

# INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

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## ACCOUNTABILITY FOR CONFLICT-RELATED SEXUAL AND GENDER-BASED VIOLENCE AS INTERNATIONAL CRIME: RESEARCH METHODOLOGY

The goal of the paper is to create a general idea of methods that can be used in the field of accountability for Sexual and Gender-based violence during the armed conflicts in the sphere of international law. Accountability for conflict-related Sexual and Gender-based violence (SGBV) is a multifaceted issue, work on which can be started from different points. It is necessary to research this question in both aspects: theoretical and practical. That is why plenty of methods must be used during the research. In this paper, all methods are analyzed through the research questions. The researcher found out that the combined method is the most useful for research Accountability for conflict-related SGBV as an international crime. Such combined method includes best practices of both quantitative and qualitative techniques. The detailed assessment of methods is given in this paper.

**Keywords:** international accountability, armed conflict, SGBV, research methods.

The choice of the research methodology is one of the most important steps in the research design. It directly influences on the quality of research, its process and conclusions. Research methodology in the international law is a separate comprehensive issue. According to Mike McConville and Wing Hong Chui “once it is understood that the sources of international law are significantly different in character from the sources of law in most domestic systems and that there is no very clear hierarchy among the various sources of international law, it becomes apparent why there are frequently such divergent views among scientists working in even well trodden territory”<sup>1</sup>. The issue becomes more complex if the research topic is unplumbed. The Accountability for conflict-related SGBV is one of them. In the framework of research methodology, first of all, it is necessary to highlight the differences between methods of research, their advantages and disadvantages, and when it is appropriate to use them. Secondly, it is important to understand what methods are appropriate for formulated research questions and hypothesis. And last but not least, whichever methods are selected, researcher must be able to prove this choice and explain how methods are related to the literature review. Therefore in this paper methods are analyzed in terms of the following research questions:

Definition of conflict-related SGBV in the international law;

Conflict-related SGBV as international crime in different branches of the international law;

Conflict-related SGBV as part of the International Criminal Court’s and tribunals’ cases;

Establishment of the international accountability for conflict-related SGBV;

Challenges of conflict-related SGBV cases in the International Criminal Court’s and tribunals’ practice;

International accountability for SGBV, committed during the armed conflict in Ukraine.

Research methodology largely falls into two different categories: qualitative and quantitative approaches. Each approach in turn has various research methods (the “tools”) to collect information or data<sup>2</sup>. In brief; qualitative “tools” should be used if researcher is interested in identifying and discussing themes, quantitative – if researcher is interested in explicit data.

<sup>1</sup> McConville, M., Chui, W. (2007). *Research Methods for Law*. Edinburgh, UK: Edinburgh University Press.

<sup>2</sup> Simion, K. (2016). *Practitioner’s Guide: Qualitative and Quantitative Approaches to Rule of Law Research*. Washington, DC: International Network to Promote the Rule of Law [INPROL], 16-17.

Therefore using qualitative “tools” researcher deals with peoples’ experiences, perceptions and inner worlds on the way to research and understand “the meaning individuals or groups ascribe to a social or human problem”<sup>1</sup>. Using qualitative approach foresee research fieldwork. Its main goal is to find and note down information about research participant’s life and cultural behavior.

Using quantitative “tools” researcher deals with statistical means. It is important to realize, that quantitative approach works not only with things that are already in numerical (figures) form (age, amount of victims, cases, years of punishment etc.), but also with things that the researcher transforms into numerical (figures) form. So, main point of the quantitative aspect is variables. Variables are the issues, which characteristic will be changed during the research or which researcher wants to measure or note down (gender, age of victims or witnesses). In general it is something that can change and that can be measured, controlled or investigated.

So the first (qualitative) approach is about interpretivist by using words and the second (quantitative) approach is about positivist by using numbers (figures).

#### *Accountability for conflict-related SGBV: qualitative approach*

Qualitative research methods usually help researcher to understand individuals and society, where they live. They are used when researcher is interested in people and their so-called life-words. In the case of life-words researcher focuses on naturally emerging languages and the meanings individuals assign to experience<sup>2</sup>. Life-words are about perception, emotions, motivations, symbols etc. For sure, this research approach is not statistical, but it helps to analyze specific situation, types and reasons.

Qualitative methods are important tools in the international law research. They give a unique opportunity to understand the circumstances of the society that is under research. Thus, researcher is able to take into account all aspects of the issue and to identify all kinds of influences on it. Comprehension of tendency using qualitative methods, researcher is able to comprehend “from concrete to general” is one more advantage of the qualitative methods.

Taking into consideration a small amount of conclusive decisions, this advantage is critically necessary in the field of international law.

In the framework of research “Accountability for conflict-related SGBV as international crime” some of qualitative methods are used. The most effective are case study and qualitative interviewing.

#### *Case study research*

Case study is a classical tool of individual studies that is often used in social sciences and international law as well. It is effective in research of single problem/case/ issue in its natural circumstances. In the international law case study helps to collect detailed information about a particular participant, a small group or organization<sup>3</sup>, understanding of which is necessary in multinational community and international issues. There are plenty of questions in the international law that can be researched by usage of the case study: jurisdiction in different cases, special needs of different nationalities and countries in the system of international law etc.

Within the confines of research, researcher uses this method during the work on lawsuits of international courts and tribunals, including the International Criminal Court, International Criminal Tribunal for the former Yugoslavia, International Criminal Tribunal for Rwanda and Special Court for Sierra Leone. The object of the case study is legal suits of conflict-related SGBV as international crimes.

The main benefit expected from the case study as tool for researching Accountability for conflict-related SGBV is generalizability. Case study offers the information in the framework of separate research question that can be useful beyond the individual case. For example, in research question “Definition of conflict-related SGBV in the international law”, case study let couch the definition of SGBV and especially conflict-related SGBV, its criteria and elements. This outcome is useful not only for the theory, but also for the international law practice.

<sup>1</sup> Creswell, J.W. (2014). *Research design: Qualitative, quantitative, and mixed method approaches*. USA: Library of Congress, 236-237.

<sup>2</sup> Berg, B.L. (2012). *Qualitative Research Methods for the Social Sciences*. Boston, MA: Allyn and Bacon, 101-157.

<sup>3</sup> Becker, B., Dawson, P., Devine, K., Traver, K. *Case Studies*. Colorado State University.

<<http://writing.colostate.edu/guides/page.cfm?pageid=1285&guideid=60>> (2019, May, 19).

Moreover, it is important to research practical procedures of the International Criminal Court and tribunals (according to their mandates) and legal suits as one of their most essential products. Case study of lawsuits shows international judicature tendencies in holding perpetrators accountable for conflict-related SGBV. In this way, it is possible to mark specifications and criteria for conflict-related SGBV as international crime in different branches of the international law: International criminal law (ICL), International humanitarian law (IHL), International human rights law (IHRL). Thus, the researcher is able to define a model that can be applied to the whole subject.

Depending on the purpose and design there are different types of case studies. In the framework of Accountability for conflict-related SGBV instrumental and explanatory case studies are used.

According to Robert Stake instrumental case studies provide insights into an issue or refine a theoretical explanation<sup>1</sup>. Using this type of the case study researcher expects to generalize outcomes of certain lawsuits and test them through the International Criminal Court's and international tribunals' practice. One of the results of this research is to form theoretical criteria useful and applicable for further practice. Explanatory case study is described by Yin as "complex study of organization or community that desire to employ multivariate case to examine a plurality of influences"<sup>2</sup>. It is necessary as a tool for dealing with research questions, marked in the scope of this topic. With the help of explanatory case study researcher analyzes components of SGBV as an issue in different armed conflicts on which international tribunals and international ad hoc courts distribute their mandates. The main expected outcome is to mould complex theoretical issue about what aspects of conflict-related SGBV must be covered for consideration it as international crime according to ICL, IHL and IHRL and holding perpetrators to accountability afterwards. Besides of this explanatory case study is also used for research question "Challenges of conflict-related SGBV cases in the International Criminal Court's and tribunals' practice". The researcher analyzes different judicial cases (both that are ended and in the process), all documents in their frontiers in the view of problem aspects of applying, investigation and awarding judgment for conflict-related SGBV. In this issue researcher also pays attention on cases that were ended on the phase of preliminary examinations or investigations. The head goal is to decompose as much cases with the elements of conflict-related SGBV as possible, to recognize reasons of refusals, to assort them and to find a way of overruling.

#### *Qualitative interviewing*

There are three types of interview depending on its corpus: standardized (structured), semi-standardized (semi-structured) and unstandardized (unstructured)<sup>3</sup>.

Edwards Rosaline notices that structured interview is at the quantitative end of the scale, but semi-structured and unstructured interviews are used by qualitative researchers<sup>4</sup>. Thus, qualitative interviews are semi-structured or/and unstructured interviews that are used for data collection and analyze.

The researcher is on the opinion the main advantage of qualitative interviewing is its flexibility. This flexibility lies in what questions are included in the interview and their priority. This issue is very necessary for the current topic, because it is important not to binder interviewee experts, but to adhere to the main line and purpose of the interview. Qualitative interviewing is also preferred because of the opportunity for more original, detailed and personal answers that give wider information and as a result deeper analysis. It is also one of the ways to discover additional issues that researcher hadn't considered previously.

Scientists set apart various forms of qualitative interviews: ethnographic, oral history, life course, life history, biographical and narrative interviews.

In the framework of Accountability for conflict-related SGBV as international crime qualitative interviewing is a very effective tool in demarking practice problems that appears during the experts activities. For such pool of experts researcher refers people that work on non-government and international organizations (institutions) and deal with the conflict-related SGBV. Moreover researcher selects experts, who work on government of countries, where conflict-related SGBV exists (existed). Result of using this method is conceivable to recognize theoretical gaps, which are more visible in practice. Thus, this method is applicable for all research questions, pointed by in this topic.

<sup>1</sup> Stake, R. (1995). *The Art of Case Study Research*. Thousand Oaks, CA: Sage Publication, 134-142.

<sup>2</sup> Yin, R.K. (2009). *Case study research: Design and Methods*. Beverly Hills, CA: Sage Publication, 84-89.

<sup>3</sup> Berg, B. L. (2012). *Qualitative Research Methods for the Social Sciences*. Boston, MA: Allyn and Bacon, 77-81.

<sup>4</sup> Edwards, R., Holland, J. (2013). *What is qualitative interviewing?* British Library Cataloguing-in-Publication Data, 6-8.

*Historical analysis*

Barzun and Graff (2004) in their research notice historical analysis is as qualitative method useful for establishing a baseline or background for whole research. While historical analysis is particularly useful in obtaining knowledge of unexamined areas and in reexamining questions for which answers are not as definite as desired<sup>1</sup>.

The main purpose of this method is to gain an understanding of different historical stages of the one phenomenon. In the case of this paper such phenomenon is Accountability for conflict-related SGBV as international crime. In spite of the fact that the topic is comparatively new, it is important to pay attention on the process of its establishment in the framework of several research questions. Firstly, this method is used in the determining Definition of SGBV in the historical aspect. For example, conflict-related SGBV at the beginning was recognized to protect woman, who suffered more during the armed conflicts and oftener were recognized as victims. In course of time the understanding of the category that can be victims was widened. This influenced not only over the definition, but over the system in general.

Secondly, recognizing Conflict-related SGBV as international crime and stipulated it in the different branches of the international law intervened during a long period of time. Therefore in different periods it established as part of the International Criminal Court's and international tribunals' mandates and their cases agreeably.

Thirdly, research in Establishment of the international accountability for conflict-related SGBV provides researcher with the consistent pattern of its creation, development and operation. This issue is necessary for marking advantages and disadvantages of such system on every phase of its history and recognizing gaps in its current operating.

The historical analysis method enables to understand contemporary problems and to find their solution.

*Accountability for conflict-related SGBV: quantitative approach*

Quantitative research methods usually deal with statistic data for measuring different aspects of research problems (questions). They give an opportunity to observe scale of researched question, to illustrate it with numbers for better understanding and proving its applicability as a result. Quantitative outcomes usually make research more demonstrative and valid. Therefore several disadvantages can be named. In some cases quantitative research neglects important information that depends on personality, human feelings and attitude. In others – data can be wrong calculated and in this way manipulated. In the sphere of the international law quantitative research is also used. It is always important to highlight real numbers in the issues under the international law and in this way to pay international community's attention on this problem issue. Sometimes for international law the scale of problem has determinative meaning. For example, some offences must have wide-spread character to be recognized as international crime. The quantitative approach is applicable in researching Accountability for conflict-related SGBV as well.

In the framework of this theme researcher uses descriptive quantitative method in researching International accountability for crimes, committed during the armed conflict in Ukraine. The main aim is to get statistic data about SGBV crimes, perpetrated in the conflict-affected area in Ukraine that potentially could be recognized as international crimes. In this regard, researcher involves two types of participants. The first one are Ukrainian state bodies authorized to collect, investigate and report cases of conflict-related SGBV as well as recommit these cases to the International Criminal Court. The second one are nongovernment organizations (national and international) that provide assessment in the field of human right, including conflict-related SGBV, count victims and record their testimonies. In this way researcher supposes to get a descriptive account of variables (number of SGBV as potential international crimes). All participants are measured once. Presentation of data involves the use of descriptive statistics in the form of graphs and charts<sup>2</sup>.

Questionnaire as one of data collection "tool" is used in quantitative research. Questionnaire includes written questions on research questions. It is the same for information or clarification. Researcher gets statistic data, necessary for research in general and for answering separate research questions.

<sup>1</sup> Barzun, J., Graff, H.F. (2004). *The modern researcher*. Belmont, CA: Thomson/Wadsworth, 94-98.

<sup>2</sup> Spector, G.M., Merrill, M.D., Bishop, M.J. (2014). *Handbook of Research for Educational Communications and Technology*. New York: Springer Science and Business Media, 141-150.

### Conclusion

In the framework of Accountability for conflict-related SGBV as international crime different research methodologies are described in the paper. It is noticed methodology is one of the key moments in the research and many issues depends on it. In whole all methodological approaches were categorized into quantitative and qualitative. Both of them are applicable to the research topic and useful to answer research questions. On the strengths of this researcher arrives at a conclusion that combined methodological approach must be used. This approach gives an opportunity to take all advantages of different research techniques and combine their outcomes in the research. It let to compare findings that are already done by other researchers with the help of similar techniques. If the question was researched by the qualitative approach only, the researcher may consider weakness or a gap and fill it by quantitative approach (and vice versa).

Combined methodological approach is not only combining two methodologies. During long period qualitative and quantitative approaches have been considered as standing in stark contrast. Using both of them researcher has more opportunities to find an effective way to answer research questions.

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