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Rape and Other Sexual Violence Against Women and Girls in Armed Conflict: A Legal Look at the Issues

Eileen Servidio

Although historical statistics on the number of victims of rape and other sexual violence during armed conflict can neither be gathered nor relied upon, one may feel safe in saying the number of these types of crimes did not diminish in the 20th century. Nor has the 21st century begun in a manner that gives much hope for a rapid reduction. Sexual violence in armed conflicts has even been said to increase, in spite of the different international conventions signed to eliminate it and in spite of the creation of international courts that have handed down decisions, equating these acts with the worst of international crimes.

Rape and sexual violence were perpetrated by combatants in both World Wars, and in conflicts such as those in Sudan, Angola, ex-Yugoslavia, Sirran Leone, Rwanda, the Democratic Republic of Congo and Darfur.[1] During the Rwanda genocide alone, it has been estimated that 250,000 to 500,000 women and girls were raped by combatants.[2] The camps in former Yugoslavia, where women were kept and repeatedly raped and otherwise abused, were notorious. In most of the recent conflicts, the numbers cited of mass rape have certainly been greatly underestimated.

Resolution 1325 of the Security Council of the United Nations on Women, Peace and Security[3] proclaimed that: 'civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict'. This study will focus on women and girls as victims of rape and other sexual violence during armed conflict.[4] It will briefly review a part of the existing international humanitarian law under which such acts may be provided for. It will then present an overview of the work of the international courts that have applied these instruments in the area of rape and other sexual violence and that have dramatically changed the legal perception of these crimes by recognizing them not only as genocide but as crimes against humanity, *inter alias*. The study will next consider why combatants are able to commit such crimes, and it will propose that a variety of elements needs to be addressed to find solutions to the problem. One of the elements that increase the possibility of sexual violence against women and girls during armed conflict may be the attitude taken toward women and girls during peacetime. It will conclude by suggesting that the creation of law condemning such acts in armed conflicts is necessary, but it is not a sufficient solution. The purpose of this study is thus to seek solutions that help to eliminate discrimination against women and girls during peacetime, and to argue that these solutions may very well play an essential role in reducing this form of violence in times of conflict.

Sexual violence has long been considered a crime under international customary law. However, rape and other sexual violence during armed conflicts were usually punished, on those rare occasions

[1] These conflicts are, unfortuately, just a few of those that could be cited.
[2] Statistics of Amnesty International (anmesty.org/actforwomen/rwa-0704) cited by Joshua H. Joseph, « Rethinking Yamashita : Holding Military Leaders Accountable for Wartime Rape » in The State University of New Jersey, Women's Rights Law Reporter, Spring/Summer, 2007.
[3] Passed unanimously, 31 October 2000 (S/RES/1325).
[4] The author realizes that women and girls are not the only victims of these crimes in times of conflict, but they are the principal victims.

when they were punished, under provisions of other international crimes. They were not necessarily international crimes in themselves. That is changing.

I. Existing international law:

The principal laws used by the different international criminal courts are the following: [5] *A. The four Geneva Conventions and their two Protocols*:[6] The basis of international humanitarian law in times of conflict remains the Geneva Conventions and their two Protocols. Nevertheless, few provisions within them address directly the question of violence against women. By way of example: Convention I[7] provides that 'Women shall be treated with all consideration due to their sex' (Art. 12). And again in Convention III[8] 'Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men' (Art. 14).

Although women are more and more often combatants, violence against them is primarily covered in Convention IV relative to the Protection of Civilian Persons in Time of War. This Convention provides a general protection of all civilians 'to alleviate the sufferings caused by war' (Art. 13). However, women are mentioned expressly and 'shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault' (Art. 27).

Protocol I[9] that reinforces *inter alia* the basic protections of civilians during conflicts, addresses directly the question of women in 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.'[10]

The Conventions treat principally international conflict waged between at least two distinct States. However, Article 3, common to all four Conventions, sets forth some minimum standards to be followed in the case of armed conflict not of an international character that occurs in the territory of one of the Parties. Paragraph 1 of that Article is relative to the treatment of 'Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause'. Those 'shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.' The acts prohibited include murder of all kinds, mutilation, cruel treatment, torture, hostage taking, outrages upon personal dignity including humiliating and degrading treatment. Rape and sexual violence against women can be considered torture in some cases, and certainly outrages upon personal dignity in all cases.

Protocol II also addresses the question of protection of victims of non-international armed conflicts by developing and supplementing Common Article 3. One finds several of the general prohibitions of violence that are already stated in the Conventions against all who have not taken part of or who have ceased to take part of the hostilities, such as outrages upon personal dignity, 'particularly humiliating

[5] This study cannot analyse all international law concerning rape or other sexual violent crimes during times of armed conflict. It will attempt to present some of the major instruments.
[6] All four Convention date from 12 August 1949, the Protocols date from 12 December 1977. There is a Protocol III: "Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem" (8 December 2005) which concerns the recognition of an additional emblem which does not interest this study.
[7] For the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.
[8] Relative to the Treatment of Prisoners of War
[9] Relative to the Protection of Victims of International Armed Conflicts
[10] Paragraph 2 and 3 of this article provide heightened protection for pregnant women and mothers with dependent infants.

and degrading treatment, rape, enforced prostitution and any form of indecent assault' and slavery and slave trade in all their forms (Art. 4).

The commentaries of the International Committee of the Red Cross (ICRC) on the different articles of the Conventions and the Protocols highlight the original purpose of the provisions. For example, the commentary in Article 27 concerning the treatment of women, Convention IV:

> Paragraph 2 denounces certain practices which occurred, for example, during the Second World War, when innumerable women of all ages, and even children, were subjected to outrages of the worst kind: rape committed in occupied territories, brutal treatment of every sort, mutilations etc. In areas where troops were stationed, or through which they passed, thousands of women were made to enter brothels against their will or were contaminated with venereal diseases, the incidence of which often increased on an alarming scale.
> These facts outrage the conscience of all mankind and recall the worst memories of the great barbarian invasions. They underline the necessity of proclaiming that women must be treated with special consideration. That is the object of this paragraph, which is based on a provision introduced into the Prisoners of War Convention in 1929, and on a proposal submitted to the International Committee by the International Women's Congress and the International Federation of Abolitionists.
> The provision is founded on the principles set forth in paragraph 1 on the notion of "respect for the person", "honour" and "family rights".
> A woman should have an acknowledged right to special protection, the special regard owed to women being, of course, in addition to the safeguards laid down in paragraph 1, which they enjoy equally with men.

The Conference listed as examples certain acts constituting an attack on women's honour, and expressly mentioned rape, enforced prostitution, i.e. the forcing of a woman into immorality by violence or threats, and any form of indecent assault. These acts are and remain prohibited in all places and in all circumstances, and women, whatever their nationality, race, religious beliefs, age, marital status or social condition have an absolute right to respect for their honour and their modesty, in short, for their dignity as women.

The Conventions and their Protocols are often considered to protect women insufficiently in times of conflict either because the provisions are often too general or because they are simply not implemented. In addition, some contemporary feminists are critical of the provisions, because they give a much too traditional role to women. They underline the ICRC commentaries, such as the one just cited, that base the protection of women on notions such as honour. If these provisions are based on the honour of the female sex, it raises the question whether women who are raped are no longer honourable? Accordingly, these protections should not be based on such antiquated notions as honour but more on the notions of human rights that are inalienable to all, regardless of sex, but with the recognition that it is mainly women and girls that are overwhelmingly the victims of those acts.

B. The two Statutes of international ad hoc tribunals and the Statute of the International Criminal Court:[11] The Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY): The

[11] There are other *ad hoc* international criminal courts that are dealing with these crimes. See for example the Special Court for Sierra Leone where persons (particularly Charles Taylor the former president of Liberia) are accused of serious violations of international humanitarian law, war crimes and

Statute was adopted on 25 May 1993 under Resolution 827 of the Security Council. That Resolution expressed great alarm for the continuing 'widespread and flagrant' violation of international humanitarian law occurring in the former Yugoslavia, particularly in Bosnia and Herzegovina. The International Tribunal for the former Yugoslavia has competence to prosecute any person for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1990. There have indeed been reports in this region of mass killings, massive, organized and systematic detention and rape of women, and the continuance of the practice of 'ethnic cleansing'.

More specifically, the Court has jurisdiction for grave breaches of the Geneva Conventions of 1949 such as torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a civilian and even taking civilians as hostages if these hostages are tortured or receive inhuman treatment.

The Statute grants the Court competence for violations of the laws or customs of war, and although the acts that are enumerated fall outside the domain of this study, the list is not exhaustive and it is evident that rape and violence during armed conflicts could be considered violations of the laws or customs of war.

Both genocide and crimes against humanity are also in the jurisdiction of the Court. Genocide is defined as a certain number of acts committed 'with intent to destroy, in whole or in part, a national, ethnical, racial or religious group'. These acts include causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part and imposing measures intended to prevent births within the group. Those conspiring to commit genocide, those directly and publicly inciting such crimes, and those attempting to commit them as those in complicity, could all be considered guilty of this crime.

Concerning crimes against humanity, the Court has competence only insofar as these crimes are committed in armed conflict, whether this conflict is international or internal in character. However, the crime must be directed against the civil population. Even though this category lists directly the crime of rape, other acts on the list could cover sexual violence such as enslavement and torture and certainly these acts would be included in the catch-all phrase of 'other inhumane acts' by which the list ends.

The Statute of the International Criminal Tribunal for Rwanda (ICTR):[12] The ICTR has the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994. The competence *ratione materiae*[13] of the Court is extremely close to that of the ICTY. The differences are due to the difference in the circumstances of the two conflicts.

It is not surprising that the first international crime listed is that of genocide. Again we find the same prerequisite concerning the acts listed: that they are committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group. The list of acts that follows in which sexual

crimes against humanity including rape and sexual slavery. However, this study will concentrate on the two *ad hoc* tribunals that have most influenced this subject.

[12] The Tribunal was created by Security Council Resolution 955, 8 Nov 1994.

[13] That is to say, the different crimes that the Court has jurisdiction over.

violence could be included are: causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group. As with the ICTY, it is not only the perpetrators of these acts that are punishable but also those who conspire, incite or attempt to commit such acts.

Concerning crimes against humanity, the Court has competence only where these acts are committed as 'part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds'. We find the same acts that are listed in the Statutes of the ICTY.

The ICTR also has competence to prosecute persons having committed or having ordered to be committed serious violations of Article 3 common to the Geneva Conventions and the Additional Protocol II. These violations or the threat of them include *inter alia* violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment, collective punishments, taking of hostages, outrages upon personal dignity, in particular humiliating and degrading treatment and finally rape, enforced prostitution and any form of indecent assault.

The Statute of the International Criminal Court (ICC): The formation of this permanent criminal court greatly benefited from the already existing two *ad hoc* courts, not only by their written Statutes, but also by the decisions that the two Tribunals have handed down. The subject of violence against women was one that the two *ad hoc* Courts viewed with great sensitivity, and the drafters of the Statutes of the ICC took into account not only some of the errors committed by the *ad hoc* Courts but also the experience in prosecuting those accused of sexual violence during armed conflicts.

According to the Rome Statute, the ICC has jurisdiction for the crime of genocide, crimes against humanity and war crimes.[14] Among the forms of crimes against humanity enumerated in the Statute, are enslavement, torture and rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any form of sexual violence of comparable violence or persecution of any identifiable group or collectivity on grounds such as gender. These acts will only be considered by the ICC as crimes against humanity only if they are 'committed as part of a widespread or systematic attack directed against any civilian population (…)'. Regarding war crimes, the Court has jurisdiction particularly where these acts have been committed 'as part of a plan or policy or as part of a large-scale commission of such crimes'. Included in these acts are grave breaches of the Geneva Conventions amongst which are torture, inhuman treatment, wilfully causing great suffering or serious injury to body or health or other serious violations of the laws and customs applicable in international armed conflict, including committing outrages upon personal dignity, in particular humiliating and degrading treatment, or committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any form of sexual violence also constituting a grave breach of the Geneva Conventions. More or less the same acts fall under the jurisdiction of the Court when committed during an armed conflict that is not of an international character. However, the Court does not have jurisdiction in 'situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature'.

[14] The ICC will also have jurisdiction in the case of crimes of aggression once a definition for that crime is determined by the members of the Court.

The importance of these three instruments in prosecuting and punishing rape and other forms of sexual violence during armed crisis cannot be underlined enough. However, no matter how important the provisions of the three Statutes are, it is what the courts do with these provisions; how they are interpreted---restrictively or extensively---and how they are implemented---again, restrictively or extensively---that one can truly gauge the consequences of these in the fight to end violence against women.

II. Cases before the international courts

Rape and other sexual violence are not recent phenomena and have long been condemned. As early as 1474 at Breisach in Germany, in one of the first 'international courts' Peter von Hagenbach was judged and convicted by twenty-seven judges from the Holy Roman Empire of violations of the 'Laws of God and of Man' for allowing his men to rape and kill innocent civilians and steal their goods. Nevertheless, although isolated judgments such as this one can be found, it is essentially through the ICTY and the ICTR that the concept of sexual violence in times of conflict has been developed.[15]

The case law of these two courts has greatly added to the acceptance that rape and other sexual violence be considered crimes against international humanitarian law in their own right. We will first look at some of the major decisions of these courts before turning to the ICC.

A. Examples of cases before the ICTY[16]

The ICTY was created to resolve the conflict in ex-Yugoslavia and also to punish the crimes committed during the conflict, particularly the crime of ethnic cleansing. Rape and other sexual violence against women and girls was in fact a premeditated strategy of terrorism, a method of systematic humiliation, intimidation and terror with the goal of this ethnic cleansing.[17]*Prosecutor against Gagovic, Jankovic, Janjic, Kovac, Vukovic, Zelenovic, Kunarac and Stankovic* [18]: A 1996 indictment by prosecutors at the ICTY, legally treated, for the first time, sexual assaults as torture and enslavement as a crime against humanity. The importance of this indictment cannot be stressed enough.

According to the indictment: Foca, a city and municipality located South-East of Sarajevo (Republic of Bosnia-Herzegovina) comprised a population of 40,513 persons of which 51.6% Muslim, 45.3% Serbian and 3.1% others.[19] The political and military take-over of the city, by regular military units from the Bosnian Serb army and irregular military units from Serbia and Montenegro, was completed mid-April 1992. Muslim and Croat residents were arrested, men and women were separated and were unlawfully confined, many civilians were killed, beaten or subjected to sexual assault. The Foca police were closely allied to the Serb forces. Many Muslim women were detained in such places as the Partizan Sports Hall or in houses and apartments used as brothels, operated by groups of soldiers, mostly paramilitary. The accused were members of the Foca police, military police or paramilitary leaders.

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[15] Cases of sexual violence were noted before the two ad hoc courts following World War II, particularly before the International Military Court for the Far East, however, as already mentioned, these crimes were not crimes in themselves.
[16] As always, in such a short study, only certain cases can be cited. This study will only provide those indictments or judgments that best fit the issues discussed. It must be remembered that those indicted or condemned in the decisions cited may have been acquitted in a subsequent decision.
[17] For example, Muslim women were impregnated by Serbian men in order to purify their blood.
[18] IT-96-23 (1996).
[19] Census taken in 1991

Among the general allegations of the indictment, it was stated that there existed at the time of the alleged crimes a 'state of international armed conflict and partial occupation existed in the Republic of Bosnia-Herzegovina in the territory of the former Yugoslavia'. The acts were 'grave breaches' of the 1949 Geneva Conventions, and the victims were persons protected by these Conventions. The charges involving torture were allegedly 'committed by, or at the instigation of, or with the consent or acquiescence of, an official or person acting in an official capacity'. Those concerning crimes against humanity 'were part of a widespread or large-scale or systematic attack against a civilian population'. In this case, it was the Muslim population of Foca. The indictment considered that the acts of forcible sexual penetration 'can constitute an element of a crime against humanity, (enslavement under Article 5 (c), torture under Article 5 (f), rape under Article 5 (g)), violations of the laws and customs of war, (torture under Article 3 and Article 3(1)(a) of the Geneva Conventions) and a grave breach of the Geneva Conventions, (torture under Article 2(b)).' The acts of penetration are defined by the indictment as including 'penetration, however slight, of the vagina, anus or oral cavity, by the penis' and '(s)exual penetration of the vulva or anus is not limited to the penis'.

It was alleged that, on 3 July 1992, some of the accused arrested Muslims. The women, who were first separated from the children, were asked to tell their interrogators where Muslim men and weapons were hidden. These women, if they were to lie, were threatened with murder and rape. Two of the accused, and other soldiers under the command of a third suspect, gang-raped several of the women whom they accused of lying. One witness cited in the indictment claimed that a woman was raped by ten soldiers (vaginal penetration and fellatio) until she lost consciousness. The episode was said to have lasted one to two hours.

A second group of accusations concerned the fate of certain female detainees held in the Foca High School. Every evening, it was alleged, groups of Serb soldiers would choose some of the younger women who were then sexually assaulted, sometimes gang-rape. The women were threatened with death, either for themselves or their children, if they did not submit. Those who resisted were said to have been beaten. The indictment mentioned the deterioration of the physical and psychological health of these women due to these repeated assaults. As with the first group of charges, individual examples of these accusations were then given in the indictment.

The third group of accusations involved the persecution of female detainees in Partizan Sports Hall by Dragon Gagovic, chief of police in Foca at the time and in charge of the detention of the female Muslim population. The detainees in Partizan were said to have suffered by 'inhumane treatment, unhygienic facilities, overcrowding, starvation, physical and psychological torture, including sexual assaults'. Gagovic, was accused not only in his capacity as the person in charge of the detention but also accused of a brutal sexual assault against one woman who had formerly complained to him about the sexual assaults. After the assault, he allegedly said that if the woman told anyone of the rape 'he would find her in five different countries'.

The final charges consisted of accusations of torture, rape and enslavement either in the Partizan Sports Hall or in Karaman's House. The detention in Karaman's House was different from that in Partizan Sports Center in that the detainees, numbering nine in all, were properly fed and had a key to lock out soldiers from entering. These women, in some cases only twelve or fourteen years old, were reserved for a special group of elite fighters commanded by Pero Elez, a Serb paramilitary. The detainees were allegedly subjected to 'repeated rapes and sexual assaults at night'. These women were

also forced to work for the soldiers. Any women not obeying orders was said to be beaten. They were also told that they would be killed 'after the soldiers were finished with them, because they knew too much'. During this period at least one of these women felt suicidal.[20]

Prosecutor v. Tadic:[21] The ICTY found Dusko Tadic, a Bosnian Serb, guilty of crimes against humanity. And although rape was listed in the amended indictment, these charges were later withdrawn. However, this case remains important for the prosecution of sexual violence. The Trial Chamber found that physical and sexual violence were violations of the laws and customs of war.[22] One of the accusations in the indictment was a particularly horrific one:

> During the period between 1 June and 31 July 1992, a group of Serbs, including Dusko TADIC, severely beat numerous prisoners, including Emir KARABASIC, Jasmin HRNIC, Enver ALIC, Fikret HARAMBASIC and Emir BEGANOVIC, in the large garage building or hangar of Omarska camp. The group forced two other prisoners, "G" and "H", to commit oral sexual acts on HARAMBASIC and forced "G" to sexually mutilate him. KARABASIC, HRNIC, ALIC, and HARAMBASIC died as a result of the assaults (….)
>
> From that body of evidence before the Trial Chamber it can be concluded that beatings of the five named prisoners and of Senad Muslimovic did take place in the hangar, that G and Witness H were compelled to and did take part in the sexual assault on Fikret Harambasic as alleged and that G was compelled sexually to mutilate him by biting off one of his testicles. It can also be concluded from the evidence of Armin Kenjar, who wrote the date of the occurrence on the wall of his room, that all these events occurred on 18 June 1992. These eight victims were all Muslims.[23]

More generally, Tadic was accused of subjecting Muslims and Croats inside and outside the different camps that had been set up, to a campaign of terror that included killings, torture, sexual assaults, and other physical and psychological abuse. The Trial Chamber concluded *inter alia* that cruel treatment may include 'inhumane acts that cause injury to a human being in terms of physical or mental health or human dignity'.

The Trial Chamber also discussed the interesting question: could a single act by a perpetrator constitute a crime against humanity? And although it was not an issue before it, the Trial Chamber did in fact seem to conclude that 'as long as there is a link with the widespread or systematic attack against a civilian population, a single act could qualify as a crime against humanity'.

The Trial Chamber added that certain acts not enumerated elsewhere in the Statute 'may also encompass other acts if they seek to subject individuals or groups of individuals to a kind of life in which enjoyment of some of their basic rights is repeatedly or constantly denied'. This is referred by the Court as persecution. It was noted that persecution could take many forms including rape.[24]

[20] The number of different charges in this indictment is indicative of the type of indictments handed down by the Prosecution. Often many charges were made against the accused. This has been often critized. It is perhaps the idea that if enough charges are made, at least one of them can be proven.
[21] Case No. IT-94-1-T (May 7,1997)
[22] Although the violence in this case was directed against male prisoners, the principles of this decision are important for all cases of sexual violence.
[23] The details given are not to be sensational but to demonstrate the type of sexual violence committed. In this case it was against men.
[24] See also the decision of the Appeals Chamber Case No. IT-94-1-A (July 15, 1999)

Prosecutor v. Delalic, Mucic, Delic, Landzo (referred to as the *Celebici Case*)[25]: The *Celebici Case* is particularly complicated. Three of the defendants were Bosnian Muslims, the forth, a Bosnian Croat. Some of the accusations against them concerned sexual assaults of detainees at the Celebici camp, a prison camp in Bosnia. Hazim Delic, a Bosnian Muslim deputy camp commander was found guilty of a grave breach both of the Geneva Conventions and of the war crime definition of rape. Zdravko Mucic, the Bosnian Croat camp commander, was found responsible for crimes committed at the camp, including sexual violence. Mucic's guilt was based on his command responsibility over the guards at the camp. It was considered that the crimes were committed so frequently and notoriously that there was no way the commander was not aware of them. The importance of this case is that the ICTY recognized the rape of Bosnian Serb women prisoners at the Celebrici prison camp as acts of torture. The act of rape was considered to inflict the grave physical and psychological pain that is the characteristic of torture. The Trial Chamber esteemed that sexual violence 'strikes at the very core of human dignity and physical integrity'.

Prosecutor v. Anto Furundzija:[26] The Trial Chamber, referring to the Appeal Chamber in the *Tadic Juridiction Decision*,[27] found that Article 3 of the Statute of the Court constitutes an 'umbrella rule' that 'covers any serious violation of a rule of customary international humanitarian law entailing, under international customary or conventional law, the individual criminal responsibility of the person breaching the rule'. Thus, the Chamber held that the offences of torture and outrages upon personal dignity, including rape, are covered by this article. Furundzija, a local Bosnian Croat military commander, was sentenced to 10 years of imprisonment for the following acts: while he was interrogating a Muslim woman who was nude, he allowed a subordinate soldier to threaten the woman by rubbing his knife on her inner thighs while saying he would put his knife inside her vagina if she did not tell the truth; and the woman and a second victim, a Croatian soldier, were interrogated and beaten on their feet with a baton, the woman was repeatedly raped before a group of soldiers while Furundzija did nothing to stop these acts. It was considered that Furundzija's role was as grave as the persons actually inflicting the pain. This decision underlines the responsibility of the person in charge who is not necessarily the person performing the condemned acts.

Prosecutor v. Kunarac, Kovac and Vukovic: [28] The Trial Chamber condemned Kunarac, Kovac and Vukovic of various charges including rape as a violation of the laws and customs of war, rape as a crime against humanity, outrages upon personal dignity as a violation of the law and customs of war and enslavement as a crime against humanity. This case makes it extremely clear that rape constitutes both a war crime and a crime against humanity. The Court also found that the rapes in Foca constituted war crimes at once under international humanitarian law found in the Statues of the Court and, as an outrage upon personal dignity, under the provisions of the Geneva Conventions. On appeal concerning Kunarac, the Appeals Chamber held that rape may constitute torture.

Prosecutor v. Zelenovic:[29] The Trial Chamber sentenced Dragan Zelenovic, former Bosnian Serb soldier and military policeman, to 15 years imprisonment[30] for torture and rape of Bosnian Muslim

[25] IT-96-21-T (Nov. 16, 1998).

[26] Case No. IT-95-17/1-T (10 Dec. 1998)
[27] Case No. IT-94-1-AR72
[28] IT-96-23-T/IT-96-23/1-T (Feb. 22, 2001)
[29] IT-96-23/2-S (April 4, 2007)
[30] The seemingly "light" sentence was explained by the Trial Chamber by the fact that Zelenovic pleaded guilty---a guilty plea could have a positive effect on establishing the truth and contributing to the reconciliation in the region and the fact that the victims were thus not obliged to relive the incidents by being forced to give evidence in Court and of course the time and effort saved by a guilty plea ; the Chamber also gave weight to the fact that Zelenovic would cooperate fully with the Prosecution ; and finally the remorse of the accused played a factor in the sentencing.

women detained in Foca municipality. He was in fact found personally responsible for nine of the rapes,eight of which were considered both rape and torture. As we have seen, women in eastern Bosnia and Herzegovina were repeatedly subjected to sexual assaults of rape and torture. The Trial Chamber remarked that '(t)he scars left by the sexual assaults were deep and will perhaps never heal. This, perhaps more than anything, speaks about the gravity of the crimes in this case'.

B. A Case before the ICTR:

The ITCR was created mainly to prosecute those responsible for the genocide perpetrated by the Hutu against the Tutsi that took place in Rwanda in 1994. The concept of genocide has been largely developed by the Court. The most important decision concerning sexual violence taken by this Tribunal has been the *Akayesu* case.

Prosecutor v. Akayesu:[31] The Trial Chamber of the ITCY found Jean Paul Akayesu guilty of nine of the fifteen counts proffered against him. The accusation included genocide, direct and public incitement to commit genocide and crimes against humanity.[32] Akayesu, a communal leader, was found guilty of a crime against humanity since he had witnessed and encouraged the rape of Tutsi women. Rape, when used for purposes such as intimidation, degradation, humiliation, discrimination, punishment, control or destruction, was held to be a violation of personal dignity and, as such, is torture when it is inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in official capacity.

Perhaps even more importantly, rape, which was committed on a massive scale in Rwanda during the conflict, was also recognized as genocide. We have seen that the international crime of genocide must be committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group. This was recognized in the case of Akayesu since his acts—witnessing and encouraging rapes and sexual mutilation of women—were committed in the course of a campaign of genocide against the Tutsi population. The Chamber esteemed that rape and other sexual violence was 'one of the worst ways of inflict (sic) harm on the victim' since the victim suffers both 'bodily and mental harm'. The sexual violence that took place was perpetrated with the intent to destroy the Tutsi group, by 'destruction of the spirit, of the will to live, and of life itself'.[33]

C. Possible definitions of Rape by the two *ad hoc* Tribunals:

The international crime of rape is not defined by the Statutes of the *two ad hoc* Courts or by international humanitarian law. According to the Trial Chamber in *Akeyesu*, rape was the 'physical invasion of a sexual nature, committed on a person under circumstances which are coercive'. This definition is again used in *Prosecutor v. Delalic*. However, the definition was then narrowed down in *Furundija* to the notion of sexual penetration. After a review of definitions of rape in national legislations, the Trial Chamber found that the *actus reus*[34] of the crime of rape is:

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[31] ICTR 96-4-T (Sept. 2, 1998)
[32] This judgement is particularly interesting since it is the first time an international court interpreted and applied the 1948 Convention of the Prevention and Punishment of the Crime of Genocide.
[33] The original indictment in this case had not included sexual violence. However, several women who testified during the trial spoke of rapes. This led the Trial Chamber to ask the prosecutor to investigate in this area. An amended indictment was then filed charging Akayesu with three counts of rape as crimes against humanity. The genocide count also was added to include sexual violence.
[34] This is the material element of a crime, the act itself, in opposition to the *mens rea* which is the mental element, that is to say, the intent of the perpetrator.

(i) the sexual penetration, however slight:

(a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or
(b) of the mouth of the victim by the penis of the perpetrator;

(ii) by coercion or force or threat of force against the victim or a third person .

This definition is more restrictive. However, if the act cannot be considered rape according to this definition, there seems to be nothing that could prevent certain sexual violence from being esteemed inhumane, and thus a crime against humanity or a grave breach of the Geneva Conventions.

In *Kunarac*, the Trial Chamber considered that:

> (T)he Furundzija definition, although appropriate to the circumstances of that case, is in one respect more narrowly stated than is required by international law. In stating that the relevant act of sexual penetration will constitute rape only if accompanied by coercion or force or threat of force against the victim or a third person, the *Furundzija* definition does not refer to other factors which would render an act of sexual penetration non-consensual or non-voluntary on the part of the victim, which (…) is in the opinion of this Trial Chamber the accurate scope of this aspect of the definition in international law.

Therefore, the notion of consent is understood in a wider framework. Thus the Court concluded that 'sexual autonomy is violated wherever the person subjected to the act has not freely agreed to it or is otherwise not a voluntary participant'. In this way, the *Kunarac* Trial Chamber agreed with the notion of penetration but was less restrictive with the concept of consent. 'Consent (…) must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances'. The Chamber also considered that the *mens rea* of the perpetrator of the crime of rape was 'the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim'.

In *Prosecutor v. Gacumbitsi*,[35] the Appeal Chambers concluded that certain circumstances were so coercive in nature that any possibility of consent was impossible. Sylvestre Gacumbitsu was accused of instigating the rape of Tutsi women and girls. If they resisted, they were to be killed by the insertion of sticks into their genitals. Gacumbitsi was condemned of crimes against humanity by the Trial Chamber for instigating eight rapes. One of the victims died after being impaled by a stick. On appeal, the prosecutor argued that:

> non-consent of the victim and the perpetrator's knowledge thereof should not be considered elements of the offence that must be proved by the Prosecution; rather, consent should be considered an affirmative defence. It argues, *inter alia*, that when rape occurs in the context of genocide, armed conflict, or a widespread or systematic attack against a civilian population, genuine consent is impossible.

The Appeal Chamber asked two questions. First, what are the elements of rape and second how

[35] ICTR-01-64 : Summary of Appeal

may these be proven. The Chamber held that the first question had already been answered by *Kunarac* that is to say that rape consists of certain acts of sexual penetration occurring 'without the consent of the victim'. The 'non-consent' and the knowledge of this must then be proven by the prosecution, since they are elements of the crime. Concerning the second question of how may non-consent be proven, the Chamber decided that:

> The Prosecution can prove non-consent beyond reasonable doubt by proving the existence of coercive circumstances under which meaningful consent is not possible. It is not necessary for the Prosecution to introduce evidence concerning the words or conduct of the victim or her relationship to the perpetrator. Nor need it introduce evidence of force. Rather, the Trial Chamber is free to infer non-consent as well as knowledge thereof from the background circumstances.

D. Cases before the International Criminal Court

The ICC has jurisdiction only for crimes committed since it has entered into force on July 1, 2002.[36] Darfur: In *Prosecutor v. Ahmad Muhammad Harun (Ahmad Harun) and Ali Muhammad Al Abd-Al-Rahman Ali Kushayb*[37] concerning the conflict in Darfur, the Pre-Trial Chamber of the ICC considered that there were reasonable grounds to issue warrants of arrest for both of these persons. Ahmed Harun served as Minister of State for the Interior of the Government of Sudan in charge of the management of the 'Darfur Security' and, as such, had coordinators the different bodies involved in the counter-insurgency, including the police, the armed forces, the National Security, the Intelligence Service and the Militia/Janjaweed. Ali Kushayb was considered one of the most senior leaders and commander of thousands of Militia/Janjaweed. It is alleged that the Sudanese Armed Forces and the Militia/Janjaweed committed several criminal acts against civilians including murders, rapes and outrages upon the personal dignity of women and girls. Among the many charges were rape constituting a crime against humanity and rape as constituting a war crime.

Northern Uganda: In 1994, the ICC begun investigation in Northern Uganda, focusing on crimes committed after 1 July 2002[38]. It had been estimated that at least 2,200 killings and 3,200 abductions recorded in July 2002 to June 2004 had taken place in over 850 attacks. Thousands of persons, especially children were abducted. The boys were forced to be killers and the girls to be sexual slaves. In *Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya*[39]*, and Dominic Ongwen*, the two leaders of the LRA[40], Kony and Otti, were charged *inter alia* with both rape and sexual enslavement.

Central African Republic*:* The Prosecutor for ICC has also opened an investigation in the Central African Republic. The investigation will focus on the most serious of crimes committed during the armed conflict between 2002 and 2003 including allegations of rape and other forms of sexual violence against hundreds of victims. After a failed coup attempt, there were allegations of massive rape and other forms of sexual violence by armed individuals against civilians. According to the 'Background information provided by the Office of the Prosecutor of the ICC,[41] (s)exual violence

[36] At the time of this article, there have been no cases decided yet by the Court.
[37] ICC-02/05-01/07
[38] The date of the entry into force of the Rome Statute which created the ICC. The ICC can only hear cases concerning facts that take place since this date.
[39] All charges have been dropped against him due to the fact that he has since been deceased.
[40] Lord's Resistance Army
[41] « Situation in the Central African Republic » The Hague, 22 May 2007 (ICC-OTP-BN-20070522-220-A_EN)

appears to have been a central feature of the conflict'. The report claims that there were at least 600 victims of rape that occurred in a period of five months. It has been suggested that the numbers are higher. According to the report:

> Credible reports indicate that rape has been committed against civilians, including instances of rape of elderly women, young girls and men. There were often aggravating aspects of cruelty such as rapes committed by multiple perpetrators, in front of third persons, with sometimes relatives forced to participate. The social impact appears devastating, with many victims stigmatized and, reportedly for a number of them, infected with the HIV virus.

Conclusion

The jurisprudence of the two *ad hoc* Courts has made great strides in protecting women and girls against sexual violence during times of conflict. However, it is still too soon to predict the effects that these Courts will truly have on the violence against women in future conflicts. The two *ad hoc* Courts were certainly limited by the fact that they concentrate on two particular conflicts and their work is slowly coming to an end. The hope now is with the ICC.

Nevertheless, the ICC is under many restrictions concerning its jurisdiction, the least not being that it holds a 'complementary jurisdiction' that is to say that the ICC can act only where a State does not act. Domestic courts' jurisdiction pre-empts the jurisdiction of the ICC.[42] If a case is being investigated or prosecuted or has been investigated by a national court having jurisdiction, the ICC will have no jurisdiction unless the State is 'unwilling or unable to genuinely carry out the investigation or prosecution'.[43] For example, in Central African Republic, the highest judicial body, the Cour de Cassation, announced that the national justice system was unable to carry out such complicated proceedings to properly investigate and prosecute the alleged crimes.[44] However, in the case of Sudan, Khartoum did not cooperate, and the ICC prosecutors had much difficulty in their investigations. The Sudanese government had tried to demonstrate that they were able to prosecute themselves.[45]

International courts are effective only where they have recognition and cooperation from the international community so that one may wonder how often the Court will find that the national proceedings are not being conducted properly. Such a decision could anger the State Party, in question and since membership to the Court is not mandatory for members of the United Nations, the State might consider withdrawing recognition of the court.

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[42] Statute of the ICC, art. 1. The complementary nature of the ICC is also mentioned in the Preambule of its Statute.
[43] Statute of the ICC, art. 17-1 (a).
[44] Africa News, UN News Service, 22 May 2007 Central African Republic ; International court Probes Killings, Sexual Crimes
[45] There are exceptions to this rule, one of which we have seen, the fact that the domestic jurisdiction will not or cannot carry out the investigation or the prosecution. Another exception is where the State having jurisdiction has investigated the case but has decided not to prosecute where this decision resulted from the "unwillingness or inability" to prosecute. The concept of unwillingness is recognized if one or more of the following circumstances exist:

Article 17-2:

(a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court (…);
(b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
(c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

This brings us to another limitation of the ICC. Not only is the jurisdiction of the Court limited to crimes committed on the territory of State Parties to the Court[46] or by their citizens or those referred to the Court by the Security Council, its competence is limited to the 'most serious of crimes of concern to the international community as a whole'. [47] This in itself should not be a problem since we have seen that the *ad hoc* tribunals have recognized sexual violence in certain situations as constituting torture, crimes against humanity and even genocide, and these crimes are listed in the ICC's Statute. Nevertheless, the Prosecutor of the Court has refused many cases based on this criterion of the gravity of the violence. The Prosecutor takes into consideration many elements, including the number of victims of these crimes.[48]

In spite of these limitations, these courts have certainly enforced whatever international humanitarian laws exist in the area of sexual violence, by finding that certain forms of sexual violence committed during armed conflicts may be covered under some of the gravest of international crimes such as crimes against humanity or genocide.

Nonetheless, it would seem probable that before a real solution can be formulated, the problem must be understood. And here is the crux of it---it is surely not completely understood. Why is there such violence against women during armed conflicts? The fact that the various efforts made have not yet had any real effect might suggest that there are many factors involved.

Several theories attempt to explain the phenomenon. For years it was believed that sexual violence, which often happened during or right after the conflict, was just part of the 'game'. The women, as the goods of those conquered, were part of the winnings of the victors. It was a 'by-product' of the conflict. In contemporary armed conflicts, this may still be true to a certain extent. However, we have seen in more recent conflicts that such violence was much more than a by-product, it was in itself a strategic policy against the enemy; one more type of weapon to be used. [49]

Since international humanitarian law is today an integral part of almost every Nation and since violations of this law are forbidden, one can only be bewildered by the fact that participants in contemporary armed conflicts choose to use these 'weapons'. The overwhelming majority of Nations are Parties to humanitarian conventions. The people of these Nations are not ignorant of these laws and principles. They are the basis of the 'morality' of the international community. Thus, it is extremely probable that those who are committing these crimes are aware that they are illegal.

Daniel Munoz-Rojas and Jean-Jacques Frésard, two authors in a larger study conducted by the International Red Cross,[50] underlined several theories that did not pertain directly to sexual violence

[46] Although the United States signed the Treaty on 31 Dec. 2000, not only has it not ratified the Convention but it has sent notice to the Court that « the United States does not intend to become a party to the treaty » and « (a)ccordingly, has no legal obligations arising from its signature of December 31, 2000 ».
[47] Statute of the ICC, art. 5
[48] See Bilan des Communications Reçues par le Bureau du Procureur de la CPI, 10 Feb. 2006. Website of the United Nations.
[49] In a Newsday article reporting the systematic rape by Serb forces in northern Bosnia, statements by the victims interviewed suggested that the sexual assaults were not a "byproduct of the war" but rather "a principal tactic of the war". One of the women interviewed said that the man who abducted her told her that he was "ashamed to be a Serb" and that they were under orders to rape the girls. Dr. Melika Kreitmayor who led the gynecological team that examined some of the victims from Brezovo Polje was cited in the article as saying that the motivation behind the rapes was "to humiliate Muslim women, to insult them, to destroy their persons and to cause shock". She continued by saying that the victims were not raped "because it was a male instinct. They were raped because it was the goal of the war". To support this, she said that some of the victims were taken and although not raped, were asked to say they were. Roy Gutman, 23 August 1992.
[50] The study, The Roots of Behaviour in War, was aimed at assisting the International Red Cross to identify the factors that may help formulate a policy to prevent violations of international humanitarian law by combatants in armed conflicts.

but instead to violations of international humanitarian law in general.[51] Their study demonstrated that combatants 'are subject to group conformity phenomena such as depersonalization, loss of independence and a high degree of conformity'.[52] Studies have shown that fighting men 'are generally motivated more by group pressure than by hatred or even fear'.[53] The soldier's reputation, the esteem of the group, and helping the group to succeed, are factors which reduce the individual's autonomy. The relations that 'bind the combatants to each other are often stronger than those that bind a married couple'.[54] The individual has a natural tendency to believe that his group is superior to other groups, which in turn 'generates prejudices, simplifications and discrimination'.[55] These factors, according to the study, lead men to follow orders more than following their own moral convictions, particularly in a combat situation, where the 'individual is rendered more docile by military training and collective preparation for confrontation with an enemy that is often demonized and dehumanized'.[56] One of the most important results of this submission to authority is the disappearance of personal responsibility.[57]

In addition, the study of Munoz-Rojas and Frésard illustrates that those combatants who are subject to humiliation and trauma themselves are likely to violate international humanitarian law.[58] This is due to the 'cycle of vengeance' and also the 'spiral of violence'. That is to say, the violence that they have been subjected to occurs amongst themselves. That is to say, the violent threats and treatment to which they have been subject by their own group subsequently leads to their reproducing this violence.[59] Furthermore, it affords proof that having the knowledge of the law does not lead to following it in 'real-life' situations. This behaviour is justified in that the combatant often feels himself to be the victim, which in turn allows him to commit the violations. Those fighting 'for survival cannot afford the luxury of humanitarian considerations and rules which could weaken' them, and hence the old adage of the end justifying the means.[60] Illegitimate behaviour thereby becomes justified if not 'legal'.

Like many previous studies, this study found that the violation of international humanitarian law is not usually one who is sick, psychopathic or even irrational. For the most part, it is the 'normal' individual who is committing these atrocities. The different factors defined in the study gradually lead to a moral disengagement.[61]

Munoz-Rojas and Frésard make two recommendations: that international humanitarian law be made political and legal more than just moral, and that combatants must be instructed in appropriate conduct and sanctioned when there are violations.[62] This latter measure could eliminate at least some of the crimes, sexual or otherwise, during conflicts. Nevertheless, it is doubtful that it would in fact eradicate the problem. The first recommendation, that international humanitarian law be more of a political and legal matter than a moral one, again seems limited. Violence against women, as we have seen, is already a legal matter, and the effect of the conventions, customs and principles in this area are far

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[51] Daniel Munoz-Rojas and Jean-Jacques Frésard, The Roots of Behaviour in War : Understanding and preventing IHL violations, in International Review of the Red Cross, March 2004 Vol. 86 No. 853.
[52] *ibid*, p. 193
[53] *ibid*, p. 194
[54] *ibid*,
[55] *ibid*
[56] *ibid*
[57] Stanley Milgram, Obedience to authority : An experimental view, Harper & Row, New York, 1974, cited by *ibid*, p. 195
[58] Already cited, p. 195
[59] *ibid*, p. 196
[60] *ibid*, p.198
[61] See theory of Erwin Staub, The roots of evil: The origins of genocide and other group violence, Cambridge University Press, Cambridge, 1989, cited by *ibid*, p. 199-200.
[62] Munoz-Rojas and Frésard, already cited, p. 206

from being conclusive. The authors themselves argue that, under certain circumstances, an illegal action can be considered a justified one.

Law is a necessary factor. One cannot stress enough the importance of manifestations such as the approval by the Third Committee (Social Humanitarian and Cultural) of the United Nations of a recent draft resolution entitled 'Eliminating rape and other forms of sexual violence in all their manifestations, including as instruments to achieve political objectives',[63] which was scheduled to be presented to the full Assembly for a vote this year.[64]

However, if law is a necessary factor, it is not a sufficient one.The study conducted by Munoz-Rojas and Frésard treated violations of international humanitarian law in general. What does it signify for sexual violence against women and girls in armed conflicts? One of the factors underlined in the study is that the combatant group often feels superior to other groups, and this feeling of superiority creates prejudices, simplifications and discriminations that may lead to violations of international humanitarian law. To this must be added, in the case of violence against women, the prejudices, simplifications and discrimination that exist already in peacetime against women and girls. Given the tendency of all combatants to feel that their enemy is inferior, it follows logically that the segment within it which is viewed everywhere 'inferior'—that is, women and girls—will be treated as even more inferior, hence the readiness to tolerate the subsequent violations of international humanitarian law.
One may then ask, why sexual violence and not just violence in general against this sub-group? The reasons for this, unfortunately, are plausibly more historic and more imbedded in the deeper problems of society; violence against women is in fact often sexual. And necessarily so, where there is a will to demoralize and humiliate the enemy group.

This brings one to wonder if rape and other sexual violence during armed conflict are not directly related to attitudes towards women and girls at all times.[65] Perhaps, in changing at all time the treatment of women and attitudes towards women, one would witness a reduction of sexual crime against women during armed conflicts. The United Nations has made great efforts in this domain. The following provide examples.

The Fourth World Conference on Women:[66] The Beijing Declaration proclaims its intention 'to advancing the goals of equality, development and peace for all women everywhere, in the interest of all humanity' and this through, *inter alia*, the empowerment and advancement of women and their full participation in the decision-making processes and access to power, through equal rights, opportunities, resource, the sharing of family responsibilities, the eradication of poverty by promoting women's economic independence, the recognition and reaffirmation of the right of all women to control all aspects of their health, 'in particular their own fertility', and the necessity of designing, implementing and monitoring, 'with the full participation of women' gender-sensitive programmes. The Declaration states very clearly that 'women's rights are human rights'.

The Beijing Platform for Action restates that its objective is the empowerment of all women, and that the 'full realization of all human rights and fundamental freedoms of all women is essential' for

[63] 15 Nov. 2007, General Assembly GA/SHC/3906. Document A/C.3/62/L.16/Rev.2
[64] The reader should remember that General Assembly Resolutions are not in themselves binding to the members of the United Nations and are thus not strictly law. However, they often lead to binding law.
[65] The author realizes that there is absolutely nothing original in this and that it is strictly a personal opinion.
[66] Fourth Conference on Women, Beijing, P.R.C., Sept. 4-15, 1995, Beijing Declaration and Platform for Action

this empowerment. Again, therefore, the emphasis was on the direct relationship between empowerment and human rights. Each Nation has the responsibility to implement the Platform for Action through national legislation. The reality of 'absolute poverty' and particularly the 'feminization of poverty' with the 'continued violence against women and the widespread exclusion of half of humanity from institutions of power and governance' can be stopped only by a 'radical transformation of the relationship between women and men to one of full and equal partnership'. The Platform not only underlined the importance of efforts of the United Nations to promote equality between the sexes[67] but also the essential role played by non-governmental organisations and feminist groups, which the text considers 'a driving force for change'. The Platform underscores the fact that discrimination against women begins at the 'earliest stages' of a women's life so that the girl child must be given the same chances as the boy child. However, it is pointed out that the girl child has less access to nutrition, education and, in general, other rights that boys have. Furthermore, these girls are also subjected to various forms of sexual and economic exploitation, paedophilia and forced prostitution being only two examples cited.
One of the critical areas in which the Platform demonstrates concern is of course violence against women. However, this violence is not an isolated issue but one directly related to the discriminatory attitude in many areas against women and girls. The Platform calls for the proposal of strategic objectives to eliminate the different areas of concern. It upheld that violence against women exists in all societies; that women are subjected to 'physical, sexual and psychological abuse that cuts across the lines of income, class and culture'. It underlines particularly that the 'low social and economic status of women can be both a cause and a consequence of violence against women'.

The concept of 'violence against women' was actually defined by the Platform as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

A non-exhaustive list of examples then followed. A special mention was dedicated to the violation of the human rights of women in situations of armed conflict, underscoring particularly murder, systematic rape, sexual slavery and forced pregnancy. Nonetheless, the list includes also family violence such as dowry-related violence, marital rape, female genital mutilation, general community violence against women including rape, sexual harassment and intimidation at work, and violence perpetrated or condoned by the State.

The Platform itself mentions that violence against women 'derives essentially from cultural patterns, in particular the harmful effects of certain traditional or customary practices and all acts of extremism linked to race, sex, language or religion that perpetrates the lower status accorded to women in the family, the workplace, the community and society'.

One could therefore conclude that violence in times of arm conflict can be fought effectively only if discrimination against women is eliminated at all times. It has been recommended to governments that they condemn any tradition, custom or religious practice that promotes violence, that they enact legislation to prevent as well as punish violence against women, and that they periodically revise such

[67] For example, 1975 was declared the International Women's Year by the General Assembly which first brought focus on women issues, the Conventions on the Elimination of All Forms of Discrimination against Women (adopted by the General Assembly, 1979 and entered into force 1981), the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women : Equality, Development and Peace which adopted the Nairobi Forward-looking Strategies for the Advancement of Women and the Fourth Conference on Women.

legislation. Governments should also help victims to obtain judicial aid, create and strengthen institutional mechanisms that help women to report violence, promote active and visible policies to increase knowledge and awareness of the causes and consequences of violence, and to ratify and implement international humanitarian norms in this area.[68]

A recent draft General Assembly Resolution[69] underlines again the importance of the Beijing Declaration and Platform for Action for 'the achievement of gender equality and the empowerment of women' and the necessity for the States to transform these into 'effective action'. The draft Resolution mentions the progress made but also stresses the need for much more. It also affirms that efforts must be made 'primarily at the national level' to be supported by 'enhanced international cooperation'. The Draft also reaffirmed the concept of gender mainstreaming as a globally accepted strategy to achieve the goals of Beijing.[70] The Draft Resolution admits that gender balance is far from being achieved. It once again emphasizes the importance for this balance that women play an important role 'in the prevention and resolution of conflicts and in peacekeeping'. Finally, it encourages all Parties, States, the United Nations system, international organisations and all sectors of civil society to intensify their action towards the goals set out.

Eliminating discrimination against women by empowering them in peacetime may be, among other important measures, an essential element in changing attitudes towards them during armed conflict. The effectiveness of the different declarations, platforms and resolutions will depend in part on their being converted into binding law. No doubt a positive result will be achieved only when international courts begin to prosecute and condemn nations not only in wartime but in peacetime too, for their violations of the law forbidding discrimination against women and girls.

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[68] One such instrument is the Convention on the Elimination of All Forms of Discrimination against Women adopted by the General Assembly of the U.N., 18 Dec. 1979. The Convention condemns all forms of discrimination against women and calls for a policy of eliminating such discrimination.
[69] A/C.3/62/L.89
[70] According to the Office of the Special Advisor on Gender Issues and Advancement of Women Department of Economic and Social Affairs, gender mainstreaming is a strategy but not a goal in itself. It involves "ensuring that gender perspectives and attention to the goal of gender equality are central to all activities-policies development, research, advocacy/dialogue, legislation, resource allocation, and planning, implementation and monitoring of programmes and projects". (www.un.org/womenwatch/osagi)