



RAPE AS AN ILLEGAL TACTIC OF WAR

Research Overview and Frequently Asked Questions

Women and girls are particularly targeted by the use of sexual violence, including as a **tactic of war** to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilians members of a community or ethnic group

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This research overview and frequently asked questions (FAQ) will analyze rape used as a tactic of warfare and address the following issues:

- *The characteristics of war rape, including rape as a tactic of warfare, which are distinct from those of rape outside of conflict;*
- *The classification of rape as a prohibited tactic of warfare under international humanitarian law;*
- *The lethality and injuries from war rape as compared with those from conventional weapons;*
- *Stigmatization as the key factor in ending states' use of unlawful tactics and weapons; and*
- *Recommendations for state action to promote stigmatization to end rape as a tactic of warfare.*

Today, conflicts around the globe are characterized by the use of rape as a tactic of warfare for military advantage (“strategic rape”).¹ The features, modalities, and impact of war rape, including strategic rape, make it a phenomenon distinct from rape and sexual violence outside of conflict. The direct and indirect deaths of girls and women from war rape constitute a significant number of conflict deaths in today’s armed conflicts.

Women and girls surviving war rape suffer from long term or permanent alteration² of their physical and mental functioning, often due to destruction of their sexual and reproductive organs. Furthermore, treatment protocols for the wounds to women and girls from war rape, including complex genital urinary trauma, have yet to be developed or incorporated in military field hospitals or surgical manuals for the war wounded.

The use of strategic rape constitutes a grave breach of international humanitarian law’s prohibition on the use of certain abhorrent weapons and tactics. This breach is separate and additional to any other crimes arising out of the same act. For example, individual perpetrators who use chemical weapons may be held accountable for a crime against humanity or genocide as well as for the war crime of using an unlawful weapon. Similarly, individuals using strategic rape may be held accountable for rape as a war crime, crime against humanity, or element of genocide, as well as for the use of an unlawful tactic of war.

However, securing justice for the use of and ending impunity for strategic rape, cannot, in and of itself, end the use of rape as a tactic of war; it is but one piece of the puzzle. This goal also requires states to



normatively and practically respond to rape used as a tactic of war in the same way they respond to other unlawful weapons and tactics including landmines, chemical weapons, and starvation. This is because while the deterrence value of criminal prosecutions remains unproven or at least debatable,³ there is clear evidence that the stigmatization of branding a weapon or tactic unlawful deters its continued use.⁴

In conflicts around the globe, rape is used systematically and ruthlessly in the almost certain knowledge that there will be no consequences for the perpetrators . . . The lead we set and the action we take therefore has the potential to save lives and change the course of events around the world; nothing less than that should be our ambition. As the international community, we curbed the development of nuclear weapons, heading off a once threatened and unstoppable wave of insecurity. We have binding Conventions against the use of torture and on the treatment of prisoners. We have outlawed the use of chemical weapons and imposed a global ban on cluster munitions . . . No country could tackle those vast problems alone, and we have shown that we can confront them together . . . Today we face another burning need to unite to improve the condition of humanity; **together it is time to say that rape and sexual violence used as weapon of war is unacceptable, that we know it can be prevented and that we will act now to eradicate it, shouldering our responsibilities as national Governments, and collectively as the Security Council.**

– William Hague, UK Foreign Secretary, 2013

Frequently Asked Questions about Strategic Rape

The following are commonly asked questions about the need to treat rape as an illegal tactic of war under international humanitarian law. This FAQ will use the terms “rape as a tactic” and “strategic rape” interchangeably.

I. When is rape in armed conflict considered a “weapon” or “tactic” of war?

Although the rape in armed conflict is not always used as a tactic of war, all rape in armed conflict is a grave breach of the Geneva Conventions. Rape described as a “weapon,” “tactic,” or “tool” of war, refers to strategic rape or mass rape aimed to further military objectives, such as destabilizing enemy forces or committing genocide. (See Question 2 below.)

Rape has always existed as part of war and has been condoned by military leaders.⁵ For example, approximately 2 million German women were raped, some of whom were Jewish concentration camp survivors, by the Russian army at the end of WWII as the “spoils of war.”⁶ Another example is the Civil War in Sierra Leone (1990-2002), where the Revolutionary United Front gang raped women as a form of group “socialization” or “bonding.”⁷ In these instances, rape was endemic, but was not used as a tactic or weapon to achieve military advantage or objectives.

2. Is rape really a tactic or weapon of warfare like other tactics or weapons regulated by international humanitarian law, e.g. landmines, chemical weapons, and the use of starvation?

Yes. The Security Council has found the use of rape as a tool or tactic of war constitutes a threat to international peace and security and that “women and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilians members of a community or ethnic group.”⁸ Both the United Nations and the ICRC have identified the features that must be present for rape to constitute a tactic or method of warfare:

The UN states:

“Sexual violence as a ‘tactic of war’ refers to acts of sexual violence that are linked with military/political objectives and that serve (or intend to serve) a strategic aim related to the conflict. This will rarely be reflected in overt orders, but may be evidenced by the fact that an armed group has a functioning chain of command and is able to restrain other offenses (like mutiny or desertion), while sexual violence is neither condemned nor punished by military hierarchy. It may also be apparent that sexual violence is in line with the overall objectives of the group.”⁹

The ICRC states:

“In order for rape to be categorized as a method of warfare, several factors must be present, including the chain of command and systematic practice. In addition: the rape or sexual violence must be widespread; the acts of sexual violence must take place in a context of or target a population group in connection with an armed conflict; the acts must be committed under the responsibility of an authority and/or weapon bearers, even if they are not carried out as a result of an explicit order or command.”¹⁰

3. What is the difference between a “weapon” and a “tactic” of warfare under International Humanitarian Law (IHL)?

There is no single definition of the terms “weapon” and “tactic” under IHL. The term weapon commonly refers to “a thing designed or used for inflicting bodily harm or physical damage”¹¹ or “an offensive capability that can be applied to a military object or enemy combatant.”¹² Under certain national laws, body parts used to kill or harm have been deemed to be a weapon.¹³ The term “tactic” generally refers to the ways in which a weapon is used; a weapon “cannot be examined in isolation from the way in which it is to be used. . . the method of warfare associated with it.”¹⁴ Some unlawful tactics, such as perfidy or attacks on civilians, accomplish their ultimate goals through the use of particular weapons. In the case of strategic rape, the underlying weapons used include rifles, sticks, knives or bullets, to penetrate the vagina or anus.¹⁵ The use of such weapons to accomplish rape is supported by the definition used by the International Criminal Court (ICC).¹⁶

While strategic rape may more appropriately be labeled a “tactic” or “method” because it represents a mode of using a variety of weapons (including body parts, guns, sticks, etc.) to accomplish a certain type of attack on a person, it also shares characteristics with certain weapons.¹⁷ However, regardless of whether something is deemed a weapon or tactic, IHL requires that states use the same legal criteria to adjudge its legality.

4. What are some examples of rape used as a military tactic?

In the past 30 years alone, strategic rape has been wielded as a “weapon of choice” in armed conflicts worldwide including those in the Central African Republic, Côte d’Ivoire, the Democratic Republic of the Congo, Mali, Myanmar, Nigeria, the Syrian Arab Republic, Somalia, South Sudan, Sudan (Darfur), Yemen, and Zimbabwe.¹⁸ Select examples include:

- Rape is currently being used as a tactic in the Syrian civil war to terrorize and displace civilians.¹⁹ In fact, sexual violence, mainly rape, is consistently identified by Syrian women, men and community leaders “as a primary reason their families fled the country;”²⁰
- For decades, rape has been systematically used by the military in Burma in its campaign against ethnic minorities: to instill fear in the populace, humiliate and destroy communities, gain information about the strategy of ethnic armies, punish support for ethnic groups and even accomplish ethnic cleansing.²¹ Despite Burma’s civilian

government signing numerous peace agreements with ethnic groups in 2011 and 2012, the Burmese military has continued its human rights violations, including rapes, against ethnic women and children;²²

- A series of military attacks against thirteen villages in Walikale territory in the Democratic Republic of Congo in July 2010 were characterized by mass rapes of women and children. The UN documented that militia commanders had explicitly ordered their troops to “carry out systematic rapes to demonstrate the coalition’s capacity to harm;”²³
- In Rwanda, rape was used to accomplish genocide.²⁴ Over the course of the one hundred day genocide, “rape was the rule and its absence the exception.”²⁵ Around 277,120 of the estimated 337,120 Tutsi women raped, or 83%, were killed during or as a part of the rapes;²⁶
- A court decision on the Guatemalan genocide, committed between 1981 and 1983, found that “the decision to rape the women was not just meant to treat them as spoils of war, but also to destroy the social fabric and to achieve the elimination of the [Maya] Ixil seed;”²⁷
- In Nigeria, women and girls are subjected to rape as a tactic of war by both sides of the ongoing conflict between state and non-state forces. The Nigerian military has used rape and abductions as a counterinsurgency tactic.²⁸ The terrorist group *Boko Haram* has kidnapped and raped women and girls²⁹ and threatened to sell over 200 girls they recently abducted from a boarding school into sexual slavery.³⁰

5. What are the distinct characteristics of war rape?

War rape is *sui generis*, with distinct characteristics rarely, if ever, seen outside of conflict. Defining features of war rape, including strategic rape, include:

- Rape is committed by multiple perpetrators: in some conflicts up to 90% of the rapes are gang rapes;³¹
- Rape that deliberately aims to destroy reproductive and sexual organs as a mode of killing or rendering victims infertile;³²
- The routine use of objects, in addition to or instead of the penis, forced into the vagina or anus, including guns, knives, burning firewood, or broken glass. These objects are used to mutilate or to provide the extra kinetic force to kill by massive organ damage and hemorrhaging;³³
- Rape that takes place in public to maximize its terrorizing effect, with family members forced to watch, or even participate in, the rapes;³⁴

- Rape that focuses on girls: in some conflicts, up to 80% of rape victims are children, some as young as six months old.³⁵ Rape of young girls is often lethal, and those who survive inevitably suffer irreparable damage,³⁶
- Rape that is used to deliberately infect “enemy” women with the HIV virus. In these cases, rape is being used as the means to transmit a biological weapon.

6. Is strategic rape currently a prohibited weapon or tactic of warfare under IHL or does there need to be a specific treaty prohibiting its use?

Strategic rape of civilians or combatants in armed conflict is unlawful in all circumstances under IHL. Weapons or tactics used in armed conflict do not have to be explicitly listed as prohibited in IHL treaties or elsewhere to be unlawful. Recognizing that a heinous new weapon or tactic could be developed at any time, IHL clearly states that even in the absence of any express prohibition, a weapon or tactic may still be unlawful under certain, well-developed IHL criteria.³⁷ To enforce this core principle of IHL, all states have an “intransgressible” duty to ensure the lawfulness of any weapon or tactic they use or plan to use in armed conflict³⁸ and to ensure that other states comply with these rules.

IHL criteria for adjudging the lawfulness of weapons and tactics were designed to be flexible to accommodate changes in patterns of warfare, the development of new weapons, and evolving public opinion. Strategic rape is unlawful under IHL criteria including:

- **Martens Clause:** This clause, first introduced in the 1899 Hague Convention and more recently reaffirmed in the 1977 Additional Protocols to the Geneva Conventions of 1949, provides the baseline criteria for determining the illegality of any weapon or tactic not explicitly prohibited. The Martens Clause test for determining the legality of a weapon or tactic is whether its use violates (1) the “principles of humanity” or (2) the “dictates of public conscience” as evidenced by sources including draft rules, government declarations, and resolutions.³⁹ These criteria were written in broad terms to accommodate changing methods of warfare and the evolving global norms which are increasingly intolerant of cruel and abhorrent weapons. Strategic rape is a textbook case of a tactic which violates the “dictates of public conscience,” as demonstrated by the long list of Security Council resolutions,⁴⁰ UN reports⁴¹ and governmental declarations, including the UK’s 2013 Declaration of Commitment to End Sexual Violence in Conflict,⁴² condemning the use of rape as a weapon or tactic of war.
- **Prohibition on attacks against civilians and acts aimed at causing terror:** Attacks against civilians are never a legitimate military objective,⁴³ and they constitute an unlawful tactic of warfare. Deliberate attacks on civilians, including those aimed at spreading terror, which result in “death or serious injury to body or health,” are grave breaches.⁴⁴ Strategic rape directed at civilians is thus unlawful under this prohibition.
- **Superfluous injury and unnecessary suffering:** The prohibition on the use of

weapons or tactics that are of a “nature to cause superfluous injury or unnecessary suffering” refers mainly to the effects on combatants⁴⁵ of weapons or tactics that would otherwise be legal, but for certain features that go beyond the legitimate result of disabling combatants. For instance, bullets that are made in such a way as to explode in the body—“dum dum” bullets—are thought to cause superfluous injury or unnecessary suffering. The injury assessments developed for this test reveal the distinct and abhorrent injuries from strategic rape that are on par with, if not worse than, those from other unlawful weapons and tactics.⁴⁶

In addition to the criteria outlined above that govern IHL’s weapons framework, adjudging exactly what tactics and weapons will be assessed for their legality is subject to the IHL prohibition on discrimination, including based on sex, which underlies the application and implementation of all of IHL.⁴⁷ The fact that states recognize certain unlawful weapons and tactics, yet fail to recognize strategic rape, an equally destructive tactic that disproportionately targets women and girls, constitutes a violation of IHL’s prohibition on adverse distinction on the basis of sex.

7. How do the IHL prohibitions on weapons and tactics cause states to change their behavior regarding the use of unlawful weapon and tactics?

The act of classifying the use of a particular weapon or tactic as unlawful is the first step to stigmatizing its use: states do not like to be viewed by other states as having committed crimes. Merely declaring a weapon or tactic unlawful, however, is not sufficient to precipitate the norm change necessary to stop its use. What is also required is an analysis of the bodily injuries and deaths caused by a weapon or tactic (see question 8, below), which reveals its abhorrent nature and reinforces their stigmatization. Stigmatization has been shown, time and again, to deter the use of the targeted weapon or tactic.

For example, the use of mustard gas in World War I to kill or maim was addressed by a campaign to make the use of such chemical weapons unlawful, which emphasized not only the heinous impact on individuals of such weapons, but also the importance of putting legal protections in place to deter its use. The resulting 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare and the stigmatization attached to the use of such weapons successfully deterred its use in World War II,⁴⁸ which was the first time that “a major weapon employed in one conflict was not carried forward to be used in a subsequent conflict.”⁴⁹ More recently, in 2013, the stigma associated with chemical weapons led to global outrage and pressure directed against Syria’s President, Bashar al-Assad. This state pressure on Syria has proven effective, resulting in its government agreeing to the destruction of its chemical stockpiles and, in fact, doing so. In the ten months since the reported use of the weapons, over 90 per cent of Syria’s declared stockpile has been destroyed or transferred to other countries that will assist in the weapons’ destruction.⁵⁰

8. How would recognizing and treating rape as a prohibited tactic of war under international humanitarian law lead to greater criminal and civil accountability?

Classifying strategic rape as an unlawful tactic of warfare in international and domestic law would increase opportunities for holding those who commit strategic rape criminally accountable. For instance, if the Rome Statute were amended to include strategic rape as a type of war crime (currently, the Rome Statute criminalizes the use of other weapons and tactics as war crimes), it would provide the ICC Prosecutor with an additional tool to build a strong case against those who use rape to wage war. It is still an open question how the ICC will interpret elements of weapons and tactics crimes, as no weapons trials have yet been held. However, criminalizing rape as an unlawful tactic—in addition to its current criminalization as a war crime, crime against humanity and act of genocide—will open up the accountability framework and thereby justice and reparations for victims of war rape. The elements of the crime of rape (as a war crime or crime against humanity) differ markedly from those for the war crimes of using an unlawful weapon or tactic, which would permit prosecutors to choose the charge that best fits the evidence available.

For instance, the war crime of rape requires detailed proof of penetration, the mode of penetration and the type of force, threat or coercion employed by the defendant.⁵¹ The crime of using starvation as an unlawful tactic, on the other hand, requires proof that the “perpetrator deprived civilians of objects indispensable to their survival” and “intended to starve civilians as a method of warfare.”⁵² The latter’s focus is on the intent of the perpetrator, and the elements of the unlawful tactic are not spelled out. Therefore, being able to charge rape as an unlawful tactic would provide the prosecutor a more appropriate crime to charge where she has evidence of widespread rape—by, for instance, medical records and affidavits—but lacks individual witnesses willing or able to testify to the specific elements of rape.

Additionally, charging rape as an unlawful tactic of war has the potential to divorce rape from its historical baggage and subjection to double standards,⁵³ by bringing it under the more “conventional” paradigm of unlawful weapons or tactics violations.

Labeling strategic rape as an unlawful tactic of warfare will also create new opportunities for civil accountability, including reparations by violator states, by tapping into the framework of the customary laws of state responsibility, which governs state civil accountability for the use of unlawful weapons or tactics.⁵⁴ State civil accountability can take the form of cessation of the use of strategic rape as well as reparations. More than the criminal prosecutions of individual perpetrators, civil accountability potentially provides more deterrence value and increases the ability to practically deliver justice and support to victims.⁵⁵

9. What could an IHL injuries and lethality assessment of strategic rape reveal about this unlawful tactic of warfare?

Subjecting weapons and tactics to a legality review under Article 36 of Additional Protocol I—, including by assessing the injuries and deaths they cause, leads to stigmatization and decreased use of a weapon or tactic. For many illegal weapons and tactics, the process of stigmatization has included an evaluation of the weapon's impact on the human body. In fact, there is evidence that campaigns to change international regimes, such as the movement to ban landmines, are most successful when they focus on “norms prohibiting bodily harm.”⁵⁶ Experts have also noted that “[c]asualty recording and the documentation of the impact of armed violence have played a critical role in past and current processes to curb weapons” and have been “central to the prohibitions on landmines and on cluster munitions.”⁵⁷ In other words, data collection on the injuries and lethality of war rape on girls and women is critical to stigmatizing and ending the use of rape as a tactic of war. These types of assessments, however, have never been done on war rape despite the fact that it causes a set of injuries not seen outside of conflict.

Data collection and the impact and injuries assessments conducted under Article 36 review, in addition to leading to the prohibition and stigmatization of weapons and tactics, are imperative for understanding the impact of conflict as well as setting priorities for responses, including medical care. To date, however, deaths from war rape, including strategic rape, have rarely been systematically measured. Therefore, wartime fatality statistics have generally presented an incomplete picture of the impact of war. One exception is the statistics that have been extrapolated for deaths from rape during the Rwandan genocide: it has been estimated that over the course of the one hundred day genocide, 277,120 of the estimated 337,120 Tutsi women raped, or 83%, were killed during or as a part of the rapes.⁵⁸ This statistic, while not necessarily representative of other conflicts, does reveal the extreme brutality of war rape and the urgency with which this tactic of war must be countered.

As with fatalities from rape, there are no systematic assessments done with regard to the severe injuries resulting from war rape, which often times do not occur outside of war. As a consequence, there is a lack of comprehensive knowledge about the medical care that is required to save the lives and restore the health of women and girls raped in war. In fact, key medical protocols and surgical manuals omit any mention of the particular wounds inflicted by war rape and the medical interventions required. For instance, one leading two-volume manual on ‘war surgery’ contains a short chapter on ‘war wounds in pregnant women,’ which focuses on pregnant women who are injured by conventional weapons.⁵⁹ In the entire 998 page manual, the word ‘rape’ only appears twice,⁶⁰ including a fleeting acknowledgment that ‘projectile and blast trauma are not the only dangers’ faced by women, another being rape used as ‘a method of warfare.’⁶¹ The heinous injuries to girls and women inflicted by war rape—and relevant medical treatment protocols—are never discussed in the manual.

Recommendations

States' role in addressing and ending breaches of IHL, including the use of unlawful weapons and tactics, has evolved and expanded over the years, as evidenced in the Rome Statute, article 89 of Additional Protocol I,⁶² the laws of state responsibility,⁶³ and the enhanced collective power of the Security Council. Increasingly, states have the power to enforce other states' compliance with IHL. States also have an obligation under common Article I of the Geneva Conventions to "respect and ensure respect" for IHL. States should seize the new opportunity for collective action offered by the UK's Preventing Sexual Violence Initiative to end the use of strategic rape as a violation of IHL's regulation of the means and methods of warfare.

Recommendations for state action to end the use of strategic rape:

- Affirm that rape used as a tactic of war to achieve military objectives is a prohibited tactic of war under the IHL framework that regulates the means and methods of warfare;
- Commit to reforming domestic laws on means and methods of warfare and/or the implementation of IHL to integrate the prohibition on rape as an unlawful tactic of war;
- Recognize that states bear responsibility under IHL for the use of rape as an illegal weapon of war in their territories, including by their forces. This includes duties to cease such acts and to provide compensation and other forms of redress for its use;
- Declare the use of sexual violence as a tactic of war a grave breach of the Geneva Conventions, which can be prosecuted using universal jurisdiction;
- Commit to seeking the amendment of the Rome Statute to the International Criminal Court to include as a war crime the use of rape as a tactic of war;
- Lay out a process for researching and monitoring the injuries and deaths that result from rape, which is key to (1) jumpstarting the process of stigmatization that is critical to deterring the use of unlawful weapons and tactics under IHL, and (2) gathering information to update national medical protocols to provide better medical treatment for the specific and severe wounds that result from rape used as a tactic of war;
- Commit to "address sexual violence as a method or tactic of conflict in peace agreements," in line with the Secretary General's call in his 2013 report on conflict-related sexual violence.⁶⁴

For more recommendations, please see GJC's Fact Sheet "**Stopping the Use of Rape as a Tactic of War: A New Approach.**"

¹ For a more detailed version of this document, see Janet Benshoof, *The Other Red Line*, 5:2 GLOBAL POLICY JOURNAL 146 (May 21, 2014), available at <http://globaljusticecenter.net/index.php/publications/articles/410-the-other-red-line-the-use-of-rape-as-an-unlawful-tactic-of-warfare>.

² International Committee of the Red Cross, *A Guide to the Legal Review of New Weapons, Means and Methods of Warfare: Measures to Implement Article 36 of Additional Protocol I of 1977* (2006), at 19 (explaining that, in order to determine whether a weapon or tactic is unlawful, it should be considered—among other things—whether the weapon/tactic causes “any predictable or expected long term or permanent alteration to the victims’ psychology or physiology”).

³ See, e.g., Julian Ku & Jide Nzelibe, *Do International Criminal Tribunals Deter or Exacerbate Humanitarian Atrocities?*, 84 WASH. UNIV. L. REV. 777, 831 (2006) (on international criminal tribunals) (“Nonetheless, the empirical and theoretical assumptions that underpin the deterrence rationale for these ICTs [international criminal tribunals] remain dubious or highly debatable. Nonetheless, the empirical and theoretical assumptions that underpin the deterrence rationale for these ICTs remain dubious or highly debatable.”); Okechukwu Oko, *The Challenges of International Criminal Prosecutions in Africa*, 31 FORDHAM INT’L L.J. 343, 354 (2007) (“Moreover, whether international criminal prosecution actually serves as a deterrent is unclear because its effect cannot be empirically verified.”). There is, of course, a connection between criminal prosecutions and broader norm change. Alex Whiting, *In International Criminal Prosecutions, Justice*

Delayed Can Be Justice Delivered, HARVARD INT’L L.J. 323, 334 (2009) (“If prosecutions promote deterrence, it will probably not be with respect to the conflict at hand but rather for future conflicts, either in the same region or in other parts of the world. In particular, deterrence will likely be achieved primarily through the eventual shaping of norms and institutions, which will occur over time even if prosecutions are delayed.”).

⁴ See ALAN BRYDEN, *INTERNATIONAL LAW, POLITICS AND INHUMANE WEAPONS: THE EFFECTIVENESS OF GLOBAL LANDMINE REGIMES* 37 (Routledge, 2013) (noting that the stigmatization attached to the use of mustard gas as a result of the 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare successfully deterred its use in World War II).

⁵ Dara Kay Cohen, *Explaining Rape during Civil War: Cross-National Evidence (1980-2009)*, 107 AM. POL. SCI. REV. 461 (2013).

⁶ Eric Westervelt, *Silence Broken On Red Army Rapes In Germany*, NPR (June 17, 2009).

⁷ See Dara Kay Cohen, *Explaining Rape during Civil War: Cross-National Evidence (1980-2009)*, 107 AM. POLIT. SCI. REV. 461, 474-75 (2013).

⁸ UN Security Council Resolution 1820, U.N. Doc. S/RES/1820 (2008).

⁹ UN Action against Sexual Violence in Conflict, *Analytical & Conceptual Framing of Conflict-Related Sexual Violence*, at 2, available at <http://www.stoprapenow.org/uploads/advocacyresources/1321456915.pdf>.

¹⁰ The ICRC definition is as follows: Int’l Committee of the Red Cross, *Frame of Reference on Sexual Violence in Armed Conflict and Other Situations of Violence*, at 10 (Mar. 2009) (internal document).

¹¹ Oxford Dictionary (1997) ‘Weapon’, 2nd ed. vol. 3.

¹² Justin McClelland, *The Review of Weapons in Accordance with Article 36 of Additional Protocol I*, 85 INT’L REV. OF THE RED CROSS 397 (2003). See also ICRC, *A GUIDE TO THE LEGAL REVIEW OF NEW WEAPONS, MEANS AND METHODS OF WARFARE: MEASURES TO IMPLEMENT ARTICLE 36 OF ADDITIONAL PROTOCOL I OF 1977* 9, n.17 (2006).

¹³ See, e.g., Court of Appeals of Texas (1997) Appellate Decision, *Najera v. State*, 955 S.W.2d 698, 13 November. (U.S. domestic law – Case held that the penis and bodily fluid of an HIV-positive defendant constituted ‘deadly weapons’ because they caused the death of his rape victim.).

¹⁴ Kathleen Lawand, *Reviewing the legality of new weapons, means and methods of warfare*, 88 INT’L REV. OF THE RED CROSS 925 (2006) (“Explaining that a weapon or means of warfare ‘cannot be examined in isolation from the way in which it is to be used . . . the method of warfare associated with it’”).

¹⁵ See Denis M. Mukwege and Cathy Nangini, *Rape with Extreme Violence: The New Pathology in South Kivu, Democratic Republic of Congo*, 6:12 PLOS MED. at 2, (2009) (reporting that women raped in the DRC have had “objects inserted into their vaginas (sticks, bottles, green bananas, pestles coated in chili pepper, rifle barrels)” and have, after rape, been “killed by shots fired into their vaginas”); see also Mladen Lončar, et al., *Psychological Consequences of Rape on Women in 1991-1995 War in Croatia and Bosnia and Herzegovina*, 47 CROATIAN MED. J. 67, 71 (2006) (“Sexual torture included insertion of foreign objects in vagina and other body openings”).

¹⁶ International Criminal Court, *Elements of Crimes* (2011), Article 8 (2)(b)(xxii)-I War crime of rape (“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.”) (emphasis added).

¹⁷ For instance, unlike the unlawful tactic of perfidy, the unlawful tactic of rape causes specific and predictable types of injuries and deaths.

¹⁸ The U.N. Secretary-General, in his September 2013 report on women, peace and security, recognized the ubiquity of sexual violence in current conflict situations. See U.N. Secretary General, *Report of the Secretary-General on women and peace and security*, ¶ 5, submitted to the U.N. Security Council, U.N. Doc. S/2013/525 (Sept. 4, 2013). See also Cassandra Clifford, *Rape as a Weapon of War and Its [sic] Long Term Effects on Victims and Society*, presented at 7th Global Conference on Violence and the Contexts of Hostility, Budapest, Hungary (5 – 7 May 2008); Dara Kay Cohen, *Explaining Rape during Civil War: Cross-National Evidence (1980-2009)*, 107 AM. POL. SCI. REV. 461 (2013).

¹⁹ Lauren Wolfe, *Syria has a massive rape crisis*, Women Under Siege Blog, 3 Apr. 2013, available at <http://www.womenundersiegeproject.org/blog/entry/syria-has-a-massive-rape-crisis>. See also Lauren Wolfe, *The ultimate assault: Charting Syria's use of rape to terrorize its people*, Women Under Siege Blog, 11 July 2012, available at <http://www.womenundersiegeproject.org/blog/entry/the-ultimate-assault-charting-syrias-use-of-rape-to-terrorize-its-people>.

²⁰ International Rescue Committee, *Syria: a Regional Crisis: The IRC Commission on Syrian Refugees* (Jan. 2013), at 6, available at <http://www.rescue.org/sites/default/files/resource-file/IRCReportMidEast20130114.pdf>.

²¹ Over the years, the Special Rapporteur on the Situation of human rights in Myanmar has reported on the use of sexual violence by the military in Myanmar against ethnic minorities. See Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, U.N. Doc. A/66/365 (16 Sept. 2011), ¶ 32; Report of the Special Rapporteur on the situation of human rights in Myanmar, Paulo Sérgio Pinheiro, U.N. Doc. A/HRC/4/14 (12 Feb. 2007), ¶ 41 (internal citations omitted); Report of the Special Rapporteur on the situation of human rights in Myanmar, Paulo Sérgio Pinheiro, U.N. Doc. E/CN.4/2006/34, 7 Feb. 2006, ¶ 78.

²² Akila Radhakrishnan and Michelle Onello, *New Report Details Ongoing Sexualized Violence in Burma*, Women Under Siege Blog (Jan. 13, 2014).

²³ United Nations Office of the High Commissioner for Human Rights, *Final Report of the Fact-Finding Missions of the United Nations Joint Human Rights Office Into the Mass Rapes and Other Human Rights Violations Committed by a Coalition of Armed Groups Along the Kibua-Mpofi Axis in Walikale Territory, North Kivu from 30 July to 2 August 2010*, ¶ 21 (July 2011).

²⁴ International Criminal Tribunal for Rwanda, *Prosecutor v. Akayesu*, Case No. ICTR 96-4-T, Judgment, ¶¶ 732-34 (2 Sept. 1998) (*holding that rape “was a step in the process of destruction of the Tutsi group - destruction of the spirit, of the will to live, and of life itself” and constitute “the factual elements of the crime of genocide, namely the killings of Tutsi or the serious bodily and mental harm inflicted on the Tutsi”*).

²⁵ See Special Rapporteur of the Commission on Human Rights, *Report on the situation of human rights in Rwanda submitted by Mr. René Degni-Ségui*, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/11 of 25 May 1994, ¶ 16, U.N. Doc. E/CN.4/1996/68 (29 Jan. 1996); see also Human Rights Watch, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath*, at 17 (Sept. 1996) (“Some observers believe that almost every woman and adolescent girl who survived the genocide was raped.”).

²⁶ See Catrien Bijveld et al., *Counting the Countless: Rape Victimization During the Rwanda Genocide*, 19 INT'L CRIM. JUST. REV. 208, 216 (2009) (quantifying the impact of rape by disaggregating the number of Tutsi women rape survivors from the number Tutsi women killed during or as a part of the rapes); see also Marijke Verpoorten, *The Death Toll of the Rwandan Genocide: A Detailed Analysis for Gikongoro Province*, 60 POPULATION 331 (2005) (analysis of Tutsi deaths by gender, in accord with the previous study).

²⁷ Open Society Justice Initiative, *Judging a Dictator: The Trial of Guatemala's Rios Montt*, at 42 (2013).

²⁸ Amnesty International, *Nigeria: Rape – The Silent Weapon* (Nov. 28, 2006), available at: <http://www.amnesty.org/en/library/info/AFR44/020/2006>.

²⁹ Human Rights Watch, *Nigeria: Boko Haram Abducts Women, Recruits Children* (Nov. 29, 2013).

³⁰ Catrina Stewart, *Nigeria's Abducted Schoolgirls: We'll Sell Them as Slaves, Pledges Boko Haram Terror Leader*, THE INDEPENDENT (May 6, 2014).

³¹ Kristine T. Hagen and Sophie C. Yohani, *The Nature and Psychosocial Consequences of War Rape for Individuals and Communities*, 2 Int'l J. Psych. Stud. 14, 15 (2010) (“It has been estimated that 90% of rape in war is gang rape . . .”); Cassandra Clifford, *Rape as a Weapon of War and Its [sic] Long Term Effects on Victims and Society*, Paper presented at 7th Global Conference on Violence and the Contexts of Hostility, Budapest, Hungary, 5 – 7 May 2008 (“Victims of war rape are often raped multiple times and gang raped, which can cause a much higher degree of physical and physiological injuries, and often lead to death”), <http://ts-si.org/files/BMJCliffordPaper.pdf>.

³² David Mankuta, et. al., *Field Evaluation and Treatment of Short-Term Psycho-Medical Trauma after Sexual Assault in the Democratic Republic of Congo*, 14:11 ISRAEL MED. ASS'N. J. 653, 653 (2012).

³³ Denis M. Mukwege and Cathy Nangini, *Rape with Extreme Violence: The New Pathology in South Kivu, Democratic Republic of Congo*, 6:12 PLOS MED. at 2, (2009); Kristine T. Hagen and Sophie C. Yohani, *The Nature and Psychosocial Consequences of War Rape for Individuals and Communities*, 2 Int'l J. Psych. Stud. 14, 15 (2010).

³⁴ See Tara Gingerich and Jennifer Leaning, *THE USE OF RAPE AS A WEAPON OF WAR IN THE CONFLICT IN DARFUR, SUDAN 15-19*, Program on Humanitarian Crisis, Harvard School of Public Health & Physicians for Human Rights (2004) (noting that rapes in Darfur, Sudan 'were often committed in front of others,' including family members); Mladen Lončar, et al., *Psychological Consequences of Rape on Women in 1991-1995 War in Croatia and Bosnia and Herzegovina*, 47 CROATIAN MED. J. 67, 68 (2006) (noting that rapes in the former Yugoslavia were frequently "public rapes, which were also aimed to frighten people and make them flee"); see also Office of the High Commissioner for Human Rights, *Report on the situation of human rights in Rwanda submitted by Mr. René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/1 of 25 May 1994*, U.N. Doc. E/CN.4/1996/68 (1996) ("According to reliable testimony, militiamen forced fathers or sons to have sexual relations with their own daughters or mothers and vice versa.").

³⁵ See Save the Children (2013) 'Unspeakable Crimes Against Children: Sexual Violence in Conflict', London: Save the Children, pp. v-38, at p. v ('The prevalence in conflict of sexual violence against children is shocking. . . . [G]irls especially but also boys under the age of 18 often make up the majority of survivors of sexual violence in conflict and conflict-affected countries; sometimes more than 80% of those affected by sexual violence are children.');

see also Nichols, M. (2013) 'Babies as Young as Six Months Victims of Rape in War: U.N. Envoy', *Reuters*, 17 April [online]. Available from: <http://www.reuters.com/article/2013/04/17/us-war-rape-un-idUSBRE93G13U20130417> [Accessed 24 March 2014]('[U.N. envoy on sexual violence in conflict, Zainab Hawa Bangura] visited a community where last year 11 babies, between 6 and 12 months old, were raped by elements of Mai Mai Morgan [a rebel group in the Democratic Republic of Congo]. . .'); see also AO Longombe et. al., *Fistula and Traumatic Genital Injury from Sexual Violence in a Conflict Setting in Eastern Congo: Case Studies*, 16:31, REPRODUCTIVE HEALTH MATTERS 132, 138 (2008) (reporting that those subjected to sexual violence in the Democratic Republic of Congo include infant children).

³⁶ See Human Rights Watch (2009) 'Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo', pp. 1-56, at p. 5 ('The destructive long-term physical, psychological, and social effects of sexual violence on the victims cannot be underestimated. The situation is particularly bad for girls, who are at risk of serious injuries after rape, and whose health is at risk if they get pregnant.');

H. Liebling, et. al., *Women and Girls Bearing Children through Rape in Goma, Eastern Congo: Stigma, Health and Justice Responses*, 4 Itupale Online Journal of African Studies 18, 25 (2012) (explaining that it is 'dangerous for young girls [such as rape victims] to deliver a child at the state when their bodies are not yet mature' as it 'can result in the rupture of the uterus and death of the child.').

³⁷ Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts [hereinafter "Protocol I"], (1979) 1125 U.N.T.S. 3.

³⁸ ICJ Nuclear Weapons, Art. 40 LSR

³⁹ See Theodor Meron, *The Martens Clause, Principles of Humanity, and Dictates of Public Conscience*, 94 AM. J. INT'L L. 78 (2000); Rupert Ticehurst, *The Martens Clause and the Laws of Armed Conflict*, 317 INT'L. REV. OF THE RED CROSS, (1997); see also Protocol Additional to the Geneva of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 1(2), June 8, 1977, 1125 U.N.T.S. 3.

⁴⁰ See S.C. Res. 1325, U.N. Doc. S/RES/1325 (2000); S.C. Res. 1820, U.N. Doc. S/RES/1820 (2008); S.C. Res. 1888, U.N. Doc. S/RES/1888 (2009); S.C. Res. 1889, U.N. Doc. S/RES/1889 (2009); S.C. Res. 1960, U.N. Doc. S/RES/1960 (2010); S.C. Res. 2106, U.N. Doc. S/RES/2106 (2013); S.C. Res. 2122, U.N. Doc. S/RES/2122 (2013).

⁴¹ Stop Rape Now, *Advocacy Resources* (2013), <http://www.stoprapenow.org/advocacy-resources> [Accessed 24 March 2014].

⁴² See UK A Declaration of Commitment to End Sexual Violence in Conflict (2013).

⁴³ International Committee of the Red Cross, Customary International Humanitarian Law Database, Rule 7, The Principle of Distinction between Civilian Objects and Military Objectives, available at: http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule7. See also Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, art. 48, 8 June 1977, 1125 U.N.T.S. 3.

⁴⁴ Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, art. 85(3)(a), 8 June 1977, 1125 U.N.T.S. 3.

⁴⁵ JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW VOL. I: RULES 237 (2005); Int'l Comm. of the Red Cross, *Report on the Work of Experts: Weapons that May Cause Unnecessary Suffering or Have Indiscriminate Effects* (1973).

⁴⁶See Theodor Meron, *The Martens Clause, Principles of Humanity, and Dictates of Public Conscience*, 94 AM. J. INT'L L. 78, 83-84 (2000) ("Although weapons or means of warfare are seldom prohibited on the sole basis of their incompatibility with such general principles as those of humanity or the dictates of public conscience, a sense of abhorrence of a particular weapon can be an important factor in the development of treaty prohibitions.").

⁴⁷Jalena Pejic, *Non-Discrimination and Armed Conflict*, 84 INT'L REV. OF THE RED CROSS, (2001).

⁴⁸ Alan Bryden, *International Law, Politics and Inhumane Weapons: The effectiveness of global landmine regimes*, Sept. 10, 2012, pg. 37.

⁴⁹ Fredrich Brown, *CHEMICAL WARFARE: A STUDY IN RESTRAINTS* 290 (Princeton Univ. Press) (1968).

⁵⁰ See Rick Gladstone and Nick Cumming-Bruce, *U.N. Official Urges Syria to Finish Chemical Arms Disposal*, NY Times (June 4, 2004).

⁵¹ International Criminal Court, *Elements of Crimes* (2011), art. 8 (2) (b) (xxii)-I War crime of rape ("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. 3. The conduct took place in the context of and was associated with an international armed conflict. 4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.").

⁵² International Criminal Court, *Elements of Crimes* (2011), art. 8 (2) (b) (xxv) War crime of starvation as a method of warfare ("1. The perpetrator deprived civilians of objects indispensable to their survival. 2. The perpetrator intended to starve civilians as a method of warfare. 3. The conduct took place in the context of and was associated with an international armed conflict. 4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.").

⁵³ See, e.g., See Kelly Askin, *Katanga Judgment Underlines Need for Stronger ICC Focus on Sexual Violence*, Blog Post for International Justice Monitor (March 10, 2014), <http://www.ijmonitor.org/2014/03/katanga-judgment-underlines-need-for-stronger-icc-focus-on-sexual-violence/> ("While most judges seem to accept that leaders and others can be convicted of crimes such as killings, torture and pillage even when they are far from the crime scenes, there is great reluctance to hold individuals accountable for sex crimes unless they are the physical perpetrators, they were present when crimes were committed, or they can be linked to evidence encouraging the crimes. It's an appalling double standard, and perpetuates the view that rape is a byproduct of war, instead of an instrument of warfare."); Women's Initiatives for Gender Justice, *Gender 2011 Report Card on the International Criminal Court* (November 2011), at 122, available at <http://www.iccwomen.org/documents/Gender-Report-Card-on-the-International-Criminal-Court-2011.pdf> ("Women's Initiatives' analysis of charges for gender-based crimes at the ICC shows that these charges are the most vulnerable category of crimes, in that they tend to be either omitted from filings or fail to reach the trial phase of the proceedings. This vulnerability is based on a number of factors involving both the Office of the Prosecutor and the Pre-Trial Chambers, including failures at the investigation phase, insufficient evidence, incorrect characterization of facts or restrictive interpretations of the definition of some gender-based crimes. In some instances, gender-based crimes have not always been fully investigated by the Office of the Prosecutor, or have not been included by the Prosecutor in his request for an arrest warrant or summons to appear, even in situations where such information was provided to the Prosecutor by NGOs including the Women's Initiatives.").

⁵⁴ See Marco Sassòli, *State Responsibility for Violations of International Humanitarian Law*, 84(846) INT'L REV. RED CROSS 401, 418-419 (2002).

⁵⁵ Prosecutions for war rape have been frequently unsuccessful, and, even where they have been successful, they have only reached a small proportion of the actual perpetrators of war rape.

⁵⁶ Martha Finnemore and Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52:2 INT'L. ORG. 887, 907-908 (1998).

⁵⁷ See Article 36, Briefing Paper: Casualty recording, critical argument and campaigning against weapons, at 1 (Oct. 2013).

⁵⁸ See Catrien Bijveld et al., *Counting the Countless: Rape Victimization During the Rwanda Genocide*, 19 INT'L CRIM. JUST. REV. 208, 216 (2009) (quantifying the impact of rape by disaggregating the number of Tutsi women rape survivors from the number Tutsi women killed during or as a part of the rapes); see also Marijke Verpoorten, *The Death Toll of the Rwandan Genocide: A Detailed Analysis for Gikongoro Province*, 60 POPULATION 331 (2005) (analysis of Tutsi deaths by gender, in accord with the previous study).

⁵⁹ ICRC, WAR SURGERY: WORKING WITH LIMITED RESOURCES IN ARMED CONFLICT AND OTHER SITUATIONS OF VIOLENCE, VOL. 2 525 (2013).

⁶⁰ ICRC, WAR SURGERY: WORKING WITH LIMITED RESOURCES IN ARMED CONFLICT AND OTHER SITUATIONS OF VIOLENCE, VOL. 1 97 (2013). ('[O]ne must count the social costs of deliberate physical, psychological, and sexual abuse as methods of warfare. Torture and rape have profound and long-term consequences.');

ICRC, WAR SURGERY: WORKING WITH LIMITED RESOURCES IN ARMED CONFLICT AND OTHER SITUATIONS OF VIOLENCE, VOL. 2 526 (2013) ('In many wars throughout history women have often been the targets and victims of sexual violence; i.e. rape as a method of warfare waged against an entire society. For some combatants, the insemination of women is an 'aim' of war. In certain modern conflicts, rape has reached epidemic proportions.').

⁶¹ ICRC, WAR SURGERY: WORKING WITH LIMITED RESOURCES IN ARMED CONFLICT AND OTHER SITUATIONS OF VIOLENCE, VOL. 2 526 (2013).

⁶² Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (1977) 1125 U.N.T.S. 3., art. 87 ("In situations of serious violations of the Conventions or of this Protocol, the High Contracting Parties undertake to act jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter.").

⁶³ International Law Commission, Draft Articles on Responsibility of States for internationally wrongful acts, Art. 41, commentary to 41 (2001).

⁶⁴ United Nations, Report of the Secretary General on Sexual Violence in Conflict, ¶129, U.N. Doc. S/2013/149 (Mar. 14, 2013).



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