Clio

Women, Gender, History

39 | 2014

Gendered laws of war

Women and international (criminal) law

Les femmes et le droit (pénal) international

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Electronic version

URL: <http://journals.openedition.org/cliowgh/546>

DOI: 10.4000/cliowgh.546

ISSN: 2554-3822

Publisher

Belin

Electronic reference

Isabelle Delpla, « Women and international (criminal) law », *Clio* [Online], 39 | 2014, Online since 10 April 2015, connection on 01 May 2019. URL : <http://journals.openedition.org/cliowgh/546> ; DOI : 10.4000/cliowgh.546

Women and international (criminal) law

Isabelle DELPLA

For the last two decades, the evolution of international law, especially criminal law, has been marked by attention to the sexual aspect of war crimes, crimes against humanity, and genocides.¹ While the Nuremberg Trials did not deal specifically with sexual crimes or victims' gender,² the International Criminal Tribunal for the former Yugoslavia (ICTY), created in May 1993, the Tribunal for Rwanda (ICTR), created in November 1994, the International Criminal Court (ICC), and the special Tribunal for Sierra Leone (2002), focused increasingly on sexual violence and female victims of war.

On the one hand, rape became a constituent element of crimes against humanity in the statute of the ICTY, and “forced prostitution” was included among war crimes by the statutes of the ICTR; sexual crimes could also be punished on grounds of slavery or torture. On the other hand, the evolution of genocide as a category in the ICTY in decisions concerning Srebrenica was based on a shift from “gendercide” (in this case, of men) to genocide, taking account of the real or presumed role of women in Bosnian society. In the media, international law, and research, growing attention was given to war violence directed at women. This could be summed up by David Rieff's sarcasm when he quoted the question attributed to a journalist newly arrived in a war zone: “Anyone here been raped and speaks

¹ I would like to give special thanks to Laura Durin and Elissa Helms and Gorana Mlinarević for their help in preparing this article.

² The Tokyo court found three people guilty of sexual violence committed during the siege of Nanking and found that nearly 20,000 rapes were likely to have been committed during the first month of the occupation of the city. See Fourçans 2012.

English?"³ There has come to be a consensus that rape is not an inevitable effect of war but one of its weapons, and that women are the intentional, or even special targets of policies of ethnic cleansing or genocide.⁴

The first consequence of this relative consensus is the blurring of distinctions between the work of journalists and that of scholars. This makes it illusory to attempt to draw a firm line of demarcation between them; academic researchers have often been influenced by the phenomena reported by journalists, such as rape in Bosnia. Nor would dividing them be desirable: some excellent work, now used as standard reference on war, violence and/or international justice, has been produced by journalists and public personalities in the media.⁵

This convergence of media interest, the work of international criminal justice (ICJ), and academic research also applies to women war criminals, research concerning them being as rare as seeing them on trial. The convergence reflects the facts on the ground: there are more women victims of violations of the laws of war than female agents of such violations. These same events, the war in Bosnia and the genocide in Rwanda, have provoked changes both in the law and in research during the last two decades.

Nevertheless, women cannot be seen in a simple binary relation to the laws of war, considering them either as (potential) victims or as (less likely) criminals. For one thing, some laws of war and their violation attract almost no attention. To steal personal possessions from the home of an enemy is a form of pillage and so technically a war crime. Still, those affected would be unlikely to be described as war victims, nor would the perpetrators of such acts, men or women, be classified as war criminals, and it is unlikely that a criminal court would consider them. And yet, such laws of war have an effect on military training and discipline, and as a consequence, on women

³ Rieff 2003.

⁴ For a review of the literature of the 1990s in which this consensus is clear, see Skjelsback, 2001. On the misogynist nature of ethnic cleansing, see Naimark 2001.

⁵ See especially the work of David Rhode, Elizabeth Neuffer, David Rieff, Jean Hatzfeld, Samantha Power or Pierre Hazan, a journalist who became a political scientist.

serving in armies, as well as men. Moreover, women can have other roles, as agents associated with the laws of war, their elaboration, and their application: as investigators, prosecutors, lawyers, judges, witnesses or experts.

Extension of the law or extension of the number of cases brought to trial?

In the last two decades, International Criminal Justice has developed tools to penalize sexual crimes and war violence directed against women.⁶ In doing so, it might be said to have followed a two-pronged inclination: on one hand, that of humanitarian international law, in the eyes of which a woman is first of all a vulnerable being in need of protection,⁷ in a system of international law that is fundamentally state-based and masculine;⁸ on the other, that of national jurisdictions which apply harsher penalties for rape and have extended the field of sexual crimes. Research in law and in political science initially focused mostly on the expansion of juridical categories and on the jurisprudence of international courts, beginning with the Tadić case in 1997, followed by those of Delalić and Furundžija before the ICTY, and the Akayesu case handled by the ICTR in 1998. They present a more complex reality than the image of progress supported by feminist aims.⁹ To be sure, there has been an extension of the definition of sexual crimes: the material element of rape includes any form of penetration of the sexual organs, including the use of objects, or any part of the body, as well as forced oral sex.¹⁰ This extension also applies to legal classifications, and the Akayesu decision recognized rape as a constituent element of

⁶ See Askin 1997 and 2003; Fourçans 2007 and 2012.

⁷ While international criminal law (ICL) is neutral with respect to women, international humanitarian law (IHL) contains several explicit protections for women, essentially concerning their role as mothers. See Gardam & Jarvis 2001.

⁸ See Charlesworth, 2013, who aims to deconstruct the idea that gender does not exist in international law and to show that this law between states is the product of a “history made by men and for men who elaborated international political and juridical structures in terms of their own values and interests”.

⁹ Halley 2008.

¹⁰ See the Furundžija verdict of the ICTY.

genocide. However, the jurisprudence of these tribunals only partially assures the image of rape as a systematic weapon of war directed against women as the primary/main victims. In fact, a sexual crime is not automatically a crime against women: international criminal law (ICL) considers human beings as “neuter”, *i.e.* without distinction of sex. No dictionary of ICL has an entry on “woman”. Either out of conservatism or avant-gardism, the ICTY focused, probably disproportionately, on men who were victims of sexual violence.¹¹ Moreover, indictments and guilty charges for systematic rape remain limited and localized.¹²

As a result, there is a gap in establishing statistics. The combination of judicial inquiries, those of international organizations, and genetic and demographic research have made it possible to establish revised, more accurate and converging conclusions concerning the number of those killed and missing, sometimes differing greatly from initial estimates.¹³ This is particularly clear in Bosnia-Herzegovina. During the war, estimates put the number of those killed between 200-250,000, mostly civilians. The combined evaluations of the ICTY and the Center for research and documentation in Sarajevo arrived at the figure of 100,000 killed, mostly soldiers. Eight per cent of these were women (22% of them civilians), and they also represented 8% of the missing according to the International Committee of the Red Cross (ICRC). But this is not the case for rape: there are no estimates any more trustworthy than the war-time ones. Statistically, the tables and inquiries do not confirm the image of women as especially vulnerable victims of

¹¹ Campbell 2007. In fact, during the Tadić trial, the first before the ICTY, the focus was on sexual violence against men.

¹² Claire Fourçans stresses that the emblematic trials of the ICTY concerning Foča, where women were subjected to repeated rapes in impromptu camps, did not go beyond the level of the municipality, although the use of sexual violence might have been punished in the trials of state representatives. In the same way, the Akaysu verdict concerned essentially the community of Taba: “Similar condemnations were later declared in several matters by the ICTR although this court did not really shed light on the nationwide planning of this sexual violence.” (Fourçans 2012: 6). See also Askin 2005.

¹³ See Tabeau & Bijak 2005; Seybolt, Aronson & Fischhoff 2013.

violations of the laws of war. As a consequence, academic research, often undertaken from a feminist perspective, stresses a qualitative approach rather than a quantitative one, making a distinction between patterns of rape – systematic or opportunistic, inside or out of detention centers¹⁴ – or else focuses on individual experiences or testimonies (see below).

The international criminal tribunals as laboratories and sources of research

In any case, the links between international criminal law and women are not limited to formulating norms of protection. This kind of justice is not only an object for researchers but also a source of new theories and knowledge. Some figures active in the field are well-known professors of international or criminal law, like Cherif Bassiouni, Antonio Cassese, or Theodor Meron, who have also conducted investigations or written on rape and its punishment.¹⁵ Court trials have provided a test for their conceptions, and some decisions have become reference texts for theory. This link between juridical institutions and research is particularly apparent in the field of law and forensic science. Indeed, making a count of women among the victims of war crimes assumes that procedures exist for identifying them and estimating their numbers. Advances in forensic medicine, the archeology of mass graves, the identification of bodies or the tally of victims, have been performed by criminal pathologists, demographers or other researchers or experts working for the office of the prosecutor of these tribunals (Bill Haglund, Eric Stover, Ewa Tabeau ...). These procedures are equally necessary to establish evidence and to classify facts in cases of rape, especially when the victim is deceased. Furthermore, the ICTs developed a practice absent from Nuremberg, calling on researchers in the social sciences

¹⁴ See Aranburu 2010; Mischkowski & Mlinarević 2009 (this work estimates that 60 women bore witness before the ICTY on the subject of sexual violence).

¹⁵ The Bassiouni report remains one of the major sources of inquiry for rape; Theodor Meron, president of the ICTY and a respected academic, is the author of “Rape as a crime under international humanitarian law”, *American Journal of International Law*, 8(3) 1993: 424-428.

(historians, sociologists, or anthropologists) as occasional or regular expert witnesses in trials. John Allcock, Tone Bringa and Robert Donia testified in this capacity for the office of the prosecutor of the ICTY, and André Guichaoua, Jean-Pierre Chrétien¹⁶ or Allison Desforges for the ICTR.

Moreover, because of the difficulties of investigating these phenomena, the ICTs have become one of the primary sources for researchers, who are often dependent on their documents and websites, even when these tribunals are not themselves the object of their research. The question then becomes one that is classic in historical research, namely what use to make of judicial sources, and what critical distance to impose on the way they are shaped by legal categories and practices. As a result, a literature linking developments in law, psychology and social sciences has come into being, whose source is often researchers working *in or for* these tribunals, and based on the testimony of women victims – with the particular difficulties this entails: preserving a balance between the rights of the defense and the protection of witnesses,¹⁷ between the search for truth and the respect due to the women in cross-examinations by lawyers who may be aggressive towards victims;¹⁸ the experience of testifying in court¹⁹ and its supposedly traumatic or cathartic effects;²⁰ and the differences which may open up between testimony in court and outside court, lived experience, the spoken, the unspoken, and silence.²¹ Criticism of judicial sources is all the more difficult in this case since the majority of women having testified to rape will have benefited from a witness protection program,²² making all or part of their testimony inaccessible.

¹⁶ On the experiences of these expert witnesses, see: Bringa 1999; Allcock 2010; Chrétien & Gatari 2002.

¹⁷ Brouwer 2005.

¹⁸ See Oosterveld 2005.

¹⁹ See Mischkowski & Mlinarević 2009.

²⁰ For a critique of the supposed therapeutic effects of bearing witness, see Henry 2009.

²¹ Mertus 2004; Mertus & Hocevar Van Wely 2004; Dembour & Haslam 2004.

²² According to Mischkowski & Mlinarević (2009), 92% of the women testifying rape did so as protected witnesses.

These interactions between judiciary institutions and academic research do not coincide with the standard model of historiographical thought concerning judges and historians, where the historian is seen as evaluating the judges' work to examine its limits from an outsider's viewpoint.²³ On the one hand, these tribunals have made increasing use of expert witnesses from the social sciences, giving rise to opposing pairs of witnesses for the prosecution and for the defense, and to cross-examinations during which academic researchers find the scientific basis of their methods and their results being challenged.²⁴ On the other hand, historiographical advances in the study of gender sometimes owe more to international jurists than to historians. This is evident when one compares the report of the Netherlands Institute for War, Holocaust and Genocide Studies (NIOD Instituut voor Oorlogs-, Holocaust- en Genocidestudies),²⁵ written by historians, with the decisions of the ICTY concerning Srebrenica. The report shows a degree of classicism and no sign of history of gender, an oversight that is the more disturbing in that it touches the heart of the events and the predictability of a massacre from the moment men and women were separated. By contrast, the court decisions displayed greater conceptual innovations, for example the Krstić decision by the ICTY in 2001 which foregrounded women and their place in that society, and which took into consideration the "Srebrenica effect" stressing post-traumatic psychology.

The defense: witnesses and defendants

In any case, research on international criminal justice is spotty and lacks balance: the studies devoted to women and gender suffer from the same limitations as research in general, which, in these contexts has largely been focused on the prosecution and its witnesses/victims. The victim has become so important as a witness

²³ See Ginzburg, 1997.

²⁴ See Petrović's 2009 thesis.

²⁵ NIOD 2002 (Nederlands Instituut voor Oorlogsdocumentatie 2002), *Srebrenica – A Safe Area: reconstruction, background, consequences and analyses of the fall of a safe area, Amsterdam*. Accessible à www.srebrenica-project.com/index.php?option=com_content&view=article&id=140:niod

of mass crimes that, barring exceptions,²⁶ recent work on the subject does not even mention any witnesses for the defense, be they men or women.²⁷ An analogous observation may be made for the defense in general: scholarly research is essentially limited to its juridical and ethical problems. The absence of work on male lawyers and their teams is also true for female lawyers.²⁸

Although it remains limited, more work has been done concerning women charged or found guilty of war crimes, comparable to research on female criminality in general.²⁹ Although women participated in Nazi persecution, very few were tried,³⁰ two post-Nuremberg,³¹ and none in Tokyo. Women took part in the slaughter in Rwanda³² and three were part of the Habyarimana government, while others were guards in the Bosnian camps. A few women were tried by local and national courts in Rwanda or ex-Yugoslavia. The relative innovation of international criminal justice lies in charging women for command responsibility, and not for their individual responsibility for acts of violence or sadism. Biljana Plavšić was found guilty by the ICTY in 2003, Pauline Nyiramasuhuko by the ICTR in 2011. Simone Bagbo was charged by the ICC in 2012 with crimes against humanity. The cases of Nyiramasuhuko and of Plavšić were exceptional for the place given women in international criminal justice. Pauline Nyiramasuhuko was minister of Family and Women's Development for the interim government. In 2011, she was condemned to life imprisonment for having directly incited the Interahamwe militias to rape and murder Tutsi women, and her son

²⁶ See Delpla, 2014, chapter 14. Female witnesses for the defense were either members of the family (wives), neighbors, or work colleagues.

²⁷ See Stover 2005; Mischkowski & Mlinarević 2009.

²⁸ Enlightening analyses on the lawyers are found especially in journalists' reports or articles – notably certain familiar names like Michel Roux – rather than in a systematic analysis. See Cruvellier 2011.

²⁹ Dauphin & Farge 1997; Cardi & Pruvost 2012.

³⁰ Irma Grese and Ilse Koch were found guilty for their roles at Auschwitz for the first and at Buchenwald for the second.

³¹ Inge Viermetz was acquitted as part of the RSHA trial and Herta Oberheuser condemned to 20 years in prison during what is known as the Doctors' trial.

³² Baraduc 2012.

was among the co-defendants, also found guilty. Her lawyer was a woman who, in presenting the defense, played up the image of innocence and meekness of women in general, and of her client in particular. The prosecution of Biljana Plavšić, the only woman at the highest level of Serbian and Bosnian-Serbian power, was led by a female prosecutor, Carla Del Ponte, and Madeleine Albright testified during her trial.

Research on women as war criminals is broadly divided into studies informed by gender studies and feminism, and those conducted by experts on the region or on the ICJ. The former approach criticizes essentializing stereotypes of female nature, the social construction of woman as “fragile” by nature and therefore “monstrous” by aberration, and stresses the asymmetry of explanations offered for male and female war criminals or perpetrators of genocide.³³ The continued use of explanations for women’s actions alleging deviance, abnormality, or madness is significant: such terms were applied to the first analyses of Nazism for example. An approach to such war criminals in terms of « ordinary women », analogous to Christopher Browning’s reference to “ordinary men”, is still a long way off. In fact, media coverage of these trials repeatedly reports astonishment that “women could do such a thing”, minimizing their political careers and activities, treating them rather as mothers or as demons, while foregrounding a certain image of their femininity during the trial. The distance between the social image of woman and a genocidal career is particularly clear in the case of Pauline Nyiramasuhuko who was a social worker before becoming minister, and kept up an appearance of gentle reserve during the trial.

In contrast, the writings by experts on these conflicts or this form of justice tend to apply epistemological equality, attributing women’s actions not to abnormality or deviance with respect to a supposedly peace-loving feminine nature, but rather to a political career path, nationalistic or genocidal. In this way André Guichaoua analyzed Pauline Nyiramasuhuko’s actions thanks to unpublished and first-hand

³³ See Hogg 2010; Sjöberg & Gentry 2007; Sjöberg 2010; Drumbl 2013; Sperling 2006; Durin 2013.

sources, specifically her journal which he discovered and used as evidence for the prosecution before the ICTR. He describes her as a woman initially inexperienced in politics who was able to use her status as a woman and her friendship with the presidential couple to get ahead. Above all, her journal casts light on the party's day-to-day decisions, its fears, and its plans to recruit and finance Interahamwe militias and following that, the militarization of refugee camps in Zaïre.³⁴

Comments on Plavšić have focused less on her criminal actions or her political career, which was usually glossed over, than on her trial. In fact, Plavšić was the first, and only, Serb political leader to plead guilty, in exchange for dropping the charge of genocide against her, and she was sentenced to eleven years in prison, provoking both juridical and political reactions. Without any mention of Plavšić's gender, as was also the case in the Nyiramasuhuko verdict, the judges presented this plea as a decisive contribution to reconciliation. Some commentators argued that the judges were probably more inclined to believe in the reconciliatory qualities of her plea and to give her a reduced sentence because Plavšić is a woman. It is even more likely that the figure of a woman as agent of peace and reconciliation was especially well suited to the aim of the judges to present the ICTY as an arena of reconciliation, like the Truth and Reconciliation Commissions. When, in prison, Plavšić withdrew her plea, denied Serbian crimes and praised General Mladić, she was confirming nationalist interpretations of her declarations in court. What the international judges considered as taking individual responsibility was in fact rather more intended to be understood as a sacrifice for the country, be it that of Prince Lazar, a heroic figure of the fourteenth century, or of a protective maternal figure as a symbolic abnegation.³⁵ It remains to be seen to what degree the overall clemency which Plavšić enjoyed (she was released after serving two thirds of her sentence, despite having insulted the tribunal by going back on her word) was due to her being a woman, not only because of the stereotype of woman as pacifist and reconciliator, but also as a result of complicity among women in power, which might explain

³⁴ Guichaoua 2005.

³⁵ Subotić 2012: 39-59; Delpla 2014: chapter 12.

Madeleine Albright's or Carla Del Ponte's relatively gentle treatment of her.³⁶

The office of the prosecutor, chambers,³⁷ and beyond

The response to this would require more extensive investigation of women as prosecutors or investigators, although the office of the prosecutor is better known. A striking fact is that while all the major actors in international justice or cases for crimes against humanity were men at Nuremberg, or in the Eichmann trial in Jerusalem in 1961-1962, international criminal courts have become famous for employing female prosecutors like Louise Arbour and Carla Del Ponte, who are often better known than the presidents of the tribunal or their male successors or predecessors. While the choice of defense lawyers is left to the accused, members of the office of the prosecutor, the registry, and the chambers are a function of the court policy. The appointment of women is the product of a pro-active attitude on the part of Albright especially,³⁸ and of certain unfortunate experiences involving investigations and the treatment of witnesses. According to Judge Odito Benito, herself female, "we needed women to judge crimes against women". Research on women active agents in the international courts of justice tends to follow one of three paths. The first, generated by journalism, geopolitics, and sociology, explains the roles of exceptional and controversial characters who have turned the tribunals into functional institutions³⁹ The second comes from the classic sociology of career strategies, interests, and fields, inspired by Pierre Bourdieu,⁴⁰ and turns out to

³⁶ David Scheffer says that Albright took Plavšić aside during negotiations, for a discussion "among women" (Scheffer 2012) and Carla Del Ponte admits to having given too much credence to Plavšić's verbal promises ... which she did not keep (Del Ponte & Sudetic 2009: 161).

³⁷ [Translator's note: "Chambers" are smaller sub-courts made of 3-5 judges rather than the full 15]

³⁸ See Scheffer 2012.

³⁹ Hagan 2003; Schoenfeld 2007; Del Ponte & Sudetic 2009.

⁴⁰ See issues n°173 and n°174, 2008, of *Actes de la recherche en sciences sociales*, « Pacifier et punir ».

be rather disappointing in that it fails to devote systematic attention to women's career-paths. Thinking that they will reveal the unspoken interests and mechanisms advancing careers hidden behind the ideals of the ICJ, such research often ends up with platitudes to the effect that working in the ICT furthers the careers of international jurists – whereas the contrary would have been both astonishing and regrettable. At the antipodes of the sociology of interests, another kind of research, with a militant perspective inspired by feminism, examines the role of women in the workings of this justice,⁴¹ in the training of teams of investigators or female judges competent to prosecute and judge cases of rape.⁴²

More research would certainly be welcome on the dynamic and conflicts of gender among teams of investigators; in teams of lawyers; in the office of the prosecutor; and in the chambers, above and beyond questions of rape. A similar observation holds for major international organizations in charge of the respect of international humanitarian law generally, and the protection of civilian populations, whether this be the Red Cross (ICRC), the UN High Commission for Refugees (UNHCR) or other major humanitarian organizations, since the career paths of women officers and more everyday gender relations remain under-researched.⁴³

A central figure: the non-combatant victim

It is paradoxical that almost all the work on the active participation of women in international criminal or humanitarian law focuses on victims and their mobilizations rather than on international jurists. Almost all the research investigates the condition of the women as victims. As a result it is difficult to give a synthetic overview of the tens of thousands of books and articles on this subject. For a start, one might distinguish those works that treat women victims of war in general from those that focus on specific categories, and their

⁴¹ These works may be those of female international jurists themselves: Wald 2005, 2006 and 2011; Gabrielle Kirk Mc Donald (2000 and 2004), Louise Arbour (2002) or Carla Del Ponte (2006). See also Mertus & Hovevar Van Wely 2004.

⁴² See Yarwood 2013.

⁴³ See Siméant & Dauvin 2002.

historical and legal construction. Particular attention has been given to women who were victims of rape, to survivors of camps, and to refugees, work which has often gone hand in hand with the emergence of rape as a category in international law, or the development or restriction of the right of asylum. In each of these cases, not only the victims of the various contemporary conflicts have been studied but also the historicity of these phenomena, both of victimization⁴⁴ and of punishment. In fact, contrary to what one might think, the punishment of rape is not a recent phenomenon, even if it was aimed less at the protection of women as such, than at controlling armies or defense of the homeland.⁴⁵ This research is focused as much on the construction of legal categories as on the constitution of victims by means of these categories. Contrary to the notion of constant progress of the law, the growth of codification, and even sanctions, does not result in an increase of protection, still less of reparations. There is thus a tension between more severe punishment for rape as a war crime and the difficulty of having rape given due weight in asylum proceedings or in the very limited protection against rape given women in refugee camps.⁴⁶

Secondly, research on female victims oscillates between stressing the extreme vulnerability of the victims and their injuries, and that of their agency, either in pragmatic everyday strategies of survival, exile or return, or on their publicly visible mobilization.⁴⁷ In any case, such interpretations often impose an artificial diagnosis of post-traumatic stress on more complex social situations,⁴⁸ or a sociology of the mobilization of women as citizens active in democratic or protest causes⁴⁹ on movements which are in fact more controlled by the authorities than they are protesting against them.⁵⁰ This raises the further question of how the victims are represented by organizations, and of whether such speech is legitimate speech, or whether by

⁴⁴ Naimark 1995; Grossmann 1995; Lévy 2012.

⁴⁵ Branche *et al.* 2011.

⁴⁶ Freedman 2007.

⁴⁷ Lefranc & Mathieu 2009.

⁴⁸ Fassin & Rechtman 2007.

⁴⁹ Nettlefield 2010.

⁵⁰ Jouhanneau 2013; Déotte 2002.

contrast victims are rendered invisible, expressing themselves rather by their silence.

In the third place, this tension is like that found in research on women and gender in seeking to characterize the rapes that took place in Bosnia. Did they make manifest a war against women in a context of male domination, latent in peacetime, but which became overt in wartime, or a war of Serbian nationalists against Bosnians, uniting men and women?⁵¹ The same conflict appears on the ground, as well as in research, between associations or research promoting a feminist approach and others which privilege a nationalist, political view. To work on female victims requires an analysis of the gender stereotypes structuring their condition, considering all feminist presuppositions as international stereotypes governing the perception of victims.⁵²

This tension is particularly clear in cases of the wives and mothers of the missing. Through them we see the difference between the status of a direct victim, whose body has been affected, and that of an indirect one, a victim through his or her relations to others. War widows are not a recent occurrence,⁵³ any more than research on combatants killed or missing in action.⁵⁴ But the image of a wife, mother or daughter of the missing man, has become a new element in the public arena. Like the Mothers of the May Square looking for their missing relatives during the Dirty War in Argentina,⁵⁵ the women of Srebrenica became important figures in the period after the wars. Two things were new here: on the one hand, the missing men being sought were not just “missing in action” but victims of enforced disappearance as an act of political violence. The crime of forced abduction is now being codified and recognized by international (criminal) justice. On the other hand, the victims are known for their demands for truth and justice, and as such they have become fully fledged actors in the post-conflict scene.⁵⁶ While their demands and protests may have made

⁵¹ Stiglmeier 1994. For a critical review of divisions among feminists, see Engle 2005 and 2008.

⁵² Helms 2013.

⁵³ Petit 2000 and 2004.

⁵⁴ Capdevila & Voldman 2002a and 2002b.

⁵⁵ Lavaud 2005.

⁵⁶ Wagner 2008.

them actors in the scheme of international criminal justice, they nonetheless reject feminist interpretations of their cause. They refuse to be considered victims of men in general while they continue to defend the cause of their sons, husbands, and fathers or to represent their absence in the public arena.

Soldiers or female combatants

An additional consideration is that until now, “female victims” meant *illegitimate* war victims, that is, civilians or at least non-combatants. But they might also be victims because they were wounded, crippled, or killed while being a legitimate target in terms of the laws of war. International humanitarian law distinguishes between combatants and non-combatants, but not between men on the one hand, and women, children, and the elderly on the other. The conventional image of women as illegitimate victims of war assumes that they are non-combatants, which may be statistically true without being absolutely so. As soon as women are considered combatants, members of the armed forces or supporters of the war effort (working in armament factories), they become legitimate targets within the framework of international law.

Despite the Amazons of mythology,⁵⁷ who are sometimes reawakened by the image of a female sniper,⁵⁸ women represent only 3% of armed forces (15% in the US) where they usually have administrative and subordinate positions, and are very rarely in combat units.⁵⁹ As a consequence, work on women combatants includes irregulars, members of resistance forces, liaison agents, terrorists or kamikazes.⁶⁰ Sociological research has explored the growing feminization of armies and of military positions, the continuity of masculine domination and/or the reconfiguration of contemporary armies.⁶¹

⁵⁷ Testart 2002.

⁵⁸ Regamey 2011.

⁵⁹ Weiss & de Braber 2013.

⁶⁰ Bucaille 2013; Jauneau 2012; Capdevila 2000.

⁶¹ Sasson-Levy 2007; Simonetti 2006; Dandeker 2003; Jauneau 2011.

To conclude, we should stress the limitations of this survey of research which offers no claim to exhaustivity, and generally deals with a very rule-oriented and state-bound view of the laws of war. A less ethnocentric overview would also consider the connections between women and the rules or regulations of war that might be less codified than those of international law. Here we might consider the warring societies of the Amazon region found in Pierre Clautrest's analyses of "societies against the State", based on an egalitarian and independent individualism. War in such a society regulates power relations notably by preventing the emergence of centralized power and state control, just the opposite of the aims of international law, which seeks rather to regulate and limit war through nation states and in the interests of their preservation. Nevertheless, if the relationships between men among themselves and with war seem very different and freer in such societies, it seems doubtful that this is so for women. The work of Philippe Descola and Anne Christine Taylor on the Chuars and Achuars of Amazonia has stressed the subordinate role of women, who are often subjected to domestic violence and polygamy. They join in rituals of head-shrinking in particular and of war in general, encouraging warriors by their chanting, aimed at increasing violence rather than tempering it.⁶² Nevertheless, they tend to remain the objects of the violence of war, the victor's trophies, who must be tamed, as animals captured in hunting can be domesticated.⁶³ In these cases, adoption or marriage are the endpoint of an essentially masculine regulation of war. There are apparently no female combatants, still less female attorneys or judges. For all that it is less ethnocentric, such an approach offers no freer or more complex figures of women at war than those of contemporary international (criminal) law, whatever its limitations.

Translated by Marian ROTHSTEIN

⁶² Descola 1993: 429 ff.

⁶³ Taylor 2000.

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