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FROM FEMALE MORALITY TO HUMAN DIGNITY: AN EVOLUTIVE INTERPRETATION OF ‘HONOUR’ UNDER ARTICLE 27(2) OF THE FOURTH GENEVA CONVENTION

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Abstract This article suggests a new interpretative framework for Article 27(2) of the Fourth Geneva Convention, which prohibits sexual violence against women in armed conflict. One specific aspect of this norm is particularly controversial: the notion of ‘honour’ has often been criticised as an obsolete concept linked to an outdated view of female morality. In the absence of a definition of the term, this article examines whether the gendered limitations of the norm can be overcome and the extent to which an evolutive interpretation of the concept is feasible. It argues that the concept of ‘honour’ can be treated as a generic term that is subject to evolutive interpretation, allowing for a renewed and gender-sensitive understanding to be developed, aligned with the concept of human dignity.

Keywords: public international law, international humanitarian law, evolutive interpretation, Fourth Geneva Convention, human dignity, conflict-related sexual violence against women, honour.

I. INTRODUCTION

This article proposes a new explanatory framework for the interpretation of Article 27(2) of the Fourth Geneva Convention,¹ based on the principle of dignity. According to this provision, ‘[w]omen shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault’. By prohibiting any form of sexual violence against women in armed conflict, the introduction of this norm in international humanitarian law (IHL) represents per se a real advance in the protection of women in war. It is the first provision to treat women in conflict situations as specially protected persons and to give legal relevance to the experience of women in conflict situations.

¹ Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (Fourth Geneva Convention).

At the same time, however, it is also a controversial norm: both its wording and its applicability are the subject of fierce contestation. ‘Honour’, the central concept of Article 27(2) of the Fourth Geneva Convention, is the source of most of these interpretive difficulties. A significant body of scholarship has criticised this norm for ‘us[ing] dated, sexist, and legally imprecise language’.² By evoking a traditional link between sex and morality, it is argued, the concept of honour embodies a gendered notion of sexual violence against women, focusing on family and social harm rather than women’s individual integrity.³

Progressive developments in conflict-related sexual violence against women, away from the traditional focus on modesty and chastity, have been seen in international criminal law⁴ and in the United Nations (UN) Security Council (UNSC).⁵ In IHL, however, a regime both older and more difficult to amend, this process has been more challenging. In the case of IHL, change may occur through States’ interpretation of the Geneva Conventions of 1949 and international case law, and the Commentaries of the International Committee of the Red Cross (ICRC) to the Geneva Conventions of 1949⁶ (ICRC Commentaries) may reflect these developments in practice. Indeed, the first updated ICRC Commentaries to the First, Second and Third Geneva Conventions⁷ have already moved towards ‘an important shift in

² P Viseur Sellers and I Rosenthal, ‘Rape and other Sexual Violence’ in A Clapham, P Gaeta and M Sassoli (eds), *1949 Geneva Conventions. A Commentary* (OUP 2015) 344.

³ See, among others, H Charlesworth and C Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press 2000) 314; R Copelon, ‘Surfacing Gender: Re-Engraving Crimes Against Women in Humanitarian Law’ (1994) 5 *Hastings Women’s LJ* 243, 249; J Gardam, ‘Women and the Law of Armed Conflict: Why the Silence?’ (1997) 46 *ICLQ* 55; J Gardam and M Jarvis, *Women, Armed Conflict and International Law* (Kluwer Law International 2001); CN Niarachos, ‘Women, War and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia’ (1995) 17 *HumRtsQ* 649, 671; J Gardam, ‘Women, Human Rights and International Humanitarian Law’ (1998) 38(324) *IRRC* 421; K Bennoune, ‘Do We Need New International Law to Protect Women in Armed Conflict?’ (2006–2007) 38 *CaseWResJIntL* 363.

⁴ See International Criminal Court (ICC), Rome Statute of the International Criminal Court (opened for signature on 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90 (Rome Statute). <<https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>>.

⁵ Under the UN Women, Peace and Security Agenda launched with UNSC Resolution 1325 (2000) (31 October 2000) UN Doc S/RES/1325 (2000), five resolutions have specifically addressed the issue of conflict-related sexual violence so far: UNSC Resolution 1820 (2008) (19 June 2008) UN Doc S/RES/1820 (2008); UNSC Resolution 1888 (2009) (30 September 2009) UN Doc S/RES/1888 (2009); UNSC Resolution 1960 (2010) (16 December 2010) UN Doc S/RES/1960 (2010); UNSC Resolution 2106 (2013) (24 June 2013) UN Doc S/RES/2106 (2013); UNSC Resolution 2467 (2019) (23 April 2019) UN Doc S/RES/2467 (2019).

⁶ See JS Pictet (ed), *Commentary on the Geneva Conventions of 12 August 1949*, vol 1: *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (ICRC 1952) (Commentary to the First Geneva Convention); JS Pictet (ed), *Commentary on the Geneva Conventions of 12 August 1949*, vol 2: *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea* (ICRC 1960) (Commentary to the Second Geneva Convention); JS Pictet (ed), *Commentary on the Geneva Conventions of 12 August 1949*, vol 3: *Geneva Convention relative to the Treatment of Prisoners of War* (ICRC 1960) (Commentary to the Third Geneva Convention); JS Pictet (ed), *Commentary on the Geneva Conventions of 12 August 1949*, vol 4: *Geneva Convention relative to the Protection of Civilian Persons in Time of War* (ICRC 1958) (Commentary to the Fourth Geneva Convention). See ICRC, Treaties, States Parties and Commentaries Database <www.icrc.org/ihl.nsf/CONVPRES?OpenView>.

⁷ See ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (CUP 2017); ICRC, *Commentary on the Second Geneva Convention: Convention (II) for the Amelioration of the*

underpinning gender assumptions'.⁸ However, no such updated Commentary exists for the Fourth Geneva Convention, where Article 27(2) is found.

Regardless of the potential contribution of an updated Commentary to the issues surrounding Article 27(2), this article suggests addressing the difficulties of the most controversial concept of honour by means of an evolutionary interpretation based on the principle of dignity. The aim is to show that, through interpretation, the term honour can be given a renewed and more gender-sensitive meaning.⁹ Ultimately, this approach may help to overcome the outdated focus on women's modesty and chastity that the concept of honour seems to evoke.

This article proceeds as follows. First, the concept of honour in Article 27(2) is examined (Section II). This analysis focuses in turn on the ordinary meaning of the term, on the context of the specific protection afforded under Article 27 of the Fourth Geneva Convention and on the meaning attached to the concept of honour in other IHL norms. Second, the article turns to the questions of whether the vagueness of the term allows for an evolutionary interpretation of its meaning and whether the principle of human dignity, as manifested in the IHL regime, can support this new interpretation (Section III). Section IV concludes with some general observations on two key consequences of the proposed approach.

II. INTERPRETING THE PROBLEMATIC CONCEPT OF HONOUR IN ARTICLE 27(2)

A. The Ordinary Meaning of Honour

According to the general rule of interpretation set forth in Article 31(1) of the Vienna Convention on the Law of Treaties (the Vienna Convention), a treaty must be interpreted 'in accordance with the *ordinary meaning* to be given to the terms of the treaty in their context and in the light of its object and purpose'.¹⁰ The ordinary meaning means the usual, common, customary meaning of the treaty's term,¹¹

Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (CUP 2017); ICRC, *Commentary on the Third Geneva Convention: Convention (III) relative to the Treatment of Prisoners of War* (CUP 2021) (2021 Commentary to the Third Geneva Convention) <<https://www.icrc.org/en/icrc-databases-international-humanitarian-law>>.

⁸ C O'Rourke, 'Geneva Convention III Commentary: What Significance for Women's Rights?' (*Just Security*, 21 October 2020) <https://www.justsecurity.org/72958/geneva-convention-iii-commentary-what-significance-for-womens-rights/?fbclid=IwAR1XN2u-P8ZcLruDJ1x7Fk6DG9X9-cGz0qENM2_FRC4E-djo6Ho6-Hdp5L0>.

⁹ Interpretation is carried out through the application of the international rules on interpretation set forth in arts 31–33 of the United Nations, Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (Vienna Convention). These rules are understood to embody principles reflecting customary international law, so they also apply to the Geneva Conventions. The International Court of Justice (ICJ) confirmed the customary nature of these norms in *Territorial Dispute (Libyan Arab Jamahiriya/Chad)* (Judgment) [1994] ICJ Rep 6, para 21; *Kasikili/Sedudu Island (Botswana/Namibia)* (Judgment) [1999] ICJ Rep 1045, para 18. With regard to art 31, *Legality of Use of Force (Serbia and Montenegro v Italy)* (*Preliminary Objections*) (Judgment) [2004] ICJ Rep 865, paras 99–100. For the same view, see also *Arbitration regarding the Iron Rhine ('IJzeren Rijn') Railway (Belgium/Netherlands)*, Award (24 May 2005) 23, para 45.

¹⁰ Vienna Convention *ibid* (emphasis added).

¹¹ R Gardiner, *Treaty Interpretation* (OUP 2008) 183.

‘according to standards of communication that give texts readily discernible meanings’.¹² Addressing the ordinary meaning of honour is particularly challenging, considering its evolving usage over time and across cultures.¹³

The word comes from the Latin *honos* and later honor.¹⁴ The older meaning of honour, still used in certain communities and the military, links a person’s status and reputation to their ability to use violence, thus preserving social structures¹⁵ and often reinforcing masculinity.¹⁶ This culture of honour has upheld patriarchal regimes by separating public and private spheres as ‘a manifestation of legal privilege that dispenses licenses along gender lines’.¹⁷ Accepting such a reading as the ordinary meaning of the term in Article 27(2) of the Fourth Geneva Convention could ultimately associate this provision with an idea of the subordination of women. It might perpetuate the gender stereotype according to which women’s honour—which cannot be expressed in terms of their ability to use violence—is strictly linked to the passive status of chastity and pureness of women. This in turn would create a link between sex and morality, which could affect views of rape and sexual violence in two ways: victims may not be treated as credible, and rape may not be seen as a harmful act.¹⁸

In recent times, such a problematic understanding of honour has been treated by some as obsolete rather than ordinary.¹⁹ Some scholars argue for a modern concept of honour that is still useful in our societies, including in the interpretation of the law.²⁰ As Simone Weil aptly puts it,

Honour is a vital need of the human soul ... Honour has to do with a human being considered not simply as such, but from the point of view of his social surroundings. This need is fully satisfied where each of the social organisms to which a human being belongs allows him to share in a noble tradition enshrined in its past history and given public acknowledgment.²¹

In this understanding, far from being a mere concern for reputation and public recognition, honour seems to define human life by assisting in shaping identity within the context of community and social environment. Honour in this modern

¹² BG Slocum, ‘Ordinary Meaning and Empiricism’ (2019) 40 StatLR 13, 15. For an interdisciplinary critique of international law’s ordinary meaning standard, see BG Slocum and J Wong, ‘The Vienna Convention and Ordinary Meaning in International Law’ (2021) 46 YaleJIntlL 191.

¹³ An overview of the philosophy around the concept of honour from Cicero to Amartya Sen can be found in P Olsthoorn, *Honor in Political and Moral Philosophy* (SUNY Press 2015) Ch 1.

¹⁴ Online Etymology Dictionary, ‘Honor’ <<https://www.etymonline.com/word/honor>>.

¹⁵ R Collins, *Violence: A Micro-Sociological Theory* (Princeton University Press 2008) 233.

¹⁶ D Black, *Moral Time* (OUP 2011) 72.

¹⁷ C Romany, ‘State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law’ in R Cook (ed), *Human Rights of Women. National and International Perspectives* (University of Pennsylvania Press 1994) 90.

¹⁸ M Cherif Bassiouni, *Crimes Against Humanity: Historical Evolution and Contemporary Application* (CUP 2011) 425–6, fn 338.

¹⁹ P Berger, B Berger and H Kellner, ‘On the Obsolescence of the Concept of Honor’ in P Berger, B Berger and H Kellner, *The Homeless Mind: Modernization and Consciousness* (Random House 1973) 83–96.

²⁰ KA Appiah, *The Honor Code: How Moral Revolutions Happen* (Norton 2010) 137–72, where the author contends that many forms of violence against women are rooted in a misguided concept of honour and that redefining it is essential to addressing gender-based violence.

²¹ S Weil, *The Need for Roots. Prelude to a Declaration of Duties towards Mankind* (Routledge 2001) 18.

understanding seems to reflect some of the concerns inherent in its original meaning. By dissociating honour from a code of violence, the concept would be understood as a fundamental character of every human being, considered as a social being, and would no longer be associated only with women as non-violent and passive subjects. Thus, no further investigation of its meaning under Article 27(2) would seem necessary.

However, even rejecting an outdated and traditional understanding of the term and adopting this modern one leaves some questions unanswered. First, it is unclear to what extent a particular interpretation of the term honour might affect the categories of prohibited conduct under Article 27(2) of the Fourth Geneva Convention. Second, it is possible to question the general meaning of the term under the Geneva Conventions, and whether it has a specific meaning when related to women. Third, the use of the concept 'attack on their honour' raises the question whether the provision is aimed at protecting the woman's physical and psychological integrity or, rather, the (albeit fundamental) character of the female being in her social connotation.

B. The Term Honour in the Context of Article 27 of the Fourth Geneva Convention

Since the use of conventional language leaves some questions open, especially from a gender perspective, it is necessary to have regard to the context in which the word honour is used in order to determine its meaning in Article 27(2).²² Article 27 offers limited guidance on what constitutes an attack on [women's] honour. By providing an indicative list of prohibited behaviours and including the final open-ended clause 'any form of indecent assault',²³ the article prohibits *all* forms of conflict-related sexual violence against women and covers a wide range of sexual conducts.²⁴

The Geneva Conventions and their Additional Protocols contain few specific provisions related to the protection of women against sexual violence in armed conflict.²⁵ Article 27, the first provision in section I of Part III of the Fourth Geneva Convention, opens 'the main portion of our Convention',²⁶ the Part related to the 'status and treatment of protected persons', which establishes a specific and more detailed regime in favour of certain categories of persons.

The first two paragraphs of the Article stem from Article 3 of the 1929 Geneva Convention on the Treatment of Prisoners of War (POWs) and Article 46 of the

²² Vienna Convention (n 9) art 31(1). The idea that the use of the context is supplementary to the ordinary meaning is expressed by U Linderfalk, 'Using the Context: The "Text" of a Treaty' in U Linderfalk (ed), *On the Interpretation of Treaties. The Modern International Law as Expressed in the 1969 Vienna Convention on the Law of Treaties* (Law and Philosophy Library 2007) 102.

²³ The statement of protection against 'any form of indecent assault' can be also found in arts 75 (2)(b), 76(1) and 77(1) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (Additional Protocol I or AP I); and in art 4 (2)(e) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978), 1125 UNTS 609 (Additional Protocol II or AP II).

²⁴ ICRC, 'Customary IHL Study', Rule 93 <<https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>>.

²⁵ Fourth Geneva Convention (n 1) art 27; AP I (n 23) arts 75, 76; and AP II (n 23) art 4.

²⁶ Federal Political Department of Switzerland, *Final Record of the Diplomatic Conference of Geneva of 1949* (Federal Political Department 1949) vol II, s A, 821 (Final Record, vol II, s A).

Hague Regulations.²⁷ The structure follows Article 3 common to the four Geneva Conventions of 1949: first, a general provision requiring respect for the fundamental rights for protected persons—related to ‘their person, their honour, their family, and religious convictions and practices, and their manners and customs’—and human treatment in all circumstances; and second, a specific paragraph related to the treatment of women.

Article 27 of the Fourth Geneva Convention uses the term honour twice: in paragraphs 1 and 2. In Article 27(1), honour follows the term ‘person’ as one of the inviolable characteristics of the protected persons that must be respected. In Article 27(2), on the other hand, honour is used to qualify the acts of conflict-related sexual violence against women. The effect of this separate treatment is seemingly to suggest that forms of conflict-related sexual violence are not primarily crimes against the physical and sexual integrity of the person, but crimes against women’s chastity and purity. This reproduces gender stereotypes related to the preservation of female modesty.

C. The Meaning Attached to the Concept of Honour in other IHL Norms

Since the concept of honour remains obscure and the Fourth Geneva Convention does not provide a definition of the term, it is necessary to resort to a systemic interpretation²⁸ by looking at other provisions in IHL treaties that expressly contain the term honour. Indeed, the term honour is used several times in the IHL Conventions. Other than in Article 27 of the Fourth Geneva Convention and Article 46 of the Fourth Hague Convention,²⁹ which deal with respect for ‘family honour’, the word is associated with *male* combatants and prisoners. Articles 10 and 12 of the Second Hague Convention of 1899,³⁰ Articles 10 and 12 of the Fourth Hague Convention of 1907, and Article 21 of the Third Geneva Convention of 1949³¹ allow prisoners to be released if they promise on parole and rest that they are ‘bound on their personal honour’ to the obligations they have entered into—otherwise they lose their right to be treated as POWs. Article 35 of the Fourth Hague Convention of 1907 requires the contracting parties to consider rules of ‘military honour’ in cases of capitulation. Article 3 of the Geneva POW Convention of 1929 and Article 14 of the Third Geneva Convention of 1949 deal with the treatment of POWs, who are ‘entitled to respect for

²⁷ Commentary to the Fourth Geneva Convention (n 6) 201. Art 3 of the 1929 Geneva Convention on the Treatment of Prisoners of War states: ‘Prisoners of war are entitled to respect for their persons and honour. Women shall be treated with all consideration due to their sex.’ Convention relative to the Treatment of Prisoners of War, Geneva (adopted 27 July 1929, entered into force 19 June 1931) (Geneva POW Convention of 1929) Art 46 of the Hague Regulations states: ‘Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.’ Hague Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land (adopted 18 October 1907, entered into force 26 January 1910) (Fourth Hague Convention).

²⁸ Vienna Convention (n 9) art 31(3)(c).

²⁹ Fourth Hague Convention (n 27) art 46: ‘Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.’

³⁰ Hague Convention (II) with Respect to the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land (adopted 29 July 1899, entered into force 4 September 1900) (Second Hague Convention).

³¹ Geneva Convention (III) relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135 (Third Geneva Convention).

their persons and honour'. The term also appears in relation to honourable burial in Article 76 of the Geneva POW Convention of 1929 and Articles 17, 120 and 130 of the First,³² Third and Fourth³³ Geneva Conventions of 1949, respectively. With regard to fundamental guarantees, Articles 75 of the Additional Protocol I to the Geneva Conventions (AP I) and Article 4 of the Additional Protocol II to the Geneva Conventions (AP II) entitle, respectively, 'persons who are in the power of a Party to the conflict' and 'all persons who do not take a direct part or who have ceased to take part in hostilities' to 'respect for their person, honour'.

The meaning of honour in IHL Conventions, often associated with combatants as a synonym for the military virtue rooted in the centuries-old military tradition of chivalry,³⁴ remains unsettled but still reflects male-oriented chivalric connotations.³⁵ Despite experiencing a crisis in military circles,³⁶ this concept of chivalric honour retains its core meaning of respect for one's self-worth and the value of the person in the eyes of others,³⁷ as well as its power to impose 'certain demanding ethical-legal soldierly duties'.³⁸ The male-oriented chivalric connotations of honour have gendered the interpretation of the concept in relation to women, where it is associated with the preservation of the female chastity and purity.³⁹ While useful to understand certain situations in 'some states, and amongst conservative military officials' in which 'the concept of honour, as used in Article 27 paragraph 2, resonates strongly',⁴⁰ this special type of honour, 'held exclusively by women',⁴¹ confirms the traditional gender connotations of the term.

D. Honour and its (Remaining) Gendered Connotations

The above analysis indicates that the concept of honour, despite efforts to disassociate it from its more traditional connotations, tends to emphasise the *social* implications of sexual violence. These entail a certain social perception of women, especially in terms of their purity and chastity, in contrast to the implications for the woman as an *individual*. It is true that this understanding of honour has allowed the community dimension of

³² Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31 (First Geneva Convention).

³³ Third Geneva Convention (n 31); Fourth Geneva Convention (n 1).

³⁴ See T Gill, 'Chivalry: A Principle of the Law of Armed Conflict?' in M Matthee, B Toebes and M Brus (eds), *Armed Conflict and International Law: In Search of the Human Face* (T.M.C. Asser Press 2013); WJ Fenrick, 'The Rule of Proportionality and Protocol I in Conventional Warfare' (1982) 98 *MILRev* 91, 94.

³⁵ This 'military honour' requires, eg, that prisoners of war 'should be permitted to wear their badges of rank and nationality ... , that officers should be treated with the regard due to their rank and age ...' Commentary to the Third Geneva Convention (n 6) 145.

³⁶ EJ Wallach, 'Pray Fire First Gentlemen of France: Has 21st Century Chivalry Been Subsumed by Humanitarian Law?' (2012) 3 *HarvNatlSecJ* 431, 431–44.

³⁷ J Arman, 'GCIII Commentary: Protecting the Honour of Prisoners of War' (*ICRC Humanitarian Law & Policy Blog*, 3 September 2020) <https://blogs.icrc.org/law-and-policy/2020/09/03/gciii-commentary-honour-prisoners-of-war/#_ftn3>.

³⁸ Z Bohrer, 'Divisions over Distinctions in Wartime International Law' in Z Bohrer, J Dill and H Duffy (eds), *Law Applicable to Armed Conflict* (CUP 2020) 189.

³⁹ See Gardam and Jarvis (n 3) 108.

⁴⁰ Visser Sellers and Rosenthal (n 2) 350.

⁴¹ A Crowe, "'All the Regard Due to Their Sex": Women in the Geneva Conventions of 1949' (2016) Harvard Research Working Paper Series HRP 16-001, 13 <http://hrp.law.harvard.edu/wp-content/uploads/2016/12/Anna-Crowe_HRP-16_001.pdf>.

violence against women to be addressed, leading to wartime rape being recognised not only as an act of aggression against the individual, but also as a ‘crime against the community’⁴² and a ‘method of warfare’ used to target the civilian population,⁴³ and conflict-related sexual violence against women also being understood as a deliberate act to humiliate entire communities.⁴⁴ However, the problem with the concept of honour seems to be its focus on the social implications of sexual violence, somewhat overlooking its primary impact on the individual as a person. Consequently, Article 27(2) of the Fourth Geneva Convention seems to suffer from ‘an approach still limited to protecting honour and not the person as such’.⁴⁵

Nonetheless, this does not exclude the continued relevance of the term honour and its potential evolution, ‘since the historical interpretation of an international instrument can never prove decisive in identifying the current status of a legal norm’.⁴⁶ The concept of honour in Article 27(2) should not be treated as frozen in time, but rather, as will be discussed below, as an evolving concept that needs to be read in the light of contemporary circumstances and perceptions of women in society and in war. The key to a new reading of honour, it is argued, is the concept of ‘dignity’.

III. (RE)INTERPRETING HONOUR AS HUMAN DIGNITY

The question of the relevance of dignity for the interpretation of honour can be addressed in two steps. First, a preliminary procedural question: can the concept of honour be subject to an evolutive interpretation? Was the use of a vague term in Article 27(2) a mechanism to allow for the provision to evolve over time? Second, a substantive question must be asked: can the principle of human dignity inform a new interpretation of the concept of honour and allow for this evolution?

A. Honour as a Generic Term

In order to understand whether honour can be (re)interpreted in the light of human dignity, it is first necessary to assess whether it is possible for the concept to be subject to an evolutive interpretation. In other words, does the vagueness of this concept ‘reflect[s] its actual condition of growth’?⁴⁷

Evolutive interpretation is ‘an interpretation where a term is given a meaning that changes over time’,⁴⁸ thus ‘casting away or reducing the original or historical

⁴² M Eriksson, *Defining Rape: Emerging Obligations for States under International Law?* (Brill Nijhoff 2011) 139.

⁴³ Gardam, ‘Women and the Law of Armed Conflict: Why the Silence?’ (n 3) 59.

⁴⁴ R Seifert, ‘War and Rape: A Preliminary Analysis’ in A Stiglmayer (ed), *Mass Rape: The War against Women in Bosnia-Herzegovina* (University of Nebraska Press 1994) 62–3.

⁴⁵ S La Rocca, ‘Le violenze di genere nei conflitti armati: nome e politiche di contrasto’ in S La Rocca (ed), *Stupri di guerra e violenza di genere* (Ediesse 2015) 50. (Author’s translation of original text: ‘un approccio ancora limitato a tutelare l’onore e non la persona in quanto tale’.)

⁴⁶ L Boisson de Chazournes and L Condorelli, ‘Common Article 1 of the Geneva Conventions Revisited: Protecting Collective Interests’ (2000) 82 IRRC 67, 69.

⁴⁷ Gallie expresses the idea of a link between the vagueness of a concept and its condition of growth with regard to the concept of democracy as an ‘essentially contested concept’. WB Gallie, ‘Essentially Contested Concepts’ (1955–1956) 56 *ProcAristotelianSoc* 167, 184.

⁴⁸ ST Helmersen, ‘Evolutive Treaty Interpretation: Legality, Semantics and Distinctions’ (2013) 6(1) *EurJLegalStud* 128. The doctrine uses ‘evolutive interpretation’ as synonym of ‘evolutionary interpretation’. The two concepts are interchangeably in this article.

meaning attached to a norm in favour of a contemporary reading'.⁴⁹ For present purposes, an evolutive interpretation would allow Article 27(2) to be addressed as 'a "living instrument" which can change its meaning'⁵⁰ in the face of developments in society, reflecting evolving circumstances.⁵¹ Specifically, analysing the 'object and purpose' of the provision may help to determine the ordinary meaning⁵² of the generic term honour,⁵³ so that evolutive interpretation does not appear 'a separate method of interpretation but rather the result of a proper application of the usual means of interpretation'.⁵⁴

Indeed, the concept of honour seems broad enough to fit into the category of so-called 'generic terms', ie terms whose meaning 'has changed as a consequence of an evolution in language'.⁵⁵ Generic terms play a role in the process of treaty interpretation in the jurisprudence of the International Court of Justice (ICJ)⁵⁶ and other international

⁴⁹ R Kolb, 'Evolutionary Interpretation in International Law: Short and Less than Trail-Blazing Reflections' in G Abi-Saab et al (eds), *Evolutionary Interpretation and International Law* (Hart Publishing 2019) 16.

⁵⁰ R Bernhardt, 'Evolutive Treaty Interpretation, Especially of the European Convention on Human Rights' (1999) 42 GYIL 12.

⁵¹ In defining evolutive interpretation, the ICJ refers to 'situations in which the parties' intent upon conclusion of the treaty was, or may be presumed to have been, to give the term used—or some of them—a meaning or content capable of evolving, not one fixed once and for all, so as to make allowance for, among other things, developments in international law'. *Dispute regarding Navigational and Related Rights (Costa Rica v Nicaragua)* (Judgment) [2009] ICJ Rep 213, para 64. For the opposite approach to evolutive interpretation, the contemporaneity approach, see G Fitzmaurice, 'The Law and Procedure of The International Court of Justice 1951–4: Treaty Interpretation and other Treaty Points' (1957) 33 BYIL 203; EE Triantafilou, 'Contemporary and Evolutive Interpretation under the Vienna Convention on the Law of Treaties' (2017) 32 ICSIDRev 138.

⁵² The ordinary meaning, the context, and the object and the purpose are not only important to determine the evolutive character of a term, but also to decide the current meaning of the evolving term in a subsequent phase. See J Arato, 'Subsequent Practice and Evolutive Interpretation: Techniques of Treaty Interpretation Over Time and their Diverse Consequences' (2010) 9 LPICT 1, 19, fn 81.

⁵³ Vienna Convention (n 9) art 31(1). The doctrine of evolutive interpretation has foundations also in art 31(3)(c). See International Law Commission (ILC), 'Fragmentation of International Law: Difficulties Arising from The Diversification and Expansion of International Law' in *Report of the International Law Commission on the Work of its Sixty-First Session* (1 May–9 June and 3 July–11 August 2006) UN Doc A/61/10, 415. However, since this provision limits the application of evolutive interpretation to legal terms only, it is maintained here that the relevant rule of interpretation is art 31(1), which applies to both legal and non-legal generic terms.

⁵⁴ G Nolte, 'First Report on Subsequent Agreements and Subsequent Practice in Relation to Treaty Interpretation' (19 March 2013) UN Doc A/CN.4/660, 26, para 62.

⁵⁵ P Palchetti, 'Interpreting "Generic Terms": Between Respect for the Parties' Original Intention and the Identification of the Ordinary Meaning' in N Boschiero et al (eds), *International Courts and the Development of International Law: Essays in Honour of Tullio Treves* (Springer 2013) 96.

⁵⁶ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion) [1971] ICJ Rep 16, para 53; *Aegean Sea Continental Shelf (Greece v Turkey)* (Judgment) [1978] ICJ Rep 3, para 77; *Dispute regarding Navigational and Related Rights (Costa Rica v Nicaragua)* (n 51) para 67. For a list of cases in which the ICJ decided not to apply the evolutive interpretation method despite the recognition of the existence of generic terms, see E Bjorge, *Evolutionary Interpretation and Intention of the Parties* (OUP 2014) 125.

judicial organs.⁵⁷ Following the view that generic terms are ‘treaty terms ... intended to evolve in response to changes in legal and social concepts’,⁵⁸ not only legal terms can be classified as generic terms for the purposes of treaty interpretation, but also other open-ended terms.⁵⁹ The use of a generic term in a treaty means that:

the parties necessarily having been aware that the meaning of the terms was likely to evolve over time, and where the treaty has been entered into for a very long period or is ‘of continuing duration’, the parties must be presumed, as a general rule, to have intended those terms to have an evolving meaning.⁶⁰

Honour, which cannot be defined as a legal term, can be classified as a generic term, meaning that a presumption of evolutionary interpretation could apply.

B. Human Dignity in the IHL Regime

Accepting that honour can be addressed through the lens of evolutive interpretation does not suggest the direction that evolution should follow. In order to understand whether honour can be (re)interpreted through the lens of human dignity, it is necessary to address first the meaning of human dignity and its role in the IHL regime.

Human dignity addresses the inherent value of human beings *qua* human.⁶¹ As an intrinsic and permanent attribute of every human being, it is inalienable⁶² and applies beyond the person’s reputation and identity in relation to their community and social environment. Although it has been criticised as an empty concept or as having a moral meaning that is difficult to translate into legal practice,⁶³ human dignity is widely recognised as a normative value⁶⁴ and ‘the ultimate aim itself of Law, of the legal order, both national and international’.⁶⁵ First introduced into international law to limit State dignity⁶⁶ and usually associated with human rights,⁶⁷ human dignity has

⁵⁷ Generic terms have been used to legitimate an evolutive interpretation by the World Trade Organization (WTO) Appellate Body. See G Nolte, ‘Subsequent Practice as a Means of Interpretation in the Jurisprudence of the WTO Appellate Body’ in E Cannizzaro (ed), *The Law of Treaties beyond the Vienna Convention* (OUP 2011) 143.

⁵⁸ H Waldock, ‘The Evolution of Human Rights Concepts and the Application of the European Convention of Human Rights’ in P Reuter (ed), *Mélanges offerts à Paul Reuter: Le droit international, unité et diversité* (Pedone 1981) 536.

⁵⁹ Problems of inter-temporality in treaty interpretation arise not only in relation to international law developments, but also where language changes. A presumption of evolutive interpretation could thus concern both legal generic terms and non-legal generic terms. See Palchetti (n 55) 96. In the same vein, see P-M Dupuy, ‘Evolutionary Interpretation of Treaties: Between Memory and Prophecy’ in Cannizzaro (n 57) 131.

⁶⁰ *Dispute regarding Navigational and Related Rights (Costa Rica v Nicaragua)* (n 51) para 63.

⁶¹ See Stanford Encyclopedia of Philosophy, ‘Dignity’ <<https://plato.stanford.edu/entries/dignity/>>.

⁶² H Spiegelberg, ‘Human Dignity: A Challenge to Contemporary Philosophy’ in H Spiegelberg, *Steppingstones Toward an Ethics for Fellow Existents* (Martinus Nijhoff 1986) 193.

⁶³ M Bagaric and J Allan, ‘The Vacuous Concept of Dignity’ (2006) 5 JHumRts 257, 263–69.

⁶⁴ O Schachter, ‘Human Dignity as a Normative Concept’ (1983) 77 AJIL 848.

⁶⁵ AA Cançado Trindade, *International Law for Humankind. Towards a New Jus Gentium* (Brill Nijhoff 2020) 279.

⁶⁶ G Le Moli, ‘Three Circles of Dignity’ (2019) 11 JHumRtsPrac 258.

⁶⁷ See, among others, G Den Hartogh, ‘Is Human Dignity the Ground of Human Rights?’ in M Düwell et al (eds), *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives* (CUP 2014); C McCrudden, ‘Human Dignity and Judicial Interpretation of Human Rights’ (2008) 19 EJIL 655.

historically received legal recognition in the IHL regime, serving as the foundation for principles of humanity and standards of public conscience.⁶⁸

The role of dignity in IHL begins with the 'objectivized intention' of the parties.⁶⁹ The brief preamble of the Fourth Geneva Convention is silent about the treaty's general objectives. However, the overall ideas that the Parties discussed when drafting the preamble are reflected in Article 27.⁷⁰ While not expressly mentioning human dignity, Article 27(1) calls for the principle of respect for the human person and 'the inviolable character of the basic rights of individual men and women'.⁷¹ This confirms that 'the general principle of respect for human dignity is the basic underpinning and indeed the very *raison d'être* of international humanitarian law'.⁷² As the core principle and the 'starting point' of the Geneva Conventions,⁷³ human dignity 'informs the interpretation of the law on the conduct of hostilities and provides a built-in mechanism for improving armies' treatment of enemies civilians'.⁷⁴

Therefore, human dignity is relevant to Article 27(2) as a principle that serves as a general interpretative lens: it can have an auxiliary function in interpreting the norm and filling in the meaning of the vague term honour. In this sense, honour under Article 27(2) must be read not only as a relevant expression of social norms and values, but also as a constitutive attribute of human dignity.

This reasoning seems to be in line with the importance attached to human dignity by Pictet, according to whom '[t]he initiators of the 1864 and following Conventions wished to safeguard the dignity of the human person, in the profound conviction that imprescriptible and inviolable rights were attached to it even when hostilities were at their height'.⁷⁵ This profound link between human dignity and individual rights is confirmed by Le Moli,⁷⁶ who argues that human dignity manifests itself in IHL not only as a core principle, but also as a 'mother-right', which injects considerations of humanity into the law and acts as 'the foundation and object of personal rights conferred by various provisions of IHL'.⁷⁷

⁶⁸ For the development of the modern meaning of human dignity, from its first Christian connotation, through its secularisation in Kantian philosophy, to its legal expression in international law, see G Le Moli, *Human Dignity in International Law* (CUP 2021).

⁶⁹ E Bjorge, 'Time Present and Time Past: The Intention of the Parties and the Evolutionary Interpretation of Treaties' in Abi-Saab et al (n 49) 37–8.

⁷⁰ Commentary to the Fourth Geneva Convention (n 6) 14.

⁷¹ *ibid* 200.

⁷² International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v Anto Furundžija*, (Trial Judgment, 10 December 1998) IT-95-17/1, para 183. Conversely, according to Luban, IHL is not designed to protect human dignity, but to reduce human suffering. D Luban, 'Human Rights Thinking and the Laws of War' in JD Ohlin (ed), *Theoretical Boundaries of Armed Conflict and Human Rights* (CUP 2016) 45–6.

⁷³ ICTY, *Prosecutor v Mucic et al* (Appeals Judgment, 20 February 2001) IT-96-21-A, para 149.

⁷⁴ E Benvenisti, 'Human Dignity in Combat: The Duty to Spare Enemy Civilians' (2006) 39 *IsLR* 81.

⁷⁶ Le Moli (n 68) 173–215.

⁷⁵ Commentary to the First Geneva Convention (n 6) 82.

⁷⁷ *ibid* 190. The issue of whether the IHL regime provides individuals with substantive rights is much discussed in the literature and cannot be covered here in detail. On the possibility of recognising the existence of certain primary rights under contemporary IHL, which is here assumed as convincing, see L Zegveld, 'Remedies for Victims of Violations of International Humanitarian Law' (2003) 85 *IRRC* 497; A Peters, *Beyond Human Rights: The Legal Status of the Individual in International Law* (CUP 2016) 195 ff, 232 ff. For the contrary view that IHL norms merely introduce standards of protection for individuals, R Provost, *International Human*

Interpreting Article 27(2) through the lens of the mother-right of human dignity implies that civilian women are not only the beneficiaries of special protection, but also the holders of an individual right to security (security right),⁷⁸ which encompasses the right not to be raped, forced into prostitution, or indecently assaulted. This scheme, which is grounded on the value of human dignity, designs an IHL-rights-based provision, in which women are not objects but subjects of protection, and which does not grant them objective standards, but subjective rights. In this sense, Article 27(2) gives rise not only to obligations between States Parties to the Convention, but also to direct State obligations towards individuals. This human rights approach emphasises the fact that the protected interest recognised by the provision is respect for the psycho-physical integrity of the woman. Honour must also be read through this individual dimension. Therefore, attacks on women's honour must be reframed as offences to the individual person and not merely as violations of societal norms of female chastity and modesty. Human dignity, understood as a mother-right, supports a new interpretation of honour that aligns with the principle of human dignity itself.

To be clear, 'dignity' has not always been viewed favourably when it comes to international rules on sexual crimes against women. In the drafting of the Statute of the International Criminal Court (ICC), also known as the Rome Statute, feminist scholars and activists strongly opposed the language of both honour and dignity, claiming that qualifying rape as 'a crime against woman's dignity minimizes the physical and psychological pain she suffers from the rape'.⁷⁹ From their standpoint, both the concepts of honour and dignity perpetuate an outdated perspective, suggesting that sexual crimes are proscribed because they make an impact on female morality, 'rather than because they constitute violence'.⁸⁰ Therefore, feminist critics argue that the only way to recognise rape and other forms of sexual assault as crimes of violence properly is to divorce them from the notions of honour and dignity.⁸¹ There are two reasons why such an approach is not useful in the present context. First, while this 'delinking' strategy⁸² proves effective in the creation of new international criminal law provisions, its success might be more limited in case of well-established IHL conventions. Since amendments to the Geneva Conventions seem unlikely, interpretation appears to be the only practical means available to bring a renewed gender-oriented understanding to the protection of women accorded under IHL. Second, far from being associated with the point of view of social environments, dignity in this context is that of human dignity in the terms concisely described above.

Rights and Humanitarian Law (CUP 2002) 26–34; E-C Gillard, 'Reparation for Violations of International Humanitarian Law' (2003) 85 IRRC 529; Luban (n 72) 45 ff.

⁷⁸ Le Moli (n 68) 194.

⁷⁹ R Lehr-Lehnardt, 'One Small Step for Women: Female-Friendly Provisions in the Rome Statute of the International Criminal Court' (2002) 16 BYUJPubL 317, 341.

⁸⁰ H Charlesworth, 'Feminist Methods in International Law' (1999) 93 AJIL 379, 386.

⁸¹ For an overview of the feminist reform agenda for the ICC, see generally, J Halley, 'Rape at Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law' (2009) 30 MichJIntlL 1.

⁸² Women's Caucus for Gender Justice in the International Criminal Court, 'Recommendations and Commentary for December 1997 PrepCom on the Establishment of an International Criminal Court. United Nations Headquarters (December 1–12, 1997)' pt III, Recommendation 6 <<https://4genderjustice.org/wp-content/uploads/2021/12/wcgj-prepcom-paper.pdf>>.

C. Interpretation of Dignity and Honour in Preparatory Works and ICRC Commentaries

Strongly influenced by women's advocacy groups,⁸³ the members of Committee III of the 1949 Geneva Diplomatic Conference decided to dedicate special protection to women.⁸⁴ The meaning of 'women's honour' was not explicitly defined by the States Parties in the *travaux préparatoires* of Article 27. However, the Italian delegate notably referred to conflict-related sexual violence against women as 'offences against honour and *dignity* of women'.⁸⁵ This suggests that at least some Parties conceived honour and dignity as closely related.

The 1958 ICRC Commentary on the Fourth Geneva Convention, as the only current commentary, has greatly influenced the interpretation of Article 27(2). The ICRC Commentary on Article 27 reveals that after World War II, the mistreatment of women by troops 'revolt[ed] the conscience of all mankind' and necessitated 'special consideration'.⁸⁶ The inclusion of a specific paragraph for women civilians thus reflected an evolving awareness of the harsh experiences that women face in war.⁸⁷ Moreover, the ICRC Commentary states that 'woman should have an acknowledged right to special protection ... in addition to the safeguards laid down in paragraph 1'.⁸⁸ Pictet noted of this additional honour-based protection for women that: 'Women ... have an absolute right to respect for their honour and their modesty, in short, *for their dignity as women*'.⁸⁹ Thus, while committed to the concept of honour as related to the idea of women's purity and chastity, both the preparatory works and the ICRC Commentary did also make links between dignity and honour.

D. Honour as Human Dignity in Case Law, Relevant Rules of International Law and State Practice

Beyond the argument based on human dignity as the *raison d'être* and mother-right of IHL and the allusions to dignity in the preparatory works and the ICRC Commentary, case law also suggests interpreting honour as dignity. Despite many prosecutions and convictions for crimes of rape and other forms of sexual violence before international criminal tribunals,⁹⁰ the term honour has not been used to describe gender-based charges. The only reference to the term can be found in the *Furundžija* case, where the International Criminal Tribunal for the former Yugoslavia (ICTY), in justifying the classification of forced oral penetration as rape, referred to the principle of respect for human dignity 'whether such outrages are carried out by unlawfully attacking the body or by humiliating and debasing the honour, the self-respect or the mental well-being of a person'.⁹¹ The Court seemed to refer here to honour in relation to the

⁸³ Final Record, vol II, s A (n 26) 821. ⁸⁴ *ibid.* ⁸⁵ *ibid* 644 (emphasis added).

⁸⁶ Commentary to the Fourth Geneva Convention (n 6) 205.

⁸⁷ On the relevance of the historical background and the events that led to the conclusion of a treaty as part of the 'the circumstances of its conclusion' under art 32 of the Vienna Convention, see MK Yasseen, 'L'interprétation des traités d'après la Convention de Vienne sur le droit des traités' (1976) 151 *Recueil des Cours* 90.

⁸⁸ Commentary to the Fourth Geneva Convention (n 6) 205.

⁸⁹ *ibid* 206 (emphasis added).

⁹⁰ The ILC quotes decisions of international and national courts in its report: ILC, 'Ways and Means for Making the Evidence of Customary International Law More Readily Available' (1950) II UNYBILC 367, 369–70. ⁹¹ *Prosecutor v Anto Furundžija* (n 72) para 183.

degradation of the person because of the mental humiliation it causes in addition to physical suffering. By defining forced oral penetration as ‘a most humiliating and degrading attack to human dignity’, the court effectively equated the concept of honour with human dignity. In this way, it broadened the interpretation of the term honour to encompass the preservation of human dignity in cases of sexual violence.

Relevant rules of international law⁹² can also be useful to demonstrate the intention of the parties to allow for an evolutive interpretation of the generic term honour. Indeed,

There is general agreement that Article 31(3)(c) does not merely refer to the law as it stood at the moment of the adoption of the treaty, but also to the law as it stands at the moment of the interpretation. This seems particularly obvious when it comes to treaties regulating warfare, a matter subject to continuous operational and legal developments. In the framework of the interpretation of the Geneva Conventions, ‘relevant rules of international law’ include ... the Additional Protocols.⁹³

In particular, Article 75(2)(b) of AP I confirmed this evolution from honour to human dignity. It expressly prohibits acts of conflict-related sexual violence as ‘[o]utrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault’.⁹⁴ The same qualification of these harms as ‘outrages upon personal dignity’ appears verbatim in Article 4 of AP II.⁹⁵ Therefore, the adoption of AP I and AP II in 1977 marked a shift in the general perception of crimes of sexual violence as crimes against the individual, in line with an evolutive approach to the interpretation of the term honour under Article 27(2).

In terms of State practice,⁹⁶ official military manuals constitute key documents, which might support the shift in meaning.⁹⁷ Some States continue to refer to honour, particularly when directly transposing Article 27(2) into their military manuals.⁹⁸ However, some of them also include any form of ‘indecent assault’ in the category of ‘outrages upon personal dignity’.⁹⁹ Interestingly, newer versions of some manuals no longer use the term honour¹⁰⁰ or use it with some human dignity-related qualifier,¹⁰¹ which underlines the new conception of sexual violence as a harm against the

⁹² See Vienna Convention (n 9) art 31(3)(c).

⁹³ J-M Henckaerts and E Pothelet, ‘The Interpretation of IHL Treaties: Subsequent Practice and other Salient Issues’ in H Krieger and J Püschmann (eds), *Law Making and Legitimacy in International Humanitarian Law* (Elgar 2021) 161.

⁹⁴ AP I (n 23). See also art 76(1) on ‘Protection of women’, which does not use the term honour: ‘Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.’⁹⁵ AP II (n 23).

⁹⁶ MN Shaw, *International Law* (8th edn, CUP 2017) 61.

⁹⁷ For the English versions of military manuals, see ICRC, ‘III. Military Manuals’ <<https://ihl-databases.icrc.org/en/customary-ihl/src/iimima>>.

⁹⁸ See, eg, the military manuals of Australia, Canada, Germany, the United States and the United Kingdom, *ibid*.

⁹⁹ See, eg, the military manuals of Germany and the United Kingdom, *ibid*.

¹⁰⁰ See *ibid*. New Zealand, Military Manual (1992) para 1114; and New Zealand, Manual of armed forces law. Volume 4: Law of armed conflict (2017) para 14.5.2 <<https://www.nzdf.mil.nz/assets/Uploads/DocumentLibrary/DM-69-2ed-vol4.pdf>>.

¹⁰¹ Argentina’s Law of War Manual (1969), *ibid*, repeats art 27(2), while the 2010 version, para 6.14, refers to sexual assaults as ‘atentado contra su honor y su libertad e integridad sexual’ <https://usnwc.libguides.com/ld.php?content_id=2998176>.

individual's integrity.¹⁰² Some manuals replace the term honour with dignity. In particular, the Spanish IHL Manual prohibits 'attacks on personal dignity, especially degrading and humiliating treatment, enforced prostitution and any form of indecent assault'.¹⁰³ Notably, the 2013 Norwegian Law of Armed Conflict (LOAC) Manual restates Article 27(2) of the Fourth Geneva Convention but substitutes 'attack on their honour' with 'assault on their dignity'.¹⁰⁴ Furthermore, the Manual provides specific protection for women 'against attacks on their honour' referring to 'degrading punishments or work'.¹⁰⁵ Considering that the same protection is guaranteed to all persons who do not participate directly in hostilities in terms of 'respect for their dignity', it seems plausible that the two terms are used here as synonyms.

Another important example of the current interchangeability of the terms honour and dignity is provided in Azerbaijan's Law concerning the Protection of Civilian Persons and the Rights of Prisoners of War. It prohibits rape of civilian persons, degrading and humiliating treatment of women, forced prostitution and 'attacks on their dignity' in international and non-international armed conflicts, and prohibits the rape of POWs, adding that 'women and young girls are especially protected against attacks on their honour'.¹⁰⁶

The fact that the term honour has declined in importance over time is confirmed by the fact that it has not been used in subsequent IHL conventions for acts of conflict-related sexual violence,¹⁰⁷ or has been defined essentially as dignity. Indeed, the 2021 updated Commentary to the Third Geneva Convention recognises that the concept of respect for a person's honour 'to some extent overlap[s] with respect for their person', and 'entails due regard for the sense of value that every person has of themselves. Honour is a personal concept that may also be linked to a person's reputation, age and standing in their community or peer group.'¹⁰⁸ This is largely due to the development of the culture (and language) of dignity, with its more democratic and universalistic scope.¹⁰⁹

In sum, an evolutionary interpretation of the concept of honour seems not only permissible, but also consistent with both the object and purpose of the Fourth Geneva Convention as well as with the practice of international tribunals, subsequent agreements and State practice. The use of the term honour by the Parties can be read as a mechanism to allow for Article 27(2) to evolve over time, as part of the process of treaty interpretation. It seems therefore plausible to interpret the term as a synonym of human dignity, thus reconciling the intention of the Parties with a renewed understanding of conflict-related sexual violence.

¹⁰² The Nigerian Operational Code of Conduct (1967), *ibid*, para 4(i), states that 'women will be protected against any attack on their *person*, honor and in particular against rape or any form of indecent assault' (emphasis added).

¹⁰³ Spain, LOAC Manual (1996), *ibid*, vol I, para 8.2.c.

¹⁰⁴ Norway, LOAC Manual (2013), para 4.49. Enforced prostitution and any form of indecent assault are also qualified as 'violations of personal dignity' (para 4.25.b) <https://usnwc.libguides.com/ld.php?content_id=47416967>.

¹⁰⁵ *ibid*, para 13.27.
¹⁰⁶ Azerbaijan, *Law concerning the Protection of Civilian Persons and the Rights of Prisoners of War* (1995), arts 17(2), 21(1), 22(1) <<https://ihl-databases.icrc.org/en/national-practice/law-concerning-protection-civilian-persons-and-rights-prisoners-war-30-june-1995>>.

¹⁰⁷ In particular, as mentioned above, the term is not present in the 1977 Additional Protocols to the 1949 Geneva Conventions.

¹⁰⁸ 2021 Commentary to the Third Geneva Convention (n 7) para 1658.

¹⁰⁹ Olsthoorn (n 13) 134 ff.

IV. CONCLUDING REMARKS

The wording of Article 27(2) of the Fourth Geneva Convention is the source of legitimate gender-specific concerns. Originally drafted as a forward-looking provision, aiming at the protection of women from sexual violence in conflict, it is currently pointed to as an outdated norm. In particular, the term honour is ‘troublesome’,¹¹⁰ in that it places emphasis on the social consequences and moral stigma of women who are victims of sexual violence rather than on the physical and psychological effects these acts have on the person.

As the only specific norm protecting women from conflict-related sexual violence, Article 27(2) is the strongest expression of the intention of States to prohibit wartime sexual crimes. It is therefore important to attribute a meaning to the term honour which is consistent with the intentions of the drafters of the Fourth Geneva Convention and changes in the understanding of honour. An evolutive interpretation seems to be the most reasonable and practicable means of rendering this norm capable of dealing with contemporary issues while at the same time preserving the original intent of the Parties. This is all the more true in view of the fact that the Fourth Geneva Convention, as one of the longest-standing and most widely ratified treaties in contemporary international law, is unlikely to be subject to revision and thus can only address developments of law and practice through an updated Commentary, though one has yet to be drafted. The fact that the treaty was clearly designed to be ‘of continuing duration’¹¹¹ is just another reason, along with the generic nature of the term honour, for adopting an evolutive interpretation.

An evolutive interpretation of the term honour has two main consequences. First, understanding honour in the light of human dignity allows for a gendered shift in the meaning of Article 27(2), confirming that ‘fundamental changes of values and societal norms’ have significantly reduced ‘the connection between sexual violence and honour’.¹¹² As this article has argued, using an evolutive interpretation convincingly leads to an understanding of honour that is aligned with human dignity and free of gendered preconceptions. Second, this new interpretation would fit into the broader debate about individual rights in IHL and the relationship between this regime and international human rights law. From this perspective, the open question to which this article may be relevant is whether the norm in question directly endows individuals, in this case women, with IHL-based rights.

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¹¹⁰ Visser Sellers and Rosenthal (n 2) 350.

¹¹¹ *Dispute regarding Navigational and Related Rights (Costa Rica v Nicaragua)* (n 51) para 66.

¹¹² G Gaggioli, ‘Sexual Violence in Armed Conflicts: A Violation of International Humanitarian Law and Human Rights Law’ (2014) 96(894) *IRRC* 503, 512.