

Strengthening International Law against Sexual Violence in Armed Conflicts: Insights from the Russian-Ukrainian War

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Abstract

Sexual violence associated with armed conflict remains a little-explored phenomenon despite its relevance due to the inadequate effectiveness of preventive measures enshrined in international humanitarian law documents. Given the ongoing Russian-Ukrainian war, it is imperative to allocate particular focus towards identifying potential opportunities for law enforcement in Ukraine. The purpose of this article is to examine international legal instruments for preventing conflict-related sexual violence by analysing principal international treaties, conventions, and declarations of judgments from international tribunals. This study employs various methods, including formal-legal analysis, content analysis, historical-legal methodology, case studies, and statistical observation. The article provides an overview of legislative mechanisms used towards preventing sexual violence related to armed conflicts while assessing current state problems within Ukraine that indicate the ineffectiveness of such mechanisms since only 208 officially registered incidents were recorded as of June 2023. The major conclusion derived from the study is a pressing necessity for a legislative framework that works in synergy with national and international institutions, ensuring states fulfil their obligations concerning human rights, and further research should address the said issue in more detail.

Keywords: Conflict-related sexual violence, gender-based violence, armed conflict, rape, International Criminal Court.

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Introduction

Sexual violence that arises from conflict is a multifaceted issue concerning international security, which highlights the problems of ethnic cleansing, genocide, and the use of violence as a means of warfare (for our study's purposes, "armed conflict" and "war" are interchangeable terms, that is they will be used synonymously therein). Due to its historical perception as an inevitable side effect of war, sexual violence has been underreported; this lack of accountability has enabled perpetrators to continue committing such atrocities with impunity (Nordås & Cohen, 2021).

The United Nations, in Resolution 1820 (2008), first recognised sexual violence as a tactic of war (United Nations, 2008). Ever since then, the global community has been actively elaborating and executing strategies to tackle and affect this issue worldwide. It was determined that the parties to any armed conflict bear the responsibility of undertaking all possible measures to ensure the safeguarding of civilians who are affected by such conflicts (UN. Security Council, 2019).

It is a widely accepted fact that several forms of sexual violence have occurred during armed conflicts across various continents and at different times. Presently, in light of the global awareness in terms of the scale, prevalence, and brutality of sexual violence committed by the Russian military on Ukrainian soil, it must not be deemed as an incidental war effect. Such acts are unequivocally criminal offences for which accountability must be established (Zadoya & Dudorov, 2023).

The relevance of the chosen topic is determined by the fact that: a) today, the phenomenon of sexual violence, which is committed in the conditions of an armed conflict, is little researched; b) the present-day circumstances necessitate an understanding of the international treaties and their potential for enforcement in Ukraine; c) the lack of unified law enforcement practices as regards qualification of sexual violence about armed conflict; d) the imperative need for probing deeper into the current developments in international humanitarian law, as well as identification and prioritisation of vectors for implementing its provisions within Ukraine's Criminal Code (hereinafter referred to as "the Code") (Verkhovna Rada of Ukraine, 2023a).

The purpose of the article is to scrutinise the international legal instruments in place for preventing conflict-related sexual violence through analysis and evaluation of key international treaties, conventions, declarations, and judgments from tribunals.

Research objectives

- To reveal aspects related to sexual violence in situations involving conflicts under human rights instruments at an international level;
- To provide a detailed description of international legal mechanisms for the prevention of conflict-related sexual violence;
- To determine the current state of the problem while contextualising it within Ukraine's ongoing war.

Literature review

Criminal-legal as well as criminological aspects of the prevention of sexual violence related to the conflict were studied in the works of both Ukrainian and foreign authors because the problem is universal. The criminal-legal and criminological aspects of preventing sexual violence about conflict have been extensively explored by scholars from Ukraine and abroad, given the universal nature of this issue. In a study by Rufanova et al. (2022), devoted to the problem of sexual violence related to conflict, it was emphasised that despite the enshrining of the laws and customs of war in numerous international instruments, the said laws are largely neglected. Scholars observe a rising trend of civilians falling victim to armed conflicts, including the perpetration of sexual violence. This also applies to the full-scale invasion of the Russian Federation on the territory of Ukraine. Disregarding international norms is primarily caused by a sense of invincibility on the part of the aggressors, and this is largely due to the inadequacies of the global legal framework. Several studies conducted by other scholars also demonstrate the ineffectiveness of legal measures in combatting sexual violence. For example, the work of Medie (2019) provides an example of African countries in which sexual violence against women during the wars of the 1990s captured the interest of global organisations and enhanced the efforts of women's advocacy groups in combatting sexual violence. As a result, many countries adopted passed laws against sexual violence against women, however, this has proven insufficient.

Gray et al. (2020) examine the similarities and disparities between the notions of "torture" and "sexual violence" in conflict environments. The scholars conclude that, from a legal perspective, these concepts lack clarity in international legislative acts. Furthermore, many literary works exhibit gendered differentiation when it comes to these concepts - torture is frequently associated with men's experiences, while sexual violence is predominantly related to women's.

Nordås and Cohen (2021) conduct a thorough literature review on sexual violence during military conflict. Scholars note that early work on the topic treated sexual violence during the conflict as something inevitable, ubiquitous, or

strategic. However, delving into the literature on sexual violence in conflict settings indicates the existence of significant differences in the causes, victims, and consequences of these actions. Thus, Kreft (2020) delves into the root causes of sexual violence during wartime. The researchers found a connection between the perpetration of sexual violence in conflict conditions and social-gender inequality. This leads to a discrepancy between such conclusions and the generally accepted understanding of sexual violence as a "weapon of war".

The works specifically highlight the issue of sexual violence against men in the conditions of war. For instance, Schulz (2020), in a monographic study, examines the evidence of violence against men in northern Uganda. Even though this phenomenon was geographically widespread in the early stages of the conflict, accounts of such events are either missing or concealed. The author presents exceptional testimonies of men regarding their encounters with gender-based harm, examining this type of violence in the context of political violence at large.

The comprehension of sexual violence during conflict as a manifestation of political violence is evidenced in further research. For instance, Revkin and Wood (2021) examine the ideology and institutions, policies, and practices of the Islamic State's pattern of sexual violence. Scholars have theorised that the organisation adopted ideologically motivated policies that allowed certain forms of sexual violence by defining the conditions of such violence and who could be targeted. Traunmüller et al. (2019), addressing the issue of sexual violence during and after the Sri Lankan civil war, highlight the strategic use of sexual violence to coerce confessions, humiliate and prevent wider participation of Tamils in the formation of the "Liberation Tigers of Tamil Eelam".

Whitaker et al. (2019) suggest that sexual violence during conflict is not inevitable. According to the said scholars, it is demonstrated that the difference in the spread of sexual violence between different armed groups occurs exemplified by the insurgent organisations.

Further, Kaur (2021) notes that sexual violence in conflict is a tactic that originated from the times immemorial. It is related to the desire to demonstrate one's dominance, the abuse of power, rather than sexual desire. As such, it can be applied to populations of all ages and genders, causing serious physical and psychological consequences for victims and their family members. Kaur (2021) maintains that the mechanism created at the international level to prevent sexual violence during war has certain limitations.

The conducted literature review indicates that there is not any country or an international organisation that has been able to elaborate on a sufficiently effective mechanism for combating sexual violence in conflict conditions.

However, it should be noted that without the participation of numerous leading countries and organisations, such as the UN, the problem could be much more widespread. The literature review demonstrates that no country or international organisation has been able to establish an effective mechanism for combatting sexual violence during conflict. Nevertheless, it is essential to acknowledge the participation of numerous leading countries and organisations, such as the UN, to prevent this problem from becoming even more widespread. Given the above, the ongoing search for effective methods and mechanisms to prevent conflict-related sexual violence that will have a noticeable effect in practice is necessitated.

Method

Research procedure

The research procedure comprises four stages, in which the legal aspects of the prevention of sexual violence under war conditions in international legal documents, the content of the studied concept, forms of sexual violence in conflict, bringing criminals to justice, historical examples, and the current state were consistently examined (Figure 1).

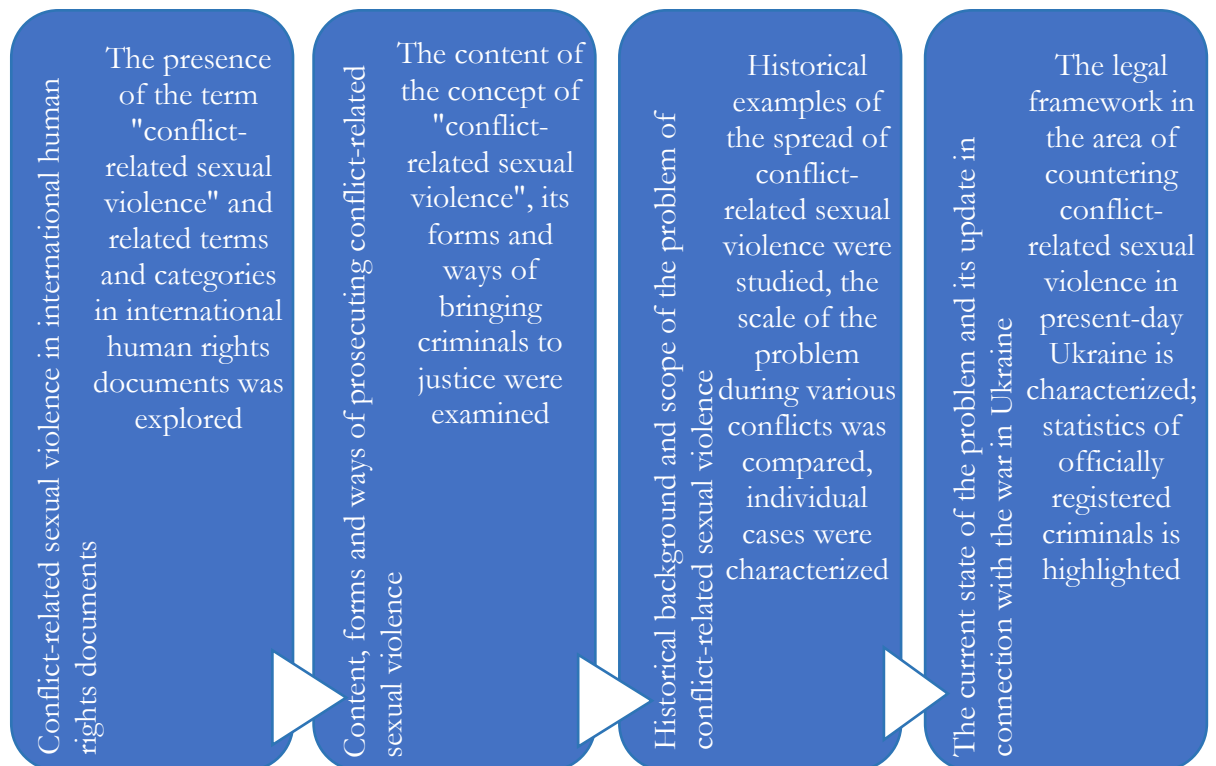


Figure 1. Research procedure

The research process encompasses four distinct phases that involve a comprehensive examination of the legal framework surrounding the prevention of sexual violence during times of war in international legal instruments, an analysis of the studied concept's content, an exploration of various forms of sexual violence in conflict settings, and finally, scrutiny of efforts to bring perpetrators to justice. Additionally, historical precedents and current developments are consistently considered (as depicted in Figure 1) throughout this rigorous investigation.

Research methods

The research draws on the formal-legal (normative-dogmatic) method, through the prism of which an attempt was undertaken to understand the phenomenon under study and its related categories. Thus, by employing the formal-legal method, an inquiry was conducted into the inclusion of "conflict-related sexual violence" in international humanitarian law agreements, resulting in its absence being confirmed. Analysis revealed that other provisions within human rights documents (such as the Council of Europe Convention on Preventing and Countering Violence against Women and Domestic Violence of 2011, the Beijing Declaration and Platform for Action, and the UN Convention against Torture of 1984, etc.) other positions provide for the prohibition of sexual violence in conflict conditions.

The method of content analysis was applied to elucidate the concept of "conflict-related sexual violence", as well as its associated categories. To achieve this objective, a multitude of regulatory texts, verdicts from legal proceedings, and other documents were scrutinised. Through this process, the most comprehensive definition of the examined concept was established while simultaneously identifying its various manifestations.

The study involved the historical-legal approach to characterise historical examples, cases, scales as well as manifestations of sexual violence in times of war. Employing this methodology enabled showcasing the occurrence of sexual violence during military conflicts, thereby offering insight into its widespread prevalence as well as highlighting a concurrent lack of efficacious remedial measures.

The current state of the problem, exemplified by the war in Ukraine, has been evaluated through a combination of formal-legal analysis, content analysis and statistical observation with additional support from graphic representation. This approach effectively highlights the prevalence of sexual violence during military conflicts across various regions in Ukraine.

Results

Conflict-related sexual violence in international human rights instruments

The concept of "conflict-related sexual violence" is not used in international humanitarian law treaties (Anderson, 2010). The United Nations in Resolution 1960 (2010) defines this term as sexual violence that occurs in conflict or post-conflict situations or in other situations of concern (e.g. political struggle) and has a direct or indirect connection to the conflict or political struggle itself, i.e. temporal, geographical and/or causal (United Nations, 2010). It refers to individual cases or typical manifestations of the practice of rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilisation, and other forms of sexual violence of comparable severity committed against women, men, girls, and boys, as well as corresponding patterns of behaviour, including this behaviour as a military tactic or a means of political intimidation by the parties to the conflict.

The absence of a global framework for conflict-related sexual violence could be attributed to the fact that the major international human rights documents do not contain references to sexual violence. However, the prohibition of this type of violence follows from the content of several international documents – the dearth of explicit allusions to this form of aggression in major international human rights texts. Nonetheless, various international documents proscribe such violence by implication. Thus, the international architecture for the prevention of conflict-related sexual violence consists of the Convention on the Treatment of Prisoners of War (Article 14, 1949), the Convention on the Protection of the Civilian Population in Time of War (Article 27, 1949), Additional Protocol No. 1 to the Geneva Conventions (Articles 75-77, 1949), the Convention for the Protection of War Victims (Article 3, 1949), the Beijing Declaration and the Platform for Actions to It (1995), UN declarations, conventions, resolution, recommendation No. 30 of the Committee on the Elimination of All Forms of Discrimination regarding the position of women in conflict prevention, conflict and post-conflict situations, the Rome Statute of the International Criminal Court, decisions of international tribunals, etc.

Characteristics of the global legal framework aimed at preventing conflict-related Sexual violence

In 1998, the Rome Statute of the ICC was adopted, which recognises as war crimes rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilisation, and any other form of sexual violence that constitutes a gross violation of the Geneva Conventions provisions regarding the protection of war victims from 1949 or is a serious violation of Art. 3, common to the Geneva Convention (International Criminal Court, 2021).

This list is not exhaustive. In particular, it does not define the minimum threshold of severity of an act that should qualify as "sexual violence". Other additional types of sexual violence can be found in the rulings of international tribunals (Gökalp Kutlu, 2014, p. 14).

According to the International Criminal Court (2021), conflict-related sexual violence is a war crime, in particular, a crime against humanity, and can be considered an element of genocide. If occasional, isolated incidents of conflict-related sexual violence are committed, then a war crime is committed (item xxii, item b, part 2, article 8 of the Statute of the International Criminal Court); if cases of sexual violence acquire signs of systematicity and scale, then the correct legal assessment of such actions will rather be crimes against humanity (paragraph g, part 1, article 7 of the ICC Statute); if sexual violence is committed to destroy, in whole or in part, any national, ethnic, racial or religious group as such, then genocide is committed (clauses b, d, part 1, article 6 of the ICC Statute).

The prevalent notion is that women are the primary targets of sexual violence in times of armed conflict. Women are indeed outnumbered. However, it must be noted that men also fall victim to such heinous acts perpetrated by warring parties. The Trial Chamber of the ICC has elucidated that for an act of sexual violence against a man to be deemed a war crime, it is imperative to establish its sexual nature and intent. Specifically, these attacks should not merely target male genitals but rather aim at destroying their masculinity and attacking their personality (paragraph 264).

The decisions ruled by international tribunals hold significant weight in comprehending the complex nature of sexual violence and its diverse forms amid times of armed conflict. For instance, the International Criminal Tribunal for the former Yugoslavia for first time convicted three members of the Bosnian Serb militia that operated during the 1992-1995 conflict in Bosnia (Prosecutor v. Kunarac, Kovač, and Vuković) for rape as a crime against humanity (in addition to convictions for deprivation of freedom and torture as crimes against humanity and numerous war crimes).

The International Criminal Tribunal for Rwanda, in the case of "The Prosecutor of the Port of Akayesu" was the first to convict the perpetrator of rape as an act of genocide. The defendant is the leader of the local government, ordered, incited, helped, and himself committed the rape of Tutsi women. The Judgment of the Trial Chamber stated that "...rape and sexual violence constitute genocide in the same way as any other act if they were committed with the specific intent to destroy, in whole or in part, a particular group..." (United Nations, 2008).

Resolution No. 2467 (2019), approved by the UN Security Council in April 2019, was an important step in combating conflict-related sexual violence (United Nations, 2019). In paragraph 30, the UN Security Council calls on parties to criminalise sexual violence in conflict and post-conflict situations and not to extend amnesty provisions to said crimes. The document states that conflict-related sexual violence occurs amidst a multitude of intertwined and recurring manifestations of violence targeting women.

Sexual violence resulting from conflicts is not accidentally distinguished from general criminal violence and constitutes a distinctive class of offences. It is committed in the setting of an armed conflict that cannot be disregarded.

The current state of the problem and its relevance to the war in Ukraine

To date, the legal basis and the only international treaty ratified by the Verkhovna Rada of Ukraine, which directly prohibits sexual violence during an armed conflict, is the Convention on the Protection of the Civilian Population in Time of War (Verkhovna Rada of Ukraine, 2023b). An explicit norm stating that civilians in the occupied territory have the right under all circumstances to personal respect, respect for their dignity, the right to a family, and respect for their religious beliefs and rites, habits, and customs are contained in the said document. They require compassionate care and safeguarding from any form of aggression or coercion, including derogatory remarks and inquisitiveness from the public. It is unequivocally unacceptable to violate the dignity of women, specifically by perpetrating sexual assault, coercing them into prostitution, or engaging in any other form of encroachment on their morality towards them (Article 27). The use of physical or moral coercion is not allowed (Article 31). Not only civilians but also military personnel are protected under international conventions against perpetrating sexual violence (ICC Case Law Database, 2017).

However, statistical observations conducted since the beginning of the military invasion of the Russian Federation on the territory of Ukraine testify to the occupiers' disregard for the norms of international law in the field of human rights. Since the beginning of the full-scale military aggression, only 208 cases of sexual violence in the conflict have been officially recorded, among which: women – 140, and men – 68, among which 12 girls and 1 boy are minors (Yasnopolska, 2023). Unofficial data suggests that the number of sexual violence violations in conflict situations is considerably higher. Figure 2 below displays the distribution of officially reported cases of sexual violence during such conditions across Ukraine.

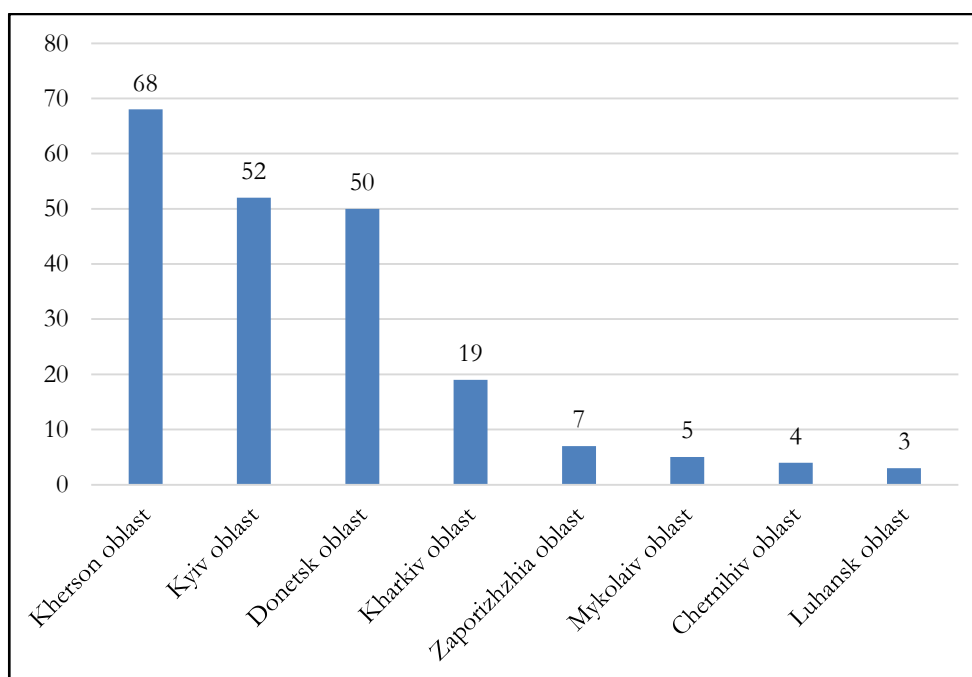


Figure 2. Distribution of officially registered cases of sexual violence in conflict by regions of Ukraine

Source: Yasnopolska (2023).

The preamble to the RS affirms that states hold the obligation to prosecute the aforementioned crimes, specifically war crimes, irrespective of their involvement in the aforementioned Rome Statute (Kirsch, 2003, p. 13), which is specifically relevant for Ukraine. Consequently, the legal significance of the "spectrum" of war crimes (Article 8) extends beyond the ICC and participating states of the Rome Statute, encompassing a range of addressees. The mentioned article is a guideline for any state in the world regarding what types of behaviour are recognised as war crimes under international (customary) law, including for Ukraine because the RS has not been ratified by the Verkhovna Rada of Ukraine (Zadoya & Dudorov, 2023). In 2014 and 2015, Ukraine used the ICC jurisdiction mechanism, thereby authorising the ICC to investigate and prosecute the crimes of genocide, crimes against humanity, as well as war crimes committed on the territory of Ukraine.

Discussion

Similar to the current article, Rufanova et al. (2022) conclude that sexual violence related to conflict is an unavoidable concomitant of any such situation and persists despite the presence of a robust legal framework aimed at preventing

it. Unlike the author's article, the researchers also acknowledge the prevalence of sexual violence directed towards women and girls who have been compelled to flee their permanent residence due to conflict, which implies that such violence may not necessarily occur solely by the parties to the conflict.

Several studies suggest that the issue of sexual violence persists even after the conflict cessation. For instance, Medie (2019) observes that laws enacted to prohibit sexual violence against women in African nations following wars during the 1990s, under external pressure from various international organisations, including the UN, have proven insufficiently effective until today. Hence, measures aimed at preventing sexual violence in post-conflict contexts should be incorporated into mechanisms designed to address it during armed conflicts. It is worth noting that the said aspect was not considered in the abovementioned article.

Gray et al. (2020) center their attention on discerning the nuances between the terms "torture" and "sexual violence" within a legal framework concerning conflict. Furthermore, the researchers scrutinise how experiencing such acts of violence affects survivors' lives thereafter. Thus, the above study focuses on examining the conceptual apparatus surrounding the said issue, investigating existing inconsistencies, and exploring potential ramifications for global security systems as a whole, whereas the current article primarily aims to characterise relevant preventive measures against sexual violence in conflict.

While the current study focuses on countering sexual violence in conflict without delving into the motives, there are numerous studies devoted to researching the underlying causes of this type of violence. Understanding the root causes is crucial in effectively addressing and preventing sexual violence in conflict situations. Nordås and Cohen (2021) note that for a long time, sexual violence was considered a predictable consequence of war or a strategic maneuver by an enemy. However, scholars recognise that the causes of sexual violence in conflict situations are diverse and differ from one country to another. We maintain that the reasons for which sexual violence was committed in the context of the conflict cannot affect the responsibility for it. By examining the unique cultural, social, economic, and political factors at play in each conflict zone, researchers can gain a more nuanced understanding of the underlying causes of sexual violence in certain regions. This knowledge can inform policies and programs aimed at preventing and responding to sexual violence in conflict zones.

According to Kreft (2020), sexual violence during conflict is not solely a "weapon of war" but also stems from social gender inequality. While concurring with the scholar's findings regarding the conclusions reached and firmly believing that women and girls necessitate heightened protection during wartime, it is

crucial to acknowledge that sexual violence in conflict encompasses more than just solely gender-related concerns. In particular, the work of Schulz (2020) proves that sexual violence in conflict conditions also occurs against men, which was also highlighted in the author's article. Traunmüller et al. (2019) have drawn attention to the problem of male silence after incidents of sexual violence, despite the potential usefulness of their evidence for shaping policies against such crimes. Therefore, any mechanism designed to prevent sexual violence must be comprehensive and protect people of all genders and ages, both civilian and military personnel.

Revkin and Wood (2021) hypothesise the possible existence of a policy in the Islamic State that assumes an ideology that justifies and legitimises some forms of sexual violence against certain social groups and prohibits others. From this, it can be assumed that sexual violence may be part of the policy of individual states that silence or even encourage such violent acts, resulting in a sense of impunity for criminals. Solving the problem must involve the coordination of other states and international organisations to bring to justice not only individuals but also state governments that silence or encourage the commission of sexual violence.

Whitaker et al. (2019) maintain that sexual violence during conflicts is not an inevitability. Researchers have discovered that the financing of insurgent organisations can impact both the incentives and the ability to deter such acts of violence. Additionally, cooperation with local populations has been shown to reduce instances of sexual violence against them. In contrast, the current study delves into global conflicts where the prevention of sexual violence necessitates a complex legal framework implemented by leading nations and international organisations.

Comparable to our research, Kaur (2021) acknowledges the establishment of a mechanism to combat sexual violence during times of war at an international level through the prohibition of such acts in conflict situations by international criminal law, humanitarian law, and human rights law. Nonetheless, although this mechanism holds significant formal power, its implementation in practice is not without gaps. The researcher primarily focused on unveiling the formal aspect of this issue; however, future research should concentrate on identifying more practical solutions to address this problem.

Conclusions

Recent global events, characterised by a considerable upsurge in international aggression, confrontation, and disregard for the principles of the rule of law, have led to the recognition that sexual violence associated with armed

conflicts can no longer be deemed an inevitable outcome of the war. Such atrocious acts are frequently employed as warfare tactics and strategies, often used to inflict torture, humiliation, and abuse upon victims. This highlights the urgent need for legislative regulation aimed at preventing these violations against human rights and the laws governing warfare. Recognising the complexity inherent in armed conflicts, we firmly believe that a mutually agreed-upon legislative framework can serve as a guarantee for preventive influence over all parties involved in such conflicts when working collaboratively with both national and international institutions. The said framework will fulfill its primary purpose: establishing the rule of law while ensuring adherence to state obligations regarding human rights issues.

The article showcases the existence of a robust legislative mechanism at the international level aimed at curbing sexual violence related to armed conflict. This is achieved through a comprehensive prohibition framework established by various components of international law, including criminal law, humanitarian law, and human rights laws. All these instruments of international law should complement each other, creating an integrated matrix that effectively mitigates threats to human dignity, collective peace and security.

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