



FACT SHEET

STOPPING THE USE OF RAPE AS A TACTIC OF WAR: A NEW APPROACH

There is a global consensus that the mass rape of girls and women is routinely used as a tactic or “weapon” of war in contemporary armed conflicts.¹ Despite two decades of intense global efforts, rape used as a tactic of war continues undeterred. This is not surprising: rape is a cheap, powerful, and effective tool for military forces to use to kill and mutilate women and children, force pregnancy, terrorize families and communities, demoralize enemy forces, and accomplish genocide.

Rape used to further military objectives or the strategic aims of a conflict (“strategic rape”), constitutes a prohibited tactic or method of warfare under international humanitarian law.

The Security Council has passed seven resolutions since 2000 containing measures to stop sexual violence in conflict, including ending the use of rape as a tactic of war. However, to date, international strategies to end its use have been focused on deterrence by ending impunity and ensuring accountability for the use of rape in 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 is because while the deterrence value of criminal prosecutions remains unproven behavior or at least debatable in changing states behavior, there is clear evidence that the stigmatization of branding a weapon or tactic unlawful deters its continued use.

Accordingly, the Global Justice Center propose that states take a new approach to ending used rape as a tactic of war: address and punish its use under the laws governing the legality of all weapons and tactics used in warfare and stigmatize its use alongside the use of other unlawful weapons or tactics.

We now know that rape and sexual violence is used as a deliberate weapon of war in the same way that guns and tanks are, to terrorise civilian populations, to humiliate, scar and destroy whole ethnic groups or religious or political opponents, cheaply, silently and devastatingly.

- William Hague, UK Foreign Secretary, Wilton Park (2012)

¹ For more information please see Global Justice Center, Rape as an Illegal Tactic of War: Research Overview and Frequently Asked Questions (June 2014); 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>.



STRATEGIC RAPE IS A PROHIBITED TACTIC OF WAR UNDER INTERNATIONAL HUMANITARIAN LAW

Strategic rape of civilians or combatants in armed conflict is unlawful in all circumstances under international humanitarian law's (IHL) framework regulating the "means and methods of warfare" (IHL weapons framework). Weapons or tactics used in armed conflict do not have to be explicitly listed as prohibited in IHL treaties or elsewhere to be unlawful. Rather, 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, including the "principles of humanity" or "dictates of the public conscience." 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 conflict and to ensure that other states comply with these rules.

Although it is undisputed that strategic rape is an unlawful tactic of war, no state has ever been held accountable, nor any individual prosecuted for its use.

The failure to address strategic rape the IHL weapons framework reflects outdated stereotypes that war consists of male combatants using conventional weapons against other male combatants. **That is not the reality in modern conflicts.** The failure to treat rape used as a tactic of war under this IHL framework discriminates against women and violates their rights to equal protection under IHL.

Furthermore, ensuring that strategic rape is governed by the IHL weapons framework will buttress existing efforts to stop its use and open up new avenues for justice, accountability and redress for victims of war rape.

THE DETERRENT EFFECT OF STIGMATIZING STRATEGIC RAPE AS AN UNLAWFUL TACTIC OF WAR

Embedding strategic rape within the purview of the laws of war governing the legality of tactics and weapons will foster its stigmatization, which has proven critical to stopping the use of other abhorrent weapons 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.

Stigmatization has been shown, time and again, to deter the use of the targeted weapon or tactic. For example, 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.

PRACTICAL BENEFITS TO RAPE VICTIMS OF TREATING STRATEGIC RAPE LIKE ALL OTHER UNLAWFUL WEAPONS OR TACTICS OF WAR

I. SAVING LIVES AND RESTORING HEALTH

Deterring the use of strategic rape will save the lives of girls and women. Rape used as an instrument of war has claimed the lives of hundreds of thousands of victims, either by killing victims outright or by making the lives of surviving girls and women intolerable, painful, and shorter. Crucial to saving the lives of war victims is the fact that weapons and tactics being used in armed conflict are constantly assessed for the lethality and severity of the injuries they cause, both for determining whether their legality should be reviewed and for updating and improving relevant medical protocols.

Examining the injuries of strategic rape and including them in the medical protocols for war zones, as is done with other weapons, would lead to enhanced knowledge and preparation among medical providers in military and other field hospitals to treat the complex genitourinary injuries of female survivors of strategic rape.

2. EXPANDING ACCESS TO JUSTICE, ACCOUNTABILITY AND REDRESS

The past 20 years have shown that justice, accountability and redress for war rape victims has been the exception not the rule. Even when there are criminal prosecutions, few perpetrators get indicted and even fewer convicted. For example, in Bosnia only 30 convictions resulted from the tens of thousands of rapes committed during that conflict. Furthermore, the International Criminal Court's (ICC) statistics on accountability for sexual violence are bleak—to date, no sexual violence charges have resulted in a guilty verdict.

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.

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. 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.

3. RESTRUCTURING DATA COLLECTION AND CHANGING NORMS ABOUT WAR CASUALTIES

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 and therefore, wartime fatality statistics have generally presented an incomplete picture of the impact of war.

Currently, women who are raped to death as an intended outcome of strategic rape are not even included in “battle deaths,” which are counted to determine whether a certain situation constitutes an “armed conflict” to which IHL applies. Deaths caused by sexual violence in conflict are categorized as “indirect” deaths, contrasted with “direct” deaths that are defined as those caused by war-related injuries and attacks (such as those inflicted by a bullet, bomb, mine, machete, or assault).

Victims of strategic rape are entitled to be counted as war casualties giving in order to give them equal and full access to the protections of IHL.

4. NON-DISCRIMINATION

Treating strategic rape, which disproportionately impacts women and girls, as an unlawful tactic of war, will be the first time the non-discrimination mandates of IHL have been applied to its weapons framework. Extending IHL’s weapons protections to victims of strategic rape will ensure their equal rights to justice, reparations, medical treatment and deterrence, which are currently available to victims of other unlawful weapons and tactics.

RECOMMENDATIONS: WHAT STATES CAN DO TO STIGMATIZE THE USE OF RAPE AS A TACTIC OF WAR AND END ITS USE

- Affirm that rape used as a tactic of war to achieve military objectives is a prohibited tactic of war under the framework of IHL regulating the means and methods of warfare and incorporate this in domestic policies and laws.
- 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.
- Take leadership and work with like-minded states (for example, the Norwegian Labour Party’s platform for 2013-2017 commits to do this) to amend the Rome Statute to include as a war crime the use of rape 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 to the Security Council.

- Affirm that women are entitled to the non-discriminatory implementation of IHL, including there be no adverse distinction in the regulation and assessments of weapons and tactics of warfare.
- Call for and support efforts at the international level, including through the Security Council to create compensation commissions to provide comprehensive reparations for victims of rape in war. Such reparations should take into account the full range of the consequences of sexual violence on the victims, including the denial of necessary medical care, such as safe abortion services, or the costs of raising children from rape.
- Call for casualty recording and impact assessments, under Article 36 to include rape used as a tactic of war. Restructure data collection efforts to treat deaths resulting from rape, as an immediate consequence of the rape or resulting from its consequences, including pregnancy, unsafe abortions or suicide, as a direct battlefield death.
- Take steps to, and urge other states to, including through the Security Council's women, peace and security mandate, translate the recognition that sexual violence is being used as an unlawful tactic of war from rhetoric to action. This can include reforming domestic laws on means and methods of warfare and ensuring the integration of IHL and this prohibition into national action plans on Security Council Resolution 1325.
- Convene an expert panel to discuss the potential to prosecute the use of rape as a tactic of war. This meeting can consider not only how to define such a crime, but also consider the specific prosecutorial benefits that can result from having the ability to try rape as a prohibited tactic of war.



The Global Justice Center works to achieve sustainable justice, peace and security by building a global rule of law based on gender equality and universally enforced international human rights laws.

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