"The European Penal Apartheid: new subjectivities, new social identities"

Rape in war - especially in the conflict in Ex-Yugoslavia

Part:

Rape in war and its prosecution at the International Criminal Court

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Rape in war and its Prosecution at the International Criminal Court

1. History

We know that the history of war is also a story about rape and especially: mass-rape.

"There is almost no armed conflict known, in which no sexual-violence towards women was committed. In spite of that rape in war was not seen as war-crime for a long time."(Palt, 06/2000, Pg. 1)

The offenders were - and partly are nowadays - not be held responsible, can not to be called to account to this day.¹

This opinion started to change with the International Tribunals of Den Haag and Ruanda. Rape -especially rape in war - is not a matter of sexuality, but power, oppression and hegemony. And we know that mass-rape in war has method and system.

The offenders are not single men, deviated from the standard, who can not control their urge, but soldiers, who are acting aimed and planned.

Though rape in war is not only existing since the beginning of the twentieth century, but already for centuries seen as customly forbidden behaviour in war, which was inflicted upon the death penalty.

Already Richard the first, named Richard, the lion harted threatened the veterans of his crusade in the 12. Century for loot, robbery and rape with the gallows.

Early military codes, which put rape under high punishment, were these of Richard II. in the fourteens Century and Henry V. in the 15. Century.

Foundation of the later martial law on the international level, was the "lieber Code" of the United States of America in 1863. In Art. 44 rape in war was put under punishment as capital crime, but at the same time rape in war was a long time accepted as unavoidable incidental appearance in armed conflicts. (See Möller 2000, Pg. 55)

During the Second World War a lot of women were victims of rape. Although the military court

¹ Please read: www.spiegel.de/politik/ausland/0,1518,20459/00.html. Steven Geyer, Washington.

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of Nürnberg had clear depositions/evidences, offences of sexual violence were not accused. Also the tribunal of Tokyo has punished only single offenders, who had raped or had ordered rape. (See Palt 06/2000, Pg. 1)

The result of these views, of looking away and acceptance can be seen in unsatisfactory prosecution and calling the offenders to account and is also shown in the norms laws of the humanitarian international law.

First the events in former Yugoslavia and in Ruanda too brought a change in the point of view towards rape in war. (See Amnesty international 1999, Pg. 4)

The international ad-hoc-tribunals for the former Yugoslavia and Ruanda defined in their decisions/judgements the first time sexual violence and rape.

The tribunals' definition of rape considered that in cases of sexual violence it is not about the description of mechanical procedures. A definition must have the aim that through sexual violence intimidation, humiliation, punishment, control and destruction of a person is strived. Moreover, the tribunal recognised that there are a lot of various opportunities to commit sexual violence against people and the main roll of it is power and control. The tribunal in Den Haag also included forced oral sexual intercourse in its definition of rape. (See Palt 06/2000, Pg.1)

For the first time in history of humanitarian international law, sexual abuse on women was not accepted to war immanent and unavoidable, but perceived and termed as crime and was prosecuted. With this the prosecution of sexual violence made a big step forward.

2. The International Criminal Court

The legal foundation of the Yugoslavia-tribunal (long: International Tribunal for the prosecution of persons, who are responsible for the violation of the International Law, which were committed since 1991 on the territory of the former Yugoslavia) lays compared to the founding of the Nürberger military court, which was based militarily on the law imposed by the occupying power after the second world war to judge the main war criminals, in a resolution of the UN-Security Council. The resolution No. 827 from 25. May 1993. (See Kuppers 2000, ego 1)

The Security Council built an International Criminal Court based on his own supranational right as peace-saving measure after Art. 41, 42 of the UN-Charta.
Through this a ratification of a contract and the voluntary participation of the membership countries were not necessary. (See Kuppers 2000, Pg. 1)
The criminal tribunal with base in Den Haag after Art. 11 of the statute organisatory consists of a Chamber, which is divided in Trial-Chambers and Appeals Chamber, an Office of the Prosecutor and the Registry. (See Möller 2000, Pg. 51)
The competence of the tribunal is spatial limited on the area of the former Yugoslavia, including the Kosovo, and "ratione temporis" on offences, which were committed there since 01.01.1991 after Art. 8 of the ICTY-Statute.
The competence "ratione materiae" is regulated in Art. 2 till 5 of the ICTY-Statute and extend to heavy violations of the four Red Cross Agreements of Geneva of the year 1949:

- Offences against the law (Art. 2) or
- The uses of war (Art. 3),
- Genocide (Art. 4) and
- Crimes against humanity (Art.5). (See Möller 2000, Pg. 51)

In 1997 the period of the activity of the tribunal was estimated for four additional years, but now the prosecution is after first investigations of new heavy offences against human nature in Kosovo about another 8 till 10 year of prosecuting through the ICTY. (See Möller 2000, Pg. 51)

3. The legal proceedings of current interest

Subsequently, I will now name three legal proceedings of current interest, which are seen as milestones in history of prosecution of rape.
In front of the International War Criminal Tribunal (ICTY), built 1993 by the United Nations, for the first time war criminals were accounted in the so-called "Celebici"-trial 1996 in front of an International Court among other things for rape in war.
The judgement of the UN - War Criminal Tribunal in Den Haag against Zejnil Delalic ! Zdravko Mucic alias "PAVO", Hazim Delic and Esad Landzo alias "ZENGA" created a leading decision in Legal International Law for the prosecution for sexual violence in armed conflicts. (See
Indeed the "Celebici"-decision is failing in unsatisfactory results concerning the responsibility for order of the chief (the court is of the conviction that the accusation is not adequate evident that Delalic as commander of the military forces of Bosnian-Herzegovina also had power of order over the "Celebici-camp"), and in a superficial legal procedure in the element of the offence of "rape". too, it is a first step in the right direction for an adequate prosecution and proscription of sexual war crimes and sexual offences against human nature.

This assessment of the international tribunal of punishment /supported/contributed in a unique way, the demonstrative incrimination of the international law defines that rape as a serious injury of the Geneva rights and their fore valued, as a necessary declaration of the humanitarian international law. (See Mischkowsky 1999, Pg. 4)

Hazim Delic got punished for the rapes as tortures in sense of the Geneva conventions in two cases: each 15 years. (See Möller 2000, Pg. 59)

This is to be served concurrently with all the other sentences, which were imposed on Delic -because: of murder, intentional and wilful killing and further torture reproaches.

Zdravco Mucic: got for several murder, cruelty and rapes, which had been committed under his responsibility, as a superior, seven years. (See Mischkowsky 1999, Pg. 4)

In the following historical very important, so called "Foca-process" - named by the Bosnian town Foca - the ICTY- in June nineteen ninety-six accused for the first time in history of human rights: rape as a crime against humanity and valued it as a serious offence of the conventions of Geneva from nineteen forty-nine (war-crimes against prisoners and civilians) . (See Mischkowsky 1999, Pg. 4)

The defendants: Kunarac, Kovac and Vukovic, who got reproached in the bill of indictment, for participating actively in rapes on Muslim women in Foca (who were kept in prison in apartments, hotels schools and in a sport hall) and got raped in an often weeklong lasting martyrrium. (See Mischkowsky 1999, Pg. 4)

Please notice now this script:
The Prosecutor vs. Dragoljb Kunarac,
Radomir Kovac, Zoran Vocovis;
Case no IT -96-23-1 and IT -96-23/1

Witness 95 was 27 when she was detained together with her two children, a baby of 1½ years atoddler of 3. She also described this incident although she remembers that Witness 90 was with them:

Q: Speak about the first night.
A: The first night - well, the first night, I don’t know exactly at what time but one came and said, you, you and you - let me look, no 88, DB, 90, and 87, the others aren't on the list. We left. He took us off to another classroom. There were four men there. When we went inside Tuta, that is each of them took one girl or woman. Tuta told me to take my clothes off. But I refused. He said it nastly. I said I won't. He slapped me twice I saw there was no way out for me and took my clothes off.

Q: What happened then?
A: When I took my clothes off he took his clothes off, just the lower parts, his pants, and then he raped me. (...)

Q: Was this the only occasion you were taken from one classroom to another while in the High School? How often did that happen?
A: It's difficult. I would say 150 times in the course of those 40 days.

Q: This is the entire time including other places. How long did you stay in the High School?
A: I don't know exactly. 15 days - they were not days for me but years, you know.

Q: How often were you taken out for rape in the High School?
A: How many times?
Q: Each night, every other night?
A: I was taken out every night and every day'
Q: The other girls too?

(Mischkowsky 2000, Pg. 11)
Two additionally accused in this law suit had no longer to account for their outrages:
A further former defendant - the former police-chief of the town Foca - who was responsible for
the imprisoning of the Muslim women in the sport hall of Foca _ with the intention to rape them
- Dragan Gagovic - got shot by the attempt of self-defence in January nineteen-ninety-nine, by
a SFOR soldiers. (See frauennews 03/99, Pg. 1)
The Bosnian-Serbians: Janko Janjic - another defendant - killed himself - while they tried to
catch him in Bosnian - Herzegovina - three weeks ago (thirteen's of October this year) - with a
grenade. (See Frankfurter Rundschau 18.10.00, Pg. 1)

As a third case, I would like to mention: the so called "Furundzija-case ", which is unique there-
fore, that it only occupies with one crime against one person. (Further accusation because of
genocide or crime against humanity is still possible) (See ai 1999, Pg. 4)
The law suit was called after the name of the accused: Anto Furundzija - as an accomplice in
the case of torture - got punished for ten years, and because of aiding for serious injury of per-
sonal-dignity (including rape) - got punished for eight years - which adds up ten years of pris-
on-sentence. (See Mischkowsky 1999, Pg. 4)²
Up to now, there are more than fifty people accused - mainly Bosnian-Serbians, some Bosni-
an- Croates, and as well some Muslims. Some of these defendants are in jails in Germany and
in Sarajevo.
All the other defendants: including Karadzic and Mladic - are still free.
And although the peace-negotiations of Dayton include the obligation of cooperation, they are
not delivered yet. (See Kuppers 2000, Pg. 1)

4. Conclusion

Finally, I would like to say:
Forms of sexual violence against women _like rape, sexual enslavement, forced prostitu-
tion_ - or forced pregnancies, are offences against Human Nature and war-crime and in this

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² Last: The Bosnian-Serbian war-criminal Tadic is now kept in German jail since seventeenth of October this year (2000) (Frankfurter
Rundschau 18.10.00, Page 1)
matter part of the Statute for the International Criminal Court, which was signed 1998 in Rome. (See Werner 1989, Pg. 1)

This reception in the Statute is a progress!
Considering the extent of violence women were put in, in practise there is no satisfactory change.
In reality, women are still victims of mass rape in areas of crisis and afterwards they are often double discriminated through the society:

- Proscription and missing support in cases of abortion inside of the community at this point should be remembered the thousands of women, who died after illegal and not skilled abortions. (See frauennews, Pg. 1)

And also:

- By not mentioning, not accusing, not prosecuting and ultimately: not punishing the offenders, who can still get away un-offended and un-avenged while the woman have to live with this agony and the shame.

Quellennachweis:

Kuppers, Bernhard: Warten im Gefängnis an den Dunen. Süddeutsche Zeitung
07.05.2000, S. 1

Mischkowsky, Gabriela: Furundzija-Prozeß Analyse. Unveröffentlichter Beitrag
Februar 1999 im Auftrag von Medica mondiale, S. 1-16


Mischkowsky, Gabriela der Krieg gegen die Frauen in Bosnien-Herzegowina. In: Vergewaltigt

3 At this point I don't want to discuss the signification of punishment in general and in this connection in particular the jail sentences chosen by the ICC. This would be a different and an issue on its own and apart from that would overextend the scope/limit of this part of the lecture. But so much for that: our society will need a form of avengement for the commencing norm clarification of rape even as a crime - maybe only until this norm is stabilised.
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Kriegsverbrechen Datenbank: Oktober 2000

http://www.coeicl.de/contentd/kriegsverbrechendatenbank.html

Indictment Information Sheet - Foca case. 15.10.00, S. 1-2

http://www.un.org/icty/glance/foca.html

Trial Information Sheet - Kunarac, Kovac and Vukovic case, 15.10.2000,

http://www.un.org/ictv/glance/kunarac.htm;


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