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Appraising Armed Conflict on Women and the Response in International Law


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I. INTRODUCTION

Women are victims of armed conflicts globally. The abuse of women during armed conflicts is heart-breaking. Abuse of women during war is a form of gender based violence (GBV). Right from time immemorial women are regarded as war booty. Thousands of women have been raped and abused in various wars like the First and Second World Wars, former Yugoslavia, Rwanda, Burundi, Sierra Leone and Congo. The effects of wars on women is devastating in form of death, physical harm, infections with HIV/AIDS, unwanted pregnancy, psychological trauma and scars. This article reviews the following: definition of armed conflicts, impact of armed conflicts on women, history of war rapes and sexual violence against women, rape as a weapon of war, war rapes in Congo, Bosnia and Darfur, human rights implications of war rapes and the response of International Law in form of adoption of resolutions by the General Assembly condemning war rapes and setting up of International Tribunals to try war rapists.

II. CONCEPTUAL CLARIFICATION

The Conventions of 1949¹ and its Protocols of 1977² do not define what armed conflict is. The International Committee of the Red Cross, however, defines the term as difference arising between two states and leading to the

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intervention of members of the armed forces is an armed conflict within the meaning of Article 2, of the United Nations Charter even if one of the parties denies the existence of a state of war.³

Tribunal for the former Yugoslavia explained that the term exists whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organised armed groups or between such groups within a state.⁴ From the above definitions there is an armed conflict if there is confrontation between the armies of two or more states or between groups. It exists whether or not there is a formal declaration of war and the conflict must degenerate into extensive and protracted battle.

The Uppsala Conflict Data Program and International Peace Research Institute adopted a pragmatic approach in defining an armed conflict. It defines armed conflict as a contested incompatibility which concerns government or territory or both where the use of armed force between two parties results in at least 25 battle related deaths in one calendar year. Of these two parties at least one is the government of a State. It described armed conflicts that cause more than 1000 battle deaths per calendar year as wars.⁵

III. CLASSIFICATION OF ARMED CONFLICTS

Under international Humanitarian Law (IHL) there are different types of armed conflicts. It can be internationalised or non-internationalised conflict. This distinction is significant because different types of armed conflict are regulated by different ruled of

IHL.

A. International armed conflicts

In 2008, International Committee of the Red Cross (ICRC) defines international armed conflicts as whenever there is resort to armed force between two or more States⁶. In the Tadic Case, the Tribunal for the former Yugoslavia proposed its general definition as an armed conflict exists whenever there is a resort to armed force between States⁷. For there to be an international armed conflict, it must be between the armies of two or more sovereign States not between the armies of a state and insurgents or between insurgents, individuals, groups or non-state actors. According



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to Fleck⁸ quoting the German Joint Services Regulation, an international armed conflict exists if one party uses force of arm against another party.⁹

Article 2 of the convention provides that the provisions of the convention shall apply to all areas of declared war between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them. It further provides also that the Convention shall also apply to all cases of partial or total occupation of the territory of a High contracting party even if the said occupation meets with no armed resistance¹⁰. High contracting parties refers to States. According to ICRC there is an IAC once there is conflict between the armies of two States whether or not there is a formal declaration of war or how much slaughter takes place or how long hostility lasts, etc. everything depends on factual conditions on ground.

States are often the parties to the convention and they have obligations to protect the rights, safety and integrity of individuals protected. The protected individuals are the wounded and sick in armed forces in the field under the First Geneva convention; the wounded, sick and ship wrecked members of the armed forces at sea under the Second Geneva Convention; protection of prisoners of War. The Geneva Convention also establishes a massive code of conduct for occupying power to protect the fundamental human rights of protected civilians¹¹, prisoners of wars¹² and combatants¹³. The Geneva Convention also provides for a system of supervision to be administered by a protecting power to ensure that states parties comply with their obligations under the Conventions¹⁴.

There is also Protocol 1 whose principal aim is to supplement and expand the provisions of the Geneva Conventions and related humanitarian law instruments. It also provides that in matters not covered by the protocol or by other international instruments, civilians and combatants shall be protected by the principles of international law derived from established custom, principles of humanity and from dictates of public conscience¹⁵. It also makes warfare less brutal and inhuman. Article 35 declares that the right of the parties to the conflict to choose methods or means of warfare



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is not unlimited and methods of warfare that cause superfluous injury or unnecessary suffering as well as widespread long-term and severe damage to the environment¹⁶. It outlaws the starving of civilians as a method of warfare and bars military attacks on or destruction of objects indispensable to the survival of the civilian population¹⁷. Section III of the Protocol especially its Article 72 makes it obligatory for parties to the conflict

to protect the humanitarian rights of civilians and civilian objects and observe other applicable rules of international law relating to the protection of fundamental rights during international armed conflicts. Whilst article 75 provides for the fundamental protection of the rights of those who are in custody shall be treated humanely in all circumstances. The following acts shall remain prohibited whether committed by civilians or military: violence to life, health or physical or mental well-being of persons, murder, torture, corporal punishment, mutilation, outrages upon dignity, taking of hostages, collective punishment¹⁸.

Article 1(4) of Protocol, however, makes the fundamental recognition, applicable to armed conflicts in which people fight against colonial domination, alien occupation and racist regimes in exercise of their right of self determination. The implication is such that conflicts of sort a nature affirms the rights of national liberation movements against colonial, alien and racist regimes as recognised by the Charter of the United Nations and the Declaration on Principles of International Law concerning friendly Relations and Co-operation among States. Even though national liberation wars are confined within a geographical boundary such wars are considered to be international conflicts under IHL and captured liberation fighters have the status of combatants or prisoners of war under IHL.

B. Non-International armed conflicts

The Uppsala Conflict Data Program and International Peace Research Institute¹⁹ defines the term as an armed conflict between the government of a State and one or more internal opposition groups without intervention from other States. Whilst the ICRC sees it as a protracted armed confrontations that occur between governmental armed forces and the forces of one or more armed groups or between such groups arising on the territory of a State. The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organization²⁰. The world has witnessed several internal armed insurgencies like the Vietnam War, Nigeria-Biafra War, and the civil wars in Sudan, Congo



Democratic Republic, Sierra-Leone, Rwanda, Burundi and in the former Yugoslavia-these are all NIAC.

Non-international armed conflicts are regulated under IHL which lays down some conditions that must be observed by all parties engaged in such conflicts that are not of an international character²¹. The condition is that all parties to a conflict must be treated humanely and without discrimination including persons and combatants who have laid down their arms, combatants who have been rendered helpless by sickness, wounds, detention or any other cause²². The sick and the wounded must be collected and be catered for by ICRC must be allowed to offer services to all the parties to the conflict and²³ victims of such protected from abuses. These protections include humane treatment and fundamental guarantees of rights of victims, protection of civilian population and those detained²⁴.

By virtue of the provision of the protocol, to apply there must be an armed conflict between a State and dissident armed party. However, the dissident armed group could have the status of combatants recognised under IHL they must have organised and responsible command structure and this include been subordinated to superior commanders; wearing of fixed distinctive sign and uniform; carrying of arms openly, obeying the laws of war; and ability to wage a protracted and sustained military operation²⁵. In addition NIAC according to Protocol II must cross the threshold of mere

internal disturbances like riots and sporadic acts of violence which is within the internal domain and control of a State there must be a full scale war between a state and a dissident internal armed group.

Fundamental legal distinction remains between IAC and NIAC and according to Fleck²⁶ they are as follow: Firstly, captured combatants under IAC enjoy the status of Prisoner of War (POW) but captured armed groups fighting in NIAC do not have status of POW, all the same procedural principle and safeguards under human rights apply to their trial. Secondly, during IAC public properties useful for military operations can be taken as war-booty. Under NIAC no such right exist under international law. Thirdly, POWs under IAC must be released and repatriated. Captured armed groups under NIAC have no such rights. Fourthly parties to IAC are entitled to belligerent reprisals whereas no such right exists under NIAC to armed groups.



C. Internationalised Internal Conflicts

According to the Uppsala conflict Data program²⁷, internationalised internal conflict (IIC) occurs between the government of a State and one or more internal opposition groups with intervention from other States on one or both sides. It is an intervention from other states that makes the conflict to be internationalised, however, the conflict is not an IAC it remains an internal or NIAC A very good example of an IIC is the war against Boko Haram in Nigeria with the intervention of Cameroun, Chad and Niger on the side of Nigeria to assist Nigeria to crush Boko Haram.

In *Nicaragua v. United States*²⁸, the government of Nicaragua argued that the United States government was supporting the Contras (a Nicaraguan rebel movement) with money, training, supply of weapons and intelligence information and further that the Central Intelligence Agency (CIA of USA) unlawfully mined the Nicaraguan ports, internal waters and territorial seas. The ICJ declared the action of the US as violating IHL and amounted to unlawful intervention which is contrary to international law.

Another classic case of internationalised internal conflict happened in the Great Lakes of Africa between 1994 to 1999 which led to the Rwandan genocide and internal rebellion in Congo Democratic Republic (CDR, formerly Zaire) which involved Burundi, Rwanda, Zimbabwe, Uganda and Congo. In 1994, there was the massacre of Tutsis by Hutus in Rwanda. Tutsi rebels from Uganda launched an attack into Rwanda and captured the capital in July 1994. 1.1 million Hutus fled into exile to Congo as refugees. In 1996 the Tutsi led government of Rwanda attacked Huto refugee camps in Congo. In 1996 Laurent Kabila set up a rebel force in Eastern Congo to overthrow the government. He eventually overthrew the government of Mobutu Seseko in 1996. Congolese rebels captured tours along Rwandan burden and raided and killed Hutu refugees westward inside Congo. Later on in 1999 there was a coalition of Congolese rebel forces to overthrown Kabila. The governments of Rwanda and Uganda sent government troops to fight along with Congolese rebels, however, the government of Zimbabwe under President Mugabe sent Zimbabwean troops to assist Kabila and there was a statement. Civil war still persists in Congo.²⁹ Armed conflicts whether internal or international is regulated by International Humanitarian Law.³⁰ However, during war times IHL is enforced and its sole purpose is to restore peace and order, protection and security of both civilians and combatants, and safety of lives and properties.

IV. IMPACT OF ARMED CONFLICT ON WOMEN

Effects of armed conflicts on women are similar in spite of its nature. From history, armed conflicts or wars have had terrible consequences on women in form of death, rape, sexual violence, gender based violence and gender based discrimination.³¹ In any war all over the world women are specially targeted for abuse, assault and violence because of their gender. Men too are victims of war but women are specifically vulnerable because they are non-combatants victims. The damages and injuries suffered by women in armed conflict are "gender-specific" which only women can fall victims of: sterilisation, women trafficking and sexual torture³². These are war crimes, crimes against humanity and crimes of genocide that ravage the integrity, decency and honour of women. These heart-breaking, heart rendering, catastrophic and heartless acts have destroyed lives of millions of women forever. Women who survive war-ravages live with emotional and psychological scars forever³³.

During the Rwanda genocide female dead bodies were raped and thereafter mutilated. The impact of armed conflict is felt differently by men and women. Women are affected more in form of non-combatants and civilians who are killed, abused and displaced. During armed conflicts most refugees are children and women who live in refugee camps vulnerable to sexual attacks from combatants and security personnel. The health impact of armed conflict is also gender specific and colossal³⁴. Women who are victims of war rapes are infected with HIV/AIDS, unwanted pregnancies and given birth to unwanted children and the evil effect of ostracism and social stigmatisation. The impact may also cause loss of virginity, mental and health problems, sexual problems and destruction of the reproductive systems.

V. HISTORY OF WAR RAPES AND SEXUAL VIOLENCE DURING ARMED CONFLICTS

Right from time immemorial women have been raped, abused and sexually molested during war. Women are regarded as spoils of war or war

booty. During the Arab slave trade, slaves were taken from non-Arabs from sub-Saharan Africa, Central and Eastern Europe and most of the female prisoners ended up as concubine slaves. During Second World War systematic sexual violence was rampant in form of rape, sexual slavery and sex camps.³⁵

From the Second World War down to 21st century rape has been used as a weapon of war especially in Liberia, Sierra Leone and other zones of war and this has led the United Nations through the Security Council to promulgate several resolutions on sexual violence and to set up war crimes tribunals to try war rapists.³⁶

A. Rape and Sexual Violence as a Weapon of War

Rape remains one of most horrific crimes against human personality is a terror-tactics and an instrument of war. Rapes in war times are higher than rapes during peace times. During peace times rape is an opportunistic violence but during war it is systematic, strategic and planned³⁷. Rape statistics is frightening and staggering. During the Second World War, Japanese soldiers abducted 100,000 to 200,000 Asian women to serve as prostitutes and comfort women³⁸. In Bangladesh in 1971 during the war of independence between 250,000 to 400,000 rapes were recorded which led

to 25,000 pregnancies³⁹. In 1985 in Vietnam 39% of Vietnamese boat women were abducted and raped⁴⁰. In Uganda during the 1980s in Luwero, 709 women were raped by soldiers and in a single incidence ten soldiers ganged-raped a victim⁴¹. During the Bosnian war over 40,000 war rapes were recorded⁴². During the Rwandan genocide of 1993, 39% of the female populations were raped⁴³. In the Sierra-Leonian war 50,000 to 64,000 women were raped.⁴⁴



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Rape during war is to humiliate, punish, intimidate and degrade the enemy. It remains means to terrorises the civil populace and force them to flee. It is a weapon of propaganda to instill terror on the enemy. This is true of the Bosnian war and the Iraq's invasion of Kuwait. It can also be used as a form of ethnic cleansing and humiliation like it happened in Rwanda and Bosnia⁴⁵. Rape can be used to destroy family bond, unity, integrity and honour. This can happen when women are raped in front of their family or when a father is forced to rape a daughter or a son is forced to rape his mother. It can be used as a form of military strategy and nationalistic policy condoned by military authorities. This is true of ethnic cleansing. Soldiers also keep women in war-front as prostitutes in sex camps and brothels to make soldiers happy and feel at home and boost their morale.⁴⁶

Rape is worst and most powerful weapon of destruction in the 20th and 21st centuries. It destroys the lives of individuals, families, communities, nations and generations. It is a weapon that destroys, demoralizes and weakens communities, pride and honour of individuals and destroys the bodily integrity of individuals. Rape is a weapon which is a precursor to death. It is a weapon of a man using his manhood to kill a woman. Most victims of rapes are either gang raped to death or the innocent victim committing suicide because of emotional and psychological shame.

The answer is of course no. Rape as a weapon of war can never achieve any goal. Rather it has dangerous and everlasting effects on the victims. The effect on the victim is colossal in form of rape, physical and psychological injuries, unwanted pregnancies, abortions, risk of HIV/AIDS infection and sometimes death. Children born of rape are sometimes rejected and abandoned in orphanages. Children like that may never know their fathers and they will never feel the joy and love of fatherhood. In Rwandan and Bosnian wars children like these are labeled as unwanted children, or children of bad memories. Mothers of these children struggle from emotional scar.

War rapes also have a bitter experience on the victim's community. The community rejects victims as unclean, dirty, traitors, damaged, abused, neglected and even killed them. Incidents of divorce are high. It also has serious consequences for a nation or country. It affects the future and solid political stability. Two decades after the Bosnian and Rwandan genocides the two nations are still struggling with post construction crises - this is also true of Sudan and Congo.



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B. War Rapes Orgies in Darfur, Congo and Former Yugoslavia

War started in former Yugoslavia in 1991 which involved the three main ethnic

groups: Serbs, Croatia and Bosniaks. The war eventually led to independent nations of Bosnia - Herzegovina, Croatia and Serbia. During the Yugoslavian war the two major means of war were: mass rape and genocide including genocidal rape in form of ethnic cleansing⁴⁷. The war was characterised with setting up of rape camps, mass rape, sexual slavery, enforced prostitution and forced pregnancy. The Bosnian Serb forces specially targeting women and girls of Bosnian Muslims for physical and moral destruction. The estimated number of rapes ranges from 20,000 to 50,000. The International Tribunal for Former Yugoslavia declared that the Bosnian Serb armed forces adopted rape as an instrument of terror.

Serbian forces pillaged and burnt down towns and villages with the support of military, police and paramilitaries. Men were killed while women were captured and taken to various rape camps where they were gang raped with the intention of getting them pregnant and they were held in captivity for up to two years so that they will not have access to abortion facilities. The purpose of confining Bosnian Muslims women in rape camps serves two purposes: firstly as a form of genocidal rape, that is to alter the ethnic balancing of Bosnia and secondly, ethnic cleansing, that is killing of Bosnian men and impregnating their women by Serbian forces.

During the trial of Kunarac, a Bosnian official described rape camps as intolerably unhygienic conditions, repeated raping in full public glare and with complete knowledge of the local authority. Sex detention centers were kept where officials came and picked girls, raped them and returned them back to the centre.⁴⁸

In Darfur, in Sudan, the perpetrators of sexual orgies against the Darfurian women are: the Government of Sudan and the Janjaweed militia, an Arab armed group backed by the Government of Sudan. The Government of Sudan has been killing men of Darfur while the Janjaweed has been raping women of Darfur as a form of ethnic cleansing and genocidal rape and to spread terror among the people, disruption of social structures, drive them from their land, and using sexual violence as a precursor to murder⁴⁹. In Congo Democratic Republic (DRC) civil war started around 1995 which toppled the regime of President Mobutu Seseseko. The civil



war still persists even up till now. War rapes have been well documented by both the United Nations and the Harvard Humanitarian Initiative (HHI). The UN has described war rapes in Congo as the worst in the world and the worst place to be a woman. According to Congressional Research Service (CRS), the Psycho-social and health consequences, particularly for the rural populations of eastern DRC, have been devastating: pregnancy, infertility, sexually transmitted disease and genital mutilation are prevalent among survivors. Rape is highly stigmatized and frequently results in spousal abandonment, inability to marry, expulsion from community and homelessness⁵⁰.

Both the government forces and rebel forces are responsible for sexual violence in the DRC. The Congolese military known as FARDC have been largely responsible for sexual violence. There is impunity and lawlessness in the army. Congolese police and intelligence agents are also responsible including rebel movements like LRA, FDLR and CNDP a rebel movement which was later merged with the Congolese army⁵¹.

VI. HUMAN RIGHTS IMPLICATIONS OF WAR RAPES AND SEXUAL VIOLENCE

Sexual violence during armed conflict is a gross violation of fundamental human rights of women. It amounts to gender based violence and violence against women. It also amount to oppression. War rapes and sexual violence has the following human

rights implications: Right to life is violated during war. Rape is a precursor to death during war. During war raped women are infected with diseases that eventually lead to death⁵² Right to human dignity is violated during war. Sexual violence is an affront to women's honour, decency and dignity. The indignity suffered by women during war rapes becomes an emotional and psychological scar which last forever.⁵³ Rape is torture and that it also amounts to inhuman or degrading treatment. During the Bosnian war women were kept in sex camps in unhygienic conditions where they were gang raped and some were raped with broken glass, bottles and guns - this is the height of inhuman and degrading treatment. They were also subjected to cruel, physical and psychological torture⁵⁴. Rape violates right to health. Sexual violence has both physical and emotional consequences for the health of women. It can lead to vaginal wounds and infections. It can also lead to HIV/AIDS and reproductive infections. Immediate health consequences include vesico and recto vaginal



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fistula⁵⁵. Right to security and bodily integrity is also violated during war. Sexual violence is an affront and attack on the bodies of women. The bodily integrity of a human person is sacred and inviolable. A human being has an absolute control over his/her own body and he/she has an absolute right to determine when, how and with whom to have sex.⁵⁶ Right to equal treatment and non discrimination is equally violated during war. Gender based and sexual violence has patriarchal origin and it is an offence of power, dominion and force over women. Its impact on women is different from men. Men too suffer from war but the consequences on women are more brutal and callous than men. Firstly war rapes; indecency and indignity are inflicted on women by men. Secondly, only women are victims of forced pregnancies, prostitution, abortions and sex camps.⁵⁷

A. The Responses of International Law

The response by International Law to impact of armed conflicts has been prompt and swift and it can be categorized by the International Human Rights Law (IHR); the International Humanitarian Law (IHL); and the International Criminal Law (ICL).

B. International Human Rights Law (IHRL)

In the International Court of Justice (ICJ) cases of Nuclear Weapon Advisory Opinion⁵⁸ and Legal Consequences Advisory Opinion⁵⁹ it was wrongly advocated that IHR applies only during peace times while IHL applies only during armed conflict. The ICJ in both cases upheld that both IHL and IHR share the objective of protecting and safeguarding individuals, they overlap even though they are two sets of international rules.

United Nations Charter protects women from the ravages of war. The UN itself was set up in 1945 to stop wars. One scourge of war is sexual violence on women during armed conflicts which are a frontal attack on the dignity and worth of women. Various judgments of International Criminal Tribunals in both Yugoslavia and Rwanda have upheld that war rapes and



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sexual violence amounted to torture.⁶⁰ Convention on the Right of the Child protects children from all forms of sexual exploitation and abuse⁶¹.

C. The International Humanitarian Law (IHL)

It is a principal law which regulates war or armed conflicts. It is known as the law of armed conflicts or law of war or international humanitarian law. It is a branch of international law that regulates the conduct of war to prevent brutality and inhuman treatment of both combatants and non-combatants during war⁶². IHL was fully developed after World War II. During, Nuremberg and Tokyo Tribunal Trials in 1945 sexual violence was not mentioned in the Charters of the two Tribunals. In the Tokyo Tribunal some Japanese war criminals were convicted for rapes including the Commander of the 14th Area Army, General Yamashita⁶³. The Four Geneva Conventions and its Protocol is the principal UN instrument for regulation of armed conflicts⁶⁴. A response of IHL which specifically protects women during armed conflicts includes the following: UN Resolutions, Conventions and Declarations and Regional Instruments.

D. Conventions and Declarations

There are several Conventions, Declarations and Resolutions in the field of IHL drafted by various international actors. Some of them are not binding on States. The Declaration on the Protection of Women and Children in Emergency and Armed Conflict⁶⁵, expresses concern over the suffering of women during armed conflicts and the UN General Assembly solemnly proclaims the Declaration by calling all combatants and member states to eliminate the suffering of women and children during armed conflicts. By virtue of these principles victims of war rapes and sexual violence can claim compensation.



E. Regional Instrument

Maputo Protocol is a unique one because it recognizes the evil and danger of war and the suffering, humiliation, indecency and indignity suffered by women during armed conflicts.

F. International Criminal Law (ICL)

By virtue of the case laws, war rapes and sexual violence during war are now genocide⁶⁶, crimes against humanity⁶⁷ and war crimes⁶⁸. In *Prosecutor v. Akayesu*, Akayesu, a local official was convicted of genocide. This was a decision of the ICTR.⁶⁹

In *Prosecutor v. Delalic*, the ICTY convicted a group of individuals who worked in different capacities at the Celebici Prison camp in Bosnia and Herzegovina were found guilty of rape and other forms of sexual violence. The Tribunal established that "wilfully causing great suffering or serious injury to body or health" amounted to a grave breach of the Geneva Convention.⁷⁰

In *Prosecutor v. Kunarac*⁷¹, the tribunal upheld the victim's right to sexual autonomy for unwanted sexual intercourse. Whilst, in *Prosecutor v. Kvocka*, the ICTY, accused persons were convicted for rapes which occurred in a detention camp. Superior and inferior officers were all convicted for been participants in a criminal enterprise.⁷²

VII. SEXUAL VIOLENCE AS A PEREMPTORY NORM OF *JUS COGENS*

Barbarous, crude, wicked, savage war rapes and sexual violence committed during the armed conflicts is now a peremptory norm of *jus cogens* as a universal or higher law⁷³. The Criminal Codes of all states in the world outlaw rape. Rape is a crime that is odious, offensive, evil and wicked.

In *Prosecutor v. Akayesu*⁷⁴, the ICTR adopted a radical and comprehensive

definition of rape and sexual violence. The trial chamber took the

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definition of rape beyond the traditional definition in national legislations. It defined rape as forced intercourse that may include, objects and/or the use of bodily orifices not considered being intrinsically sexual²⁵. It adopted the same approach in defining sexual violence as, any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact²⁶. The tribunal cited forced nudity as an example of sexual violence that does not necessarily involve physical contact. The Akayesu's jurisprudence was followed in *Prosecutor v. Musema*²⁷, where ICTR held that penetration of the mouth is rape.

In *Prosecutor v. Furundzija*²⁸, the tribunal held that rape amounted to torture and a *jus cogens*, under international law and rapists who commit rape during armed conflicts indisputably entail individual responsibility under international law.

VIII. CONCLUSION

International law has sent a strong message to both States and individuals on war rapes and sexual offences during armed conflicts and it will no longer be tolerated and there is no hiding place for war rapists' criminals. Both States and individuals will be criminally liable for their actions in respect of gender based violence during armed conflicts. The United Nation is also involved in post conflict resolution, reconstruction, peace and development. In view of this the UN has set up the United Nations Department of Peacekeeping Operations Office of Military Affairs to maintain peace keeping missions in theatres of war to protect civilians and non combatant and to assist in the post reconstruction process²⁹. However, some writers have noted that there are some gaps in the Geneva Conventions and there is a need to create additional protocols that will focus specifically on women. Another problem also rightly observed is that the enforcement mechanisms for most UN treaties Conventions are weak.³⁰

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¹ Geneva Conventions adopted on 12 August, 1949 by the Diplomatic Conference for the Establishment of International Convention for the Protection of Victims of War held in Geneva from 21 April to 12th August, 1949.

² See the Additional protocols adopted on 8th June, 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law in Armed Conflicts.Cf. www.hrc.ucepeace.org (last accessed 0/3016).

³ See the ICRC which is an international NGO that promotes IHL made this opinion in a paper published in 2008, cf www.irct.org (last accessed 19/3/016).

⁴ See M. Jenny" Towards an international Judicial System "Stanford Law Review, Nov 2003.

⁵ Id.

⁶ ICRC, "How is the Term "Armed Conflict" Defined in International Humanitarian Law?", opinion paper, March, 2008.

⁷ Id. at 3.

⁸ D. FLECK, THE HANDBOOK OF HUMANITARIAN LAW IN ARMED CONFLICT (1995), at 40.

⁹ Id.

¹⁰ See Geneva Convention, Paragraph 2 of Common Article 2. See also M. SHAW, *INTERNATIONAL LAW* (6th edn. 2008) at 1190-1192 and S.K. KAPOOR, *INTERNATIONAL LAW AND HUMAN RIGHTS* (18th edn. 2011) at 7632-763.

¹¹ Articles 12, 32, 33 34 of the 4th Geneva Convention.

¹² Articles 12, 13, 14, 15, 16 of the 3rd Geneva Convention.

¹³ Id.

¹⁴ Art. 8 of Geneva Conventions I, II and III and Art. 9 of Geneva Convention IV. See also L.C. GREEN, *THE CONTEMPORARY LAW OF ARMED CONFLICT* (1993) at 234.

¹⁵ Paragraph 2 of Article 1 (Protocol 1).

¹⁶ Articles 35, 54 and 55.

¹⁷ Article 54.

¹⁸ Paragraph 2 of Article 75.

¹⁹ Gleditsh, *Supra*, note 5.

²⁰ Id.

²¹ Common Article 3.

²² Common Article 3(1).

²³ Common Article 3(2).

²⁴ See Parts II, III and IV of Protocol II generally. See also symposium on "International Humanitarian and Human Rights Law in Non-International Armed Conflicts", 33 *Am.V.L. Rev.* 9 (1Q83) 9-161.

²⁵ T. MERON, *HUMAN RIGHTS IN INTERNAL STRIFE: THEIR INTERNATIONAL PROTECTION* (1987) at 75.

²⁶ Id. at 627-628.

²⁷ Id.

²⁸ *Nicaragua v. United States*, 1986 ICJ 14.

²⁹ *Washington Post*, June 27, 1997; Human Rights Watch/Arms Project, "Rwanda's Genocidal Forces Rearmed in Exile", May 29, 1995.

³⁰ C. WIGWE, *INTERNATIONAL HUMANITARIAN LAW* (2010) at I.

³¹ For impact of war on women see generally; B, JOANNA, *RAPE: A HISTORY 1860s TO THE PRESENT* (2009); F. SHARON, *RAPE: WEAPON OF TERROR* (2001).

³² For definitions of rape, torture, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and sexual violence, see the *Elements of Crimes of the International Criminal Court*.

³³ Medicines Sans Frontiers (MSF), *I Have No Joy, No Peace of Mind: Medical, Psychosocial and Socio Economic Consequences of Sexual Violence in Eastern DRC* (Paris MSF, 2004)

³⁴ E. STEFAN, "HIV/AIDS and the Changing Landscape of War in Africa", *International Security*, vol. 27, No. 2. at 159 - 177.

³⁵ C. Chinkin, "Rape and Sexual Abuse of Women in International Law", 1994, 5 *E.J.I.L.* 326.

³⁶ Since 1991 the UN has set up the following International Tribunals to try sexual violence. The Tribunal for the Former Yugoslavia, International Tribunal for Rwanda, Special Court for Sierra-Leone and the International Criminal Court.

³⁷ *The 1996 Shame of Bosnias Raped POWs*, *Independent*, 28 April, 1996 at 7.

³⁸ I. Chang, *The Rape of Nan king: The Forgotten Holocaust of World War II* (1997).

³⁹ Goldstein, Joshua, *War and Gender: How Gender Shapes the War System and Vice versa* (Cambridge,

Cambridge University Press, 2001).

⁴⁰ Jeanne Ward, et.al., *Sexual Violence Against Women and Girls in War and Its Aftermath: Realities, Responses and Required Resources*, Paper delivered at Symposium on Sexual Violence in Conflict and Beyond 21 - 23 June, 2006, Brussels, Belgium, at 2.

⁴¹ Id.

⁴² Amnesty International, *Counting Violence Against Women: Facts and Figures* (2004).

⁴³ Id.

⁴⁴ L. Amowitz, et.al., "Prevalence of War-Related Sexual Violence and Other Human Rights Abuses among Internally Displaced Persons in Sierra Leone" *Journal of American Medical Association*, 2002, vol. 4 at 513 - 521.

⁴⁵ S., Alexandra, ed., *Mass Rape. The War Against Women in Bosnia - Herzegovina* (1994).

⁴⁶ International Alert, *Women's Bodies as a Battleground: Sexual Violence Against Women and Girls During the war in the Democratic Republic of Congo* available at http://www.international_alert.org (accessed 10th June, 2015).

⁴⁷ United Nations, *Report of the Secretary General on the Rape and Abuse of Women in the Areas of Conflict in the Former Yugoslavia*, 25 October, 1996, par. 23.

⁴⁸ *Prosecutor v. Kunarac*, ICTY, App Ch June 12, 2002.

⁴⁹ Alliance DARC, *Sexual Violence in Darfur*, 10th Dec, 2006; Human Rights Watch, *Sexual Violence and Its Consequences Among Displaced Persons in Darfur and Chad*, April 2005.

⁵⁰ A. Alexi, *SEXUAL VIOLENCE IN AFRICAN CONFLICTS* (2011) at 19.

⁵¹ "DR Congo: Hold Army to Account for War Crimes". Human Rights watch release of May 19, 2009, <http://www.org/en/2009/05/19/dr-congo-hold-army-account-war-crimes>.

⁵² See Article 6 of ICCPR Section 33(1) of 1999 Constitution.

⁵³ Section 34 of 1999 Constitution. See Article 10 of ICCPR.

⁵⁴ See Article 7 of ICCPR. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment generally prohibits torture.

⁵⁵ Campbell R, et.al., "Secondary Victimization of Rape Victims: Insights From Mental Health Professional Who Treat Survivors of Violence", *Violence Victory*, Fall 1999, vol. 14, No. 3 pp. 261 - 275.

⁵⁶ Section 12(2)(6) of Constitution of South Africa protects right "to bodily and psychological integrity which includes the right to security and Control over their Body"

⁵⁷ Section 9 of the Constitution of South Africa protects individuals against Discrimination on ground of "Sex, gender, pregnancy or marital status".

⁵⁸ *Legality of the Threat or use of Nuclear Weapons*, Advisory Opinion, ICJ Reports, 1996 par. 26.

⁵⁹ *Legal Consequences of the Construction of a wall in the Occupied Palestinian Territory*, Advisory Opinion. Also cited in H. Heintze, "On the Relationship Between Human Rights Law Protection and International Humanitarian Law 86 IPRC (2004) at 789.

⁶⁰ Dean Adams, *The Prohibition of Widespread Rape as a Jus Cogens*, 6 *San Diego Int' l L.J.* (2005) 357., David S. Mitchell, *The Prohibition of Rape in International Humanitarian Law as a Norm of Jus Cogens: Clarifying the Doctrine*, 15 *Duke J. Comp. & Int'l*, (2005), 219 at 222 - 236; see L. Chavez, *Special Rapporteurs Preliminary Report on the Situation of Systematic Rape, Sexual Slavery and Slavery - like practices during periods of armed conflicts*.

⁶¹ Article 19 of CRC.

⁶² H. COUBREY, *INTERNATIONAL HUMANITERIAN LAW: MODERN DEVELOPMENT IN THE LIMITATION OF WARFARE* (1998); D. FLECK, *THE HANDBOOK OF INTERNATIONAL HUMANITERIAN LAW* (2008).

⁶³ D. Brouwer, Anne - Marie, "Supranational Criminal Prosecution of Sexual Violence" *Intersection*, at 5.

⁶⁴ The Geneva Conventions were adopted in 1949 and its two Additional Protocols were adopted in 1977.

⁶⁵ Adopted by G.A. Resolution 3318, 14 Dec. 1974.

⁶⁶ See Article 6(b) of the Rome Statute of International Criminal Court.

⁶⁷ *Id.*, Article 7(7)(t).

⁶⁸ *Id.*, Article 8(2)(b)(xxii).

⁶⁹ *Prosecutor v. Akayesu*, (ICTR-96-4-T) ICTR T., September, 1998.

⁷⁰ *Prosecutor v. Delalic*, (ICTY-96-21-T), Nov. 16, 1998.

⁷¹ *Prosecutor v. Kunarac*, (ICTY) T Ch II, 22 February, 2001.

⁷² *Prosecutor v. Kvočka*, (ICTY) T Ch, Nov. 2, 2001.

⁷³ I.A. SHEARER, I.A., *STARKES INTERNATIONAL LAW*, (11th edn.) at 48 - 50.

⁷⁴ *Prosecutor v. Akayesu*, *Supra* note 69.

⁷⁵ *Id.*, at 686.

⁷⁶ *Id.* at 688.

⁷⁷ *Prosecutor v. Musema*, (ICTR-96-13-T), 27 January, 2000.

⁷⁸ *Prosecutor v. Furundzija*, (IT-95-17/1) App Ch, 21 July, 2000.

⁷⁹ United Nations, *Addressing Conflict-Related Sexual Violence An Analytical Inventory of Peace Keeping Practice* (New York, UN, 2010).

⁸⁰ C. Chinkin, "Rape and Sexual Abuse of Women in International Law", 1994, 5 E.J.I.L. 326.

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