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CRIMINALISING WARTIME SEXUAL VIOLENCE IN INTERNATIONAL LAW

THE CONTRIBUTION OF FEMINIST ACTIVISM



Sexual violence in conflict and international law

- Despite its prevalence in conflict settings, for many years, international law paid little attention to sexual violence and its gender dimensions.
- The criminalisation of wartime sexual violence was not a priority for international law.
- Gender-biased representation of sexual violence prevailed in the social and legal imaginary, pushing this phenomenon to the margins of international justice

Why was wartime sexual violence not a priority for international law?

- Sexual violence was considered a natural and unfortunate side-effect of war
- Sexual violence was a private act that should not be discussed in public to protect a woman's decorum and the respectability of her family.
- There was a condescending attitude towards sexual violence by generations of male international lawmakers.
- Murder or torture were more relevant crimes to prosecute, as they are what most afflict men in times of war.
- Sexual violence was an opportunistic act of soldiers
- Sexual violence demonstrated victor's supremacy over enemy's women

Wartime sexual violence and international law during the first half of the 20th century

- **World War I:** Accounts of rape were used to promote anti-German sentiments. However, the trials of Istanbul and Leipzig made no explicit reference to sexual violence.
- **World War II:** there were reports of sexual violence committed by Allies and Axis. However, no charges were included in Nuremberg nor Allied Control Council trials. The Tokyo trials prosecuted the rapes in Nanking.
- **International Humanitarian Law:** The Geneva Conventions prohibit sexual violence. However, they link it with the protection of women's honour, which it is often associated with features such as chastity, modesty, and vulnerability

Feminist activist and international law post 1990

- **Yugoslavian war and Rwanda Genocide:** reports of widespread and systematic sexual violence against women called the attention of feminist activist
- Feminist activists highlighted the silence of international law towards the different forms of violence against women, including sexual violence
- Sexual violence was not an inevitable effect of war but an act of male domination over women, and a weapon used against them
- Feminist activists engaged in a legal and political campaign for including sexual violence in the agenda of international law
- Feminist activists lobbied for the recognition of sexual violence as a human rights violation
- They also sought for the international criminalisation of sexual violence by international courts
- Feminist activists used a punitive discourse. The expressivist goal of criminal justice was essential to reprobate sexual violence



Achievements of feminist activism for the criminalisation of wartime sexual violence

International Human Rights Law

The transnational women's movement influenced the establishment of the following legal frameworks:

- **CEDAW General Recommendation 19:** violence against women is a violation of human rights
- **Vienna Conference 1993:** it called on states to combat impunity for sexual violence through criminal prosecutions and punishments
- **Beijing Conference 1995:** it emphasised that women and girls are particularly vulnerable to wartime sexual violence. It promoted criminal prosecution and public condemnation of sexual violence in conflict.
- **Regional Human Rights Courts:** The jurisprudence of the IACtHR and the ECHR has recognised sexual violence as one of the most serious violations against women, which must be fully criminalised and punished



International Criminal Law

- The expressive role of international criminal law fulfils the goals of feminist advocacy for publicly condemning wartime sexual violence and punishing those responsible
- The jurisprudence of international courts, such as ICTY, ICTR, ICC, SCSL and ECCC, have condemned different experiences of wartime sexual violence. This includes rape as torture, sexual violence as an inhumane act, sexual violence as genocide, sexual enslavement, forced marriage, forced pregnancy, sexual violence within armed groups, sexual violence against men, among others.
- The influence of feminist activism in the adoption of the Rome Statute (1998) for the establishment of the International Criminal Court (ICC) was essential in the effort of making the international criminal law more gender-sensitive, particularly with respect to sexual violence.
- Feminist activism contributed to moving sexual violence from the periphery to the heart of international criminal law. It also influenced the mainstreaming of gender justice in post-conflict and peacebuilding situations

Women, Peace and Security Agenda

- The Security Council listened to the voices of feminist activists, and through Resolution 1325 of 2000 established the WPS agenda. This agenda seeks to recognise the different experiences of women during war and tackle their root causes. It comprises nine resolutions.
- Since its adoption, the transgression of the female body has become a central topic. Resolutions 1325, 1820, 1960, 2106 and 2467 have enshrined a vision of civilian women as particularly more vulnerable to wartime sexual violence than any other group of individuals.
- **Resolution 1820 of 2008:** States should effectively prosecute wartime sexual violence, as it amounts to war crimes, crimes against humanity, and genocide. It stresses that women's access to justice must be prioritised.



Challenges and limitations in addressing wartime sexual violence

- Contemporary international law has reduced gender justice in contexts of armed conflict as justice for civilian women who are victims of sexual violence.
- International law continues to reinforce gender norms. It represents women as vulnerable, passive, non-violent, innocent, and helpless sufferers; while implicitly depicting men as warring, ruthless, and aggressive agents of violence
- This makes it difficult to recognise experiences of sexual violence suffered by men or LGBTQ people during conflict. It also excludes the experiences of sexual violence of those individuals who are not part of the civilian population, such as combatants or members of the armed forces.
- International law reproduces power structures relating to gender, politics, economics, and race. It has focused primarily on cases of sexual violence in "weak" countries, which are often non-white. This may create the inclination to see sexual violence in conflict as something peculiarly criminal and horrible that only happens in poor countries.
- Categorising sexual violence as genocide can push the violation of women's bodies secondary to the annihilation of the group. In this sense, victims of sexual violence are targeted because of their membership in their community and not because of the gendered nature of the violence itself.
- Categorising sexual violence as the worst harm against women has drawn attention away from other problems women face during and after war, e.g., poverty, forced displacement, food security, land rights, access to formal jobs, their relationship with the environment, among others.

References

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