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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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SEXUAL VIOLENCE IN CONFLICT ZONES

AUTHORED BY - SUBHAGYA SINGH

Abstract

Since the 1990s, sexual violence in conflict zones has received much attention of the media. Unfortunately speaking, there is no dearth of instances of sexual violence in conflict zones and it has become a serious threat to the humankind. Such notable instances are mass rapes in the wars in the former Yugoslavia and during the Rwandan genocide received widespread coverage, and international organizations-from courts to NGOs to the UN-have engaged in systematic efforts to hold perpetrators accountable and to ameliorate the effects of wartime sexual violence. Yet many millennia of conflict preceded these developments, and we know little about the longer-term history of conflict-based sexual violence. The famous book *Sexual Violence in Conflict Zones* helps to fill in the historical gaps. It provides insight into subjects that are of deep concern to the human rights community, such as the aftermath of conflict-based sexual violence, legal strategies for prosecuting it, the economic functions of sexual violence, and the ways perceived religious or racial difference can create or aggravate settings of sexual danger. Essays in the volume span a broad geographic, chronological, and thematic scope, touching on the ancient world, medieval Europe, the American Revolutionary War, precolonial and colonial Africa, Muslim Central Asia, the two world wars, and the Bangladeshi War of Independence. By considering a wide variety of cases, the contributors analyse the factors making sexual violence in conflict zones more or less likely and the resulting trauma devastating. Topics covered range from the experiences of victims and the motivations of perpetrators, to the relationship between wartime and peacetime sexual violence, to the historical background of the contemporary feminist-inflected human rights moment. In bringing together historical and contemporary perspectives, this wide-ranging collection provides historians and human rights activists with tools for understanding long-term consequences of sexual violence as war-ravaged societies struggle to achieve post-conflict stability.

SEXUAL VIOLENCE IN CONFLICT ZONES

Last year saw an alarming rise in militarization, illicit arms proliferation, and unconstitutional government changes. These shifts created a dangerous environment for civilians, exposing them to an intensified level of sexual violence. The United Nations report on conflict-related sexual violence covering 2022 underscores the urgent need to address this horrific issue. It has persisted despite international efforts to eradicate it, and the report highlights the dreadful situation that continues to spread out in various conflict-ridden regions around the world. The report documents cases involving women, girls, men, boys, and individuals of diverse sexual orientations, gender identities, and those affected by disabilities. Their ages range from the very young to the elderly, with the majority coming from socioeconomically marginalized communities.

While it is true that women and girls continue to bear the brunt of these atrocities, the report uncovers the often-over-looked reality that men, boys, and gender non-conforming individuals are also strongly impacted by conflict-related sexual violence.

As the civic space decreased and the rule of law weakened in 2022, both state and non-state armed groups saw the opportunity to exploit the vulnerabilities of affected populations. Groups used sexual violence, including rape, gang rape, and abductions, as real weapons, and instruments, causing immeasurable suffering to individuals and communities. Internationally recognized terrorist organizations and transnational criminal networks have employed sexual violence as a tactical weapon to destabilize already fragile regions.

This strategic use of sexual violence has hindered both conflict resolution and post-conflict recovery efforts. In several instances, sexual violence has been used as an instrument of intimidation. In some cases, the authorities responded to civilian demonstrations and protests with disproportionate force, including the use of sexual violence as a means of repression. This abuse of power creates a climate of fear that completely suppresses dissent and undermines basic human rights.

The statements made above clearly show that rape and other forms of sexual violence are/have been pervasive in conflicts throughout history. Three UN reports highlight the prevalence of these atrocities in Ukraine, Haiti, and Ethiopia. The conflicts in these three countries might differ in nature but what

is intertwined in these conflicts is the horrifying use of sexual violence to torment civilian populations; to punish ethnic, political, or cultural rivals; and assert and maintain control is present in each case.

Sexual violence during conflict can be divided into three overarching categories: a war tactic, widely committed with an intentional purpose; tolerated, but not specifically ordered, by leaders; and committed independently by individuals when the opportunity arises.

While international law provides wide protections against sexual violence, enforcement of these provisions is sluggish. Considering the current conflicts in Ukraine, Haiti, and Ethiopia, it is evident that international law has done little to stem the perpetration of sexual violence in conflict. International organizations need to build a framework for developing country-specific, survivor-focused, responses-centred on investing in local organizations when possible-that can provide resources and avenues to justice for victims.

Russian Armed Forces in Ukraine

Allegations of rape and sexual violence in Ukraine have been numerous since Russian troops invaded Ukraine in February 2022, and do not appear to be subsiding. A report released on October 18 examined human rights violations that took place in the first two months of the 2022 war in Ukraine. The United Nations found that Russian forces have committed the "vast majority" of human rights violations during the conflict. These crimes include the widespread perpetration of rape and sexual violence. Victims of sexual violence range in age from four to eighty-years-old. The report details a four-year-old child being forced to perform oral sex on a Russian soldier. Other documented violence includes gang rape and forcing family members to watch while their children and mothers were sexually assaulted. Most of the cases of sexual violence also qualify as torture or cruel or inhumane treatment.

Pramila Patten, UN special representative of the secretary-general on sexual violence in conflict, called the use of rape by Russian forces a "military strategy," and stated that it is being used as a "deliberate tactic to dehumanize the victims." According to Patten, the United Nations has verified more than one hundred cases of rape since the onset of the conflict. The real number is likely much higher. The commission is still investigating whether the sexual and gender-based violence amount

to a more widespread pattern.

The conflict situation and forced displacement have made it increasingly challenging for victims to access health care, psychological resources, and law enforcement. While there is an unprecedented level of reporting on sexual violence in Ukraine and many victims are sharing their stories with international media, the trauma and social stigma surrounding sexual violence has made many survivors hesitant to talk about their experiences.

Most policies on conflict-related sexual violence have focused on helping the survivors of such abuse. However, we also need to focus on prevention: how to stop sexual violence from occurring in the first place. The fact that many armed groups manage to effectively prohibit sexual violence shows that prevention is possible. Several routes to prevention are outlined here:

- Changing norms – including changing how survivors are perceived and treated in their communities;
- Creating safer spaces – including improving infrastructure and reporting practices;
- Improving reporting – including protection of witnesses;
- Ending impunity – substantially increasing the likelihood that crimes of sexual violence will be punished;
- Assuring accountability – strengthening commander responsibility for acts committed by troops; and
- Mitigating sexual violence after war – including more systematic and integration of sexual violence prevention in DDR processes and security sector reform.

Coming to General Assembly resolution 70/262 and Security Council resolution 2282 (2016), it underlined the importance of Member States' involvement and cooperation in sustaining peace at all stages of conflict and in all its dimensions, stressing that sustaining peace is imperative to preventing the outbreak, escalation, continuation, and recurrence of conflict. In response, the United Nations Secretary-General placed prevention at the centre of all United Nations efforts.

As part of these efforts, the United Nations Special Representative of the Secretary-General on Sexual

Violence in Conflict, as Chair of the United Nations Action Against Sexual Violence in Conflict network of 23 entities, presents this Framework for the Prevention of Conflict-related Sexual Violence.

Much programmatic work is already being done to address gender-based violence in emergency settings. This Framework complements those critical efforts by addressing how prevention of conflict-related sexual violence is also a peace and security imperative. Prevention demands not only a programmatic response at the individual and community level, but a political response grounded in the women, peace, and security agenda and international humanitarian law. Programmatic mandates and political protection mandates should address the prevention of conflict-related sexual violence strategically and in a complementary, mutually-reinforcing manner.

The Framework outlines critical elements and considerations for prevention, to guide decision-making in a clear and comprehensive way. It builds on general acceptance that the prevention of conflict-related sexual violence must involve normative change and the elimination of gender inequality and power imbalances, but also highlights critical political and security-focused approaches that can help reduce the occurrence of armed conflicts in which this form of violence necessarily arises. For this essential work, Member States and other political entities must be engaged. This Framework provides guidance to this end and further aims to dismantle silos by enhancing efforts and collaboration between diverse actors within broader efforts to prevent conflict-related sexual violence. In doing so, the Framework contributes to the overall prevention of conflict and human suffering, which lies at the heart of the United Nations mandate.

It is crucial to have answers to some questions related to prevalent sexual violence in conflict zones. These questions are as follows: -

What factors contribute to the use of sexual violence as a weapon of war?

Conflict-related sexual violence, or CRSV, refers to acts of sexual violence, including rape, sexual slavery, forced prostitution and other forms of sexual abuse, that occur in the context of armed conflict or war. Such violence is often used as a strategy or condoned practice by armed groups or individuals to intimidate, control and instill fear among civilian populations. Although women and girls are more

often victims of this criminal act, anyone can be a victim of CRSV.

There is no one factor that contributes to the use of sexual violence in war. It appears that it has been a part of the human dynamics of war since humans began recording their nefarious activities. From the scholarship over the last 15 years, we know there is widespread variation in CRSV. It is sometimes committed on a massive scale, and sometimes it is what might be called “opportunistic.” What is important to know though is that this form of violence is personal in the sense that unlike the act of shooting someone with a gun, when there is a distance from the victim, sexual violence requires intentionality and aggressive physical contact. It is never an accident.

Scholarship on CRSV points to a couple of important findings. First, sexual violence in conflict is not inevitable. Research analysis of wars over the past 45 years by Yale University’s Elisabeth Wood finds that not all wars result in sexual violence being used in conflict. The finding is important because it means there are ways to prevent the use of sexual violence in conflict. Dara Kay Cohen of Harvard demonstrated in her research that not only is there variation between wars, but even within the same conflict, some armed groups perpetuate sexual violence on a large scale and others do not. For example, research shows that rape was widespread in the civil wars of Sierra Leone and Timor-Leste but far less common during El Salvador’s civil war or on the part of the Liberation Tigers of Tamil Eelam in Sri Lanka.

Second, research points to the fact that leadership matters. When an armed group’s leaders maintain control insisting on no tolerance for sexual violence in a conflict then it usually does not happen. But when that leadership either turns a blind eye or intentionally orders it, this is considered criminal under the Rome Statute of 1998 of the International Criminal Court (ICC), when rape as a war crime was codified.

Prevention is inferred in both examples of scholarship’s contribution to the better understanding of CRSV. Why does it not happen in some conflicts but in others, and why does leadership offer a key intervention? And, of course, making sure there is accountability of those who order sexual violence or ignore it is key to prevention.

For 10 years now, through our Missing Peace Initiative, we have annually hosted scholars working on CRSV for workshops to learn about their research on sexual violence and its relationship to armed conflict. We support these scholars, but also understand that for their knowledge to have impact, helping them shape communication of their findings for non-academic audiences is critical. The recent Missing Peace Global Symposium demonstrated that scholars want to get their findings to those policymakers. USIP prioritizes building bridges between policymakers and scholars on the topic of CRSV.

How effective are international legal frameworks in preventing and prosecuting instances of sexual violence in conflict zones?

Conflict-related Sexual Violence (CRSV) is a nascent field compared to human rights writ large. The breakthrough came during the 1990s with the International Criminal Tribunal for the former Yugoslavia (ICTY). Unlike during the Nuremberg Trials after World War II, when there was a decision not to address sexual violence crimes, the ICTY brought forward clear charges against Serbian military leaders for wartime sexual violence. Progress has been made over the last two decades that has refined CRSV international policies. This week the latest jurisprudence was released at the United Nations on gender-based crimes and crimes against children.

These growing legal frameworks are making a difference and will continue to improve accountability. If we look back to World War II and the Japanese occupation of Korea, what were euphemistically called “comfort women” we now call survivors of extreme sexual violence. It is important to make these linkages that CRSV is not new, but we do now have international policies, including U.N. Security Council Resolution 1325 and Resolution 1820, as well as mechanisms of prosecution.

Have these mechanisms stopped sexual violence? There is no silver bullet, so to speak, for stopping sexual violence in conflict just as there is no one way to end it during peacetime as well. It is accurate that we continue to see this form of criminal warfare in many of our current conflicts. Take the recent conflicts in Israel, Sudan, Ethiopia’s Tigray region and Ukraine; and it continues in the eastern region of the Democratic Republic of Congo. The question is: Is this recognition of CRSV because we are turning our attention to it now or is it getting worse? We do not know because we have not really studied it in a methodological way. We are doing it now. That is the good news.

I recall a U.N. Peacekeeping general a decade ago said at USIP that sexual violence is more effective at destroying a village or a community than a bullet, and it is cheaper. That is painful to hear. How do you begin to address it? So, you do need global legal frameworks to prosecute CRSV, but there is no simple fix. The legal approaches are critical, but they alone cannot end this form of criminal violence.

The international courts are very expensive, they take a very long time, they are often very politicized. Hence, the bottom line is that they are not alone going to end sexual violence in a conflict.

Are there any successful examples of conflict resolution or peacebuilding efforts that specifically address sexual violence?

Colombia, which went through a decades-long civil war, has recently held its own tribunal and they noted 35,000 victims of sexual violence, and that includes both men and women. That is something to look at. It is important to study how a country addresses this kind of criminal activity and helps to bring healing to its victims and survivors.

As we see in World War II, the problem just does not go away — Japan and Korea still have this diplomatic divide around the fact that Japan will not apologize for what happened in World War II when Korean women were made sexual slaves to the Japanese army. So, the fact that Colombia is trying to address this in their own civil war should be studied and offered as a way forward for other countries. Colombia is in so many ways ahead of many parts of the world in terms of the horrific things they have experienced as a country, but also the ways they are trying to address them.

It would be appropriate to say that societies or areas struck in conflicts shall take positive lessons from the successful examples of peacebuilding and conflict resolution efforts and shall imbibe the techniques or the framework which these countries or areas have adapted. However, it should also be noted that every conflict is different and not all conflicts can be resolved by a single method or framework, as every conflict has a different cause and circumstances.

In my personal opinion, I would say that being a responsible citizens of respective nations, we all shall try to build such an environment which is sustainable for the future generations and I think that

we as individuals have a responsibility to provide a safer yet productive environment for the generations to come and we have a duty towards the future generations to give them such an environment which they are deserving of, rather than involving them in conflicts and violence which is so deep-rooted that it prevails for the years to come. On this note, lets pledge to make this planet a safer one for all.

