

Academic workshop on sexual violence

Workshop structure

Introduction	5 min
<ul style="list-style-type: none">• Overview• ICRC disclaimer about the facts as presented by the case studies• Code of conduct (listening to and respecting others' views, possibility of leaving the room if not comfortable, etc.)	
I. Film: <i>Congo Kinshasa: the hidden battlefield</i>	15 min
<ul style="list-style-type: none">• Introduction to the film and the ICRC's activities• In-class brainstorming on the issues touched upon in the film	
II. Presentation	75 min
<ul style="list-style-type: none">• The issue of sexual violence• The legal framework• The humanitarian response	
III. Questions and discussion	25 min
Break and informal discussion	30 min
VI. Case studies¹	
Based on the legal approach of the international humanitarian law (IHL) reference publication <i>How does law protect in war?</i> , the sole purpose of this session is to allow participants to identify which rules of international humanitarian law could or should have applied in practice. Hence, the discussion will only address legal issues and arguments.	
A. Introduction to the cases and questions	15 min
B. Group discussion (three groups)	40 min
C. Group report and discussion	40 min

¹ Case studies and discussions taken from Marco Sassòli, Antoine Bouvier and Anne Quintin, *How does law protect in war?*, 3rd. ed., ICRC, Geneva, 2011, also available online at:

<http://www.icrc.org/eng/resources/documents/publication/p0739.htm> (last visited on 01.07.2014)

According to the introduction to this IHL reference publication (Vol. I, p. 35-36), "[n]either the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents [...] The criteria for inclusion of a document is not whether historical facts are accurately described, but whether it allows a discussion of a particular aspect of IHL. No description of alleged historical facts in a reproduced document can therefore be construed as an opinion of the ICRC or of the authors."

India, Press Release, Violence in Kashmir (1992)²

Timeline:

Indian security forces involved in counter-insurgency operations in Kashmir have committed rape with impunity, according to a report released today by two human rights organizations: Asia Watch, a division of the New York-based Human Rights Watch, and the Boston-based Physicians for Human Rights (PHR). The 18-page report, *Rape in Kashmir: A Crime of War*, is the result of a fact-finding mission in October 1992 to Kashmir by Asia Watch and PHR. It focuses on rape as a tactic of war in Kashmir. The report documents 15 cases of rape by Indian security forces. The investigators interviewed the victims and a gynaecologist who examined nine of the women, and obtained medical evidence in the cases documented in the report.

Indian government authorities have rarely investigated charges of rape by security forces in Kashmir. Although there is no evidence that this form of torture is sanctioned as a matter of government policy in Kashmir, by failing to prosecute and punish those responsible, the Indian authorities have signalled that the practice of rape is tolerated, if not condoned. Indeed, in responding to reports by the press and human rights groups about incidents of rape, government officials unfailingly attempt to dismiss the testimony of the women by accusing them of being militant sympathizers. In one case described in the report, a physician who assisted rape victims and arranged for them to be examined was detained and tortured by the security forces.

Group discussion:

1. Does it matter under IHL whether the rape victim is a civilian, a combatant, a fighter, a militant sympathizer, or a terrorist? Why?
2. What charges for international crimes could be brought against members of the Indian security forces? Why? Does your answer depend on how the violence in Kashmir is classified under IHL?
3. Does a State violate IHL if rapes are committed by its security forces even though they are not committed as part of a government policy? Why? Even though rape is prohibited under that State's laws?

² Case No. 270 study and discussion taken from Marco Sassòli, Antoine Bouvier and Anne Quintin, *How does law protect in war?*, 3rd. ed., ICRC, Geneva, 2011, also available online at: <http://www.icrc.org/eng/resources/documents/publication/p0739.htm> (last visited on 06.07.2014)

2009 DRC, Conflict in the Kivus³

Timeline:

Joint military operations – *Umoja Wetu*

On 20 January 2009, at least 4,000 Rwandan troops, and possibly many more, crossed the border into eastern Democratic Republic of the Congo to fight the Democratic Forces for the Liberation of Rwanda (FDLR) in a joint Rwandan-Congolese offensive named operation *Umoja Wetu* (“Our Unity” in Swahili). Although a joint offensive in name, many Congolese troops were distracted by the complicated integration of former combatants from the National Congress for the Defence of the People (CNDP) and other armed groups into their ranks and were largely absent from the operation.

Concerned about negative public opinion from having concluded a deal in which Rwandan troops were invited into Congo, Kabila’s government at first maintained that the Rwandan soldiers present in Congo were only military advisors to the joint operations and would not stay long. Then in a televised statement on 31 January, President Kabila extended the invitation declaring that the joint operation would be finished by the end of February 2009, without making any mention of the extent of Rwanda’s military involvement. Rwandan troops quickly forged ahead, sometimes together with former CNDP troops, attacking one of the main FDLR bases and other FDLR positions (North Kivu). After 35 days of military operations in North Kivu, and in what was likely an agreed timeframe between Presidents Kabila and Kagame, the Rwandan army withdrew from Congo on 25 February.

Sexual violence

In the first six months of 2009, the cases of sexual violence registered at health facilities near the areas of conflict in North and South Kivu doubled or tripled. FDLR combatants were responsible for nearly half of all the rapes documented by Human Rights Watch. In over 30 cases documented by Human Rights Watch, victims told us that their FDLR attackers said that they were being raped to “punish” them. Most of the victims were gang-raped, some so viciously that they later bled to death as a result of their injuries. Some of the victims were killed when they were shot in the vagina. The killing and rape was accompanied by widespread and wanton burning of homes, schools, health centres and other civilian structures. In dozens of places across North and South Kivu, entire villages were burned to the ground and the population’s goods were looted, leaving families utterly destitute.

The attacks on civilians by the coalition soldiers during operation *Umoja Wetu* often included sexual violence against women and girls, and also in at least one case, against a man. Human Rights Watch documented 42 cases of rape by coalition soldiers who were deployed against the FDLR in January and February 2009.

There appears to have been an increase in cases of male rape since the launch of military operations against the FDLR. However, there are almost no statistics due to the shame and fear associated with male rape in Congo.

³ Case No. 229 study and discussion taken from Marco Sassòli, Antoine Bouvier and Anne Quintin, *How does law protect in war?*, 3rd. ed., ICRC, Geneva, 2011, also available online at: <http://www.icrc.org/eng/resources/documents/publication/p0739.htm> (last visited on 06.07.2014)

Group discussion:

1. What protection does IHL confer against rape and other forms of sexual violence? Does IHL also protect men against sexual violence? How?
2. Can rape be prosecuted by the ICC? What about by the Congolese courts? How? Who can be prosecuted for these acts? (Congolese soldiers, Rwandan soldiers, combatants of the FDLR, military commanders?) What practical constraints have to be overcome for prosecution of rape to take place?
3. What measures can be taken to improve compliance with IHL by government soldiers on the battlefield? And by the FDLR? What practical measures can be taken when violations occur on such a large scale?

Armed conflicts in the former Yugoslavia (1993)⁴

Timeline:

Widely publicized and credible reports by the media, human rights organizations, and representatives of the international community were made about widespread atrocities committed as part of practices of “ethnic cleansing”. Their reports included allegations of rapes committed in particular by Bosnian Serb forces on a systematic basis and as a policy. International public opinion and the international community insisted on the punishment of those responsible for such serious violations of IHL and of human rights. Particularly outraged about rapes, a specific instrument against such practices was desired and it was said that contemporary IHL did not sufficiently prohibit rape.

First, the UN Security Council established in Resolution 780 (1992) a Commission of Experts to enquire into alleged violations, which later published a very extensive report. Then, on 25 May 1993, it went further and established by Resolution 827 (1993) an “International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991” (ICTY) in The Hague. The ICTY is competent to prosecute grave breaches of the Geneva Conventions, violations of the laws or customs of war, genocide, and crimes against humanity. It has concurrent jurisdiction with national courts, but primacy over them when it so decides. All States have to cooperate with the ICTY.

ICTY, *The Prosecutor v. Tadić*⁵

A Muslim testified that she was raped at the Prijedor military barracks. After the rape she was bleeding terribly and went to the hospital where she was told by one of the doctors that she was approximately three to four months pregnant and that an abortion would have to be performed without anaesthetic because there was none. When this doctor asked another doctor for assistance, the second doctor started cursing, saying that “all balija women, they should be removed, eliminated”, and that all Muslims should be annihilated, especially men. He cursed the first doctor for helping Muslims. Prior to the rape there had been no problems with her pregnancy. When she returned from the hospital she went to stay with her brother in Donja Cela, eventually returning to her apartment in Prijedor where she was subsequently raped for a second time by a former Serb colleague who had come to search her apartment. The next day she was taken to the Prijedor police station by a Serb policeman with whom she was acquainted through work. On the way he cursed at her, using ethnically derogatory terms and told her that Muslims should all be killed because they “do not want to be controlled by Serbian authorities”. When she arrived at the police station she saw two Muslim men whom she knew, covered in blood. She was taken to a prison cell which was covered in blood and where she was raped again and beaten, afterwards being taken to the Keraterm camp. She recognized several prisoners at Keraterm, all of whom had been beaten up and were bloody. She was transferred to the Omarska camp where she often saw corpses and, while cleaning rooms, she found teeth, hair, pieces of human flesh, clothes and shoes. Women were called out nightly and raped; on five separate occasions she was called out of her room and raped. As a result of the rapes she has continuing and irreparable medical injuries. After Omarska she was taken to the Trnopolje camp and then returned to Prijedor, where she was often beaten.

⁴ Case No. 203 study and discussion taken from Marco Sassòli, Antoine Bouvier and Anne Quintin, *How does law protect in war?*, 3rd. ed., ICRC, Geneva, 2011, also available online at: <http://www.icrc.org/eng/resources/documents/publication/p0739.htm> (last visited on 06.07.2014)

⁵ *Ibid.* case No. 211.

Group discussion:

1. Is rape prohibited by IHL governing international armed conflicts? What about by IHL governing non-international armed conflicts? How? Is it a war crime? Even in non-international armed conflicts? Justify your answer.
2. If rape was indeed committed as part of an “ethnic cleansing” policy, what crimes would that entail? Who could be found criminally liable for those crimes?
3. What additional measures could help put an end to the practice of rape in armed conflicts? Would an additional international instrument be useful? What provisions should it contain?