SEXUAL VIOLENCE AND INTERNATIONAL LAW
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Introduction

In the 2002 World Report on Violence and Health, the World Health Organization defined sexual violence as “any sexual act, attempt to obtain sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim in any setting, including but not limited to home and work” (p. 149). This report goes on to elaborate on the meaning of coercion, which at its core refers to force. However, force in the context of sexual violence can take on a variety of forms which include physical force, psychological intimidation (including blackmail and threats), and when a person is simply unable to give consent (World Report on Violence and Health, 2002).

As can be seen from its definition, sexual violence is a very broad topic. For the purposes of this paper, sexual violence will be examined in the context of armed conflict, and more specifically in how it pertains to international law, especially international humanitarian law, which is commonly referred to as the law of war. The forms sexual violence has assumed during times of war or armed conflict have included rape, which in this context has been systematic rape. It has also taken the form of sexual slavery, forced prostitution and trafficking. Though there are instances of sexual violence taking place against combatants, for the most part, sexual violence is enacted against civilian populations, and the main victims are women and children, who in times of war must be protected by the Fourth Geneva Convention of 1949 and the additional Protocols of 1977. This is not to deny that men also suffer from various forms of sexual violence because, in times of war and conflict, it is quite evident that they are at risk too; however, for the purposes of this paper, women and children will be the focus of the intersection between sexual violence and international humanitarian law.

This paper will first discuss the background of sexual violence in times of war and armed conflict, then will give some background information on international humanitarian law and more specifically on the Fourth Geneva Convention of 1949 and the articles that have jurisdiction over sexual violence. This paper will then discuss how and why it is possible that sexual violence relates to these particular articles, putting it on the level of a war crime, crime against humanity, form of genocide and form of torture. Lastly, this paper will discuss why it has only been relatively recently that sexual violence has become recognized under international law.
Background and Main Questions

Sexual violence in a historical context

After the war in the Former Yugoslavia and the Rwanda Genocide, sexual violence, *in the form of* rape, acquired a new seat on the international agenda. This was *due to the fact that* for the first time political and military leaders were tried and found guilty under charges of sexual violence as a form of war crime. However, it is very important to note that sexual violence in times of armed conflict was not an invention of the 1990s: sexual violence in the form of rape, sexual slavery, forced prostitution and trafficking have accompanied war and conflict since the days of ancient Greece and Rome (Niarchos, 1995). Historically, in conflicts involving the ancient Greeks, Romans and Hebrews, “women were often seized as prize along with the lands and livestock of the vanquished” (Niarchos, 1995, p. 659). It was not uncommon, and as ancient texts reveal, that women who were captured oftentimes expected to become wives, servants, slaves, or concubines of the victors and expected to be raped, enslaved, and tortured as a result of war.

Essentially, women were regarded as part of the spoils of war, which was consistent with the status of women during ancient times well up into the eighteenth and even nineteenth centuries. Women in most cultures and societies, were regarded as the property of men, whether it was their father, husband, brother, or some other male relative. Women were considered subject to these male figures and not viewed as individuals in their own right. In times of war for women to be enslaved or raped was ultimately considered an insult to the man in charge, as it was his property being spoiled. Even as early as these remote days, rape and other forms of sexual violence were used as ways to demoralize conquered populations or groups. This was not because the women had experienced horrific treatment, but rather because the men and the communities viewed themselves as being shamed because what had been considered belonging to them had been violated and spoiled.

These practices continued well into the twentieth century. For example, during the First World War, there is documented evidence that the German soldiers who marched into Belgium and France used rape as a tactic to create fear and panic in the civilian populations (Niarchos, 1995). The same holds true for the Second World War where sexual violence was widespread throughout Europe and Asia. Again, rape was used as a way to instill fear and actively terrorize civilian populations, and to degrade and humiliate the unfortunate victims. Sexual violence was also known to occur in the concentration camps. There, it took the form of rape but also of sexual humiliation and torture, means that were used to demoralize those in the camps. Also, all sorts of human experiments were conducted, some of which could be categorized as forms of sexual violence and torture, which usually led to death.
However, what often goes unnoticed are the crimes of sexual violence that were committed by the Allied troops during World War II. There are accounts of sexual abuse on the part of the Soviets when they entered Berlin in 1945 and where between 80,000 and 110,000 women are believed to have been raped (Niarchos, 1995). Also there is documented evidence by the Italian government that between 1943 and 1945 Italian women were greatly threatened by the Moroccan soldiers of the French army, who had been “given a license to rape” (Niarchos, 1995, p. 666). Still during World War II, there were significant charges brought against the Japanese Army for the atrocities committed against the civilian population of Nanking, which came to be known as the “Rape of Nanking”. Eyewitness accounts described the sadistic nature of the rapes and mutilation of approximately 20,000 women and children in the first month of the occupation (Niarchos, 1995).

Sexual violence was also widespread during the Vietnam War, where it was used as a tactic to boost the morale of American soldiers and instill fear and terror in the Vietnamese population. Sexual violence in this context often took the form of rape, torture and mutilation of Vietnamese women and, as many veterans have testified, was “standard operating procedure” (Niarchos, 1995, p. 667). There are other accounts in Bangladesh, formerly East Pakistan, after it declared its independence in 1971. A war was waged and during the course of it there was a campaign carried out on the part of the West Pakistani soldiers, in which over 200,000 Bengali women were raped (Niarchos, 1995). Many of these women were forced into prostitution in West Pakistani military brothels, and the vast majority of the women raped during the course of this war were rejected by their families, husbands and villages, became outcasts and were permanently marginalized. So sexual violence in this instance was again carried out in an attempt to break up and demoralize communities. In more recent conflicts there has been evidence of sexual violence towards women and children in El Salvador, Guatemala, Liberia, Kuwait, Yugoslavia, Rwanda, and Sudan, where the tactics and uses of sexual violence followed similar trends.

Until recently, sexual violence was seen as and considered an unfortunate byproduct of war and conflict. Today, this is no longer the case. Since the Second World War, there have been a number of treaties and conventions created that not only condemn sexual violence but also call for its prevention. These include the Geneva Conventions, especially the Fourth Geneva Convention of 1949 and the two Additional Protocols of 1977; the 1948 Convention on the Prevention and Punishment of the Crime of Genocide; the 1979 Convention on the Elimination of All Forms of Discrimination Against Women; the 1989 Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000); the Convention Against Transnational Organized Crime (2000) and its supplemental Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and
Children (2000); the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (1984), and the Rome Statute of the International Criminal Court (1998).

The Rome Statute of the International Criminal Court is very important because it includes a wide array of gender-specific crimes, which include rape, sexual slavery, enforced prostitution, forced pregnancy and forced sterilization (World Health Report, 2002, p. 170). What is additionally important about this document is that it “includes certain forms of sexual violence that constitute a grave breach or serious violation of the 1949 Geneva Conventions, as well as other forms of sexual violence that are comparable in gravity to crimes against humanity” (World Health Report, 2002, p. 170).

The importance of these conventions and treaties at both a domestic and international level is that it has become more difficult to overlook sexual violence as an inevitable byproduct of war and conflict. In many places, sexual violence still may not be recognized for what it really is, namely a crime against humanity, but during the course of the history of sexual violence in conflict, there has been a shift in the understanding and perception of these acts. We are no longer in an era where it is acceptable for women and children to be considered and treated as the “spoils of war”. Granted there are still societies and cultures in the world today where women are still traditionally seen and expected to belong to men, but at least at an international level it is no longer acceptable for war to be waged through women’s bodies. In the context of sexual violence in times of conflict, the world is still far from having eradicated this practice. However, times are changing in the sense that now there are mechanisms in place to hold those who commit and utilize such tactics accountable for their behavior. These mechanisms that are currently in place are largely due to the creation, subsequent expansion and implementation of international humanitarian law.

The basic premises and historical background of international humanitarian law

International humanitarian law is commonly referred to as the law of war or the law of armed conflict (Gasser). The fundamental purpose of international humanitarian law is to “protect the human being and to safeguard the dignity of man in the extreme situation of war” (Gasser, p. 16). Essentially, international humanitarian law presides over both international and internal armed conflicts, its attempt being to set and maintain a basic and minimum standard of how war is to be waged, in the sense of what is acceptable and what is unacceptable in regards to tactics and means of waging war. It is also extremely important as international humanitarian law sets a basic and minimum standard for non-combatants during times of war, which initially included wounded soldiers, but has been extended to civilians. At its core, international humanitarian law
attempts to protect the vulnerable during armed conflict. “Today’s universal and for the most part written international humanitarian law can be traced directly back to two persons both of whom were marked by a traumatic experience of war: Henry Dunant and Francis Lieber” (Gasser, p. 7).

What these two men proposed was that, in times of war and conflict, it was of paramount importance that there be a distinction between belligerents and non-belligerents, and that non-belligerents would not be targets. Initially Dunant and Lieber were referring to non-belligerents in the sense of wounded and sick soldiers who were no longer able to fight, but then there was a shift in which non-belligerents began to include civilian populations. From this moment on, there was an increasing focus on the victims of war, who were often times civilians, and today, there is just as much of an emphasis on protecting the civilians caught in war as there is on protecting the wounded and sick.

Dunant and Lieber based their ideas on those of Jean-Jacques Rousseau. Rousseau noted in his work *A Treatise on the Social Contract* written in 1762 was that war should not be waged with the intent to “destroy an enemy nation, but rather war should be utilized as a way to overcome enemy forces” (Gasser, p. 7). This is very important as it illustrates the distinctions that must be made, during times of armed conflict, in terms of the means and tactics of waging war, the intentions of war and the targets. To destroy enemy forces implies a waging of total war, and can include demoralizing, dehumanizing and wiping out the enemy. However, to overcome enemy forces implies doing only what is necessary in order to put an end to the conflict, which does not include destroying a population, be it physically, culturally, emotionally or mentally.

In 1864, the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field was adopted. This document was in many ways one of the important forerunners to the four notorious Geneva Conventions that are used today to govern the laws of war both internationally and domestically. This First Convention permitted medical workers to attend to the wounded in the field and protected them from being attacked or hindered in providing treatment and assistance to the victims of war. After World War I, the convention underwent revision and it is only in 1949 that it became known as the First Geneva Convention.

In 1899 at the Hague Peace Conference, it was decided that “victims of war at sea [would be] under the protection of the law of Geneva [or the 1864 Convention]” (Gasser, p.9). The convention was revised and again adopted in 1907 at The Hague Peace Conference, and in 1949 was adopted as the Second Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea. The two Hague Peace Conferences also discussed and adopted the Convention on the Laws and Customs of War on Land, which had a number of articles that dealt with the conditions and treatment of prisoners of war. After World War I, a Prisoner of War Code was developed in the Geneva Convention of 1929, which was further developed after World War
II. This then led to the creation and adoption in 1949 of the Third Geneva Convention Relative to the Treatment of Prisoners of War.

The Fourth 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War was actually quite ground breaking at the time (Gasser). The concept of providing protection from “arbitrary treatment and violence” to civilians that had been conquered or found themselves in enemy hands due to occupation or invasion was quite new. In many ways it was really only after World War II that the international community saw how most of the worst acts committed during war were enacted against civilian populations, and that there was a need for an international instrument and mechanism to protect civilians in times of war and occupation. What was additionally important about the Fourth Geneva Convention was that it provided protection to civilians not only in international conflicts, but also in civil wars and internal conflicts; the Additional Protocol I further supplements this protection.

The Fourth Geneva Convention of 1949 and its jurisdiction over sexual violence

Some have argued that the “greatest achievement of the 1949 Diplomatic Conference was the (Fourth) Convention relative to the Protection of Civilian Persons in Time of War” as for the first time individual civilians during times of war or conflict were guaranteed protection under international law (Gasser, p. 39). When one looks at any major war or armed conflict, often what one will find is that the civilian population that gets hit the hardest and suffers the most in the course of a conflict. Based on the simple idea expressed in the law of war that “hostilities should take place exclusively between the armed forces of the conflicting parities”, the fact that civilians often directly experience and suffer due to the ensuing conflict is both ironic and tragic (Gasser, p. 39).

What the Fourth Geneva Convention of 1949 stated was that civilians must not only be kept out of the forefront of an ongoing conflict, but are also entitled to protection in the course of a conflict since they are, by definition, non-combatants. Essentially the Fourth Geneva Convention acted to put into writing what had formerly been only an “unwritten law of humanity” which was that engaging civilians into what was essentially a military conflict, be it by enacting military strategies against or targeting them in an attempt to gain ground in a conflict or war situation, was not acceptable or tolerable by international standards (Gasser, p. 40).

During the course of the twentieth century, the wars, especially World War II, testified to the horrors that can potentially befall civilian populations if they are not protected by some sort of code of international law. The drafters of the Convention agreed upon two basic threats that can befall civilians during times of war, both of which are elaborated on throughout the document. The first threats civilians must be protected from are “the dangers caused by military operations themselves”, and the
second are “the threats to which vulnerable persons are exposed when in the power of the enemy” (Gasser, p. 40).

Both of these are important themes when one considers sexual violence during times of conflict and war. Sexual violence, when systematic, has taken the form of military operations enacted against the civilian population. Concerning the second major threat, it is mainly women and children who are the targets of sexual violence and are generally the most vulnerable groups within civilian populations. Acts of sexual violence have been enacted against these groups when enemy forces have occupied or invaded particular regions, placing the enemy in a position of power, and rather than respecting basic human rights and their obligations under international humanitarian law, these enemy forces abuse their power over these vulnerable groups, and sexual violence becomes one form of this abuse. Some of the major issues and themes covered in the Fourth Geneva Convention include the prohibition of *using civilians as shields to protect* particular areas, especially areas of or with military importance, (Fourth Geneva Convention, Article 28). In Article 33, the Convention also prohibits the use of a collective form of punishment in the attempt to intimidate or terrorize the civilian population, and the same article as well as Article 34 prohibit taking civilian hostages, spoils, and executing retaliations against civilian populations. Article 51 of Additional Protocol I reiterates the idea that civilian populations under international humanitarian law are not to be the targets of attacks. This provision explicitly prohibits the use of violence or the threat of the use of violence against civilians in an attempt to spread terror among civilian populations.

The use of sexual violence essentially violates the most fundamental principle of the 1949 Convention relative to the Protection of Civilian Persons During Time of War, that it is unacceptable and intolerable to wage war upon civilian populations in an attempt to win the war or conflict. Sexual violence in a historical context as well as in modern warfare has been utilized as a deliberate way to wage war on and through the bodies and minds of primarily women and children. Sexual violence violates the provisions regarding the prohibition of utilizing collective forms of punishment to terrorize and intimidate civilians, and of using civilians as spoils of war, hostages and means by which to retaliate.

Though sexual violence is explicitly condemned in a number of international conventions, it is only mentioned once in the Fourth Geneva Convention, in Article 27 which reads: “Protected persons are entitled, in all circumstances, to respect for their persons, their honor, 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 honor, in particular rape, enforced prostitution, or any form of indecent assault”. Protocol I and II to the Geneva Conventions supplement this protection, Protocol II extending this protection to internal conflicts.
Based on this provision (Article 27), sexual violence, carried out under whatever circumstance in an armed conflict or war situation, is a violation of the Geneva Conventions. By definition, sexual violence of any kind is coercive and violent, both physically and mentally. Also reference is made to the fact that protected persons are entitled to respect for their family rights. This is an extremely important factor to consider in terms of the consequences of sexual violence. Many women who have been victims of sexual violence suffered from such extreme forms of violence, torture and mutilation (including repeated rapes, and the use of objects such as guns, broken bottles, sticks etc.) and so their reproductive systems are no longer in tact or functioning. So not only are they denied the right to a family, but they may be stigmatized and marginalized by their community for not being able to have children.

These women can be stigmatized in a number of ways. First, even though from a Western perspective we may look at such acts of sexual violence as being unwarranted on the part of the victim, there is still a very strong cultural stigma that these women have been defiled and, as a result, they are rejected by their community and family. Secondly, women who were forcibly impregnated and gave birth to children of the “enemy”, as was done in both the Former Yugoslavia and in Rwanda, are also shunned and rejected by their families and communities as they are also seen as being defiled and spoiled. Finally, for women who experienced extreme forms of torture and mutilation and are no longer able to bear children because their reproductive systems are damaged beyond repair, there is a stigma as in many villages and communities women are valued for their child bearing abilities. Their inability to reproduce combined with the fact that they were used for sexual purposes by another man (or men), again leaves many women shunned and marginalized. It must however be remembered that these acts were committed deliberately against and targeted towards the civilian populations.

Essentially, the use of sexual violence in these situations not only shows disrespect for the human being, culture, religion and practices, it reveals a complete contempt for the “enemy’s” way of life. For even the testimonies of the perpetrators reveal that sexual violence was enacted with the intent to destroy these communities, people and cultures.

Article 3, common to all four Geneva Conventions and dealing with conflicts not of an international character, outlines the basic rules or the fundamental guidelines of international humanitarian law. It explicitly prohibits “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; the taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; and the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples”.

Eyewitness accounts and testimonies from victims of sexual violence during war and conflict situations, namely in the Former Yugoslavia and
Rwanda, are clear evidence that sexual violence, especially rape, forced prostitution, forced pregnancy, sexual slavery, violate many of these fundamental guidelines. First of all rape was used as a tool of violence against the life of the victims. Large numbers of women and children were slaughtered, not without first being raped, tortured and mutilated. There are numerous accounts of women being mutilated, having their bodies sliced open, their breasts removed, and different objects used to rape them, before they were violently killed. Many women were raped in front of their entire village, family or groups of enemy soldiers. This same humiliation and degradation have also been expressed from women who were forced into rape camps, sexual slavery and prostitution, where part of the sexual violence enacted against them included shaming and debasing them, before raping and killing them. Even though Article 3 does not explicitly include rape, from the practices that have taken place in times of war, it is clear how sexual violence is covered in its jurisdiction.

Articles 146 and 147 of the Fourth Geneva Convention delineate a number of acts that are to be punished as “grave breaches” of the Geneva Conventions. Some of these include “willful killing, torture or other forms of inhumane treatment of protected persons which can be prisoners of war and civilians”, and also include “attacks on civilian population or individual civilians resulting in death or serious injury to the body or health of the victim” (Gasser, p. 85). These acts are considered as grave breaches and can be tried as war crimes. Sexual violence has not been included explicitly but again, from the practices that took place during the wars mentioned above, it is clear how sexual violence is to be covered under these provisions and thus tried as war crime.

From the testimonies of both victims and those in the armed forces, there is significant evidence that suggests that sexual violence was both a precursor and the means to enact willful killings, torture and forms of inhumane treatment to civilian populations. These attacks on civilian populations were done to instill fear and terror, but also to inflict enough damage to cause death or to permanently damage the women’s bodies and lives, so they would never be able to bear children and/or would forever be physically disfigured and maimed when torture and mutilation occurred as part of the sexual violence. This has had severe impacts on both the physical and mental health of victims.

Physically, if the woman is not beaten to death or doesn’t die as a result of the mutilation and torture inflicted with the rape, there are many other grave physical consequences of rape. According to the Center for Reproductive Law and Policy (1996), if there has been internal damage, the victim is at a great risk of developing further infections, which, if left untreated, can result in death or damage to the reproductive system. In times of war and conflict women often have limited access to such resources, making these infections lethal (CRLP, 1996). Women can also contract a wide array of Sexually Transmitted Diseases (STD), including HIV/AIDS, which again, if left untreated, can cause irreparable damage
such as pelvic inflammatory disease, infertility, blindness, cancer and eventually death (CRLP, 1996). For women who are impregnated either deliberately (as was the case in the Former Yugoslavia and Rwanda) or ‘accidentally’, there are all sorts of complications that can arise medically. The same infections and risks listed above apply and become extremely exacerbated in case of pregnancy: women and child have a high risk of death (CRLP, 1996).

These women’s mental health is also severely harmed, as they are very likely to suffer from post-traumatic stress disorder (PTSD) and to develop a wide array of psychological problems and disturbances that may require years of treatment (CRLP, 1996). As was discussed earlier, many of these women are rejected by their families, husbands, villages and communities, as they are regarded as being defiled and unclean, especially if they have been impregnated. This too can give rise to a whole range of psychological problems associated with alienation combined with the experienced trauma. This can lead to things like complete mental and physical deterioration, making it very difficult for them to function and take part in every day society, and can lead to extreme marginalization, trafficking, and even suicide.

Therefore, though sexual violence is not explicitly listed as a grave breach, the intentional acts themselves as well as the short and long-term consequences of sexual violence on women and children in civilian populations can and must be considered grave breaches punishable as war crimes.

The jurisdiction of sexual violence under other principles of jus cogens

_Jus cogens_ refers to a “peremptory norm of general international law” as defined in the 1969 Vienna Convention on the Law of Treaties in Article 53. Essentially what is meant by a peremptory norm is a norm that is accepted by the international community, and any deviation from this norm is totally unacceptable and intolerable. The prohibitions of genocide and of torture are two norms that are ‘classified’ as _jus cogens_ because the international community prohibits them both and doesn’t tolerate any deviation. Sexual violence during times of war and conflict, especially how it was enacted during the war in Yugoslavia and the Rwanda Genocide, can be placed under the jurisdiction of these two universally prohibited acts.

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as the following: “any of the following acts committed with the intent to destroy in whole or in part, a national, ethnic, racial or religious group as such: a) killing members of the group; b) causing serious bodily or mental harm to members of the group; c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) imposing measures intended to prevent births within the group; e) forcibly transferring children of the group to another group”.
In terms of establishing a case of genocide, what is important is the intent behind the use of sexual violence, and this intent must be to destroy a particular group. In both the war in the Former Yugoslavia and in the Rwanda Genocide, sexual violence was used as a means by which to carry out campaigns of ethnic cleansing. In both cases, the war or conflict was waged on the civilian population in an attempt not only to terrorize the civilians, to cause them to flee and never to return out of fear, but also with the deliberate motive to kill a particular ethnic group. In both cases, the conflict was being waged on civilians in an attempt to “destroy in whole or in part” the particular targeted group. This was evidently done by murdering people, but in the context of sexual violence, there are numerous testimonies on the part of the perpetrators and victims that reveal that these acts of sexual violence in the form of rape, mutilation, torture and the like were done with the intent to kill the victims (Human Rights Watch, 1996). Thus, clause a) of the definition of genocide is fulfilled. Furthermore, as discussed above, sexual violence has a multitude of physical and mental consequences on the victims, if they survive the attack. Again from the testimonies of people on both sides (the perpetrators and the victims) it can be seen that these acts of sexual violence were ordered and carried out systematically, and done with the intent to inflict both bodily and mental harm (clause b).

This was done for two reasons: first of all, the infliction of physical harm was to hurt, maim or kill victims (clause a) in an effort to destroy the group, it was also done to instill terror and fear so as to cause members of the group to flee and never to return. In a sense, the perpetrators were carrying out an order to cleanse the land of a particular group. This was done mainly in Yugoslavia where women fled and were afraid to return home, resulting in the break-up of communities. Also in terms of the mental and psychological health (clause b), the consequences of sexual violence have been discussed above, but to reiterate some of the long term consequences, the most common have been PTSD, alienation, stigmatization and marginalization of the victims which in turn can lead to complete mental deterioration, also resulting in the break-up of communities and particular ethnic groups. There are stories of sons being forced to rape their mothers and sisters, or of having to watch the women of their family and village be raped, tortured and mutilated. Such acts of terror, cruelty and humiliation carry with them cultural and social implications, for the families as well as the communities. How is it possible to rebuild a family and come together as a unit of support, both to each other individually and in terms of constituting a community and society collectively, after such events?

It is important to note that when campaigns of sexual violence were enacted, these outcomes were not only kept in mind, but were part of the purpose of waging such an atrocious form warfare on civilian populations. Coming back to the 1948 Convention on Genocide, clauses c), d) and e) of the definition of genocide clearly apply to cases of systematic rape.
and sexual violence. Rape, being a way to defile women and break up and demoralize not only the women but also the men of the community, fits under clause c. Also, the various forms of torture and mutilation that were carried out with the intent to prevent women from a particular group to give birth (killing the women also makes it difficult for a new generation to be born) clearly fits under clause d. Finally, the idea of forced pregnancy, whereby women would be raped repeatedly until they got pregnant, can fit under clause e. In the ethnic groups involved in the war in Yugoslavia and in Rwanda, there is the belief that the child carries the ethnicity of the father. So when women are raped and impregnated by the “enemy” sperm, the children born of these women are automatically considered to be of the other ethnicity. This is partly one reason why these women were shunned and stigmatized by their own groups, not only because they had been “spoiled” by rape, but also for having birthed an enemy offspring. Another issue that arose from these forced pregnancies was women trying to give themselves abortions by what we would consider primitive methods, for example using coat hangers, which result in numerous deaths and severe injuries.

Thus, what makes sexual violence a crime of genocide in this context is that it was and is utilized as a military tactic to destroy, debilitate, demoralize and main particular targeted groups.

The 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as: “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.

Essentially, torture is defined by three basic elements: 1) an act intentionally causing severe pain or suffering, 2) committed for a purpose, and 3) carried out either directly by a public or governmental official or with its consent. Sexual violence during times of conflict and war clearly falls within these guidelines. From testimonies, it is known that sexual violence and all its variants can cause extreme pain both physically and mentally. During times of war sexual violence has been used as a means by which to punish not only the victims who are usually women, but also the men who culturally are shamed by sexual violations and abuse. Sexual violence has also been used as a way to extract information, but especially to intimidate and instill fear and terror in the victimized population. In the cases of both the former Yugoslavia and Rwanda (and even throughout history as was discussed previously) sexual violence was not simply a byproduct of the conflict, it was systematic. It was part of the military procedure and code
of conduct, in an attempt to win the conflict or as part of a larger strategy of ethnic cleansing or genocide. Clearly sexual violence was carried out with the consent and under the orders of public and governmental officials.

Reasons for recognizing sexual violence under international law

Throughout history, sexual violence has been a part of war and conflict, and the brutal nature of war has not changed very much. So why is it that it is only relatively recently that it has been given the attention it deserves in light of international law, especially international humanitarian law? Though there have not been any profound studies on this topic, I would like to suggest a few factors that I think have contributed to its newfound seat on the international agenda.

First of all, it has only been relatively recently that women have been granted equal rights to men in the Western world. Most equal rights movements began in the 1960s and were not solidified until the late sixties, seventies and even the eighties in some countries. So the idea of women having rights, and specifically women rights that give them autonomy over their own body and life (as specified in the Convention on the Elimination of All Forms of Discrimination Against Women) is still relatively new. Yet since the Women's Rights Movements, these ideas have been spreading and gaining in importance, which is why it has become possible for women and the international community not only to recognize but also to protest and bring to justice what is an extreme and deliberate violation of women's rights. A new standard for the treatment of women has emerged with these movements, which makes these deliberate practices unacceptable and intolerable, and instigates people to bring the perpetrators to justice.

Another factor has to do with the two recent war situations (the Former Yugoslavia and Rwanda) where sexual violence was systematically enacted against civilian populations and which are currently being tried in the War Crimes Tribunals.

Yugoslavia provided a very unique example. As Rieff (2002) suggests in his book *A Bed for the Night*, what got the world's attention concerning Yugoslavia was the disbelief that such actions were taking place in Europe. He goes on to say that after World War II there seemed to be understood that atrocities such as genocide and ethnic cleansing would not take place again, especially not on the continent that witnessed such an extreme form of it in terms of the Holocaust. Yet, that was almost exactly what started to happen, and people were just so shocked by the acts, intentions and motivations behind the killing that it brought the conflict and the atrocities committed by all sides to international attention. The same idea holds true with the Rwanda Genocide. People around the world just couldn’t believe what had happened, that they had done nothing to stop it and that 800,000 people had been slaughtered.
In both cases the media played quite a significant role. It has been said that the Vietnam War was the first real televised war because the world had the technology and the capacity to do so. This also holds true for the war in Yugoslavia. The media, in the thirty years between the Vietnam War and Yugoslavia, has grown immensely and has taken a prominent place both in the day-to-day life of most people as well as on the international arena. Being the power it is, the media has been able to set its own agenda based on what it chooses to cover. To a large extent, it was able to televise both the war in the Former Yugoslavia as well as the consequences of the Rwanda Genocide. The media played a big role in drawing enough people's attention to the acts of sexual violence that were committed during the conflicts and really instigating the international community to react and to bring the perpetrators of such atrocious acts to justice.

However, I think it is important to emphasize that all three factors, namely the rise of the human rights discourse (in particular that of women’s rights), the particular locations of these conflicts and the atrocities that occurred, and the media, act to reinforce each other. The issue of sexual violence being considered what it is today, which is a violation and grave breach of the Geneva Conventions and thus a war crime and crime against humanity, an act of genocide and an act of torture, is a result of these three factors working interdependently, continually reinforcing one another.

Conclusion

Sexual violence encompasses a wide array of acts and behaviors. At its core, sexual violence can be understood as coerced sexual activity. In times of armed conflict and war the most common forms sexual violence takes are rape, which usually involves torture and mutilation, forced pregnancy, sexual slavery, and forced prostitution. These behaviors and acts are nothing new in the context of war and armed conflict, as they date back well before the times of ancient Greece. What has given sexual violence a new connotation in recent years has been the fact that since the war in the Former Yugoslavia and the Rwanda Genocide, sexual violence has been and is currently being considered a violation and grave breach of the Geneva Conventions, an act of genocide and an act of torture.

It is interesting to consider why it has only been recently that these atrocious acts have come to the attention of the international community and are being recognized as far more than unfortunate byproducts of war and conflict. Firstly, the rise of the human rights movements, and more particularly the women's right movement, alerted and educated the world on issues of women's equality and autonomy, and on the fact that crimes against women will no longer be acceptable or tolerated by the international community. Secondly, the context of the wars in the

Former Yugoslavia and Rwanda played a role in the sense that after WWII, the world and the international community couldn’t fathom that
campaigns of ethnic cleansing using such violent and horrific means could actually happen again, especially in Europe. In some ways, the strong reaction against these acts is due to disbelief. In Rwanda, I think that part of the strong reaction now is an attempt to compensate for the fact that the international community did not lift a finger to prevent, curb or stop the massacre. Bringing the perpetrators to justice now is one way for the international community to appease its conscience. Thirdly, the media interacts with both factors in bringing such issues to the limelight. The media has evolved to a place of considerable importance and has the power to set an agenda, whether political, social or economic and muster world attention.

Finally, it is important to note that the resulting interaction of these three factors has contributed to expanding what is to be considered a grave breach of the Geneva Conventions, an act of genocide and an act of torture, because sexual violence as such is only explicitly mentioned once in the Geneva Conventions, and not at all in the Genocide Convention or Torture Convention. It has now become possible for people to interpret these acts of sexual violence as acts to be covered under the jurisdiction of these conventions and instruments of international law.

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