

Women2000

**Sexual Violence and Armed Conflict: United Nations
Response**

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Introduction

Sexual violence during armed conflict is not a new phenomenon. It has existed for as long as there has been conflict. In her 1975 book *Against Our Will: Men, Women and Rape*, Susan Brownmiller presented stark accounts of rape and other sexual atrocities that have been committed during armed conflict throughout history. While historically very few measures have been taken to address sexual violence against women committed during armed conflict, it is not true to say that there has always been complete silence about the issue. Belligerents have often capitalized upon the abuse of their women to garner sympathy and support for their side, and to strengthen their resolve against the enemy. Usually, the apparent concern for these women vanishes when the propaganda value of their suffering diminishes, and they are left without any prospect of redress. It is true to say that the international community has, for a long time, failed to demonstrate a clear desire to do something about the problem of sexual violence during armed conflict. The turning point came in the early 1990s as a result of sexual atrocities committed during the conflict in the former Yugoslavia, and it seems that finally, the issue has emerged as a serious agenda item of the international community.

Towards the end of 1992, the world was stunned by reports of sexual atrocities committed during the armed conflict in the former Yugoslavia. Newspaper headlines decried: "Serbian rape camps: Evil Upon Evil" and "Serben vergewaltigen auf obersten Befehl" (Serbs rape on highest orders)¹. The media reported that rape and other sexual atrocities were a deliberate and systematic part of the Bosnian Serb campaign for victory in the war. A perception was generated that detention camps had been set up specifically for the purpose of raping women, and that the policy of rape had been planned at the highest levels of the Bosnian Serb military structure. Strong and persistent demands for a decisive response to these outrages came from around the globe.

Many of the steps taken to address sexual violence against women during armed conflict have occurred within the framework of the United Nations. This issue of *women 2000* focuses upon some of these developments. Two points must be made at the outset. First, sexual violence during armed conflict affects men as well as women. However, it is clear that women are more likely to be subjected to sexual violence than men. Women are also targeted for different reasons than men, and they are affected by the experience in very different ways to men. For a woman, there is the added risk of pregnancy as a result of rape. In addition, women occupy very different positions in society to men, and are treated differently as a result of what has happened to them. Women are frequently shunned, ostracized, and considered unmarriageable. Permanent damage to the reproductive system, which often results from sexual violence, has different implications for women than for men. Thus, while it is imperative to acknowledge and redress the trauma suffered by both men and

women,

it is important to recognize their different experiences when responding to the problem. Secondly, it must be emphasized that sexual violence is only one of the issues that arise when considering women's experience of armed conflict. For example, more women than men become refugees or displaced persons during conflict, and women's primary responsibility for agriculture and water collection in many societies renders them particularly vulnerable to injury from certain types of weapons used in conflict, such as land-mines. Further, women's overall position of disadvantage within the community means that the general hardships accompanying armed conflict frequently fall more heavily upon women than upon men. Women who serve as combatants experience armed conflict differently to male combatants, and the culture of militarism impacts upon women in particular ways.² Although not within the scope of the present issue, the many other ways that armed conflict affects women warrant serious attention and concern.

In the first part of this issue, consideration is given to the failure of the international community to address the issue of war-time sexual violence during the early years of the UN. Developments are traced to the early 1990s when the international community finally recognized that human rights violations committed against women during armed conflict, including sexual violence, violate fundamental principles of international human rights and humanitarian law. In the second part of this issue, the manner in which sexual violence during armed conflict emerged as an item of serious concern within the UN is examined. The role of women's NGOs in exerting pressure for change is highlighted, and the UN's response described. The concluding section examines how the issue may be advanced in the next century.

Sexual Violence During Armed Conflict: A Hidden Atrocity?

The Nature of Sexual Violence During Armed Conflict

The term "sexual violence" refers to many different crimes including rape, sexual mutilation, sexual humiliation, forced prostitution, and forced pregnancy. These crimes are motivated by a myriad of factors. For example, a commonly held view throughout history has been that women are part of the "spoils" of war to which soldiers are entitled. Deeply entrenched in this notion is the idea that women are property -- chattel available to victorious warriors. Sexual violence may also be looked upon as a means of troop mollification. This is particularly the case where women are forced into military sexual slavery. Another reason that sexual violence occurs is to destroy male, and thereby community, pride. Men who have failed to "protect their women" are considered to be humiliated and weak. It can also be used as a form of punishment, particularly where women are politically active, or are associated with others who are politically active. Sexual violence can further be used as a means of inflicting terror upon the population at large. It can shatter communities and drive people out of their homes. Sexual violence can also be part of a genocidal strategy. It can inflict life-threatening bodily and mental harm, and form part of the conditions imposed to bring about the ultimate destruction of an entire group of people.

Sexual Violence and World War II

Historical records are largely silent about the occurrence of sexual violence during World War II. This is not because sexual violence did not occur, but for a variety of other reasons. Part of the problem is that sexual violence was perpetrated by all sides to the conflict. Consequently, it was difficult for one party to make allegations against the other at the conclusion of hostilities. Moreover, sexual violence had long been accepted as an inevitable, albeit unfortunate, reality of armed conflict. This was compounded by the fact that in the late 1940s sexual matters were not discussed easily or openly, and there was no strong, mobilized women's movement to exert pressure for redress.

Only in recent years have writers and others begun to reconsider the issue of sexual violence during World War II. At the centre of this has been the belated recognition of crimes committed against many thousands of Asian women and girls who were forced into military sexual slavery by the Japanese Army during World War II. They have become known as "comfort women". In 1992, the Japanese Government officially apologized for compelling these women into military sexual slavery, and has written to each surviving "comfort woman". The UN's Special Rapporteur on violence against women has reported that these women and girls endured:

"...memorable experiences are when I speak to victims, especially when I spoke to the comfort women in Korea. I don't think I have ever heard such horrendous tales...[Special Rapporteurs] are not supposed to cry, but it is terribly difficult." Radhika Coomaraswamy, Special Rapporteur on violence against women, Interview in Libertas, International Centre for Human Rights and Democratic Development, Dec 1997, Vol 7:2, p. 7.

"...multiple rape on an everyday basis in the 'military comfort houses'...Allegedly, soldiers were encouraged by their commanding officers to use the "comfort women" facilities rather than civilian brothels 'for the purpose of stabilizing soldiers' psychology, encouraging their spirit and protecting them from venereal infections', as well as a measure to prevent looting and widespread raping during military attacks on villages."⁴

The Special Rapporteur has stated that the tales of the "comfort women" are amongst the most horrendous she has ever heard. Yet the stories of these women remained buried for nearly 50 years.

Post-World War II War Crimes Trials

Following World War II, two multinational war-crimes tribunals were established by the Allies to prosecute suspected war criminals, one in Tokyo, and the other in Nuremberg. Despite the fact that rape and other forms of sexual violence had been prohibited by the laws of armed conflict for centuries, no reference was made to sexual violence in the Charters of either the Nuremberg or the Tokyo tribunals. Although some evidence of

sexual atrocities was received by the Nuremberg Tribunal, sexual crimes committed against women were not expressly charged nor referred to in the Tribunal's Judgement. Indictments before the Tokyo Tribunal did expressly charge rape, evidence was received, and the Tokyo Judgement referred to rape. For example, evidence of rape during the Japanese occupation of Nanking was presented during the trial of General Matsui who had the command of Japanese forces there. Matsui was convicted of war-crimes and crimes against humanity based in part on evidence of rape committed by his troops. However, none of the women who had been raped were actually called to testify, and the subject of women's victimization was only given incidental attention.

Additional war crimes trials were held pursuant to Control Council Law No. 10, which was adopted by the Allies in 1945 to provide a basis for the trial of suspected Nazi war criminals who were not dealt with at Nuremberg. This document represented an advance over the Charters of the Nuremberg and Tokyo Tribunals in that rape was explicitly listed as one of the crimes over which the Control Council had jurisdiction. However, no charges of rape were actually brought pursuant to Control Council Law No.10.

Control Council Law No.10 Article II(1)(c) of, gave the Council jurisdiction over: "Atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated." (emphasis added).

The Geneva Conventions and Additional Protocols

Although not a UN initiative, the four Geneva Conventions adopted in 1949 are relevant to the present discussion. Following the horrors of World War II, these Conventions were initiated by the International Committee of the Red Cross in order to improve the situation of war victims. In 1977 two Additional Protocols were adopted to extend and strengthen the protection provided in the Geneva Conventions. These treaties form part of the law of armed conflict, and contain certain provisions that apply specifically to women.

Many of these provisions seek to protect women in their capacity as expectant mothers, maternity cases and nursing mothers; others regulate the treatment of female prisoners. There are also provisions dealing explicitly with sexual violence.

Problems with provisions of the law of armed conflict that prohibit sexual violence

In the 1949 Geneva Conventions and Additional Protocol I, certain crimes are designated as "grave breaches". Classification of a particular crime as a grave breach is significant because States have a duty to search for persons who are alleged to have committed grave breaches and, if found within their territory, to bring them before their courts or alternatively to extradite them for prosecution. The effect of the grave breach system is to

create a hierarchy, with some violations of the law of armed conflict considered more egregious than others. Sexual violence is not expressly designated as a grave breach, although the view that sexual violence fits within other categories of grave breaches, such as "wilfully causing great suffering or serious injury to body or health", and "torture or inhuman treatment", has gained acceptance. Nonetheless, the absence of express reference to sexual violence as a grave breach is a reflection of the international community's historical failure to appreciate the seriousness of sexual violence during armed conflict.

Another problem with provisions of the Geneva Conventions and Additional Protocols is that they characterize rape and other forms of sexual violence as attacks against the "honour" of women, or at most as an outrage upon personal dignity. The implication is that "honour" (or dignity) is something lent to women by men, and that a raped woman is thereby dishonoured. Failure of these instruments to categorize sexual violence as a violent crime that violates bodily integrity, presents a serious obstacle to addressing crimes of sexual violence against women. It directly reflects and reinforces the trivialization of such offences. In addition, as one writer has pointed out, the provisions are protective rather than prohibitive.⁴

The only requirement is for particular care to be taken, presumably by men, to protect women against sexual violence. Thus the provisions appear to be more about the role of the "male warrior" during armed conflict than about recognizing sexual violence as a violation of the rights of women and prohibiting it.

What is the "law of armed conflict"?

The body of international legal principles found in treaties and in the practice of States, that regulates hostilities in situations of armed conflict. "Armed conflict" is the preferred legal term rather than the term "war" because the law applies irrespective of whether there has been a formal declaration of war. Other terms with the same meaning include: "international humanitarian law", "the humanitarian laws of war" and "jus in bello". Different rules apply depending upon whether a conflict is internal (i.e. a civil war) or international (i.e. a war between two or more states or state-like entities). Internal conflicts are regulated by fewer laws than international conflicts.

Is the law of armed conflict different

UN Responses to Sexual Violence

One of the first major references within the UN system to women and armed conflict was in 1969, when the Commission on the Status of Women, began to consider whether special protection should be accorded to particularly vulnerable groups, namely women and children, during armed conflict and emergency situations. Following this, the Economic and Social Council (ECOSOC) asked the UN General Assembly (GA) to adopt a declaration on the topic. The GA responded by adopting the Declaration on the Protection of Women and Children in Emergency and Armed Conflict in 1974. The Declaration recognizes the particular suffering of women and children during armed conflict. It emphasizes the important role that women play "in society, in the family and particularly in the upbringing of children", and the corresponding need to accord them special protection. It also urges

from international human rights law?

Yes, the law of armed conflict and international human rights law have historically developed as separate bodies of law, with the former directed at the alleviation of human suffering in times of armed conflict, and the latter directed at the alleviation of human suffering during times of peace.

Since the establishment of the UN, there has been a tendency to regard the law of armed conflict as part of the broader international human rights law framework.

Does the law of armed conflict deal explicitly with sexual violence?

Yes, the relevant provisions are:

Geneva Convention IV Relative to the Protection of Civilian Persons; Article 27: *"Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault."*

Additional Protocol I of 1977; Article 76(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."

Additional Protocol II of 1977; Article 4(2)(e) prohibits: *"Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault."*

States to comply with their obligations under international instruments, including the 1949 Geneva Conventions, that offer important guarantees of protection for women and children.⁵ There is no explicit reference to women's vulnerability to sexual violence during armed conflict. Yet, as the Special Rapporteur on violence against women has reported, there is evidence that in 1971, rape was committed on a massive scale during the conflict in Bangladesh.⁶ In light of this, the omission of any explicit reference to sexual violence in the Declaration just a few years later is notable. Clearly, at the time the Declaration was adopted, concern over the situation of women during armed conflict was closely connected with their role as mothers and care-givers, and very limited recognition was given to issues affecting women in their own right. However, the Declaration does make a general plea for compliance with the laws of armed conflict. The Fourth Geneva Convention of 1949 was in existence at the time and, as described above, this expressly addresses rape. The Declaration also stipulates that all necessary steps shall be taken to prohibit inter alia degrading treatment and violence, which may be considered to implicitly encompass sexual violence.⁷

Throughout the 1980s, the UN continued to refer to the particular vulnerability of women during armed conflict, but still without any explicit reference to the prevalence of sexual violence. The practice of considering women and children as one category demonstrated a continuing preoccupation with women as mothers and care-givers.

For example, commencing in the 1980s the ECOSOC agreed a series of resolutions on the situation of Palestinian women and children in the occupied Arab territories, as well as the situation of women and children in Namibia, and women and children living under apartheid. These resolutions recognized the poor living conditions of women but did not refer to their vulnerability to sexual violence. It seems unlikely that, in contrast to the

majority of other conflicts throughout history, sexual violence was not a feature of these particular conflicts.

At the end-of-decade Conference held in Nairobi in 1985, the Forward-looking Strategies for the Advancement of Women, adopted to provide a blueprint for the advancement of women to the Year 2000, referred to the especially vulnerable situation of women affected by inter alia armed conflict, including the threat of physical abuse. The general vulnerability of women to sexual abuse and rape in everyday life was recognized, but sexual violence was not specifically linked to armed conflict.⁸

Even in the mid-1980s, sexual violence during armed conflict largely remained unrecognized.

The 1990s: International Concern Over Sexual Violence During Armed Conflict

The Gulf War and the Creation of the United Nations Compensation Commission

Some of the first steps towards progress on the issue of wartime sexual violence taken by the UN have gone almost unnoticed. As in the case of other conflicts, when Iraq invaded Kuwait in 1990, sexual violence was a frequent occurrence during the ensuing hostilities. A UN report documented the prevalence of rape perpetrated against Kuwaiti women by Iraqi soldiers during the invasion.²

Although the UN Security Council did not expressly refer to sexual violence against women in its resolutions relating to the Gulf conflict, it did create the United Nations Compensation Commission (UNCC) to compensate victims who suffered damage as a result of Iraq's unlawful invasion of Kuwait. The UNCC is primarily funded by a 30 per cent levy on Iraq's annual oil exports. Initially, Iraq refused to resume oil exports under the conditions imposed by the UN, thereby crippling the capacity of the fund to operate as intended. However, in 1995, an agreement was reached known as the "oil for food" arrangement, and money has subsequently become available for the payment of claims. The UNCC determined that it would compensate "serious personal injury" which expressly includes physical or mental injury arising from sexual assault. Some claims asserting rape by members of the Iraqi military forces were filed with the UNCC, and guidelines were adopted to facilitate proof of these claims making it much easier for

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