

TREATMENT OF SEXUAL VIOLENCE IN INTERNATIONAL LAW

Leiber Codes (1863)

- General Order 100 signed by President Abraham Lincoln to regulate the conduct of the Union army during the U.S. Civil War specifically included “rape” and made it punishable by the death penalty. (article 44)
- The code was later adopted as international law at the 1907 International Peace Conference in Copenhagen and became the basis for Hague Convention IV respecting the laws and customs of war on land, though the rape provision underwent dramatic changes.

Hague Convention(1907)

- In the regulations attached to the Hague Convention, Article 46 states: “Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice must be respected.”
- While there is no specific mention of rape, this provision was long relied on as the prohibition.

Nurember & Tokyo Tribunals(1945/6)

- The London Charter creating the International Military Tribunal for Nuremberg made no mention of the offense of rape.
- Control Council Law No. 10, the basis for prosecution of lower-level Nazis listed rape as a crime against humanity.
- The Tokyo War Crimes Tribunal charged rape as an offense and relied on the regulation attached to the Hague Provisions relating to “family honour.”

Geneva Conventions (1949) and Additional Protocols (1977)

- Common Article 3: This article, common to all four Geneva Conventions, applies to non-international armed conflicts and prohibited “outrages upon personal dignity, in particular humiliating and degrading treatment” against protected persons (i.e. those not taking active part in the hostilities)
- Article 27 of the Fourth Geneva Convention, relating to the protection of civilian persons in time of war, states: “Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.”
- Article 75 Additional Protocol I, relating to the protection of victims of international armed conflicts, prohibits: “outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault.” Art. 76 calls for special protection of women in armed conflict.

- Article 4 of Protocol II, relating to internal armed conflict, prohibits: “outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault.”

Int'l Criminal Tribunals for the Former Yugoslavia & Rwanda (1993 & 1995)

- The Statutes of the ICTY and ICTR list rape as among the crimes against humanity within the tribunals' jurisdictions but not specifically among the grave breaches or other serious violations of the laws and customs of war.
- Through the jurisprudence of both of these tribunals, rape and other forms of sexual and gender violence have been recognized as among the most serious of offenses and have been charged and prosecuted as such. The cases have recognized that rape and other sexual violence can constitute genocide, torture and other inhumane acts.

Statute of the International Criminal Court(1998)

- Specifically prohibits “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence” Article 7(1)g – crimes against humanity; Article 8(2)(b)(xxii) – war crimes in international armed conflict; Article 8(2)(e)(vi) – war crimes in non-international armed conflict.
- Article 7(1)(h) prohibits “persecution against identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.”
- Article 7(1)(c) – Enslavement, meaning the exercise of any or all powers attaching to the right of ownership over a person, including the exercise of such power in the course of trafficking in persons, in particular women and children.