

## Sexual Violence as Weapon of War

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In general women face in peacetime as well as in wartime different forms of discrimination and gender based violence. But during an armed conflict, and because of the atmosphere of chaos, terror, intimidation, excessive use of power and arms & impunity, this form of violence will definitely increase and will affect women's dignity and security.

Our aim of this study is to highlight on the sexual violence against women during armed conflicts and to show the path of the international law and international criminal tribunals in prosecuting & punishing the perpetrators of these crimes.

Sexual violence against women in wartime takes different forms , like for example : Rape , sexual slavery , forced prostitution , genital mutilation , forced pregnancy , forced abortion , transportation of sexual diseases , forced to strip in public places , sexual humiliation , forced & early marriage and human trafficking .

And we have seen all these various crimes during many wars throughout history, where women's body turned into a battleground and where rape and sexual violence become a weapon of war par excellence and therefore constitutes a deliberate and strategic behavior in order to control, intimidate, destroy & humiliate the enemy through the violation of women's bodies & dignity.

Many are the reasons for which , women are abused & sexually violated during a war :

- The first reason, is to satisfy the desires of the men fighters. Women's bodies become a reward for the men to motivate them to fight.
- The second reason, is to send a message of disdain & contempt to the enemy. Because raping the women of the enemy consists a big insult against him.
- The third reason is, to use the sexual violence as an instrument of torture and a tool of ethnic cleansing and genocide as well as a tool to change the demographic balance in a specific community.

## The path of the International Law in recognizing Sexual violence against women as a war crime

During a long period where sexual violence against women was common & widespread during armed conflicts, the international and local legislations failed to give a legal description to such crime. This failure led to no responsibility and no punishment of these crimes due to the legal principal that says: “No crime, No punishment in absence of a legal text “.

On the national level, the legal treatment for crimes of sexual violence against women during war, started with some local laws and regulations that regulate the practices & behavior of soldiers during war & punishes crimes of sexual violence. For example , the USA adopted in 1863 & for the first time a military law called “ Lieber Code “ , according to this law rape during war was punished by death penalty .

On the International level, the legal framework to punish war crimes including sexual crimes against women was elaborated for the first time with the ratification of Geneva 4 conventions in 1949 and their Two Additional Protocols in 1977.

According to the article 27 of Geneva 4<sup>th</sup> convention, women shall be especially protected against any attack on their honor in particular against rape, enforced prostitution or any other form of indecent assault.

And according to the article 76 from the 1<sup>st</sup> additional protocol, women shall be the object of special respect and shall be protected against **rape , forced prostitution** and any other form of indecent assault.

The above mentioned articles had limited sexual violence against women during war in 2 forms of sexual violence: Rape & forced prostitution. But if we expand the interpretation of the article number 27 ( G4C ) & 76 ( AP1) & 4 (AP2) we realize that , not only rape & forced prostitution are forbidden but any act that may attack women’s honor & dignity and any form of indecent assault consist a war crime and a flagrant violation of the International Humanitarian Law .

The package of all the international conventions and regulations Including : the Universal Declaration of Human Rights , the Geneva conventions , CEDAW convention & Beijing declaration & platform for action , all these were not enough to protect women from sexual violence during war or to stop such crimes .

Therefore , and in order to maintain the international peace & security after the terrible crimes of sexual violence that took place in many countries especially in Former Yugoslavia & Rwanda , the UNSC had adopted several resolutions under the title of : “ **Women Peace & Security** “ , and these resolutions are :

- UNSCR 1325 adopted in 31/10/2000
- UNSCR 1820 adopted in 19/6/2008
- UNSCR 1888 adopted in 30/9/2009
- UNSCR 1889 adopted in 5/10/2009
- UNSCR 1960 adopted in 16/12/2010
- UNSCR 2106 adopted 24/6/2013
- UNSCR 2122 adopted 18/10/2013

By adopting the above mentioned resolutions, the UNSC stresses that sexual violence during conflict constitutes a war crime, a crime against Humanity, Genocide. And demands parties in conflict to take appropriate measures to protect women from sexual violence. And it also calls states members and UN agencies to take all the measures to prevent women from such crime.

At the same time, the UNSC encourages the participation of women in decision-making institutions especially during the post-conflict period and the peace-building process in order to allow women to be decision-makers and not only victims of war.

The UN agencies and organizations and the international community and International NGO's are taking this case very seriously and they are making a lot of effort to stop sexual violence against women by investigating on such crimes and issuing reports & studies constantly and by supporting the survival women.

### **Supranational Criminal Prosecution of Sexual violence in the International Criminal Tribunals (ICTY – ICTR- ICC)**

The establishment of the two ad hoc tribunals: The International Criminal Tribunal for former Yugoslavia (ICTY) in May 1993, and the International Criminal Tribunal for Rwanda ( ICTR) in November 1994 , have made notable progress towards defining sexual violence as :

“**Weapon of War** “.

This paper highlights and evaluates the innovations made by the ICTY & ICTR towards recognizing for the first time the issue of sexual violence as a threat to International Peace & Security .

- The armed conflicts in former Yugoslavia especially in Slovenia, Bosnia & Herzegovina including Serb republic, Croatia & Kosovo pitted different parties against one another. The cases before the Tribunal involve atrocity crimes committed between 1992-1995 by perpetrators of Serb origin against civilian populations of Muslim & Croatian origin. Hundred thousand of Women were victims of massive rape, many of them were captives in rape camps ( ex : Filin Flas , Kiratrum , Marsaka ) .
- Regarding the Civil war in Rwanda in 1994 (between April & July), the perpetrators from HUTU origin committed genocide against Rwandans citizens from TUTSI origin. Almost half million of citizens & especially TUTSI women were killed, raped & sexually abused.

In The judgments rendered by the ICTY & ICTR , sexual violence took various forms like : rape , torture , enslavement , persecution , outrages upon personal dignity & inhuman treatments .

Sexual violence is considered by these Two tribunals a Supreme War crime that threat international peace & security and was described as a crime against humanity & a weapon used to commit Genocide and ethnic cleansing to a specific group targeted.

The ICTY & ICTR adopted two common standards to describe Sexual violence as a weapon of war and an act to commit Genocide or Crime against humanity, and these standards are: **Systematic & Widespread attack.**

The positive results in the course of the prosecution and punishment of sexual violence by the ICTY & ICTR , encouraged later to include some advanced articles in Rome convention or the statute of the International Criminal Court .

### **International Criminal Court (ICC)**

The International Criminal Court (ICC) is the first permanent International Tribunal competent of trying individuals for genocide, crimes against humanity, war crimes and crime of aggression when national courts are unable or unwilling to do so.

The Rome Statute of the International Criminal Court entered into force on 1 July 2002

The ICC can prosecute and bring to justice individuals accused of genocide, war crimes, Crimes against humanity and crimes of aggression. These crimes are defined in the Rome Statute, and reflect existing international law.

- According to the articles number 6 , 7 & 8 of Rome Statute , Sexual violence against women could be an act of Genocide or a crime against humanity or a war crime or all these crimes together .

- From the several cases referred to ICC especially the war crimes committed in Uganda , Congo , Central Africa , Darfur , Kenya , Libya & Cote d'Ivoire . The Court found that between 200 to 400 thousands of women were raped & sexually abused during the armed conflicts in Congo. And the Persecutor of the Court had accused the former president of Cote d'Ivoire Laurent Gbagbo & his wife and some of Sudan's leader including the president Omar Hassan Bashir for committing crimes of sexual violence against women during the armed conflicts in Cote d'Ivoire & Sudan .

Finally , The national security of a state can be achieved only by ensuring woman's security and her physical and psychological safety, not only because she is an integral part of the society but because she should live in peace and benefit from her rights without discrimination or violation whatsoever .

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