GENDER AND SEXUAL VIOLENCE UNDER THE ROME STATUTE

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1. Introduction

1.1. General: Gender crimes

Gender crimes have always been perpetrated during war. History is full of reports of women being raped, sexually enslaved, impregnated, sexually mutilated, and subjected to other forms of sexual violence during periods of armed conflict, mass violence, occupation, resistance, and transition.¹

For centuries, women were considered legitimate spoils of war, along with livestock and other chattel. In the Middle Ages, unrestricted sexual access to ‘conquered’ women was used as an (justified) incentive to capture a town. When later on rape became explicitly prohibited by the laws of war, the crimes were still deemed mere inevitable consequences or side effects of armed conflict and were rarely punished. Sexual violence was

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¹ See Susan Brownmiller, Against Our Will: Men, Women and Rape (1975) 33, stating that the ancient Greeks viewed rape as socially acceptable behaviour well within the rules of warfare; Donald Wells, War Crimes and Laws of War (2nd ed. 1991) 91, noting that during the Middle Ages in Europe, if a city refused to surrender upon the victors’ demand for surrender, the rules of combat allowed soldiers to rape women occupants; Sharon Frederick and The AWARE Committee on Rape, Rape: Weapon of Terror (2001), stating that in World War II, invading armies used rape to subjugate the will of civilian populations; Kelly Dawn Askin, War Crimes Against Women: Prosecution in International War Crimes Tribunals (Martinus Nijhoff Publishers, 1997) 27, asserting that “through[ou]t the ages, triumph over women by rape became a way to measure victory, part of a soldier’s proof of masculinity and success, a tangible reward for services rendered... [and] an actual reward of war”.

considered an incidental by-product of the conflict, the necessary reward for the fighting men.\textsuperscript{2}

Today, despite the creation of the United Nations and the establishment of a broad range of humanitarian law and human rights instruments, rape and other forms of sexual violence during armed conflict are still common practice. Furthermore, evidence indicates that sexual violence during armed conflict has taken a new dimension:

- Rape and sexual violence are increasingly committed systematically and strategically, such that sexual violence forms a central and fundamental part of the attack against an opposing group. Indisputably, rape and other forms of sexual violence are used as weapons of war.

- Furthermore, combatants have been abducting women and girls, keeping them in secret places, to “service” the combatants and to improve their morale. Rape in these cases is neither an inevitable consequence of war, nor even an instrument of war but used as part of the military machinery to fuel the fighting soldiers.\textsuperscript{3}

Rape and sexual violence are potent weapons for a number of reasons:

(i) Cultural and religious attitudes in some parts of the world, associated with female chastity or notions of so-called “purity” increase the suffering through feelings of guilt and shame;

(ii) Prevailing attitudes and beliefs create and further the impression that a woman is “spoiled goods” if she has sex, whether voluntarily or involuntarily, outside a marital context (a stereotype rarely imposed upon victims of non-sexual crimes), increasing the suffering through ostracism; and

(iii) The impact of rape and other forms of sexual violence often extend to families, local communities, and society at large.

Outside a prison context, targets of gender crimes are overwhelmingly female. The victims of certain crimes, such as forced impregnation and forced abortion, are exclusively women and girls. This may explain why the progress made globally in recognizing, prohibiting, and finally enforcing gender crimes perpetrated in armed conflict has been extremely slow.


\textsuperscript{3} The original reference refers to the “comfort stations” in Japan. I would suggest rather linking to LRA practices today.