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Rape as a Tool of War

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Rape as a Tool of War

“It is one thing to learn the laws of land warfare in training, quite another to apply their underlying moral values in the brutal, cynical world of combat, where a commander’s exhortations may have unintended horrific consequences.”¹
(Col Robert J. Berens, US Army retired)

Introduction

War is commonly described as a strife usually between nations conducted by force as well as the state of open hostility and suspension of ordinary international law prevalent during such a strife.² Because the objective of warfare is to intimidate and defeat the enemy as quickly and completely as possible, war is regarded as a breakdown of law and order where in many cases the “end justifies the means.” In wartime soldiers are the “combatants” and therefore entitled to take a direct part in the hostilities which usually means attacking enemy combatants or enemy objectives. They are typically part of armed forces structured with ranks, the more senior ranks having power to give orders to, and exercise discipline over their subordinates.³

In war, women are usually non-combatants since they do not directly take part in the hostilities. Mostly they are civilians that cannot lawfully engage in hostilities and may

not, as a rule be attacked unless they participate directly in these same hostilities.⁴ So, generally speaking, women are not directly involved in warfare because the main actors are the combatants who are predominantly male. Women, however, are often the major victims of warfare. They are the silent casualties of war because they play no role in starting wars or ending them.⁵ Sexual abuse of women during and after warfare has been well documented but rape as a tool of war has rarely been reported or recorded, even though it has resulted in death and suffering of countless women.⁶

In the Concise Oxford dictionary, rape is defined as the forcible or fraudulent sexual intercourse imposed on women.⁷ It is also considered as an abuse of power and control in which the rapist seeks to humiliate, shame, embarrass, degrade and terrify the victim and as such it represents one of the worst forms of abuse inflicted on women as non-combatants. Because rape's primary objective is to exercise power and control over another person,⁸ it has frequently been used as an instrument of war, for intimidation or simply to "take possession of the enemy's territory," but mostly it has been just another means that justified the end.

Through the ages rape was often regarded as a natural, if unfortunate, by-product of when men took up arms against men.⁹ But times have changed and so has the use of rape in times of war. History shows that rape has taken many forms; ranging from wartime excesses, "spoils of war," intimidation tool, "comfort houses" and, more recently becoming a real tool of war with the sanctioned and genocidal rapes that have been reported in Bosnia-Herzegovina and Rwanda. However it remains first and foremost an

act of aggression with sexual manifestation.¹⁰ Rape and sexual abuse as forms of torture or cruel, inhuman or degrading treatment are clearly in contravention of international human rights standards as well as of international humanitarian law and a state of war should be no justification for the suspension of such standards.¹¹

In an attempt to bring light on the different aspects mentioned above, this paper will look at rape and how it has been used as a tool of war throughout the years. It will specifically look at examples from recent events, the crime itself, and its pre-conditions as well as the response of the law, international and domestic. Although this paper will confirm that more steps have recently been taken towards the prosecution of high-level leaders responsible for rapes in time of war, it will also demonstrate that what is being done is still not enough and offer some recommendations. What this paper will not discuss are the religious and cultural backgrounds that play an important role in the development of plans that include rape as an integral part of the tools of war. In the end it will be maintained that, in order to prevent the use of rape as a tool of war, the development and implementation of a clearer international doctrine and sanctions as well as more support for rape prevention and education need to be implemented.

Definitions

Before getting into the history of rape in war it is essential to clarify some of the terminology that will be used. To start with, “wartime excesses” was a term used in the past to describe the dalliances of a few soldiers in the euphoria after the battle.¹² As well,

rape as part of the spoils of war can be found throughout history, as far back as the oral recounting of Mediterranean warrior-kings attributed to Homer. The practice of seizing women as war booty, hardly different than cattle and corn, was a normal occurrence considering they were just enemy belongings.¹³ But since this paper is aimed more at recent events, the terms to be developed further are “Comfort Women,” intimidation, sanctioned rapes, and genocidal rapes.

First, the 100,000 Asian “comfort women” enslaved in military brothels during World War II provide perhaps the ghastliest twentieth-century example of an “institutionalized” form of rape.¹⁴ The Japanese Expeditionary force in Central China issued an order to set up comfort houses because Japan was afraid of criticism from China, the United States and Europe following the cases of massive rapes between battles in Shanghai and Nanking.¹⁵ Nanking will be discussed in more details later in the paper. The rape of women for intimidation of the civilian population in general¹⁶ is said to be a violent practice that has long been a part of the near universal, received history of war.¹⁷ There are many examples of this practice, some of which will be examined later in the paper.

Sanctioned rapes are a political form of violence used to deliberately terrorize the civilian population.¹⁸ There are too many examples of this form of rape in the history of conflicts to adequately describe them here. To remain within the terms of the paper only a sample of rapes sanctioned by military authorities will be presented. A brief illustration

of this type of rape would be that during the August 1990 invasion of Kuwait it is estimated that at least 5,000 women were raped by Iraqi soldiers.¹⁹

Genocidal rapes, the form of sanctioned rapes seen in Bosnia-Herzegovina and Croatia have been defined as a military policy of rape for the purpose of genocide. In her book on “*Rape Warfare*” Beverly Allen claims that three main forms of genocidal rape exist. First: The soldiers enter a village, take several women of varying ages from their homes, rape them in public view, and depart. The news spreads quickly throughout the village and when the soldiers return several days later and offer the terrified residents safe passage away from the village, most accept and leave everything behind. Second: women held in concentration camps are chosen at random to be raped, often as part of torture preceding death. Third: Women are arrested and imprisoned in rape/death camps and are raped systematically for extended periods of time. Such rapes are either part of torture preceding death or part of torture leading to forced pregnancy. Pregnant victims are raped consistently until such time as their pregnancies have progressed beyond the possibility of safe abortion and they are released. In the first case, the death of the victim contributes to the genocidal goal and in the second, the birth of a child does, because the perpetrator – or the policy according to which he is acting – considers this child to have the identity of the father and none of the mother’s.²⁰

Rape in war

As previously mentioned there are too many examples of rape in times of war to recount them all here but to put things in perspective and illustrate the extent of the problem it is essential to have a look at a number of them. The examples listed will

follow the categories previously mentioned to facilitate reference to the definitions. First the “Comfort Women”: “From the perspective of a Korean woman, forcibly recruited, with no control over her body or her life but compelled to have intercourse on demand, what the Japanese soldier saw as customary was in fact one in a series of unpardonable rapes.” (Hyunah Yang)²¹ Moreover a Netherlands’ tribunal convicted Japanese military defendants, who had enslaved thirty-five Dutch women and girls in comfort stations, for war crimes including rape.²²

Second, intimidation: In 1971 an estimated 200,000 – 400,000 women were raped by Pakistani soldiers in Bangladesh during a nine-month reign of terror following a failed rebellion. Recent evidence suggests that Russian soldiers in Chechnya also raped women and girls on a mass scale.²³ From Algeria there are frequent reports of young women being abducted and repeatedly raped, often for weeks at a time. The terrorists justify such sexual abuse by referring to them as “temporary marriages.”²⁴ In Sierra Leone “rape was also part of the war, but it was something that women never spoke about and communities never addressed,” says Roisin De Burca, a child protection officer with UNICEF in Freetown.²⁵ Particularly in Freetown the rebels raped thousands of women over a period of two weeks. The “SOBELS” were soldiers who wore the uniform of the government by day and then robbed, raped and attacked civilians by night.²⁶ Unfortunately the Lome Peace Accord granted a blanket amnesty to all acts committed during the war, including sexual abuses and rapes.²⁷

Third, sanctioned rapes: In Kosovo rapes were not rare or isolated acts committed by individual Serbian or Yugoslav forces; but rather they were used deliberately as an instrument to terrorize the civilian population, extort money from families and force people to flee their homes.²⁸ A recent study by Human Rights Watch reported 96 cases of rape against Kosovar Albanians, but the organization believes the actual number of rapes committed by Serbs during the NATO bombing was much higher. The majority of the documented rapes were committed by Serb paramilitaries.²⁹ In these instances rape was used as an instrument of war.³⁰ One of the most publicized cases of sanctioned rape is the one of 1937/38 in Nanking where an estimated 20,000 Chinese women were raped. The raping was not restricted to soldiers. Officers at all levels indulged in the orgy. Some not only urged soldiers to commit gang rape in the city but, warned them to dispose of the women afterwards to eliminate evidence of the crimes. Several Japanese officers were charged and held responsible for the rape of the 20,000 women.³¹ Another example of sanctioned rape is mentioned by Alexander Solzhenitsyn who is quoted as saying “it was common knowledge among the troops that German girls could be raped and shot with impunity”³² when the Russians entered Germany in 1945.

Fourth, genocidal rape: In Bosnia, in the early 1990s, a military policy of rape for the purpose of genocide was established.³³ Rape was then a central weapon in the Serb’s strategy of ethnic cleansing³⁴ and many perpetrators said they were under orders to rape³⁵ to ensure that the victims and their families would never return to the area. In 1992 when the city of Foca (South-East of Sarajevo) was overrun by Serb forces, Muslim and Croat women were detained and repeatedly beaten and raped. What seems to be unprecedented

about the rapes of Muslim women in Bosnia (and, to a lesser extent, the Croat women too) is that there was a clear political purpose behind the practice. The rapes in Bosnia were an organized and systematic attempt to cleanse the Muslim population.³⁶

Violent sexual abuse of ethnic Burmese women at the hands of the military has also occurred in epidemic proportions in recent years.³⁷ One document whose authenticity was not fully established appears to lend credence that rape was not only widespread in Burma, it was used as a conscious tool of war. The letter describes a “strategy of mixing blood” and “Burmanization” in Shan State and instructs soldiers to “occupy (marry or impregnate) women who are not Burman.”³⁸ A 1997 Shan report says that 120 troops lead by Capt Htun Mya found forty-two women and gang raped them for two days and two nights before killing them. As well a Shan leader is quoted as having said in an interview that: “It’s understood that they have permission from their officers.”³⁹

In Rwanda, Tutsi women were raped, gang-raped, raped with objects such as sharp sticks and gun barrels, held in sexual slavery or sexually mutilated.⁴⁰ The mayor of the Taba commune, for one, was charged for sexual violence by the Rwanda tribunal.⁴¹

Pre-conditions

Rape in time of war has not, throughout most of recorded history, been regarded solely as a crime against women. It has however been seen as a heinous crime against

men: a humiliation inflicted upon a nation, an affront to a man's pride as guardian.⁴² Marauding armies have always used rape as a means of controlling the minds and body of those they sought to conquer. In this regard rape enabled the victors to demoralize their prey, further asserting their power over the alien enemy. It is this distinction between "them and us" that is stressed during warfare hence granting the right to destroy other human lives. Women are raped in war, as casually, or as frenetically, as a village is looted or gratuitously destroyed. In some places sexual trespass on the enemy women remains one of the satisfactions of the conquest.⁴³ Therefore rape of a doubly dehumanized object – as a woman, as an enemy – carries its own terrible logic.

Furthermore the perpetrators know that they will most likely never be prosecuted. They know that the raped woman's testimony is rarely deemed to be as "trustworthy as that of a man whose wallet was stolen."⁴⁴ Or, as stated in a 1996 report from the Shan Human Rights Foundation about the rapes in Burma, they know that "When soldiers rape women, there is no action taken against them."⁴⁵ They are also aware that should they get caught they have the possibility, right or wrong, to blame their superiors for having given the orders. After all, they were just being good soldiers and doing their duty.

On the other hand, survivors report that in Bosnia-Herzegovina some Serbs initially refused to rape and they have been severely punished and even killed for it. Some were also incapable of performing the rapes on order and to guard against such shortcomings they made use of pornographic materials and drugs to help short-circuit whatever moral or ethical resistance they might have had and induce the psychological

and physical states necessary for rape.⁴⁶ Sometimes junior officers tried to enforce the laws of war only to be undercut or overruled by indifferent or downright sadistic superiors.⁴⁷

Victims of rape

Because the rejection of rape victims by their community is more upsetting than the rape itself⁴⁸ and the stigma of rape is so deep, it is often stated that a “good” woman would rather kill herself than continue to live after being raped.⁴⁹ Those that don’t kill themselves express their feelings with recorded statements such as “I don’t exist as an emotional being. I’m just surviving.”⁵⁰ In “*The Rape of Lucrece*” William Shakespeare provides a very good description of a woman’s feelings after being raped:

‘Her house is sack’d, her quiet interrupted,
Her mansion batter’d by the enemy;
Her sacred temple spotted, spoil’d, corrupted,
Grossly engirt with daring infamy:.....”⁵¹

Therefore it should be fair to conclude that by raping the women the soldiers do indeed accomplish their aim of taking possession of the enemy’s territory and belongings, as well as, in the most recent cases, of working towards the demise of a complete ethnic group. When the women die it advances the genocide, as well as when they want to die out of shame of having become the property of the enemy and being rejected by their own community. In most cases they are ashamed of reporting the fact that they have been raped to those that could prosecute the perpetrators. Consequently, either through

their death or their refusal to lay charges they reduce the possibilities of bringing light on what really happened and the chance of establishing better regulations and controls.

The crime

What type of crime is war rape: a crime of obedience, a crime against humanity, a crime against honour and dignity, or as alleged by some feminists looking at how rape was used in Bosnia-Herzegovina, a crime of biological warfare? A review of these terms, in reverse order for emphasis, provides more perspective. First, biological warfare: Beverly Allen explains that the use of sperm in genocidal rape is not only effectively destructive; it also constitutes a highly perfected form of biological warfare for its chemical stability, ease of storage, and capacity to deliver to a specific target. She also adds that the biological mechanisms of the production and delivery of the biological agent, sperm, are such that the attackers never fear the phenomenon of blowback. Thus, they can never get pregnant themselves.⁵² An idea, that even if clinically true, is so farfetched that it has not been considered officially. It is described here only to show the plurality of perspectives on war rape and the difficulties of determining where rape should fit in existing international laws.

Second, crime against honour and dignity is described as part of the provisions giving women special protection against rape in time of hostilities. Article 27 of the Fourth Geneva Convention of 1949 states that “protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their

religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected against all acts of violence or threats thereof and against insults and public curiosity.” It then goes on to say that: “Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.”⁵³ There are unfortunately many pitfalls to linking rape to honour and one of them is that on the scale of wartime violence, rape as a mere injury to honour or reputation has a tendency to appear less worthy of prosecution than injuries to the person.⁵⁴

Third, crime against humanity refers mostly to sanctioned and genocidal rape. The list of specific crimes contained within the meaning of crimes against humanity has been expanded since Article 6 C of the International Military Tribunals was amended to include rape and torture in the International Crimes Tribunal for the Former Yugoslavia and the International Crimes Tribunal for Rwanda.⁵⁵ To some extent crimes against humanity overlap with genocide, but they are distinguishable because they do not necessarily require the intent to destroy in “whole or in part.” They target only a given group and carry out a policy of “widespread and systematic” violations. They are also distinguishable from war crimes in that they not only apply in the context of war; they apply in times of peace as well.⁵⁶ Proving that rape is widespread or systematic is necessary for establishing a crime against humanity.⁵⁷

Fourth, crime of obedience: is an act performed in response to orders from an authority that is considered illegal or immoral by the larger community. The most

obvious criterion for defining an act as a crime of obedience is evidence that the actors knew their orders were illegal or inconsistent with moral principles.⁵⁸ On the other hand, although the classical line of defence for those accused of crimes of obedience is that they were “only following orders,” the presence of superior orders in itself is not an acceptable defence.⁵⁹ In other cases the perpetrators may see their personally motivated actions – such as the rape or sadistic tortures of “enemies of the state” – as not exactly ordered, but encouraged or at least condoned by their superiors.⁶⁰ For example many reports state that the perpetrators in Bosnia said they were ordered to rape.⁶¹ As mentioned before, in a lot of cases the soldiers are not afraid to violate women because they know the chances they will be punished are very slim. Nevertheless soldiers are not just mere automatons responding to the wills of others, they bear individual responsibilities as persons⁶² and they also have the responsibility to not obey unlawful orders.

As an individual a soldier is responsible for criminal conduct if he knew or should have known of its illegal nature. With respect to human rights atrocities to which criminal culpability is attached, it would seem that a great many are so patently atrocious that such an ignorance is never an excuse.⁶³ Rape is one of them and there should be no ambiguity. It is clearly a crime because it violates common-sense rules of decency and social conduct.⁶⁴ There are many definitions of what an unlawful order may be but the one offered by the trial court that convicted Adolph Eichmann is particularly clear:

“The distinguishing mark of a “manifestly unlawful order” should fly like a black flag above the order given, as a warning saying “Prohibited”. Not formal unlawfulness, hidden or half-hidden, nor

unlawfulness discernible only to the eyes of legal experts, is important here, but a flagrant and manifest breach of the law, definite and necessary unlawfulness appearing on the face of the order itself, the clearly criminal character of the acts ordered to be done, unlawfulness piercing the eye and revolting the heart, be the eye not blind nor the heart not stony and corrupt, that is the measure of “manifest unlawfulness” required to release a soldier from the duty of obedience upon him and make him criminally responsible for his acts.”⁶⁵

Soldiers, who as individuals are subject to legal and moral obligations, should know that rape is a crime and therefore recognize, when ordered to rape, that they are receiving an unlawful order.

The law

Rape has been considered a war crime for centuries. In 1474, Peter von Hagenbach was convicted by an international military tribunal made up of representatives from the Hanseatic League,⁶⁶ on charges including rape during the military occupation of the Austrian town of Briesbach.⁶⁷ In 1813 a US congressional committee complained that British officers were not making significant efforts to restrain their men, but were, on the contrary, tolerating their excesses. It was said at the time “that troops who have been instigated by the example of their officers to plunder the property and burn the houses of unarmed citizens should proceed to rape and murder need not excite surprise, however it may inspire horror.”⁶⁸

History also shows that the Nuremberg trials did not charge the Nazis with rape, even though some witnesses testified about it, whereas the War Crimes Tribunal in Tokyo did convict Japanese officers for rape in China.⁶⁹ Despite the legal precedents,

rape has long been “mischaracterized” and dismissed as a private crime, the ignoble act of the occasional soldier.⁷⁰ However, in a break with jurisprudence, General Tomoyuki Yamashita’s trial embodied the modern extension of the principle of “respondeat superior,” that is, instead of being convicted for war crimes as a subordinate, he was convicted for war crimes committed by his subordinates.⁷¹

Once again, a closer look at the more recent events illustrates the difficulties in prosecuting rape in time of war. As will be demonstrated below, because too often individual prosecutions of perpetrators are left to local courts after a conflict, it is almost impossible to achieve convictions locally. On the other hand, in the case of the war tribunals for the Former Yugoslavia and Rwanda it is their mandate that is restrictive since their aim is not to prosecute individual cases of rape but rather to pursue top commanders who gave the orders.⁷² Also even if they have a number of perpetrators indicted they face significant difficulties bringing them to justice.

On the domestic side, after such a conflict it is rare that the justice system is in a position to properly handle victims’ complaints, the investigations and the prosecutions. For example in Kosovo it is known that the rape victims are not likely to find justice because of the current state of the local justice system.⁷³ And because of the stigma attached to rape, it is unlikely that many victims will officially file a report, preferring to keep silent. Nevertheless there has been some headway made in that respect. A Federal Court in Manhattan, New York, ordered a former Bosnian Serb wartime leader, to pay \$4.5 billion in damages to victims of rape, torture and genocide. Sadly the judgement is

considered merely symbolic because it is unlikely that the individual would be forced to pay since he remains at large in Bosnia. On the other hand the verdict is not really about monetary damages but about gaining recognition of the acts.⁷⁴

On the international side, the International Tribunal for the Former Yugoslavia has been given the power to “prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population: murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial and religious grounds, or other inhumane acts.”⁷⁵ For example, in January 1999 the International Tribunal for the former Yugoslavia found a certain Anto Furundzija guilty of standing by while another paramilitary beat and raped a woman detainee during an interrogation in 1993.⁷⁶ Unfortunately, of the eight people indicted on rape charges in Foca (Bosnia) two are dead (one killed himself by detonating a grenade while he was getting arrested), three are standing trial at The Hague and three are still at large.⁷⁷

In the case of the International Tribunal for Rwanda, things are a little different in the sense that it has the power to prosecute persons responsible for the same list of crimes as the International Tribunal for the former Yugoslavia, but only when committed as part of a widespread systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.⁷⁸ For example, the case against one Akayesu is the first before the Rwanda tribunal in which someone is specifically charged with crimes of sexual violence, and the first to address the issue of a leader’s responsibility for

encouraging and allowing others to commit rape.⁷⁹ Also, the Rwanda Tribunal will try a former Rwandan Minister for Family and Women's Affairs, on the grounds that she encouraged the use of rape as a method of attacking an entire ethnic group.⁸⁰

Recommendations

As presented above the domestic and international law enforcement mechanisms are obviously very weak.⁸¹ There are serious lacunae in the existing norms of the international humanitarian law with regard to the protection of women and because of this situation, rape continues to be used as a tool of war with few repercussions to the perpetrators themselves. There is a great need to improve substantive protection to women under international humanitarian law, but there is also a need to strengthen the implementation of the related laws.

The treatment of rape by the international war tribunals, as one of a cluster of war crimes, either as a crime against honour and dignity or as a crime against humanity, continues to obscure the status of rape as a violation of international humanitarian law.⁸² Cases of wartime sexual assaults should legitimately be the focus of prosecutions whether they are associated with other violations or not. Although this is now recognized by the war tribunals mentioned above, it is not enough. As a result, Nurhalida Binti Mohamed Khalil in her article "*Has International Humanitarian Law Failed Women?*," recommends that "there should be a Geneva Convention for the Protection of Women in Times of Armed Conflict" and there should be a legal instrument put in place that would include both the international humanitarian and the human rights laws so the rules

pertaining to women in armed conflict can be applied more comprehensively and effectively.⁸³

On the domestic side, those that have to deal with the victims as well as the perpetrators as part of the follow-on efforts to restore law and order should be trained and educated in what to do and how to react when faced with these circumstances.

Commanders at all levels should know about these matters and should be aware that special care is needed to set a climate of support for the women who have been raped. They should also be aware that systems should also be put in place to facilitate their recovery and the possible apprehension and prosecution of the perpetrators. In this last case it is essential that the need to establish an effective legal system as soon as possible after the conflict be recognized.

Then, what about those that follow the unlawful orders to rape? Can they just go on claiming that they simply committed a crime of obedience; that it was their duty as soldiers to do what they were told? No. The soldier of today must be a citizen that can demonstrate the ability to harmonize obedience and military discipline with the principles and values of liberty and human dignity.⁸⁴ The soldier must be able to distinguish between a lawful and a manifestly unlawful order. Nonetheless, many potential war crimes, - be they inspired by one's character, values, or anguish – can be, and often are averted by professional, responsible leaders responsive to the laws and customs of warfare. An irresponsible leader, on the other hand, can as easily bring them about.⁸⁵

Therefore soldiers and leaders at all levels must be better trained and educated to deal with these matters.

Conclusion

War is a breakdown of law and order and the abuse of women as part of it has always occurred and always will. Over the years there have been many different ways of violating women. From wartime excesses, “spoils of war,” intimidation tool, and “comfort houses” to the more recent overwhelming excesses of sanctioned and genocidal rapes women have been and still are the silent casualties of war. The difference now is the reason behind why they are used and the related responsibilities of those committing the crimes. Women victims of armed conflicts do have problems unique to them that should be recognized as such.

Rape has long been prohibited, but the prohibition has been so far largely ignored or enforced.⁸⁶ Although, international crime tribunals are currently in a position to prosecute perpetrators, and because rape is included with a number of other crimes under the overall “crimes against humanity” it remains essential to prove it is widespread and systematic. The idea, the plan and its magnitude certainly represent a crime against humanity, and the leaders and commanders that have put the plan together should be, and are being, indicted. But so far the results are not very convincing and surely not a firm indication to the perpetrators that rape is a recognized crime and that, to use a cliché, they will do the time if they commit the crime.

One thing is very obvious at the end of this overview of rape as a tool of war; clearer national and international interpretations of the laws regarding rape in times of war are required in order to curb future war crimes before the shooting begins. What exists right now is not enough, as proven by the rate of recurrence of rape in the recent conflicts. The international community must realize that there is an urgent need for more international and domestic support for rape prevention and education in general. Only with very specific laws and application thereof will it be possible to put a dent in this atrocious problem. Moreover, modern armed forces can no longer feign ignorance of, or indifference to, the frequency of sexual violence in military operations. The history of rape during warfare, as seen above, is so extensive that military commanders should recognize that sexual violence is a likely outcome of armed conflicts⁸⁷ and they should be trained and educated accordingly.

In conclusion, rape in time of war is a crime, as at any other times, and it should be recognized and punished as such. Therefore, in order to help prevent the use of rape as a tool of war as well as provide the basis for authority, training and education for those involved in all aspects of conflicts, the development and implementation of clearer international doctrine and more effective sanctions are required.

End Notes

- ¹ Col. Robert J. Berens, "Battle Atrocities," *Army*, Vol 36, No 4, (1986): 1
- ² The Concise Oxford Dictionary, (1984): 1210
- ³ Roy Gutman and David Rieff ed., *Crimes of war: What the Public Should Know*, (1999): 97
- ⁴ The Canadian Department of National Defence Law of Armed Conflict manual, (1999): 3-1 – 3-4
- ⁵ William Maley, ed., *Developments in International Humanitarian Law*, (1995): 221
- ⁶ William Maley, ed., *Developments in International Humanitarian Law*, (1995): 207
- ⁷ The Concise Oxford Dictionary (1984): 856
- ⁸ Beverly Allen, *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina*, (1996): 119
- ⁹ Roy Gutman and David Rieff ed., *Crimes of War: What the Public Should Know*, (1999): 323
- ¹⁰ Catherine N. Niarchos, "Women, War and rape: Challenges Facing the International Tribunal for the Former Yugoslavia," *Human Rights Quarterly*, 17.4, (1995): 1
- ¹¹ Amnesty International USA, *Bosnia-Herzegovina: Rape and Sexual Abuse by the Armed Forces*, (1993): 2
- ¹² Kevin Whitelaw, "Rape as a War Crime Prosecutions for the Horrors Inflicted in Bosnia," *US News and World Report*, Vol. 128, No. 13, (2000): 1
- ¹³ Roy Gutman and David Rieff ed., *Crimes of war: What the Public Should Know*, (1999): 323
- ¹⁴ Roy Gutman and David Rieff ed., *Crimes of war: What the Public Should Know*, (1999): 328
- ¹⁵ Iris Chang, *The Rape of Nanking*, (1997): 52
- ¹⁶ Valerie Oosterveld, "When Women are the Spoils of War," *The Unesco Courier*, Jul/Aug, (1998): 1
- ¹⁷ Katherine H S Moon, "The Comfort Women: Colonialism, War and Sex," *Journal of World History*, Vol 10, (1999): 1
- ¹⁸ Neve Gordon, "Rape's Political Import not Restricted to Bosnia," *National Catholic Reporter*, Vol 36, (2000): 1
- ¹⁹ Judith Gardam, *Humanitarian Law*, (1999): 366
- ²⁰ Beverly Allen, *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina*, (1996): 62-63
- ²¹ Katherine H S Moon, "The Comfort Women: Colonialism, War and Sex," *Journal of World History*, Vol 10, (1999): 1
- ²² Roy Gutman and David Rieff ed., *Crimes of War: What the Public Should Know*, (1999): 328
- ²³ Neve Gordon, "Rape's Political Import not Restricted to Bosnia," *National Catholic Reporter*, Vol 36, (2000): 1
- ²⁴ Cesar Chelala, "Algerian Abortion Controversy Highlights Rape of War Victims," *The Lancet*, Vol 351, (1998): 1
- ²⁵ Suzanne Fisher, "Sierra Leone: Picking up the Pieces", *New African*, Jun, (2000): 1
- ²⁶ James Traub, "The Worst Place on Earth," *The New York Review of Books*, Vol 47, (2000): 4
- ²⁷ Suzanne Fisher, "Sierra Leone: Picking up the Pieces", *New African*, Jun, (2000): 3
- ²⁸ Donatella Lorch and Preston Mendenhall, "The War's Hidden Tragedy," *Newsweek*, Aug 14, (2000): 1
- ²⁹ Donatella Lorch and Preston Mendenhall, "The War's Hidden Tragedy," *Newsweek*, Aug 14, (2000): 1
- ³⁰ Amya Robertson, "Kosovo: Gang-rapes Exposed," *Off Our Backs*, Vol 30, (2000): 1
- ³¹ Valerie Oosterveld, "When Women are the Spoils of War," *The UNESCO Courier*, Jul/Aug, (1998): 2
- ³² Col. Robert J. Berens, "Battle Atrocities," *Army*, Vol 36, No 4, (1986): 4
- ³³ Beverly Allen, *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina*, (1996): 62
- ³⁴ Kevin Whitelaw, "Rape as a War Crime Prosecutions for the Horrors Inflicted in Bosnia," *US News and World Report*, Vol. 128, No. 13 (2000): 1
- ³⁵ Beverly Allen, *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina*, (1996): 77
- ³⁶ Beverly Allen, *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina*, (1996): 95
- ³⁷ Dennis Bernstein and Leslie Kean, "Burma's Military Rapists," *The Nation*, Vol 267, (1998): 1
- ³⁸ Dennis Bernstein and Leslie Kean, "Burma's Military Rapists," *The Nation*, Vol 267, (1998): 2
- ³⁹ Dennis Bernstein and Leslie Kean, "Burma's Military Rapists," *The Nation*, Vol 267, (1998): 1
- ⁴⁰ Anonymous, Rwanda: "Genocidal Rape Conviction," *Off Our Backs*, Jan, (1999): 1
- ⁴¹ Valerie Oosterveld, "When Women are the Spoils of War," *The UNESCO Courier*, Jul/Aug, (1998): 1
- ⁴² Judith Gardam, *Humanitarian Law*, (1999): 377

-
- ⁴³ Beverly Allen, *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina*, (1996): 89
- ⁴⁴ Neve Gordon, "Rape's Political Import not Restricted to Bosnia," *National Catholic Reporter*, Vol 36, (2000): 1
- ⁴⁵ Dennis Bernstein and Leslie Kean, "Burma's Military Rapists," *The Nation*, Vol 267, (1998): 1
- ⁴⁶ Beverly Allen, *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina*, (1996): 97
- ⁴⁷ Peter Karsten, *Law, Soldiers and Combat*, (1978): 74
- ⁴⁸ Suzanne Fisher, "Sierra Leone: Picking up the Pieces", *New African*, Jun (2000): 2
- ⁴⁹ Donatella Lorch and Preston Mendenhall, "The War's Hidden Tragedy," *Newsweek*, Aug 14, (2000): 2
- ⁵⁰ Roger Thurow, "A Bosnian Rape Victim Suffers from Scars that do not Fade," *Wall Street Journal*, Jul 17, (2000): 1
- ⁵¹ *The Complete Works of William Shakespeare*, (1973): 1057
- ⁵² Beverly Allen, *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina*, (1996): 67
- ⁵³ Cited in Catherine N. Niarchos, "Women, War and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia," *Human Rights Quarterly*, 17.4, (1995): 10
- ⁵⁴ Catherine N. Niarchos, "Women, War and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia," *Human Rights Quarterly*, 17.4, (1995): 10
- ⁵⁵ Roy Gutman and David Rieff ed., *Crimes of War: What the Public Should Know*, (1999): 108
- ⁵⁶ Roy Gutman and David Rieff ed., *Crimes of War: What the Public Should Know*, (1999): 108
- ⁵⁷ Roy Gutman and David Rieff ed., *Crimes of War: What the Public Should Know*, (1999): 328
- ⁵⁸ Herbert C. Kelman & V. Lee Hamilton, *Crimes of Obedience*, (1989): 46
- ⁵⁹ Herbert C. Kelman & V. Lee Hamilton, *Crimes of Obedience*, (1989): 48
- ⁶⁰ Herbert C. Kelman & V. Lee Hamilton, *Crimes of Obedience*, (1989): 50
- ⁶¹ Beverly Allen, *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina*, (1996): 77
- ⁶² Professor Nicholas Rescher, *In the Line of Duty: The Complexity of Military Obligation*, (1990): 15 - 16
- ⁶³ Steven R. Ratner, *Accountability for Human Rights: Atrocities in International Law*, (1997): 121 - 122
- ⁶⁴ Mark Osiel, *Obeying Orders: Atrocity, Military Discipline, and the Law*, (1999): 138
- ⁶⁵ Mark Osiel, *Obeying Orders: Atrocity, Military Discipline, and the Law*, (1999): 77
- ⁶⁶ L.C. Green, *The Contemporary Law of Armed Conflict*, (1993): 22
- ⁶⁷ Roy Gutman and David Rieff ed., *Crimes of War: What the Public Should Know*, (1999): 323
- ⁶⁸ Peter Karsten, *Law, Soldiers and Combat*, (1978): 70
- ⁶⁹ Tina Rosenberg, "New Punishment for an Ancient Crime," *New York Times*, Apr 5 late edition, (1998): 1
- ⁷⁰ Anonymous, "Rwanda: Genocidal Rape Conviction," *Off Our Backs*, Jan, (1999): 1
- ⁷¹ Herbert C. Kelman & V. Lee Hamilton, *Crimes of Obedience*, (1989): 74
- ⁷² Donatella Lorch and Preston Mendenhall, "The War's Hidden Tragedy," *Newsweek*, Aug 14, (2000): 2
- ⁷³ Donatella Lorch and Preston Mendenhall, "The War's Hidden Tragedy," *Newsweek*, Aug 14, (2000): 2
- ⁷⁴ David Rhode, "Jury in New York Orders Bosnian Serb to Pay Billions," *New York Times*, Sep 26, (2000): 1 - 2
- ⁷⁵ Yoram Dinstein and Mala Tabory, *War Crimes in International Law*, (1996): 409
- ⁷⁶ Anonymous, "Bosnia: War Rape Conviction," *Off Our Backs*, Vol 29, (1999): 1
- ⁷⁷ *The New York Times*, "Bosnia War Crimes Suspect Kills Himself on Arrest", Oct 14, (2000): 2
- ⁷⁸ Yoram Dinstein and Mala Tabory, *War Crimes in International Law*, (1996): 456
- ⁷⁹ Valerie Oosterveld, "When Women are the Spoils of War," *The UNESCO Courier*, Jul/Aug, (1998): 2
- ⁸⁰ Kevin Whitelaw, "Rape as a War Crime Prosecutions for the Horrors Inflicted in Bosnia," *US News and World Report*, Vol. 128, No. 13, (2000): 1
- ⁸¹ Neve Gordon, "Rape's Political Import not Restricted to Bosnia," *National Catholic Reporter*, Vol 36, (2000): 1
- ⁸² *The Canadian Yearbook of International Law*, Vol XXXVI, Tome XXXVI, (1998): 124
- ⁸³ William Maley, ed., *Developments in International Humanitarian Law* (1995):235
- ⁸⁴ Professor Nicholas Rescher, *In the Line of duty: The Complexity of Military Obligation*, (1990): 16
- ⁸⁵ Peter Karsten, *Law, Soldiers and Combat*, (1978): 70
- ⁸⁶ Catherine N. Niarchos, "Women, War and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia," *Human Rights Quarterly*, 17.4, (1995): 15
- ⁸⁷ *The Canadian Yearbook of International Law*, Vol XXXVI, Tome XXXVI, (1998): 138

Bibliography

- Allen, Beverly. *Rape Warfare*. University of Minnesota: Minneapolis, MN, 1996
- Amnesty International USA. *Bosnia-Herzegovina: Rape and Sexual Abuse by the Armed Forces*. EUR 63/01/93, Amnesty International: New York, NY, 1993
- Anonymous. Rwanda: "Genocidal Rape Conviction," *Off Our Backs*, Jan, 1999
- Anonymous. "Armies at War Use Rape as a Weapon," *National NOW Times*, Fall, 1999
- Berens, Col. Robert J. "Battle Atrocities," *Army*, Vol 36, No 4, 1986
- Bernstein, Dennis and Leslie Kean. "Burma's Military Rapists," *The Nation*, Vol 267, 1998
- Canadian National Defence. *The Law of Armed Conflict at the Operational and Tactical Level*. B-GG-005-027/AF-020, September 23, 1999
- Chang, Iris. *The Rape of Nanking*. BasicBooks: New York, NY, 1997
- Chelala, Cesar. "Algerian Abortion Controversy Highlights Rape of War Victims," *The Lancet*, Vol 351, 1998
- Cook, Martin L. "Moral Foundations of Military Service," *Parameters*, Vol 30, 2000
- Dinstein, Yoram and Mala Tabory. *War Crimes in International Law*. Martinus Nijhoff Publishers: The Hague, NL, 1996
- Fisher, Suzanne. "Sierra Leone: Picking up the Pieces", *New African*, Jun 2000
- Gardam, Judith. *Humanitarian Law*. Dartmouth Publishing Company Limited: Aldershot England, 1999
- Gordon, Neve, "Rape's Political Import not Restricted to Bosnia," *National Catholic Reporter*, Vol 36, 2000
- Green, L.C. *The Contemporary Law of Armed Conflict*. Manchester University Press: Manchester, 1993
- Green, L.C. *Command Responsibility in International Law*. Canadian Forces College: Toronto, ON, 1996
- Gutman, Roy and David Reif ed. *Crimes of War, What the Public Should Know*. W.W. Norton & Company: New York, NY, 1999

-
- Karsten, Peter. *Law, Soldiers and Combat*. Greenwood press: London, 1978
- Kelman, Herbert C. and V. Lee Hamilton. *Crimes of Obedience*. Yale University Press: Binghamton, NY, 1989
- Lorch, Donatella and Preston Mendenhall. "The War's Hidden Tragedy," *Newsweek*, Aug 14, 2000
- Maley, William ed.. *Developments in International Humanitarian Law*. Australian Defence Studies Centre: Canberra, Australia, 1995
- Meron, Theodor. *War Crimes Law Comes of Age*. Clarendon Press: Oxford, 1998
- Moon, Katherine H S. "The Comfort Women: Colonialism, War and Sex," *Journal of World History*, Vol 10, 1999
- Niarchos, Catherine N. "Women, War and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia," *Human Rights Quarterly*, 17.4, 1995
- Osiel, Mark. *Obedying Orders: Atrocity, Military Discipline, and the Law*. Transaction Publishers: New Brunswick US, 1999
- Oosterveld, Valerie. "When Women are the Spoils of War," *The UNESCO Courier*, Jul/Aug , 1998
- Ratner, Steven R, and Jason S. Abrams. *Accountability for Human Rights Atrocities in International Law*. Clarendon Press: Oxford, 1997
- Rescher, Professor Nicholas. *In the Line of Duty: The Complexity of Military Obligation*. United States Air Force Academy: Colorado, 1990
- Robertson, Amya. "Kosovo: Gang-rapes Exposed, *Off Our Backs*," Vol 30, 2000
- Rhode, David. "Jury in New York Orders Bosnian Serb to Pay Billions," *New York Times*, Sep 26, 2000
- Rosenberg, Tina. "New Punishment for an Ancient Crime," *New York Times*, Apr 5 late edition, 1998
- Sykes, J.B. ed. *The Concise Oxford Dictionary*. Clarendon Press: Oxford, 1984
- The Canadian Yearbook of International Law*, Vol XXXVI, Tome XXXVI. UBC Press, Vancouver BC, 1998
- The Complete Works of William Shakespeare*. Rex Library: London, GB, 1973

The New York Times, “Bosnia War Crimes Suspect Kills Himself on Arrest”, Oct 14, 2000

Thurow, Roger. “A Bosnian Rape Victim Suffers from Scars that do not Fade,” *Wall Street Journal*, Jul 17, 2000

Traub, James. “The Worst Place on Earth,” *The New York Review of Books*, Vol 47, 2000

United Nations International War Tribunal for Rwanda Webb Site, 17 Nov 2000

Wakin, Malham M. ed. *War, Morality and the Military Profession*. Westview Press, Inc.: Boulder, Colorado, 1986

Whitelaw, Kevin. “Rape as a War Crime Prosecutions for the Horrors Inflicted in Bosnia,” *US News and World Report*, Vol. 128, No. 13, 2000

Whitten, Robert C. A Review of “By Force of Arms: Rape, War and Military Culture,” *Journal of Political and Military Sociology*, Vol 27, 1999