

International Law: The Issue of Rape

Thesis within Political Science

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Abstract

Why haven't the UN been able to recognise rape as a weapon of war?

The thesis enlightens the usage of rape in war and the consequences this has brought on women who have been subjected to rape. The bulk of the information is taken from various articles, documents and journals and the method used is of a qualitative nature. The thesis sheds light upon women's rights in the international arena and questions why it took so long (almost 50 years) for the United Nations (UN) in addressing rape as a war crime within international law.

The first part of the thesis will present various theories that elucidate the word sexual violence and more accurately 'rape' in the context of war. The second part generates the judicial part that will depict the difficulty for the international community to address rape as a war crime within international law.

Furthermore the thesis takes the approach in presenting obstacles faced by the UN, within the framework of human rights, to handle delicate issues such as rape and sexual violence. Since rape is, to a large extent, a complicated and a broad concept, and since it falls under the category of women's rights and under human rights, the thesis will explain reasons behind the dawdling and the hurdles faced by the UN in accepting rape under the category of war crime.

The third part of the thesis will present possible predicaments that are unmanageable for the UN. Some possible issues that the thesis has touched upon, is cultural diversity and differing opinions among the member states which has resulted in lack of consensus. Furthermore, the study will present the notion of women's rights, and question if they are part of human rights. The thesis will also discuss the dual role of the UN and its struggle for the past decade to uphold its role both as an intergovernmental as well as a transnational body. Lastly the thesis will enlighten sovereignty that each state must enjoy. Sovereignty has resulted in lack of agreement among the member states which again has caused delay in recognising rape as a war crime.

Key words: Rape, Sexual Violence, War, Women, Human Rights, Women's Rights, United Nations (UN), International Law.

Sammanfattning

Varför har FN inte kunnat erkänna våldtäkt som ett krigsbrott?

Denna studie har ägnats åt att upplysa användning av våldtäkt och andra former utav sexuella övergrepp under krig och dess konsekvenser för utsatta kvinnor. Studien har tillämpat en kvalitativ och litterär metod. Den största delen av materialet har tagits ur diverse artiklar, dokument och tidsskrifter. Uppsatsen upplyser kvinnors rättigheter inom den internationella arenan och studien ifrågasätter varför Förenta Nationerna (FN) har dröjt (ca.50 år) med att identifiera våldtäkt som ett krigsbrott inom internationell lagstiftning.

Första delen av uppsatsen kommer att presentera de underliggande teorierna som preciserar konceptet sexuellt övergrepp och mer djupgående, också förklara anledningar bakom användning av våldtäkt, därav begränsa dess användning inom krigsförhållanden.

Andra delen av uppsatsen sätter fokus på termen våldtäkt och dess utveckling inom den juridiska ramen. Den behandlar folkrätt, och framhäver även orsaker till FN's svaghet och svårighet att kunna erkänna, inte bara våldtäkt som ett krigsbrott, utan också andra frågor som är problematiska för FN att kunna hantera. Eftersom begreppet 'våldtäkt' är relativt brett, faller det både under kvinnors rättigheter och i sin tur under mänskliga rättigheter. Av denna anledning kommer uppsatsen att ta upp de möjliga anledningar om varför det har dröjt för FN, men också dess svårigheter, att kunna erkänna användning av våldtäkt som ett vapen inom krig.

Tredje delen av uppsatsen tar upp några av de möjliga problem som är ohanterliga för FN, bland annat kulturella skillnader och individuella åsikter mellan medlems staterna, vilket medför brist på konsensus. Uppsatsen ifrågasätter även om kvinnors rättigheter är del av mänskliga rättigheter. Utöver det kommer även uppsatsen resonera kring FN's dilemma att kunna särskilja sin roll som ett mellanstatligt och transnationellt organ. Och sist men inte minst kommer suveräniteten, som varje stat har rätten till att erhålla, att diskuteras. Denna punkt kommer att klargöra den oenighet som förekommer mellan medlems staterna, vilket ännu än gång har resulterat i det dröjsmål som uppstått i att kunna indentifiera våldtäkt som ett krigsbrott.

Nyckelord: Våldtäkt, Sexuella Övergrepp, Vapen, Krig, Kvinnor, Mänskliga Rättigheter, Kvinnors Rättigheter, Förenta Nationerna (FN), Internationell Lagstiftning.

List of Acronyms

CEDAW- The Convention on the Elimination of All Forms of Discrimination against Women

CCL10- Control Council Law no. 10

ICC- International Criminal Court

ICTR- International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda

ICTY- International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia

IHL- International Humanitarian Law

IHRL- International Human Rights Law

SC- Security Council

UN- United Nations

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1 Introduction

Sexual violence against women is a severe abuse that has been going on for centuries. Rape is used tactically in war, to defeat the enemy. The sexual act in itself is very harsh and hard hitting on both men and women, since both women and men could be raped and rapists. Nevertheless, its physical and psychosocial consequences are, sometimes, even worse both on the individual and their communities.

Throughout history, individuals have become victims of sexual harassment and violence. For instance, during the First and the Second World Wars, especially in Germany, some women who were labelled, “Whore for Hitler’s Troops”, who after being persecuted were sexually assaulted in concentration camps and elsewhere. Similarly, the phrase “Rape of Nanking” in 1937 became very common, after it was found out that somewhere between 20.000 and 80.000 women were raped and another between 100.000 and 200.000 women were forcibly imprisoned and raped several times by soldiers. Some of the recent mass rapes occurred in wars are; Bosnia-Herzegovina in 1992-1996, Rwanda in 1994 and in Darfur, Sudan which is still an ongoing crisis.

1.1 Subject

In 1945, when the United Nations (henceforth will be referred to as UN) was founded, the issue of sexual violence and rape was not recognised, or at least not made explicit, by the UN convention in 1948 neither as an act of genocide nor a war crime. However, there was a brief explanation of such behaviour and one paragraph indicating bodily and mental harm, may include rape and sexual violence. According to international law three categories of crimes were introduced; (1) crime against humanity, (2) a crime committed during genocide and (3) a war crime. Yet, rape was not recognised as a crime under the last category until 1998 in the Rome Statue of the International Criminal Court (ICC), which was established by the UN.

In 1993 the Security Council determined to establish an international criminal tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in territories such as former Yugoslavia, Darfur and Rwanda. These tribunals further elaborated on crimes related to sexual violence, especially rape, against women. This kept progressing until the formation of the ICC where finally sexual violence became recognised as a war crime. Yet ambiguity remained.

Not until June 2008 the UN passed resolution 1820 that once and for all declared and identified the use of sexual violence against women as a crime of war. From here the UN decided that immediate actions must be taken to prevent people from committing these immoral acts. This piece of research will focus on UN’s difficulties in recognising rape as a war crime. The thesis will also take into consideration women’s and children’s situation in war and the consequences. Although both men and women can be a prey of rape, the thesis will be limited to women and children.

1.2 Aim

The purpose of this study is to explore, in general, the issue of rape in war and, in particular, the UN’s response to sexual violence and rape as a war crime. A secondary aim of the thesis will be to analyse problems faced by the UN to address the issue of rape as a war crime.

1.3 Research Questions

The purpose of the thesis is to answer the following questions:

- **What has the UN's response been to sexual violence and rape as a war crime?**
- **What have been the hurdles faced by the UN in addressing the issue of rape? (as the issue of rape has been addressed)**

The conclusion and analysis sections will be based on these questions.

1.4 Method

To achieve the purpose of the study, qualitative data will be collected from various sources. The majority of the information is taken from reliable secondary sources, including a dissertation along with various books, documents and articles.

The strength of the qualitative method is the diversity of sources that can be chosen and contrasted with each other, which shows the variety and the avoidance of relying on one source. This in turn reduces the probability of bias in the study. However, the main criticism of a qualitative method is that it involves personal partiality, since the author decides the sources that will be chosen.

Moreover the three important aspects that are taken into consideration in this qualitative method are, (1)*authenticity*, (2)*independence*, and (3)*tendency*. The *authentic* nature of a source is to go back to its roots and see what it claims to be, which shows if the source is false or trustworthy. The *independent* nature indicates the classification of the source, if it is a primary source, which is not influenced by any other sources and is genuine. And lastly, *tendency* indicates if a source is biased where the author involves his or her personal interpretation. Yet again, this does not remove the probability of involving personal interpretation and the selectivity of sources (Esaiasson, Giljam, Oscarsson and Wangerud, 2003).

Furthermore the issue of rape is a difficult concept that has various interpretations. The main sources chosen in this study are articles written by scholars and international documents, most of them passed by the UN. Hence, since most articles referred to are of a feminist nature this aspect must be kept in mind when making the conclusions. Nevertheless a feminist perspective is dominating in this branch of study, as the focus has been on sexual violence against women and children. Most scholars are women, which indirectly involves women's influence and feminist ideas in this type of study.

Most documents that are selected are from that UN collections. These documents refer to rape in a rather confusing manner, by this, it means that rape has been differently explained in the documents. Under certain circumstances, according to internationally passed documents, culprits are sentenced for having committed rape crimes, but the document do not explicitly state rape as a war crime. Hence, this 'confusing language' problem steers the selection of sources. The sources that mention the word 'rape' are chosen, as there is a higher probability of finding them.

The thesis starts off with a general understanding of rape in belligerent circumstances in order to understand why rape is an efficient tool in war and its consequences. This study has been limited to include the Hague Conventions in 1899 and 1907 as this was the first time rape was consi-

dered a crime according to international law. This will limit the study from the framework of 1899 up until 2008. Finally in 2008 rape was declared to be a war crime, without any further confusion. From here the thesis will evaluate what took so long for the UN in recognising rape as a war crime. And lastly a concluding section will be based on answering the main research questions.

1.5 Disposition

► Chapter 2: *The Function of Rape in Wars*

Chapter two will focus on sexual violence and rape as a tactic weapon used in war. The chapter will present consequences, both psychosocial and physical, on the victim and suggest relevant theories which will explain the use of rape. The objective of the chapter is to address *why* rape is used as a weapon in war and during genocide. The section will also provide with examples where rape has been used in war.

► Chapter 3: *Rape as a Crime in International Law*

Chapter three will analyse the UN's response in recognising rape as a war crime. The chapter will historically lay grounds for three classifications of crime that emerged throughout history, according to which rape became labelled. The three categories are (1) a crime against humanity, (2) a crime committed during genocide and (3) a war crime. Furthermore, the chapter will evaluate the distinction between the three classifications of rape.

► Chapter 4: *The Formation of the ICRC and the ICTY Tribunals in 1993*

Chapter four continues to discuss the development of the concept of rape in history. This time it will evaluate the confusing language dilemma of rape. The chapter will also present three cases that took place in the tribunals.

► Chapter 5: *The formation of the ICC and the Introduction of Resolution 1820*

Chapter five will show the final achievements by the UN in addressing rape as a war crime, through the introduction of the ICC and the 1820 Resolution on Women, Peace and Security. In this chapter it will be shown that the crime of rape, finally, became recognised as a war crime.

► Chapter 6: *The United Nation's Addressing the Issue of Rape*

Chapter six will discuss the scope of problem for the UN in recognising rape as a war crime. The chapter will question whether 'Women's Rights' are part of 'Human Rights'. Here the problem of human rights will be discussed and thus the weakness of the UN in reaching consensus on human rights. Furthermore, the issue of 'cultural diversity', the 'sovereignty principle' for each member state and the difficulty in recognising the UN both as a transnational and intergovernmental organisation will be touched upon. These are some of the issues that create problems for the UN in solving the human rights dilemma. At the end of the chapter an analysis will discuss the hurdles faced by the UN in addressing the concept of rape in international law.

Each chapter will be concluded with a brief analysis. In chapter one the analysis will be based on why rape is used as a weapon in war. The analysis sections in chapter three, four and five will dis-

cuss the same question; the UN's response. Finally chapter six will discuss the difficulties faced by the UN in addressing rape as a crime in international law.

► Chapter 7: *Concluding Remarks*

The last chapter will refer to the research question(s) of the thesis and will discuss the final concluding remarks on the research question(s).

2 The Function of Rape in and after Wars

2.1 Introduction

This will present the concept of rape in war. Since rape has various explanations and theories, the thesis will be limited to the core concepts of rape in belligerent circumstances both domestically and internationally. The question that the introductory part will seek to discuss is why rape is used as a weapon in war?

2.2 Rape used as an Object for Male Communication

Rape occurring in war, according to many feminist theories, is the final symbolic act aimed at degrading the male rival. According to Ruth Seifert (1994, p.59) “the rape of women carries a message: it communicates from man to man, so to speak, that the men around the women in question are to be able to protect “their” women”. In many cultures, men feel ashamed if “their” women (mother, sister, and wife) are raped in an armed conflict. This marks men as incompetent which, in turn, wounds their masculinity. This sexual assault is “considered as a direct attack on their manhood and their own integrity” (Reid-Cunningham, 2008, p.282). “In this way, women are used as political pawns, as symbols, of the potency of the men to whom they belong” (Reid-Cunningham, 2008 p.282).

For instance in Yugoslavia, many women who had been raped, were sent back to the opponent's territory because they were pregnant and it was impossible for them to undergo an abortion since they were in a late stage of pregnancy. Similarly, many men during the Second World War divorced or ended their relationship because they believed that their wives were responsible for their deeds. They accused their spouses for being raped by other unknown men. Due to this many women were ashamed of having witnessed rape, and instead kept silent. These behavioural patterns are evident in cultures where women are considered to be the property of men and their social responsibility (Cahill, 2001). If a woman is raped, this does not only affect her, but also her family, her community and the society that she belongs to. Due to the loss of face and the risk of being separated from her groupings, women chose to remain silent.

2.3 Patriarchy and Militarization

Many feminists' argue that when we analyse war, instead of focusing on armed conflict, which is a short-term process, we should look closer into the militarization. According to them, “it is the militaristic culture that legitimates violence as a way of solving conflict” (Farewell, 2009, p.394).

Also, one of the reasons behind men becoming soldiers is the desire to confirm their masculinity and boost their masculine qualities. In particular in western cultures, to join the military service masculinity serves as a symbolic act certifying that a boy has crossed the line over to manhood. Such practises also affirm that gender specific roles are reinforced in our society (Farewell, 2004).

Thus, the military service is mainly seen as a masculine institution, and its masculine attitude strengthens gender-relations and patriarchy (Farewell, 2004). When war is long-lasting in a country, the society becomes militarized. Due to this militarization the society gives birth to “patriarchal values and mechanisms of domination and control, heightening hierarchical relations between men and women and equating constructions of masculinity with violence” (Farewell, 2004, p.394). For women, this entails a constant pressure and a feeling of threat due to the conflict of gender-relations. The combination of patriarchal values and the construction of militarization reinforce the difference between gender relations and leads to war rape. Furthermore, the protectionist ideas that are part of patriarchal relations encourage men to believe that women are their property and that they have to defend male communication relations (Sideris, 2003).

Protectionist values are encouraged by patriarchal theories of procreation that goes back to religious and cosmological ideas. The female and male body are seen as two complementary parts in the construction of procreation. However, the female body provides vessel for the male’s seed, which in turn lays the foundation to use rape as a weapon of war.

In light of this Card (1996) continues to argue, and uses the so called term “genetic imperialism”, since his theory rests on the grounds of men, as the dominating figure in this context. Delaney (1991) compliments Card (1996) and states that; “men are owners of the seed, in the form of both grain and children, and the control the seedbeds in which these are planted” (Delaney, 1991, p.239). Similar to both Card (1996) and Delaney (1991), Farewell (2004) argues that the female’s body “provides the vessel for the seed and supplies nurturance from the field that is her body, whereas the male seed determines the identity of the child. Nations, as territory and as land, are often viewed symbolically, as female, to be protected from outside forces, as can be demonstrated by appeals to save the honour of the motherland” (Farewell, 2004, p.386). From this view one can conclude that men are considered to be the owner of “their” women, both biologically and sociologically. Thus, this would also show that raping a woman is not only an assault against her, but also an attack against the man that she “belongs” to. (Shanks, et.al.2000), which again strengthens the idea of male communication related to this theory.

According to Seifert (1994) “rapes also result from the offers of masculinity that armies make to their soldiers, or from the elevation of masculinity that accompanies war in western cultures” (p.59). The attitude towards gender roles has been changing for many years in our society, but masculinity is still relevant in today’s society through the military and army. The feeling of masculinity is reinforced in the military profession; however, masculinity could be interpreted differently according to country and culture where power and dominance lay grounds for eroticism and sexuality to be developed (Farewell, 2004).

2.4 Gender Relations and Militarization

Our society consists of two gender roles; masculinity and femininity, which are also reflected in our professional services. For instance, the military service reflects these beliefs as masculinity is traditionally regarded the dominating gender role in this field (at least in western cultures) (Farewell, 2004). There are various definitions of masculinity, but in western societies, masculinity is most often linked to heterosexuality and the sentiments of power such as being macho, confident

and dominating. According to Ruth Seifert (1994) “in our culture (western) a homosexual man is perceived as less masculine than a heterosexual one, a gentle, fearful man as less masculine than an aggressive one” (p.60). She further pinpoints that discrimination occurs when people are selected in the army. For instance, a man rather than a woman and a heterosexual rather than a homosexual is preferred. The exclusion of women and homosexuals from this field, gives ground for the monopoly of power, which in turn emphasises the feeling of the “macho man” and the belief in female inferiority. In western cultures when a man rapes a woman, this is often an expression of a mixture of violence with eroticism and sexuality. This has been evident in many wars. For instance, historically, many wars have become labelled, “rape of Nanking”, “rape of Belgium” and “rape of Kuwait”, since rape has been a “frequent” weapon used to torture women culturally, physically and mentally.

In the army the probability of using rape as a weapon is higher, since masculine feelings cultivate heterosexual feelings. According to Elkin (1946) at the end of the Second World War, many sociologists argued that soldiers who needed to release their inner feelings and tensions and to boost their self-image used rape as a means to reach this end. Chinkin (1994, p.328) argues that rape is not a question of sex, “it is rather a question of power and control which is ‘structured by male soldiers’ notions of their masculine privilege, by the strength of the military’s line of command and by class and ethnic inequalities among women”. Allender (2004, p.1) argues similarly “the goal of rape is to shame the victim into submission through loss of face”.

In certain cultures, masculinity and power are linked together. This plays a crucial role in cultural representation. During the Second World War there were many cases of unreported gang rapes where male combatants raped women. Although many soldiers witnessed brutal gang rapes encouraged by other soldiers, they did not report it. Soldiers were forced by their leaders to take part in these acts, and those who declined were perceived as weak and coward (Seifert, 1994).

Another theory behind the outbreak of sexual violence in an armed conflict is “the interplay between male psychology and society’s construction of masculinity”(Seifert,1994, p.62). Seifert, cites Joan Smith (1992) who argues that certain characteristics are considered to be ‘feminine’, such as “empathy, sympathy and gentleness are valued less highly”(Seifert,1994, p.62). She believes that these feelings act as a threat on a man’s masculinity. Most prefer not to show emotions like fear and empathy and feelings are only expressed under extreme or uncontrolled circumstances, where they take the form of anti-feminine feelings. Joan Smith (1992) further states that many soldiers have the ‘masculine’ sentiments part of their culture, “for which they also have been trained as experts: to violence, which then becomes a specifically sexual violence against women” (Seifert, 1994, p.62).

2.5 Destroying the Opponents’ Culture and Community

The female population plays a significant role in “constructing and defending ethnic and nationalist identity” (Farewell, 2004, p.395). Yuval-Davis (1997) argues that, women play a major role in the context of ethnicity and nationality. After all, the female body has the ability to give birth to a child, which in turn fosters ethnic and nationalistic groups (Copelon,1998). However, the community put restrictions on sexual behaviour. In some cultures women have the responsibility to defend the honour of their community. This they do, “through marriage and cultural practices that maintain a pure lineage and pure ethnic-cultural identity. It follows, then, that rape and sexual violence during ethnic conflict become strategies for infiltrating or destroying these boundaries and attacking the honour of the community and the purity of its lineage” (Farewell,1998,

p.395). This provides the reason behind raping a woman thus also rest on ethnic-cultural, religious and national aspects, not only the patriarchal aspect.

Under many circumstances, when there is an armed conflict women are perceived as 'by-products' of war. Often war is perceived as men's business. In consequence women are targeted, as the man's property (Shanks et al, 2000). The abuse of women plays a significant role in destroying a community and a culture. Ruth Seifert (cited in Stigmayer, 1994, p.62) argues "if the aim is to destroy a culture, they [women] are primary targets because their cultural position and their importance in the family structure". She argues that in order to destroy a culture, actions must be taken on civilians in order to crush the culture. After all, a culture is not destroyed unless people are destroyed that belong to the community and culture. Besides, most actions are taken under "unintentional" terms, which means that civilians are the ones that are wounded, scared and under threat. To achieve military victory, the whole targeted society has to be wiped out and devastated. She adds that this way of systematically involving and targeting the civilian population is what she calls 'dirty wars'.

Similarly, Shanks and Schull (2000) add that: "systematic rape in these cases was clearly used to spread terror and fear among the population" (Shanks et al, 2000, p.1153), which indicates the use of rape as a tool targets the opponent group both physically and psychologically. This way of fighting 'dirty wars' has been predominating in history, and particularly evident during the Second World War, where rape becomes an intentional military attack. Again raping becomes an intentional military attack aimed at devastating the opponent culture, and according to several theorists, it is much more about power, culture and control than sexual feelings. Many civilians were systematically raped in conflicting areas such as Bangladesh, Rwanda and Yugoslavia. In all three countries the intention behind using rape was ethnic cleansing.

2.6 A Woman's Body and Hatred against Women in War

Susan Brownmiller (1992) writes in her article: Making Female Bodies the Battlefield, that: "sexual sadism arises with astonishing rapidity in ground warfare, when the penis becomes justified as a weapon in a logical reality of unarmed non-combatants, encircled and trapped. Rape on an object doubly dehumanized- as woman, as enemy- carries its own terrible logic. In one act of aggression, the collective spirit of woman *and* of the nation is broken, leaving a reminder long after the troops depart" (Brownmiller, 1992, p.37).

What Brownmiller (1992) is indicating is that the stigma of rape remains in the community although the enemy has departed. The consequences could be death, pregnancy, psychosocial trauma, infections and venereal diseases as well as severe post-traumatic stress (Reid-Cunningham, 2008).

The female body has a significant impact on politics and cultural destruction. According to Wobbe (1993) a community could be destroyed through the female body. In general women are more vulnerable in war zones than men to fall prey for sexual assault. Copelon (1995), argues that raping a woman is not only violence against her but also against her body, "autonomy, integrity, selfhood, security, and self-esteem" (Copelon cited in Peters, et al, 1995, p.201) as well as her position in the community.

Additionally, feminist scholars have argued that rape would not have occurred unless men were hostile towards women. For instance in the Japanese invasion of Nanking, "Chinese witnesses saw Japanese rape girls under ten years of age in the streets and then slash them in half by sword.

In some cases, the Japanese sliced open the vaginas of preteen girls in order to ravish them more effectively” (Chang, 1998, p.91). The way the rape was carried out, indicates the hatred that is expressed through the exploitation of rape. In fact according to Brownmiller (1992), women were not only raped because they were enemies but simply because they were women. She argues that women are raped because of their gender. This provides a further explanation that women’s victimization is further reinforced due to pre-existing gender relations and socio-cultural circumstances and the belief that the honour of the community and family is situated in a woman’s body. This allows for the frightening conclusion that rape is an excellent tool to destroy the enemy’s group in an armed conflict (Farewell, 2004).

Scholars argue that misogyny does exist in society, but as a discrete phenomenon, that people do not openly demonstrate. However, when war breaks out feelings that are under the surface becomes fragile, which means that since misogyny exists, this takes the form of violence that is targeted against women. War becomes “an adventure that affirms and acts out unconscious destructive fantasies against women” (Seifert,1994, p.66) .

2.7 Ethnic Cleansing and Genocide

Rape has recently become an objective used not only in armed conflict, but also in order to cleanse an ethnic group and during genocide. The war in the former Yugoslavia and the genocide in Rwanda, are among the first wars in which it became revealed that mass rapes were used systematically in order to destroy the rival group. For instance in Rwanda and Bosnia, Farewell (2004, p.78) cites Nikolic-Ristanovic (1999) who argues that “the idea of rape as method of ethnic cleansing [...] represents a deep patriarchal construction: women as objects, as passive recipients of men's seeds who add nothing original to it. In this view, the identity of the child depends only on men, and consequently women impregnated by their enemies will give birth to children who will belong to the ethnic group of the enemy” This indicates that men have the aim “to contaminate the enemy group's blood and genes” (Farewell, 2004, p.396).

When rape is used as a weapon during armed circumstances this has devastating effects both on the women, her family and the community that she belongs to. In the Rwanda genocide, the Japanese invasion in Nanking in 1945 and the war in the former Yugoslavia, mass rapes were used as a strategy to destroy the rival group through women. When a vast number of women are systematically raped, the reproductive capacities are destroyed, because in many cases women are unable to give birth to children due to physical destruction of the reproductive parts and psychological instability. In this case the plausibility of giving birth to children in the targeted group is limited; instead women are forcefully impregnated for the enemy’s group. Furthermore “children born of rape are seen by the mother's community as a soiling the group's bloodlines, while the perpetrators may consider the women and the child to have been "ethnically cleansed" through the assault” (Farewell,2004, p.397). In some communities a child that is born of rape is not accepted because the child is considered to be an enemy (Reid-Cunningham, 2008). In addition, by using rape as a tool to destroy the enemy, it does not only reduce the counter population, but also instil “fear, submission, compliance, and fight from areas of contested territory”. In the Rwanda genocide for instance Hutu men were encouraged, through the usage of propaganda, to rape Tutsi women.

When mass rapes takes place, people that are related to the women (who have been raped) or people who have witnessed a person being raped bear a mental burden and chose not to return to the place where the traumatic event took place. This again shows that rape is an outstanding tool to destroy the enemy due to its devastating effects on their community. It is not only the act in itself that is very dramatic, but also the combination of torture, forced pregnancy, repeated gang

rapes, humiliation, slaughter, beating and looting successfully cleanses a community (Reid-Cunningham, 2008). Moreover, forced pregnancy leads to babies born to the opposite group, because according to many patriarchal cultures, babies belong to the father's group, which expands their community. During genocide many men have the intention to make women pregnant and then take away that child from the mother (USDA Evidence Analysis Library, 2009).

2.8 Rape as a Weapon Used in War: Three Cases

Case I: The German Army

During the Hitler era, Germans, especially the Aryan race, were prohibited to have sexual intercourse with non-Aryan women and men. The third Reich had provided military brothels for men who could have sexual relations with Aryan volunteers. Rape and other sexual forms were not prohibited nor considered crimes under German military law. Instead emphasis was put on not having sexual relations with other races than their own.

Although German soldiers were restricted to not have sexual intercourse with non-Aryans, many soldier raped some 35.000 women in the brothels of the Ravensbruck concentration camps. Also many German soldiers also raped Soviet Union women on the east front. Many SS guards brutally tortured and raped Jewish women.

Case II: The Red Army

Similarly, during the Second World War, when the Red Army (Soviet army) occupied the Hungarian capital of Budapest, it was estimated that around 50.000 women were raped by the soldiers. Throughout this period families, friends and neighbours suffered, as their women were frequently raped. In light of this and other similar events, scholars have argued that the soldiers of the Red Army were recognised by the Germans as "brutal rapists" (Mark, 2005, p.134). Mark (2005) argues that the international community ignored the cruelty of the Red Army and "did not draw attention to Red Army atrocities" (Mark, 2005, p.134). Furthermore, he states that many of the Hungarians did not admit it themselves that rapes were taking place, others stated that it was just a common consensual sex between the Hungarian women and the soldiers.

Case III: The Japanese Army

The exploitation of rape was not only limited to Europe but was also frequently used in Asia. One of the most horrifying rape acts committed against any civilization was when the Japanese army occupied Nanking (a Chinese city) in December, 1937. More than 300,000 thousand Chinese were systematically tortured, raped and murdered (Chang, 1997). According to Browmiller (1992) among these people, approximately 20.000 to 80.000 were raped. But she argues that it is difficult to present neither any statistics nor any exact numbers. In many cases women were forcibly impregnated and some witnessed family members being raped, which was shameful and a reason why it was concealed from the international community. Over 150.000 women were labelled "comfort women" who were placed in brothels so that they could satisfy the sexual needs of soldiers (Reid-Cunningham, 2008).

2.9 Analysis: What is the Purpose of Using Rape as a Weapon of War?

So far the thesis has focused mainly on the underlying theories and concepts of rape in armed conflicts and some examples of how rape was used in wars. The concept of rape has a continuum of theories that can be applied to rape cases during peaceful times. Yet, the purpose of the thesis is to answer the question of rape in an armed conflict, which will limit the research within the context of war.

The sexual act is not about sexuality, but has to do with sentiments such as control, power and superiority. In patriarchal societies when a woman is sexually assaulted, it does not only affect her but also the surrounding that she belongs to, like the family and the community. This indicates that women constitute a 'property' of a man (father, husband, brother), which entail that a woman's body is used as tool to destroy the opponent, since it is a matter of a 'man to man' attack where women are utilised as pawns.

Moreover the construction of the military in many western countries cultivates masculine feelings and anti-feminine emotions. For instance fear and empathy are labelled as 'coward' sentiments. Ultimately this reinforces masculinity and gender difference, which under armed conflicts boosts sexual feelings. A person is forced to commit certain acts that otherwise, would be restricted in a man's 'mind' during peacetime.

From the religious, biological and social points of view a woman and a man are two counterparts, where the woman is considered the nurturer of the man's seed. In this case rape is an efficient tool to make use of, since it wounds a community tacitly by targeting the very core of the community, namely 'the woman'. The bitter truth is that women's bodies are vulnerable under such circumstances and are easily aimed at to destroy the enemy.

During genocides and armed conflicts, rape was used systematically and widely. The raped victims did not only suffer from physical pain, but also psychological destruction. The tactic of using rape destroys the rival group as women's reproductive capabilities along with the stipulation of rejecting and killing newborn babies destroys and cleanses an ethnic group. All these issues contribute in understanding the logic behind the usage of rape during armed conflicts.

3. Rape as a Crime in International Law

3.1 Introduction

Not only rape but women have been tortured, terrorized and mentally unfit to lead normal lives. Some women died or lost their capacity to give birth to children. Others had to give birth to unwanted children that did not only defame them but also the rest of the community. Some lost their children because they were killed. Yet, after the formation of the UN in 1945, the number of rape cases did not diminish. This indicates that the UN failed to take enough actions in preventing the recurrence of this phenomenon. Although women were the victims the UN was unable to address rape as a war crime in internationally.

The following chapter will show the historical development of addressing rape and other forms of sexual violence within international law and further discuss the actions taken by the UN in declaring rape as a war crime.

The Confusing Language Dilemma

The purpose of this chapter is to scrutinise the significance of rape within the judicial framework. Before understanding the concept of rape in international law, it is crucial to bear in mind that there is a distinction in specifically *referring to rape as war crime* and to *refer to other languages* that may include the crime of rape.

For clarification when referring to the word ‘apple’ the word can be described under various phrases or wordings, such as, a ‘fruit’, a ‘round-shaped fruit’ or by colour, ‘green’, ‘red’ or ‘dark red’. In this example if the word ‘apple’ is not explicitly put in writing, instead, ‘apple’ is recognised under other wordings. Similarly when dealing with the issue of rape, this has resulted in a ‘confusing language’ dilemma, which makes it problematic in understanding the development of rape as a war crime in international law. In some cases rape is considered as a war crime, but there are no documents specifying rape to fall under the category of war crime. This problem might be complex in the beginning of the chapter, but this will become clearer as the reader approaches the end of the chapter.

Additionally there are three important branches within international law that have to be identified with when dealing with rape as an international crime. The first one is ‘Crimes against Humanity’, the second is ‘Genocide’ and the third is ‘War Crime’. According to Klamberg (2008), within international law all three crimes categories have dissimilar implications.

- **Crimes against humanity: widespread and systematic**
- **Genocide: destruction of a protected group**
- **War Crime: armed conflict**

All three branches of crime go hand in hand. The category ‘crimes against humanity’ is the ground category that includes all crimes that are systematic and widespread. In trials before 1998 lawyers referred to articles under phrases such as ‘inhumane treatment’ and “ill-treatment when their actual intention was to sentence people for having committed rape crimes. Rape was indeed acknowledged as a crime under all three classifications, however, it lacked documentation as a crime committed in genocide as well as a war crime until 1998.

Women’s rights are part of human rights and for this reason this section will provide a brief explanation of the concepts of International Humanitarian Law (IHL) and International Human Rights Law (IHRL). Both concepts play significant roles, since rape falls under both. Yet, the thesis will demonstrate that under IHL rape is accepted as a war crime, whereas in IHRL it is not as obvious.

The chapter will follow a historical time line, which will gradually show how and why rape became accepted as a crime, and then, from there, put emphasis on rape in the context of war. Throughout this section and onwards one has to bear in mind that the purpose is to examine rape as a war crime, but in order to reach a conclusion, the development of the first two branches of crime will be discussed. Chapter three, four and five will strive to answer: What has the United Nation’s response been to sexual violence and rape as a war crime?

3.2 Definitions in International Law

IHL and IHRL are two essential laws that “protect the lives, health, and dignity of individuals, albeit from a different angle” (Advisory Service on International Humanitarian Law, 2003). Al-

though the laws aim to protect human beings from cruel treatment, the protection of women and children and to restore peace, both laws possess differences that will be presented in the following section.

Similarities and Differences between IHL and IHRL

The IHL developed and was codified in 1899 and 1907 in The Hague Conventions as well as the 1949 Geneva Conventions. Also, the Additional Protocols to the Geneva Convention in 1977 and the judgements in the Nuremberg and Tokyo Tribunals, all are contributing events in establishing IHL.¹ The IHL is also referred to as the laws of war or the law and customs of war, which makes the law exceptional since it is mainly applied to exceptional situation such as armed conflicts (Advisory Service on International Humanitarian Law, 2003, p.1). The IHL sets up certain 'customary rules' that are applied to armed conflicts, which is legally binding for states (What is International Humanitarian Law, ICRC, 2004). IHL is often referred to as part of IHRL, which is applicable to international and non-international armed conflicts and to state and non-state actors (IHL and IHRL Similarities and Differences, 2003).

The IHRL on the other hand is applied at all levels, regional, domestic and international. IHRL is made up of international rules, created by treaty or custom, where individuals can expect and claim certain behaviour from governments. "Human rights are inherent entitlements which belong to every person as a consequence of being human" (Australian Red Cross, 2008). It is binding for nation-states that ratify this treaty. A concept that is widely used in the context of IHRL is universal jurisdiction. The universal jurisdiction on human rights states that nations are bound to respect human rights, otherwise persecution or punishment is authorized if human rights are violated. The IHRL unlike the IHL is applicable at all times both during peacetime and during armed conflict (IHL and IHRL Similarities and Differences, 2003).

Gender based violence is a 'new' phenomenon in the context of IHRL. This illustrates that gender discrimination has not received considerable attention in the field of humanitarian law. However, the adoption of the UN Charter in 1945 and the formation of the Universal Declaration on Human Rights contributed in the promotion of gender equality. There are a number of Human Right treaties that specialize in certain fields. For instance the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is an agency within the UN that mainly focuses on woman related issues.

Under the legislative process rape falls both under IHL and IHRL. However, since the objective is to depict rape as a grave breach within armed conflicts the thesis will be limited to IHL. Under IHL rape constitutes a war crime that takes place under coercive and violent circumstances. For this reason an understanding of the development of IHL is essential and also to keep in mind that that IHL is a relatively new law. A consequence of this became that rape, which is part of IHL, became unrecognised for a long time (IHL and IHRL Similarities and Differences, 2003).

¹ These events will be explained in detail later in the thesis.

3.3 Historical Development

1899 and 1907: The Hague Convention

As mentioned earlier rape in an international context, was not considered a war crime until recently. Women have been systematically raped in belligerent environments, and rape has been considered to be a mere 'by-product of war'. In consequence the issue of rape and sexual violence in systematic manner has not been widely discussed in world politics. The first time rape was considered as an international crime was as late as in the early twentieth century.

The Hague Peace Conference in 1899 and 1907 relied on an earlier document which was called the Lieber Code which originated in 1863. The Lieber Instructions "codified customary international law of land warfare" (Ellis, 2007, p.227). This document presented rape as a crime of "troop discipline" (Ellis, 2007, p.226). People who committed these acts were punished to death. The Lieber Code is undeniable among the first to spread its pioneering message to punish those who raped during war (Askin,1997).

The Hague Conventions focused primarily on military personnel and civilised people and the relationship between these two groups. It did also take into consideration prisoners of war and their well-being. However, the main purpose of the conventions was to come up with certain rules and regulations concerning war. Yet, The Hague Conventions were one of the first to make a distinction between offensive and defensive war and thus "aimed at preventing unnecessary suffering in war" (Askin, 1997, p.39). The purpose of the conventions was not to make aggressive war illegal, but rather to codify certain conduct that was unacceptable in war.

Since the concept of rape was fairly new, neither was there any definition of rape nor was it codified as a crime against humanity. Rape is related to the concept of human rights and more accurately to women's rights, two concepts that are reasonably new in international law. The Humanitarian law made dramatic progress since "the concern for the honour and safety of women" (Cleiren and Tijssen, 1994, p.476) was recognised. Cleiren and Tijssen (1994) further argues that rape and other forms of sexual assault against women has steadily been considered as a crime, because this does not only effect the woman, but also people in her surroundings. For instance according to The Lieber Code in 1863 it was stated that "family honour and rights, the lives of individuals, as well as their religious convictions and practise, must be respected (Cleiren, et.al,1994, p.477).

The 1907 Hague Conventions have played significant roles in the protection of women by stating that their "honour" has to be safeguarded. However, although these developments were carried out, in favour of women's rights, it did not stop women from being systematically raped during the First and the Second World War. Yet, after the World War I many cases of sexual assaults were reported, which paved way for further development of rape as an international crime. (Askin, 1997).

1945: Control Council Law no.10

Askin (1997) cites Professor Wells who states: "before there could be crimes of war there had to be laws of war. Before there could be laws of war there had to be customs of war. Before there could be customs of war there needed to be some sense that war had limits" (Askin, 1997, p.46).

The International Military Tribunal (IMT) was established after World War II. The IMT charter included relatively new concepts that had not received much attention prior to the Second World War. The most significant feature of the charter was the introduction of two substantive crimes that had not previously been articulated in international law; the crimes against peace and the crimes against humanity. These two classes of “crimes made it possible to bring to justice German high officials who might otherwise have been beyond the reach of conviction, but whose actions so shocked the human consciousness that they warranted particular sanction (Röling, 1993 cited by Askin, 1997, p.117-118)

However, in the IMT charter, rape was not proclaimed to be a crime against humanity. The first time that rape was stated to be a specific crime against humanity was by the Control Council Law no. 10 (CCL10). The document was signed by the victorious nations of the Second World War in Berlin on December 20th in 1945. The aim with the document was to lay the basis for penalising war criminals in German courts. In consequence, many of the leaders that had escaped prosecution by the IMT charter were instead convicted by the CCL10 under article II of Control Council no. 10.

The following definition of crimes against humanity is taken from CCL10:

“Crimes against humanity. Atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape or other inhumane acts committed against any civilian population, or persecution on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated” (Cleiren, et.al, 1994, p.478).

This was the first time that rape was specifically stated in a document to fall under ‘crimes against humanity’. Yet, it is important to point out that rape was not considered as a war crime, neither in the IMT Charter nor in the CCL10. Bassiouni (1999) cited by Askin (1997) argues that rape was not explicitly mentioned neither in the Nuremberg nor in the Tokyo Charters² but instead it remained “subsumed within the words ‘or other inhumane acts’ ”(Askin,1997, p.125). This ultimately shows that rape was referred to as a war crime, but people were convicted of rape crimes under phrases such as ‘inhumane treatment’.

1945: The Nuremberg Trials

The Nuremberg Trial, which is also called The International Military Tribunal in Nuremberg, began in November 1945 after the Second World War. The purpose with the trials was to prosecute the Nazi leaders by the victorious nations. The allies agreed upon publishing a charter, which is formally called the Nuremberg Charter.

The following extract is taken from the charter, where it is clearly demonstrated that rape was not stated as a crime against humanity.

Article 6 (c) of the Charter states as following in term of ‘Crimes against Humanity’:

“CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the Jurisdiction of the Tri-

² These events will be discussed in the next sections.

bunal, whether or not in violation of the domestic law of the country where perpetrated” (Charter of the IMT, 2001).

The charter does not set forth explicitly rape as a crime against humanity (Ellis, 2007). Surprisingly, although rape was used tactically during the Second World War both in Asia and Europe, the act remained obscured and merely covered by the phrase “other inhumane acts” (Boot, 2002, p.510). As it has been presented, the Control Council Law no.10 regarded rape as crimes against humanity, but people committed these acts were not prosecuted in the Nuremberg Trials. On this account, Ellis (2007) argues that it is not completely accurate that rape did not receive any attention at all; in fact a commission was established “to investigate allegations of mass rape of French and Belgian women, but it was not a serious initiative” (p.228).

Post to the Hague Conventions, the Nuremberg Charter took a further step to categorise certain acts as war crimes and people were convicted of the following crimes:

1. “Killing and cruel treatment of civilian population on occupied territory and in the open sea;
2. *Abduction of the civilian population of occupied territories into slavery and for other purposes;*
3. Killing and cruel treatment of prisoners of war and other servicemen, with whom Germany found itself in a state of war, as well as persons in the open sea;
4. Killing of hostages;
5. Imposition of extortionate fines;
6. Senseless destruction of towns, settlements, and villages and *devastation unjustified by military necessity;*
7. Forced recruitment of civilian manpower
8. Germanization of occupied territories” (Askin,1997, p.136)

Dawn Askin (1997, p.136) provides his analytical insight by demonstrating that crimes such as “murder, pillage and destruction of towns” were included in the Nuremberg Charter, but there was no sign of sexual violence and rape, which was the utmost problematic issue for women at this time. Despite the convincing indictments of rape and various other forms of sexual assault, especially, in the Lieber Code where people were charged with sex crimes under “family crimes”. Many of the sex crimes that were committed during the Second World War could have been prosecuted under Article 6 (c) of the IMT charter. Yet the difficulty remained as gender specific crimes were not expressively enumerated in conventions and charters, and were left solely to judicial interpretation of prosecutorial discretion (Askin, 1997, p.138).

Keeping these circumstances in mind rape was neither acknowledged as a war crime in the Nuremberg trials, nor was it accepted in the Tokyo trials, which the next section will discuss.

1946: The Tokyo War Crimes Trials

From May 3rd in 1946 until November 12th 1948 the International Military Tribunal for the Far East (IMTFE) was established in Tokyo. Similar to the Nuremberg Trials in Europe, the Tokyo Tribunals were a consequence of the victorious allies’ eagerness to prosecute the war criminals under the jurisdiction of the ‘so called’ universal international laws. The tribunal was placed at various locations in China. The idea behind the trials was to prosecute Japanese war criminals that, according to the allies, committed grave offences during the Second World War. The Tokyo Charter was established by Americans, yet, there were not many dramatic changes from the Nur-

emberg Charter. One distinction however was that there were three women that were part of the “prosecution counsel at Tokyo” (Biehler, 2003, p.509), who with unfaltering determination sympathised with the rape victims.

Article 5 of the Tokyo Charter stated as following:

“Crimes against Humanity; namely, murder, extermination, enslavement, deportation, and other inhumane acts committed before or during the war, or prosecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in execution of such plan” (Charter of IMFTE, nd.)

The Tokyo tribunal sought to prosecute people for having committed rape as a war crime, which stands in contrast to the Nuremberg trials (Meron, 1993). Ellis (2007), argues the difference lied in the Japanese invasion of Nanking. During the Japanese invasion over 200.000 women had been systematically raped and many of these women were used as “comfort woman” for the Japanese troops. In light of this it was unique as “the tribunal prosecuted rape crimes, even though its statue did not explicitly criminalize rape” (Ellis, 2007, p.228). For instance under the language of ‘inhumane treatment’ Japanese were penalized for having raped Chinese women (Askin, 1997, p.180). In addition, many of the female medical personnel were raped, murdered and physically abused which falls under the language: “failure to respect family honour and rights, individual life, private property and religious convictions” (Askin, 1997, p.180).

People who committed rape crimes were punished under the charter for various crimes such as “inhumane treatment, “ill-treatment” and “failure to respect family honour and rights”. Unlike the Nuremberg Tribunal the Tokyo Tribunal documented rape crimes, which became part of public records both nationally and internationally. Although being evident that rape was used widely during the Second World War, nowhere in the charter was rape recognised as a crime of war (Askin, 1997). Chinkin (1994) argues “unfortunately, in these documents the position with respect to rape is ambiguous. Rape was not included in the listed war crimes in Article 6 of the Nuremberg Charter, although the list was specifically stated not to be exhaustive”(p.331).

Subsequent to the Nuremberg Trials there were no new laws calling for the prosecution of war-time criminals for the war crime of rape. The Control Council Law no. 10 indeed mentioned rape as a crime against humanity. However, the Tokyo Trial played a significant role in acknowledging sex crimes as crimes of war and crimes against humanity (Askin, 1997).

1949: The Fourth Geneva Convention

The Geneva Conventions consists of four treaties and another two additional protocols (protocol I and protocol II) that set the rules and customs of war. In 1949 twelve nations in Europe ratified the conventions after the Second World War. The Geneva Conventions had had a significant impact on the progress of International Humanitarian Law. Considering sexual offences article 27 of the Fourth Geneva Convention derives from article 46 of the Hague Convention (IV).

The Fourth Geneva Convention “*Relative to the Protection of Civilian Persons in Times of War*”, provides protection for civilians in international armed conflict and specifically provides that women should be protected against rape as well as forced prostitution (Chinkin, 1994).

Article 27 in the Fourth Geneva Convention states:

“Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault [...] However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war” (Convention (IV) relative to the Protection of Civilian Persons in Time of War Geneva 1949, 2005).

With the introduction of the Geneva Convention the protection of women was becoming an alarming issue within international law.

1977: Supplementary Protocols I and II to the Geneva Conventions

Protocol I

In 1977, an additional Protocol to the Geneva Convention of 12 August 1949 was passed which emphasised the Protection of Victims of International Armed Conflict. Similar to article 27 in the Fourth Geneva Convention, rape is again highlighted as a prohibited crime in times of war, which is evident in the following extract taken from article 76 from chapter 11.

“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” (Protocol Additional to the Geneva Conventions of 12 August 1949, 2005)

However this did not mean that rapists would be punished during all circumstances. Article 2 (b) of Protocol I Additional to the Geneva Conventions of 1949 states:

“Rules of international law applicable in armed conflict” means the rules applicable in armed conflict set forth in international agreements to which the Parties to the conflict are Parties and the generally recognised principles and rules of international law which are applicable to armed conflict” (Protocol Additional to the Geneva Conventions of 12 August 1949, 2005)

Since this document is additional to the Fourth Geneva Convention of 1949, rape is considered to be a rule that is applicable in an armed conflict. Nevertheless, Dawn Askin (1997) argues that there is no indication that rape, forced prostitution or other forms of sexual assaults are punishable if it takes place on “widescale, systematic policy, or on ethnic, political, racial, national, or religious grounds” (Askin, 1997, p.313). Additional Protocol I and the Geneva Conventions prohibit rape and other forms of sexual assaults as a reprisal against civilian. The application of these rules is subject to the customary international law of armed conflict. Nevertheless this indicates that rape was merely a rule that was applied within the context of war, however, the recognition of rape as a war crime still remained a goal to be achieved.

Protocol II

In 1977 an additional supplementary protocol was released which complemented Protocol I which focused on the protection of victims of Non-International Armed Conflicts. The second additional protocol explicitly prohibits rape, which can be traced in article 4 of the convention:

“shall remain prohibited at any time and in any place whatsoever: (e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form or indecent assault”

The Geneva Conventions and the amendments of 1977 Protocols (I and II) provide that women should be protected in any armed conflict, and this is not only prohibited in international but also national armed conflict. Furthermore, this prohibition should not be limited to the conflict period but also after the war ends (Meindersma, 1995). The need for the latter is evident as it in many cases was reported that even if a war was over, the number of rape cases continued to rise.

3.3 Analysis I: What has the United Nation's Response been to Sexual Violence and Rape as a War Crime?

A vital point of departure is to acknowledge the dissimilarity between IHL and IHRL. Rape falls under both laws but receives more attention under the IHL. There is a difficulty, though, in addressing rape under IHL. In IHL gender-based violence was a “new” concept that needed to be elaborated. The IHL is applied to armed conflicts, whereas the IHRL deals with human rights at peaceful times. The latter though, is a delicate issue for the UN to reach consensus upon. This will be further discussed in chapter six dealing with the concept of human rights in the UN.

The objective behind differentiating the three crimes³, ‘Crimes against Humanity’, ‘Genocide’ and ‘War Crime’ shows that all three crimes are interrelated. But in order to recognise the last category that is war crime, the first and the second category have to be addressed. The crime of rape is a systematically and widely (crimes against humanity) used tool in war as well as useful for the intention to destroy an ethnic group (genocide). However, in order to classify rape as a war crime the first two categories need to be defined.

Under the IHL, the Hague Conventions of 1899 and 1907 were one of the early conventions that codified rules and regulations applied to armed conflict. These were imperative steppingstones in acknowledging rape as an international crime in the field of humanitarian law. The interesting part of the Hague Conventions was the rules and customs of war that were set up. The very indication that rules and customs in an armed conflict were required by international law; speeded up the process in identifying rape as forbidden act during times of war.

Yet, the introduction of The Control Council Law in 1945, which was established after the UN, gave rise to two relatively new categories of crimes: crimes against peace and crimes against humanity. This was the first time rape became recognised as a crime against humanity, but it remained unrecognised as a war crime and as an act of genocide. Nevertheless, the important impact of the law was that it made it easy for scholars and jurists refer to Law no.10 when prosecuting people who used rape as a weapon in war.

Furthermore, this chapter has shown the fallacy of the Nuremberg Trials in 1945 of failing to mention rape as a crime under international humanitarian law. Instead people who committed ‘sex’ crimes, the few that were prosecuted, were punished under phrases such as “inhumane treatment” or “other inhumane acts”. This indicates the vitality in establishing conventions that explicitly stated rape as a prohibited act. For instance, during the Second World War prior to the establishment of the UN, when a high number of women throughout Asia and Europe were used as pawns in armed conflict and hundreds of thousands of women were systematically raped. Only

³ See page 16. The definition of Crime against Humanity, Genocide and War Crime

a few perpetrators were prosecuted due to lack of explicit language that prohibited rape as a war crime. During the Nuremberg Charter rape was only limited to crimes against humanity.

So far unlike the Nuremberg Charter, the Tokyo Tribunal, in 1946, prosecuted perpetrators who had committed rape crimes in war. However, similar to the Nuremberg Charter, nowhere in the Tokyo Charter was rape mentioned as a crime. Nevertheless, the achievement and progress of rape as a crime was recognised in the Asian tribunals. It became evident that rape was used widely and systematically in many armed conflicts. This was especially apparent in the Japanese invasion of Nanking, where thousands of women were raped daily.

Again the Tokyo Trials, similar to the Nuremberg Trials, charged people with crimes described as: “ill-treatment” and “failure to respect family honour and rights”, which makes rape an ambiguous concept leaving it in the hands of the prosecutors. Rape was, hence, not recognised as a war crime and for this reason the UN was late in accepting rape as a war crime which did not only imply that men continued raping, but also that many women were frightened and kept silent, which ultimately slowed down the process of recognising rape as a war crime.

Following the Nuremberg and Tokyo Trials, in 1949 twelve nations ratified the so-called Geneva Convention that developed the concept of humanitarian law. In this process the concept of ‘customs of war’ under international law was discussed and revised. In article 27 of the Geneva Convention it is unambiguously stated that women shall be protected against rape in times of war. In light of this article 27 is significant as it explicitly prohibits rape, by emphasising the protection of civilians during times of war. Although the convention specifically states that women should be protected against rape, uncertainty still remains. Nonetheless, the important aspect of the convention is that it states the protection of women in “times of war”, which indicates that rape was gradually becoming recognised as a widely used act under combative circumstances.

In 1977 four Additional Protocols were applied to international humanitarian law, which included rape as a prohibited crime. Article 76 from additional protocol I explicitly stated the conditions of protecting women in international armed conflicts, and article 4 under additional Protocol II guaranteed the protection of women in non-international armed conflicts subsequent to the Geneva Convention. Interestingly the term rape, by this time, began to be utilized under international law. The achievement so far was the recognition of rape both in international and non-international armed conflicts. The first additional protocol was only applied to international conflict, so even if women were raped in an internal conflict, the rapist had technically not committed any crime under international law (Cleiren. et al, 1994, p.497).

Fortunately, when the second protocol was introduced the ambiguity was resolved. In the Protocol (II), it was stated that women should be protected against rape both in international armed conflicts and non-international armed conflicts. Yet again nowhere was it stated that rape is a prohibited war crime. The documents only stated that women should be ‘protected’ against rape. The vast number of rapes that occurred in the Balkans and Rwanda revealed in history how widely and systematically rape was used in genocide and to spread terror. For the first time in history rape was given serious attention under international law.

4. The Formation of ICTY and ICRC Tribunals in 1993

4.1 Introduction

Two wars that took place after the establishment of the UN were the wars in the former Yugoslavia and Rwanda. The war in the former Yugoslavia, which is also called the war in Bosnia-Herzegovina, started in 1992 and lasted until 1995. Mass rapes and systematic campaigns were carried out for the purpose of ethnic cleansing. At this time, UN resolution 820 was passed that underscored the use to systematic rape in war. The war in the former Yugoslavia was very important in history, since it showed how cruelly and widely, in war and during genocide, women were subjected to sexual violence. Rapes took place at various places throughout the war at any hour during the day. For instance on rape camps, at home, in public, anywhere (Skjelsbaek, 2006, p.374).

Correspondingly during the Rwanda genocide in 1994, widespread sexual attacks took place against women on daily basis. Similar to the civil war in the former Yugoslavia, women were raped not just at home but anywhere and everywhere; “on the streets, at checkpoints, in cultivated plots, in or near government buildings, hospitals, churches, and other places where they sought sanctuary” (Nowrojee, 2005, p.1). A medical study done by Mukamana and Brysiewicz in December 2008 showed that women felt useless, “they felt that they had lost their dignity, respect and identity” (Mukamana and Brysiewicz, 2008, p.381). Above all this the spread of HIV and AIDS was intensifying along with the increase of the number illegitimate children, since women were unable to abort their children due to many reasons (Mukamana et.al, 2008, p.381).

The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia established in 1993, commonly called ICTY. The tribunal was founded by the UN to prosecute those who had committed serious war crimes in the former Yugoslavia region since 1991. A similar tribunal named the International Tribunal for the Prosecution for Rwanda, known as ICTR, was established in 1994 to prosecute those who were responsible for the Rwanda Genocide and other crimes in violation of international law in the Rwanda region. The chapter will therefore evaluate a number of cases that were part of the tribunals that paved the way to further elaborate on the definition of rape.

4.2 Defining Rape in International Law and Armed Conflict

A significant development in defining and accepting rape and sexual assault as an international crime became known through the jurisprudence of the ICTY and ICTR, where people were charged for cases of rape. Up until this time, rape had only been accepted as a crime against humanity. Ellis (2007) argues that both tribunals have “significantly advanced the crime of rape by enabling it to be prosecuted as genocide, a war crime and a crime against humanity (Ellis, 2007, p.229).

Both tribunals had to come up with their own definition of rape, because there was no consensus and universal definition of rape. Earlier than the formation of the Geneva Conventions, rape was neither considered a true crime nor was it explicitly mentioned in any international law. The definition was discussed in both ad hoc tribunals with the help of a number of documentations and cases. The listed cases below, played crucial roles in further developing the definition of rape in the international legal framework.

Case I: The Kunarac Case in the ICTY Tribunal

Three people named Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic were found guilty for the following crimes by the ICTY Tribunal. All three were part of Serb campaigns that deliberately wanted to cleanse the Muslim (non-serb) population in the Foca area. Mosques were destroyed, thousands of Muslims were killed and women and children widely and systematically targeted and raped repeatedly (Cerone, 2006).

Kunarac, Kovac and Vukovic were accused and punished violating crimes against humanity. They were accused of rape and the “tribunal expanded the definition of rape from an act of coercion or force, or threat of force, against the victim to a “non-consensual or non-voluntary” sexual act (Ellis, 2007, p.229). In the Kunarac case it was revealed that the sexual act was committed with force on the victim. The case explicitly indicated that the use of force and coercion was not permitted any more.

The Trial found all defendants guilty, and they were charged “with torture and rape, both as a violation of the laws or customs of war and as a crime against humanity” (Judgments of Trial Chamber II in the Kunarac, Kovac and Vukovic Case, 2001). The Trial also affirmed that rape was a war crime committed under non-international armed conflict, which indicated that rape constitutes a war crime committed by non-state actors. After the Kunarac case the ICTY Tribunal passed a document where Rules of Procedure and Evidence were acknowledged.

According to Dawn Askin (1997) “this rule is one of the most progressive in the history of gender jurisprudence, taking into account the coercive nature of rape” (p.304). In many cases where women willingly accepted to have intercourse with an unknown man, was due to their helplessness in order to defend and save themselves or their children. In other cases some mothers had to give consent to be raped, in order to save their daughters from becoming the victims. With the introduction of rule 96, the court no longer required solid proof in areas where mass rapes occurred.

Case II: The Akayesu Case in the ICRC Tribunal

Yasushi Akayesu of Japan was the chief of the UN Transnational Authority in Cambodia (UNTAC) in 1992. During the Rwanda Genocide Akayesu persuaded Hutu men to rape and torture Tutsi women through campaigns.

In the ICTR case against Akayesu the judges concluded “the central elements of the crime of rape cannot be captured in a mechanical description of objects and body part” (Barnes, 2005, p.305). Under the ICTY Tribunal rape was defined as “physical invasion of a sexual nature, committed on a person under circumstances that are coercive” (Peace Women, 2009). In the Akayesu case, the tribunal developed the definition of rape and concluded that the act is “not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact” (Peace Women, 2009). In this case it was shown that Akayesu, although not committing the crime physically, he encouraged Hutu men to rape Tutsi women. By doing so the court concluded that Akayesu was to be guilty. Subsequent to the Akayesu case it was concluded that to rape or even encourage others to commit this cruel act were found guilty by the tribunals (Rules of Procedure and Evidence, 2007).

Case III: The Furundzija Case in the ICTY Tribunal

Anto Furundzija worked as a local commander of the Croatian Defence Council, which was a special police unit. Anto Furundzija witnessed when a woman was raped and tortured by a num-

ber of men and also forced her to perform vaginal and oral sexual acts (Trial Watch, 2009). According to the Tribunal the women suffered from humiliation. This was not only a sexual assault but also a crime against her personal dignity. The ICTY concluded that this was a war crime of “outrages upon personal dignity” which is stated in Protocol II of the Geneva Convention for non-international conflict combined with article 3 of the ICTY Statute that prohibits violations of the laws or customs of war (Ellis, 2007, p.237).

4.3 The Outcome

In the ICTY and the ICTR rape became known as an international crime through the evolvement of a number of cases. The language of the articles that the jurists referred to did not explicitly state rape as a forbidden war crime. Yet the cases evaluated and were successful in developing definitions of rape in the context of international law. At this stage rape fell under crimes against humanity, a crime committed during genocide and as a war crime, nevertheless, rape was only explicitly stated under crimes against humanity under the ICTY and ICTR statute.

After several judgements and the three cases discussed the tribunal defined rape under customary international law as following:

- i) *“the sexual penetration, however slight: (a) of the vagina or anus of the victim but 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 coercive or force or threat of force against the victim or a third person”*

(Human Rights Watch, 2008)

During the trials, Ellis (2007) pinpoints that it was “recognised that coercion can exist whether directed toward the victim or toward third parties” (Ellis, 2007, p.231). Moreover, the definition of rape became much clearer, which laid grounds for the international community in accepting rape as a war crime. However, this definition was not enough; the definition of rape was further developed in the International Criminal Court (ICC), which will be discussed in the next chapter.

4.4 Analysis II

The three cases discussed in the chapter (Kunarac, Akayesu and Furundzija) modified the concept of rape and two new definitions were added. Firstly, subsequent to the Kovac case, through rule 96 the coercive nature of rape became known. Secondly, through the Akayesu and Furundzija case, it was exposed that the crime of rape is not limited to physical contact or penetration, but can also be punishable for witnessing or encouraging others to use rape. By this time rape was defined under customary international law, but it still lacked the definition as a war crime.

Nevertheless, the positive aspect of the two tribunals was, first of all, that rape became known as a war crime, although not expressed explicitly in the statutes, but it was demonstrated that people were prosecuted for having violated customs and laws of war.

This became highly controversial in ICTY in the Kunarac case, where the judges concluded that Kovac was guilty of having violated laws and customs of war through the usage of rape. This had a remarkable impact on the development of rape as a war crime, because under these cases it was demonstrated that rape was used for three purposes: (1) to destroy an ethnic group, (2) it was used to spread fear and terror and, lastly (3) to use it systematically and widely in order to achieve

the first two. All three intentions have categorised rape as a crime under three separate sections in international IHL, the first one violates rules and customs of war which makes rape a war crime and a crime of genocide, the other two classifies rape as a crime against humanity.

Nonetheless, rape was not expressively written in words as war crime nor a crime committed during genocide. However, people were prosecuted for having violated laws and customs of war, by using rape, with the intention to cleanse an ethnic group. So far rape was already stated as a crime against humanity in both statutes, but neither as a war crime nor a crime committed during genocide.

5. The Formation of the ICC and the Introduction of Resolution 1820

5.1 Introduction

This chapter will mainly focus in showing the solution to the issue of rape and portray the success in accepting rape as a war crime. The Rome Statute of the International Criminal Court (ICC) was established in 1998, as a part of the UN. Some countries such as the United States, India and China still have not ratified the tribunal. Nevertheless, the ICC is a permanent criminal tribunal that investigates cases of crimes of genocide, crimes against humanity and war crimes. This section will provide with further progresses that were made in the field of gender based crimes, in particular of rape as a war crime, after the establishment of ICTY and ICTR.

Finally in 2008, the UN demanded “immediate and complete halt to act of sexual violence against civilians in conflict zones” (Security Council SC/9364, 2008). The resolution removed all the dilemma associated with the ‘confusing language’ issue and declared that sexual violence should not be tolerated.

5.2 1998: The Formation of the ICC

Following the establishment of the ICTY and ICTR, the ICC reconsidered and reformulated the definitions established in the ICTY and ICTR cases, as it had the advantage of using the work of the tribunals to define rape. For instance the Akayesu and Furudzija cases ensured the ICC the insight of coercion and force as part of the crime of rape. The Kunarac case, on the other hand, suggested that rape can also be committed by a person who does not intentionally give consent or the element of rape as a non-physical act.

By the time ICC was established, the ICTY and ICTR had accomplished to spread the awareness that rape was a crime in terms of; genocide, crimes against humanity and war crime. Using this advantage the ICC statute successfully expanded gender crimes by making rape an individual crime, including other forms of sexual assaults and explicitly defined rape as a war crime and a crime against humanity (USDA Evidence Analysis Library, 2009). In addition, the ICC further expanded the issue of rape by incorporating two additional elements in its statute, first of all the coercive nature of rape and secondly the helplessness of giving consent to have unwanted sex.

In terms of genocide, the ICC like the ICTY and ICTR defines rape as a weapon used during genocide. According to article 6 of the ICC Statute, genocide constitutes “causing serious bodily or mental harm” (Klamberg, 2008) to members of a “national, ethnic, racial or religious group” with the purpose to “destroy the group” (Klamberg, 2008). Yet, unlike the ICTY and ICTR, the

ICC forbids prosecution based on gender, as it demonstrates the systematic nature of using rape as a weapon of war to prosecute females. This way of acting is, according to ICC, considered a crime against humanity.

Article 7(1) (g) of the ICC Statute states as following:

“For the purpose of this Statute, “crime against humanity”, means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity”.

(ICC Statute, 1999-2002)

Hence, the biggest achievement of acknowledging rape as a war crime was in the ICC. The ICC explicitly states in, Article 8 (2)(b)(xxii) and Article 8 (2)(c)(vi), rape as a prohibited war crime that can be detected in the following extracts taken from the ICC Statute:

[Article 8 (2)(b)(xxii)]

“committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence [constitutes] a grave breach of the Geneva Conventions”

[Article 8 (2)(c)(vi)]

“committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions”

(ICC Statute, 1999-2002)

Although people were being prosecuted for the crime of rape in the ICTY, there was no recognition of rape as a gender based crime until the ICC and not solid enough motives to prosecute. Ellis (2007) states that “the clearly-defined prohibition of persecution based on gender in the ICC Statute will allow a broader spectrum of crimes against women to be prosecuted in the future” (p.242).

Regarding women’s right in the international arena, the ICC, made use of the experiences and advances made by the ICTY and ICTR, in terms of gender crime and especially rape. Crimes under international law such as war crimes, genocide and crimes against humanity were reconsidered on broader and clearer basis.

5.3 2008: Resolution 1820 on Women, Peace and Security

As late as in 2008 the UN passed resolution 1820 that stated “rape and other forms of sexual violence can constitute a war crime, a crime against humanity or a constitutive act with respect to genocide” (Resolution 1820, 2008). Further it states that “rape and other forms of sexual violence, and evacuation of women and children under imminent threat to safety” (Resolution 1820, 2008). The resolution once and for all declared in 2008 that rape should fall under all three categories and that people who committed the crime of rape should be penalized.

In resolution 1820, the haziness that was associated with the confusing language that jurists encountered was solved. The UN was indeed late in acknowledging the crime of rape as a war crime, but finally in 2008 it was put into words that rape should under no circumstances be tolerated and explicitly fell under the category of war crime.

5.4 Analysis III

Conceivably, the biggest achievement came in 1998 and 2008. At the time of the ICC establishment, the court made progress in stating rape as prohibited crime under the branch of 'crimes against humanity' and 'war crimes (article 8 explicitly states that rape is a prohibited war crime and according to article 7 it is expressly stated to be a crime against humanity). During this period gender-related crimes advanced in the field of international humanitarian law. There was still ambiguity where to draw the line between these categories. Claiming that rape is purely a war crime does not deny the fact that it is also a crime committed against humanity. Similarly when rape is used to spread fear and terror, one cannot reject that it could also be classified as a crime committed during genocide.

Nevertheless, the confusing language was once and for all resolved in 2008, when rape was explicitly documented and recognised as a war crime in resolution 1820. Yet, the question remains unanswered, what made the UN linger until 2008, despite the fact that the issue of rape was already highly controversial before the establishment of the UN. The ultimate question rises; why did it take so long for the UN in recognising rape as a war crime? What have been the hurdles faced by the UN in addressing the issue of rape? The next chapter will lay grounds for a closer examination of this dilemma.

6. The United Nations' Addressing the Issue of Rape

6.1 Introduction

This chapter will present possible theories that seek to answer the fallacies within the UN to address the issue of rape as a war crime. The chapter aims to answer the hurdles faced by the UN in addressing the issue of rape?

The first part will question whether women's rights are part of human rights? Secondly the next sections will evaluate the dilemma of cultural diversity in the organisation. Thirdly, the chapter will put emphasis on the principle of sovereign states and the UN. Finally the focus will fall on the crisis faced by the UN in its 'dual- role' as a transnational and an intergovernmental organisation. This will be followed by an analysis and discussion of the importance of all four aspects with regard to the crime of rape in war.

6.2 Are Women's Rights part of Human Rights?

When the UN was established, the world was divided mainly in two poles (the eastern and western blocs). Ever since, the world has gradually shifted from bipolarity into multipolarity. The UN faced the dilemma of establishing programmes that maintained peace and security, but also introduced the concept of human rights, an innovative concept in international law at that time.

Even if women's rights have been part of human rights, women's rights have been neglected for many years both on the domestic and international arena. (Stamatopoulou, 1995, p.45). According to the UN Universal Declaration of Human Rights, which was adopted in 1948, the humanity of all people (no matter man or women) should be respected (Bunch, 1995, p.13). However, the truth remains that not much has been said about women in the charter. For instance in article 2, rape is stated under a rather complex language such as; "No one shall be subjected to torture, or

to cruel, inhumane or degrading treatment”, which makes it complicated to interpret rape under such phrases.

In the early universal declarations of human rights documents, it was stated that women and men’s rights are equal (Okin, 2001). However The Convention of All Forms of Discrimination Against Women (CEDAW), which is part of the UN, departed from this view and emphasised some issues that are different for men and women, such as “maternity leave, pregnancy-related health care, and affirmative action for women in education and employment” (Okin, 2001, p.33). Catherine Mackinnon (1995) pinpoints that men and women should be treated equally, but “women are [...] violated in ways men are not [...] many of these sex-specific violations are sexual and reproductive” (Mackinnon, 1995, p.184).

A large number of feminist scholars have argued that rape is one of the issues that are not recognised as a violation of human rights, because when it comes to gender-based violence it is difficult to draw the line between the public and the private sphere (Okin, 2001). Freeman (1995) claims “human rights begin at home” (p.149). Equality derives from the family and then further upwards on an international level (Freeman, 1995). Similarly Bunch (1995) states that if “women are denied democracy and human rights in private, their human rights in the public sphere also suffer, since what occurs in “private” shapes their ability to participate fully in public arena”(p.14).

Feminists argue that if men control women’s bodies sexually, they indirectly abuse human rights such as “slavery (forced prostitution), sexual terrorism (rape) or imprisonment (confinement to the home)” (Bunch, 1995, p.14). Hence, giving rise to the question of who should be deciding if human rights are abused? And consequently who should intervene, the state itself or the international community (UN)?

In this case it is a matter of interpretation. In many countries rape is regarded as a “private” affair and in numerous societies when women are subjected to domestic violence, no authority has the rights to intervene. For instance rape was not regarded as a war crime until the 1990’s and the issue of rape did not have much importance under humanitarian law (Friedmann, 1995). In fact nobody had the authority to punish those committing rape. Also, when women are victims of violence, especially torture in the private sphere, which is also the “non-governmental sphere” (Charlesworth, 1995, p.106), in many cases it is neglected in international law. To solve the problem of rape in an international context Stamatopoulou (1995) suggests “the artificial barriers between “private” and “public” spheres have to be removed” (Stamatopoulou, 1995, p.39). This means that raping women should be punished under human rights violations and should not be obscured by the “private” sphere.

In patriarchal societies for a woman, her home-environment is the most dangerous, where men are the head of the house. This causes “serious obstacles in the way of protecting the rights of women and children” (Okin, 2001, p.36). Hilary Charlesworth (1995), argues in her article ‘*Human rights as Men’s Rights*’, the dominating figures in the public sphere such as “economic, political and work places” mainly consists of men (Charlesworth, 1995, p.106). In light of this, human rights laws are shaped according to the ‘masculine perspective’, whereas the private sphere is not included on the national or on the international level. The legal law and the legal order are also developed to reflect the experiences of men, which excludes women’s opinions within the field (Charlesworth, 1995, p.103). She further states that if this continues to occur in the future, there will not be any progress in women’s rights.

The problem of 'solving' this dilemma must start from the domestic level. If women's approach to improve human rights is denied and if their opinions are neglected, women will continue to play a subordinated role in society. Similarly in international legal order, especially in the UN, the dominating lead figures are males. "Power structures within governments are overwhelmingly masculine: very few states have women in significant positions of power, and even in those states that do, the numbers are extremely small" (Charlesworth, 1995, p.104). After all the international human rights laws are developed by state actors. For instance the civil war in Yugoslavia and the genocide in Rwanda, Mackinnon (1995) argues:

"the more a conflict can be framed as within a state- as a civil war, as domestic, as private- the less effective the human rights model becomes. The closer the "fights" comes to home, the more "feminized" the victims become, no matter what their gender, and the less likely it is that international human rights will be found violated, no matter what was done" (p.193).

6.3 Human Rights and Cultural Diversity

Today the UN consists of roughly 192 member states, all with various cultures, traditions, ethnicity and languages. Arti Rao (1995) questions in her article *The Politics of Gender and Culture in International Human rights Discourse*: "Can we have an international discussion of human right in a world of cultural differences?" (Rao,1995,p.167). There is no doubt that there is a need of international human rights on the international arena (Rao, 1995). But "how can human rights exist in a culturally diverse world"(Ayton-Shenker, 1995, p.1).

The relationship between women's rights and cultural diversity can, from a theoretical point of view, be separated in two approaches: "the universalists and the cultural relativists" (Mayer, 1995, p.176). For the cultural relativists human rights vary according to cultures. Ayton-Shenker (1995) who is a cultural relativist, states that human rights are interpreted differently according to "culture, ethnic, and religious traditions" (Ayton-Shenker, 1995, p.1). He further states that there are no legitimate cross-cultural principles and values that can be claimed to be the true rights (Mayer, 1995). Cultural relativism could form its own cultural norms claim that they are above the international law. This in turn poses a threat to the "effectiveness of international law and the international system of human rights" (Ayton-Shenker, 1995, p.1).

Cultural universalism is the opposite side of the pole, which entitles nations to follow the rights that are set by the international community (Mayer, 1995). This phenomenon is important as it illustrates why it is complicated to explicitly state rape as a war crime in an international context, since rape can be interpreted in various ways and depending on the context at which it took place. In many countries, rape is looked upon differently, and the consequences it has on the victim are also judged according to their own views.

Dawn Askin (1997) argues that the consequences are very traumatic, for all who are raped. Nevertheless, its consequences may be "particularly severe in traditional patriarchal societies, where the rape victim is often perceived as soiled and unmarriageable, thus, becoming a target of societal ostracism" (Askin, 1997, p.268). In the Yugoslavian war, when non-Muslim raped Muslim women, the children that were born (due to rape) were not considered Muslims since, a child is, according to Islamic traditions identified by the father. Accordingly, the Muslim women that were raped got their lives ruined, because, if a Muslim woman loses her virginity, she is considered unworthy of marriage, which conceivably brings shame and humiliation for her whole family. In such cases, the stigma of rape is deemed to be a taboo, where victims are left with no option, but to keep it a secret. This indicates that the UN is restricted to take any actions due to a large num-

ber of rape cases that are unreported. In western cultures, on the other hand, the stigma of rape is not considered to be equally severe.

Furthermore within the UN, the non-western member states do not accept the imposed values that derive from the western culture, which again makes it problematic for the UN to reach a consensus regarding human rights. The principle of non-intervention will be discussed in the following section, and gives rise to an additional dilemma within the wide concept of human rights.

6.4 The Principle of Sovereign States and the UN

Not until recently human rights have not been regulated by the international law, it was rather a domestic principle that was left to the national decisions level (Pellet, 2000). Respecting state sovereignty is an essential principle according to the UN Charter. According to Article 2.7 “nothing contained in the present Charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state”(Bertram, 1995, p.391). The sovereignty “represents the basic constitutional doctrine of the law of nations, which governs a community consisting primarily of states having a uniform personality”(Warbrick, 1994, p.205). Included in this principle are the basic “rules on territorial integrity and non-intervention”(Warbrick, 1994, p.205).

States enjoy their sovereignty in many ways. To states sovereignty means independence from interference from a higher authority in which they can enjoy cooperating, communicating, trading and investigating according to their own interest. Powerful states have different abilities to make their points heard in terms of material capacities, which in turn give them a superior role on the global arena.

The decolonisation process brought a new international world order. Countries that once were occupied by powerful states were left free to maintain order in their countries, which was not an easy task. Many of the new states became, and are still extremely weak. For these weak states, international law plays a significant role to “protect their formal status and these states have sought to utilise the law to invest it with standards and obligations which will go towards mitigating their vulnerable positions” (Warbrick, 1994, p.210). Nevertheless, international organisations such as the UN, neglect the weaker states in the decision-making process. The powerful states hold an advantageous position (for instance the Security Council), such as the five permanent-members of the UN who are the veto holders (United States, China, Russia, Britain and France). Despite this statement in the UN Charter: “The Organisation is based on the principle of sovereign equality of all its Members“(Warbirck, 1995, p.211), the members of the Security Council maintains a superior positions in the organisation and countries that are weaker do not accept to impose human rights upon them.

For many years the UN maintained the principle of sovereignty, because the aim was not to intervene in case of conflict *within* states but *between* states. However, the new peace-building missions rely on solving internal affairs, which makes the issue of sovereignty problematic. In internal affairs, governments fear such interventions because they are the decisions-makers within their territory and they dislike intervention of any ‘external’ actors. For instance inases of corrupted and abused governments this is even more problematic (Bertram, 1995).

The principle of state sovereignty has changed for the past 50 years especially post to the decolonisation period. Kofi Annan (1999) stated in one of his articles that “states are now widely understood to be instruments at the service of their peoples and not vice verse” (Annan, 1999,

p.1). He further argues that the responsibility of the Charter is to protect individual human beings rather than those who abusing and going against them. The international community has either been too slow or too late or even unwilling to respond to humanitarian crisis, and Annan therefore questions “why states are willing to act in some areas of conflict, but not in other” (Annan, 1999, p.1).

McGoldgrick (1995) claims that “states have used sovereignty as a defensive shield” (p.106). In order to promote and maintain human rights states have to cooperate along with the UN. States are responsible for dealing with violations of human right, but since states are constantly disagreeing on certain political issues, the protection of international human rights is limited. For instance when CEDAW requested to carry out a study of women under Islamic law, they were criticised both by the General Assembly and the ECOSOC and were repelled to start with such a project (McGoldgrick, 1995).

Furthermore, as little as one percent of the UN budget is spent on the development of the human rights programme. Also organisations that work for the promotion of human rights do not have enough authority to influence and make changes due to their limited role in the UN (McGoldgrick, 1995). These factors hold back the UN in reaching a consensus on human rights and thus also hinder the recognition of rape as a war crime.

6.5 Intergovernmentalism vs. Transnationalism: An Overview

In contemporary society the UN incorporates multidimensional tasks, working as an organ that not only deals with issues between states but also within states. The UN also promotes a common good by the influence of NGOs and specialized agencies that deal with related matters.

At the present the UN as a body has two roles; being a transnational organ and an inter-governmental body. Yet, the UN faces the dilemma of distinguishing itself between its role as an inter-governmental organisation and the role as a transnational network (Cronin, 2002)

The UN- A Matter of Interest

The utmost goal of the UN is to put forward solutions and ideas that benefit the whole international community rather than a particular state(s). As the UN also has the role of being a transnational body that is promoting a common goal, its member states create clashes within the UN. A consequence of this is that state representatives become highly reluctant to support transnational goals on behalf of someone else (Cronin, 2002).

In many cases this has been evident in the history of the UN where, generally, powerful states have refused to intervene unless they gain something in return. In large, the decisions taken fall back on the permanent members and their interests, and sometimes this has a negative impact on the UN as a whole body. This in turn creates a lack of confidence in the UN by its member states.

Correspondingly, when it comes to human rights, again interest is an issue since states and NGOs promote different paths, ideas and beliefs that is of their particular interest, which do not necessarily coincide with one another (Puchala, Laatikainen, Coate, 2007). For instance, NGOs such as Amnesty International emphasises female liberal rights, which many non-western countries have different views upon. This again highlights the ongoing tensions between UN’s role as a transnational and inter-governmental body (Cronin, 2002).

The Security Council - A Dual Role

The Security Council has often been criticised for endorsing human rights, but fail even so to apply and accept these ideas as an obligation (Cronin, 2002). For instance during the Vietnam War, American soldiers were encouraged to rape Vietnamese women, in order to satisfy their needs, but on the other hand Americans punished German soldiers for having raped Jewish women (Sturken, 1997). This unfair approach of the Security Council and member states causes the emergence of a commitment gap between its member states and the UN as a whole organisation. The member states have a lack of political willpower to grant the UN, sufficient resources and contributions, especially in terms of troops, finance and personnel. This commitment gap halts the UNs' ability to fulfill its missions which it according to its transnational character is forced to be undertaken (Puchala et al., 2007).

A Commitment Gap

The prominent reason behind this commitment gap derives from the fact that the Security Council is the power holder and that they have, in many cases, a prevailing double standard of providing resources whenever it satisfies their own interest. A similar comparison would be the US refusal to ratify the International Criminal Court (ICC) because they are reluctant to accept any organ that goes above their national jurisdiction. For the UN the clash rises since the UN attempts to promote human rights, but is prevented due to the lack of contributions and support from its member states (Puchala et al., 2007).

Nevertheless, a commitment gap is a critical issue within the field of human rights. This became apparent when Kofi Annan put forward his proposal to make human rights a "third pillar" alongside peace and security and economic and social development within the UN. In light of this, the Human Rights Council was established as a successor to the Human Rights Commission and is supposedly independent from the Security Council in its decision-making process. Kofi Annan desired to set up this Human Rights Council, since the previous Human Rights Commission was suffering from a "credibility deficit". The member states exploited their membership to endorse human rights ideas springing from the commission but only with the motive of protecting themselves and to criticize other states. Yet, this commitment gap has had a spill-over effect even onto the new council as the majority of the states were willing to create a Human Rights Council, while the US and Israel with the cooperation of some other states were against it. The US stresses its willingness to cooperate in order to make the Human rights Council a strong body, but their true commitment is lacking as they refuse to ratify it (Terlingen, 2007).

This demonstrates the five permanent members' unwillingness to accept proposals that they must follow. Eventually, this leads to a clash between endorsement and enforcement, where the five permanent members promote an issue, but as soon as it comes to implementing those ideas, there is resistance from the members to ratify them as they go against their interest.

Sovereignty versus Common Good

It is, however, not only the permanent five that are hesitant in granting UN authority in these matters. Weaker states also resist granting the UN the authority to take actions when it comes to the transnational aspects because this threatens their sovereignty. There is a tension between North and South, because countries, especially third world nations feel that they are forced to apply, for instance 'western' human rights values, which goes against their norms (Cronin, 2000). Many Islamic countries claim that for some states, "cultural difference can be [a] security threat"

(Puchala et al.,2007,p.134), which is why they are sceptical in letting western countries impose the universal values.

Moreover, “agreeing on universal values in an organisation of 192 member states composed of thousands of ethnic, religious, and cultural groups is difficult” (Puchala et al.,2007,p.117). This again highlights the clash between the member states and the transnational agenda of UN, where certain member states argue that the UN promotes what is called cultural relativism, whereas NGOs and the UN argue they promote universal values. This was evident in the Vienna Conference in 1993, where some Asian countries and other non-western governments refused to accept what they saw as a US policy of enforcing the western values as universal values. At this point a west vs. non-west conflict was seen, where clashes between civilizations became apparent. Both counterparts were blaming each other for halting the universalism of values. Asia for instance claimed that universalism is “a product of western values” (Puchala et al., 2007, p.129), whereas the US blamed many of the non-western governments for abusing human rights by refusing to implement values that the US regarded universal. Here the UN became paralyzed between their attempt to pursue a common good, which was prevented by member states arguments of threats to their sovereignty and refusal in accepting cultural relativism (Puchala et al., 2007).

6.6 Analysis: What have been the Hurdles Faced by the UN in Addressing the Issue of Rape?

The UN Universal Declaration of Human Rights declares that women’s rights are equal to men’s rights. However, feminist scholars and CEDAW argue that women’s rights should be distinguished from men’s rights, since women dominantly are degraded and humiliated sexually in comparison to men. This implication can also be linked to the usage of rape, because rape falls under the same category. Due to the clash between women and men’s rights, the crime of rape is also neglected in many fields, especially when it comes to armed conflicts. This has been evident, for a long period of time, since there was haziness in fully identifying rape as a war crime under international law.

Moreover, the exploitation of rape during a belligerent conflict is considered to be a private affair, which is why the UN has had a great difficulty in categorising rape as a non-governmental issue. This impedes the process of reaching a consensus of rape as a war crime, since the question does not even reach up to the international arena.

Furthermore, the ‘masculine perspective’ is a frequent problem, that is not only faced by the UN, but also the domestic level, which is why the importance of rape is not fully understood from a women’s point of view, where the significance of the concept becomes fragile. This again affects the outcome of rape as a defined crime, and a consequence of this is that the process of defining and accepting it as a war crime becomes slow. All these issues also boost the subordination of women in society, which indirectly affect women’s rights.

The cultural diversity dilemma increases with the number of actors involved globally. The ultimate clash that occurs is between cultural relativists and cultural universalists. Within this dilemma, the issue of rape becomes very delicate, since there is a lack of consensus between both parties. The problem becomes even more complicated when sexual related crimes are applied to cultures that have their own norms, customs and to some extent interpretation of sexual related offences. As discussed previously, in some cultures, the stigma of rape shape a women’s life, family and community, which is why in many instances rape cases are not revealed to the interna-

tional community. A result of this becomes that the process of identifying cases of rape is a challenging task for the UN. This again reflects the hindrance of accepting rape as a war crime.

First of all 'Human Rights' is a somewhat new concept that steadily evolved and became identified by the member states. However, along with the issue of cultural diversity and the development of women's rights, the issue of state sovereignty has become a hindrance for human rights to be enforced internationally. Prior to the UN establishment, the concept of human rights was indeed widely discussed, like in The Hague and Geneva Conventions, but the acceleration of the idea of human rights was put into action after the establishment of the UN.

Additionally since powerful states have a superior ability in controlling the world due to their material capabilities, weaker states stresses unwillingness to impose the ideas of the powerful states on them. This becomes very problematic, because in this case the difficulty is not on reaching a consensus, but the problem rests in states' refusal to cooperate, which occurs due to the escalating clash among the member states.

Considering human rights, within the UN there is a democratic dilemma, due to the clash between strong and weak states, and the dominating nature of the Security Council. The UN is mainly a cultural relativist organisation; where states look for own self-interests and are rather sceptical in taking actions that produces utility for the majority of the member states. This gets even more complicated with states sovereignty principle, where some countries use it a shield under 'so called' justified grounds. The exploitation of the sovereignty principle halts the process of imposing human right on states. This in turn affects the human rights process, which is slowed down. This is especially prevalent in the issue of north-south countries and west and non-west states where the act of rape and the consequences it brings for a person varies depending on a countries cultural interpretation of rape.

Rape is a new and delicate issue within human rights, which is difficult to accept as a crime, but obstacle such as women's rights, cultural diversity and states sovereignty makes the concept of rape even more problematic to reach consensus upon. Keeping these circumstances in mind, combating the usage of rape is again put to halt due to the general dilemma that the UN faces, namely the dual role of the UN as an intern-governmental and a transnational body. Currently the UN works as a multidimensional organisation, which handles a great number of functions that makes it complicated to categorise the UN neither as a purely intergovernmental organisation nor as a transnational organisation.

In addition, there are a number of issues that creates further hurdles for the UN in taking actions on democratic grounds. For instance the role of the Security Council raises the question of reliability of democracy. Are states willing to cooperate under undemocratic conditions?

As discussed earlier, within the human rights process, the Security Council is reluctant to share its power with any other organ, which would weaken its position. Many NGOs and UN affiliated organs find themselves powerless when it comes to contribution in the human rights process. They claim that the decision-making must be shared by several more actors, than just the five permanent members (Puchala et al., 2007). The problem here is that that the Security Council has the ultimate power, where most of the decisions are taken under its command. The conflict here is clear; NGOs and other transnational bodies demand influence, which the Security Council is reluctant to provide them with (Puchala et al., 2007).

In addition the Security Council endorses and encourages transnational organs to contribute in terms of ideas and solutions. However, the five permanent members "are unwilling to accept

protections of human rights as an obligation” (Cronin, 2002, p.65). In other words they are willing to endorse human rights but they are unwilling to follow these ideas. Ultimately the question rises, what rights does the UN possess? The issue about sovereignty versus the common good is also put at task. Under what circumstances is the UN allowed to interfere in a country?

This dilemma is specially revealed between North and South as well as Western and Non-western countries. Member states that do not necessarily agree on certain values become hesitate in granting the UN the authority to intervene in human rights affairs, since it, according to them, arguably constitutes a threat to their sovereignty. Due to these conflicts of interests over universal values, the UN is hampered in its mission to protect human rights. Thus, the clash also prevent transnational bodies such as NGOs and international institutions to become efficient in putting pressure on governments to implement human rights, and to support countries to monitor and promote the establishment of these humanitarian laws (ICISS, 2001).

7. Concluding Remarks

7.1 Introduction

This section will cover the overall questions and provide with an analysis that have been the outcome of the thesis.

- **What has UN’s response been to sexual violence and rape as a war crime?**
- **What have been the hurdles faced by the UN in addressing the issue of rape?**

The UN did address rape as a war crime and their contribution has been remarkable in the field of human rights. Yet, the UN did not contribute enough despite mass rapes taking place before and continued to take place after their establishment in 1945. During the Second World War both in Asia and in Europe when women were cruelly raped the international community did not take sufficient measures to prevent mass rapes to be repeated in history. Why did it take so long for the UN to take actions?

7.2 A Confusing Legal System

There have already been indications of rape as a war crime in 1998 according to the ICC jurisprudence. Yet, until the formation of the International Criminal Court in 1998 there existed no precise definition of rape as a war crime. The biggest error in acknowledging rape as a war crime has been its confusing language and also due to rape falling under the concept of ‘Human Rights’, which in itself is a difficult concept for the UN to handle.

In early documents such as the CCL10 and The Hague Conventions, rape was merely categorised under crimes against humanity. In many cases, such as the Tokyo Charter there was no indication of rape as a crime, but there were cases where perpetrators were charged with rape crimes, while others were not. However, up until the ICC in 1998, the issue of rape was gradually evolving through two other categorise, namely crimes against humanity and genocide. These crimes were set as steppingstones before rape was recognised as a war crime. Keeping this in mind, during armed conflicts, unfortunately, it became difficult for jurists to refer to rape as a war crime. Although people were sentenced for having committed the crime of rape, yet, they were unable to refer to explicit language in documents, where rape ought to have been stated as a war crime.

Rape is a delicate and complicated issue, since it cannot easily be defined nor theorised. The issue of rape instead needs to be investigated under particular circumstances. Yet, since the usage of rape during genocide and during wars has increased dramatically, the widespread pattern of the usage of rape can be easily be detected under armed conflicts. This involves the juridical aspect of the crime of rape, which also becomes complicated and ultimately raises questions such as: What makes a person responsible of rape? Under what wordings is he or she held responsible according to under international law?

In many cultures rape is associated with masculinity, power and gender discrimination. In wars when women are raped, they are used as pawns in order to defeat the enemy. In cultures, especially in Asia and many Islamic states, where women are considered the protectors of the family honour, it is shameful for the woman as well as her family to reveal the raping. A result of this becomes that a large number of rape cases are hidden from the courts. This eventually leads to buried rape cases, that the international community fails to discover and thus become unsuccessful in taking actions against.

7.3 The UN- A Hampered Organisation

The UN was formed during a time where the world was going through a phase of World Wars, where cases of murder, torture and other forms of inhumane treatment received more attention than rape. No matter how cruelly women were raped, evidence has suggested that rape was not prioritized according to international law. Indeed, there have been cases where perpetrators were sentenced for rape crimes, but they were too few in relation to the thousands of rapes that took and still take place today.

As the thesis has demonstrated, the UN has faced difficulties in reaching consensus on human rights among the member states. A consequence of this becomes that rape, which is a product of human rights suffers and is delayed in its recognition to be accepted a war crime. In many cases UN related agencies such as CEDAW and other NGOs such as Amnesty International have put their effort in making rape an alarming concern, but due to the undemocratic system that exists within the UN, the matter is placed on hold. This has mainly to do with the clash between, first of all, the cultural diversity that occurs within the UN among the member states and secondly the clash between weak and strong and western and non-western states. The issue gets even problematic with the role of the Security Council, where the veto holders, sometimes, misuse their veto power.

Additionally, in a number of cases rape is considered to be a domestic issue, where the distinction between the public and private sphere ultimately conceals the crime of rape. Even if rape occurs during wars, it is not always considered as a war crime since many rape cases are obscured by the victims themselves due to shamefulness and the ignorance of accepting it as a crime. This ultimately leads to unrecognised rape cases that fail to reach the international level.

7.4 The Dual role of the UN

When the UN was formed, the recognition of the dual-role of the organisation, both as a transnational organ and an intergovernmental body, might not have been as apparent as it became during the years following its establishment. Gradually with the introduction of the concept of human rights and the introduction of the international laws that gradually evolved, the member states that were part of the UN became reluctant to the organisation. There are a number of rea-

sons behind this dilemma; among those is again the undemocratic system (the role of the Security Council), but also member states lack of credibility and legitimacy for the UN, disagreements among the member states and the cultural diversity that steadily is becoming challenging. Additionally, the role of the NGO's and UN affiliated organs also face the problem of differing opinions, which again makes it even more difficult to handle rape as an issue of human rights. As rape is a component of human rights, all these problems contributed in slowing down the process of accepting rape as a war crime.

Although the UN is willing to take actions to maintain peace and impose human rights, it still faces weaknesses related to the principle of sovereignty that each member state possesses. Nations are unwilling to let a third party become involved in their matter. This is one of the reasons behind the unresolved dilemma of the issue of human rights. This ultimately suggests an explanation to why rape did not receive enough attention before 1998. The countries involved in war were unwilling to accept aid from the international community. For this reason, when resolution 1820 was released, it was, once and for all, declared that rape is characterised as a war crime.

8. Future Research

Using the ground work of this thesis and to conduct a research in the future, one possibility would be to further investigate on how women are affected by rape in war. A field study would be suitable to present, as well as to perceive an insight of how women pursue their lives and the consequences they face subsequent to the cruel act.

Nevertheless one has to bear in mind that such study is not very simple to carry out. In order to achieve a good work, confidentiality is a requirement. Those who have been targeted of sexual violence go through traumatic disorder, and therefore do not necessarily willingly express their feelings. For this reason when conducting interviews it is essential that the researcher is successful in building up enough confidence among those women who are going to be interviewed, which would facilitate for them to easily communicate but also put their trust in the researcher.

Once the interviews have been completed, the next step would be to draw the conclusion. Some questions that may have been the research question could be: In what ways are women affected? What does the international community have to do to prevent this from repeating? And in what ways can victims be supported to lead 'normal' lives?

References

Journals, Articles and Books

- Allender, Dan. (2004) 'Raping Eve: Reflections on war rape, the political process, and grace' *The Other Journal at Mars Hill Graduate School, Issue 4 (2009)*
- Askin, Kelly. (1997) 'War Crimes Against Women: Prosecution in International War Crimes Tribunals', (Published by Kluwer Law International, Netherlands).
- Barnes, Andrea. (2005) 'The handbook of women, psychology and the law', (Published by Jossey-Bass, UN of America).
- Biehler, Anke. (2003) 'War Crimes Against Women', *Criminal Law Forum*, Kluwer Academic Publisher. Printed in Netherlands, 13, p.507-513
- Boot, Matcheld. (2002) 'Genocide, Crimes Against Humanity, War Crimes: Nullum Crimen Sine Lege and the Subject Matter Jurisdiction of the International Criminal Court', (Intersentia, Antwerpen, Oxford, New York).
- Boyle, Alan, (1994) 'The principle of co-operation: the environment' in '*The UN and Principles of International Law, Essays in Memory of Michael Akehurst*' edited by Colin Warbrick and Vaughan Lowe, (Routledge, London, New York) p. 120-136
- Brownmiller, Susan. (1992) '*Making Female bodies the Battlefield*', (Newsweek, January 4, 1993) p. 37 (Lincocln, London). p.73-81
- Bunch, Charlotte. (1995) 'Transforming Human rights from a Feminist Perspective' in '*Women's rights: international feminist perspectives human rights*' edited by Julie Peters and Andre Wolper, (routledge, New York, London) p. 11-17
- Burds, Jeffrey. 2009 'Sexual Violence in Europe in World War II, 1939-1945'. *POLITICS & SOCIETY, vol.37 No.1, March 2009*, p. 35-747
- Cahill, Ann. (2001) '*Rethinking Rape*', (Cornell University Press, Ithaca, London)
- Card, C. (1996). 'Rape as a weapon of war' *Hypatia, 11 (4)*, p.4-18
- Chang, Iris. (1997) '*The Rape of Nanking: the forgotten holocaust of World War II*', (Penguin Books, New York)
- Charlesworth, Hilary. (1995) 'Human rights as Men's Rights' in '*Women's rights: international feminist perspectives human rights*' edited by Julie Peters and Andre Wolper, (routledge, New York, London) p. 103-113
- Chinkin, Christine. (1994) 'Symposium The Yugoslavi Crisi: New International Law Issues. Rape and Sexual Abuse of Women in International Law' 5 *EJIL* (1994) p. 326-341
- Cleiren, C.P.M and Tijssen, M.E.M. (1994) 'Rape and Other Forms of Sexual Assault in the Armed Conflict in the Former Yugoslavia: Legal, Procedural, and Evidentiary Issues' *Criminal Law Forum Vol. 5 No.2-3 (2004)*, p. 471-506
- Copelon, Rhonda. (1994) 'Surfacing Gender: Reconceptualizing Crimes against Women in Time of War' in '*Mass Rape- The War against Women in Bosnia- Herzegovina*' edited by Alexander Stiglmayer, (University of Nebraska, Lincocln,London). p.197-218

- Cronin, Bruce. (2002) 'The Two Faces of the UN: the Tension Between Intergovernmentalism and Transnationalism' *Global Governance, Vol.8, No.1*, p.1-19
- Delaney,C. (1991). 'The seed and the soil: *Gender and cosmology in Turkish village society*'. Berkely: University of California Press.
- Elkin, Henry. (1946) 'Aggressive and Erotic Tendencies in Army Life', *American Journal of Sociology* 5, p.410
- Ellis, Mark. (2006-2007) 'Breaking The Silence as an International Crime' *Case W. RES.J.INT'L.L Vol.38:225 (2006-2007)*, p. 225-247
- Esaiasson. P., Giljam. M., Oscarsson. H. and Wangerud. L. (2003). 'Metodpraktikan: Konsten att Studera Samhalle, Individ och Marknad', *Stockholm: Nordstedt Juridik*. p.303-315
- Farewell, Nancy. (2004) ' War Rape: New Conceptualizations and Responses'. *AFFILIA, Vol. 19 No. 4 (Winter 2004)*, pp. 389-203
- Fitzgerald, Kate. (1997) 'Problems Of Prosecution and Adjudication of Rape and Other Sexual Assaults under International Law" 8 *EJIL (1997)*, p. 638-663
- Forsythe, David.P. (2002) 'The United States and International Criminal Justice' *Human rights Quarterly, Vol.24, No.4*, p.974-991
- Freeman, Marsha. (1995) 'The Human rights of Women in the Family: Issues and Recommendations for Implementation of the Women's Convention' in '*women's rights: international feminist perspectives human rights*' edited by Julie Peters and Andre Wolper, (routledge, New York, London) p. 149-166
- Friedman, Elisabeth. (1995) 'Women's Human rights: The Emergence of a Movement' in '*Women's rights: international feminist perspectives human rights*' edited by Julie Peters and Andre Wolper, (routledge, New York, London) p.18-35
- Gray, Christine. (1994) ' The principle of non-use of force' in '*The UN and Principles of International Law, Essays in Memory of Michael Akehurst*' edited by Colin Warbrick and Vaughan Lowe, (Routledge, London, New York) p. 33-48
- Honig, Jan W. (2001) 'Avoiding War, Inviting Defeat: The Srebrenica Crisis' *Journal of Contingencies and Crisis Management* 4. *Vol.9*. pp.189-200
- International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect (Ottawa: International Development Research Centre, 2001)*, p.21-397
- James, Alan. (1994) ' The principle of co-operation: UN peacekeeping' in '*The UN and Principles of International Law, Essays in Memory of Michael Akehurst*' edited by Colin Warbrick and Vaughan Lowe, (Routledge, London, New York) p. 160-174
- MacKinnon, Catherine. (1993) 'Turning Rape into Pornography:Postmodern Genocide" in '*Mass Rape- The War against Women in Bosnia- Herzegovina*', (University of Nebraska, Lincocoln, London). p.183-196
- MacKinnon, Catherine. (1993) ' Rape, Genocide, and Women's Human rights' in '*Mass Rape- The War against Women in Bosnia- Herzegovina*' edited by Alexander Stiglmayer, (University of Nebraska, Lincocoln,London). p.183-196

- Mark, James. (2005) 'Remembering Rape: Divided Social Memory and the Red Army in Hungary 1944-1945'. *Past and Present*, no.188 (Oxford August. 2005), p.133-161
- Mayer, Ann Elizabeth.(1995) 'Cultural Particularism as a Bar to Women's Rights: Reflections on the Middle Eastern Experience' in *Women's rights: international feminist perspectives human rights*' edited by Julie Peters and Andre Wolper, (routledge, New York, London) p. 176-188
- McGoldrick, Dominic. (1994) 'The Principle of non-intervention: human rights' in *The UN and Principles of International Law, Essays in Memory of Michael Akehurst*' edited by Colin Warbrick and Vaughan Lowe,(Routledge, London, New York) p. 85-119
- Meindersma, Christa. (1995) 'Violations of Common Article 3 of the Geneva Convention As Violations of the Laws or Customs of War Under Article 3 of the Statue of the International Criminal Tribunal For the Former Yugoslavia'. *Netherlands International Law Review*, p. 375-379
- Meron, Theodor. (1993) 'Rape as a Crime Under International Humanitarian Law'. *The American Journal of International Law*, Vol.87, No. 3 (Jul., 1993), p. 424-428
- Moller Okin, Susan. (2001) 'Feminism, Women's Human rights and Cultural Differences', *Hypatia*, vol. 13, no.2 (Spring 1998), p.32-52
- Mukamana, Donatilla and Brysiewicz, Petra (2008) 'The Lived Experience of Genocide Rape Survivors in Rwanda', *Journal of Nursing, December 2008, Volume 40 Issue 4*, p.379-384
- Nikolic-Ristanovic, V. (1999) 'Living without democracy and peace: Violence against women in the former Yugoslavia'. *Violence Against Women*, 5(1), p.63-80
- Olujic, M. (1998) 'Embodiment of terror: Gendered Violence in peacetime and wartime in Croatia and Bosnia-Herzegovina'. *Medical Anthropology Quarterly*, 12, p. 30-46
- Puchala, Laatikainen, Coate (2007) *UN Politics*. Chapter 6 & 7
- Rao, Arati. (1995) 'The Politics of Gender and Culture in International Human rights Discourse' in *Women's rights: international feminist perspectives human rights*' edited by Julie Peters and Andre Wolper, (routledge, New York, London) p. 167-175
- Reid-Cunningham, Allison. (2008) 'Rape as a Weapon of Genocide'. *Genocide Studies and Prevention* 3, 3 (December 2008), p. 279-296
- Shanks, Leslie and Schull, Michael J. (2000) "Rape in war: the humanitarian response": Gender-based and Sexual Violence against Women during Armed Conflict. *Journal of health management, October 1, 2002* 4(2),p. 167 – 183
- Seifert, Ruth. (1994) 'War and Rape A Preliminary Analysis' in *Mass Rape- The War against Women in Bosnia- Herzegovina*' edited by Alexander Stiglmayer, (University of Nebraska, Lincoln, London). p.54-72
- Sideris, Tine. (2003) "War, gender and culture: Mozambican women refugees" *Soc Sci Med.* 2003 Feb; 56 (4), p. 713-24
- Skjelsbaek, Inger. (2006) 'Victim and Survivor: Narrated Social Identities of Women Who Experienced Rape During the War in Bosnia-Herzegovina'. *Feminism and Psychology 2006 SAGE (London, Thousand Oaks and New Delhi) Vol. 16(4)*, p.373-403

Stamatopoulou, Elissavet. (1995) 'Women's Rights and the UN' in *Women's rights: international feminist perspectives human rights* edited by Julie Peters and Andre Wolper, (Routledge, New York, London) p.36-51

Stiglmeier, Alexander. (1994) 'The War in the Former Yugoslavia' in *Mass Rape- The War against Women in Bosnia-Herzegovina*, (University of Nebraska, Lincoln, London). P.1-34

Sturken, Marita. (1997) 'Tangled Memories: The Vietnam War, the Aids Epidemic, and the Politics of Remembering'. (University of California Press Ltd London, England).

Terlingen, Yvonne. (2007) 'The Human rights Council: A New Era in UN Human rights Work', *Ethics & International Affairs, Vol.21, No.2*, p.167-178

Warbrick, Colin. (1994) 'The principle of sovereign equality' in ' *The UN and Principles of International Law, Essays in Memory of Michael Akehurst*' edited by Colin Warbrick and Vaughan Lowe, (Routledge, London, New York) p. 204-229

Zalichic-Kaurin, Azra. (1994) 'The Muslim Woman' in *Mass Rape- The War against Women in Bosnia-Herzegovina* edited by Alexander Stiglmeier, (University of Nebraska, Lincoln, London). p.170-174

Internet Sources and Documents

Rape and abuse of women in the areas of armed conflict in the former Yugoslavia, G.A. res. 48/143, 48 U.N. GAOR Supp. (No. 49) at 263, U.N. Doc. A/48/49 (1993) retrieved from <http://www.wfrrt.net/humanrts/resolutions/48/143GA1993.html> on 2009.05.31

Rape May Be an Act of Genocide in International Law. USDA Evidence Analysis Library 2009. Retrieved 2009-05-27 from http://clg.portalxm.com/library/keytext.cfm?keytext_id=201 on 2009-05-05

Nowrojee, Binafer. (2005) "Your Justice is Too Slow": Will the ICTR Fail Rwanda's Rape Victims? Retrieved from [http://www.unrisd.org/80256B3C005BCCF9/\(httpPublications\)/56FE32D5C0F6DCE9C125710F0045D89F?OpenDocument&panel=relatedinformation](http://www.unrisd.org/80256B3C005BCCF9/(httpPublications)/56FE32D5C0F6DCE9C125710F0045D89F?OpenDocument&panel=relatedinformation) on 2009-06-03

BBC News. (2008) "Rwanda: How the Genocide Happened" Retrieved from <http://news.bbc.co.uk/2/hi/africa/1288230.stm> on 2009-05-31

ICTY Statute. (2000) Retrieved from http://www.icls.de/dokumente/icty_statut.pdf on 2009-04-20

"What is International Humanitarian Law?" ICRC (2004) Retrieved from http://www.ehl.icrc.org/images/resources/pdf/what_is_ihl.pdf on 2009-04-12

International Humanitarian Law and International Human rights Law Similarities and Differences (2003) retrieved from http://www.ehl.icrc.org/images/resources/pdf/ihl_and_ihrl.pdf on 2009-07-12

Australian Red Cross. (2008) Retrieved from http://www.redcross.org.au/ihl/what-is-IHL_QandA.htm on 2009-04-28

Charter of IMT. (2001) Retrieved from <http://www.ess.uwe.ac.uk/documents/chtrimt.htm> on 2009-06-01

IMFTE charter. (nd.) Retrieved from <http://www.icwc.de/fileadmin/media/IMTFEC.pdf> on 2009-06-02

Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. (2005) Retrieved from <http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5> on 2009-05-16

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. (2005) Retrieved from <http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079> on 2009-05-16

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. (2005) Retrieved from <http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/d67c3971bcff1c10c125641e0052b545> on 2005-05-16

JUDGEMENT OF TRIAL CHAMBER II IN THE KUNARAC, KOVAC AND VUKOVIC CASE. (2001) Retrieved from <http://www.un.org/icty/pressreal/p566-e.htm> on 2009-05-27

A Rule 96 of the Rules of Procedure and Evidence (2007) Retrieved from http://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032_Rev40_en.pdf

Peace Women organisation. (2009) Retrieved from <http://www.peacewomen.org/un/ictj/sexcrimes.html> on 2009-05-11

Trial Watch Organisation. (2009) Retrieved from http://www.trial-ch.org/en/trial-watch/profil/db/facts/anto_furundzija_180.html on 2009-06-12

Human rights Watch. (2008) Retrieved from <http://www.hrw.org/en/node/12376/section/3> on 2009-06-12

Rome Statute of International Criminal Court. (1999-2002) Retrieved from <http://untreaty.un.org/cod/icc/statute/romefra.htm> on 2009-06-11

ICTR Statute. () Retrieved from http://www.icls.de/dokumente/ict_r_statute.pdf on 2009-06-13

Security Council SC/9364. (2008) Retrieved from <http://www.un.org/News/Press/docs/2008/sc9364.doc.htm> on 2009-11-15

