

STUDENT CONTRIBUTION

Rape as a War Crime: The Position of International Law since World War II

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International attention first focused on the use of rape as a tactic of warfare in Bosnia between 1991 and 1995. Rape was also employed by Hutu troops against Tutsi women in the genocidal campaign in Rwanda in 1994. In December of 1993, The United Nations adopted the Declaration on the Elimination of Violence against Women, and with that the international community acknowledged its global dimensions. What became clear to the world was that women's distinctive needs, experiences, vulnerabilities, and perspectives were being excluded in the development of both the substantive and procedural rules of international humanitarian law, as well as the remedies it offered victims. A community of elite women legal policy makers comprised of judges, prosecutors, lawyers, and investigators evolved to try these cases in International Criminal Tribunals in Europe and Africa. During the Bosnian war of 1992-95 Yugoslav women and hundreds of other Muslim women were systematically raped and tortured in a clear attempt to advance the cause of ethnic cleansing. Several of the women took to court, and testified against, three Bosnian soldiers in the courtrooms of the Yugoslav war-crimes tribunal in The Hague. The ruling made on the rape cases between Yugoslav women and the Bosnian Serb army is a landmark in establishing that systematic rape during conflict is not merely a violation of the practice of war but a crime against humanity. In turn, sexual assault during slavery has been recognized as an independent crime under humanitarian and human rights laws. The ruling is very significant because it opens the door for many other victims of sexual violence to press for their recognition as victims, for penalties, and for compensation. It also means that effort will consequently be made to promote its application. However, whether the codification

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of such laws can be translated into the practical protection of women during conflict remains to be seen.

Keywords

International Humanitarian Law, war crimes, mass rape, comfort women.

I. Introduction

In the arena of armed conflicts canvassing the globe, regardless of the internal or international character of the conflict, the truth that peeks at us time and again is that no one is safe. Worse yet, perpetrators do not consider any act off limits. And nowhere is this more apparent than it is in attacks committed against women. Uniformly, these crimes are becoming more blazoned and more horrific in their character and commission. It is almost as if the attackers are boldly defying and challenging the acceptable moral standards set by humankind and daring anyone to take action even as they threaten escalated inhumanity if outside forces intervene in any way or begin to record the crimes committed.

The connection between sexual conquest of women and war was considered natural and inevitable, an essential engine of war, rewarding soldiers and readying them to fight again.¹ The rape of women in prison was not considered torture but was usually noted as incidental to war,² a lesser abuse and even excused in law as a mere personal indiscretion, while official toleration of privately inflicted gender violence was ignored as a human rights issue. Rape was the fault of unchaste women or brushed under the rug, and thus raped women were consigned to invisibility, isolation, and shame.³ In the first recorded International Criminal Tribunal (1474), Peter von Hagenbatch⁴ was convicted and executed on a number of charges which included offences of rape.

¹ ROBERT CRYER, HAKAN FRIMAN, DARRYL ROBINSON & ELIZABETH WILMSHURST: AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE 244 (2007).

² Siobhan K. Fisher, *Occupation of the Womb: Forced Impregnation as Genocide*, 46 DUKE L. J. 91-133 (1996), available at <http://www.jstor.org/stable/1372967> (last visited on Aug. 17, 2009).

³ Rhonda Copelon, *Rape and Gender Violence: From Impunity to Accountability in International Law*, 2 HUMAN RIGHTS DIALOGUE (2003); *Violence Against Women*, (Nov. 5, 2003), available at http://www.cceia.org/resources/publications/dialogue/2_10/articles/1052.html (last visited on Aug. 16, 2009).

⁴ Following a rebellion by the towns of the Upper Rhine against his tyranny, Hagenbach was put on trial. He was convicted and beheaded for crimes during the siege of Breisach that "he as a knight was deemed to have a duty to prevent," although he had argued that he was only "following orders" from the Duke of Burgundy to whom the Holy