) structured so as to respond best to crimes committed against women (as opposed to the gendered feminine). According to the Division for the Advancement of Women, “The position of legal adviser for gender issues was created to ensure that the large number of sexual violence allegations would be properly addressed” (DAW, 1998, pp. 9-10). In addition, one investigation team was established to specifically investigate sexual violence, and all investigation teams are comprised of both women and men (Report of the Secretary-General on the Rape and Abuse of Women in the Areas of Armed Conflict in the Former Yugoslavia, 25 October 1996, para. 23).

II. Conceptualisations of Sexual Violence in the ICTY & the ICTR

This section shows that rape and sexual violence in armed conflicts have been prosecuted as war crimes, crimes against humanity and genocide in the ICTY and the ICTR, depending on the context of the crime. It is notable that the enforcement of GBV during armed conflict was transformed from no prosecutions whatsoever prior to 1993 into such broad interpretations of such crimes. It is argued that this was attributable to the expansion of collective consciousness in the global collective self. The chapter now outlines the ways in which GBV has been conceptualized in the ICTY and the ICTR.

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102 These resolutions contained the Statutes of the ICTY and the ICTR as annexes, which determined the Tribunals’ jurisdiction, organisational structure, and criminal procedure.
A. Rape as Torture

Rape can be classified as torture in the ICTY Statute under:

- Article 2 (b): grave breaches of the Geneva Conventions of 1949;
- Article 3: violations of the laws and customs of war: outrages upon personal dignity including rape; and
- Article 5: crimes against humanity.

The ICTR punishes rape as torture under:

- Article 4: violations of Common Article 3 of the Geneva Conventions and Additional Protocol II; and
- Article 3: crimes against humanity.

Rape was considered to constitute torture by the ICTY in the case of Delacic. In this case, the accused was found guilty of torture as a “grave breach” of the Geneva Conventions and as a violation of the laws and customs of war. The Trial Chamber, in aligning rape with torture, commented on the gendered nature of the crime: “violence directed against a woman, because she is a woman, is a form of discrimination” (Delacic, para. 493). In addition, this decision holds superiors criminally liable for failing to “adequately train, monitor, supervise, control, and punish subordinates who commit rape crimes” (Delacic, para. 395). This decision had the effect of charging commanders with actual and constructive notice of the actions of their subordinates.

The ICTY broadly defined ‘torture’ and ‘cruel treatment’ in a series of cases. The ICTY in the case of Kunarac, Kovac and Vukovic recognised that because of the exceptional nature of armed conflict, the crime of torture in international humanitarian law does not

require the presence of a State official or any other authority-wielding person in the torture process (para. 496, 2001). The Trial Chamber thus conceptualised rape within the following definition of torture:

“the intentional infliction of severe pain or suffering, aiming at punishing, intimidating, coercing or discriminating against the victim” (para. 497).

In Tadić, the Trial Chamber of the ICTY held that the physical and sexual abuse of prisoners in camps amounted to cruel treatment. According to the Chamber, cruel treatment includes inhumane acts that cause “injury to a human being in terms of physical or mental integrity, health or human dignity” (para. 729, 1997). In the case of Furundžija, the defendant was attributed individual responsibility by the ICTY for sexual violence as a co-perpetrator of torture and as an aider and abettor of outrages upon personal dignity including rape (para. 269 and 275, 1998). The case also stipulated that even the rape of one victim is a serious violation of international humanitarian law. Moreover, the Trial Chamber stressed, “any form of captivity vitiates consent” (para. 271). ICTY judges in the Kvočka et al. trial established that a “hellish orgy of persecution” occurred in the Omarska, Keraterm and Trnopolje camps of northwestern Bosnia.

The ICTR was stricter in its interpretation of torture. The judges in the case of Akayesu affirmed that rape only constituted torture when inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. According to the ICTR,

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“Sexual violence amounts to torture when used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person” (Akayesu, para. 689).

Since the landmark case of Akayesu, the ICTR has struggled to convict “high-level criminals for crimes of rape and sexual violence, largely because of a lack of evidence directly linking the accused persons to the crimes committed” (Haffajee, 2006, p. 202). As such, the jurisprudence of the ICTR was expanded in the case of Karemera\(^{109}\) to include the theory of joint criminal enterprise (JCE). This theory:

“views crimes of rape in a larger context—as part of a master plan motivating the mass violence that occurred between April and July of 1994…Prosecutors should invoke the JCE doctrine only if an accused actually had control over, and made a substantial contribution to, a crime of rape or sexual violence” (Haffajee, 2006, p. 202).

B. Rape as a War Crime

Sexual violence has been categorised as a war crime when it occurs under circumstances that specifically breach the laws and customs of war. The ICTY punishes grave breaches of the Geneva Conventions of 1949 under Article 2 of its Statute and violations of the laws and customs of war (outrages upon personal dignity including rape) under Article 3. Violations of Common Article 3 of the Geneva Conventions and Additional Protocol II are punishable in the ICTR Statute under Article 4.

The Trial Chamber of the ICTY confirmed in Furundzija that Article 3 of the ICTY Statute is an all-embracing rule that covers “any serious violation of a rule of customary IHL” (paras 132-133). Rape and other serious sexual assaults were declared to fall within


\(^{110}\) The Prosecutor v. Karemera (Karemera Amended Indictment), Case No. ICTR-98-44-I, Amended Indictment (Feb. 23, 2005).
this definition. This interpretation of war crimes therefore overcomes the “grave breaches” requirement in the Geneva Conventions.

C. Rape as a Crime Against Humanity

Crimes against humanity are defined in Article 7 of the Rome Statute of the ICC\(^\text{111}\) (‘the ICC Statute) as:

> “any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
>
> (a) Murder;
>
> (b) Extermination;
>
> (c) Enslavement;
>
> (d) Deportation or forcible transfer of population;
>
> (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
>
> (f) Torture;
>
> (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
>
> (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
>
> (i) Enforced disappearance of persons;
>
> (j) The crime of apartheid;
>
> (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health” [emphasis added].

Sexual violence is categorised as a crime against humanity under Article 5(g) of the ICTY.

Statute, and Article 3(g) of the ICTR Statute. Crimes against humanity have also achieved *jus cogens* status, which means that they are compelling law, prohibited at all times, in all places (Charney, 1993, p. 541). Crimes against humanity include:

“crimes aimed at any civilian population and are prohibited regardless of whether they are committed in an international or internal armed conflict” (Report of the Secretary-General, 1993).

Thus, a single case of serious sexual violence, including rape, may be grounds for prosecution for crimes against humanity, if that single violation can be linked to a larger series of violations of fundamental human rights or humanitarian law that evidence a widespread or systematic attack against a civilian population. In this way, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and sexual violence are all prohibited as crimes against humanity in the relevant statutes.

The judgment of *Kunarac* was the first decision to classify rape as a crime against humanity in the ICTY and also the first conviction linking sexual slavery with rape. The enslavement convictions were considered to be “outrages upon personal dignity.” The ICTY in *Tadic* and the ICTR in *Akayesu* found that acts committed as part of a widespread or systematic attack on a civilian population in which the “accused intended for discriminatory reasons to inflict severe damage to the victims’ physical integrity and human dignity” (para. 730 and para. 695 respectively) amounted to crimes against humanity. According to the *Tadic* decision, “anyone,” including non-state actors and low-level participants, “may be convicted of aiding and abetting crimes of physical, mental and sexual violence through continued and knowing participation in, or tacit encouragement of, these crimes” (para. 726). Depending upon the future interpretation of “tacit encouragement” this decision provides huge scope for implicating offenders in prosecutions for sexual violations who have not necessarily directly participated. This represents an affirmative step in the defence of abuse victims because if *Tadic* is applied
in the future, even witnesses to sexual abuses may be criminally liable.

D. Rape as Genocide

Finally, sexual violence can be understood as genocide when it is committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group. Genocide can be prosecuted under Article 4(2) of the ICTY Statute, and Article 2 of the ICTR Statute. The prohibition against genocide has become part of customary international law and a norm of *jus cogens*.112

The jurisprudence linking rape to genocide largely stems from the seminal judgment of the ICTR in *Akayesu*. This case changed the landscape of gender-related crimes in international humanitarian law because for the first time in history it was held that rape and other forms of sexual violence could be used as tools of genocide. According to the Trial Chamber,

“[rape crimes] constitute[d] genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such” (para 731).

Akayesu was found guilty of crimes against humanity and genocide for aiding, abetting, ordering, or encouraging, and sometimes witnessing, more than two dozen rapes and other sexual assaults at the bureau communal where, due to his authority, he was in a position to prevent them. In addition, Akayesu’s public encouragement of sexual assault crimes against Tutsi women in a speech to a crowd led to another conviction of direct and public incitement to commit genocide (Amann, 1999, p. 197). This judgment was revolutionary in that a separate category of sexual violence was established as an acknowledgment of

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the tools of genocide. For example, genocidal rape concerns situations where Tutsi women were deliberately raped by Hutu men suffering from HIV/AIDS in Rwanda. Akayesu was sentenced to life imprisonment for his crimes, and the verdict on the sex crime convictions was upheld on appeal (Askin, 2004, p. 17).

Therefore, the prosecutions in the ICTY and the ICTR expanded the collective consciousness in creating the contemporary legal response to the enforcement of GBV against women. The ad hoc tribunals have prosecuted various forms of sexual violence as instruments of genocide, crimes against humanity, torture, forms of persecution and enslavement, and war crimes. The cases referred to above are not the only cases in the ICTY and the ICTR that have adjudicated gender-related crimes, but they are the seminal cases that have established the primary precedents upon which subsequent decisions have been based. According to Askin (2004, p. 19), the ICTY and ICTR cases on GBV have established the following precedents in international criminal law:

(i) That males and females can be raped;
(ii) That a person convicted of rape does not have to be the physical perpetrator;
(iii) That forcible vaginal, anal, or oral sex constitutes rape;
(iv) That rape can be committed by foreign objects, such as guns, sticks and broken bottles;
(v) That rape of a single victim constitutes a war crime;
(vi) That persons can be held criminally responsible for sex crimes as individuals and superiors; and
(vii) That rape committed in the context of a joint criminal enterprise is justiciable if the rape is either a part or a foreseeable consequence of the

The groundbreaking work of the ICTY and the ICTR as ad hoc tribunals led to the creation of the ICC in 1998 as a permanent criminal tribunal through which rape and other forms of sexual violence can be prosecuted as crimes against humanity, as war crimes and as acts of genocide. The Statute of the ICC built upon the work of the tribunals to make the enforcement of sexual assaults during armed conflicts an ongoing fixture in international law. From the perspective of this thesis, the ICC constitutes one expression of the crystallizing global collective self, with an (albeit embryonic) enforcement arm.

The ICC Statute comprises sufficient codification and prohibition of violence against civilians in lieu of a specific treaty prohibiting rape and sexual violence in armed conflicts. Rape and other forms of sexual violence by combatants in the conduct of armed conflict are now recognized as war crimes and crimes against humanity in the ICC Statute. Article 8 of the Statute establishes that war crimes are grave breaches of the Geneva Conventions. They include outrages upon personal dignity, in particular humiliating and degrading treatment and committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions.

Article 6 of the ICC Statute classifies sexual violence as genocide, and Article 7 of the ICC Statute states that when torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable

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113 As of mid-2012, the ICC has 139 signatories and 121 states parties: Status List of the ICC, UNTS, 2012.
gravity are committed as part of a widespread and systematic attack against any civilian population, they are crimes against humanity. The integration of several forms of sexual violence into this article represents an acknowledgment by the international community of the myriad ways in which the abuse of civilians can occur in armed conflict. The ICC Statute thus overcomes some of the limitations of the tribunals and is far-reaching in its application to sexual violence; including crimes that had never before been formally articulated in an international instrument (Askin, 2003). However as of mid-2012, the USA, China, and India have not ratified the ICC Statute (The States Parties to the Rome Statute, 2012). It is argued that this represents an ongoing challenge in relation to the prosecution of sexual violence, and as such, an impediment to the integration of shadow material.

Furthermore, as of mid-2012, the ICC is yet to convict any individuals for sexual violence. In the ICC’s first ever conviction (of Congolese warlord, Thomas Lubanga Dyilo114), no sexual violence charges were brought despite the evidence that emerged during the trial suggesting that young girls were raped and sexually assaulted by troops under his command (Mubulama and Nzigire, Institute for War and Peace Reporting, 2011). There are, however other cases being pursued by the ICC that include charges of sexual violence. For example, the second case to go to trial at the ICC contains charges of sexual violence (against Germain Katanga,115 alleged leader of the Forces for Patriotic Resistance in the Democratic Republic of the Congo). Sexual violence crimes, including

rape, are also included in the indictments against Jean-Pierre Bemba Gombo,\textsuperscript{116} a former vice-president of the Democratic Republic of the Congo (Mubalama and Nzigire, Institute for War and Peace Reporting, 2011).

IV. The Definition of Rape in International Law & the Relevance of Consent in Situations of Armed Conflict

Another way in which the consciousness of the global collective self was expanded by the ad hoc criminal tribunals and the ICC relates to the definition of rape in international law. Durham and O’Byrne write,

“Currently, discussion has shifted beyond the capacity and the need to prosecute crimes involving sexual violence into procedural and technical analysis. Issues include the actual definition of the crime of rape under international law, and the relevance of consent in situations of armed conflict” (2010, p. 46).

It is argued that this shift from collective representations (the need to prosecute) into more sophisticated forms of reflectivity (technical aspects of prosecution) constitutes evidence of growing consciousness. In the course of prosecuting GBV, the definition of ‘rape’ has been a central issue in the jurisprudence of the ad hoc tribunals. This is because prior to the creation of the tribunals, there was no explicit definition of rape in international law treaties, custom, nor from general principles of international criminal law (Gagro, 2010, pp. 1320-1321). The tribunals have adopted one of two approaches to the definition of rape: either a mechanical approach or a conceptual approach.

The ICTR case of Akayesu was the first case to consider the definition of rape in international law. The judgment of the ICTR adopted a conceptual definition of rape, by

\textsuperscript{116} The Prosecutor v. Jean-Pierre Bemba Gombo, ICC-01/05 -01/08, International Criminal Court (ICC), 22 November 2010.
eradicating the linkages between rape and dignity and connecting rape with a broad form of aggression. Rape was defined as:

‘A physical invasion of a sexual nature, committed on a person under circumstances which are coercive; it may or may not involve sexual intercourse’ (ICTR, 1998, paras. 597-598).

Cole comments,

“The proof of non-consent was not an element of the crime, and instead the prosecution was required to prove the coercive circumstances in which the act of rape took place” (2008, p. 58).

This conceptual definition was celebrated because it eschewed mechanical descriptions of objects and body-parts (Jarvis, 2003). Furthermore, the Chamber in Akayesu went on to define sexual violence very broadly, as:

“Any act of a sexual nature which is committed on a person under circumstances which are coercive” (paras 597-598).

Coercion was conceptualized as:

“physical force as well as threats, intimidation, extortion or other forms of duress, such as the existence of armed conflict and the presence of armed militants” (para. 598).

This distinction between rape and sexual violence combined with an expansive conceptualization of coercion was a sign that the work of the ICTR recognized and gave due weight to the gendered and complex nature of the abuses during the armed conflict.

This definition was also applied in Delacic, the first case to define rape at the ICTY. In this case, the Trial Chamber stated that it agreed with the reasoning in Akayesu and saw “no reason to depart from the conclusions of the ICTR” (para. 479).

However the ICTY in Furundzija (1998) then adopted a mechanical definition of rape that had been implemented in the domestic laws of major legal systems throughout the world (para. 177). The actus reus of rape was re-formulated as:

(i) The sexual penetration, however slight:

(a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used
by the perpetrator; or

(b) the mouth of the victim by the penis of the perpetrator;

(ii) By coercion or force or threat of force against the victim or third person (para. 185).

Despite the jurisprudence of the ICTY in Furundzija, the ICTR in Musema affirmed the conceptual definition of rape as adopted in Akayesu and stated that:

“the essence of rape is not the particular details of the body parts involved, but rather the aggression that is expressed in a sexual manner under conditions of coercion” (paras 226-229).

The Chamber expressly commented,

“a conceptual definition is preferable to a mechanical definition of rape. The conceptual definition will better accommodate evolving norms of criminal justice” (para. 227-228).

This approach echoed many of the feminist writings after the conflict in the former Yugoslavia (Copelon in Stiglmayer, 1994) and was consistent with the trend in national legislatures to broaden the definition of rape. However Musema’s conviction was overturned in the Appeals Chamber for lack of evidence beyond a reasonable doubt.

In the cases of Kunarac (2001) and Kvocka and Others (2001), the ICTY again adopted the mechanical definition of Furundzija used in part (i) of the actus reus above. In Kunarac, the judges conducted an in-depth analysis of legal systems around the world, and the conceptualization of consent in part (ii) was re-framed to place the emphasis on the nature of consent, rather than the nature of force applied:

“where such penetration occurs without the consent of the victim. Consent for this purpose must be given voluntarily, as a result of the victim’s free will, assessed in the context of the surrounding circumstances” (para 460).

This amendment was a positive one, as it anticipated situations in armed conflicts where,

for example, women initiated the sexual intercourse under threat of torture or death (Askin, 2003). The Kunarac case was subject to appeal, and the ICTY and ICTR Appeals Chamber attempted to settle the definition of rape, confirming the previous definition it had provided.119

The ICC Statute takes a similar approach to the ICTY, by adopting a mechanical definition of rape. Thus, the elements of the crime of rape in the ICC encompass the following:

1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.120

In this context, the term ‘invaded’ is gender-neutral, and the ICC understands that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity (n. 15-16, ICC, 2002).

In a departure from the Akayesu and Musema cases, the ICTR in Semanza121 adopted the narrower ICTY definition of Kunarac. In making this shift, the ICTR did however state:

“the Chamber recognizes that other acts of sexual violence that do not satisfy this narrow [mechanical] definition may be prosecuted as other crimes against humanity…such as torture, persecution, enslavement and other inhumane acts” (paras 344-345).

120 Elements of Crimes, ICC Doc ICC-ASP/1/3, Article 7(1)(g), September 3-10, 2002.
The definition of rape was however challenged after the *Semanza* case, with De Brouwer noting,

“It just so happened that the next day, the Niyitegeka Judgment was pronounced (by another [ICTR] Trial Chamber), which, remarkably, relied on the conceptual definition” (2005, p. 125).

The mechanical definition of *Kunarac* was affirmed by the *Kajelijeli*\(^{122}\) and *Kamuhanda*\(^{123}\) judgments, with the Trial Chamber commenting:

“Given the evolution of law in this area, culminating in the endorsement of the Furundžija/Kunarac approach by the ICTY Appeals Chamber, the Chamber finds the latter approach of persuasive authority and hereby adopts the definition as given in Kunarac. The mental element of the offence of rape as a crime against humanity is the intention to effect sexual penetration, with the knowledge that it was being done without the consent of the victim” (Kajelijeli, para. 915).

The ICTR then revisited the definition of rape in the judgment of *Muhimana*\(^{124}\) (Haffajee, 2006, p. 210). The Trial Chamber acknowledged that:

This Chamber considers that Furundžija and Kunarac, which sometimes have been construed as departing from the Akayesu definition of rape—as was done in Semanza— actually are substantially aligned to this definition and provide additional details on the constituent elements of acts considered to be rape… The Chamber takes the view that the Akayesu definition and the Kunarac elements are not incompatible or substantially different in their application. Whereas Akayesu referred broadly to a ‘physical invasion of a sexual nature,’ Kunarac went on to articulate the parameters of what would constitute a physical invasion of a sexual nature amounting to rape… On the basis of the foregoing analysis, the Chamber endorses the conceptual definition of rape established in Akayesu, which encompasses the elements set out in Kunarac (paras. 549-551).

While this judgment relied on both the *Kunarac* and *Akayesu* approaches, and indeed was an attempt to reconcile them, it merely created new contradictions in the definition of

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rape. The disparities in the ICTR regarding the definition of rape seem to be related to the differing approaches of the three trial chambers (De Brouwer, 2005, p. 125).

The judgment of the Joint Appeals Chamber of the ICTY and the ICTR ultimately overcame these contradictions in the judgment of Gacumbitisi. The Appeals Chamber adopted the position expressed by the ICTY Appeals Chamber in the Kunarac Appeal judgment, which established that non-consent and knowledge thereof are elements of rape as a crime against humanity (para. 153). This means that the Prosecution is required to prove these elements beyond a reasonable doubt. According to the Appeals Chamber, non-consent can be proved by establishing coercive circumstances under which meaningful consent is not possible. This case was a clear statement that the Kunarac approach should be adopted despite the significance of the Akayesu judgment. However it must be noted that this appeals judgment only addressed the element of non-consent, so it is possible that future judgments may adopt the actus reus that was applied in Akayesu (Cole, 2008, p. 74). Cole questions whether non-consent should be an element of the crime of rape in the context of armed conflict, or whether any victims are “by definition under a non-consensual attack” (Cole, 2008, p. 75). As such, the victims of GBV in armed conflict can already be presumed to have lost autonomy over their bodies, which was why the ICTR originally adopted the conceptual definition of rape in Akayesu.

126 The Appeals Chamber stated: “As with every element of any offence, the Trial Chamber will consider all of the relevant and admissible evidence in determining whether, under the circumstances of the case, it is appropriate to conclude that non-consent is proven beyond reasonable doubt. But it is not necessary, as a legal matter, for the Prosecution to introduce evidence concerning the words or conduct of the victim or the victim’s relationship to the perpetrator. Nor need it introduce evidence of force. Rather, the Trial Chamber is free to infer non-consent from the background circumstances, such as an ongoing genocide campaign or the detention of the victim. Indeed, the Trial Chamber did so in this case. Knowledge of non-consent may be proven, for instance, if the Prosecution establishes beyond reasonable doubt that the accused was aware, or had reason to be aware, of the coercive circumstances that undermined the possibility of genuine consent” (Prosecutor v. Gacumbitisi, Case No. ICTR-2001-64-A, Appeals Chamber Judgment of 7 July 2006, paras. 155-157).
It is argued that these attempts to settle the definition of rape in international law represent the complexity of self-reflectivity. Reflection in the collective self is a nuanced process of articulating the precise nature of conscious awareness in the global collective self. Judges in the ad hoc tribunals are required to define the parameters of GBV in armed conflict, a task that has never before been undertaken at the global level. It is reasonable to expect that this has been a challenging process.

V. Rules of Procedure and Evidence

In the course of prosecuting GBV in armed conflict, the ICTY, the ICTR and the ICC are also consciousness-raising in their approach to rules of procedure and evidence. From the creation of the tribunals, the judges of the ICTY and the ICTR were not bound to apply any particular legal system or national rules of evidence (see for example, comments in Akayesu, para. 495). Article 15 of the ICTY Statute provides that the judges of the ICTY:

“shall adopt rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters.”

Rule 89 of the ICTR Rules of Procedure and Evidence similarly gave the Chamber scope to apply the rules of evidence which, in its view, best favoured a fair determination of the matter before it. This broad discretion has given rise to a number of evidential issues, which are explored as follows.

The first issue relates to corroboration of testimony in sexual assault trials. Rule 96 of the Rules of Procedure and Evidence of the ICTY\textsuperscript{127} and its counterpart in the ICTR\textsuperscript{128}
specifically concern testimonial evidence in sexual assault cases. Rule 96 (i) is groundbreaking from an evidentiary point of view in that it requires, in cases of sexual assault, that no corroboration of the victim’s testimony. The justification for Rule 96 relates to the nature of the armed conflict during which the crimes were committed, characterised by the systematic and mass rape of women (Delacic, para. 44). In requiring no corroboration of testimony, Rule 96 confers the same presumption of reliability on the testimony of a victim of sexual assault as the testimony of victims of other crimes (Tadic, paras 535-539; Akayesu, para. 134). Other measures to protect victims were taken in the case of Kunarac, Kovac and Vukovic, where although the victims “directly faced their accusers, the victims were identified by numbers, spoke through voice scramblers and were hidden from public view to protect their privacy” (Mertus, 2001).

Following Rule 96 of the ICTR and the ICTY, Rule 63 of the ICC Rules of Evidence and Procedure expressly prohibit the Court from requiring corroboration of a victim’s testimony.129 Whilst the Trial Chambers are not bound by any rule of corroboration each must use its own assessment of the probative value of the evidence before it. It is also important to note that in general, corroboration of testimonies does not necessarily determine their credibility (Musema, paras 45-46). In addition, rule 96(ii) does not allow consent to be used as a defence if the victim:

(a) Has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression; or

(b) Reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear.

129 Rule 63(4) of the International Criminal Court Rules of Procedure and Evidence similarly provides: ‘…a Chamber shall not impose a legal requirement that corroboration is required in order to prove any crime within the jurisdiction of the Court, in particular, crimes of sexual violence.’
It is likely that victims of GBV in armed conflict would be readily able to prove the existence of threat, thus vitiating the defence of consent in these cases. This rule must be considered alongside the elements of the crime of rape.

Rule 96 is to be lauded from the point of view of traumatised victims, and yet in its application must be tempered with the intrinsic rights of the accused. As Alvarez points out, the difficulty with international ad hoc tribunals such as in Rwanda and the former Yugoslavia is that generally the witnesses on either side will represent the ethnic divide that initially gave rise to the armed conflict. Without the need for corroboration in the ICTY for example, “Muslim witnesses will say anything against those who they believe are at war with them and Serbian witnesses will do the same against non-Serbs” (Alvarez, 1999, p. 443).

It is therefore questionable how judges can reach neutral conclusions under these circumstances without corroboration. In the ICTY case of Tadic, Rule 96 was applied, which required no corroboration as to the testimony of rape victims. The judges commented that the reliability and motives of witnesses must be estimated in the case of each individual witness. Ethnic hatred was not found to constitute a prima facie reason for doubting the truth of a witness’s testimony (para. 505). Essentially the application of a procedural rule such as Rule 96 must involve the same balancing analysis as occurs in any criminal court, whereby the probative value of evidence in implicating the accused is weighed against its prejudicial effect on the accused or a witness. One way that has been recommended to dilute the issue of ethnic hatred in evidence is to monitor the selection and training process for judges in the tribunals to ensure that the arbiters have no agenda regarding the outcome of the conflict (Chinkin, 1994).
The second issue relates to the classification of privileged communications. This is a gendered issue relating to GBV because the classification of communications between rape victims and health care professionals as unprivileged and thus admissible evidence could deter women from reporting sexual violence. *Furundzija* was significant because the ICTY decided that statements to a rape counselling centre were capable of being disclosed in evidence. In this case the defendant was charged with the rape and torture of ‘A’ based on statements made by A recorded in documentation from psychological treatment at a Women’s Therapy Centre in Bosnia and Herzegovina. The Trial Chamber considered that the Defence should have the opportunity to investigate the nature of the “medical, psychological or psychiatric treatment or counselling” received by A. It is argued that this decision was flawed because the potential benefit for the Defence in having access to the documents is outweighed by the likely trauma suffered by victims of sexual violence, and the deterrent effect that this may have on future disclosures to counsellors. Allowing the Defence access to the documentation was arguably a violation of A’s privacy, and set a dangerous precedent that could invariably deter other victims from coming forward.

This case was also interesting from a gender point of view for another reason. On appeal, the defence alleged that because Judge Florence Mumba, the only female judge on the bench,

> “had previously served as a member of the UN’s Commission on the Status of Women and condemned rape as a war crime and urged its prosecution, she was predisposed to promote a common feminist agenda, and should have been disqualified for having at least an appearance of bias” (Askin, 2004, p. 18).

The ICTY Appeals Chamber rejected this argument and upheld the Trial Chamber judgment (*Furundzija*, para. 199),
“noting that Judge Mumba’s expertise in women’s issues and gender crimes made her exceptionally qualified to sit as a judge on cases adjudicating sexual violence” (Askin, 2004, p. 18).

The ICTR rules do not presently provide explicitly or implicitly for any form of counsellor-patient privilege. In the absence of such a rule, women are discouraged from reporting sexual abuse, seeking counselling, or testifying at trial. Or, if sufferers of sexual abuse are initially prepared to seek counselling they may be inhibited in their discussions. Most importantly, if counsellor-patient privilege is not implemented, it is inevitable that the Defence will use a witness’ medical records to cast aspersions on their mental or emotional state, and in turn, the credibility of their evidence. Furthermore, counselling records may have limited relevance to the trial: statements made in therapy are hearsay, not made under oath, and may be misunderstood or misreported by the counsellor (Furundzija, Amicus Curiae Brief, 1998). A reasonable resolution to this issue is contained in the Amicus Curiae Brief in Furundzija: to allow psychiatric evaluations of witnesses only in cases where the mental state of the witness is relevant to the Defence.

The ICC Rules of Procedure and Evidence\textsuperscript{130} have gone a step further than the ICTR and the ICTY by codifying Rule 73, entitled “Privileged Communications and Information.” Sub-rules 73 (2) and 73 (3) provide that the ICC may recognise communications within some professional or confidential relationships as privileged. In this context, particular consideration is to be given to relationships between patient and medical doctor, psychiatrist, psychologist or counsellor, or between a person and a member of a religious clergy. It is argued that this is a satisfactory response to the problems of this kind faced by

the ICTY and the ICTR. Under certain circumstances it is clear that it will be appropriate for a court to have access to a witness’s medical records. However this determination will need to be based upon an intricate reasoning process whereby the benefit of admitting the evidence to the accused is not outweighed by the violation of the privacy of the witness, subject to additional policy reasons for excluding the evidence in terms of future precedents. Yet it is unclear whether victims would ultimately trust this rule. There is clearly a distinction between an adequate legal response and its practical effect upon witnesses.

In addition, the ICC Statute requires that “fair representation of female and male judges” be “taken into account” in the selection process (Article 36(8)(a)(iii)) and that the selection of judges and staff take into account the “need to include persons with legal expertise on violence against women” (Article 36(8)(b)). Furthermore, Article 43(6) requires the creation of a Victim and Witness Unit within the ICC Registry to provide protective measures, counselling and other appropriate measures.

This section has outlined the innovations made by the ICTY, the ICTR and the ICC in the prosecution of GBV. From the conceptualisations and definitions of rape to the rules of procedure and evidence, these international tribunals have expanded the consciousness of the global collective self. In response to the trauma of genocides in Rwanda and the former Yugoslavia, the global collective self was compelled to raise its awareness of shadow material through self-reflectivity. The final section of this chapter presents the additional policy instruments in international law that were created alongside the ICTY, the ICTR and the ICC.
VI. Additional Policy Instruments in International Law

In addition to the jurisprudence of the ad hoc tribunals and the far-reaching statute of the ICC, there are several international law policy instruments that were created from the early 1990s onwards in order to eliminate GBV in armed conflict. It must be noted that these policy instruments were solely focused upon women, rather than the gendered feminine, as the victims of GBV in armed conflict. It is argued that these policy instruments represent the growth in consciousness that occurred concurrently to the jurisprudence of the ad hoc tribunals and the creation of the ICC. As has been stated, the global collective self is expressed through a diverse range of international fora, including international organisations and tribunals, and their representatives.

The CEDAW Committee has made two General Recommendations (Recommendation 12 of 1989 and Recommendation 19 of 1992) in relation to violence against women that are applicable to armed conflict. The Committee recognized that GBV is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men (General Recommendation no. 19 of 1992). General Recommendation 19 further stipulates that the CEDAW prohibits GBV although it does not specifically refer to violence:

The [CEDAW] Convention in Article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

It is clear that males are not included in this definition of GBV.
The *Vienna Declaration and Programme of Action*\textsuperscript{131} is a human rights declaration adopted at the World Conference on Human Rights in June 1993. Part II, para. 38 focused on the elimination of violence against women. In relation to GBV against women in armed conflict, the declaration provides that GBV against women in armed conflict requires:

“a particularly effective response” because “violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law.”

Part II, para 38, also calls upon the General Assembly to adopt the Declaration on the Elimination of Violence Against Women.

The *Declaration on the Elimination of Violence Against Women*\textsuperscript{132} was adopted by the General Assembly in 1993. It defines violence against women as:

“any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”

The Declaration identifies three main categories of violence against women: physical, sexual and psychological violence occurring in the family, within the general community, and violence that is perpetrated or condoned by the State. It explicitly recognizes that women in conflict situations are especially vulnerable to violence.

In 1994, as a result of the Declaration, the Commission on Human Rights appointed a Special Rapporteur on Violence against Women, Including its Causes and


Consequences.\textsuperscript{133} The current mandate of the Special Rapporteur is to:

\begin{enumerate}
  \item Seek and receive information on violence against women, its causes and consequences from Governments, treaty bodies, specialized agencies, other special rapporteurs and to respond effectively to such information;
  \item To recommend measures at the national, regional and international levels to eliminate violence against women and its causes; and
  \item To work closely with other special rapporteurs, special representatives, working groups and independent experts of the Human Rights Council - and with the treaty bodies (Office of the High Commissioner for Human Rights, 2011).
\end{enumerate}

An additional Special Rapporteur on Systematic Rape, Sexual Slavery, and Slavery-like Practices During Periods of Armed Conflict was also appointed in 1995 to report on the specific situation of systematic rape during wartime. This report was submitted on 22 June 1998.\textsuperscript{134} It stated:

\begin{quote}
An effective response requires that acts of sexual violence and slavery must be properly documented, the perpetrators brought to justice, and the victims provided with full and effective redress (para. 8).
\end{quote}

These rapporteurs are examples of specific individuals who are communicating the message of expanded consciousness in the global collective self. While representing the persona of the collective self, they are also attempting to raise awareness of, and integrate its shadow material.

The *Beijing Declaration and Platform for Action* was adopted at the Fourth World Conference on Women in November 1995. At the Conference, sexual violence against women during armed conflict was a major theme. The *Beijing Declaration* identified women and armed conflict as one of the twelve critical areas of concern to be addressed by Member States, the international community and civil society. These policy instruments clearly demonstrate the underlying narrative of international law in the 1990s, whereby GBV in armed conflict was directed at vulnerable women, who in turn needed the support and protection of international law.

This narrative of ‘protecting women from GBV during armed conflict’ is also evident in more recent UN Security Council Resolutions. However the narrative expands somewhat to call for the inclusion of women in decision-making and transitional justice. Security Council resolution 1325 (2000) on women, peace and security emphasizes the need to protect women and girls from GBV, particularly rape and other forms of sexual abuse, in armed conflict. In this resolution, the Security Council calls for the greater participation of women in at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict. The resolution calls on actors to adopt a gender perspective when negotiating and implementing peace agreements. This requires the acknowledgement of:

(a) The special needs of women and girls during repatriation and resettlement and for

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136 According to paragraph 135 of the Beijing Platform for Action, “While entire communities suffer the consequences of armed conflict and terrorism, women and girls are particularly affected because of their status in society and their sex. Parties to the conflict often rape women with impunity sometimes using systematic rape as a tactic of war and terrorism. *The impact of violence against women and violations of the human rights of women in such situations is experienced by women of all ages, who...are victims of acts of murder, terrorism, torture, involuntary disappearance, sexual slavery, rape, sexual abuse and forced pregnancy in situations of armed conflict, especially as a result of policies of ethnic cleansing and other new and emerging forms of violence [emphasis added].”*
rehabilitation, reintegration and post-conflict reconstruction;

(b) Measures that support local women’s peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements;

(c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary.

It is clear that international law is attempting to acknowledge the unique attributes of feminine consciousness here, yet conflates the feminine with women. The gendered feminine does indeed have special needs, and must be incorporated into post-conflict justice and peace-building mechanisms. However this does not automatically mean that women alone comprise the gendered feminine.

The principles of resolution 1325 paved the way for four supporting resolutions, which were adopted by the Security Council: 1820 (2008), 1888 (2009) and 1889 (2009) and 1960 (2010). Together, the resolutions specifically address sexual violence in conflict and post-conflict situations. Resolution 1820 (2008) calls for an end to widespread conflict-related sexual violence and for accountability in order to end impunity. Resolution 1888 (2009) focuses on strengthening leadership, expertise and other institutional capacities within the United Nations and in member states to help put an end to conflict-related sexual violence. Resolution 1889 (2009) complements 1325 by calling for the establishment of global indicators to measure progress on its implementation (UN Women, 2011). Resolution 1960 calls upon the Secretary-General to list those parties credibly suspected of committing or being responsible for patterns of sexual violence in situations on the Council’s agenda. The Council may take action against listed parties, including relevant sanctions. Resolution 1960 also demands the establishment of monitoring, analysis, and reporting arrangements specific to conflict-related sexual
violence (UN Women, 2011).

It is argued that all of the policy instruments in international law created from the early 1990s onwards were in response to the shift in consciousness regarding GBV during armed conflict. This represented the global collective self facing and identifying the shadow through collective representations and self-reflectivity.

**Conclusions**

This chapter has critically analysed the ways in which modern international law has responded to GBV in the context of armed conflict. The chapter identified GBV in armed conflict as an example of the shadow of the masculine and feminine consciousness in the global collective self. Examining shadow material is crucial to the process of integration and Self-realisation in Jungian psychology, as this process is often initiated by a confrontation with shadow material (Casement in Papadopoulos, 2006).

The chapter examined the phases of engagement between international law and the shadow material. These three phases of engagement with the shadow demonstrate the link between developments in international law and the expansion of collective consciousness. This link reinforces the theory of international law created in this thesis, as a reflection of the level of consciousness in the global collective self. Phase One occurred prior to 1945, where GBV in armed conflict was acknowledged as a crime in international humanitarian laws, though not confronted as such when it did occur. Phase Two was a response to the trauma of World War I and World War II, and lasted from 1945 until the 1990s. This Phase involved strong collective representations prohibiting GBV, yet with no prosecutions, including at the Nuremberg and Far East Tribunals. Phase Three occurred
after the genocides in the former Yugoslavia and Rwanda, with the creation of ad hoc tribunals, the International Criminal Court and other hybrid tribunals to prosecute GBV. The jurisprudence and statutes of the ICTY, the ICTR and the ICC were examined by reference to: conceptualisations of GBV, the definition of rape, and rules of procedure and evidence specifically relating to sexual assault trials. This phase also included additional policy instruments in international law such as declarations, Special Rapporteurs and Security Council resolutions. This cumulative, 3-phase response has culminated in the current normative legal framework prohibiting GBV during armed conflicts. The global collective self remains in the third phase of engagement with the shadow, albeit with new contributions to the narrative that women must be integrated into transitional justice and peace-building mechanisms.

This chapter concludes that GBV in armed conflict represents the shadow of the masculine and feminine consciousness. In the narrative of international humanitarian law, men are constructed as aggressors, and women are constructed as vulnerable victims. However it will be argued that the existing narrative of international law directs its energy to the GBV against women, rather than GBV against the gendered feminine. The next chapter develops this concept and discusses how the shadow can be integrated by the global collective self.
Chapter Nine: Case Study Part Four
Integrating Unconscious Material to Empower the
Masculine & the Feminine in International Law

“What acts do you perform when consciousness is being changed and you can re-imagine the world? How do you act upon the vision you might have of a better world, of its becoming? The becoming requires a series of actions. When you try to make a difference, you find yourself working within the very systems that create this paradox which you have identified…You need to find a movement or action to attach to the consciousness that ideas may form” (James Cameron at the Philip Allott Symposium, 2005, p. 263).

“We have come to the end of the old story, but a new one has not yet been fully articulated and widely embraced” (Karen Litfin, 2003, p. 44).

Thus far, this thesis has attempted to:

(i) Identify the existence of conscious and unconscious material in the global collective self; and

(ii) Illustrate, through a case study, how such conscious and unconscious material in the global collective self is expressed in international laws relating to gender.

This chapter is the final section of the case study. It focuses upon the ways in which the unconscious material of gender justice can be consciously integrated to empower the masculine and feminine consciousness in international law. The chapter is divided into two sections. It first shows that despite the 3-phase collective engagement with shadow material (outlined in the previous chapter), GBV persists as a central aspect of armed conflicts. As such, it is necessary for the unconscious shadow to be consciously integrated in the global collective self, and the first section suggests ways in which international law can facilitate a new stage of integration of the masculine/feminine shadow. In this section, the act of GBV is constructed as an archetypal crime, whereby the gendered feminine in men and women is abused and violated by the gendered masculine in men and women, regardless of the sex of the perpetrator and victim. This chapter further suggests that the act of GBV may be linked to the destruction of the feminine that occurs in the recruitment, training and treatment of combatants.
The second section of the chapter particularly focuses upon the ways the narrative of gender in international law can be transformed to integrate the masculine and the feminine consciousness. The chapter concludes by suggesting that international law needs to recognize and affirm men’s rights to the private sphere, and to incorporate men and same-sex couples more explicitly into the gender justice framework.

**Integrating the Shadow**

I. The Shadow Persists

Despite the strong normative framework created in public international law to deal with GBV in armed conflicts, the atrocities against civilians continue. As Mazurana notes, GBV has now become one of the defining characteristics of the civilian experience during contemporary armed conflicts and continues to be used as a military strategy (2010, pp. 11-13). Statistics of GBV from recent conflicts are startling. Recent reports from Burma indicate that Burmese soldiers regularly use gang rape of the female body as a weapon of war (Rogin, 2011), and in the Sierra Leone conflict, between 50,000 and 64,000 internally displaced women were victims of sexual assault (Inter-Parliamentary Union, 2008). Since 1996, sexual violence against women and children in the Democratic Republic of Congo (DRC) has been used to torture and humiliate the civilian body. UNICEF estimates that hundreds of thousands of women and girls have been raped since the conflict began in DRC, and a study published in the American Journal of Public Health found that approximately 48 women are raped in the DRC every hour (Peterman, Palermo and Bredenkamp, 2011). In fact, over a four day period in 2010, 387 civilians were raped in Walikale, North Kivu in the DRC (Kallas and Radhakrishnan, 2011). As Steinberg comments,

"we can’t show that [international law] measures have kept one woman in Eastern Congo from
being raped, or kept one girl in Afghanistan from getting acid thrown in her face for daring to return to school” (Donald Steinberg, Crisis Group Deputy President for Policy and member of UN Civil Society Advisory Group on Women, Peace and Security, International Crisis Group 2010 podcast).

Moreover, while sexual violence can be horrifying for victims during armed conflict, it can ultimately be traumatic for a lifetime. Ellis writes,

“Rape, or the threat of it, is aimed at breaking the will of women and girls. Unwanted pregnancies, diseases including HIV, rejection and ostracism by families and communities are common legacies of rape” (Ellis, 2011).

Kallas and Radhakrishnan agree:

“The stigma associated with rape ostracizes girls and women, particularly those who become pregnant, because they are often seen as carrying the enemy’s child. They are frequently abandoned by their communities, struggling for ways of living with children born out of rape” (Foundation Rwanda, 2011).

This chapter engages with the disparity between the normative legal framework created in international law and the reality of sexual atrocities against civilians continuing unabated in armed conflicts.

La Shawn Jefferson, Executive Director of the Women’s Rights Division at Human Rights Watch, offers three primary reasons for the failure of the global community to eradicate GBV against women in armed conflict:

(i) The status of women in peacetime puts them at heightened risk during wartime;

(ii) “Increasing international exposure and public outrage about rape in conflict have failed to translate into vigorous investigation and prosecution of perpetrators” (Jefferson, n.d., pp. 1-2); and

(iii) “Inadequate services for survivors of wartime sexual assault reflects official disregard for the harm women and girls suffer in the course of conflict and suggests a lack of commitment to facilitating rape survivors’ reintegration into society” (Jefferson, n.d.,
In addition to the sociocultural reasons causing GBV to persist, the reporting of rape as a crime in armed conflicts is notoriously rare, because of its associations with a person’s honour and dignity. As the previous chapter shows, the association of rape with dignity has been reinforced in the language of international law.¹³⁷ Haddad writes,

“Feminist theory argues that violence against women has often been viewed as falling on the private side of the public/private dichotomy, which shields it from public investigation, scrutiny and prosecution” (Haddad, 2011, p. 112).

According to Chinkin, victims of abuse in armed conflict may especially be reluctant to report their experiences (1994). The Special Rapporteur for the Former Yugoslavia claimed there are many reasons why survivors may be reluctant to testify about their experiences, including “severe trauma, feelings of shame, lack of trust, fear of awakening bad memories as well as fear of reprisals” (Report of the Secretary-General, 1993, para. 13). In many wartorn communities, victims of GBV are shunned after the event for dishonouring their families, as discussed by Ward and Marsh:

“Some rape victims may be rejected by their families and communities for having ‘lost their value’ (Hobson, 2005, p. 21 quoted in Ward and Marsh, 2006, p. 9). In Burundi, women who had been raped told researchers in 2003 that “they had been mocked, humiliated and rejected by women relatives, classmates, friends and neighbors because of the abuse they had suffered” (Al, 2004, quoted in Ward and Marsh, 2006, p. 9). Raped women may be abandoned by husbands who fear contracting HIV, or who simply cannot tolerate the shadow of “dishonor” they believe their raped wives have cast across them. Without prospects for the future, prostitution may seem the only viable option to these women (Ward and Marsh, 2006, p. 9).

¹³⁷ See, for example, article 27 of Geneva Convention IV (1949): Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault…” and article 4(2)(e) of Additional Protocol II (1977): Without prejudice to the generality of the foregoing, the following acts...are and shall remain prohibited at any time and in any place whatsoever: outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form or indecent assault.
Nadine Puechguirbal, ICRC adviser on women and war, states:

“Horrific stories of rape and other forms of sexual violence emerge from almost all armed conflicts. Indeed, the scope of the problem has long been underestimated. This is mainly because women often remain silent about what they have gone through, afraid that their families and communities will reject them. As a result, it is difficult to say how prevalent sexual violence is in any given conflict” (ICRC, 2 March 2011).

It is clear that the current approach to seeking justice for GBV has had limited success. As the previous chapter displayed, the laws of international humanitarian law prohibit violations against the feminine, and those laws are broadly applied when they are prosecuted. Yet there is a disproportionate relationship between the small number of prosecutions in the ICC, the ICTY, the ICTR, and other domestic or hybrid courts, and the amount of sexual violations occurring during armed conflict. This shows a substantial gap between the content and enforcement of GBV in international humanitarian law, and the urgent need for new approaches to bridge this gap.

II. Transforming the Narrative of GBV in Armed Conflict

Reflecting upon this apparent plateau of consciousness about GBV in armed conflict, this chapter argues that a new (fourth) phase of ‘shadow’ consciousness in international law is necessary. This stage involves the full awareness and integration of the unconscious shadow. Ketola observes:

“In Jungian philosophy the mentally developed ego is called the self. The ego can develop into a self by becoming conscious of the formerly subconscious shadow and other archetypes (e.g. anima or animus) and by integrating material from them into its conscious side” [emphasis added]

(Ketola, 2008, p. 201).

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138 For example, the Rwandan Gacaca courts, the Regulation 64 Panels in the courts of Kosovo, and the Special Court for Sierra Leone.
As the collective shadow is the result of the build-up of unconscious and unnamed material in the collective self, it cannot ultimately be overcome without identifying, confronting and integrating the unconscious and symbolic material underneath the external facts. As Seifert writes, “War crimes against women have a symbolic meaning and must be analyzed within the symbolic contexts of the nation and the gender system” (1996, p. 35).

This thesis argues that the process of becoming conscious of shadow material in gender justice will be aided by transforming the international law narrative of GBV in armed conflict in the following ways:

(i) Analyzing belief systems about the true nature of the victims of GBV in armed conflict; and

(ii) Acknowledging and healing the shadows of the perpetrators.

It is argued that the existing narrative of international law about GBV during armed conflict in fact reinforces the unconscious shadow material. This is because the narrative of international humanitarian and criminal law constructs GBV in armed conflict as a simplified interaction between men (soldiers) as the gendered masculine – powerful and evil aggressors – and women (civilians) as the gendered feminine – powerless, helpless victims at the mercy of the perpetrator. As such, international law about GBV categorises actors as the demonic male soldier or the female victim. All of the past shadow phases adopt this archetypal theme of men as controller/dominators and women as victims, particularly in relation to GBV. In their 2010 volume, Cook and Cusack refer to this type of narrative as ‘gender stereotyping.’ They define gender stereotypes as the “social and cultural construction of men and women, due to their different physical, biological, sexual and social functions” (2010, p. 20) They reflect,
“Stereotyping is part of human nature. It is the way we categorize individuals, often unconsciously, into particular groups or types, in part to simplify the world around us. It is the process of ascribing to an individual general attributes, characteristics, or roles by reason only of his or her apparent membership in a particular group” (Cook and Cusack, 2010, p. 1).

It is therefore argued that the existing narrative of GBV in armed conflict is based on particular stereotypes or archetypes of men, women, soldiers and civilians, where women are designated as vulnerable victims, while men require legal control over their irrepressible urges. In the current narrative of GBV, international law sees the woman as devalued, destroyed and violated by the ‘male enemy.’

Rather than adopting this narrative, this chapter proposes an alternative narrative, whereby the act of GBV in armed conflict is viewed as an unconscious attempt to destroy and violate the gendered feminine in the victim and the perpetrator. As such, it is equally destructive and damaging for both the gendered masculine and the gendered feminine, the soldier and the civilian. Sellers writes,

“Gender depends on the meaning given to males and females in the context of a society. So we often speak in “reductionist” terms, reducing gender to women and when we refer to gender strategy reducing it to sexual violence committed against women and girls. This is unfortunate. There is room for growth” (2009, p. 304).

This alternative narrative views the sexual abuse of a civilian by a combatant as an archetypal crime, which is symbolic of the violation of the vulnerable gendered feminine by the distorted gendered masculine. Through this lens, armed conflict is an exaggerated and distorted version of the already unsettled masculine/feminine duality.

III. Analysing Belief Systems About the Nature of the Victims

This thesis suggests that one way of becoming conscious of the GBV shadow is to acknowledge that the gendered feminine in men and women is the true victim of sexual
assault during armed conflict, rather than just women. While women have traditionally been the targets of GBV, emerging research shows that men are also victims of sexual violence during armed conflict.\textsuperscript{139} Sivakumaran writes,

“Reports of sexual violence by men against men emerge from numerous conflicts, ranging in time from Ancient Persia and the Crusades to the conflicts in Iraq and the Democratic Republic of the Congo. Despite these accounts, relatively little material exists on the subject and the issue tends to be relegated to a footnote” (2007, p. 253).

GBV against men is only beginning to enter the collective consciousness:

“There are certain things you just don't believe can happen to a man, you get me? But I know now that sexual violence against men is a huge problem. Everybody has heard the women's stories. But nobody has heard the men’s” (Eunice Owiny of the Makerere University Refugee Law Project, quoted by Will Storr, 17 July 2011).

Sivakumaran argues that the international community has been silent on the issue of male/male rape because any sexual activity between two men is considered “to be indicative of homosexuality, regardless of any element of coercion” (2005, p. 1274). He continues, “Given the prevalence of homophobia in society, this amounts to a "taint" on the part of the victim of the rape” (2005, p. 1274). GBV against men can take various forms, for example, rape and sexual assault, castration and enforced sterilization, sexual mutilation, genital violence (beatings of the genitals or the administration of electric

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shocks to the genital area), enforced nudity and masturbation, and enforced incest or enforced rape of female or male others (United Nations Office of the Coordination of Humanitarian Affairs, 2008, p. 1).

This chapter suggests that the feminine orientation in both men and women (the gendered feminine) is being targeted and abused by soldiers and combatants, rather than just the female body. This means that female soldiers (as the gendered masculine) can engage in sexual violence against male or female victims (as the gendered feminine). For example, Private Lynndie England, Specialist Sabrina Harman and Specialist Megan Ambuhl of the United States Army gained notoriety as a female soldiers carrying out GBV against male victims (Brockes, 2009). In 2005, they were convicted in a US martial court for torture and prisoner abuse at Abu Ghraib prison in Baghdad (Brockes, 2009). Likewise, male soldiers (as the gendered masculine) can engage in sexual violence against male or female victims (as the gendered feminine). Particularly in recent armed conflicts, such as the DRC and Sudan that are characterised as civil wars, many men are not directly involved in the tribal fighting and are at greater risk of sexual violence (Storr, 2011).

In A Different Kind of Silence: the Rape of Men During Armed Conflicts, Lara Stemple of the University of California’s Health and Human Rights Law Project identifies GBV against men in armed conflicts such as Chile, Greece, Croatia, Iran, Kuwait, the former Soviet Union and the former Yugoslavia. Her study of 6,000 concentration camp inmates in Sarajevo found that 80% of men reported having been raped (Stemple, 2009). In addition, Stemple claims that international organisations and NGOs are ignoring this phenomenon. In her study of 4076 NGOs that conduct work on GBV in armed conflict, “only 3% of them mentioned the experience of men in their literature” (Stemple, 2009).
McMullen argues that:

“In male-dominated cultures, males do not want to accept that they can be and are victims of rape. Therefore, very few male rapes are reported; it is not openly talked about and it becomes a taboo subject; there is little general understanding about it; and it is not recognized in law” (McMullen, 1990, p.9).

International humanitarian law is currently predicated on rigidly defined gender roles that presume women will be the victims of male sexual violence in armed conflict. In this sense, sexual violence against civilian men has been ignored by international law even more so than sexual violence against civilian women. Carpenter notes that “psycho-social services for male survivors of sexual violence are virtually non-existent in almost all parts of the world” (in Durham and O’Byrne, 2010, p. 48).

This thesis argues that the gendered feminine encompasses the female and the male in their non-masculine consciousness. In fact, Del Zotto and Jones point out that GBV against men and boys is often used as a way to emasculate the male enemy, and turn him into a de facto female through sexual cruelty (2002). Durham and O’Byrne write, “A number of authors perceive that the male victim of sexual assault is ‘feminized’ by the perpetrator, forced to occupy the position of the stereotypically submissive and subordinated woman” (2010, p. 48). The transformed narrative of GBV in armed conflict connects the defenceless bodies of men and women to the gendered feminine in the global collective self. Stemple argues that we must confront gender assumptions in order to overcome sexual violence, writing:

“Male rape will only be curtailed when the perception of men broadens beyond one that sees men as a monolithic perpetrator class, and instead recognizes that men and boys should be a group entitled to rights claiming. The failure of human rights instruments to address these claims promotes regressive norms about masculinity rather than challenging the harmful status quo. It would be more helpful to understand the ways in which regressive gender norms harm both men
and women. It is possible to take sex and gender into account without setting up false divisions that pit all men against women, villains against damsels in distress” (2009, p. 634).

This chapter therefore constructs sexual violence during armed conflict as an attempt to violate and/or destroy the gendered feminine, whether it resides in the female or male body. It argues that civilians in internal armed conflicts are particularly at risk of GBV because defenceless cities become war-zones, and civilians can unexpectedly become military targets. This was highlighted in the conflicts in Kosovo, Rwanda, Uganda, Sierra Leone and the DRC, and could explain the higher incidence of GBV in civil conflicts as opposed to international conflicts that have a clearer distinction between combatants and civilians, war-zones and civilian zones (see Cohen, 2011 and Peterman, Palermo and Bredenkamp, 2011). In the transformed narrative of GBV in armed conflict, the gendered masculine is symbolized by (male and female) combatants, military bases and targets, and war-zones. The gendered masculine is gripped and distorted by the violent, warring, public sphere with no access to the feminine private sphere. Combatants are expected to embrace the gendered masculine by leaving their homes and families, and fighting to the death. Masculinity is thereby transformed into ‘hyper’ masculinity (Cahn, Aolain and Haynes, 2011, p. 101). Otherwise, men are subsumed into the gendered feminine, by staying behind with the women in the defenceless private sphere.

Indeed, pre-existing gender roles and the cultural relationships between men and women are exacerbated and polarized during armed conflicts. Earlier chapters showed that in peacetime, the gendered masculine can become oppressive if it is denied access to the gendered feminine. In armed conflict, the masculine is distorted and becomes sadistic, exploitative and violent in response to its total alienation from the private sphere. In peacetime, the gendered feminine can be self-conscious, oppressed and devalued. In
armed conflict, the feminine is distorted and becomes abused, traumatised and destroyed. Thus, GBV in armed conflict can be understood as a distorted and exaggerated symbolic expression of the split between masculine and feminine in the collective unconscious. This is because it acts out the devaluing and violation of the feminine private sphere by the dominant and oppressive masculine public sphere. It is, perhaps, symbolic of the routine violation and exploitation of the feminine private sphere by the masculine public sphere, and the masculine trying to repossess something of the feminine that has been denied. This link between peacetime and armed conflict was acknowledged by Chinkin, who wrote,

“The obligations incurred and learned in peacetime need to be sufficiently strongly imbued so that they hold fast in the social disruption of armed conflict.” (1994, p. 341).

This thesis argues that the rape of male and female civilians (the gendered feminine) during armed conflict is an inflated symbol of how the private sphere is routinely treated in peacetime. It is thus crucial for the values of the global collective self to be aligned with conscious rather than unconscious material in peacetime. The transformed narrative acknowledges that if the masculine/feminine duality is unconscious in peacetime, then it is going to be expressed in shadow during armed conflict. This highlights the necessity of the transformation of the collective self in relation to the feminine.

The rape of men in armed conflict has been marginally acknowledged in international law. In relation to the prosecution of male rape, there has been one case of note in the ICTY: Cesic.140 Ranko Cesic was convicted of rape as a crime against humanity for forcing two brothers to perform fellatio on each other at gunpoint during their detention at

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a camp in Bosnia. Earlier cases of forced fellatio (Tadic and Delacic) were prosecuted as inhuman treatment or inhumane acts, whereas Cesic was deemed to fall within the Tribunal’s definition of rape.

The rape of men in wartime has also been acknowledged in a very limited way by the UN Office for the Coordination of Humanitarian Affairs (OCHA). In 2008, the OCHA published a Discussion Paper on the topic of sexual violence against men, with the intention that it would stimulate further research on the issue. It was entitled, ‘Use of Sexual Violence in Armed Conflict: Identifying gaps in Research to Inform More Effective Interventions (The Nature, Scope and Motivation for Sexual Violence Against Men and Boys in Armed Conflict’). In order to more adequately confront the rape of men in armed conflicts, Durham and O’Byrne note, “more robust and gender-sensitive reporting and detection processes, along with support services, are required at the frontline in conflict situations” (2010, p. 51).

IV. Healing the Shadows of the Soldiers

An additional method of bringing consciousness to the shadow of gender justice is to conceive the act of GBV during armed conflict as the destruction of the feminine consciousness in the victim and the perpetrator. As such, while it is palpably necessary for international law to prosecute individuals for sexual violence after armed conflicts, it is just as crucial to heal the soldiers, perhaps even preemptively.

It is argued that soldiers who commit sexual violence in the course of armed conflict are attempting to embody an “idealized notion of heterosexual manhood…such as that of the masculine, sexually potent fighter and provider” (Baaz and Stern, 2009, p. 497). GBV in
armed conflict constitutes the shadow of the masculine consciousness, whereby the heroic warrior is transformed into the demonic rapist. This chapter suggests that soldiers have often been indoctrinated to destroy and violate their own inner feminine orientation throughout their training and in the course of combat. As such, rape during armed conflict acts out and validates that destruction. Baaz and Stern write,

“The specific zone of combat and command in the military, the texts tells us, remained a particular sort of male domain… a place where the feminine does not belong except as a temporary intruder who serves as an outlet or receptacle for male sexual lust. Indeed the Feminine, in all of its known forms (i.e., prostitute, Eve, flower etc.) must ultimately be exorcized in order for this macho man to be effective and to respect the ‘chain of command’ and his allotted position in the male hierarchies of the military structure (2009, p. 507).

In interviews with soldiers from the DRC, Baaz and Stern were informed that rapes occurred because the soldiers were poor and were unable to take leave for months or years at a time (2009, p. 509). This mentality normalized the rapes within:

“the military setting through discourses of disempowerment and unfulfilled masculinity… It is through this normalizing reasoning that rape becomes a possible performative act of masculinity” (Baaz and Stern, 2009, p. 510).

Similarly, Silberschmidt (2001) writes,

“socioeconomic change in rural and urban East Africa has increasingly disempowered men. Second, this has resulted in men’s lack of social value and self-esteem. Third, with unemployment and incapable of fulfilling social roles and expectations, male identity and self-esteem have increasingly become linked to sexuality and sexual manifestations. Fourth, in their frustrated situation, multi-partnered sexual relationships and sexually aggressive behaviour seem to have become essential to strengthen masculinity and self-esteem.”

It is argued that the shadow masculine consciousness of armed conflicts constructs the feminine as an otherwise inaccessible object that must be taken by force. According to Baaz and Stern, soldiers distinguish between normal rapes (which are the result of a lack
of money and leave) and ‘evil rapes,’

“which stem from a sense of moral disengagement that accompanies the climate of warring and violence in which they have been living; previously unthinkable behavior becomes conceivable and even dedramatized through the process of dehumanizing and ‘normalization’ of violence and killing” (2009, p. 510).

This supports the argument that soldiers are subsumed into a shadow masculine consciousness whereby violence and killing are considered to be normal behaviour. Many soldiers in the DRC are also frequent users of illicit drugs, which can intensify the distorted behaviour. According to one soldier, violence in the form of rape is often induced by drugs and the craziness of war, which ‘destroys’ the otherwise healthy ‘minds of people’ (Baaz and Stern, 2009, p. 512).

Another perspective on the shadow aspects of soldiers is offered in the study ‘Causes of Sexual Violence During Civil War: Cross-National Evidence (1980-2009).’ Dara Kay Cohen finds strong evidence that “the choice of recruitment mechanism– namely, whether the armed group abducted or press-ganged its members– predicts the use of sexual violence” (2011, p.1). She concludes that rape is often used “as a method of combatant socialization, in which members of armed groups who are recruited by force use rape to create and maintain social cohesion” (2011, p. 1). Cohen also links genocide and contraband funding to the presence of wartime rape on a large scale. This suggests that rape is used to damage and control the soldiers as much as it is used to damage and control the victims.

In another study, interviewees from DRC described the following soldier initiation rites to Jocelyn Kelly:

“Q: If someone wishes to join you, what can he do?
R: That civilian must be spilt in the dust, be beaten black and blue so that he might leave his civilian thoughts.

Q: Beat him first? How is this helpful?

R: The civilian will come out of him. You must spill him in the mud, to beat him black and blue before he is taken care of and given his uniform as well as a gun.

Q: Will he not be trained?

R: He will be trained after receiving a uniform and a gun. You will be shown the field and explained things as they are. Since you have already dropped civilian thoughts because of the flogging, you will start saying, “Ahhhh! So it is like this!” Then you will be practicing what you have learned.

Another soldier described his first beating, saying new recruits were taken to the river, stripped naked, and flogged. After the beating they were “anointed” with the river mud.

The soldier described himself as being “molded in the mud” and went on to say, “All those sticks that you were beaten with put into you another ideology.” (Kelly, 2010, p. 6).

In addition to the use of violence as a means to control soldiers, there is also evidence that many soldiers follow orders from superiors to rape, and carry out these orders in fear of punishment. It has been shown that sexual violence during armed conflict is often used as a military tactic designed to disable and humiliate the enemy (Card, 1996; Seifert, 1996). GBV “is systematically being used as a weapon of war in conflicts worldwide” (Kallas and Radhakrishnan, 2011). *UN Women* reports:

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141 The concept of command or superior responsibility is acknowledged in Article 33 of the Rome Statute, which states:

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:

   a. The person was under a legal obligation to obey orders of the Government or the superior in question;

   b. The person did not know that the order was unlawful; and

   c. The order was not manifestly unlawful.

2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

Clearly superior responsibility cannot be used as a defence to the crime of rape or GBV where it forms part of a genocide or crimes against humanity, but it is questionable as to whether this defence could be used in relation to a single act of rape in the course of an armed conflict (which would be classified as a war crime or a grave breach of the Geneva Conventions).
“Armed actors…systematically deploy sexual violence against civilians as a means to achieve military and political ends. In recent conflicts, countless women and children have been abducted into armed groups and subjected to multiple forms of abuse” (UN Women, 2011).

If soldiers are instructed to use GBV against women then they can be expected to follow such instructions as they would any other instructions (for example, to kill, or to destroy property). In relation to the armed conflict in the DRC, Kelly writes,

“Punishment for disobedience is harsh and includes imprisonment, flogging, and possibly death. As one soldier noted, “I must obey, because they are orders. There is no way to refuse it. . . . Even if you do not want to, you are not given a chance to choose. . . . You go—the body—but [hesitation] the soul is not there” (2010, p. 7).

It seems that we applaud the blind obedience of soldiers as ‘heroic’ when they are fighting and killing for the cause of our particular nation-state, yet denounce the blind obedience of soldiers who are fighting, raping and killing for tribal reasons, or for fear of their personal safety. As Fox observes, “In times of war, governments do not welcome the authentic, questioning spirituality of warriors, but want the religious obedience of soldiers” (2008, p. xii). It is argued that the problems are not with the individual soldiers, but with the fighting and the ‘blind obedience’ to any military strategy. In the interviews conducted by Baaz and Stern, all of the soldiers of the DRC that they spoke with had “an overarching sense” that rapes were forbidden and universally wrong (2009, p. 512). This highlights that it is the nature of armed conflict (as shadow masculine consciousness) that gives rise to deviant behaviour, rather than deviants seeking armed conflicts in order to partake in violence and killing.

Therefore it is argued that the experience of being recruited as a combatant, given drugs and beatings in order to be controlled, and following orders to rape may be as damaging for the soldier as it is for the sexual abuse victim. This thesis suggests that far from being
evil and threatening, many of the soldiers who commit these atrocities are potentially deeply vulnerable, disempowered and terrified. Indeed, even the use and abuse of child soldiers with beatings, sexual exploitation and forced drug-use is widely reported (see, for example, Child Soldiers International, 2012; Martz, 2010; Honwana, 2006; Rosen, 2005). As Schauer and Elbert note, “an estimated 300,000 child soldiers—boys and girls under the age of 18— are involved currently in more than 30 conflicts worldwide” (in Martz, 2010, p. 315). This phenomenon paints a far more complex picture of GBV in armed conflicts, whereby the soldiers committing the atrocities may be damaged, drug addicted, and in fear of their lives should they disobey orders. This analysis does not purport to encompass every experience of every soldier in every armed conflict, but it is an attempt to offer an alternative narrative of the ‘sexually abusive, in control, demonic soldier.’

This chapter concludes that the approach of international law to GBV in the aftermath of armed conflict does not acknowledge that soldiers may also be victims because they are inherently damaged by their exposure to violence, hatred, destruction and the use of sexual violence as a military strategy that may or may not be aligned with their personal values. Soldiers, in their preparation for and engagement in armed conflict, are completely dissociated from, and indeed have been taught to violate, their feminine consciousness. Soldiers are trained to disregard emotion, sensitivity and vulnerability. War correspondent Norman Lloyd reflects on his experience of armed conflict:

“[you are] in an environment where the people you’re with are being killed and wounded. You lose your senses. You don’t have room for sensitivity. You become a fairly insensitive person because there’s no room for that” (Lloyd quoted in Fox, 2008, p. x).

With shadow unconscious material being carried by soldiers, this thesis argues that in the aftermath of war, a narrative that demonizes soldiers and victimizes women is not going
to resolve the endemic and toxic problem of GBV in armed conflict. It is necessary to approach the problem holistically, by viewing the soldiers as living manifestations of the distorted masculine shadow. The objective here is in no way to victimize soldiers, or to minimize the trauma that male and female victims of GBV have experienced. In fact, as a criminal prosecutor for the NSW Office of the Director of Public Prosecutions in 2007 I participated as a solicitor in many sexual assault trials and witnessed firsthand the traumatisation and re-traumatisation of sexual assault victims in the course of prosecution. However in the course of sentencing hearings I also witnessed the pain, exploitation and/or mental illness that all of the offenders had experienced from an early age that often led to their crime.

As such, the objective of this chapter is to theorise about GBV in a different way, as an attempt to transform the narrative of GBV in international law. It is argued that the only way to do this is to acknowledge the traumatic experience of soldiers and to re-orient male and female combatants with the concept of the feminine during peacetime. According to de la Huerta,

“There is still an acute need open up men’s hearts and spirits…It’s because of [the male] disconnection with themselves, their bodies and their emotions…that frustration surfaces and comes out in inappropriate ways, with violence and rape and war” (quoted in Fox, 2008, p. xx).

This section has argued that the narrative of international law in regards to male and female bodies in armed conflict has been unconscious since prior to the creation of the UN. Rather than attempting to overcome the masculine/feminine polarization in armed conflict, international law has responded to the circumstances of armed conflict in an unconscious, fragmented, dualistic fashion by creating ‘the laws of war.’ These laws are intended to regulate the way that fighting takes place between the masculine, and to
Protect the feminine from harm and the GBV that inevitably occurs in the masculine fall-out. International law views armed conflict as created and waged by men, with women as innocent victims. As such, in relation to GBV during armed conflict, international law has responded to the feminine as a special subset of victim.

Transforming the narrative of GBV in armed conflict is the first step to becoming conscious of shadow material. A more authentic narrative must acknowledge the true nature of the victims of GBV and the shadows of the perpetrators of GBV. It must acknowledge that the act of GBV violates the gendered feminine in the victim and the perpetrator, and both are irrevocably harmed as a result of this interaction. Durham and O’Byrne write,

“A gender perspective on IHL insists on emphasizing two principles: first, that where women (and men) participate in war, their experiences should be recognized as valid, rather than being excluded from the discourse or reduced to stereotype; and secondly, that IHL norms apply to all participants in war, in both a protective and regulatory sense, regardless of gender” (2010, p. 51).

However it must also be acknowledged that becoming conscious of the shadow is a complex and fraught process:

“According to Jung (1963), the realization of the self through an individuation process is the ultimate goal towards which humans strive (see also Colman, 2000) – but this process is never totally completed. However hard we try to become aware of our darker side and accept it, the shadow necessarily remains partially unconscious and carries out commando attacks from its secret hiding places” (Ketola, 2008, p. 202).

So far, this chapter has focused on the integration of collective shadow material in the form of GBV in armed conflicts. The following section is a broader exploration of how international laws relating to gender justice can become more conscious.
Applying Integration Methods in International Law

The last section adopted a broad theme of acknowledging the experience of men in the narrative of gender justice. In international law, the male experience is often conflated with masculine consciousness, which is powerful, aggressive and decisive. Similarly, the female experience is often conflated with a shadow feminine consciousness, which is vulnerable, powerless and victimized. This section argues that international law needs to end these associations of men with the masculine and women with the feminine in order to achieve authentic gender equality.

I. The End of Conflating Feminine Consciousness with Women

Feminist scholars of international law have argued that public international law has traditionally been dominated by men (see, for example, the seminal works in this area by Charlesworth and Chinkin, 2000; Charlesworth, 1999; Charlesworth, Chinkin and Wright, 1991; MacKinnon, 1987; MacKinnon, 1989; and the edited volume by Peters and Wolper, 1995). Rosa Brooks reflects:

“you would expect to find both women and men populating the world of international law. Nonetheless, if you look for the women in international law and policy, you look almost in vain…perhaps it is because the traditional subjects of international law appear, at first glance at least, to have very little to do with the immediate concerns of women” (2002, pp. 345-346).

This thesis submits that it now may be more useful to argue that international law has traditionally been dominated by the masculine consciousness within men and women, rather than men; and that the feminine consciousness within men and women has been left out of international law. Yet this association of masculine consciousness with men and feminine consciousness with women has been sustained in women’s rights law.
Similarly, in his writings, Carl Jung conflated the feminine consciousness (the anima) and the masculine consciousness (the animus) with gender stereotypes of men and women (Kast in Papadopoulos, 2006, p. 116). Psychologist Labouvie-Vief comments on these cultural constructs of gender:

“They not only reflect certain inner self-identifications and outer social realities, but they also come to create those very inner and outer realities. Thus, the resulting language of gender attributions becomes a framework within which developing selves define themselves, attempting to validate their ‘appropriateness’ as men and women in culture” (in Young-Eisendrath and Dawson, 1997, p. 225).

It is argued that while men have traditionally been associated with a masculine consciousness and women have traditionally been associated with a feminine consciousness, they are not automatically connected, just as sex and gender are not automatically connected.\textsuperscript{142} Durham and O’Byrne write,

“Treating women and men as if they were fixed and unchangeable categories can exclude the experience of those people who do not fit neatly into the assumption about how ‘men’ and ‘women’ are supposed to behave” (2010, p. 32).

It must therefore be noted that feminine consciousness does not necessarily imply \textit{female} consciousness. This thesis adopts the approaches of Jungian analysts James Hillman (1985) and Andrew Samuels (1989), which reject the idea of contrasexuality\textsuperscript{143} but accept the concept of anima and animus as principles that apply to both men and women.

Accordingly, in the Jungian philosophy masculine and feminine consciousness exist in all

\textsuperscript{142} As defined by the World Health Organization (2012), ‘sex’ refers to the biological and physiological characteristics that define men and women, whereas gender refers to ‘the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women’ (2012). However the concept of masculine and feminine consciousness can also be distinguished from gender because gender is still contingent upon a person’s sex. As established in this thesis, consciousness refers to collective representations, which are agreed upon narratives and descriptions for the group. Therefore, sex and gender are \textit{a part of} the collective consciousness, because they form an agreed upon narrative.

\textsuperscript{143} Contrasexuality refers to the Jungian premise that a person’s gender has unconscious aspects of the opposite gender, for example, that men have an unconscious feminine aspect and that women have an unconscious masculine aspect.
individuals, and it is not necessary for a feminine consciousness to be brought forth by women, or for a masculine consciousness to be brought forth by men (Singer, 2000). All men and women have impulses towards survival, security, territory, position and protection in the collective just as all men and women have drives towards care and nurturing of self, other, community and nature. Men can and do express feminine consciousness just as women routinely express masculine consciousness. Moreover, feminine consciousness in men and women does not necessarily signify effeminate behaviour, nor does masculine consciousness equate to machismo. Reeser writes,

“Instead of considering the two genders as opposites, one might think in Derrida’s terms of femininity as ‘supplementary’ to masculinity, meaning that masculinity can only exist by virtue of its dependence on femininity. While masculinity might be defined in language as inherently different from femininity, the very fact that it is the opposite of femininity suggests that its definition requires femininity” (2010, p. 37).

Indeed this thesis proposes that the relationship between masculinity and femininity is analogous to the relationship between conscious and unconscious material: both elements are dynamic and symbiotic in the self. The next section of the chapter analyses the nature of feminine consciousness, and how it might have appeared in international law.

II. Feminine Consciousness and International Law

Whereas masculine consciousness (the Jungian ‘animus’) is focused on outcomes and logic, the feminine consciousness (the Jungian ‘anima’) is relationship-orientated and intuitive (Young-Eisendrath, 1997, p. 228). It is characterised by the care and nurturing of self, other, community and nature. Its value system prioritizes equality, health and

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144 However, it is acknowledged that because masculine consciousness has historically been confined to the public sphere along with men, and feminine consciousness has historically been confined to the private sphere along with women, men have traditionally been more attuned to masculine consciousness and women have traditionally been more attuned to feminine consciousness. Of course, as men and women have become increasingly immersed in all facets of the public and private spheres, masculine and feminine consciousness has already begun to transcend the public/private dichotomy.
relationships over power, protection and territory. In this consciousness, security is
derived from the quality of relationships and ongoing communication with others. If
international law had evolved according to a feminine consciousness, it may have had the
following characteristics:

(i) A United Nations with the General Assembly as a permanent world
government, with rotating ‘leadership’ of the Assembly, and each nation-
state entitled to one vote;

(ii) A permanent world government that makes decisions on the natural
environment, distribution of world resources, and the long-term
consequences of certain technological developments;

(iii) International laws that are unfolding ‘relationship narratives’ and
‘intention reports,’ rather than fixed documents that dictate behaviour and
lead to penalties when such behaviour is not carried out. Such narratives
have certain fundamental elements, but these are subject to change as each
collective evolves;

(iv) A more diverse response to international conflicts based upon the laws and
customs of the parties involved;

(v) A greater amount of ‘nation-states’ that have sought self-determination
based upon common cultural heritage;

(vi) No significant disparities in power because the era of colonialism never
existed;

(vii) A focus on a universal narrative of empowerment as the priority of
international law;
(viii) No specific human rights conventions for women, children, and others of various races and abilities because all human beings have the same intrinsic rights and entitlements;

(ix) No need for a genocide or torture convention;

(x) No nuclear weapons, and no acts of aggression that need to be constrained with force;

(xi) The presence of International Resolution Law, which focuses on mediation and arbitration in the case of nation-state disputes;

(xii) A strong and fertile natural environment that is more powerful and more instrumental than human-made developments;

(xiii) Less, and slower technological development;

(xiv) More entrenched national identities and languages based on indigenous customs;

(xv) A smaller and slower-growing world population due to the lack of control over the natural environment and an absence of medical technology.

A dominant feminine consciousness does not automatically signify a matriarchal society, with more women in leadership roles and the public sphere than men. However the feminine consciousness is more likely to foster a social system that equally distributes public and private sphere activities between all ages, races and sexes. In the feminine consciousness, the concern of one is the concern of the whole.

However, if men and women access both their masculine and feminine sides, the sex of representatives in politics, business or law is immaterial, because each individual will be able to represent the importance of the masculine and the feminine, and the public and private spheres.

A dominant feminine consciousness is not necessarily preferable to a dominant masculine consciousness, because a dominant feminine consciousness can lack direction and clear
boundaries, and can be vulnerable to threats from within the natural environment, or from uncooperative collectives within the system. Moreover, there is a need for strong and un-self conscious leadership and competition in the collective self. It is also reasonable to prioritise the need for physical survival, which is the dominant concern of the masculine consciousness. As such, this thesis ultimately bears the message of an integration of masculine and feminine consciousness in the public and private spheres. Thus, the fundamental question remains: how do we use international law to integrate feminine consciousness into the public sphere and masculine consciousness into the private sphere?146

How to Integrate Masculine & Feminine Consciousness in International Law

Earlier chapters have argued that since the foundation of the UN in 1945, the public sphere has been dominated by a masculine consciousness and the private sphere has been dominated by a feminine consciousness. This thesis constructed this masculine/feminine, public/private division as a symbol of the split between conscious and unconscious material in the global collective self. The specific goal of Jungian analysis is to engage and interpret the images that emerge from the unconscious, with a view to integrating the conscious and unconscious aspects of mind (see, for example, Man and his Symbols, 1978 ed.). Jung wrote,

"The unconscious as we know can never be ‘done with’ once and for all. It is, in fact, one of the most important tasks of psychic hygiene to pay continual attention to the symptomatology of the

146 This thesis is not suggesting that this process has not already begun. It is suggesting that the process of integrating the masculine consciousness into the private sphere and the feminine consciousness into the public sphere has been unconscious and uncoordinated thus far.
unconscious symptoms and processes, for the good reason that the conscious mind is always in danger of becoming one-sided…” Jung, C. in Campbell, J. (ed.) 1971, 159.

As such, merely becoming aware of unconscious material is not enough to ensure ongoing ‘psychic hygiene.’ As such, in order to work towards integration, this thesis suggests that is necessary to:

(i) Bring aspects of feminine consciousness (equality, inclusion, collectivism, ethic of care, healing and nurturing) into the international law framework relating to the public sphere; and

(ii) Bring aspects of masculine consciousness (survival, security, territory, power and position) into the international law framework relating to the private sphere.

Thus, we need to integrate the values of the private sphere and the public sphere by making the public sphere more flexible, connected and inclusive, while making the private sphere more empowered and secure. The thesis suggests that this kind of integration can potentially occur through a change in the narrative of international law, and the introduction of men’s rights to the private sphere in international law.

I. Changing the Narrative of Gender

Integrating masculine and feminine consciousness in international law cannot occur through the existing narrative, which is characterized by the sole pursuit of ‘women’s rights’ and the work of bodies associated with this aim such as UN Women (the UN Entity for Gender Equality and the Empowerment of Women) and the Commission on the Status of Women. The women’s rights narrative perpetuates the gender divide between men and women because it is based on the principle that empowering women is translated as bringing them closer to the status of men in the public sphere. This assumes that men
and the public sphere are inherently empowered, and that women and the private sphere are inherently disempowered.

It is argued that the gender narrative needs to be based on the principle that gender justice for men and women is linked to a balance of masculine and feminine consciousness in international law. As feminine consciousness is relationship-oriented, and based on care and equality, this thesis concludes that the first step towards the integration of masculine and feminine consciousness in international law may be to incorporate men into the existing gender justice framework. Leaving men out of the gender justice narrative, or treating men as the enemy in this narrative, actually runs counter to feminine consciousness, which is focused on inclusion and connectedness. This chapter makes the following recommendations for the global collective self to move towards a higher state of reflectivity in relation to the split between masculine and feminine consciousness.

**A. Recommendation: Transformation of Gender Organisations**

It is recommended that there should be no future UN conventions, projects, or conferences that relate only to women or that are in the pursuit of ‘women’s rights,’ unless the projects are necessarily specific to the female sex, such as antenatal healthcare. Accordingly, the thesis recommends that UN Women should be transformed to UN Empowerment, and the Commission on the Status of Women should be transformed to the Commission on Gender Equality, with all of their projects aimed at integration: helping women into the public sphere and men into the private sphere. International gender organisations must expand their mandates to involve the publication of focus areas, resources and statistics that reflect the experience of women and men. This new narrative could be disseminated by global workshops and conferences run by UN Women.
and the agreed conclusions on priority themes set for each year by the Commission on the
Status of Women (see http://www.un.org/womenwatch/daw/csw/).

B. Recommendation: CEDAW Reservations and State Reports as Relationship Narratives

It is argued that the feminine consciousness is also more accepting of cultural nuances and
relativism in the application of gender justice. This lends itself to a more flexible attitude
in relation to the implementation of gender rights, based on the understanding that cultural
change cannot be imposed and must arise from within the national collective self. It is
self-evident that the application of women’s rights in international law involves complex
relationships between the global collective self and nation-state collective selves. On the
one hand, the global collective self has created the CEDAW, a convention that
presupposes universality and homogeneity in relation to the life experience of women. On
the other hand, nation-states have responded to and interpreted the CEDAW in ways that
are culturally relative and heterogeneous. This tension between universalism and cultural
relativism has been widely acknowledged in women’s rights literature (see, for example,
Mayer in Peters and Wolper, 1995, pp. 176-188; Engle Merry, 2006, pp. 103-133; and

This thesis argues that creating resistance between ‘universal’ and ‘cultural’
interpretations of gender justice will only lead to greater divergences and
misunderstandings about the ideal forms of social structures for men and women. As
such, this will create more resistance and unconscious material in the global collective
self. As Arendt notes, “people want to be recognized as members of their particular
cultural and political communities rather than as abstract human beings” (1974, p. 466,
quoted in Bielefeldt, 2000, p. 96). For example, nation-state reservations are indications of the conflict between universal and cultural perceptions of human rights. Article 28 of the CEDAW permits reservations at the time of ratification or accession that are compatible with the object and purpose of the Convention. The most common reservation in relation to the CEDAW has been made on the basis of its inherent conflict with Islamic principles and Sharia law.\footnote{The following Islamic nation-states have made reservations to this effect: Bahrain, Bangladesh, Brunei Darussalam, Egypt, Iraq, Kuwait, Libya, Malaysia, Maldives, Mauritania, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Syrian Arab Republic, Tunisia, and the United Arab Emirates. Three nation-states (Iran, Sudan and Somalia) have chosen not to sign or ratify the CEDAW for this reason.} In addition, seven UN member states have not ratified or acceded to the convention: Iran, Nauru, Palau, Somalia, Sudan, Tonga, and the United States.

As stated in Chapter Six, Article 18 of the CEDAW commits nation-states that have ratified or acceded to the CEDAW to submit national reports, within one year after the entry into force for the State concerned and thereafter at least every four years, on measures they have taken to comply with their treaty obligations. It is suggested that if a nation-state perceives that its cultural relationships are going to be critically appraised against an unfamiliar foreign standard, then it will be more likely to avoid submitting State Reports or to submit reports that are late or incomplete.\footnote{See, for example, Byrnes and Freeman, 2012, pp. 1-61, and information provided by the CEDAW Committee on the need for follow-up reporting by certain nation-states at http://www2.ohchr.org/english/bodies/cedaw/followup.htm.} Comparing State Reports with CEDAW ideals can lead to the condemnation of cultural practices that conflict with Western notions of gender justice and the ostracism and suppression of those cultures that practice them (Billet, 2007, pp. 40-41). This can have the effect of dividing the global collective self into two spheres: the civilised West, and the barbarous ‘Other’ (Krisch, 2005, pp. 386-387; Pahuja, 2005, p. 461).
This chapter proposes that a feminine consciousness could be integrated into the CEDAW framework with reservations to the CEDAW and state reporting mechanisms treated as ‘relationship narratives.’ Rather than the CEDAW Committee judging reservations and state reports against a universal standard of women’s rights, the reports could be considered as evolving reflections of relationships between men and women in specific cultural contexts. It is argued that a “constructive dialogue between the state’s delegation and the monitoring body will promote respect and understanding of human rights within the reporting state” (Bulto, 2006). As such, the CEDAW Committee could shift its narrative in relation to its consideration of State reports, whereby it notes the gender changes that have been made by the nation-state, but does not make specific recommendations about how the nation-state should alter its laws to comply with CEDAW in the future. The CEDAW Committee should ultimately be a collection point for global information on gender, rather than a panel that provides judgments or recommendations to nation-states.149

This is not to suggest that cultures or religions that are oppressive towards women need to be openly supported or encouraged. Rather, this chapter argues that if there is any resistance in the collective self, it must be consciously addressed and integrated (rather than judged) before authentic progress towards gender justice can be made. Donnelly argues that ‘Western’ human rights arose as the product of modernity and the social, economic, and political changes that accompanied it. Therefore, human rights have resonance “wherever those transformations have occurred, irrespective of the pre-existing

149 As an example of CEDAW judgments and recommendations, see the Concluding Comments of the CEDAW Committee in relation to Saudi Arabia, 2008: <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.SAU.CO.2_en.pdf> Byrnes and Freeman note the variety of ways in which the path to gender equality has been realised, including through the adoption of CEDAW standards by civil society groups, courts and tribunals (2012, p. 16).
culture of the place” (2007, p. 287). As such, nation-states need to evolve particular norms and values as part of their natural development. It is argued that admonishment or even encouragement from the CEDAW Committee does not accelerate this process; in fact, it may create more resistance between the global collective self and the nation-state in question. According to Jouannet, the universal application of human rights is impossible until there is “a common ethics or global culture” on which human rights are based (2007, p. 390). A common ethics or global culture cannot be imposed by international law. In shaping the global collective self with conscious thoughts, values and narratives, we need to approach issues constructively with non-judgment in order to “secure positive norm transfer from international law to domestic legal processes” (O’Rourke, 2011).

C. Recommendation: Transforming the Language of Gender Conventions

In addition, this thesis recommends that the language of gender conventions should be changed to focus on the desired outcomes of the law, rather than focusing on what is to be eradicated. International law conventions and organisations must ‘work from the end,’ which means that the vision of the law must be articulated prior to the drafting of the text. If the vision of the law is gender equality or gender justice, then the language of the convention should reflect that intention. Naming a convention ‘The Convention on the Elimination of All Forms of Discrimination Against Women’ incorporates a value judgment about how gender justice will come about. The CEDAW could be more positively named to reflect its ultimate goal. A change in the narrative and language of gender conventions could thus occur through a transformation of the CEDAW, which is linked to the following section on men’s rights to the private sphere.
II. Men’s Rights to the Private Sphere in International Law

“Men do not appear in the CEDAW, except as shadow comparators for women’s equality and implicit perpetrators of their inequality” (Rosenblum, 2011, p. 166). As such, a further suggestion towards integrating masculine and feminine consciousness in international law is the acknowledgment of men’s rights to the private sphere. This could take the form of a new section in the CEDAW that protects the rights of:

(i) Men to be free from discrimination in relation to decisions relating to guardianship of children;
(ii) Fathers to spend equal time with their children;
(iii) Fathers to share equal responsibility with mothers for child support payments in the event of marriage dissolution;
(iv) Fathers to access paternity leave from workplaces;
(v) Men to refuse to engage in compulsory military service;
(vi) Men’s bodies to be free from forced recruitment into armed forces and all forms of violence in armed conflict.

In light of the acknowledgment of the rights of men to the private sphere, the CEDAW could be re-named as A Convention on Gender Equality, A Convention on Gender Justice or A Convention for the Empowerment of Men and Women. The Convention could be re-framed so as to reflect the priority of ending the split between masculine and feminine consciousness. These changes to the gender framework are not intended to victimise men in the way that this thesis argues women have been victimised. Rather, these are offered as corrective recommendations that restore the balance of gender equality in the global collective self.
Furthermore, these recommendations force people to become conscious of the archetypal split between public and private, masculine and feminine. As far as this thesis is concerned, in the realisation of gender justice, the only legitimate alternative to acknowledging the private sphere rights of men is to eliminate the existing women’s rights framework, such that the rights of women are equal to the rights of men, as contained in the ICCPR and the ICESCR. It is paradoxical that by acknowledging the private sphere rights of men, we are able to reinforce the strength and empowerment of women in the public sphere. This represents the ‘transcendent function’ of Jungian theory at work, which transforms the opposition of masculine and feminine into a new and integrated relationship.\footnote{As an ancillary comment, this thesis proposes that the Internet also holds potential in international law as an integrating conduit between the (masculine) public and (feminine) private spheres, as a nexus between international law and the individual. Existing UN organisations (UN Women, the Commission on the Status of Women and the CEDAW Committee) could use web facilities and internet forums to encourage men, women, NGOs and government agencies to offer feedback on state progress and to advertise new projects in relation to gender justice.}

III. Implications for Same-Sex Couples in International Law

A further implication for the integration of masculine and feminine consciousness in international law is the concept of rights for same-sex couples. If we accept the premise that all individuals have masculine and feminine aspects, then the distinction between same-sex and opposite-sex relationships becomes immaterial. The thesis argues that laws regarding heterosexual marriage have resulted from the conflation of men with masculine consciousness and women with feminine consciousness.

Article 26 of the ICCPR provides that all persons are equal before the law and entitled to equal protection under it. In this respect, state parties must guarantee equal and effective
protection against discrimination on a number of grounds, including sex, race and ‘other status.’ However article 26 must be read in light of article 23(2), which provides that “[t]he right of men and women of marriageable age to marry and to found a family shall be recognized.” The Human Rights Committee in Joslin v New Zealand\textsuperscript{151} held that article 26 of the ICCPR did not require New Zealand to legislate in favour of same-sex marriage. Further, the Committee found that there was “consistent and uniform” state practice to indicate that marriage was heterosexual. However, there is evidence to suggest that state practice is starting to shift, with thirteen nation-states recognising the rights of same-sex couples to marry as of April 2013, including The Netherlands (2000), Belgium (2003), Spain (2005), Canada (2005), South Africa (2006), Norway (2008), Sweden (2009), Portugal (2010), Iceland (2010), Argentina (2010), Denmark (2012), New Zealand (2013) and France (2013). This thesis argues that the acknowledgment of same-sex couples to marry in international law is a necessary by-product of gender justice, and the integration of masculine and feminine consciousness.

**Conclusions**

This chapter has shown that in spite of the engagement of international law with shadow material, GBV has not diminished as a central aspect of armed conflicts. The chapter explored how shadow material of the masculine/feminine relationship can be consciously integrated in the global collective self, and suggested ways in which international law can facilitate this integration. It argued that international law must embark upon a new (fourth) stage of engagement with the shadow where the narrative of GBV is transformed in international law. In the new narrative, the act of GBV is constructed as an archetypal

crime, where the *gendered feminine* in men and women is abused and violated by the *gendered masculine* in men and women, regardless of the sex of the perpetrator and victim. The chapter also suggested that the soldiers (as perpetrators of GBV) may be victims themselves, acting out the destruction of their own inner feminine consciousness.

The chapter then examined how a new narrative of masculine and feminine consciousness can be more broadly integrated in international law. The chapter incorporated this new narrative in the following ways:

(v) Changing the narrative of gender through the transformation of gender organisations;

(vi) Considering CEDAW reservations and State Reports as unfolding relationship narratives;

(vii) Adapting the language of gender conventions; and

(viii) Amending the CEDAW to acknowledge the rights of men to the private sphere in international law.

The purpose of these changes is to draw attention to the split between masculine and feminine consciousness in the public and private spheres, and to empower the private sphere by affording men ‘rights’ to gender equality. This is because the provision of rights in the context of international law constitutes global recognition of the importance of the entitlements conferred.

Indeed, the expansion of consciousness in the global collective self is analogous to a spider’s web that begins with an intention, leading to seemingly gentle weaving, and expanding out into unexpected spirals of connection.
Chapter Ten: Conclusions & Applications of the Work

This final chapter of the thesis consists of the key conclusions and future applications of the work. It begins by reviewing the research design of the thesis: the original hypothesis, research questions and methodology. It then provides the dominant conclusions and contributions of the thesis, which fall into three categories:

(iv) The Collective Self Theoretical Framework;

(v) The relationship between the global collective self and public international law; and

(vi) Implications for gender justice in public international law.

The chapter then outlines the original contributions made by the thesis. Finally, the chapter analyses potential applications of the theory to other case studies, as scope for further research in this area.

In summary, this thesis used a combination of psychological and sociological theory to create an analytical category of the global community as a socially constructed ‘collective self.’ This ‘global collective self’ has a personality that contains conscious and unconscious elements, and manifests itself in the external facts of public international law (multilateral conventions, declarations, tribunals and organisations). As such, public international law was conceptualised as an expression of the global collective self. By way of case study, the thesis analysed how gender justice and the relationship between masculine and feminine consciousness in the global collective self is expressed in international law. It showed that since the foundation of the UN, gender justice has been translated as ‘women’s rights’ in international law, which assumes that men and the public sphere are intrinsically empowered, and that women and the private sphere are intrinsically disempowered. This unconscious split between masculine and feminine
consciousness is evident in laws and international organisations relating to women, and laws relating to gender-based violence in armed conflict. The thesis concludes that it is necessary to transform the narrative and language of gender justice in international law.

**Review of the Research Design**

I. Review of the Hypothesis

The original hypothesis of this work was that collectives (groups such as organisations, institutions, nation-states, and the global community) could potentially be analysed in a similar way to individuals, with collective personalities, conscious and unconscious material. Based on this hypothesis, the thesis treated the global collective self as the culmination of other socially constructed collective selves, expressed through external facts such as public international law. This analysis could potentially lead to useful conclusions about the nature of international law in the global community, and particularly about the nature of gender justice in international law.

II. Review of Research Questions

Based on the hypothesis of a socially constructed global collective self, this thesis was structured according to the following research questions:

(i) Is the concept of a ‘collective self’ or a ‘collective personality’ supported by psychological and/or sociological theory?

(ii) Can theories of the collective self be applied in order to theorise about public international law?

(iii) What is the ontology of public international law, and what is its relationship to the global collective self?

(iv) What is masculine and feminine consciousness, and how are these types of
consciousness made manifest in the international law relating to women?

(v) What effects do masculine and feminine consciousness have on gender justice in international law?

(vi) How is the relationship between masculine and feminine consciousness expressed through gender-based violence in armed conflict?

(vii) How does the global community process its unconscious material, and what effect does this have on the international law relating to gender justice?

III. Review of Methodology

The thesis adopted an interdisciplinary qualitative methodology. The thesis used theories and methods from sociology and analytical psychology in order to create a Collective Self Theoretical Framework. The research design adopted was an in-depth case study of gender justice in international law. The evidence used to inform the case study included a range of multilateral treaties and declarations in women’s rights law, feminist theories in international law, and the jurisprudence of the ICTY, ICTR and the ICC in prosecuting gender-based violence in armed conflict.

Furthermore, the theoretical framework developed in the thesis can be considered explanatory, critical and normative. It was explanatory in the sense that it attempted to locate the causal role played by the global collective self in the global community, and on the basis of this analysis, drew conclusions and predictions. It was critical because it identified particular aspects of the international system that are not functioning well or can be considered ‘unconscious.’ It was also normative as it indicated an alternative
future or mode of operation that does not currently exist, but might be brought into being (Kurki and Wight, 2007).

**Overview of Thesis Conclusions**

In summary, the major conclusions of the thesis can be grouped into three categories: the theory of collective selves, the relationship between the global collective self and public international law, and implications for gender justice in international law. These conclusions are detailed as follows.

I. The Collective Self Theoretical Framework

As stated above, this research was based on the hypothesis that, in addition to individual selves, collective selves also play a dominant role in social life. One of the principal conclusions of the thesis is that socially constructed collective selves exist and play a dominant role in social life. To reach this conclusion, the thesis conducted a review in Chapter Two of collective self theories in philosophy, sociology, psychology and the natural sciences. From these theories, the thesis used a combination of sociological and psychological models to create a psycho-social Collective Self Theoretical Framework, as outlined in Chapters Three and Four.

The sociological theory adopted was the sociology of human consciousness approach (Burns and Engdahl, 1998a). This approach analyses the concept of individual consciousness by beginning with collective realities and collective consciousness. As such, individuals are identified and understood by reference to their participation in various collective selves/agents, such as families, organisations, nation-states and ultimately the global community (Burns and Engdahl, 1998a, p. 68). Collective selves are
characterised by community, language, language-based communication, institutional and cultural arrangements, collective representations, self-conceptions, and self-referentiality (Burns and Engdahl, 1998a, p. 67). In this model, there is a significant emphasis on language in the development of individual and collective consciousness. Collective consciousness is therefore defined as:

“Socially based cognitions, representations and reflective processes, based on language, collective representations, and the capabilities of discursive reflection” (Burns and Engdahl, 1998, p. 69).

In sum, the model shows that collective selves on all levels:

“families, communities, administrative organizations, or states, are social agents and can be considered to possess agential capabilities: to think, judge, decide, act, reform; to conceptualize self and others as well as self’s actions and interactions; and to reflect” (Burns and Engdahl, 1998a, p. 73).

Collective selves are conscious because they possess powers, make choices and act purposively. They have an identity, a name, particular values, “defined social relationships, procedures, and the capacity to make collective choices, determine goals or intentions, and to take collective action” (Burns and Engdahl, 1998a, p. 74).

While this sociological model had much to offer in terms of understanding collective identity and collective will, its treatment of unconscious collective material was limited. The sociology of human consciousness model refers to unconscious collective material as ‘oppressive reflectivity’, or that which is un-represented and un-named by the collective (Burns et al., 2003; Burns and Engdahl, 1998a, p. 81). With unconscious material, Burns and Engdahl acknowledge that:

“…unrecognized or poorly defined problems cannot be dealt with…Reflective and problem-solving powers may then be distorted, the generation of alternatives and varieties narrow and
largely ineffective, and social innovation and transformation misdirected and possibly self-destructive (Burns et al., 2003).

While this is an informative indication of the effect of unconscious material on collective selves, the thesis required more detail on the nature of the collective unconscious. As such, the thesis turned to analytical (Jungian) psychology in order to understand the concept of the collective unconscious. In researching Jungian theories, it became apparent that there were significant overlaps with the sociology of human consciousness approach, as demonstrated in the following table:

<table>
<thead>
<tr>
<th>Sociology of Consciousness Model</th>
<th>Analytical Psychology</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collective agent/collective self</td>
<td>Collective psyche</td>
</tr>
<tr>
<td>Collective representations</td>
<td>Conscious ego</td>
</tr>
<tr>
<td>Self-reflectivity</td>
<td>Becoming conscious of (reflecting on and processing) unconscious material</td>
</tr>
<tr>
<td>What is unnamed or unrepresented by the collective</td>
<td>Unconscious material</td>
</tr>
<tr>
<td>Limited or distorted reflectivity</td>
<td>Defence mechanisms protecting the ego</td>
</tr>
<tr>
<td>Conflict or trauma</td>
<td>Exposed unconscious material</td>
</tr>
<tr>
<td>Dialectic between the named and the unnamed in the collective</td>
<td>Dichotomy between conscious and unconscious material</td>
</tr>
</tbody>
</table>

*Table 10.1: Complementarity of Psycho-Social Approaches*

However Jungian theory builds upon the concept of a collective self, by providing a multi-faceted treatment of unconscious material in the collective, giving language and substance to phenomena such as the archetypes of syzygy (anima/animus) and the shadow, cultural complexes, and defence mechanisms.

Based on this combination of the sociology of human consciousness model and Jungian
theory, in Chapter Four the thesis formed a new theory of collective selves in the Collective Self Theoretical Framework (as depicted in Figure 10.1 below). This framework established that collective selves, like individual selves, have dynamic and autonomous ‘personalities’ that exhibit consciousness and possess unconscious material.

![Figure 10.1: The Collective Self Theoretical Framework](image)

In developing the Collective Self Theoretical Framework, the thesis sought to argue that an awareness of the collective self at all levels can provide insights into the nature of collective life: why certain patterns seem to recur, how particular dualities dictate the structures of everyday life and why these patterns and dualities are difficult to overcome. The focus of the thesis was the collective self formed by the global community: the global
collective self. The global collective self was constructed as the culmination of other, smaller collective selves such as nation-states, regions, and international organisations. The global collective self finds expression in external realities, such as contemporary public international law. For the purposes of the thesis, contemporary international law is deemed to have commenced in 1945 with the foundation of the United Nations.

II. The Relationship Between the Global Collective Self & Public International Law

Chapter Five contained the second principal conclusion of the thesis: that the global collective self forms a co-constitutive relationship to contemporary public international law. As such, both the conscious and unconscious material of the global collective self is expressed in public international law. Therefore on the one hand, public international law reflects the conscious, normative philosophical visions of the global collective self and on the other, its unconscious limitations, irreconcilable patterns and dualities. The thesis argued that this ontological theory of public international law can explain its inconsistencies and paradoxes. In this way, public international law, as a mirror of the global collective self, is simultaneously supremely powerful and supremely benign. It is powerful because it sets a conscious agenda for the future vision of the global community. Through hard and soft international laws, the global self creates a narrative of the past and articulates its wishes for the future. Conversely, public international law as a mirror is relatively benign because it simply reflects the exact nature of what is shown to it by its amalgamated parts: nation-states, international organisations, NGOs, the media, academics, journalists and citizens.
III. Implications for Gender Justice in International Law

The third principal conclusion of the thesis was that gender justice in international law is an apt example of the way in which international law reflects the conscious and unconscious material of the global collective self. Chapters Six to Nine contained the case study of gender equality and justice in international law. The case study illustrated how collective consciousness and the collective unconscious are made manifest in international laws and narratives. The thesis outlined the specific ways in which the global collective self, through the medium of international law, has responded to the issue of gender justice from both a conscious and unconscious perspective (as shown in Figure 10.2).

Figure 10.2: The Collective Self Theoretical Framework & Gender Justice in International Law
Chapter Six presented the conscious material of gender justice in the global collective self. It showed that the conscious narrative of gender justice is premised upon the historical discrimination against women and their exclusion from the public sphere. It was argued that various schools of feminism have informed much of the gender justice narrative. As such, international laws promote women’s rights, and women’s access to the public sphere in order to bring about equality for men and women. Consciously, women have been granted legal rights through multilateral conventions such as, inter alia, the *Convention on the Political Rights of Women (1953)*, the *Convention on the Nationality of Married Women (1957)*, the *Convention Against Discrimination in Education (1960)*, the CEDAW (1979) and the CEDAW-OP (1999). Organisations were also created by the UN to foster this conscious narrative, for example, the Commission on the Status of Women (CSW) and the Division for the Advancement of Women, which became UN Women in July 2010. During its first session, the CSW articulated the following objective:

“To raise the status of women, irrespective of nationality, race, language or religion, to equality with men in all fields of human enterprise…” (E/281/Rev.1, 25 February 1947).

This encapsulates the conscious narrative of international law in relation to gender equality.

Chapter Seven then explored the unconscious material contained in the narrative of international laws relating to gender justice. The chapter argued that there is an unconscious split between masculine and feminine consciousness in the global collective self, which manifests itself in international law. It suggested that we must separate men from the masculine consciousness and women from the feminine consciousness because according to Jungian theory, all individuals possess elements of masculine and feminine consciousness. As such, all individuals benefit from an integration of masculine and feminine, public and private.
The chapter showed that in using men’s reality as the yardstick for women’s rights, international law created a power hierarchy that placed men and the public sphere ‘above’ women and the private sphere. This narrative suggested that the realisation of men’s rights in the public sphere was the ideal goal for women. Chapter Seven showed that this approach of only granting rights to women and encouraging women into the public sphere has ironically had a disempowering effect by:

(i) Casting women as archetypal victims and men as archetypal dominators, which reinforced existing stereotypes;

(ii) Ignoring the rights and needs of men to access the feminine consciousness of the private sphere;

(iii) Glorifying masculine consciousness and the public sphere; and

(iv) Diminishing the significance of the private sphere.

In short, women have been granted public sphere rights while a man’s equal right to the private sphere has not yet been fully acknowledged or even articulated.

Therefore the narrative of gender justice in international law means that now men and women are both bound by a traditional masculine, public sphere consciousness, while the feminine private sphere remains disempowered and unconscious. The thesis argued that this narrative unconsciously perpetuated the split between masculine and the feminine consciousness. After almost seventy years since the first recognition of women’s rights in international law, women may be more empowered in the public sphere, but the feminine private sphere is still devalued and disempowered for men and women.

Chapter Eight continued the theme of identifying unconscious material in gender justice. It suggested that sexual atrocities committed against men and women during armed
conflict constitute unconscious ‘shadow’ material of the global collective self. The chapter examined how international law has engaged with this shadow material since 1945. The chapter identified three stages of collective consciousness in relation to gender-based violence in international humanitarian law:

(i) Repression and silence prior to 1945, with minimal action in international law was taken in the early twentieth century to address sexual violence in armed conflict, for example, The Hague Convention No. IV concerning the Laws and Customs of War on Land (1907).

(ii) Collective representations from 1945 until the early 1990s, including the formation of the UN, the Geneva Conventions of 1949, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974), and the Additional Protocols to the Geneva Conventions (1977); and

(iii) Self-reflectivity from the early 1990s to the present, in the form of the statutes and jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Court (ICC), other hybrid criminal tribunals, and additional policy instruments.

It was shown that in terms of gender-based violence in armed conflict, international law has adopted the same narrative as other women’s rights law, whereby women are afforded rights and protections because they are constructed as archetypal victims and men are constructed as dominator/controllers.

Chapter Nine explored how the unconscious material of gender justice can be brought to consciousness in the global collective self. The chapter concluded that the narrative of
gender justice must be changed before real outcomes can be achieved in gender justice. In relation to shadow material, the chapter recommended that the narrative expands to acknowledge that gender-based violence in armed conflict increasingly occurs against men. It was suggested that gender-based violence is a crime committed by the shadow masculine consciousness in men and women against the shadow feminine consciousness in men and women. Moreover, the chapter argued that the narrative must encompass the experience of soldiers, who have often been indoctrinated to destroy and violate their own inner feminine consciousness throughout their training and in the course of combat. As such, rape during armed conflict acts out and validates that destruction. The chapter showed that many combatants in recent conflicts, such as the DRC and Sierra Leone, have been abducted and forced into combat. In many instances, soldiers are heavily drugged on a regular basis or under the age of 18. The chapter suggested that it is necessary to acknowledge these factors in order to create a broader narrative of the systemic factors that lead to gender-based violence.

It concluded that international law cannot achieve the objectives of gender justice without becoming aware of, and integrating unconscious material. It was proposed that the unconscious material of gender justice can be processed and integrated by bringing aspects of feminine consciousness (equality, inclusion, collectivism, ethic of care, healing and nurturing) into the international law framework relating to the public sphere, and bringing aspects of masculine consciousness (survival, security, territory, power and position)\(^\text{152}\) into the international law framework relating to the private sphere. The thesis showed that this integration can practically come about by changing the narrative of

\(^{152}\) These attributions of masculine and feminine consciousness were developed in Chapter Seven in the section entitled ‘Masculine and Feminine Consciousness in International Law.’
gender through:

(i) The transformation of gender organisations;

(ii) The consideration of CEDAW reservations and State Reports as unfolding relationship narratives;

(iii) The adaptation of the language of gender conventions; and

(iv) The amendment of the CEDAW to acknowledge the rights of men to the private sphere in international law.

It was argued that the integration of this unconscious material in the global collective self will ultimately transform the collective experience of masculine and feminine consciousness. The fundamental contribution of the thesis is that the objectives of public international law cannot be achieved without the expanded consciousness of the global collective self. Indeed, the thesis argued that international law is symbiotically linked to the level of consciousness in the global collective self.

**Original Contributions of the Work**

There are several original features of this interdisciplinary thesis. Perhaps most importantly, this is the first application of Jungian theory to the theory of international law, and to gender equality in international law. As stated in Chapter Five, international law theorist Philip Allott has applied Freudian psychoanalytic concepts to international law theory in his work, however he has not utilised analytical psychology. The Collective Self Framework, as a combination of sociological and psychological theory, is an original lens through which we can analyse the global community and other subsidiary collective selves, such as nation-states, cities and organisations. The Framework goes beyond sociological theory by using Jungian thought to examine the development of collective consciousness and the realisation of an integrated collective self. Furthermore, the
Collective Self Framework offers an original theory of international law, as a reflection of the conscious and unconscious material of the global collective self.

Another original contribution that the thesis makes is the distinction between masculine and feminine consciousness in international law, in contrast to the conflation of masculine attributes with men, and feminine attributes with women. The thesis showed that focusing the narrative of international law on masculine and feminine consciousness rather than men and women can better illuminate the ongoing challenges in gender justice. Rather than single-mindedly working towards public sphere rights for women, this thesis suggested that international laws and organisations would benefit from a renewed focus on:

(i) Private sphere rights for men; and
(ii) Bringing a feminine consciousness into the public sphere by transforming the language of the CEDAW, and the work of the CEDAW Committee.

Ultimately the thesis attempts to bring an original voice to feminist theory in international law, by bringing men into the gender narrative, and re-valuing the private sphere for men, women, and the global collective self.

Applications of the Work to Other Case Studies

This thesis has several elements that can be applied in other contexts. First, it is argued that the Collective Self Theoretical Framework could be applied to analyse an infinite number of socially constructed collective selves: families, organisations, institutions, nation-states and regions. Secondly, the split between masculine and feminine consciousness could be applied to analyse other regimes in international law that adopt the same divisive archetypal patterns, for example indigenous peoples and racial
minorities. Thirdly, if one accepts the concept that all individuals have masculine and feminine aspects to their consciousness, then this theoretically lends itself to rights for same-sex couples in international law.

I. Applying the Collective Self Theoretical Framework

This thesis submits that the Collective Self Theoretical Framework can be applied to any form of collective self, from a partnership to the global community. This is because all collective selves are socially constructed, and possess conscious and unconscious material. In applying the framework, the key is to determine the conscious narratives of each collective self, and the unconscious material that lies beneath the conscious narrative. The conscious narratives refer to the nature of collective representations and self-reflectivity, while unconscious material will consist of recurring patterns, dualities and archetypes such as the relationships between masculine and feminine consciousness (the anima/animus syzygy) and the shadow.

Applying the Collective Self Theoretical Framework can assist an organisation, institution, or nation-state to confront its unconscious material in order to work towards greater forms of consciousness. Once a collective self becomes aware of its unconscious material, it is able to transform its narratives, and to create ongoing reflective structures that allow the collective self to consciously articulate and achieve its objectives. The Framework may additionally help to analyse what it means to be a State Party to a multilateral treaty, in terms of defence mechanisms and projection perhaps.
II. Applying the Masculine/Feminine Consciousness Duality to Indigenous Peoples in International Law

It is further argued that the theory of duality between masculine and feminine consciousness developed in this thesis could be usefully applied to the relationship between colonisers and indigenous peoples in international law. This is because the same dualities and archetypes have been adopted in the narrative of international law towards women and indigenous peoples. Women and indigenous peoples are constructed by international law as victims lacking in rights and power, whereas men and colonisers are constructed by international law as controlling and intrinsically powerful.

‘Indigenous peoples’ were defined in a 1986 study by Jose R. Martinez Cobo, the UN Special Rapporteur to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, as:

“…those which having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.” (UN Doc. E/CN.4/Sub.2/1986/7 and Add. 1-4).

It is argued that there are substantive overlaps in how international law treats women and how international law treats indigenous peoples. For example:

(i) The dichotomy between men and women mirrors the dichotomy between colonisers and indigenous peoples, although in the case of indigenous peoples, colonisers are charged with “ethnic chauvinism” (Anaya, 1996, p. 75);
(ii) Unconscious projection occurs whereby indigenous peoples project control and intrinsic power onto colonisers, while colonisers project vulnerability and weakness onto indigenous peoples;

(iii) Indigenous peoples are often regarded in the legal narrative as archetypal victims with colonisers cast as archetypal controller/dominators, although colonisers have often experienced deep suffering as a result of losing a connection to the cycles of nature;

(iv) The principle of non-discrimination in the women’s movement is comparable to the principle of self-determination in the indigenous movement as an attempt to empower the ‘minority’;

(v) Unconscious language is used in the international law relating to indigenous peoples, which focuses on what is unwanted in the indigenous experience, rather than what is desired; and

(vi) As the indigenous sphere is devalued, the dominating culture loses the benefit of indigenous knowledge, particularly in relation to care of tribe and community, land management and spiritual kinship with nature.

Like women, indigenous peoples have been denied public sphere rights throughout history. In relation to indigenous peoples, this oppression was actually fostered by international law prior to 1945 because title to territory was based upon cession, conquest, occupation or prescription (McHugo, 1998). As such, from the perspective of international law, indigenous peoples could legitimately have their entitlements to territory undermined through conquest. According to the Aaland Islands case,

“Positive international law does not recognise the right of national groups...to separate themselves from the State of which they form a part by the simple expression of a wish” (League of Nations Official Journal Spec. Supp. No. 3 (1920), 5).
However in the current climate of international law, concepts of sovereignty and statehood have become increasingly layered. There is an emerging trend whereby indigenous rights, the decolonisation movement and the conferral of fundamental human rights have led to the notion of territorial sovereignty based on self-determination (Bayefsky, 2000, p. 72). This has been evident since 1945, when the European maritime powers first considered the prospects of withdrawal from their territories (Bahcheli, Bartmann and Srebnik, p. 17). However as can be seen from the subsequent practice of states in the decolonisation era, territorial sovereignty is now viewed not as a hard-law right, but as a privilege to be exercised only in genuine cases of terra nullius.  

It is argued that self-determination in the context of indigenous rights is analogous to non-discrimination in the context of gender. As such, indigenous peoples in many nation-states are in a similar position to women in relation to the denial of their public sphere rights. And in response, it is argued that international law is pursuing a similar narrative of giving indigenous peoples rights, such that they may one day enjoy the status of colonisers. In 2007, the UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples. Article 3 of the Declaration provides,

“Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

Indigenous peoples are also protected under the ICCPR (1966), the ICESCR (1966), the Convention on the Prevention and Punishment of Genocide (1948), the Convention on the Elimination of All Forms of Racial Discrimination (1966) and other general conventions pertaining to human rights. Like the women’s rights movement, the UN has

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153 As characteristic of this trend, see for example the decision of the High Court of Australia in Mabo v Queensland [No 2] (1992) 175 CLR 1.
also created organs to advocate for the rights of indigenous peoples, for example, the UN Permanent Forum on Indigenous Issues, the UN Working Group on Indigenous Populations, a subsidiary organ of the Sub-Commission on the Promotion and Protection of Human Rights, and the UN Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous Peoples.

The thesis argues that adopting this narrative in relation to indigenous peoples in international law has a disempowering effect, because it encourages indigenous peoples to wholly pursue the colonisers’ attitudes to land ownership, the environment and community. This process of granting rights to indigenous peoples also overlooks the loss of kinship with land that has been experienced by the colonisers, and the possibility of integrating and learning from indigenous peoples is lost. Thus, in granting colonisers’ rights to indigenous peoples, the process of cultural assimilation is encouraged, and the unique culture and heritage of indigenous peoples are lost. Jungian analyst David Tacey writes,

“…If such people are deprived of their relationship to the Dreaming, through colonization, alienation from tribal lands and practices, a traumatic reaction ensues. Colonial governments offer money and token support, but the [collective] soul has been injured by experiences that are catastrophic and often irreversible” (2006, p. 109).

The thesis concludes that it is useful to apply the duality between masculine and feminine consciousness to the treatment of indigenous peoples in international law. Like women, indigenous peoples symbolize the vulnerable and victimised private sphere, and like men, colonisers symbolize the glorified and powerful public sphere. It is argued that both

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155 The same arguments could be used in relation to the split between dominant and ‘minority’ races in international law, with the Convention on the Elimination of All Forms of Racial Discrimination (1965) using the same rhetoric as the CEDAW, and the CERD Committee performing similar work to the CEDAW Committee.
entities have much to learn from one another. It is therefore necessary for integration of colonising and indigenous consciousness to occur via the processing of unconscious material.

**Final Observations**

This thesis concludes that the split between conscious and unconscious material is responsible for many of the ongoing problems in the global collective self, for example, the unsettled relationships between men and women, and indigenous peoples and colonisers. The thesis has argued that the first steps towards resolving the split between masculine and feminine consciousness is to create:

(i) Collective awareness of the existence of, and reasons behind, the split, and

(ii) A new integrated narrative of the relationship between men and women in international law.

In the unfolding of collective consciousness, this thesis argues that individuals and collectives are evolving organically. The thesis maintains that consciousness cannot be forced or imposed, but can be inspired, encouraged and nurtured through legal developments, education and support. It has been shown that international law often acts as a beacon indicating the areas where the global collective self needs to develop its consciousness. In this way, international law represents the vision for the global community. This is why it is crucial for international law to have a clear and conscious sense of the masculine/feminine duality. Where international law continues to oppress the feminine and use the masculine as the barometer for social progress, this will be reflected in the socio-cultural development of the global community.

While the masculine consciousness is solution-focused and provides specific recommendations for change, the feminine consciousness is reflective and process-
orientated. The feminine consciousness trusts that the collective narrative of men and women is transforming organically, and cannot be controlled. Perhaps the ‘solution’ is trusting in this process; trusting that certain individuals will be inspired to carry out particular research or to write books, or to create businesses or organisations, or to live from a place of feminine consciousness such that they inspire others. The important factor is for individuals and groups to live consciously and inclusively, and to be conscious of their inner narrative, and the narrative of the work being done. The feminine consciousness understands that collective awareness will expand in line with cycles and trajectories of collective life.

Adapting the vision of the feminine ideal is not as straightforward as the creation of a new treaty. It is about a shift in consciousness and a realization that masculine and feminine consciousness are central to well-being in every individual, whether they are male or female, whether they live in the West or the East, whether they are rich or poor, and regardless of their race, religion, language and sexual orientation. As Grof writes:

“It is difficult to imagine that the crisis in the world can be solved with the same attitudes and strategies that were instrumental in its development in the first place. And since, in the last analysis, the current global crisis is the product and reflection of the stage of conscious evolution of humanity, a radical and lasting solution is inconceivable without inner transformation and a move towards global awareness” (Grof, 1988, pp. 77-78).

The relationship between international law and the global collective self can be compared to a pool of water. Whenever the water (the global collective self) is murky (unconscious), international law will likewise carry a dark and unconscious narrative. If we are able to purify and cleanse (bring consciousness to) the water, international law will simultaneously be purified.
I. Articles, Books & Reports


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Penhaul, K. et al. (2003) ‘Bush calls end to major combat’, CNN, 2 May:


Analytical Psychology’s Encounters with Aboriginal Culture,’ *Transcultural Psychiatry*, vol. 40(2), pp. 208-238.


II. Cases, Inquiries and Advisory Opinions

Committee on the Elimination of All Forms of Discrimination Against Women


CEDAW Committee Inquiry


High Court of Australia Case


Human Rights Committee Cases


**International Criminal Court Cases**


**International Criminal Tribunal for the Former Yugoslavia Cases**


**International Criminal Tribunal for Rwanda Cases**


International Committee of Jurists Entrusted by the League of Nations Case


III. Treaties and Other International Instruments


Charter of the United Nations, opened for signature 26 June 1945, 1 UNTS xvi (entered into force 24 October 1945).


Convention Against Torture and other Cruel, Inhumane, or Degrading Treatment or Punishment, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).


Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, opened for signature 18 December 1990, 2220 UNTS 3.


Geneva Convention (I) for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field, opened for signature 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950).

Geneva Convention (III) relative to the Treatment of Prisoners of War, opened for signature 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950).


