

Weaponized Rape; Russia Violates International Humanitarian Law to Mar Ukraine's Morale

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“Ukrainians gather on Whitehall in London wearing traditional floral headdress and holding bloodied messages to call support against Russia.” (Photo: Getty)¹

INTRODUCTION

Guerilla warfare, flanking maneuver, frontal assault, pincer movement, and rape. Which does not belong? None. All five describe an organized military tactic historically employed in various armed conflicts. Sexual violence attaches to this tactical grouping via foreign adversaries who wield rape as a deadly piece of artillery in their arsenal.

This is not the first intersection of rape and wartime, as history has illustrated that sexual crimes are used to punish, humiliate, and intimidate enemies.² This manifests on several fronts; rape as an instrument of genocide to “shape the future of a country through forced impregnation,” and “gang rape” to bond troops.³ Most notably, Serbian “Rape Camps” in Bosnia housed girls and

women who were impregnated “with children fathered by the enemy” and subsequently “imprisoned to prevent them from getting abortions.”⁴

When wielded militarily, rape is a weapon that inflicts compounding sociological effects within a region. Psychologist Alexandra Kvitko, the director of a trauma victim hotline for the United Nations Children’s Fund (UNICEF), stressed that “rape is an instrument of war against the civilian population - an instrument of destruction.”⁵ Impregnating women with “enemy” children “weakens social ties” because the victim is subsequently “rejected by her own family, or community.” This fragmenting phenomenon afflicted Nigerian females who were raped by Boko Haram fighters and subsequently ostracized and regarded as “bad blood” to their friends and families.⁶ This mass, forced, and foreign impregnation “undermines the cohesion of the community” as the succeeding generation gives birth to children who are “half and half ethnically” despite no paternal relations.⁷

ORIENTATION

In the Spring of 2022, reports of alleged sexual violence poured from Ukraine; “a mother of four gang raped by Russian soldier in Khern,” a Ukrainian woman’s body “found dead -- naked and branded with a swastika,” and a “woman raped by a Russian Commander on the day tanks entered the village of Kalyta.”⁸

Following Russia’s withdrawal from Bucha, a suburb of Kyiv, around twenty-four females were “systematically raped” by Russian soldiers.⁹ U.S. Secretary of State, Antony Blinken, stated that “what we’ve seen in Bucha is not the random act of a rogue unit.”¹⁰ Instead, Blinken contends that “it’s a deliberate campaign to kill, to torture, to rape, and to commit atrocities.”¹¹ The incident in Bucha brought this grotesque pattern of sexual exploitation to the forefront. Ranging from ages 14-24, these two dozen women were raped while occupying a basement, leaving nine of them

pregnant. One woman testified that the soldiers told them that they “would rape them to the point where they wouldn’t want sexual contact with any man.” This was interpreted as an assumed attempt to prevent the future birth of Ukrainian children.¹² Rather than killing the women and girls to “prevent reproduction,” the Russian forces instead chose to “inflict sexual harm as a sign of their power.”¹³

The quantity of sexual violence reports that have surfaced in this region “suggest that rape at the hands of Russian soldiers may be widespread.”¹⁴ Kvitko reported that, in the five years of working for UNICEF’s hotline, she had dealt with “10 cases of sexual assault before the invasion.”¹⁵ Following the conflict, however, she now has “50 cases ...not only women - ... children and boys and men.”¹⁶ Kvitko described that one of her clients “ran out into the street to stop soldiers from raping her 19-year old sister.” In response, a Russian officer spat at her to “tell everyone that this will happen to every Nazi whore.”¹⁷ Evidently, this form of violence is operating as an epidemic, plaguing various locations, age groups, and UNICEF statistics.

OSCE REPORT

The Organization for Security and Cooperation in Europe Office for Democratic Institutions and Human rights (ODIHR) published a “Report on Violations of International Humanitarian and Human Rights Law, War Crimes, and Crimes Against Humanity Committed in Ukraine Since 24 February 2022” [hereinafter referred to as “the Report”].¹⁸ The Report “found violations of international humanitarian law (IHL) by Russian forces,” specifically “instances of conflict-related gender-based violence, such as rape, sexual violence, or sexual harassment.”¹⁹ It recognized that a “detailed assessment” of specific allegations is not entirely possible.²⁰ However, the Report evidenced that an undeniable pattern of violations at the hands of the Russian

perpetrators exists, representing a gross deviation from international obligations regarding the conduct of hostilities.²¹

First, the Report wrestled with categorizing these allegations by making a key distinction between four categories of infractions; international humanitarian law (IHL), international human rights law (IHRL), war crimes, and crimes against humanity.²² IHL and IHRL are “two distinct but complementary bodies of law” as they are both “concerned with the protection of life, health, and dignity.”²³ IHL is the law of armed conflict, which refers to laws regulating the conduct and methods of warfare. IHRL, on the contrary applies at all times, “in peace and in war.”²⁴ IHL demands quick passage for humanitarian aid; free movement for humanitarian workers; protection for medical workers; and protection of prisoners, wounded, and refugees, to ultimately limit the effects of armed conflict.²⁵

Unlike IHL and IHRL, crimes against humanity and war crimes are committed by individuals, not states. Crimes against humanity are “committed as part of a widespread or systematic attack directed against any civilian population, with the knowledge of the attack.”²⁶ These crimes are characterized as intentionally causing “great suffering, or serious injury to the body or to mental or physical health.”²⁷ The Report recognized that the “most comprehensive catalogue of crimes against humanity and war crimes” was published by the 1998 Rome Statute from the International Criminal Court (ICC).²⁸ War crimes and crimes against humanity are “not fully disjunctive,” meaning that an “individual may thus commit crimes of both categories by one single act.”²⁹ Unlike war crimes, however, crimes against humanity “are not explicitly enumerated” as there is “no special instrument” on them.³⁰

The Report reconciled these categories with the intent of pursuing justice against Russia in the most efficient and potent legal avenue. It recalled that Russia’s alleged sexual violence “may

constitute a crime against humanity (Article 7(1)(g) of the Rome Statute) or a war crime (Article 8(2)(b)(xxii) of the Rome Statute).³¹ However, it also highlighted the Geneva Convention's statement that select infractions of IHL are "to be considered grave breaches" or established as violations by "customary international law" and "international criminal law (ICL) treaties."

Whether a grave breach or a violation established customarily by ICL, those IHL infractions constitute war crimes.³² With this in mind, war crimes can only be perpetrated if a specific individual can be identified. Considering the Report was "unable to determine such individual perpetrators," their objective is restricted to "mention[ing] which violations would constitute war crimes, if the responsible individuals can be found."³³

To counter this pitfall, the Report did articulate several institutional safeguards that have been implemented to combat the sexual violence transpiring in Ukraine.³⁴ First, Russia and Ukraine are both parties to the *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW). The CEDAW is an international treaty enacted by the UN General Assembly that operates as a legal instrument requiring countries to eliminate discrimination against women and girls.³⁵ Second, the UN Security Council's Resolution 1325 urges "all parties to armed conflict to respect fully international law applicable to the rights and protection of women and girls" and to "take special measures to protect women and girls from gender-based violence, particularly rape."³⁶

The Report proceeded to identify specific phenomena that have cultivated environments of increased sexual violence. Most notably, mass displacement. The majority of the 10 million people who have fled from Ukraine since February 2022 have been female.³⁷ Displacement leaves women vulnerable as they are separated from loved ones, are coping with war trauma, and have left everything behind.³⁸ The Report articulated that such displacement conceives situations in which

Russian forces are more likely to abuse “women and girls who are alone” by “luring them into the trap of forced prostitution, slavery, or forced labor.”³⁹

Further, and most unsettling, is the double edge to this sword; women who stay behind in Ukraine are just as vulnerable. This manifests in a “lack of access to social services including schools and disrupted community networks.”⁴⁰ Women who are impregnated by sexual violence find themselves with “unsuitable conditions as healthcare centers in Ukraine become inaccessible.”⁴¹ Evidently, both Ukrainian women who are displaced and left behind face threats of sexual violence from Russian forces; rape is a systemic attack on all fronts.

LEGAL RECOURSE

The question remains; how can Russia be held accountable for such acts? Several prominent international personnel have made public statements in favor of direct punishment;

Pramila Patten, Special Representative of the Secretary General of the UN;

“Council has already failed in preventing the outbreak of the conflict and in ensuring the cessation of hostiles - it must not fail in repudiating sexual crimes.”⁴²

Hugh Williamson, Director of Europe and Central Asia’s Human Rights Watch;

“Rape, murder, and other violent acts against people in the Russian forces’ custody should be investigated as war crimes.”⁴³

Charu Lata Hogg, Founder of the All-Survivors Project;

“Any such act of conflict-related sexual violence - rape, forced prostitution, sexual slavery, forced pregnancy - is considered a breach of international human rights law.”⁴⁴

Although each statement carries the same urgency and central objective (swift prosecution), several obstacles remain. Despite “the Ukrainian ombudsman [receiving] over 400

reports of rape committed by Russian soldiers,” and the UN mission [receiving] 75 allegations,” holding anyone accountable is rare.⁴⁵ Further, when representatives of the Russian federation speak out, they repeatedly scorn the UN for “retching up accusations levelled without evidence.”⁴⁶ These representatives raise objections by instead highlighting alleged crimes committed by Ukrainian nationalists and speculate at the intentions “of the United States and the United Kingdom to supply long-range artillery and multiple launch systems to Ukraine.”⁴⁷ With the lack of accountability and Russia’s explicit denials on the world stage, justice is few and far between.

Confirming sexual violence claims is cumbersome because of the sensitive subject matter. The lead of the UN’s team documenting human rights abuses in Ukraine, Matilda Bogner, comments that “it’s difficult [...] because it’s often the type of case where victims don’t want to speak publicly, and they’re often not in safe areas where it feels safe for them to speak out.”⁴⁸ In the meantime, psychologists can only provide victims with contact information of prosecutor offices to ensure that “when they are ready, women can seek legal assistance.”⁴⁹

However, Dara Kay Cohen, a public policy professor at Harvard Kennedy School and author of *Rape During Civil War*, notes that a “disturbing trend” with Russia’s sexual crimes is the “lack of any attempt to hide such crimes.”⁵⁰ Cohen argues that the “brazenness” of this phenomenon suggests that commanders are “at a minimum, aware of what’s happening.”⁵¹ Such impudence could lend itself to evidence production and prosecutorial groundwork, but fails to solve the issue of victims electing to, understandably, remain behind closed doors.

A potential solution for the information gap between healing women waiting to share their experiences, and the need for evidence for prosecutorial success, is a humanitarian response. The Office of the United Nations High Commissioner for Human Rights (OHCHR) goes so far to claim that “we do not need hard data for a scaled-up humanitarian response, nor for all parties to put in

place preventive measures.”⁵² Natalia Karbwaska, the director of Strategic Development for the Ukrainian Women’s Fund, advances the need to “provide food, medicine, and other support to Ukrainian women.”⁵³ Further, the humanitarian community is urged to “build interventions to support young children into their work.”⁵⁴ This includes “mental health services,” “quality early childhood education,” and “help for caregivers.”⁵⁵ Approximately less than 3% of humanitarian aid is dedicated to this work.⁵⁶ Although beneficial in the short term, this approach fails to reprimand the perpetrators of evil, leaving the Russian federation unscathed and undeterred.

Another obstacle is the limits of the International Criminal Court. The ICC convicted Ratko Mladic, former Bosnian Serb military commander, for genocide and war crimes (“including the mass rape of women and girls”). Further, the former Yugoslav leader Slobodan Milosevic was convicted on comparable charges but died before his trial concluded.⁵⁷ However, these isolated prosecutorial success stories are few and far between. In general, ICC has “struggled to obtain widespread international acceptance.”⁵⁸ Powerhouse nations including the United States, China, and India declined to ratify the court’s founding statute, the 2000 Rome statute.⁵⁹ For the ICC to perform its impartial function of prosecuting war crimes, ending impunity for genocide perpetrators, and providing justice to victims, endorsement from the international community is pertinent.⁶⁰ This reality of the ICC’s international reception limits is jurisdictional leverage.

Russia operated in the same category as the US, India, and China (signed treaty but did not ratify) until 2016 when Russia formally withdrew its signature from the Rome statute.⁶¹ The withdrawal was an explicit reaction to the court’s publishing of “a report classifying the Russian annexation of Crimea as an occupation.”⁶² Despite not changing much in practice, Tanya Lokshina of the Human Rights Watch (HRW) stated that this move “sa[id] a lot about Russia’s attitude

towards international justice and institutions” serving as a ”statement of direction [that] Russia no longer has any intention of ratifying the treaty in the future or of cooperating with the court.”⁶³

On the contrary, although Ukraine is also not an official member of the ICC, it accepts the court’s jurisdiction over alleged crimes in November 2013 via two explicit declarations.⁶⁴ This expresses the country’s obligation to potentially cooperate with the court in future endeavors and may present a legal path of recourse for the sexual violence committed by Russian forces.⁶⁵ Ukraine’s signal of cooperation is a hopeful contrast to Russia’s swift withdrawal and subsequent isolation from the ICC. What remains to be answered is whether Ukraine’s participation with the ICC is enough to corner Russia, forcing the country back onto international stage for prosecution.

CONCLUSION

The weaponization of rape is a wretched, deadly, and overlooked component of the Russian-Ukraine conflict. At the onset of Spring 2022, hundreds of rape allegations flooded from the region of Ukraine. Although largely individual incidents, one occurrence included two dozen women and girls in the Kyiv suburb of Bucha. This horrific event caught the attention of foreign agencies and international law scholars, motivating a response. However, despite the overwhelming quantity of allegations, response efforts have been meager.

This is not the first occurrence of a failed national response to rape patterns. Although historically consistent, sexual crimes during wartime periods remain largely taboo. A multitude of factors, from victim fear to lack of IHL recourse platforms, have contributed to prosecutory dead-ends. With a consistent pattern of failed reproach, victims are only further encouraged to heal in isolation and shy away from seeking legal recourse. Additionally, the majority of international avenues for redress require individual perpetrator isolation, and/or backing from Russia as a federation, neither of which are likely to surface.

The Organization for Security and Cooperation in Europe (OSCE) attempts to expose these shortcomings and obstacles in its “Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine Since 24 February 2022.” This Report also serves as a call to action to the international legal community, non-profits, foreign governments, and federal agencies to find avenues through which victims can access aid and seek retribution from their perpetrators.⁶⁶

Sexual violence is a heinous weapon for a foreign adversary to wield as it boasts a lasting impact in the community. Impregnation and birth by the enemy leads to internal ostracization within one’s community as local populations view the children as outcasts with foreign blood. Further, considering the realities of the wartime period, women who are impregnated or injured as a result of the sexual violence face the stark inaccessibility of mental and physical healthcare both in Ukraine and in the regions to which they have been displaced.

ENDNOTES

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- ⁹ *Id.*
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- ¹⁵ John et al., *supra* note 4.
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- ²⁹ *Id.*
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- ³¹ *Id.*
- ³² *Id.*
- ³³ *Id.*
- ³⁴ *Id.*
- ³⁵ *Id.*
- ³⁶ UN Doc. S/RES/1325 (2000), Women and peace and security, 31 October 2000
- ³⁷ OSCE, *supra* note 16.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² UN Doc., *supra* note 34.

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⁴⁶ UN Doc., *supra* note 34.

⁴⁷ *Id.*

⁴⁸ Sommer, *supra* note 1.

⁴⁹ John et al., *supra* note 4.

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⁵¹ *Id.*

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⁶⁰ *See id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Sommer, *supra* note 1.

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