
***Violence against women in armed conflicts
– legal issues***

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INTERNATIONAL HUMANITARIAN LAW

1. „Geneva Law“ - sparing those who do not or no longer directly participate in hostilities /rules of protection - *humanity*/:

a) four Geneva Conventions on the protection of war victims of 1949

b) Protocols Additional I & II of 1977

c) customary law

2. „Hague Law“ - limiting the violence (the choice of means and methods of conducting military operations) to the amount necessary to achieve the aim of the conflict /rules of combat - *prohibition of causing unnecessary suffering*/:

a) Hague Regulations 1907

b) Protocols Additional I & II of 1977

c) customary law

WOMEN IN ARMED CONFLICT– NOT ONLY VICTIMS

- **Sexual violence**
 - rape
 - „reparation marriage“
 - sexual slavery
 - enforced prostitution
 - forced pregnancy
 - forced sterilization
- **Displacement**
- **Detention**
- **Separation from the missing family members**
- **Death of the loved ones, widowhood**
- **Physical injury (e.g. genital mutilation), death of women**
- **Combatants**
- **Key role of ensuring family livelihood**
- **Participation in conflict resolution and decision making, in peace-keeping, peace-building, negotiations, mediation, conflict prevention , as election monitors**

WOMEN - CATEGORIES

- ❑ **Civilians (90 % of war casualties)**
- ❑ **Combatants or civilians taking part in hostilities (collecting intelligence, transporting munitions, suicide attackers, voluntary human shields)**

COMBATANTS – those who have the right to participate in hostilities (to kill, wound and destroy within the limits of law); if captured – entitled to POW status

CIVILIANS ≠ COMBATANTS

WOMEN- PROTECTION

- ❑ **General protection as civilian persons**
 - ❑ **General protection as women (Art. 27§2 GC IV, Art. 76§1 PA I)**
 - ❑ **Special protection of pregnant women, maternity cases, nursing mothers, mothers of young children (e.g., 14, 16, 17,21-23, 38§5, 89, 127 GC IV, 8, 70, 76§2 PA I)**
 - ❑ **Special protection of interned women:**
 - **POWs – Art. 14 GC III, Art. 75 PA I**
 - **Civilian internees – Art. 85 GC IV, Art. 75 PA I**
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SEXUAL VIOLENCE DURING ARMED CONFLICTS IN UN FIGURES

- ❑ Over 200.000 women have suffered sexual violence in DRC since the beginning of the conflict (1994)
- ❑ 250.000 – 500.000 women were raped in Rwanda in 1994
- ❑ Between 20.000 – 50.000 were raped in Bosnia & Herzegovina in 1992-1995.
- ❑ In 2015 (UN SG Report):
 - CAR – 29.800 cases of sexual violence
 - Colombia – 5.500 cases of sexual violence
 - Somalia – 3.900 cases of sexual violence... and Afghanistan, Iraq, Libya, Mali, South Sudan, Sudan (Darfur), Yemen...

Allegations against the UN - 30 staff members, 69 peace-keepers

DEFINITION OF RAPE

- ❑ **ICTR *Akayesu, Muhimana, Bagosora*: „ a physical invasion of a sexual nature, committed on a person under circumstances which are coercive”**
- ❑ **ICTY *Celebici, Furundžija, Kunarac*- additional details on the constituent elements of acts considered to be rape, types of penetration etc.**

The key criterion – lack of consent

- ❑ **ICC Elements of Crime – integrate earlier definitions and provide widely accepted definition:**

„The perpetrator invaded the body of a person by conduct resulting in penetration (...) with a sexual organ, any object or any other part of the body. The invasion was committed by force, by threat of force (...) or against a person incapable of giving genuine consent”.

DEFINITION OF SEXUAL VIOLENCE

- ❑ **ICC Statute: Art. 7(1)(g), 8(2)(b)(xxii), 8(2)(e)(vi)**
„rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity” – non-exhaustive list
 - ❑ ***Akayesu* case ICTR**
„Any act of sexual nature which is committed on a person under circumstances which are coercive”
Act of sexual nature – broad interpretation, from comments with a sexual connotation to penetration
Coercion – physical force, but also intimidation, threats, acts which do not involve physical contact (verbal, psychological violence)
Encompasses and is broader than rape
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DEFINITION OF SEXUAL VIOLENCE

- ❑ **Other ICL cases, WHO definition and doctrine: trafficking for sexual exploitation, mutilation of sexual organs, sexual services in return for food or protection, forced abortions, enforced contraception, sexual assault, forced marriage, forced inspection for virginity, forced public nudity**
 - ❑ **No internationally agreed upon definition of **gender based violence****
 - ❑ **From the existing definitions it's clear it's broader than sexual violence**
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CONFLICT-RELATED SEXUAL VIOLENCE

Sexual violence that occurs

- In conflict**
- In post-conflict setting**
- During political strife**

ICC Elements of Crime: for a war crime to exist it must be committed „in the context of and associated with“ a.c.

Nexus between an act and a.c. - temporal, geographical, other (?)

RAPE

- breach of GC IV, PA I and PA II**
 - grave breach of GC and of customary law
= war crime**
 - violation of Art. 3 common to GC and PA II**
 - crime against humanity**
 - genocide**
 - torture**
 - widespread and systematic sexual
violence against civilians constitutes a
threat to international peace and security**
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RAPE UNDER GCS AND PA - IAC

- **GC IV, Art. 27 (section on the territories of the parties to the conflict and occupied territories)**

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 especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be *especially* protected against any attack on their honour, *in particular* against **rape, enforced prostitution, or any form of indecent assault.**

RAPE UNDER GCS AND PA - IAC

□ PA I, Art. 75 para 2 (b)

„The following acts against are and shall remain prohibited at any time and in any place whatsoever:

(...) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault”.

□ PA I, Art. 76 para. 1

„Women shall be the object of special respect and shall be protected in particular against **rape, forced prostitution and any other form of indecent assault”.**

RAPE UNDER GCS AND PA - NIAC

□ GC, Art. 3 common

„Persons taking no active part in the hostilities (...) shall in all circumstances be treated humanely, without any adverse distinction founded on (...) sex (...). The following acts are and shall remain prohibited at any time and in any place whatsoever:

- a) violence to life and person, in particular (...) cruel treatment and torture;**
- c) outrages upon personal dignity, in particular humiliating and degrading treatment”.**

□ PA II, Art. 4 para 2 (e)

„The following acts against the persons (... who do not take a direct part in hostilities...) are and shall remain prohibited at any time and in any place whatsoever:

- (...) outrages upon personal dignity, in particular humiliating and degrading treatment, ~~rape~~, enforced prostitution and any form of indecent assault”.**

QUALIFICATION / CRIMINALIZATION OF RAPE IN ICL

- Rape not explicitly listed in IHL as a “grave breach” of the GCs or as a “war crime” under PA I unless considered “inhuman treatment” or “great suffering or serious injury to body or health” – otherwise no criminalization

 - Today’s qualification of rape as a war crime in IAC and NIAC is based on:
 - ICTY cases : e.g., *Furundžija*, *Celebici*, *Prlić*, *Kunarac* ;
 - Statute ICC: Art. 8 para. 2 b (xxii) {IAC} and e (vi) {NIAC}
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QUALIFICATION / CRIMINALIZATION OF RAPE IN ICL

- ❑ **Violation of Art. 3 common to GC and PA II:**
 - Statute ICTR - Art. 4
 - ICTR cases, e.g. *Musema*
 - ❑ **Crime against humanity – widespread or systematic attack directed against any civilian population:**
 - post-II WW Control Council Law No. 10
 - Statute ICTR - Art. 3 (g)
 - Statute ICTY - Art. 5 (g)
 - Statute ICC - Art. 7 para. 1 (g) - includes rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization or any other form of sexual violence of comparable gravity
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QUALIFICATION / CRIMINALIZATION OF RAPE IN ICL

- **Genocide – with the intent to destroy, in whole or in part, a national , ethnical, racial or religious group, rape can be considered as falling into different categories of acts:**
 - **causing serious bodily or mental harm to members of the group**
 - **deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part**
 - **imposing measures intended to prevent births within the group**
 - **ICTR: *Akayesu* case;**
 - **ICC: *Elements of Crime***
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QUALIFICATION / CRIMINALIZATION OF RAPE IN ICL

- **Torture – act inflicted intentionally by a public official for a specific purpose (obtaining information or confession, punishing, intimidating, discriminating)**
 - **ICTY cases: *Celebici, Simić, Tadić, Zarić* case;**
 - **ICTR: *Akayesu* case;**

 - **Threat to international peace and security**
 - **widespread and systematic sexual violence against civilians - S.C. Res. 1820 (2008) on Darfur, S.C. Res. 1960 (2010) on DRC**
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HUMAN RIGHTS

- ❑ **The lack of specific, explicit prohibitions against sexual violence in most HR treaties (1966, 1950, 1969, 1981); neither in CEDAW 1979**
- ❑ **Convention on the Rights of the Child 1989, art. 19 – protection of children from all forms of sexual exploitation and sexual abuse + PA II of 2000**
- ❑ **Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women 1994**
- ❑ **Maputo Protocol on the Rights of Women in Africa of 2003 to 1981 African Charter (violence = also sexual violence)**
- ❑ **In Europe no treaty, only recommendations of the Council of Europe on violence against women**

Inter-American Commission on Human Rights, European Court on Human Rights - sexual violence as torture or cruel, inhuman or degrading treatment or punishment

CUSTOMARY IHL

- **Rule 93 – „Fundamental Guarantees” - rape and other forms of sexual violence are prohibited (both in IAC and in NIAC)**
 - **Rule 156 – „Definition of War Crimes” - rape considered a war crime**
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OTHER MECHANISMS AND MEASURES

- United Nations – all main organs concerned, in particular:**
 - Secretariat – SG’s reports and bulletins, including specifically on conflict- related sexual violence + special envoys**
 - Security Council debates and resolutions on:**
 - * protection of civilians in armed conflicts**
 - * women, peace and security (from 1325 in 2000)**
 - + statements of the President of the Security Council**
 - General Assembly:**
 - * debates on the status of the GCs and PAs**
 - * UN Women**
 - Many other IGO and NGO as well as the International Red Cross and Red Crescent Movement**
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MECHANISMS TO ENFORCE RIGHTS AND REDRESS VIOLATIONS

- ❑ **New treaty?**
 - ❑ **New international mechanism of compliance?**
 - ❑ **Focus on municipal law and domestic mechanisms:**
 - **domestic legislation – prohibitions, penalization (disciplinary and criminal sanctions)**
 - **dissemination and training, particularly armed forces, police, prosecutors, judges**
 - **strong health system (physical and psychical injuries, transmission of diseases, pregnancy...)**
 - ❑ **Role of armed organized non-state actors**
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THANK YOU 😊

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