Chapter 6

A NEW DIRECTION – TOWARDS A NEW ERA?

Fifty years have passed since the time of the Nuremberg and Tokyo trials, a time when international law was silent and ignored the horrendous sex crimes perpetrated during WWII. During this period, the transparency of sex crimes began to be painted in with the colors of honor, and international law’s treatment of this subject reflected the gender subordination of women. Also, during this same period, women’s political power began to be consolidated. As I discuss in this chapter, women’s organizations and many scholars made significant contributions towards breaking down the stereotypes and misconceptions about all types of sex crimes. This development had a significant impact. Yet at the same time as these developments, shocking gender crimes were central features of both the war in Yugoslavia and the war in Rwanda. They could no longer be ignored: rape and sexual slavery were used as tools of conquest and were part of the national struggle and ethnic cleansing that accompanied these battles. In both of these wars, atrocious sex crimes were perpetrated as part of the official policies of the war.

In 1993, as a result of these horrendous crimes, feminist women became involved in international humanitarian law in order to fight against these atrocious crimes. They also sought to use them as a platform for feminist change of the international criminal law.\(^{262}\)

These wars lead to the establishment of two international criminal tribunals – one for the former Yugoslavia (the ICTY) and one for Rwanda (the ICTR), which both prosecuted sex crimes against women. As demonstrated below in this chapter, these tribunals made great progress with respect to the treatment of sex crimes during war in international law. Sex crimes were no longer related to as offenses that were subordinate to other serious crimes, but were treated instead as independent international crimes which stood on their own two feet. However, ultimately, neither the ICTY nor the ICTR provided meaningful legal tools which could enable further progress.\(^{263}\) In this chapter, I show how these tribunals did not interpret the traditional crime categories in a manner that was broad enough when they applied them to sex crimes. They selectively

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\(^{262}\) See Janet Halley, Rape at Rome, supra note 3, p. 5.

applied only some of the existing crime categories, and in ways that were insufficient to deal appropriately with sexual offenses.

6.1 THE FORMER YUGOSLAVIA (ICTY)

According to the report of the United Nations Special Rapporteur on Human Rights, over 20,000 women in the former Yugoslavia were victims of abuse between 1992 and 1994. Most of the incidents of rape were committed by Serbian forces.

In an operation intended as “ethnic cleansing”, hundreds of thousands of Serbs raped thousands of Muslim and Croatian girls and women for the purpose of “forced impregnation”. These horrific acts occurred in approximately twenty rape and death camps. Perhaps even more than the incomprehensible number, the circumstances of these horrific acts are shocking. Women were imprisoned in houses, in hotels or in one of the tens of detention camps, where they were repeatedly raped by Serbian soldiers over many months, and the acts of rape were accompanied by violence and cruelty. The women were used as a means to humiliate, to abuse, and ultimately, to try and destroy the entire population.

The choice of this tool was not incidental and can be explained as follows: First, the Serbs sought to expand the Serbian population at the expense of the Muslim population. The women were held in camps where they were repeatedly raped with the hope that they would become pregnant and give birth to Serbian children. According to Islam, the child’s religion is determined by the father’s religion. Thus the criminals hoped that the Serbian population would grow enough to wipe out the Muslim population. Second, rape was used as a means of humiliation and injury to the victim’s personal and social honor.

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265 Note that even some of the UN soldiers sent to protect the local population compelled refugees to submit sexually in order to receive assistance. See Catharine A. MacKinnon, “Rape, Genocide and Women’s Human Rights” in Alexandra Stiglmayer, ed., Mass Rape: The War against Women in Bosnia-Herzegovina (University of Nebraska Press, 1994) 183 (hereinafter Catharine MacKinnon, Rape, Genocide and Women’s Human Rights). I discuss sex crimes committed by peace-keeping forces below in Part Three, chapter 8: “Part of Existing Crime Categories or a Discrete Crime?”


267 For an analysis of the different kinds of honor, see Orit Kamir, Israeli Honor and Dignity, supra notes 13, 233, 234.