

RAPE AS A WAR CRIME

A CRITICAL PERSPECTIVE ON INTERNATIONAL RESPONSES AFTER THE WAR IN YUGOSLAVIA AND RWANDA

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“It is a ‘universal soldier,’ not ‘universal Serb, Croat, Muslim’ that rapes; rape in war is a war weapon against women, not an ethnic but gender crime.”

Belgrade feminist’s statement

“Boys will always be boys!”

Akashi, Head of the UN Peace operations in Cambodia, 1992, commenting on allegations that UN soldiers sexually abused local women

The number of armed conflicts has been rising steadily since 1945, globally reaching an estimated number of 30 major and 80 to 100 minor conflicts today¹(cf. Unesco 2002). In all forms of armed conflicts, international and internal, women are raped, whether the conflict is fought mainly for religious, ethnic, political or nationalist reasons or a combination of all these. And women are raped by men from all sides - both enemy and “friendly” forces. There have been reports of rapes and other forms of sexual abuse committed by members of United Nations peacekeeping forces(cf. Chinkin 1993 or Peacekeeping Watch 2002). For a long time sexual war crimes against women remained invisible. They even were trivialized or seen as unavoidable by-products of war. Only at the beginning of the 1990^s , when the atrocities of Yugoslavia and Rwanda came to light, the media, several women rights groups and feminist scholars

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¹ The exact number of wars are subject of debate, depending on how war is defined. A widely accepted definition of a major war is one involving more than 1000 battlefield deaths per year (see Byrne 1995).

stressed the issue of rape as the “forgotten” war crime, calling for the international proscription of every form of sexual violence against women in international law. Since then, numerous papers have been written analysing rape as a war crime, most of which stress the increasing systematic use of rape, its strategic function in modern warfare, rape used as a weapon of war and a tool of political repression.

This term paper seeks to analyse the use of rape as a war crime and its status in international law today almost ten years after the wars in Yugoslavia and Rwanda. It also looks at the role of the United Nations(UN) and the special responsibility of peace workers. The paper tries to sort out which challenges the international community still has to cope with.

My thesis is that with the policy of the International Criminal Tribunals ICTY and ICTR² and the new Statute of the International Criminal Court (ICC) important improvements concerning the real acknowledgement of rape as a war crime have evolved.

But on the other side, I also want to argue, that to identify the strategic or systematic use of rape for political reasons as the sole or even major cause for the abuse of women during wartime is simplistic and risks to suppress that women during wartime very often are raped or sexually abused not only by “their ethnic, national or religious enemies”, but also by men of their “own side” or even by UN soldiers or aid workers whose original task is to help and protect them.

Rape as a weapon of war

While rape has always been regarded as an “ugly side effect” of war — “*part of the Homeric booty of killing the men and taking the women as prizes*” (The Population Research Institute 1999) — not long ago for the first time a global awareness began to grow that in the modern period rape is increasingly used as a weapon of war and a tool of political repression. The widespread occurrence of rape

² International Criminal Tribunals for the Former Yugoslavia (ICTY) and for Rwanda (ICTR).

in times of conflict in the beginning of the 1990^s has attracted worldwide attention for a short time and has been seen as directly related to the position of women in communities as bearers of cultural identity. It was stated that the holding up of women as symbolic bearers of caste, ethnic, national or religious identity exposes them to the risk of attack. A huge media action during the war in Yugoslavia focusing on the mass rapes in Bosnia was followed by an overwhelming response from activist, academic, publishing and generally feminist circles (cf. Slapsak 2001). While rape has long been mischaracterized and dismissed by military and political leaders as a private crime, a sexual act, "*the ignoble act of the occasional soldier rape*" (Human Rights Watch 1993), it was then stressed that rape in conflict or under repressive regimes is neither incidental nor private. "*It routinely serves a strategic function and acts as a tool for achieving specific military or political objectives*" (Human Rights Watch 1993). The international response focusing on the mass rapes in Bosnia and the response to the terrible mass rapes in Rwanda used as a weapon of genocide, led to the recognition that the rape of women in conflict situations can be intended not only as violence against women, but as an act of aggression against an ethnicity, nation, community or a religious group (cf. Byrne 1995 or Morokvasic 1998). During the Bosnian war, a European Community team of investigators found that Serbs had committed mass rape as a part of their expansionist policy of "ethnic cleansing." Rape served as a deliberate instrument of war, a means of assaulting an enemy's solidarities, of shattering families and demoralizing the enemy.

Causes for rape in war

Several analyses have tried to identify a number of reasons for sexual violence against women, two of which are especially related to rape in armed conflict: violence against women is directed towards the social group of which she is a member because to rape a woman is to humiliate her community (cf. Chinkin 2001). Complex and combined emotions of hatred, supremacy, revenge for real or imagined past wrongs and national pride are produced and inten-

tionally manipulated in armed conflict. They finally erupt in systematic rape of the other side's women. For the men of the community rape can signify the totality of their defeat; "they have failed to protect 'their' women". Thus women's bodies become places of the exchange of masculine messages. These patterns of behaviour are e.g. the case when nationalism dominates a conflict situation. (cf. Morokvasic 1998). Second, studies have indicated the connection between militarisation of the state and violence against women. Other connections have been drawn between 'normal' peacetime attitudes towards women and rape in armed conflict. The feminist scholar Cornelia Zirpins describes gender construction in the military and stresses that although gender relations have slightly changed during the last 20 years, soldiers are still given typical models of identification of masculinity. She mentions language as a significant paradigm for the mixture of violence and sexuality. As examples she notes that "*a women is conquered, a country too, a gun is called the bride of the soldier*, or that the invasion of Iraqi troops in 1990 was called "*The Rape of Kuwait*" (Zirpins 1997). Widely known is the explanation that women are still objectified, seen as gratification for the warrior and as a victory trophy.

The following quotation represents a distinct interpretation of the connection between gender construction in the community, nation and military and the rape of women in war and graphically describes the consequences for the individual: "*Sexual sadism arises with astonishing rapidity in ground warfare, when the penis becomes justified as a weapon in a logistical reality of unarmed non-combatants, encircled and trapped. Rape of a doubly dehumanized object – as women, as enemy – carries its own terrible logic. In one act of aggression, the collective spirit of women and of the nation is broken, leaving a reminder long after the troops depart. And if she survives the assault, what does the victim of wartime rape become to her people? Evidence of the enemy's bestiality. Symbol of her nation's defeat. A pariah. Damaged property. A pawn in subtle wars in international propaganda*" (Brownmiller, S. 1993: *Against Our Will: Men, Women and Rape*; quoted in Byrne 1995 p.16)

Rape in International law: Yugoslavia and Rwanda – a turning point?

Conventionally, international law concerned itself solely with regulating the relationship between states. It observed respect for state sovereignty as the basic principle. That means that states had exclusive jurisdiction over their internal affairs and over their citizens. Citizens and individuals within the jurisdiction of state territories were not right-holders or subjects of international law and it therefore refrained from judging criminality of individuals. And while rape has always been a crime of individuals against individuals, it was not until recently that it has been perceived as war crime, which is a crime against the laws governing the ways in which wars are conducted. Although rape has already long been prohibited by the laws of war and has been incorporated into various modern Codes of Military Conduct, unfortunately, in these documents the position of rape was quite vague. Since the Red Cross-treaty from 1949, rape was mentioned in International law. But it was not precisely defined. The relevant laws of war were controlled within the 1949 Geneva Conventions, the 1977 supplementary Protocols, and in the body of law arising from the judgment of the Nuremberg Tribunal and the Military Tribunal for the Far East. Rape was not integrated in the listed war crimes in Article 6 of the Nuremberg Charter, although the list was specifically stated not to be complete. The Fourth Geneva Convention provided protection for civilians in international armed conflict and specifically supplied that women should be protected against rape. Feminists noted that these provisions did not formulate a clear prohibition against sexual abuse, but rather engaged states to offer women protection against attacks on their honour and to grant them special respect (cf. Chinkin 1993). Even though it was known that mass rapes had taken place in e.g. Korea, Germany, Russia, Vietnam or any other place of an armed conflict in the last century, it has been ignored when it came to juridical clearing up of war crimes until the wars in Yugoslavia and Rwanda.

After the wars in Yugoslavia and Rwanda the Security Council of the United Nations decided in accordance with the requirements for Chapter VII action of the UN-Charter, that the establishment of International Tribunals will help to restore and maintain international peace in the areas. The Tribunals have been accorded jurisdiction over war crimes, genocide and crimes against humanity.

The cases of mass rapes during the Yugoslav war have been reported in media nearly while they were happening. One could argue that this helped to define rape as a war crime. Nevertheless, world organizations reacted almost immediately and not decades after, as it was the case with the mass rapes in Korea or Germany during World War II. The mass rapes that took place during the wars in the former Yugoslavia, particularly those in Bosnia and Herzegovina, were the first in history brought before an international court and, as such, these crimes, together with the mass rapes that occurred in Rwanda, contributed to groundbreaking changes in relation to the treatment of sexual crimes committed against women in war at international criminal tribunals (cf. Kesic 2001). The ICTY Statute covers both international and internal conflict in former Yugoslavia, the ICTR Statute is valid to internal conflict in Rwanda. Rape has been listed as a form of crime under the category of *Crimes against humanity* in both Statutes of the ad hoc international criminal tribunals ICTY and ICTR. Under three out of four groups of listed crimes charges of rape have been made: *Violations of the laws and customs of war*, *Grave breaches of the Geneva Conventions of 1949*, and *Crimes against humanity*, and once (the Akayesu case at the ICTR³) under the Genocide provision. In Rwanda, one of the accused, J.P. Akayesu, a city mayor who became a war-lord during the Hutu genocide against Tutsis, was charged with rape and gender violence as a genocidal act. The case is interesting at any rate, because for the first time in the history of international law, an international court laid a charge for rape of women under the Genocide Convention (Article 2 of the ICTR). “*In this case, wartime gender violence was treated as an integral part of the overall intention and the process of the destruction, in whole or in part, of the*

³ For a detailed analyses of the Akayesu case see Pillay 2000.

particular group, targeted as such, with women specifically targeted as part of that group” (Kesic 2001).

Critical perspectives

From feminist side it was criticized that in the Akayesu case, again, it was not women as a protected group whom the court was protecting and restituting, but female members of the targeted ethnic group. The sentence and its explanation did not explicitly state that sex or gender can be taken as the basis for a stable and permanent identity, as race, ethnicity, etc. can. By expanding the four grounds explicitly mentioned in the notion of a “stable and permanent group” (religion, nationality, race, ethnicity) whose protection is secured with the Genocide Convention and ratified in ICTY and ICTR, some feminist lawyers argued that “gender” appeared as a category of rights and protection, already in the Akayesu case, even though he was charged under the *Genocide* article of the ICTR (cf. Kesic 2001).

Concerning the atrocities in Yugoslavia, despite the fact that the media response had positive effects on the awareness of the problem, the instrumentalisation of the individual victims was condemned. As Morokvasic stresses, almost all international observers focused on the point that the rape of women happened as a means of intimidation of the whole group and often stories were simplified due to the differentiation of the victims according to their ethnicity declaring it as “*a conflict of the goodies (here the Croats) against the baddies (the Serbs)*”(Morokvasic 1998). Thus the recognition of rape as a weapon of war also leads to its use for political purposes. One of these effects of wartime rape is the manipulation of rape figures to advance special interests. The victor tends to downplay the role of rape in his victory; the beaten may inflate figures to get popular support. Both can use the figures to demonise the “other” as the “*barbarian rapist*”(Ibid. 1998), and special interest groups such as population control advocates use the opportunity to advance their own agendas. As the Zagreb-based Center for Women War Victims stated: “*We fear that the process of helping raped women is turning in a strange direction, being taken over by governmental institutions*

and male gynecologists in particular. We fear that the raped women could be used in political propaganda with the aim of spreading hatred and revenge, thus leading to further violence against women and to further victimization of survivors” (cf. Chinkin 1993). Such manipulation is likely to obscure the real tragedies of the individual women. And of course it surely does not pursue the denouncing of rape as a crime against women and as a gendered political strategy in war. Morokvasic’s interpretation: *“It is as if rape of women as the usual war practice of men was not worthy of attention unless it was presented as a crime against a nation. Rape could be condemned only from a nationalist perspective”* (Ibid.). She concludes, that war rape cannot be considered simply as a *“crime of men against women, but also not only as a crime against a state, nation or community”* (Ibid.). The Croatian feminist Vesna Kesic summarizes: *“From a woman’s, or at least from a feminist point of view, we can once again argue that it was not a crime against women, but a crime against women as members of a “stable and permanent,” i.e. ethnic or national group that became punishable as such. This meant that it was not the atrocity as such (mass rape of women, harm done to the single woman), but the purpose of that atrocity, in these cases ethnic cleansing or genocide, which decided the character of the crime and decisively contributed to the change, welcomed for more general reasons”* (Kesic 2001). The feminist lawyer Nevanethem Pillay claims that within the Conventions and treaties of the ICTY and ICTR there is a *“noticeable dearth of sexual assault prohibition”* (Pillay 2000) but she accepts this as understandable, since the treaties were made by men and militarists whose concern she defines as to win wars and not to defend human rights.

The UN and impartiality

The war in Yugoslavia led to an unusually high engagement of multinational UN troops: UN Protection Force (UNPROFOR), International Force (IFOR) and Stabilisation Force (SFOR). Most of the members of these peacekeeping forces seemed to have little knowledge about international humanitarian law. Their mandate was interpreted differently and sometimes led to confusion within

the troops whether they had to be strictly impartial or not. The following example shows what effects this unclear situation of the UN troops can have on the situation of women. An officer who was asked to explain what impartiality means answered, that for example if a member of a UN Peace Taskforce sees a women being raped, he should react with respect, discipline and reservation. His duty would be not to intervene (cf. Richter-Lyonette 2000). The camps in Yugoslavia, where women have systematically been raped, were known to the UN, but the International Red Cross and the UNHCR remained inactive for a long time. An official in charge of the UN Human Rights Commissioner for Yugoslavia complained that they had no effective measure to handle the situation (cf. Wullweber). Even the camps to which international peacekeepers had access to, could not be disbanded, for one reason because the European states did not offer enough capacities for refugees.

Women's Human Rights Violation committed by UN Peace-workers

Women's rights groups found out, that sexual violence against women in societies generally increases during situations of armed conflicts. Sexual violence against women seems to grow and happen in wartime very often also within an ethnicity, a nationality or a religious group. Other reports have documented a corresponding rise in sex trafficking of children and women in places where there is a peacekeeping presence. While the causes for such violence on the part of peacekeeping troops have not been fully explored, sexual violence against women around any military culture is not new. But it also shows that to define rape during war solely as a weapon of war for ethnic or other political reasons cannot explain this phenomenon. There are many examples of sexual abuse of women by forces representing the international community, by those who were supposed to be peacekeeping and protecting the population. Byrne says that the *militaristic ideology of misogyny* and *aggressive masculinity* would often override the responsibility of protection under which these forces work (cf. Byrne 1995). She found out that large-scaled military operations regularly result in an increase in prostitu-

tion and sexual harassment. For instance, this also was the case in Cambodia. Male UNTAC personnel created such a problem of sexual harassment of Cambodian women and of female UNTAC staff during the peace process, that complaints were made to the Special Representative of the UN Secretary General in Phnom Penh (cf. Byrne 1995). Problems occurred in several refugee camps where women and girls were vulnerable to sexual attacks as it was for example the case in Rwanda. There were reports of soldiers generally terrorising the camp population and of sexual harassment. In January 2000, more news came to light, this time about the rape and murder of a 12-year-old Kosovo-Albanian girl by a UN peacekeeper. The following investigations found out, her murder had taken place in a climate of reckless violence and aggression against the Kosovo people and that peacekeepers had *"failed basic standards of conduct of human decency"* (Peacekeeping Watch 2002). A woman wrote to the American minister for foreign affairs: *"Would American troops get the necessary training to avoid 'Okinawa-type situations' - three American servicemen are being tried in a Japanese court for the abduction and rape of a 12-year-old Okinawan girl - and would they also be on the lookout for abusive behavior of any kind among the soldiers from about 30 other nations under American command? Would American troops abroad be living under the rules and laws they must obey at home, setting an international standard?"* (Crossette 1996). In October 2000, the Security Council passed a resolution, which showed the Council's willingness to incorporate a gender perspective into peacekeeping operations and urged the Secretary-General to ensure that field operations included a gender component (cf. Byrne 1995). This resolution also calls on all parties to armed conflict to take special measures to protect women and girls from gender based violence. Additionally, after the horrific violations by peacekeepers in communities they are charged with protecting brought women's rights groups to the foundation of an information-sharing network to facilitate the documentation and compilation of these human rights violations. The *Center for Strategic Initiatives for Women*, the *Women's Caucus for Gender Justice* and the *Women's International League for Peace and Freedom* have joined together to initiate the formation of a network

to help ensure a broad collection of information and recommendations possible. *“The network is intended to facilitate the quick flow of information about the commission of violations by Peacekeepers, to bring media and public attention to their occurrence and to seek appropriate responses from the UN as well as troop contributing countries”* (Peacekeeping Watch 2002)

The International Criminal Court (ICC)

The ICC which has built on the experiences of the ICTY and ICTR, holds more radical changes in the direction of ending impunity for gender crimes and has introduced sex and gender justice in international human rights and humanitarian law. The creation of the ICC was established in 1998 with the purpose of investigating and punishing the *crime of genocide, crimes against humanity, and war crimes*. The Rome Statute of the ICC entered into force on 1 July 2002. Concerning gender in the Statute, the following breakthroughs were made. Gender-specific crimes are now included under two of the three core crimes that are given, *crimes against humanity* and *war crimes*. The listing of these crimes is expanded and covers a broader spectrum than before in the ICTY and ICTR Statutes. In Article 7 of the Rome Statute *crimes against humanity* include these definitions: *“rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity”* (ICC 2002). Article 8, on *war crimes*, lists the same atrocities, adding *“any other form of sexual violence also constituting a grave breach of the Geneva Conventions”* (ICC 2002). Another achievement is the description of forced pregnancy that the ICC Statute gives to the crime. It states: *“Forced pregnancy means the unlawful confinement, of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law”* (Ibid.). The ICC has recognized forced pregnancy as an “ethnic” and not a gender crime, but as Vesna Kesic claims, by excluding it from the category of genocide and adding it to the crimes against humanity, and by adding “other grave violations” it also recognized its gendered dimension (cf, Kesic 2001). However, the

treatment of rape as a crime as outlined in the 2002 Statute of the ICC is probably the most significant achievement towards the recognition of rape as crime against gender in future.

In 1999, David J. Scheffer, the American Ambassador-at-Large for War Crimes Issues stressed in a speech, that the USA would support and push for more justice concerning the international fight through the ICC against sexual violence in armed conflicts: *“Throughout the many debates surrounding the creation of the ICC, the United States has been a strong advocate for the inclusion of rape and sexual violence as specific offences for the world body to punish. We fought hard for laws that help ensure the protection of women in times of conflict throughout the world. We also pushed for a broader definition of rape that is gender neutral and treats physical invasions by any object or body part no differently in the eyes of the law, thus further protecting victims from the horror of inhumanity”* (Scheffer 1999). Since, the ICC Statute of today has followed this direction and in general has the potential to bring a shift to the existing patterns of international affairs and relations of states towards intensive multilateralism with regard to International law, the unintelligible blockade of the USA needs to be broken to prevent the weakening of the achievements of the ICC.

Conclusion

It is evident that with the policy of the International Criminal Tribunals ICTY and ICTR and the new Statute of the International Criminal Court (ICC) important improvements concerning the real acknowledgement of rape as a war crime have evolved. And as outlined above, it is of high importance that violence directed at women and children in wartime is made public, condemned, and harshly punished. Therefore, the work of the UN War Crimes Tribunals for Yugoslavia and Rwanda and the International Criminal Court, aimed at prosecuting the perpetrators of wartime rapes is a good step in the right direction. The new permanent International Criminal Court has integrated the experience from the sexualized warfare in the Balkans within its legislative framework. The enforcement of these norms needs to be supported by the international

community. And although it is clear that International law will not prevent rape in wartimes and will not rapidly change national and international discriminatory or sexist law, it provides a tool for political advocacy which has been achieved through the steady work of the women's rights movement. But though there is increasing attention given to the incidents of sexual violence in times of conflict, there has yet been little progress on the protection of women's human rights in times of conflict and little attention given to the problem of the general increase of sexual violence in conflict areas and in "post-conflict" situations.

To prevent at least a part of atrocities the mandate of UN troops must be clear and impunity or neutrality should never lead to inactivity when facing a woman, a child, a man or a group of civilians under threat. To incorporate a gender perspective into peacekeeping operations as proposed by the UN and to ensure that field operations include a gender component is a central step that needs to be taken seriously by all peace working agencies and by the military. This paper shows that to protect women and girls from gender based violence several levels of an armed conflict must be addressed. Since gender images in society, military and politics can not be changed easily, it is still important that women's rights groups draw attention to women's rights violations, bring media and public attention to them and seek responses from the UN.

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