
VIOLENCE AGAINST WOMEN IN ARMED CONFLICT: AN OVERVIEW

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HISTORICAL OVERVIEW

- Rape and pillage/looting: the spoils of war
- Women being viewed as the property of the man
- Susan Brownmiller, *Against Our Will: Men, Women and Rape*, 1975
- Examples:
 - o WWII and the women raped by the Soviets
 - o WWII and the rapes that took place during the 1937 occupation of Nanking
 - o Women raped during the independence war in Bangladesh in 1971
- Victors' gratification
 - o WWII and the rape of French women by American troops

RECOGNITION OF THE PROBLEM DURING THE CONFLICT IN THE FORMER YUGOSLAVIA

- Press reports about the camps and more particularly 'rape camps' (Roy Gutman, Pulitzer Prize, Omarska camp)
- United Nations Security Council and Commission of Experts on conflict in Yugoslavia
- That report by the Commission of Experts led to the creation of the International Criminal Tribunal for the Former Yugoslavia
- Recognition that:
 - o How common and widespread it is
 - o Rape not incidental, a by-product of war, rather being used as a deliberate military strategy, In particular impregnation of women so that they give birth to children from a different nationality/ethnicity/race → conflict in Rwanda (a year later after the creation of the ICTY has sadly demonstrated this)

WHY THIS INVISIBILITY AND WHAT HAS CHANGED, IF ANYTHING?

IT IS WAR.... WHAT DO YOU EXPECT?

It is war.... You can do whatever you want...	Concept of war crimes is old, faith books also prohibit certain crimes in times of armed conflict
Prosecution on the national level which means prosecuting your own people: great reluctance to do this	Indeed: very few prosecution of war crimes generally. Not much has changed sadly at least on the national level
	Positive developments: Prosecution on the international level ICTY, ICTR, Special Court for Sierra Leone

BOYS WILL BE BOYS

Boys will be boys	<p>Link between peacetime and wartime violence against women established by academic scholars and stressed by Special Rapporteur on Violence against Women; no need to be defeatist though and thus need to change attitudes in peacetime too!</p> <p>Lieber Code already criminalised sexual offences against women in armed conflict but true that neither Geneva Conventions nor Additional Protocol make rape and sexual offences more generally a grave breach, in the end need to interpret torture and cruel treatment as covering rape and other sexual offences → OLGA WILL ELABORATE ON THIS</p>
Combine boys will be boys and it is war...	Very few prosecutions (IMT Nuremberg) But IMT Tokyo and Batavia case

	about Dutch women and sexual slavery
Combine boys will be boys and it is war and reluctance to talk about sex	Little interest in looking into these crimes Experience of the judges at the IMT Nuremberg: rather Victorian attitude and unwillingness to explain rape in mechanical terms But done at IMT Tokyo which proves not a problem and since the end of the 90s at ICTY, ICTR, Special Court for Sierra Leone and role of gender adviser at ICTY and ICC as well as prosecutorial policy. Progress!! → OLGA WILL ELABORATE ON THIS

PUBLIC / PRIVATE DICHOTOMY

More general problem, not only in armed conflict is that in international law the focus is traditionally on the State and State agents. Anything committed by private individuals falls outside the radar of international law (State responsibility) After all, traditionally international law regulates the relations between States. Only with human rights has this changed.	Principle of due diligence, linking State responsibility to acts committed by non-State actors: <ul style="list-style-type: none"> - Prevention - Investigation - Prosecution - Compensation Work of the UN Special Rapporteur on Violence against Women, its Causes and Consequences. Concept features in the Istanbul Convention (Council of Europe Convention on preventing and combating violence against women and domestic violence)
Women as carers of children, elderly people, sick people, etc → not in the public sphere	Indeed this is a role often undertaken by women and women are thus protected in this role by a number of provisions in international humanitarian law that link women and children (pregnant women, maternity cases, mothers with children under seven

	<p>years of age). I don't think this is a problem though as women do need to be protected in this context. Becomes however problematic when women are girls! → SOLANGE WILL ELABORATE ON THIS</p>
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SCOPE AND TYPE OF VIOLENCE AGAINST WOMEN IN ARMED CONFLICT

YET: recognition of the issue of violence against women in armed conflict appears to be limited to sexual violence

Whilst my colleagues will focus on this aspect of violence against women I'll take a broader view.

First, we have to remember that:

1. The best we have at the moment is CEDAW that focuses on the principle of non-discrimination though there are General Comment 19 on violence against women and the 1993 UNGA Declaration on the Elimination of Violence against Women but not legally binding.
2. Still no convention against violence against women and unlikely that such an idea will be supported by the United Nations

Second, we must stress that in times of armed conflict, States have to respect **and** protect women (see Article 27 GC IV)

Third, women, in fact, are subject to a range of violent, degrading, inhuman acts during armed conflict

1. Women often left behind to care for others which means that they have to find food, water, etc. They are then vulnerable to attack.
2. They are likely to be 'collateral damage' in military attacks or the objects of attack when it is believed that they support the adversary
3. Access to humanitarian aid
4. Limited freedom of movement because of road blocks, curfews, closures of some areas (some women giving birth at road blocks or

being sent back home as they cannot go through to reach a hospital to give birth)

5. Female detainees (include prisoners of war): conditions in camps, hygiene, health and medical care, sanitation

In relation to international criminal law and sexual violence against women..... I leave the floor to OLGA JURASZ.