

Editorial: Introduction

Anne-Marie de Brouwer

Eefje de Volder

Chiun Min Seah*

Impact: Center against Human Trafficking and Sexual Violence in Conflict

In its 2018 report on conflict-related sexual violence (S/2018/250, 23 March 2018) the UN Secretary-General stressed the urgency of addressing the nexus between trafficking in persons for sexual exploitation and conflict-related sexual violence, further to UN Security Council Resolutions 2331 (2016) and 2388 (2017). The articles in this Special Issue – partly in support of the UN Secretary-General’s call – investigate academic and practical perspectives in varied threads of the nexus between both crimes in times of conflict. This Special Issue illustrates the manifold predicaments which exist in looking at conflict-related sexual violence and human trafficking for the purpose of sexual exploitation in concert, despite the progress that has been made in recent decades towards a climate of international criminal justice for both crimes separately. The articles of this Journal’s Special Issue are grouped to categorically confront the nexus between both crimes accordingly, namely based on (legal) definitions of the crimes (Section 1); prevention (section two); legal redress (Section 4); and case studies (Section 4). In light of the importance and urgency of the matter, together with the Journal’s main editor, Nicole Siller, we decided that the production of this Special Issue should be quick. Abstract submissions came by 1 June 2018 and it took ‘only’ half a year until this Special Issue was published in January 2019. This collection includes contributions from academics and practitioners from different fields of expertise and backgrounds, with the idea to bridge both worlds and to come to a better understanding of the issues involved.

In the first section on definitions, *Ghafoerkhan, Scholte, De Volder and De Brouwer’s* article examines the nexus between conflict-related sexual violence and trafficking for sexual exploitation in situations of conflict from a psychological and legal perspective. In general, but in particular during conflict, being victimized by sexual violence once, can put individuals at risk for similar or other forms of sexual re-victimization. For a victim who endured sexual violence, context hardly matters for its psychological impact. Therefore, the authors argue that from a psychological viewpoint there is no justification for a clear-cut distinction between CRSV and THB for purposes of sexual exploitation. Yet, from a legal perspective, this differentiation does matter: the legal definitions form the basis for the prosecution of perpetrators on the one hand and for access to

* DOI 10.7590/245227719X15476235096490 2452-2775 2019 Journal of Trafficking and Human Exploitation

particular rights for victims on the other. With this line of argumentation, the authors offer a first exploration into the nexus between both crimes, focussing on the psychological impact on the lives of victims/survivors, the legal definition of the criminalities, and subsequent access to rights for victims and survivors.

Following this, *Mahmood* investigates the legal definition of human trafficking as a crime stipulated in Article 7(2) of the Rome Statute (enslavement as a crime against humanity) of the International Criminal Court (ICC) by reviewing the international definition as per the United Nations Trafficking Protocol, the Rome Statute's drafters' intentions regarding the crime against humanity of enslavement, and the interpretation expounded in the case of *Kunarac et al.*¹ The author argues that, despite this entrenched role of human trafficking within conflicts, the prospect of its prosecution before the ICC must be questioned in light of its definitional ambiguity, room for interpretation and overlap with the crimes of enslavement and sexual slavery as defined in the Rome Statute. The author states that while the crimes of enslavement and human trafficking significantly overlap, they do not fully coincide. While this may lead to the temptation to include human trafficking for the purpose of sexual exploitation as a distinct crime within Article 7 of the Rome Statute, she states that splintering the crime of enslavement even further will lead to legal uncertainty and belies the complexities of the crime of human trafficking. In this respect, *Mahmood* argues, that the ICC should also forgo the crime of sexual slavery as a distinct crime from enslavement, leaving the latter as the umbrella provision under which both sexual and non-sexual acts of ownership are prosecuted.

Adamczewska in the Prevention section of the Journal (section two) expounds that the Women, Peace, and Security Resolutions (WPS Resolutions) of the United Nations Security Council are a vital part of the international framework to prevent conflict-related sexual violence and human trafficking. Yet, the Resolutions' potential is not fully realised as they are insufficiently implemented by Member States. The author explains that the lack of implementation of the Resolutions is caused by debatable uncertainties about their legal status, their scope of applicability, and the implementation mechanisms. But, so she argues, a human rights-based approach could resolve these ambiguities and protect the Resolutions' potential to strengthen conflict-related sexual violence and human trafficking preventions. Furthermore, the author holds the view that States' obligations incorporated within the WPS Resolutions overlap with obligations stemming from international human rights treaties and consequently mean that the core of the Resolutions are binding and applicable during peacetime.

¹ International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković* (IT-96-23 & 23/1).

Adamczewska maintains the proposition that WPS Resolutions' implementation can and should be enhanced through UN Human Rights System mechanisms and by increased involvement of civil society organisations.

Major General (retired) *Cammaert*, was interviewed by *De Volder* and *De Brouwer* for this Special Issue to discuss the prevention of conflict-related sexual violence and human trafficking for sexual exploitation in conflict. Peacekeepers in multifaceted peacekeeping missions square up to atrocities every day during conflict and post conflict situations. These brutalities include sexual violence in armed conflicts and human trafficking cases. As someone with a decorated career in the military, *Cammaert* discusses how peacekeepers attend to these crimes and what they could do to prevent these crimes whilst being on the ground. The unique standpoint is substantiated by *Cammaert's* extensive and first-hand military experience with how he perceives both crimes and how peacekeeping missions can most aptly prevent both crimes; by being proactive, collecting intelligence for early warning and acting upon it, and by ensuring a better gender balance within peacekeeping personnel.

Section 3 examines legal responses to sexual violence during conflict and human trafficking for sexual exploitation in situations of conflict. *Pulvirenti* and *Abrusci* scrutinise national legal frameworks and contents of relevant norms of the 13 countries mentioned by the UN Secretary General in its 2018 report on CRSV, for the investigation and prosecution of conflict-related sexual violence and sex trafficking at the national level whilst taking into account four different variables. The variables include whether the country has ratified or accessed the Palermo Protocol; whether human trafficking is criminalised; and whether sexual violence is criminalised during peace and war-time. The comparison of these variables for all 13 countries interestingly illustrates that none of them satisfactorily addresses these phenomena. It shows the limits of domestic legislation in understanding the nexus between the two crimes and effectively criminalising them. The challenges in enforcing and applying these laws lead to the suggestion that both crimes are better addressed internationally, specifically at the ICC, even if this does not come without its own set of obstacles. The authors propose a few suggestions to bridge the interpretive gap between sexual violence in conflict and sexual trafficking crimes and conclude that sexual violence-related crimes and human trafficking for sexual exploitation are strictly related in the context of armed conflicts as both stem from the same root of criminality and supplement each other. Due to the issues of impunity and lack of resources for effective national enforcement of legal frameworks, the article surmises that, apart from prosecution, a joint effort by both states and the ICC is required to successfully address these crimes.

Comrie clearly draws the growing awareness of the intersections between trafficking in persons for the purpose of sexual exploitation and sexual violence in times of conflict by considering the requirements for each crime under transnational and international criminal law legal frameworks, and analysing the common evidential challenges in the investigation of prosecution of both

crimes based on conflict and post-conflict backgrounds. The author concludes that both legal structures must be treated as complementary and mutually reinforcing. Due to the many shared evidential challenges, the author puts forth that there is the potential for increased cooperation between Member States for investigating and prosecuting transnational organised crime and international justice mechanisms. The article draws several important lessons learnt at the International Criminal Court in the management of intermediaries by the prosecution and investigative teams in early cases. The author deduces that the key strategy in promoting complementarity and ending the impunity gap for sexual violence in conflict internationally that also improves international cooperation on mutually relevant cases is through effective investigation and prosecution of transnational organised crime.

Viseur Sellers, a distinguished international criminal lawyer and Special Advisor on Gender to the Prosecutor of the International Criminal Court, shares her views with *De Brouwer and De Volder* on the nexus between conflict-related sexual violence and human trafficking for sexual exploitation. *Sellers* considers the similarities and differences between both crimes and demonstrates instances where persons are both victims and/or survivors of conflict-related sexual violence and human trafficking for sexual exploitation in conflict. Through her vast experience, *Sellers* elucidates how national and international legal mechanisms tackle prosecuting trafficking in persons and sexual violence in conflict, and details the challenges during investigation and prosecution of nexus between the two crimes, the importance of prosecuting perpetrators under which definition for the victims and survivors, and the distinction between transnational and international crimes in the context of trafficking. *Sellers* also propounds that it is vital to understand victims and survivors' perspectives in determining which support measures were positive, negative, and most valuable so as to address the legal protection gap whereby victims and survivors of human trafficking have more access to support on the basis of legal status as opposed to those of conflict-related sexual violence. The interview ends on an optimistic note towards prosecuting perpetrators and protecting victims of human trafficking and sexual violence in conflict in conjunction nationally, transnationally, and internationally.

In the final section of this Special Issue – section 4 – the nexus between conflict-related sexual violence and human trafficking for sexual exploitation is discussed on the basis of specific case studies. *Hee-soon* explores the phenomenon of up to 200,000 undocumented North Korean refugee women and girls hiding across mainland China who are highly exposed to being trafficked into China's sexual trade. This occurrence is incidentally encouraged by the Chinese government seeking these refugees' arrest and in case of repatriation, torture, interrogation, imprisonment, and even execution may ensue. The author recounts North Korean women and girls in China living in exile and documents their entry into prostitution, online pornography, and forced marriage by way of conditions and tactics used to identify victims and lure them into the industry.

It is a highly lucrative illicit industry that is dominated and defined by transnational networks and layers of organisations involving brokers, human traffickers, criminal organisations, public officials, and men who pay to rape and sexually assault women and girls. The author shows that the sobering realities and aftermath of being trapped within the industry means that these victims never escape the drug addictions, sexually transmitted diseases, physical violence, and long-term ramifications of sexual violence.

Akhtar, on the other hand, investigates how the protected armed conflict in Afghanistan has amplified the vulnerability of adolescent boys to become victims of sexual violence, known as Bacha Bazi. Bacha Bazi as an Afghan custom is where young men and boys are subjected to being forced to dress as girls and women, dance seductively for an audience of wealthy, powerful, older men, and also sexually exploited. This case study focuses on the evolution of Bacha Bazi into a systematic war tactic used by both parties to the conflict such as underaged boys being trained to be undercover spies, suicide bombers to launch insider attacks on Afghan military bases and police checkpoints under the guise of Bachas. The article provides an overview of Afghanistan's international legal obligations towards children's protection to identify the minimum standards to be adhered by Afghanistan as well as the history of this tradition alongside a scrutiny of the nexus between conflict-related sexual violence and sexual trafficking in the form of Bacha Bazi. Whilst identifying the main factors of the Bacha Bazi and numerous impediments that victims face in striving for justice and rehabilitation, the author considers the cultural context of deep-seated Afghan traditions, oppression of women, and hypermasculinity and critically examines the United States led international military intervention's role in the rise of Bacha Bazi.

What the above contributions show is that when there is lack of cultural/social recognition of these crimes and when there are many limitations in the prosecution of rape and sexual violence in national and international criminal tribunals, significant normative progress attained to prosecute these sexual crimes as war crimes, crimes against humanity, and genocide cannot continue to develop and improve for the benefits of suffering victims in particular. As the UN Secretary-General stated in its 2018 report on conflict-related sexual violence, such acts of brutality must never be allowed to 'become entrenched in post-conflict societies, because countless women, girls, men, and boys still live under the shadow of sexual violence.'² Extended warfare induce desperations whereby victims become vulnerable of entangling themselves in sexual exploitation for survival and perpetrators in turn prey on them in the disguise of providing better futures. The economic maxim of supply and demand denote

² United Nations Security Council, *Report of the Secretary-General on Conflict-Related Sexual Violence* (S/2018/250), 23 March 2018, para 9.

that victims are exploited from the onset of sexual trafficking as they are beguiled by fallacious job opportunities and desires to acquire brighter prospects only to be buried in torments of sexual slavery and forced prostitution. The complex and harrowing ramifications of sexual violence could cause a negative chain reaction to the victims' experience of their self-worth, dignity, sense of identity and safety. In the absence of accountability, conflict-related sexual violence and human trafficking in the form of sexual exploitation will continue to prosper. Prevention of these crimes is therefore key. This Special Issue Journal represents a solid progression towards making a positive impact on the international criminal justice system and the victims of these horrendous atrocities.