

Women a(t) Battlefield

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Abstract

Sexual violence against women on the war setting has reached shocking dimensions being recorded as an intentional tool strategically used to achieve military objectives. A means to an end! This paper explores arguments on the evolving of the sexual violence into a weapon of war responsible for some of the most severe crimes. A picture of the legal provisions and the international legal instruments ruling over it is considered; shedding light on the history of an old crime with just some recent records on legal accountability. Historical facts and two cases of war rapes; respectively that of Bosnia and Herzegovina and Kosovo are analysed drawing remarks on how and why rape was an effective tool of war to achieve ethnic cleansing and territorial gain. Using a comparative approach between the cases it is argued that, despite the progress done on the recognition of sexual violence as a crime of war and crime against humanity, such aggression remains largely unpunished and not prosecuted.

Key Words: Sexual violence; armed conflict; weapon of war; justice; Bosnia; Kosovo; ICTY;

Rape in warfare is not bound by definitions of which wars are "just" or "unjust." Rape was a weapon of terror as the German Hun marched through Belgium in World War I. Rape was a weapon of revenge as the Russian Army marched to Berlin in World War II. Rape flourishes in warfare irrespective of

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nationality or geographic location... Rape in war is a familiar act with a familiar excuse.

Susan Brownmiller (1975, 32)

1. Introduction - Sexual Violence as a tool of war

Women are directly targeted and one of the most affected groups on the armed conflicts nowadays. The cost women are paying for wars, is being just too much. *While more men are killed in war, women often experience violence, forced pregnancy, abduction and sexual abuse and slavery* (UNIFEM 2002, 1). The recent report issued by United Nations Secretary General (UNSG), regarding sexual violence in conflicted countries gives an overview of the disturbing dimensions the problem has reached. Analysing countries currently tangled in an armed conflict and others in post conflict situation such as: Afghanistan, Central African Republic, Colombia, Democratic Republic of Congo, Iraq, Libya, Myanmar, Mali, South Sudan, Somalia, Syria, Sudan, Yemen, Bosnia and Herzegovina, Ivory Coast, Nepal, Sri Lanka, Burundi and Nigeria the report makes it evident that sexual violence against women is not an incident (UNSG, 2017; s/2017/249). Countries chosen indicate the most alarming situations and do not exclude the fact that same crime is not recorded elsewhere an armed conflict arises.

It is almost frightening how the conflict/ war situations have changed in terms of arms and tools used to combat the enemy. The battlefields of today are not the same as the ones we are used to think - two armies/ military forces against each other using military strategies to advance, conquer and rule. We are living the times when beside military techniques and the soldiers, wars are intentionally fought on bodies of women and won through their humiliation and dishonour. As the United Nations (UN) report reveals; *sexual violence is not incidental, but integrally linked with the strategic objectives, ideology and funding of extremist groups.* (UNSG, 2015; S/2015/203). A strategy that as the most recent conflicts indicate, is used to achieve ethnic cleansing, sowing terror on the community, control reproductivity, and not only.

Yet, such phenomena is not a remark of our times. Going back in time, Susan Brownmiller, considered also as the first author attempting to give an historical overview of rape in warfare records on her book "*Against our will; Man, Women and Rape*" that rape has historically accompanied the warfare:

“Rape in warfare is not bound by definitions of which wars are “just” or “unjust.” Rape was a weapon of terror as the German Hun marched through Belgium in World War I. Rape was a weapon of revenge as the Russian Army marched to Berlin in World War II. Rape flourishes in warfare irrespective of nationality or geographic location... Rape in war is a familiar act with a familiar excuse” (Brownmiller, 1975, 32).

The past century offers too many examples of it from the battle for Bangladeshi independence in 1971, Japanese rapes in 1937 occupation of Nanking to Rwanda conflict rapes in 1993, the organised rape of women in Bosnia 1992-1995, public rapes in Kosovo on 1998-1999 and the list goes on with the most recent conflicts in Liberia, Congo, Sierra Leone and Syria.

There are no clear data on the exact numbers of women worldwide who suffered sexual violence during war. Neither can we pretend to have accurate data per single country. The data found/ registered are more an estimation of approximate numbers based on testimonies disclosed and those that have been able to be collected. As expected, due to the difficult context on which such violence happens; it is impossible to record each case. On the other hand, many of the women victims of violence would not report their experience bearing the shame and most of the times feeling guilty of what experienced. Such difficulty finds confirmation on the fifth periodic report on the situation of human rights in the (Bosnia and Herzegovina) territory of the former Yugoslavia - in 1993 when stating that *it is not yet possible to estimate the full scale of sexual abuse which may have taken place, because access to conflict zones is limited and the refugee population has dispersed* (Commission on Human Rights, 1993, E/CN.4/1994/47, 5). Nevertheless, international organization as Human Rights Watch, Amnesty International and sometimes also grassroots organizations on the country have been able to record some data afterwards and make an assessment based on the occurrence of the incidents. Yet, the statistics remain an estimation rather than real number of victims. In the below table there is an estimation on incidents of rape in 5 armed conflicts happened during the 90s, as per the Geneva Declaration Secretariat Publication.

Table 1: Estimated incidents of rapes of conflicts in the 90s

Armed Conflict	Estimated Number of Rapes
Sierra Leone (1991–2001)	More than 215,000
Rwanda (1994)	250,000–500,000
Bosnia and Herzegovina (1992–1995)	14,000–50,000
Liberia (1989–2003)	Approximately 500,000
Kosovo (1998–1999)	23,200–45,600

Source: “Global Burden of Armed Conflict” Geneva Declaration Secretariat, pg. 39

The numbers speak of hundred thousands of women being sexually abused. Such estimation per country logically leads to taking into consideration the possibility that such abuse may be a well thought and planned aggression rather than simple masculine violence against women in a particular environment marked by expression of aggression as a conflict indeed is.

To better understand the reasons of flagrant use of sexual violence forms and rape in warfare this paper takes into account the conflicts of Former Yugoslavia listing some of the main reasons for mass rapes and sexual violence on that specific context.

1.1. What makes rape a tool of war?!

Brownmiller (1975) underlines that rape in wartime is closely connected to the special psychological conditions of combatants and their expression on exercising power and violence toward women. However, this seems to be not a satisfying reason which may explain the dimension and the brutality of the sexual violence applied in different conflicts. Starting with World War I (WWI) rape had political motivation as it was politically used as a strategy to win territories; *never before in history had rape in war the privilege of territorial conquest* (Brownmiller, 1975, 44). World War II likewise registered mass rapes done by Red Russian army and Allies army being ordered by Generals themselves; *I then told him that, in spite of my most diligent efforts, there would unquestionably be some raping, and that I should like to have the details as early as possible so that the offenders could be properly hanged.* – General Georges Patton, Jr (Brownmiller, 1975, 31). Those “some

rapes' ordered were intended to mark the much wanted victory and the total humiliation of the enemy. Not a case was sent to Nuremberg tribunal to ask justice for such crime afterwards.

Coming closer in time, facts have shown that such a pattern is true. Sexual violence in war settings more than an unplanned act or a phenomena coming out of the conflict as negative spillover is part of the agenda and the strategy of the parties fighting. A strategy of intimidation to gain complete control of the enemy and advance the territorial occupation. Furthermore, being an act of instilling fear and collective shame, rape prevails especially in those cultures with strong traditional moral code where the honour of the woman is closely related to the honour of the household and the man of the family (e.g. traditional, tribal or Muslim cultures). This way, the man will not only be dishonoured but psychologically put into condition to accept its failure on protecting his woman, his honour and for consequence surrender. While the reasons of sexual violence may differ from war situation to another due to the context, in all backgrounds the act is exercised to instil collective fear- making use of women bodies as best way to attack, humiliate not only women but mostly the men they are related to. Rape is, this way, simply a means to an end! A very effective tool of war!

Ethnic cleansing is one of the reasons/ ends sexual violence was used especially on Balkan's recent conflicts. Testimonies gathered from women victims of rape in Bosnia and Herzegovina and Kosovo conflicts affirm that solders intentionally wanted to get them pregnant or force them to give birth to children of Serbian blood. Some of the women who got pregnant were forced to carry the babies to term and deliver. (Crider, 2012, 20-21) So, the child born will be of Serbian blood and ethnically clean. This was a purposeful action to control the productivity as part of ethnic cleansing but also a psycho- social torture forcing them to bear the child against their will. *Humiliation/dishonour* stands as another end. Many women in Bosnia and Kosovo were raped in front of their husbands, children, in laws or neighbours, who from their side were forced to watch at gunpoint. In this case, the woman is just a tool, a battlefield to psychologically attack the man (father, husband, brother, sons) related to her and the whole community watching. Rape was proved to be so effective in humiliating people that things went even further in Balkans where many males also were forced to participate in sexual acts with other males, including their own father or son (Prosecutor v. Milosevic, Case No. IT-02-54-T). This was a way to force collective shame- the man will be publicly dishonoured.

Consequently, in a culture where the honour of the man and family is determined by the honour and chastity of the women, the man is forced to see losing his manhood and accept the failure and the shame publically. It works better than killing. *Instilling fear/terror*: Rape and all forms of sexual violation are acts of the violator showing its power and supremacy toward the victim- telling that by its power he possess the victim leaving no choice. Public rape was used to sow fear, terror and collective shame so the other ethnic community will leave the country. Different women were raped, in front of family members in their homes and sometimes continually, over and over again. Others were raped in public places so everyone may see, fear and flee (Crider, 2012, 20-21). Dishonour and instilling of fear are somehow connected to each other; they go together as psychological state of mind that destroys the bound in the family and the entire community. Fear and humiliation on the violated woman; dishonour and public humiliation of the men related to her resulting on collective shame and community fear. These are enough reasons which have obliged thousands of people to run away from their homes and cities. It is so that ethnic cleansing is achieved- no need of guns! *To gain information*: In some cases women have reported that are raped or threaten to be raped just to reveal information, whereabouts of men and combatants hiding.

Rape's consequences are to be seen in two levels; personal/individual for the victim and collective for the whole community/society the victim belongs. In the personal level the trauma is bigger and the sense of basic trust and security for life, which is not found any longer in the proper community and family, gives an unending suffering to the victim who, as per such social mindset, is now unworthy person even to her own family. The physical and psychological trauma of the rape is followed and deepened by the rejection and stigmatization of the society giving no hope for a recovery and a healing future. No wonder why some of victims have either left their countries or committed suicide feeling suffocated by the stigma and the pressure of the community.

At the collective level, the psychological and sociological rooted phenomena (honour, chastity, manhood) that are considered the basis for keeping the society together and strong family bounds are with rape weakened and undone. As happened in both Bosnia and Kosovo, different women who have been raped have been rejected by their families as in front of their community were considered dishonoured, humiliated, have lost their dignity, reproductive health and were stigmatized as good to nothing. With such consequences the society reaches the status of

dissolving itself. And in such condition is controlled, conquered or forced to flee very easily!

2. Legal background- recognition of sexual violence as crime

In the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979, there is no provision that explicitly address the sexual violence against women or rape. Such a failure may be explained by the institutional understanding at that time but also the late entry of the issue of sexual violence into international agenda (Chinkin, 2010). However, the main instrument protecting women on the international arena lacked commitment on addressing violence against women. Scrutinizing the Humanitarian Law which precedes CEDAW, the four Geneva Conventions in the important common article 3 say that *"Women shall be treated with all the regard due to their sex"* (Geneva Convention, 1949 Art. 3), which was in an indirect manner expression of a prohibition against sexual violence, including rape. Nonetheless, no explicit mention of it! The fourth Geneva Convention is the only one to mention rape on the article 27 saying that *"Women shall be especially protected against any attack of their honour, in particular against rape, enforced prostitution, or any form of indecent assault"* (Geneva Convention IV, 1949, Art 27). This is the oldest legal provision found that sets a duty on protecting women from sexual violence on war situation or armed conflicts. In spite of this, Humanitarian Law provides no definition of rape, sexual violence or recognition of it as crime of war. Humanity had to witness the occurrence of some of the worst forms of violence against women during the 90s to get there.

Mass rapes in Rwanda's genocide and rape camps of former Yugoslavia conflicts were a deep shattering of pain to be ignored. In front of such aggression, the international community could not ignore any longer the legal protection of women from different forms of sexual violence including rape.

In the decade of 2000s of UNSC, aware and well informed of the alarming situation, adopted a series of Resolutions¹ calling on the conflict parties to pay attention on protecting women, girls, civilians from rape and other forms of sexual violence. Resolution 1820 on sexual violence which

¹ See Resolution Nr. 1325 (2000), 1612 (2005) and 1674 (2006), 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010)

was adopted unanimously is finally explicit on the issue stating that such act it can constitute *a war crime, a crime against humanity, or a constitutive act with respect to genocide*. In addition, the same resolution points out that perpetrators of such crimes of sexual violence should be excluded from amnesty provisions (SCR 1820, 2004, point 4).

This legal achievement can be partly attributed to the jurisprudence work especially International Criminal Tribunal for former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) set up with Security Council Resolution 1966 in 2010. Both tribunals have paved the way for more refined understandings of sexual violence abuses in conflict. Their statute provisions on recognition of sexual violence as crime against humanity and breach to peace have been fundamental not only to their work for the countries they are investigating but also to the legal international recognition of it by International Criminal Court (ICC) and issuance of the UN resolutions. Meanwhile, their constitution as special Criminal Court respectively for former Yugoslavia and Rwanda conflicts brought more understanding on the legal terms of prosecuting sexual violence and also creating the environment for punishment. Both international community and single states can benefit from the legal clarity on their statute, definition² and testimonies on trials processed to punish such crime.

The Statute of the ICTY, lists rape as a *crime against humanity* on its article 5 (g). The Statute of the ICTR likewise lists rape as a *crime against humanity* on its article 3 (g), while its article 4 defines rape, enforced prostitution and indecent assault of any kind as a *serious violation* of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims. ICTR goes even further considering sexual violence as an *act of genocide* on the famous case of Akayesu (ICTR-96-4, Akayesu case).

Later on, the Rome Statute of the International Criminal Court describes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other form of sexual violence of comparable gravity *as a crime against humanity* on its article 7 (1)(g).

² The trial chamber of the ICTY in Prosecutor v. Anto Furundzija defined the objective elements of rape as: (i) the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; (ii) by coercion or force or threat of force against the victim or a third person. Furundzija Judgment, Case no. IT-95-17/1-I, p. 73, para. 185.

Other articles of ICC as the article 8(2) (b) (xxii) label rape, enforced prostitution, forced pregnancy, sexual slavery... and other form of sexual violence as serious violations of the laws applicable in international armed conflict *as a crime of war*.

The same article 8 on its point (e) (vi) lists rape, sexual slavery, enforced prostitution, forced pregnancy... enforced sterilization and other form of sexual violence as a *serious violation of article 3* in relation to the armed conflict not of an international character which is common to the four Geneva Conventions. (ICC Statute, Article 8)

With the creation of ICTY and ICTR, for the first time in the history sexual violence was prosecuted as crime against humanity, war crime and an act of genocide. This is, without doubt, an important, big step ahead on legal sphere insuring that sexual violence in war situation both in international and non-international armed conflict context is condemned as *grave breach to peace, war crime and crime against humanity*.

Moreover, counting sexual violence as a weapon of war carries a rethinking of post-conflict reconciliation and methods to form a more evolved understandings of security. To this new mindset and progress is also attributed the adoption of resolution on women and peace and security on 31 October 2000 (UNSCR, 2000, S/RES/1325). The resolution recognizes the important role of women in the prevention and resolution of conflicts, peacebuilding, peacekeeping, peace negotiations, and emphasises the importance of their participation and engagement in all actions for the maintenance and promotion of peace and security.

The world has now enough legal provisions and understanding which may safeguard against the violence of women in war settings and as the cornerstone for this stands the trauma and deep suffering of hundred thousands of women in Bosnia, Kosovo and Rwanda.

3. Sexual Violence in Bosnia and Herzegovina Conflict

Bosnia and Herzegovina is one of the countries where sexual violence, mass rapes, rape camps and the humiliation of women was clearly used as a weapon of war. Statistics speak of 14 000 up to 50 000 women suffering severe forms of sexual violence during the 1992- 1995 armed conflict. (GDS, 2007, 39) To understand better the situation of such violation is brought here a bit of the context.

Bosnia's war started as a result of the dissolution of Yugoslavia in a time when Croatia and Slovenia were already separated and independent

countries. Being a multi-ethnic³ country inhabited from Bosnian Serbs (Orthodox), Bosnians called Bosniaks (Muslims) and Croats (Catholics) the conflict involved all three main ethnicities against each- other. A war, first fought for independence from Yugoslavia (Serbia & Montenegro in that time) but later on, the idea of ethnic division of the territory prevailed. The agreement of Bosniaks and Croats to come together⁴ reduced enemies in two camps by the end of it; Federation against Bosnian Serbs who were supported by the Serbian army. In this complex situation different crimes and abuses to civilian population flourished being recorded as some of the most inhuman treatment and crimes ever committed. Sexual violence and rape found its place on the agenda of politics and tactics of army's generals to achieve the control of the areas and destroy the society from within by destroying families and psycho-social equilibrium of the enemy.

³ According to the 1991 census, 44% of the population considered themselves Muslim (Bosniak), 32.5% Serb and 17% Croat, with 6% describing themselves as Yugoslav.

⁴ On 18 March 1994 a peace agreement, mediated by the USA between the warring Croats (represented by the Republic of Croatia) and the Republic of Bosnia and Herzegovina was signed in Washington and Vienna. This reduced the warring parties to the Federation of Bosnia and Herzegovina in the Army of the Federation of Bosnia and Herzegovina composed of the Army of the Republic of Bosnia and Herzegovina (ARBiH) and the Croatian Defense Council (HVO), against the Republika Srpska in the Army of Republika Srpska (VRS) In the map you may see the division of the territory controlled by Bosniaks army the light blue area, Croatian army the yellow area and Bosnians Serbs army controlled area in pink.

Figure 1: BiH partition as per areas of military control, November 1995



Source: US Library of Congress, created by Central Intelligence Agency, 1995

Abused women have witnessed that rapes were ordered and planned: “We have orders to rape the girls.” Other women testified that they were taken to a house and even though were not raped were ordered to communicate to other people that they had been raped. Furthermore, when a woman asked her rapist why he, a Bosnian Serb, had suddenly turned on the Bosniaks and begun raping the women. He had replied that they had to “because you are Muslims and there are too many of you. Other rapists had stated that they had to rape in order to avoid being killed themselves”. (Crider 2012, 19)

The special reporter of the Commission on Human Rights investigating the Bosnia situation in 1993 confirmed the same pattern of rape as a tool and strategy used by military forces.

There were continuing reports from many places that women had been raped by Bosnian Serb civil and military police, as well as soldiers, but the difficulty of gaining access to Serb-held territories prevented the collection of comprehensive information. (Commission on Human Rights, 1993, E/CN.4/1994/47, 5)

According to the study done by Samford University rape in Bosnia can be grouped into five different categories. To the first category belong rapes which occurred in villages before fighting breaks out to terrorize civilians. So, when people from a village heard of rapes in another village would flee. In the second category are included rapes which were carried out at the time of the invasion of the Bosnian Serb forces. Women were raped in houses, on streets, gang rapes, in public and in private. To the third category belong the rapes carried out into detention centres, where women were held by force and raped repeatedly. The fourth category is similar to the third; attacks and abuses occurred in what came to be known as "rape camps." The women at these camps were continuously raped with the goal of getting the pregnant with "Chetnik⁵ babies." The study underlines that the women's group Tresnjevka speaks of around 35,000 women held in Serbian run rape camps. The fifth category includes abuses of the kind where women were made to please troops in "makeshift brothels". Afterwards most women instead of being released were killed. Many of the women in this category were from detention centres. Additionally, pregnant women were intentionally held in detention to exclude the possibility they may carry an abortion (Crider, 2012, 20-21).

Camps of concentration that appeared now again in Europe after their first time of World War II in Bosnia were turned into camps of sexual violence created for rape of women (Flores, 2010), sowing terror and public humiliation. Committee on the Elimination of Discrimination against Women on its special report for Bosnia and Herzegovina in 1994 had recorded 200 camps being scene of large-scale rapes, forced prostitution and other abuses. Foca's women's prisons, the Partizan sports Hall, the high school and the Hotel Zelengora, have come to be known at the war crimes tribunal as the "rape camps" or "rape factories". Women witnessed that have been raped day and night by Serb soldiers who would enter the detention centres and select their victims from among the female prisoners.

⁵ Serbian nationalist paramilitary group fighting to retain Serbian influence

They were taken into private apartments or classrooms where were subsequently sexually assaulted, forced to dance nude and compelled to perform degrading domestic chores. Some of them were also kept as personal sex slaves by former neighbours, much older men whose wives and families they knew (CEDAW Committee 1994/C/SR).

All the witnesses collected and trials processed by ICTY so far have confirmed that sexual violence was such an intentional well thought political plan and strategy of the war to the extension that it did not excluded minor girls of 12- 13 years and men (ICTY, 1997 Prosecutor v. Tadic)

Ethnicity and the religion diversity creating three main subcultures, communities (Croatsians, Bosniaks, Serbs), living together in Bosnia give another dimension to the rape tragedy as a crime and act of violence. How rape is viewed in a certain society is indivisibly related to the respective cultural and ethnic characteristics of both the victim and the perpetrator. *Rape committed by someone of the same cultural or ethnic group may not be regarded in the same manner as if committed by someone from a different group (Wing, Merchan, 1993).* Consequently, Muslim woman raped from an orthodox Serb, culturally is the worse humiliation and punishment ever, not comparable to as if the same woman would have been raped by an Muslim man. Being raped by a Serbian, an orthodox she becomes unclean, unacceptable and not worthy of bearing ethnically clean children anymore, so excluded from the society and often denied by her family. This would have not been the case if the rape would have been committed by a fellow Muslim. To a certain degree, this last one, would make woman not as unworthy or unclean as the first case. If raped by a Muslim she is somehow still acceptable!

In addition, under Islamic law and Muslim culture, the ethnicity of Muslim children is determined by the ethnicity of the father. Thus, the children of non-Muslim Serbian rapists are not considered to be Muslims. Clearly, both Serbs and Bosniaks were aware that the resulting child will never be considered an ethnic Bosniak.

Nonetheless, rape has been part of warfare since men began doing battle, what made it notable in the Bosnian conflict was its execution in an organised, prevalent manner with official encouragement and order. In Bosnia rape was used as a tool/weapon of "ethnic cleansing" operations as the prosecutor of ICTY affirms.

4. Sexual Violence in Kosovo Conflict

After Bosnia and Herzegovina the sexual violence and rape were similarly applied in Kosovo to Kosovo Albanian women. The conflict of Kosovo was less complex than that in Bosnia and more clearly defined in terms of ethnics and army involved. Kosovo had the status of Autonomous Region within the Yugoslavia Federation inhabited by the majority Albanian (83%) ethnics and Serbian (10%) and other ethnics (7%). (Brunborg 2002) Since the early 80s Kosovo has been the first area within the Yugoslavia having turbulences, ethnical violation of rights and witnessing the high nationalism which brought to war and the breakup of the Federation. In 1989, the Serbian-controlled government in Belgrade suspended the autonomy of Kosovo which was given by the 1974 constitution and initiated a suppression on human rights towards Albanian population of the region. Local Albanian police officers were replaced with special police units from the Serbian Ministry of the Interior. Kosovo intense armed conflict lasted less (1998- 1999) than that of Bosnia due to intervention of NATO armed forces who took control of the territory.

As underlined by Human Rights Watch (HRW) report, rape and other forms of sexual violence in Kosovo took place under the shadow of what have been happened in Bosnia and Herzegovina. Women in Kosovo knew that rape had been used as a tool of ethnic cleansing in Bosnia and Herzegovina. Serbian paramilitary groups such as Arkan's Tigers and Vojislav Seselj's White Eagles once active in the Bosnian war, allegedly joined in the ethnic cleansing operation in Kosovo. Kosovan women and men have heard about their bad reputation for using sexual violence and rape as a weapon of war in Bosnia. *I wasn't afraid of the killing. I was afraid of the raping* (HRW, 2000).

Same Pattern: in Kosovo as in Bosnia and Herzegovina rape and other forms of sexual violence were part of military strategy and weapon for ethnic cleansing ordered by military generals. As the UNIFEM report describes "the best looking women were chosen by the officers and the rest were given to the soldiers to rape. On the first day, the soldiers were under command to take part in the rapes. On the second and subsequent days, things were more "relaxed" and soldiers had a choice about whether to participate or not. A young twenty-year old soldier who refused to rape was nearly killed" (UNIFEM, 2000).

In general, rapes in Kosovo are being grouped into three categories; rapes in women's homes, rapes during flight, and rapes in detention.

According to the Human Rights Watch report in the first category are included rapes where, security forces entered private homes and raped women in front of family members, in the yard, or in an adjoining room. In the second category are included rapes during the flight. Internally displaced people wandering on foot or riding on tractors were stopped and threatened by the Yugoslav Army, Serbian police, or paramilitaries. If families could not give cash, security forces threatened to rape and take away their daughters; in some cases, even when families did provide money, their daughters were taken away. The third category of rapes took place in temporary detention centres, such as abandoned homes or barns (HRW, 2001, 10).

Figure 2: Reported incidents of rape in Kosovo February - June 1999

Source: Human Rights Watch Report, 2000

Nonetheless the intense armed conflict in Kosovo lasted half of time (98-99) of that in Bosnia (92-95) estimated statistics provided from different local and international agencies record 23,200–45,600 (DCAF, 2007, 39) victims of sexual violence, close to that of Bosnia and Herzegovina. It's in play the same logic and strategy to sow terror and achieve ethnic cleansing knowing well that that could work better and faster. Subsequently, if time is not in our favour the rapes should be done quickly! Expressed on the words of a Kosovo Albanian woman; *Women were very vulnerable and the*

*Serbs knew that if they touched the women the men would react. This has been going on for ten years (HRW, 2000)*⁶.

There were needed 15 years after the war for women raped and sexually abused to be legally recognized as victims of war by the Kosovo government. This came after the new constitution in place amended the request of many efforts of reporting and denouncing by Amnesty International, Human Rights Watch and Kosovo's Women Associations. In spite of this, crime of rape and sexual violence during the war is the less prosecuted, with only 2 cases sent to EULEX and none sent to ICTY. International justice institutions seem to have closed an eye to Kosovo women suffering by treating sexual violence less of a crime compared to other war crimes in this particular conflict. In addition, due to social stigma war rape remains still under denounced in Kosovo and women raped suffer social isolation and discrimination.

5. Remarks from Bosnia and Herzegovina and Kosovo

Both cases confirm that sexual violence was used as a weapon of war for achieving ethnic cleansing, eradicating communities from their area to others (Bosnia) or outside of the region/country (Kosovo) to take control of the territory. The same military groups acting in Bosnia have moved to Kosovo meaning not only Serbian military and paramilitary groups but also the Republika Srpska's military and Russian military wearing Yugoslavs military uniform (UNIFEM, 2000). Therefore, the same tactics, strategy and ways were used in both countries with the difference that while in Bosnia due to the long lasting conflict the violence on the rape camps was longer and women were kept and abused there for an extended length of time, in Kosovo the longest time of keeping and abusing women in detention venues is recorded to be up to 3 months (UNIFEM, 2000). The intervention of NATO in Kosovo avoided the creation of rape camps in the form and number they reached in Bosnia but intensified rape incidents wherever and whenever it could be applied and the brutality of it, so that all may be finished in a short time. This is also confirmed by the estimated statistics where in 1 year and half in Kosovo are reported nearly same number of abuses as that of 4 year conflict in Bosnia.

⁶ With 10 years the woman refers from 1989 when Serbia withdraws the status of autonomy and established a military state in Kosovo by abusing Kosovo Albanians in different forms. HRW interview, Sevdie Ahmeti, Pristina, July 12, 1999

Rape is predominantly severe in patriarchal and traditional, societies, like those of the Bosniaks and Kosovo Albanians, because the raped woman is often no longer considered for marriage being seen as unworthy, unclean, further making rape victims "a target of societal ostracism" (UNIFEM, 2000). Number of raped women abandoned by their husbands or families support such argument, being this way a reason why sexual violence was strategically thought to be an effective weapon to devastate the society and make the whole community fall apart.

"The removal of purity, chastity, and virginity from the unmarried rape victims literally makes them unmarriageable, and brings shame and disgrace to the entire family group. The violation perpetrated upon married women makes it impossible for many of them to stay in their marriages" (Wing, Merchan, 1993).

Such stigmatization and denial of the sexual victims appears to have been stronger in Kosovo. The observations of the author in the country have shown that people refuse or avoid to talk about such crime. Often community members would point a finger on the raped women to show that she is marked by dishonour. Such situation has mobilized Women organizations in different advocacy activities as that of May 2015 "Thinking of You". Kosovo women from Diaspora with the support of the then Kosovo president Ahtifete Jahjaga displayed thousands of dresses hung up on washing line symbolizing the hidden and silent survivor. The women themselves remain the strongest voice in asking justice, acceptance and better treatment for their abused fellows.

While, cases of sexual violence in Bosnia and Herzegovina have been often on international media, recorded also in movies and prosecuted before national and international court (ICTY) and also Bosnia local courts. Kosovo is far behind on doing justice to the violence used against women during the war. National and international institutions (ICTY) have failed or ignored such issue. Lacking lobbying /advocacy and media appearance as in Bosnia and Herzegovina and also being Kosovo not a UN member state it seems to have contributed to neglecting and removing from their agenda the justice for Kosovo women.

United Nations' institutions also have failed to report sexual violence in Kosovo or to encourage judiciary institutions on making justice for such violence locally and internationally, even though United Nations Mission in Kosovo (UNMIK) is present in the country since 1999. The lack of information about Kosovo abuses in the periodical UNSG reports and other UN reports about sexual violence worldwide has been so obvious in the 15

years after the war that had to receive the reaction of Kosovo women and the Kosovo Ministry for dialogue. Kosovo Women board's on petition led by the minister herself sent a direct letter to the former Secretary General to ask on addressing the issue:

"While the annual reports of Secretary General on Conflict-related Sexual violence, including the one of this year S/2015/203 of 23 March 2015, provides valid documentation on this phenomena in many conflicts worldwide, it fails to include the case of Kosovo. We, women in Kosovo have decided to speak. We seek international justice for Kosovo women raped during the 1998-1999 conflict. Therefore, we kindly request a meeting with you to discuss this issue, in line with the UNSC Resolution 21016 (2013) and having in mind that the United Nations fully supports the principle of ensuring services for survivors and an end to impunity. We believe that a first step in this endeavour is a credible factual based report that includes evidence, which requires the involvement of both the UNSG and Kosovo authorities."⁷ (KWBP, 2015)

This letter and the invitation to meet on the issue remain still unanswered.

6. Conclusions

While Sexual violence has been historically present in the war situation, forms and reasons for it have seen changes till to severe forms of rape camps as those recorded on the armed conflicts of Bosnia and Herzegovina. Rape is means for an end in the nowadays conflicts. Rape is strategically used as a weapon of war being ordered as a way to achieve ethnic cleansing, instilling fear and terror on the community, dishonouring and humiliating through the power it has on ruining the social equilibrium through the collective shame, breaking the social close bound in the families and the community forced to leave. Bosnia and Herzegovina and Kosovo conflicts are clear examples of armed conflict where sexual violence was politically used as a weapon of war for achieving ethnic cleansing. Such fact puts pressure on the judiciary institution to demand justice for such crimes

While first legal provision for protecting women from rape is found on the article 27 of the fourth Geneva Convention, prosecution of sexual

⁷Cited from the official page of Kosovo's Prime minister, available here:
<http://www.kryeministri-ks.net/?page=2,9,5633>

violence toward women has not been part of the international jurisdiction till the flagrant reported mass rapes of Former Yugoslavia armed conflicts and Rwanda genocide. ICTY and ICTR are the first tribunals to recognize sexual violence as Crime of war, crime against humanity and severe violation of humanitarian law- breach to peace.

After standards set from ICTY and ICTR, ICC statute adopted their legal basis and UN resolution 1820 (2008) on sexual violence which was adopted unanimously are finally explicit on the issue stating that such act it can constitute *a war crime, a crime against humanity, or a constitutive act with respect to genocide*. Perpetrators of such crime of sexual violence should be excluded from amnesty provisions.

Challenges on making justice on women who have suffered sexual violence on armed conflict remains concrete. National and international institution still lack commitment on prosecuting such crime. Kosovo is a clear example of where national and international judiciary bodies have failed to make justice for women raped during the conflict.

List of References

- Brownmiller S. (1975) *Against our will, Men, Women and Rape*, New York, Pelican Books
- Bastick M. Grimm K. Kunz R. (2007), *Sexual Violence in Armed Conflict*, Geneva, CDCAF
- BBC (2014) "Bosnia war-The Death of Yugoslavia":
<https://www.youtube.com/watch?v=Pt5n2381Fzc>, (Accessed 14 October 2017)
- BBC (2014) "The death of Yugoslavia- Enter Nationalism."
<https://www.youtube.com/watch?v=bzvNZz-X-50>, (Accessed 14 October 2017)
- Brunborg H. (2002) *Report on the size and ethnic composition of the population of Kosovo*, Oslo
- CEDAW Committee, "Concluding comments of the Committee on the Elimination of Discrimination against Women: Bosnia and Herzegovina" Special Report, Thirteenth session, 17 January - 4 February 1994
- CCN (2008) "Sex slave: 'Every day we were raped'"
<http://edition.cnn.com/2008/WORLD/europe/07/22/sarajevo.rape/index.html?iref=mpstoryview> (Accessed 14 October 2017)
- Commission on Human Rights (1993) *Fifth periodic report on the situation of human rights in the territory of the former Yugoslavia*.

- Chinkin Ch. (2010) *The CEDAW committee and violence against women*. Florence, Italy, ED.IT Press
- Crider L. (2012) *Rape as a War Crime and Crime against Humanity- The Effect of Rape in Bosnia-Herzegovina and Rwanda on International Law*, Samford University
- Flores M. (2010) *Stupri di Guerra- La violenza di massa contro le donne del novecento*, Roma
- Geneva Declaration Secretariat (2008): Global burden of armed violence. <http://www.genevadeclaration.org/fileadmin/docs/Global-Burden-of-Armed-Violence-full-report.pdf> (Accessed 14 October 2017)
- Human Rights Watch Report. (2001) *Under Orders- War Crimes in Kosovo*,
- Human Rights Watch Report. (2000) *Kosovo: Rape as a weapon of "Ethnic Cleansing"*
- HRW (2000) "Kosovo: Rape as a weapon of "Ethnic Cleansing", <http://www.hrw.org/reports/2000/fry/>, (Accessed 14 October 2017)
- ICTY (1997) Case No. IT-94-1-T, *Prosecutor v. Tadic*, 7
- ICTY (2012) "Sexual Violence and the triumph of Justice": <https://www.youtube.com/watch?v=HZ4EM6iiq0k>, (Accessed 14 October 2017)
- Library of Congress (1995) "Dayton agreement over areas of control, 24 November 1995 : [Bosnia and Herzegovina]," <https://www.loc.gov/item/95685686/> (Accessed 14 November 2017)
- Los Angeles Times (1993) Testimony : A Trio of Women's Voices Bears Witness to the Horror of War and Rape as Yugoslavia Disintegrates, http://articles.latimes.com/1993-01-31/magazine/tm-857_1_serbian (Accessed 14 October 2017)
- Park J. *Sexual violence as weapon of war in international humanitarian law*, University College London
- Selimi. L (2007) "Rrëfime tronditëse - femrat e dhunuara gjatë luftës së Kosovës", Prishtine
- The Prime Minister Office (2016) "Tahiri: Ban Ki Moon ignores justice for women raped during the war in Kosovo": <http://www.kryeministri-ks.net/?page=2,9,5633>, (Accessed 14 October 2017)
- UNIFEM. (2000) *No safe place-An Assessment on Violence against Women in Kosovo*, Prishtine
- UNIFEM (2002) *Women, War and Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-building*, New York
- UNSG (2015) Conflict-related sexual violence Report, S/2015/203

-
- UNSG (2017) *Report on Conflict related sexual violence*, s/2017/249, New York
- UNSC (1993) *Statute of the International Criminal Tribunal for the Former Yugoslavia* (as amended on 17 May 2002)
- UNSC (1994), *Statute of the International Criminal Tribunal for Rwanda* (as last amended on 13 October 2006)
- UNGA (1998) *Rome Statute of the International Criminal Court* (last amended 2010)