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## ***Rape Warfare and International Humanitarian Law***

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**Abstract:** Throughout time no matter where the location, rape and other acts of sexual violence towards women have always been a part of war. Shrugged off, rape warfare has become an acceptable by-product for what men do even though the Geneva Conventions, the legal framework outlining the rules of war, prohibits it. Specifically looking at the war in Bosnia-Herzegovina and in Rwanda, this thesis will focus on how women's bodies became the battlefield. Journals, books and documentary films all present testimony on how rape went beyond being a by-product of war to instead become a tool of war itself: a strategic military plan for genocide. Secondary research examines articles within the Geneva Conventions as well as the Convention on the Prevention and Punishment of the Crime of Genocide that directly address the safety and treatment of women during war. My findings are that these structures of law very often go ignored. The creation of an International Criminal Court and two ad-hoc tribunals, however, will prosecute those accountable for committing sexual atrocities during war and in doing so send a strong message that acts of violence towards women will not be tolerated. How well this message gets heard remains to be seen as wars continue to define our future.

### **INTRODUCTION**

It took four months for the atrocity outside the town of Mahmudiyah, Iraq, to be

exposed in print and over the airways. Fifteen-year-old Abeer Qasim Hamza al-Janabi was gang raped, her skull smashed and her body set on fire. Her parents and younger sister were also killed in the mur-

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This paper is the opening chapter of my thesis which I wrote as a student of the Adult Learning Division at Lesley University. I graduated May 2007 with a Bachelor's Degree in Behavioral Science. The completed work (50 pages) includes a chapter on "Law" which examines the wording within the Geneva Conventions and the Genocide Convention that focuses on the protection of women during war. Another chapter entitled "Justice" gives examples of the successes and failures of the International Criminal Court in prosecuting those who commit acts of sexual and gender violence. My awareness of what women experience during war and post-conflict first rose when I heard Zainab Salbi, founder and President of the non-profit organization, Woman for Women International, give an interview on WNPR radio. At the time I was taking a class on "Women and Economic Development" and my final paper was written about women rebuilding their communities after war. A class in "Stories of the Holocaust" coincided with the 60<sup>th</sup> anniversary of the Nuremberg trials. Harvard University held a two day conference on its legacies which unfortunately I was unable to attend. I did, however, see a very moving dance performance choreographed by Liz Lerman that was commissioned for this event. In leaving the theater that night my mind was at work laying the framework for my final paper for class that would be a brief overview of the trials. It was an article in *Time* magazine that brought my focus to the topic of my thesis. I wanted to follow the justice system five United States soldiers would face for the raping and murder of a young woman and the killing of her younger sister and parents in Iraq. I wanted to learn the basis of International Law (it was not easy) and more importantly I wanted to share with my classmates what has and is happening to women during war and armed conflict.

der that took place in early March 2006, involving five United States soldiers (Rawe, 2006, para. 2). In September 2006, the New York Times reported that for four of the soldiers: Specialist James Barker, Sergeant Paul Cortez, Private Bryan Howard and Private Jesse Spielman, “an Army investigator has recommended a court-martial on charges that could lead to the death penalty for each” (para. 1). Private Steven Green, “said to have conceived the plan to rape the girl...[sic] discharged as a private in May after a psychiatric evaluation, is in custody in Kentucky, where he faces federal rape and murder charges” (para. 8).

Sexual violence against women during war and armed conflict can be a series of singular, isolated acts such as the tragedy that occurred in Mahmudiyah and it can occur on a massive scale such as in Bosnia-Herzegovina. The ethnic cleansing that took place during this conflict rose in April 1992 and “in 1993, a European Community commission estimated the number of rape victims in Bosnia-Herzegovina at twenty thousand. The Muslim-led government insisted the number was fifty thousand” (Stiglmeier, 1999, p. 327). The war ended in November 1995 while genocide ravaged Rwanda in April and May of 1994. Women again were victims of sexual violence:

[A]ccording to human rights observers and Rwandan medical workers, rape was the rule, not the exception: an integral part of the genocide. The number of pregnancies said to be caused by force suggest that so-called genocidaires raped 250,000 to 500,000 women and girls in less than one hundred days. (Flanders, as cited in Barstow, 2000, p. 96)

Most often the perpetrators are rebel forces, but sadly, acts of violence are also carried out by the very same people who are put in place to protect citizens, includ-

ing humanitarian workers and allied soldiers. Though the location of conflict may change—Iraq, Bosnia-Herzegovina, Rwanda, etc.—the experiences of what women suffer and endure are all similar. Their stories tell of fear and severe pain as well as strength, courage and hope (Rehn & Sirleaf, 2002, chap. 1).

Noeleen Heyzer, Executive Director of the United Nations Development Fund for Women (UNIFEM), describes the devastation that war/armed conflict leaves on a given country and its people. The infrastructure that holds the society together is extinguished, taking years, even decades, to rebuild. Economic resources are scarce and people live on the edge trying to get by on any strategy for survival. Family lives and communities are shattered as they bury the dead and care for the wounded. Often, there is no word about what happened to a family member and the surviving are haunted with questions they will never have answered (2004, Women, war and peace section).

“It is important to understand the conditions and difficulties of women’s lives in times of war and conflict” (Heyzer, 2004, Women, war and peace section, para. 2). Already subjugated to a lower status in many societies, women are affected even more during a country’s upheaval. After a death of a husband, son or father, women take on the responsibility of becoming the heads of a household, trying to establish an income while finding food and other necessities for their families at the expense of their own health. Significant numbers of women and children are forced to flee their country becoming refugees or internally displaced persons (Heyzer, Women, war and peace section). While armed conflict will continue well into the 21<sup>st</sup> century,

...the nature of warfare has changed: it is no longer soldiers who comprise the largest number of casualties, but civilians. In

World War I, 14 per cent of the deaths were civilians; today it is estimated that this number has risen to over 75 per cent. The nature of the battlefield has changed: warfare is no longer fought in remote battlefields between armies but is fought in our homes, our schools, our communities and increasingly on women's bodies. (Heyzer, Women, war and peace section, para. 1)

As the nature of war escalates, the use of sexual violence grows more widespread. In many societies women are viewed as the fabric of the community and are held to be the keepers of a culture's values with great importance placed on their sexual purity. They are targeted for violence for this very reason.

In conflicts throughout the world, violence against women has been used as a weapon of war, not just to violate the women but to humiliate the men of the other side, and to erode the social and moral fabric of entire communities across generations. (Heyzer, 2004, Women, war and peace section, para. 3)

This paper will examine rape and other acts of sexual violence committed against women with specific focus on the war in Bosnia-Herzegovina and in Rwanda. Journals, books and documentary film all presented testimony of how gender-specific forms of violence were used by those in power to carry out the military goal: genocide. My findings are that despite the pillars of international humanitarian law we have in place, the Geneva Conventions are grossly trampled upon by military leaders, disputed throughout the international community and very often ignored. Those who are abandoned through all of this are of course civilians, and women are most at

risk. As much as we would envision a world free from armed conflict, we arrived in the 21<sup>st</sup> century at war and women still innocent victims in the war zone.

## SEXUAL VIOLENCE

Rape has always been a part of war. Despite witnesses and survivors who have come forward to testify and documents collected, it remains, as Todd Salzman (2000) writes, not only

...one of the most underreported crimes worldwide, but it is also one of the least punished in the aftermath of a war. Occurrences of rape are frequently considered an inevitable by-product of war with the non sequitur 'Boys will be boys'. (p. 87)

In *Against our Will: Men, Women and Rape*, Susan Brownmiller (1975) correlates the Germans quest for Aryan supremacy with the use of rape, showing how it "played a serious and logical role in the achievement of what they saw as their ultimate objective: the total humiliation and destruction of 'inferior peoples' and the establishment of their own master race" (p. 49). Meanwhile, Japan's abduction of women and girls for forced prostitution throughout World War II plenished the military brothels where "ultimately about 200,000 women were abducted to fill the brothels, but there were never enough: women were forced to service as many as twenty or thirty or more men a day" (Barstow, 2000, p. 11). Throughout the history of war, no matter where the location, "rape in warfare is not bound by definitions of which wars are 'just' or 'unjust'....rape flourishes in warfare irrespective of nationality or geographic location" (Brownmiller, p. 31).

Barstow (2000) identifies three different

forms of sexual violence:

1. *Individual rapes* (p. 11), such as the incident in Mahmudiyah and in the months and years to come it will remain to be seen whether evidence of other incidents in Iraq will come forward.
2. *Military sexual slavery*, or forced prostitution such as Japan's 'comfort women':

...the purpose is to satisfy the sexual desires of an army with maximum efficiency, by supplying women, almost always from a different national group, for the troops. Military sexual slavery...is not prostitution. To be a prostitute is a voluntary choice, that is, as voluntary as a choice made under extreme economic pressures can be. Women and girls forced into military brothels have not made that choice. They have been tricked or kidnapped into servicing soldiers, and they are confined as if they were prisoners of war. (Barstow, p. 11)

3. *Mass rape*, as specifically planned in the conflict in Bosnia-Herzegovina and Rwanda's genocide. It serves as both a strategy and

...as a political weapon, it can change the balance between ethnic, racial, or religious groups....When it is combined with a deliberate policy of forced impregnation, as by the Serbs in Bosnia and the Hutus in Rwanda, it aims at the destruction of an ethnic group. It becomes a technique of genocide: to so defile the enemy's women that they will no longer be considered as future mothers for their own people. (Barstow, p. 45)

Research has documented the use of rape "as a means of humiliating the enemy and destroying family and community life" (Barstow, 2000, p. 3). Susan Brownmiller (1975) emphasizes:

...rape is considered by the people of a defeated nation to be part of the enemy's conscious effort to destroy them. In fact, by tradition, men appropriate the rape of 'their women' as part of their own male anguish of defeat....Defense of women has long been a hallmark of masculine pride, as possession of women has been a hallmark of masculine success. Rape by a conquering soldier destroys all remaining illusions of power and property for men of the defeated side....The act that is played out upon her is a message passed between men—vivid proof of victory for one and loss and defeat for the other. (p. 38)

Todd Salzman (2000) continues with this deeply rooted patriarchal ideal that extends through societies:

[W]hen a 'man's woman' is violated through rape, it is often very difficult for him to accept the humiliation of such an event. He has failed to live up to his masculine duty and the obligation to defend 'his woman,' regardless of the circumstances. (p. 85)

The rapes and sexual violence that took place in Bosnia-Herzegovina and in Rwanda went much further than pride and possession. It fulfilled the objective of both wars and became part of military strategy behind them.

### *Bosnia-Herzegovina*

It was the mission of the president of Serbia, Slobodan Milosevic, to create “the establishment of a ‘greater Serbia’—that is, a Serb-inhabited region purged of all non-Serbs throughout Serbia, Bosnia-Herzegovina and Croatia” (Salzman, 2000, p. 70). His pursuit at first would not rely on military force so much as it would on press and television propaganda that then “set Yugoslavia’s ethnic and national groups against one another....It was not the inability of the different ethnic groups to live together that brought on the conflict, but rather the political aim of separating them” (Hartmann, 1999, p. 51). Starting with superior officers down through the chain of command to the subordinates in the armies and local authorities “within the Bosnian, Muslim, and Catholic communities, sexual assault and rape served as particularly effective means of achieving this goal” (Salzman, 2000, p. 70).

The war began in April 1992 and when Serbs seized power at the end of that month in the town of Prijedor, Bosnia, and closed the roads, Nusreta Sivac interviewed in the documentary film, *Calling the Ghosts*, recalled, “thinking something could only happen to the men. No one would touch the women” (Jacobson & Jelincic, 1996). In May as she was being taken away to the notorious Serbian camp, Omarska Detention Camp, she reasoned, “Is such a thing still possible in this century. People taken to camps. I thought that was the past” (Jacobson & Jelincic). Still, when evidence of rape/death camps began to appear, it was met with silence. “The Red Cross and other humanitarian organizations had apparently been informed about the rape camps for a long time without objecting especially strenuously or bringing it to public attention. Allegedly the United Nations also had long possessed similar information” (Seifert, 1994, p. 68).

It is inconceivable that both organiza-

tions failed to act with any command. These camps as Allen (1996) reports would be part of a pattern that specifically “used rape for the purpose of genocide” (p. 62) and that had been “conceived and planned before the outbreak of the war to affect the ethnic cleansing of Muslims from Serbian territory” (Salzman, 2000, p. 70).

Serb, Bosnian Serb, and Croatian Serb soldiers and the militias and irregular forces known as Chetniks arrest Bosnian-Herzegovinian and Croatian women, imprison them in a rape/death camp, and rape them systematically for extended periods of time. Such rapes are either part of torture preceding death or part of torture leading to forced pregnancy. Victims who do not become pregnant are often murdered. Victims who do become pregnant are raped consistently and subjected to severe psychological abuse and other forms of torture until such time as their pregnancies have progressed beyond the stage when a safe abortion would be possible, at which point they are released. (Allen, p. 63)

Genocide thus occurs two ways as Salzman (2000) points out, “in cases where the victims were murdered following repeated rapes and sexual assaults, the genocidal intent is obvious. Not so obvious, however, is genocide in the form of forced impregnation” (p. 75). The understanding behind this is found embedded in the culture

...in the Balkans, a patriarchal society, the family name passes on through the male, regardless of religion or ethnicity. Even though biologically the child shares an equal amount of genetic material from



the male and female, this fact does not overcome the sense that a child born from rape by a Serb will always be considered Serbian. (Salzman, p. 79)

Allen and Salzman both question the logic that denies the biological genetic material of the non-Serbian mother; however, "the idea that the male determines a child's ethnic identity is cross-cultural and common, though misinformed" (Salzman, p. 78). It is a difficult, if nearly impossible, perspective to erase. The women are then "expelled from the camps convinced at least to some degree that the pregnancy they carry will result in the birth of a Chetnik, a Serb, a child who will have none of her or his mother's characteristics" (Allen, p. 98). Many women:

...attempt third-trimester abortions or to commit suicide....It derives more often from the mother's conviction that her offspring, quite simply, is the enemy. At some level, she hates it and wants to destroy it. It is part of what has so dreadfully destroyed her town, harmed her, tortured, maimed, and slit the throats of her loved ones. (Allen, p. 98)

Others simply abandon their babies shortly after giving birth.

Nusreta Sivac, like a large proportion of victims, knew who raped her. "Most of them (guards) I knew personally, before the occupation we had coffee together at work, talked" (Jacobson & Jelincic, 1996). This too was strategically planned. "Recognition seemed an important part of Serbian policy. The persecuted would be less likely to return to their town and villages if their assailants were local inhabitants rather than men from distant territories" (Salzman, 2000, p.75). A pattern similar in intent is as follows:

Chetniks or other irregular forces enter a Bosnian-Herzegovinian or Croatia village, take several women of varying ages from their homes, rape them in public view, and depart. The news of this atrocious event spreads rapidly throughout the village. Several days later, regular Bosnian Serb soldiers or Serbs from the Yugoslav Army arrive and offer the now-terrified residents safe passage out of the village on the condition that they never return. Most accept, leaving the village abandoned to the Serbs. (Allen, 1996, p. 62)

To stay would be futile, thus the Serbian military leaders secure their victory "of still another village with very little cost to themselves" (Allen, p. 63), creating an exodus of refugees. One only need look at the town of Prijedor to see the effects of rape warfare and what now remains:

Prijedor has become 'Serbian territory.' Fifty thousand Muslims and 15,000 other non-Serbs were driven off or murdered, twenty-five mosques and eleven Muslim sanctuaries were blown up, more than 10,000 houses and apartments were searched, looted, and destroyed. Only burned ruins are left to indicate that Prijedor once had more inhabitants than it does today. (Stiglmeier, 1994, p. 86)

## RWANDA

Rwanda's peace was shattered on April 6, 1994, when a fatal airplane crash took the life of Rwandan President Juvenal Habyarimana. It took only a matter of hours for the Hutus (the majority ethnic group) to start the massacre against the minority Tutsis. The attacks were so well organized,

planned, and executed that the speed and violence of the killings was devastating, “between April and July of 1994, Rwandan murders killed between 500,000 and 1 million men, women, and children in the culmination of an all-out war that followed years of pogroms, expulsions, casualties, and flight” (Flanders, as cited in Barstow, 2000, p. 96).

As in Bosnia-Herzegovina, the organizers of Rwanda’s genocide needed a wedge to divide the two ethnic groups:

[B]ut shattering bonds between Hutu and Tutsi was not easy. For centuries they had shared a single language, a common history, the same ideas and cultural practices. They lived next to one another, attended the same schools and churches, worked in the same offices, and drank in the same bars. A considerable number of Rwandans were of mixed parentage, the offspring of Hutu-Tutsi marriages. (Human Rights Watch [HRW], 1999, p. 4)

Sexual violence would play the strategic role, a weapon of war, in Rwanda’s genocide to destroy the Tutsis as a group:

[T]he pattern of sexual violence in Rwanda shows that acts of rape and sexual mutilation were not accessory to the killings, nor, for the most part, opportunistic assaults. Rather...these acts were carried out with the aim of eradicating the Tutsi. Taken as a whole, the evidence indicates that many rapists expected, consequent to their attacks, that the psychological and physical assault of each Tutsi woman would advance the cause of the destruction of the Tutsi people. (HRW, 1996, Sexual violence as an act of genocide section, para. 7)

The physical looks of the Tutsi women were specifically emphasized which then made these women targets:

According to European racialized mythology, Rwandan Tutsi women were said to be more beautiful (‘European-looking’) than their Hutu counterparts. Rising against the Tutsi, Hutus repeatedly warned their men to beware of Tutsi seductress spies, and in the lead-up to the 1994 genocide, Hutu propaganda stroked Hutu men to take revenge. (Flanders, as cited in Barstow, 2000, p. 96)

Hutu women who had any connection to Tutsi either through marriage, friendship, or for being “supporters of political groups associated with Tutsi, or protectors of Tutsi” (HRW, 1996, Gender-based violence against Rwanda women section, para. 8), were targeted as well.

HRW (1996) identified three ways sexual violence was committed (Sexual violence against Tutsi women section):

1. *Rape by the militia.* The Interahamwe and the Rwandan Armed Forces comprised the two largest armed groups:

Since the militias were working in groups, Tutsi women who were taken from their homes or found hiding were frequently subjected to gang-rape. Often, women were raped multiple times. Many survived one rape or gang-rape, only to be discovered by another group of Interahamwe who would rape them again. (HRW, 1996, Rape by the militia section, para. 1)

Most women died after the assault, either their assailants killed them shortly after raping them or from the physical injuries they sustained.



Assailants sometimes mutilated women in the course of a rape or before killing them. They cut off breasts, punctured the vagina with spears, arrows, or pointed sticks, or cut off or disfigured body parts that looked particularly 'Tutsi,' such as long fingers or thin noses. (HRW, 1999, p. 215)

Some lives were spared with added emotional torture "that they were being allowed to live so that they would 'die of sadness'" (HRW, 1996, Introduction section, para. 3).

2. *Collective sexual slavery*: Women were forced to sexually serve members of an armed group:

[I]f assailants decided to spare the lives of the women, they regarded them as prizes they had won for themselves or to be distributed to subordinates who had performed well in killing Tutsi. Some kept these women for weeks or months in sexual servitude. (HRW, 1999, p. 215)

3. *Individual sexual slavery*: This was also known as 'forced marriage'. The women remained in captivity, constantly threatened that they would be killed, yet kept alive "for their personal sexual service....Such women were often called 'women of the ceiling' because captors hid them in a space between the roof and the ceiling to prevent their being discovered and killed by others" (HRW, 1996, Individual sexual slavery: forced "marriage" section, para. 1). Years later these women

...show enormous internal conflict when they describe the situation. On the one hand, they had no choice and in most cases despise

the man whom they refer to as their 'husband.' On the other hand, they also realize that without the protection of this very man...they would most probably be dead today. (HRW, Individual sexual slavery: forced "marriage" section, para. 2)

A decade has now come and gone. Today's landscape tells a story of unimaginable trauma and enormous hardship for the women. "Some observers believe that almost every woman and adolescent girl who survived the genocide was raped" (Bonnet, as cited in HRW, 1996, Problems documenting gender-based crimes section, para. 1) and it reverberate extensively today:

[A]s Rwandans begin the onerous task of rebuilding a country ravaged by bloodshed and genocide, the burden is falling heavily on Rwandan women. Rwanda has become a country of women. It is currently estimated that 70 percent of the population is female and that 50 percent of all households are headed by women. (HRW, Introduction section, para. 7)

## SHAME, STIGMA, SILENCE

The layers of psychological, emotional and physical trauma rape leaves on women are immense as Seifert (1994) notes:

[A] violent invasion into the interior of one's body represents the most severe attack imaginable upon the intimate self and the dignity of a human being: by any measure it is a mark of severe torture. When a woman's inner space is violently invaded, it affects her in the same way torture does. It results in physical pain, loss of dignity, an at-

tack on her identity, and a loss of self-determination over her own body. (p. 55)

This is compounded by the upheaval and destruction of her country, her community and her home. "They are still attempting to cope with witnessing the torture and execution of fathers, husbands, or sons, the rape of their own daughters or mothers, being detained in camp, or losing their homes and personal belongings" (Salzman, 2000, p. 85). What community does exist often does not understand and accept wartime rape in its proper context. Rather than responding to women with compassion and support,

...raped women are frequently stigmatized and ostracized within these communities...[I]f her experience becomes public knowledge, a raped woman will be considered an outcast in certain cultures; her husband will abandon her, or in the case of an unmarried woman, she will be unable to marry if she so desires because of the stigma associated with the event. (Salzman, p. 82)

This response is entrenched in religion which "emphasizes the protection of a woman's dignity and honor. ... [T]o be raped, humiliated and defiled was a fate worse than death" (Salzman, 2000, p. 80) in a culture whose very essence and "meaning is denoted by the female gender" (Seifert, 1994, p. 63). Many women choose to be silent instead; however this choice poses far more serious consequences physically as well as repercussions that can historically change how perpetrators of rape warfare are brought to justice and to invoke new laws that will punish them. Women need to come forward and reveal what has happened to them so that the crime garners the public attention it deserves and women

have a forum in which to heal. Ruth Siefert (1994) observes:

[I]f one suppresses and silences this experience, it means that in a cultural context women's experience and therefore women's subjectivity is being extinguished... By being marginalized, suppressed, or even 'naturalized,' rape as an extreme and structural act of violence against women disappears from the cultural memory... The experiences, the reality, and thereby the subjectivity of women are being denied (p. 67).

The crime gets buried and women's voices get stifled as it did for Japan's comfort women for 50 years. As Barstow (2000) notes, "when rape is not mentioned, the historical record is distorted" (p. 7).

If their experience gets erased so does any means for legal recourse. "Only when violence is brought up in this way and made public can there be any change. For only when sexual violence is perceived as a political event, when it is made public and analyzed, can its causes and contexts be probed and strategies to overcome it be considered (Seifert, 1994, p. 68).

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