

CRIMES AGAINST HUMANITY

A New Legal Weapon to Deter Rape

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When Judge Florence Mumba of Zambia confronted three Bosnian Serbs at the war crimes tribunal in The Hague last month and convicted them of rape and sexual enslavement, she dismissed two excuses that soldiers have used through the ages: "boys will be boys" and "I was only following orders."

For the first time, a war crimes tribunal ruled that rape was a crime against humanity, and did not have to be ordered from above to rise to that highest level of atrocity.

"Lawless opportunists," Judge Mumba said, "should expect no mercy, no matter how low their position in the chain of command may be." In fact, she added, rape did not have to be perpetrated in time of war to be a punishable offense. "In time of peace as much as in time of war, men of substance do not abuse women," she said.

Madeleine K. Albright, the former secretary of state, who as the American representative at the United Nations pushed for the creation of war crimes tribunals for the Balkans and Rwanda, and also pushed for more attention to crimes against women, called the judgments "a huge deal." Rape, she said, "is a weapon of war, and to have that recognized was a very big step forward."

After the United Nations, in the mid- 1990's, set up the first international war crimes courts in half a century, it made the crucial decision to expand the list of crimes to include abuses of women. What Judge Mumba and her panel have now done is to demonstrate that these crimes can be prosecuted successfully.

Gauging the eventual practical impact of that precedent is more difficult.

According to Ruth Wedgwood, an expert on the United Nations and international law who teaches at the Yale Law School, the Hague decisions can be expected to encourage more prosecutions. Those decisions, she said "could mean that in the future, women's cases will get more resources, and attention to gender balance on tribunals, a sufficient number of women in prosecutors' offices and dealing sensitively with rape victims."

"But this is more iconographic, more emblematic, than it is a legal change," she continued.

In fact, she pointed out, rape has been identified as a war crime since the American Civil War, when Francis Lieber included it in his code of conduct for the Union Army. It was also mentioned in the 1949 Geneva Conventions (but demurely, as an "outrage upon personal dignity" in civil wars).

But prosecution of this crime, as of all war crimes, has always been the problem. Typically the military officers who commanded the offenders also made decisions about whom to charge, and that has often meant an unenthusiastic prosecution, or none at all.

On the other hand, international judgments, like those from Nuremberg and Tokyo in the 1940's, do set standards of international acceptability, to which all nations are then expected to adjust the conduct of their troops. In that context, Ms. Wedgwood was struck by the message sent in convicting men who were not committing the kind of large-scale abuses that until now have defined crimes against humanity.

"They've not been charged with the abuse of 10,000 women," she said. "They were not like the commander of the entire comfort- women enterprise of the Japanese Army." She said that the ordinariness of the men "makes the conviction more significant."

Some analysts argue that in the half- century since the war crimes tribunals in Germany, profound changes in the social as well as legal atmosphere helped make this new verdict possible. As women's movements have reduced squeamishness about discussing rape and other sexual abuses, women have slowly become braver in bringing evidence to tribunals, not only in the Balkans but also in Africa. There have also been convictions involving rape at the war crimes tribunal for Rwanda, but only under the umbrella of broader criminal definitions like torture.

The new atmosphere of openness and determination among women to press for attention to crimes against them has had effects in many areas. In East Timor, for example, where evidence is now unfolding of rape and sexual enslavement on a mass scale by pro-Indonesian militias, a special office for women's issues is part of the United Nations administration now governing the territory, and more attention is being paid to women in refugee camps, where they are almost always vulnerable to abuse.

Ms. Wedgwood said the United Nations might heed the message of the trial and begin to take more responsibility for abuses committed by peacekeeping troops sent out under its flag. Under present rules, peacekeepers charged with rape or other offenses are still turned over to their national governments and sent home, not always to punishment.

Looking back over the last decade, some legal experts are surprised at the speed with which the war crimes tribunals have expanded new fields of law governing military behavior, helping to lay a strong foundation for a permanent international court now being considered by the United Nations.

"The whole war crimes operation has gone a lot farther and a lot faster than anybody ever thought when the United States early in the Clinton administration first came out for setting up the tribunals," said Warren Zimmerman, who was the American ambassador to Yugoslavia as it was splintering a decade ago. Since then, he said, not only has it been proved that Balkan war criminals can be caught but also "the whole definition of what's accountable before this court has been broadened."

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