



A HANDBOOK ON

**THE EVOLUTION OF
DEFINITIONS
RELATING TO
SEXUAL OFFENCES**

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THE EVOLUTION OF DEFINITIONS RELATING TO SEXUAL OFFENCES

- 1863 Lieber Codes General Order 100 signed by President Abraham Lincoln to regulate the conduct of the Union Army during the U.S. Civil War, Article 44 specifically included 'rape' and made it punishable by the death penalty.
- This code had enormous impact on International Law and was at 1907 International peace conference in Copenhagen and was the basis for the Hague Convention iv respecting the laws and customs of war on land. (the provision relating to rape underwent dramatic changes)

- 1907 Hague Convention Article 46 refers to "Family Honour and rights, the lives of persons, and private property, as well as religious convictions and practice must be respected" - There is no specific mention of rape but this particular provision was long relied on as the prohibition.
- The first military "comfort station" was established in March 1932 in Shanghai, China after Japanese invasion. The institutionalisation of the comfort women system was the Japanese government's response to the outrage generated by the massacres, rapes, and pillage of Nanking, known as the "rape of Nanking." As a result, other sexual slavery facilities and a complex trafficking network were established to compel women into providing sexual service for the Japanese military wherever Japanese soldiers were found. Procuring and securing women for these stations was an integral part of the war strategy, admittedly intended to deter open rape in occupied territory, limit anti-Japanese resistance among the local populace, avoid international disgrace and protect the Japanese soldiers from venereal disease. Women and girls were forced or coerced into these stations, often "recruited" by

deceptive promises. The poorest were frequent targets of official or officially sanctioned recruitment. Their enslavement involved repeated rapes, mutilations, and other tortures. They suffered inhumane conditions, including inadequate food, water, hygienic facilities, and lack of ventilation. Conditions were horrendous. Women testified to living in conditions surrounded by rats, lice, disease, and filth. Beatings, psychological torture, isolation, and other mistreatment were the norm. Pregnancy as a result of rapes, forced abortion, and loss of reproductive capacity were suffered by many of the "comfort women." The effect of this unimaginably debilitating treatment and of the failure of the government of Japan to acknowledge, compensate and otherwise repair its crimes had, until recently consigned most of these brave women to a life of shame, isolation, poverty and relentless suffering.

- 1945/1946 The London Charter creating the International Military Tribunal for Nuremberg had serious shortcomings as they failed to address or even mention the offence of rape. There was widespread sexual violence in Europe and the Japanese Military's widespread practice of sexual slavery of "comfort women"

was not addressed by the International Military Tribunals. Control Council Law No. 10 was the basis for prosecution of lower level Nazis. This Law listed rape as a Crime against Humanity. The Tokyo War Crimes Tribunal charged rape as an offence and relied on the regulation attached to the Hague Provisions relating to "Family Honour"

➤ 1949 Geneva Conventions and 1977 Additional Protocols.

- Common Article 3 which applies to all four Geneva Conventions applies to non-international armed conflict and prohibited "outrages upon personal dignity, in particular humiliating and degrading treatment" against protected persons. (those not taking active part in the hostilities) However they were not listed among the grave breaches. Grave Breaches are serious war crimes that are subject to the Universal jurisdiction of all States. Moreover a State is bound to extradite an offender if it does not prosecute and punish that person.
- Article 27 of the Fourth Geneva Convention which relates 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 1, 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". Article 76 calls for special protection of women in armed conflict.
- Article 4 of Protocol 11, 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."
- In 1990 a former "comfort woman" broke nearly 50 years of silence about her sexual enslavement by the Japanese Military in World War II, sparking international movement seeking accountability and reparations.
- 1993 the Vienna World Conference on Human Rights recognized the need to address grave violations of women's human rights as part of the UN agenda.
- ✳ 1995 The 4th World Conference on Women in Beijing adopts Platform for Action affirming rape as a war crime.

- 1993 & 1995 The International Criminal Tribunal for the Former Yugoslavia and Rwanda The Statutes of the ICTY (International Criminal Tribunal for Yugoslavia) and ICTR (International Criminal Tribunal for Rwanda) list rape as among the crimes against humanity within the tribunal's jurisdiction 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 offences 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.
- 1998 the ICTR issues the *Akayesu* judgement, finding rape as a form of Genocide. The Tribunal concluded that there was no commonly accepted definition of the term "rape" in International Law. The definition that was used in *Akayesu* for Rape was " a physical invasion of a sexual nature committed on a person under circumstances which are coercive" such acts are not limited to a physical invasion of the human body. The Court viewed rape as a form of aggression and wished the definition to be this

broad in order that it should not be reduced to a mechanical description of objects and body parts.

- 1998 The ICTY issues the *Furundzija* judgement, finding rape as a form of torture. The definition of rape the ICTY resorted to was " 1. 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, b) of the mouth of the victim by the penis of the perpetrator 2. By coercion or force or threat of force against the victim or a third person
- 1998 Rome Statute of the International Criminal Court adopted by a vote of 120 - 7 codified and specifically prohibited "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other forms of sexual, violence" as war crimes and crimes against humanity for the first time in history. 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.

In addition *Persecution* is included in the ICC Statute as a crime against humanity and specifically included for the first time the recognition of

gender as a basis for persecution. Article 7(1)(h) prohibits persecution against identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender 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 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.

Article 6 contains an explicit statement in the commentary that rape and other sexual violence can constitute acts of genocide.

Article 21 of the statute specifically states that the application and interpretation of law must be without adverse distinction on the basis of enumerated grounds, including gender.

- 2000 December - The Tokyo Tribunal (Women's International War Crimes Tribunal on Japan's Military Sexual Slavery) is called to order, recognizing historical failure of states to discharge their

responsibility to ensure justice for crimes such as rape and sexual slavery, despite overwhelming evidence of the 'comfort women' system, and declaring that the internationally constituted International Military Tribunal for Nuremberg failed to prosecute Japanese officials for these crimes. The victimized countries namely North and South of Korea, the Philippines, China, Taiwan, Indonesia, East Timor, Malaysia, including Japan presented indictments prepared by the country prosecutors, testimonies of former 'comfort women', evidences, expert opinions by eminent lawyers, scholars and historians.

- On the 4th December 2001 the official judgment of the Tokyo Tribunal was issued finding Emperor Hirohito criminally responsible for Crimes against Humanity. The Tribunal found that the Emperor was aware of the fact that his troops committed these atrocities including rape and sexual violence and rather than take all necessary steps to prevent rape, including through meaningful sanction, investigation and punishment, he consciously approved or, at least, negligently permitted, the massive effort to perpetuate and conceal rape and sexual slavery through the continuing extension of the "comfort women" system.

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