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Conflict- Related Sexual Violence As A Tactic Of Warfare In Non-International Armed Conflict: A Critical Analysis

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Abstract

Particularly in cases of non-international armed conflicts, conflict-related sexual violence is a grave breach of both international humanitarian law and international criminal law. The definition of conflict-related sexual assault as a ‘tactic of warfare’ is examined in this article along with its legal ramifications within the context of non-international armed conflicts. It analyses the extent to which sexual violence may be deliberately employed to achieve social, political and military objectives and examines the challenges associated with recognising such conduct under international law. This article further implies the protection afforded to victims and the development of international legal standards concerning sexual violence in non-international armed conflict. The phrase of warfare’ examines how such violence is planned and strategic in such situations. In addressing conflict-related sexual violence in non-international armed conflicts, this article explores the ongoing need for effective accountability, victim protection and uniform implementation of international legal standards.

Keywords: Conflict-related sexual violence, non-international armed conflicts, international humanitarian law, sexual violence, tactic of warfare, armed conflicts, warfare

1. Introduction

The ramifications of classifying sexual assault associated with conflicts as a military tactic are examined in this article. In light of pertinent treaties, Security Council resolutions, and international humanitarian law, it explores how conflict-related sexual assault has been identified in international law and policy and critically investigates the issues associated with the description. It also considers the protection afforded to women in situations of armed conflict.

2. A ‘Tactic Of Warfare’

In 2008, the UN Security Council adopted Resolution 1820, following on from the earlier adoption of the UN Women, Peace and Security agenda under UN Security Council Resolution 1325 (2000), which recognised that conflict-related sexual violence particularly targets women and girls and constitutes a threat to international peace and security.¹ The development owes much to the persistent efforts of the human rights advocates and the feminist movement, all of which have done much to highlight the widespread nature of sexual violence and the suffering of (non) survivors. Resolution 1820(2008), for the first time in formal UN policy, characterised conflict-related sexual violence as a tactic of warfare that is used to target and terrorise a civilian population.² The Resolution particularly noted:

‘...women and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group: and that sexual violence perpetrated in this manner may in some instances persist after the cessation of hostilities.’³

The resolution went on to stress that:

*‘... sexual violence, when used or commissioned as a tactic of war to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security...’*⁴

UN Security Council Resolution 1820 (2008) is a watershed document in the UN women, peace and security agenda and a strong and visceral reaction to the targeting and exploitation of vulnerable people during times of armed conflict. It brought to light what many people already examine about the brutality and bloodshed of the combat: conflict related sexual violence can be operationalised as

¹ UNSC Res 1820 (19 June 2008) UN Doc S/RES/1820.

² *ibid.*

³ UNSC Res 1820 (n 1) preamble.

⁴ UNSC Res 1820 (n 1) para 1.

a way to overwhelm and break an enemy's will to fight, either directly or indirectly, by targeting the civilian population thought to be supporting the enemy as a catalyst for forced displacement . This is particularly the case when it is carried out in a systematic manner and covered by a chain of command, or where a chain of command ought to have known of its use but did not take appropriate actions to address it. Sexual violence in the context of conflict has been called a warfare technique. It will be problematic from a legal standpoint to characterise conflict-related sexual assault as a 'tactic of warfare', and it is problematic that the UNSecurity Council did not pay the attention that is necessary to define these phrases in the Resolution in order to avoid any ambiguity.

The nexus between sexual violence, conflict-driven trafficking in persons and violent extremism, as described in Security Council Resolution 2331(2016), continued to disproportionately affect women and girls.⁵ In Afghanistan and Iraq, hundreds of 'wives' and children of terrorist fighters continued to be held in prisons without due process. Survivors and their children faced myriad challenges related to stigma, rejection and a lack of identity of documents, which can lead to statelessness. The plight and rights of children born of conflict-related sexual violence and of their mothers will be explored in a forthcoming special report, as requested by the Security Council in its resolution 2467(2019).⁶ While national authorities in regions affected by the Islamic State in Iraq continue to grapple with the legacy of trafficking, sexual slavery and terrorism, including by pursuing efforts to respond to the needs of survivors.⁷

Despite significant gaps in prevention, accountability and the protection of victims and witnesses, there were number of developments during the period. National Courts convicted leaders of armed groups for sexual violence, and the number of prosecutions of state actors also increased through both cases.⁸ At the International Criminal Court, the trial of an Alleged member of Ansar Eddine for inter alia, crimes of rape and sexual slavery committed in Northern Mali in 2012 and 2013, which opened in July 2020, resumed in September 2020. The Court also handed down its first conviction for the crime of forced pregnancy in February 2021.⁹

In March 2020, a framework of cooperation to address conflict-related sexual violence was signed, prioritising efforts to address this crime as an integral part of the broader political and democratic transition. All tools must be made available to strengthen compliance with relevant international law and international standards, to break the vicious cycle of sexual violence,

⁵ UNSC Res 2331 (20 December 2016) UN Doc S/RES/2331.

⁶ Christine Chinkin and Madeleine Rees, 'Commentary on Security Council Resolution 2467: Continued State Obligation and Civil Society Action on Sexual Violence in Conflict' (Women's International League for Peace and Freedom) <<https://www.un.org>> accessed 1 August 2026.

⁷ *ibid.*

⁸ 'Preventing Conflict-Related Sexual Violence in Detention Settings: Principles and Commentary' (All Survivors Project) <<https://www.un.org>> accessed 1 August 2026.

⁹ *ibid.*

underreporting, impunity and revenge, even during overlapping crises such as COVID-19. Combating sexual violence will require mutually reinforcing measures to foster public health and durable peace, which put survivors of sexual violence at the centre of all efforts made on their behalf.¹⁰

3. Tactics are a synonym for method

The term tactic is a synonym for a method in international law. In this respect, a method relates to the specific conduct, or tactic, when engaging in hostilities in armed conflict.¹¹ Put another way, a method of warfare is generally understood to be how a weapon is used.¹² Or the specific tactics used to take the fight to an enemy in armed conflict.¹³ For this study, method and tactic will be used interchangeably and can be taken by the reader to be synonymous with each other.

4. Methods have Limits

Methods by which parties to an armed conflict may wage warfare are not unlimited. Methods are subject to certain limitations in international humanitarian law. In this respect of methods of warfare are restricted by Article 35 of Protocol 1 additional to the Four Geneva Conventions, 1977.¹⁴ Article 35 affirms the principle of military necessity, requiring parties to an armed conflict to balance humanity with the military necessity of any action.¹⁵ Furthermore, parties to an armed conflict must consider the proportionality of their actions by weighing the likely amount of injury and suffering their method will cause against the likely military advantage to be achieved.¹⁶

The aim here is to avoid unnecessary suffering defined by the ICJ as:

“.... a harm greater than that unavoidable to achieve legitimate military objectives.”¹⁷

Methods of warfare are also restricted by Article 51(4) of Protocol 1 additional to the Four Geneva Conventions, 1977¹⁸ which prohibits indiscriminate attacks. This restriction requires parties to an armed conflict to be able to make this distinction between those directly participating in the armed

¹⁰ All Survivors Project, 'Preventing Conflict-Related Sexual Violence in Detention Settings' (n 8).

¹¹ Marco Sassòli, Antoine Bouvier and Anne Quintin, *How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law* (3rd edn, ICRC 2011) 280.

¹² Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (ICRC 1987) para 1957.

¹³ Sassòli, Bouvier and Quintin (n 11) 280.

¹⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (AP I) art 35. Article 35 is considered customary international law and is applicable in non-international armed conflicts: see Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law, Volume I: Rules* (CUP 2005) rule 70.

¹⁵ Sandoz, Swinarski and Zimmermann (n 12) para 1386.

¹⁶ Gary D Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (CUP 2010) 270.

¹⁷ *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226, 238.

¹⁸ *Legality of the Threat or Use of Nuclear Weapons* (n 17) 257.

conflict and those not (or no longer) directly participating in the armed conflict, and between military and civilian targets.¹⁹

5. **Methods subject to an assessed of their legality**

In international humanitarian law, a method or tactic of warfare is subjected to an assessment of its legality based upon the test of military necessity, proportionality and distinction. Framing conflict-related sexual violence as a tactic or way of warfare raises the logical dilemma of how to apply the military necessity, proportionality, and distinction tests to evaluate the legality when the tactic in question is already a criminal activity. The issue of defining conflict-related sexual assault as a strategy of warfare will be covered in the next section.

Problems with characterising conflict- related sexual violence as a ‘tactic of warfare’.

Rape is now frequently described as a ‘tactic or method of warfare’ in both the wider story of UN women and the worldwide debate on sexual violence related to the combat agenda for peace and security. The use of this term is widely accepted, at least in a non- legal manner, as a way of highlighting that such acts are not just a by-product of war, but that they may form part of the strategic and operational effects that armed groups and militaries seek to enact to shape and influence the battle space. From the standpoint of international law and military sociology, it is problematic to characterise conflict-related sexual violence as a ‘tactic of warfare’, even though such a characterisation could be acceptable for the general public.

The problems will be addressed in conflict-related sexual violence as follows,

- Acts of sexual violence are criminalised.²⁰
- Acts that are criminalised in international law cannot be subjected to a test as to their legality as a method in armed conflict.
- The characterisation of conflict- related sexual violence as a tactic of warfare creates confusion between the conduct of hostilities and the lawfulness (or unlawfulness) of the methods of warfare.²¹
- Characterising conflict- related sexual violence as a tactic of warfare does nothing to add to the prohibition of such acts under international law.²²
- Defining conflict- related sexual violence as a tactic of warfare does nothing to alter

¹⁹ See ICRC, 'Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law' (2008) 90 International Review of the Red Cross 991, 1031, 1034–35.

²⁰ 'Declaration on the Elimination of Violence against Women' UNGA Res 48/104 (20 December 1993) UN Doc A/RES/48/104.

²¹ *ibid.*

²² *ibid.*

how such crimes are considered post- conflict.²³

- Sexual violence in conflict that does not fit the narrative of a tactic.²⁴

i. Acts of sexual violence are criminalised

From an international law perspective (relating to the all domestic jurisdictions) sexual violence is unlawful and criminal behaviour. Through a variety of treaty provisions, international custom and jurisprudence, international law which makes certain acts of sexual assault associated to conflicts legal. Combatants are prohibited from using such criminal acts against anyone, regardless of status.

Additionally, international humanitarian law prohibits violence against civilians and persons not directly participating (or no longer directly participating)²⁵ in armed hostilities.

ii. Acts criminalised in international law cannot be subjected to a test as to their legality as a method in armed conflict.

Sexual violence is unlawful and criminal behaviour, and it cannot and should not be subjected to a legal test of military necessity, proportionality and distinction²⁶ by those directly participating in hostilities. Irrespective of the tactical or operational advantage to be gained by the use of sexual violence combatant cannot lawfully employ such an act as a method of warfare. Military commanders and armed groups should have absolute clarity concerning the law of armed conflict in this regard.

The lawfulness or unlawfulness of a tactic of warfare depends ultimately on its nature, its military necessity in pursuit of a legitimate military objective, proportionality and whether it causes superfluous injury or unnecessary suffering or a combination thereof.²⁷ there can be no argument to support conflict- related sexual violence being permitted.

iii. Sexual Violence in conflict that does not fit the narrative of tactic.

The prevailing characterisation of conflict-related sexual violence as a tactic of warfare refers to such acts being carried out for the purpose of establishing populations, destroying family and community bonds, supplying combatants with sexual services to target an enemy and to weaken

²³ *ibid.*

²⁴ *ibid.*

²⁵ See ICRC, 'Interpretive Guidance on the Notion of Direct Participation in Hostilities' (n 19) 1031, 1034–35.

²⁶ For discussion of military necessity, proportionality and distinction, see Jan Klabbers, *International Law* (2nd edn, CUP 2017) 226–27; Emily Crawford and Alison Pert, *International Humanitarian Law* (CUP 2018) 195–99.

²⁷ See Regulations Respecting the Laws and Customs of War on Land, annexed to Convention (IV) Respecting the Laws and Customs of War on Land (adopted 18 October 1907, entered into force 26 January 1910) 205 CTS 277 (Hague Regulations) art 23(e); AP I (n 14) arts 35(2), 51(4)(b) and (c). For the customary nature of these rules, see Henckaerts and Doswald-Beck (n 14) rules 70 and 71.

their centre of gravity. However, sexual violence can also reflect the opposite of an effectively implemented political or military tactic to target a civilian population. The contemporary characterisation of conflict- related sexual violence as a tactic of warfare tend to seek to portray military institutions as rational war machines, but fails to account for a principle factor in military sociology known as the ‘‘fog of war’’.²⁸ Military sociology and the fog of war suggest that the use of violence in armed conflict is shaped and influenced by the situational and fluid nature of warfare.

The effect of classifying conflict- related sexual violence as a tactic of warfare is that a definition gives little consideration opportunistic o random criminal acts of sexual violence during times of armed conflicts.²⁹ In non- international armed conflicts, non-state actors and armed groups also play an important role in the commission of conflict –related sexual violence. Attributing too much rationality to conflict- related sexual violence, assuming it occurs as a tactic of warfare, lacks nuance and fails to deal with the complex nature of armed conflict and of sexual violence.³⁰ The important takeaway on this line of argumentation is that irrespective of whether conflict- related sexual violence results from random criminal acts or as a tactic of warfare, such acts are categorically prohibited under international law and thus characterising them as a tactic does nothing to further criminalise them under contemporary international law.

iv. Protections for Particular Categories of Women.

In addition to the general measures for the protection of all women, specific categories if women are to get special treatment in accordance with the strategy of warfare related to conflict-related sexual violence. These specific rules are designed to meet the goals of the general provisions discussed, as it is essential, since women faced many difficulties due to methods of warfare.

Women in detention and Internment.

A network of specific and important rules protects detained and interned women impacted by conflict. Separate quarters and conveniences must be provided for women prisoners of war (even during disciplinary punishment),³¹ women internees (except when interned along with a family

²⁸ For the purposes of this master thesis, the fog of war is defined as the uncertainty in situational awareness experienced by those directly participating in armed conflict. The term seeks to capture the uncertainty regarding one’s own capabilities, the adversaries’ intent and the actions of other actors in the operating environment.

²⁹ Regina Mühlhäuser, 'Reframing Sexual Violence as a Weapon and Strategy of War: The Case of the German Wehrmacht during the War and Genocide in the Soviet Union, 1941–1944' (2017) 26(3) Journal of the History of Sexuality 366.

³⁰ UNFPA, 'The Impact of Conflict on Women and Girls: A UNFPA Strategy for Gender Mainstreaming in Areas of Conflict and Reconstruction' (United Nations Population Fund, Bratislava, 13–15 November 2002).

³¹ Françoise Krill, 'The Protection of Women in International Humanitarian Law' (1985) 249 International Review of the Red Cross 337, 354 (echoing the relevant Commentary, which indicates that art 14(2) of Geneva Convention (III) Relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135 (GCIII) implies that 'the separation must be effective, in other words that male prisoners must not have access to the dormitories of women prisoners whether or not the women consent'). Furthermore, it is the responsibility of the

unit), and other women detainees.³² Female supervision is required for females under disciplinary punishment (Under 3rd Geneva Convention) and at all times as well as women internees and detainees, including those in occupied territory, except when held with a family unit.³³ women internees are to be searched only by women.³⁴

In interpretation the gender specific provisions of the Geneva system, the ICRC has written more broadly that this protection should apply to all women detainees.³⁵

Mothers and Pregnant Women.

During armed conflicts, further protection is offered to pregnant women and new mothers, beyond the detention context. As Krill notes, pregnant women and maternity cases are often “assimilated... to the sick and wounded....” In the Geneva law.³⁶ They are afforded a special protection, usually but not exclusively under this rubric. Mothers and pregnant women should receive special treatment in regard to medical care.³⁷ In addition to maternity cases, hospitals, their personnel and land and air vehicles must be protected and respected: they may in no circumstances be the object of attack.³⁸ States must allow free passage of foodstuffs and supplies to pregnant women and nursing mothers. and they are to receive priority in the distribution of life supplies.³⁹

A further question surrounds the commingling of the specific concerns of women, especially pregnant women, which are sometimes combined with children. Though logistically coherent in some ways, this approach has been addressed by women's human rights methodology. The category “women and children” may infantilise women.⁴⁰ Meanwhile, the focus on protecting future generations associated with the rules relate to pregnant women may also inadvertently, “instrumentalise” women's bodies. This concerns and demonstrates the importance of examining the protection of women in armed conflict without reducing their reproductive roles.

Detaining Power to ensure this separation: *ibid*. It should be noted that this provision only explicitly relates to dormitories and conveniences: quarters as a whole do not have to be separated: *ibid*.

³² GCIII (n 31) arts 25, 29, 97; Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (GCIV) art 85; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609 (AP II) art 5(2)(a).

³³ GCIII (n 31) art 97; GCIV (n 32) art 76; AP I (n 14) art 75(5).

³⁴ GCIV (n 32) art 97.

³⁵ See ICRC, *Women and War* (ICRC 2008) 11. See also Krill (n 31) 340.

³⁶ See eg Krill (n 31) 348. In fact, rather alarmingly, the heading of the commentary on art 91(2) of GCIV is 'Maternity cases, serious diseases': Jean S Pictet (ed), *Commentary IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (ICRC 1958) 399.

³⁷ GCIV (n 32) art 91.

³⁸ *ibid* arts 18, 20–22.

³⁹ *ibid* art 23.

⁴⁰ AP I (n 14) art 70(1).

Furthermore, in non- international armed conflict, the conventional rules governing the means and methods of combat offer even less protection, leaving women particularly vulnerable. Protocol 11 article 13 provides general norms to protect the civilian population from the effects to conflict.⁴¹ It prohibits the direct targeting of civilians and the use of acts of violence or threats thereof to terrorise the civilian population. However, as ‘Gardam’ and ‘Jarvis’ have noted, Protocol 11 contains no specific limitations on the means and methods of combatants. There is no prohibition against indiscriminate attacks or any requirement as to proportionality, no prohibition on the civilian population being used as a shield against military operations, and no prohibitions against reprisals.

6. Conclusion

Sexual violence in conflict continues to be a grave breach of international humanitarian law with severe repercussions for both people and communities impacted by armed conflict. Proportionality or other considerations applicable to methods of warfare. Sexual violence is prohibited under international law regardless of whether it is committed as part of an organised strategy. Opportunistically, or as an isolated criminal act.

Therefore, while the ‘tactic of warfare’ characterisation may assist in understanding the strategic and social dimensions of conflict-related sexual violence, it should not obscure its fundamental legal prohibition. Greater emphasis should be placed on prevention, accountability, survivor protection and the effective implementation of existing international legal obligations, particularly in non-international armed conflicts where customary international humanitarian law remains significant.

⁴¹ Pictet (n 36) 395 (listing 'women and children' as the heading of the commentary's discussion of art 89(5) of GCIV).

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