SEXUAL VIOLENCE AGAINST WOMEN: THE INCORPORATION OF THE GENDER PERSPECTIVE IN PUBLIC INTERNATIONAL LAW

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Abstract: This article analyzes the historical panorama of the treatment given to sexual violence against women in war contexts in international law, considering the gradual recognition of women as subjects of human rights and the incorporation of the gender perspective, aimed at better focusing the multiple impacts of violence against the woman. This paper has a qualitative approach, using, as primary sources, international treaties and resolutions of the United Nations Security Council. Results point to the development of legislation, denunciation mechanisms and jurisdictions that protect women's rights at international level, limited, however, by national practices, difficulties of internalizing international court decisions, and to characterize individual responsibility for breaking international laws.

Keywords: Public International Law; Human Rights; Gender Violence; Women; Sexual Crimes.

1 Introduction

The general objective of this work is to study sexual violence against women in contexts of war within the framework of Public International Law. The research problem consists in verifying how international standards have evolved towards the incorporation of the recognition of sexual violence committed against women in Public International Law in the context of armed conflicts from a gender perspective, also demonstrating the effort of women to trigger justice when they are victims of violence as a consequence of historical discrimination, but highlighting the importance of the investigation of sexual crimes committed since they are covered by the characteristics of crimes against humanity.

In this survey paper, we conducted an inductive research aiming to summarize and organize the theme in the field. Therefore, it is more descriptive than analytical in nature, seeking to be a reference for future studies.

The methodology used employed the bibliographic survey and the steps involved, covering extensive survey of primary sources, reading of the material, filing, logical organization of the subject and, finally, the writing of the text.

The primary sources included international legal sources, namely international declarations, treaties, covenants, statutes, protocols, and conventions that address the issue of

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sexual violence against women in armed conflict, especially from the United Nations (UN), the Organization of American States (OAS), the Inter-Parliamentary Union (IPU), and World Conferences. Additionally, they also covered resolutions and reports, these mainly coming from the UN. Extensive material on paradigmatic judgments and judicial decisions in the field of sexual violence against women was also raised, especially from the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, the Inter-American Court of Human Rights, and the Inter-American Commission on Human Rights, for being pioneers in addressing the subject and coining the use of criminalizations in the international context. Each source provides a small part of the puzzle that allows one to visualize how the current scenario came to be.

The focus remained on tracing a history of the first references to mechanisms to combat sexual violence committed against women in Public International Law and its gradual normative incorporation, capable of allowing not only the recognition of women as a subject of rights but also the triggering of complaint and jurisdiction systems. In this sense, interactional legal sources and their application/jurisdictional repercussion are presented but it is not the objective of this work to bring the doctrinal unfolding.

The present study consists of five sections in addition to this Introduction (Section 1). In Section 2, a historical contextualization of the first references to sexual crimes in international law is made. Sections 3 and 4 address the recognition of women as a subject of human rights and the incorporation of the gender perspective in Public International Law, aimed at better focusing on the multiple impacts of sexual violence against women. In particular, Section 4 addresses the subject through the study of UN Security Council Resolutions and International Jurisprudence (International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda; Inter-American Court of Human Rights; Inter-American Commission on Human Rights). Section 5 provides considerations regarding the effectiveness of International Charters, considering the Brazilian context as an example. Finally, Section 6 presents the conclusions.

2 Historical contextualization of the first references to sexual crimes in International Law

Historically, the first mentions of sexual crimes made by international law concern prohibitions against rape in contexts of war. Totila, the Ostrogoth, who invaded Rome in 546, forbade his soldiers to rape the women of the city. An ancient English war code, enacted in 1385 by Richard II, prescribed hanging for any soldier who raped a woman. Later, in the 17th century, the Dutch author Hugo Grotius discusses the fact that, while some countries allowed the violation of female dignity in times of war, others, in turn, did not authorize it. In 1785, the Treaty of Friendship and Trade concluded between the United States and Prussia established that both children and women would not be molested in a possible war between the two States.

The *Lieber Code* of 1863, a document adopted by both the USA and several European countries at the time, established the death penalty for soldiers who commit rape in its article 44. Moreover, although the Hague Conventions of 1899 and 1907 did not explicitly refer to rape and other forms of sexual violence, they prescribed the obligation to "family honor" and "religious practices and convictions", which (in the patriarchal and sexist conception of the time) can be understood as a protection of women against rape (HAGAY-FREY, 2011, p.60-61).

During the Second World War (WW2), there were two major periods of great progress in the proximity to the international rules regarding the abuses committed against civilians during fighting that: (1) in the aftermath of the war, when the world was confronted with the atrocities of the Nazis and the almost comparable crimes of the Japanese troops in Asia (among other barbarities, Japanese troops committed the Nanking Massacre, also known as the "Rape of Nanking", the episode of the murder and mass rapes of civilians that took place in 1937); and (2) in the late 1990s, after the end of the Cold War, as a reaction to the ethnic cleansing in the former Yugoslavia and the genocide in Rwanda (NEIER, 2005, p. 37).

WW2 represented a game changer in the history of human rights. The Nazi regime clearly and undeniably showed the possibility of suppressing centuries of political struggles and legal achievements (FACCHI, 2011, p.127). Post-WW2 advances included the establishment of international crimes tribunals in Nuremberg and Tokyo (unfortunately, sexual crimes committed were not tried by such tribunals) (BARRERA, 2011, p. 143); the designation of certain offenses as crimes against humanity; the adoption of the Genocide Convention[3] by the United Nations (UN), and the acceptance by virtually all governments of the world of the 1949 Geneva Conventions, the basis of International Humanitarian Law, determining certain violations as "serious offenses", or war crimes, applying, for the first time, prohibitions to domestic armed conflicts.

The conflicts in the former Yugoslavia and Rwanda inspired the establishment of the first tribunals for international crimes since Nuremberg and Tokyo; the extension of the concept of war crime to certain offenses committed in domestic conflicts; the first trials and convictions for genocide; and the adoption of a treaty for the establishment of a tribunal for permanent international crimes (NEIER, 2005, p. 37-38).

According to Hagay-Frey (2011, p. 157-158), international law could be divided into three major moments specifically addressing the crimes of sexual violence:

1. *Era of silence*: a time when there was little or no mention of acts of sexual violence in international laws. It is a period in which the idea of female submission prevails

[3] The Convention on the Prevention and Repression of the Crime of Genocide, concluded in Paris on December 11th, 1948, on the occasion of the 3rd Session of the United Nations General Assembly, was ratified by Brazil on September 4th, 1951, and enacted by Decree nº 30,822/1952.

so that rape was perceived both as a form to defeat the enemy and to improve the morale of the soldiers. In this sense, international laws were created by men to protect men, leaving aside violence against women. This Era would also include the two great wars, including the International Criminal Courts of Nuremberg and Tokyo, for which a large amount of eyewitness and documentary evidence was not enough to punish sexual crimes in the sentences handed down.

2. *Era of Honor*: the long silence of international law is broken with the signing of the 1949 Geneva Convention. Despite the recognition of the crime of rape in international legislation, such an act was understood as a violation of the honor of the woman, and not as crimes against her dignity or against her physical, psychological, and emotional integrity. Under this perspective, such practices assumed a secondary role in international standards.
3. *Current Era*: it began with the establishment of International Criminal Courts of Rwanda and the former Yugoslavia, created with the aim of trying war crimes committed in these countries. The sentences enacted in these courts represented a real historical milestone, listing sexual crimes in all categories of crime existing in international law. The Rome Statute, widely recognized before the international community, came soon after and established such an understanding, although without the extension attributed by the courts.

3 Evolution of International Standards

In the historical context that Hagay-Frey (2011, p. 157) calls the "Era of Silence", despite the Nuremberg and Tokyo courts having not judged, at least seriously[4], the sexual crimes committed, on December 20th, 1945, the Allies enacted the *Control Council Law nº 10* to punish persons guilty of war crimes, against peace, or against humanity (MOLINER, 2003, p. 33). This law presents a non-exhaustive enumeration of the crimes considered against humanity, including rape (sexual violation) (BARRERA, 2011, p. 143).

On December 10th, 1948, the UN General Assembly approved the Universal Declaration of Human Rights. In its preamble, where the values on which it is based and the ideals to which it aspires are presented, a conception already emerges that goes beyond the vision of liberal guarantees: the commitment of member countries and the United Nations to pursue "equal rights for men and women"[5]. The rights attributed to the freedom of expression and religious belief, together with freedom from fear and necessity, are affirmed not only as an individual value but as a social necessity, the denial of which "led to acts of barbarism that offend the conscience of

[4] In the Tokyo court, a military general, Matsui Iwane, and Japan's Foreign Minister, Hirota Köri, were convicted of the episode known as the "rape of Nanking" (BROOK, 2001, p. 679).

[5] "[...] the peoples of the United Nations proclaim, once more, their faith in the fundamental rights of Man, in the dignity and worth of the human person, in the equal rights of men and women [...]".

humanity" (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1948b).

Given its importance, it is worth highlighting the Geneva Conventions, a series of treaties drawn up during four Conventions that took place from 1864 to 1949 and which formed the basis of international humanitarian rights. The signing of the Geneva Convention of 1949 marks the beginning of what Hagay-Frey (2011, pp. 157-158) calls the "Era of Honor".

Article 3 of the Geneva Convention I establishes the minimum level of State obligations towards the person within the framework of a domestic armed conflict:

> **Article 3**[...]
> 1) Persons who do not take a direct part in hostilities [...] shall be, in all circumstances, **treated with humanity, without any distinction of unfavorable character based on race, color, religion or belief, gender, birth or fortune, or any other analogous criterion.**
> For this purpose, the following shall remain prohibited, at any time and place, concerning the aforementioned persons:
> **a) Offences against life and physical integrity, especially homicide in all forms, mutilation, cruel treatment, torture, and torment;** [...]
> **c) Offences against the dignity of persons, especially humiliating and degrading treatment;**
> (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1948a, emphasis added)

Article 14 of the Geneva Convention III provides for respect for prisoners, stressing that "women must be treated with all respect due to their gender and benefit in all cases from treatment as favorable as that accorded to men" (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1949).

In the same sense, article 27 of the Geneva Convention IV provides:

> **Article 27 -** Protected persons are entitled, in all circumstances, to respect for their person, their honor, their family rights, their religious convictions and practices, their habits and customs. **They shall always be treated with humanity and especially protected against all acts of violence or intimidation, against insults, and public curiosity**.
> **Women will be especially protected against any attack on their honor, and particularly against rape, forced prostitution, or any form of attack on their modesty** (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1950, emphasis added).

It follows from article 27, which has criminalized sexual violation as a crime of international law.

The framework established by Convention IV and Additional Protocol II to the Geneva Conventions on the Protection of Victims of Armed Conflict[6] was to determine sexual crimes as international law, highlighting the need to incorporate a gender perspective into international law with the aim of giving visibility to the impact, eminently differentiated, of armed conflicts over women (BARRERA, 2011, p. 145).

[6] Decree nº 849, dated June 25th, 1993, enacted protocols I and II of 1977 additional to the 1949 Geneva Conventions, adopted on June 10th, 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts.

4 The incorporation of gender perspective in international law

In the second half of the 20th century, there is also another fundamental passage in the history of human rights: its extension to women. In much of the world, legal equality between the two genders, claimed for centuries, is formalized: the holders of rights are no longer only men but all people (FACCHI, 2011, p. 139).

In western countries, the essential path to equality was the attainment of the right to vote, which opened the path to women to the progressive conquest of the other rights associated with it. As previously seen, the Charters of the post-war period have enacted the equal rights between genders (at the time, it was said equality of the sexes), and gave rise to the transformation of the process of legal reform (walking in the direction of the availability of the human body, of self-determination, of one's assets, one's job, one's freedom, access to all jobs and public positions, etc.) (FACCHI, 2011, p. 139-140).

It is important to point out that the treatment without considering the specificities of the recipients of the standard causes its results to be applied to a "universal subject" that does not exist, so that the "generalization for all individuals is insufficient and does not account for the experiences of women and men interchangeably" (DUQUE, 2015, p. 16).

In this sense, Bobbio points out that (2004, p. 31):

> A new trend, which can be called a specification, has manifested itself in recent years; it consists of the **gradual but increasingly sharp passage to a further determination of the subjects entitled to rights [...]. This specification occurred concerning either gender**, or the various phases of life, or the difference between normal state and exceptional states of human existence [...] (emphasis added).

Thus, in weighing the proclaimed equalities, gender discrimination was still observed (and one can safely say that it is still observed). In view of this, the UN Assembly proclaimed the Declaration on the Elimination of Discrimination Against Women (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1967).

However, the document that effectively substantiates the internationalization of women's rights is the Convention on the Elimination of all Discrimination Against Women (CEDAW)[7], adopted by the UN in 1979. Its preamble states that women's rights are an integral part of human rights. This act is based on the observation that "women continue to be the subject of serious discrimination" despite the confirmation of legal parity between the genders

[7] Signed by Brazil on March 31st, 1981, and ratified on February 1st, 1984 (INTER-PARLAMENTARY UNION, 2003). When ratifying CEDAW, the Brazilian State formulated reservations to article 15, paragraph 4; article 16, paragraph 1, subitems (a), (c), (g), and (h); and article 29. The reservations to articles 15 and 16, withdrawn in 1994, were made due to the incompatibility of the Convention with Brazilian legislation concerning the asymmetry between the rights of men and women, especially in civil matters. The reservation to article 29 concerns the dispute between member States as to the interpretation of the Convention and remains in force. As for the Additional Protocol to the Convention, Brazil became a member in 2002 (OBSERVATÓRIO BRASIL DA IGUALDADE DE GÊNERO, 2016).

in international declarations and the adoption of specific instruments aimed at "promoting the principle of equality between men and women". From this it follows that the realization of women's rights does not only require the formal extension of existing rights. Member States undertake to take all appropriate measures to ensure parity of rights between men and women in the various spheres of social life, eliminating discrimination de jure and de facto (INTER-PARLAMENTARY UNION, 2003). This is how CEDAW expresses regarding discrimination against women:

> Article 1 - For the purposes of this Convention, the expression "discrimination against women" shall mean all of the distinction, exclusion, or restriction made on the basis of gender which has the purpose or the result of damaging or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.

CEDAW is also the first international document that places women's effective access to fundamental rights as a priority issue for humanity as a whole. Women's perspective is, therefore, assumed as the foundation of private rights and measures, expression of typically feminine demands.

Furthermore, CEDAW agrees that women's rights may have varied applications in different countries and that traditional cultures can play a decisive role in limiting them. The effective access to the rights is put forward as an objective for which legal reforms are not enough. Economic, social, and cultural transformations, especially an education, are necessary for rights that encompass "the change in the socio-cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary practices, and any other type that is based on the idea of the inferiority or superiority of either gender or stereotypical functions of men and women".

By ratifying CEDAW, governments commit themselves to take a series of domestic measures to end discrimination against women. However, one of its weaknesses is the near absence of sanctions against governments that do not comply with the commitments made.

Brazil is also a signatory to the Optional Protocol to CEDAW, through Decree nº 4,316/2002. The Optional Protocol authorizes the submission of complaints by individuals or groups of individuals directly to the CEDAW Committee, slightly increasing its autonomy from State sovereignty.

In June 1993, the World Conference on Human Rights takes place in Vienna, Austria. It recognizes that "the human rights of women and girls are inalienable and constitute an integral and indivisible part of universal human rights", and that "gender violence and all forms of sexual abuse and exploitation [...] are incompatible with the dignity and worth of the human person and must be eliminated" (CONFERÊNCIA MUNDIAL DOS DIREITOS HUMANOS,

1993).

Given its relevance, the Declaration on the Elimination of Violence Against Women, proclaimed by the UN General Assembly in its Resolution 48/104 of December 20th, 1993, deserves mention. This Declaration is the first international human rights document focused exclusively on violence against women, thus incorporating violence against women into the conceptual framework of human rights:

> Article 1 - For the purposes of this Declaration, "violence against women" means any act of gender-based violence resulting in, or likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of freedom, occurring in both public and private life (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1993a).

The notion that women are also subject of international rights is being consolidated, little by little, perhaps more slowly than one would like, but still steadily.

In 1994, the Organization of American States (OAS) gave force of law to the Declaration on the Elimination of Violence Against Women through the Convention to Prevent, Punish and Eradicate Violence Against Women (Convention of Belém do Pará), filling a gap in CEDAW that had not addressed this topic (BARSTED, 2001, p.4). The Convention is the first international treaty on the protection of women's human rights to expressly recognize violence against women as a widespread problem in society, also recognizing, quite forcefully, that violence against women is a specific type, which is based on gender, regardless of class, religion, age, or any other condition of the women (ORGANIZAÇÃO DOS ESTADOS AMERICANOS, 1994).

Article 7 of the Convention of Belém do Pará establishes that it is the duty of the Member-State to "incorporate into their domestic law, criminal, civil, administrative, and other measures necessary for the prevention, punishment, and eradication of violence against women, and adopt appropriate applicable administrative measures". Article 8 requires the Member-State to "promote and support government and private education programs intended to raise the awareness of the public on the issues of violence against women, legal remedies, and redress relating to violence against women".

It is important to note that the case Maria da Penha[8] was the first in which the

[8] In 1983, the biopharmaceutical specialist Maria da Penha Maia Fernandes suffered a double attempted murder by her then-husband inside her own home in Fortaleza, Ceará: (1) in the first attempt, the attacker shot her back while she slept, leaving her paraplegic; (2) in the second, he tried to electrocute her in the bath. In 1998, after more than 15 years of the crime, despite two convictions by the Ceará Jury (one in 1991 and another in 1996), there was still no final decision in the case and the aggressor remained in freedom, which is why Maria da Penha, CEJIL-Brasil (Center for Justice and International Law, Brazil Chapter), and CLADEM-Brasil (Latin American and Caribbean Committee for the Defense of Women's Rights, Brazil Chapter) sent the case to the Inter-American Commission on Human Rights of the Organization of American States (IACHR/OAS). In 2001, the IACHR held the Brazilian State liable for omission, negligence, and tolerance, considering that this case presented the conditions of domestic violence and tolerance by the State, as defined in the Convention of Belém do Pará (ORGANIZAÇÃO DOS ESTADOS AMERICANOS, 2001).

Convention of Belém do Pará was applied. Faced with this context of internationalization, feminist groups and non-governmental organizations articulated themselves to approve the Bill that gave rise to Law nº 11,340/06 (Maria da Penha Law), which creates mechanisms to curb domestic and family violence against women. Despite the progress represented and the results observed, it should be pointed out that the effectiveness of the Law still encounters several obstacles concerning the social, patriarchal, and sexist culture of our country.

The 4th World Conference on Women, held in Beijing, in 1995, was based on an assessment of the progress made since previous conferences (Nairobi, 1985; Copenhagen, 1980; and Mexico, 1975) and an analysis of the obstacles to be overcome so that women could fully exercise their rights and achieve their integral development as persons. The Beijing Declaration and Platform for Action was elaborated, an essential instrument of women's human rights that identified twelve priority areas of concern, among them violence against women and the effects of armed conflict on women. Three innovations with great transformative potential in the fight for the promotion of the situation and rights of women were enshrined: the concept of gender, the notion of empowerment, and the focus on transversality. Of these three, the concept of gender stands out, which "allowed the movement from an analysis of the situation of women based on the biological aspect to an understanding of the relationships between men and women as a product of socially and culturally determined patterns, and, therefore, susceptible to modification" (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1996).

Chapter "D" of the Beijing Platform for Action is devoted entirely to Violence Against Women, of which highlights, in addition to item 113 that reproduces article 2 of the Declaration on the Elimination of Violence Against Women, item 118, which provides:

> 118. **Violence against women is a manifestation of the historically unequal power relations between women and men, which have caused the domination of women by men, the discrimination against them, and the interposition of obstacles to their full development**.**Violence against women**, throughout its life cycle, **derives essentially from cultural habits**, especially the harmful effects of some traditional or customary practices and all acts of extremism related to race, gender, language, or religion, which **perpetuate the condition of inferiority conferred on women** within the family, the workplace, the community, and in society. **Violence against women is aggravated by social pressures, such as the shame of reporting certain acts; women's lack of access to legal information, assistance, and protection; by the lack of laws that effectively prohibit violence against women**; by the fact that the laws in force are not properly amended; by the lack of commitment of the public authorities in the dissemination of the laws in force and in their compliance; and **by the absence of educational and other means to combat the causes and consequences of violence**. The images of violence against women that appear in the mass media, particularly the representations of rape or sexual slavery, and the use of women and girls as sexual objects, including pornography, are factors that contribute to the continued prevalence of this violence, harmful to the community in general and in particular to children and young people [...] (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1996, emphasis added).

In the context of sexual violence under consideration, Chapter "E", which addresses "Women and Armed Conflict", and Chapter "I", on "Women's Human Rights" are also important (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1996).

All this normative advance associated with the experiences of the International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR), created in 1993 and 1994, respectively, culminated in the adoption, in 1998, of the Rome Statute (which governs the International Criminal Court - ICC), where, *for the first time, sexual violence appears as an independent crime* (TRIBUNAL PENAL INTERNACIONAL, 1998).

The Rome Statute recognizes gender crimes, elevating sexual crimes to the status of crimes against humanity (and, therefore, imprescriptible) (article 7, 1, g, combined with article 29) when committed in the context of a widespread and systematic attack against the civilian population (article 7, 2, a).

Prosecutor Ela Wiecko V. de Castilho (2005, p. 1) weaves the following considerations regarding the gender approach introduced by the Rome Statute:

> The ICC is currently one of the most developed mechanisms in the field of gender justice since it incorporates (a) a definition of gender, (b) the principle of gender-based non-discrimination, (c) rules of procedure and evidence, protection and participation in relation to victims and witnesses of crimes of sexual violence, and (d) criminalizes sexual and gender violence at the international level.

Table 1 lists the main international instruments for the protection of Human Rights ratified by Brazil.

Table 1 – Main Treaties, Declarations, Covenants, Action Plans, and International Conventions for the Protection of Human Rights

Approval in the International Body	**Ratification by Brazil**	**International Instrument**
1945	1945	Charter of the United Nations
1948	1948	Convention Against Genocide
1948	1948	Universal Declaration of Human Rights
1966	1992	International Covenant on Civil and Political Rights
1966	1992	International Covenant on Economic, Social and Cultural Rights
1979	1984/1994	Convention on the Elimination of All Forms of Discrimination Against Women
1984	1989	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
1986	1989	Inter-American Convention to Prevent and Punish Torture
1993	1993	Declaration on the Elimination of Violence Against Women
1994	1995	Inter-American Convention to Prevent, Punish and Eradicate Violence Against Women (Convention of Belém do Pará)
1995	1995	Platform for Action of the IV World Conference on Women
1998	2002	Rome Statute
2000	2002	Optional Protocol to the Convention on the Elimination of All Forms of

Approval in the International Body	Ratification by Brazil	International Instrument
		Discrimination Against Women

Source: Barsted (2001, p. 5-6), with modifications.

In 2001, Radhika Coomaraswamy, UN Special Rapporteur on Violence Against Women, presented the report on *La violencia contra la mujer perpretada y/o condonada por el Estado, en tiempos de conflicto armado (1997-2000)* in which she indicates:

> [...] **that women and girls have been raped by government forces and other non-state actors, by the police responsible for their protection, by guards of refugee camps and borders, by neighbors, by local politicians, and sometimes by family members under threat of death**. They have been sexually injured or mutilated and have often been killed or left to die. Woman **have been subjected to humiliating comments after being naked, they have been forced to parade or dance naked in front of soldiers or in public, and to perform painful household chores while naked**. Women and girls have been forced to "marry" soldiers, a euphemistic term used to designate what is essentially a repeated violation and sexual slavery, they and their children have suffered disabilities as a result of exposure to chemical weapons. [...]
> The Special Rapporteur stresses that **there is still a mismatch between the acknowledgment by the international community that those who have committed violations and other acts of gender-based violence are accountable to the law and should be punished**, and the political will of Member States to implement international humanitarian law and human rights standards, and reiterates that **transgressors must bear their responsibilities**. The current impunity of those who applied the Japanese system of military slavery during WW2 is just one of many examples of this **negligence of some Member States that do not investigate past acts of sexual violation and violence, nor do they prosecute or punish those responsible. This contributes to creating a climate of impunity that today perpetuates violence against women** [...] (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 2001, emphasis added).

These were the main international legal bases that address the issue of sexual violence against women in the context of war (declarations, treaties, covenants, statutes, protocols, and conventions). They laid the foundations for the development of domestic national legislation by setting the minimum parameters/levels of human rights to be followed. Subsequently, the greatest international advances in the subject began to occur through Resolutions and international jurisprudence that began to apply such parameters. These will be the topics of the following sections.

4.1 UN Security Council Resolutions

The United Nations Security Council is one of the main bodies of the United Nations, responsible for ensuring the maintenance of international peace and security, recommending the admission of new members to the General Assembly, and approving any changes to the Charter

of the United Nations. Their decisions are usually referred to as *Resolutions*, have binding legal value, and aim to indicate the solution to any conflict related to the maintenance or promotion of international peace and security. It is the only body in the international system capable of adopting mandatory decisions for all 193 UN Member States, and may even authorize military intervention to ensure the implementation of its resolutions (ONU, 2021).

The United Nations Security Council has already approved five resolutions that specifically discuss the problem of sexual crimes, presenting a gender focus.

Resolution nº 1325/2000 focused on the condition of women in conflict situations, highlighting the need for protection against sexual crimes and urging that the gender perspective be considered in all the conflict resolution architecture:

> 10. Calls on all parties involved in armed conflict to take special measures to protect women and young from gender-based violence, especially violation and other forms of sexual abuse, as well as all other forms of violence that occur in situations of armed conflict;
> 11. Stresses the responsibility of all States to end impunity and prosecute those responsible for genocide, crimes against humanity, and war crimes, including those related to sex and any other type of violence against women and girls, and, in this regard, stresses the need to, wherever possible, exclude such crimes from the amnesty provisions; (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 2000).

Resolution nº 1820/2008 strongly condemns the practice of sexual violence as a tactic of war in conflict situations, recalling the possibility of such practices constituting war crimes, crimes against humanity, and genocide:

> 4. Notes that rape and other forms of sexual violence may constitute a war crime, a crime against humanity, or an act constituting genocide. Stresses the need to exclude crimes of sexual violence from the amnesty provisions in addressing conflict resolution processes. Calls on the Member States to comply with their obligations to prosecute those responsible for such acts, to ensure all victims of sexual violence, especially women and girls, the protection of the law and the right to justice, and stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation; (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 2008)

Resolution nº 1888/2009 is also considered an advance in international law, as it created the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict. This office focuses its work in countries considered priorities in the fight against violence against women. Among its objectives are the fight against impunity for crimes of sexual violence and the protection and empowerment of women in conflict situations (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 2009).

Resolution nº 1960/2010 states that sexual violence is practiced in a systematic and widespread manner in conflict situations, constituting a serious violation of human rights. Additionally, it proposes institutional mechanisms aimed at protecting and preventing crimes of

such a nature and advancing the fight against impunity in conflict (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 2010).

Finally, Resolution nº 2106/2013 presents a gender focus, affirming the need for the search for equality already in the post-conflict moment, and aiming at consolidating the achievements of Resolution nº 1325/2000 (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 2013).

4.2 International jurisprudence

Jurisprudence, understood as the set of uniform and constant decisions of the courts, issued for the judicial solution of conflicts, involving similar cases (DINIZ, 2008, p.295), has been increasingly relevant considering international decisions in cases of sexual violence.

In principle, jurisprudence has its obligation restricted to the case in which the decision was rendered, but it serves as a parameter for other judgments involving equal or similar issues by applying different normative precepts in a logical and systematic manner. In this sense, it plays the important role of updating the legal provisions, making them compatible with social evolution.

In this context, this section presents decisions in the context of judgments of international courts considered important concerning the acknowledgment, trial, and punishment of sexual violence (for an explanation of the cases, readers refer to the bibliographic references cited).

4.2.1 The International Criminal Tribunal for the former Yugoslavia

It inaugurates what Hagay-Frey (2011, p. 158) calls the "Current Era" of international law regarding the subject of crimes of sexual violence.

At the end of the 20th century, the Balkan Peninsula was the scene of numerous ethnic conflicts that resulted in a balance of thousands of deaths and an untold number of refugees. Such conflicts were considered the most intense since WW2. Furthermore, sexual crimes were practiced in a widespread and systematic manner against the civilian population and used as an instrument of war, ethnic cleansing, and humiliation. In this context, the International Criminal Tribunal for the former Yugoslavia (ICTY) was established (HAGAY-FREY, 2011, p. 80; ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1993b).

Approximately 20,000 to 44,000 women were victims of sexual abuse between 1992 and 1994 in Yugoslavia. Most of the rapes were carried out by Serbian men against Muslim and Croatian girls and women. Additionally, many women were arrested in homes or hotels, becoming sex slaves. The victims were repeatedly raped over several months and treated with violence and cruelty (CHIAROTTI, 2011, p. 185).

Rape was used as a form of humiliation and damage to the honor of victims and their families since, according to Islam, rape victims are considered unclean, undesirable, and unfit

for marriage. This often led to the banishment of victims, and in some cases, their own death by family or community members. Finally, rape was used as a form to exalt the honor of the aggressors and raise the morale of their own soldiers (HAGAY-FREY, 2011, p. 80-81).

In 1993, a group of women who were part of the NGO *Women in the Law Project* (WILP) sent a delegation to the conflict site responsible for drawing up a report calling for the crime of rape to be included in international criminalization, characterizing it as a serious violation of the Geneva Conventions (WOMEN IN THE LAW PROJECT, 1994, p. 91-93).

Article 5, g, of the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY Statute) represented a milestone in the history of International Criminal Law in *listing for the first time "rape"' as a "crime against humanity"*. Such a codification also innovated by considering rape not as a violation of the honor of women but as an attack on humanity, breaking with the current understanding at the time (HAGAY-FREY, 2011, p. 83).

The Tribunal held that both rape and other types of sexual assault constituted a serious violation of the Geneva Conventions and the customary laws of war, and could be considered as crimes of torture and genocide.

The ICTY Statute encouraged female participation in the entire legal process, with the presence of women researchers, legal consultants, judges, or prosecutors. Such promotion was important for the success of the tribunal in view of the greater sensitivity of women to a gender perspective in crimes (ASKIN, 1999, p. 302-303).

Another important step forward is the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia, which established more flexible and appropriate rules for collecting testimony and ensuring effective protection of victims of sexual abuse. A Regra 34 desse documento, além de criar uma unidade específica para acolher e aconselhar as testemunhas e vítimas de abuso sexual, também fomenta a contratação de mulheres qualificadas a fim de prestarem um atendimento adequado à vítima (HAGAY-FREY, 2011, p. 84-85).

The following trials stand out:

1. The first trial, against Dusko Tadic, set an important precedent for sexual crimes in international law. The defendant was charged with committing crimes against humanity for his involvement in a campaign of terror that included killing, torture, sexual assaults (perpetrated against both men and women), and other types of physical and psychological abuse.
2. Case nº IT-96-21-T, Prosecutor's Office vs. Zejnil Delalić, Zdravko Mucić alias "Pavo", Hazim Delić, Esad Landžo alias "Zenga" (Čelebići): tried crimes of sexual exploitation and torture of prisoners in the Čelebići camp. Several soldiers were accused, among them Hazim Delić, the camp guard, convicted of using rape as a torture technique against female prisoners. This was the first time that rape was

recognized as a crime of torture in international law. Furthermore, the Tribunal understood that the testimony of victims of sexual violence should be credited with the same credibility that is given to victims of other crimes, not requiring from them proof of the statement:

3. Case nº IT-95-17/1-T, Prosecutor's Office vs. Anto Furundžija: innovated by developing a definition of the crime of rape that was not limited to vaginal or anal penetration, but that included oral violations.

> 185. Thus, the Trial Chamber finds that the following may be accepted as the objective elements of rape:
> **(i) the sexual penetration, however slight:**
> **(a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or**
> **(b) of the mouth of the victim by the penis of the perpetrator;**
> (ii) by coercion or force or threat of force against the victim or a third person (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1998, p. 73, emphasis added).

Additionally, it established that it is forbidden not only to practice rape or sexual assault, but also to plan, order, instigate, or assist in their execution.

4. Case nº IT-96-23-T & IT-96-23/1-t, Prosecutor's Office vs. Dragloljub Kunarac, Radomir Kovač, and Zoran Vuković: first case in which a defendant was charged *exclusively* for committing sexual crimes against women.

4.2.2 The International Criminal Tribunal for Rwanda

The International Criminal Tribunal for Rwanda (ICTR) was established in November 1994 to prosecute cases of crimes against humanity and genocide that occurred during the country's civil war. During its existence, there were more than fifty trials and thirty convictions. The basis of the substantive law applicable to the ICTR was the 1948 Convention on the Prevention and Punishment of Crimes of Genocide, the four Geneva Conventions of 1949, and their three additional protocols (PAULA, 2011, p. 53-54).

This Tribunal was responsible for the first judicial framework of the sexual crime, which was understood by the court as an instrument of genocide. Therefore, the very act of mass serious bodily injury through sexual violence constitutes a genocidal act (PAULA, 2011, p. 62). As stated by Susana Chiarotti (2011, p. 181):

> Esta es la primer sentencia de un tribunal penal internacional que define la violencia sexual: "cualquier acto de naturaleza sexual que se comete contra una persona en circunstancias coactivas" y la violación sexual como: "una invasión física de naturaleza sexual, cometida contra una persona bajo circunstancias coactivas". A la vez, considera a ambas como delito de lesa humanidade.

The only sexual crime expressly provided for in article 3 of the Statute of the International Criminal Tribunal for Rwanda (ICTR Statute) was typified by penetration of the

victim's anus, vagina, or mouth by the agent, using any object (PAULA, 2011, p. 67), crimes of a sexual nature that did not involve penetration would be framed either in the subsection on torture or in the subsection on other inhuman acts.

However, with the judgment handed down in that Tribunal, *the concept of sexual violence extends beyond rape (penetration) for the first time*, comprising any act of a sexual nature against a person under the circumstance of coercion, not being required to prove the use of physical force. It is accepted that sexual violence can occur even through acts that do not involve penetration or even physical contact, such as, exposing the person to nudity, threats, intimidation, extortion, and other types of mistreatment that use fear or despair to constitute coercion (CHIAROTTI, 2011, p. 182). Sexual violence was included among inhuman acts, which violate human dignity, causing serious physical and mental damage. The ICTR also indicates that the mental element of rape as a crime against humanity consists in the intention to perpetrate prohibited sexual penetration knowing that it occurs without the consent of the victim.

The most relevant judgment on sexual crimes in this context of civil war is that of Jean Paul Akayesu, from Taba Commune. He was Burgomaster of the commune, the highest local authority, and, under his administration, more than two thousand people were brutally annihilated and as many were mutilated and sexually assaulted (PAULA, 2011, p. 93). He was sentenced to life in prison in a trial that lasted sixty days, having been convicted on nine of the fifteen charges, including that of having committed a sexual crime.

4.2.3 Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights (IACHR) is an autonomous body of the OAS charged with the promotion and protection of human rights in the American continent. Together with the Inter-American Court of Human Rights, it integrates the Inter-American Human Rights System. It is based in Washington and is composed of seven elected jurists who jointly represent the OAS member countries.

The activities of the IACHR are developed around three cores: (1) the individual petition system; (2) the monitoring of the human rights situation in the Member States; (3) the attention to priority thematic lines. They are directed in a complementary manner by the following concepts: (1) the principle *pro personae*, according to which a standard should always be interpreted in the most favorable way to the human being; (2) the need for access; (3) justice; (4) the incorporation of the gender perspective in all its activities (OEA, 2021).

The paradigmatic cases of the IACHR regarding the acknowledgment of sexual violence are related below.

- **Case Raquel Martín de Mejía vs. Peru. Case nº 10,970. Report nº 5/96 of March 1st, 1996 (CENTRO PELA JUSTIÇA E O DIREITO INTERNACIONAL, 1996)**: in this

case, the Court determined that the *rapes committed should be considered as crimes of torture and against humanity*. It also established that there was no context at the time that allowed the victim to report the incident, highlighting the stigma that sexual violence means for those who suffer it. It indicated that the abuses committed by members of the State are the result of its omission and constitute violations of the human rights of the victims, especially their physical and mental integrity, constituting, in the specific case, a crime of torture. The Court's report on the case highlights the psychological suffering and the marks that the stigma of sexual violence leaves on its victims:

> Raquel Mejía fue víctima de violación, y en consecuencia de un acto de violencia contra su integridad que le causó "penas y sufrimientos físicos y mentales". Como surge de su testimonio, luego de ser violada "estaba en un estado de shock, sentada sola en [su] habitación". **No se animó a realizar la denuncia pertinente por miedo a sufrir el "ostracismo público". "Las víctimas de abusos sexuales no denuncian estos hechos porque [se] sienten humilladas. Además nadie quiere reconocer públicamente que ha sido violada. No se sabe cómo puede reaccionar el marido. [Por otro lado] la integridad de la familia está en juego, los hijos pueden sentirse humillados de saber que esto le ha ocurrido a su madre"** (CENTRO PELA JUSTIÇA E O DIREITO INTERNACIONAL, 1996, p. 97-98, emphasis added).

The Tribunal acknowledges that victims of rape by Government agents do not report these abuses for fear of public humiliation and the perception that those responsible will never be punished, adding to this the fact that they are usually threatened with reprisals against themselves or their families.

- **Ana, Beatriz, and Celia González Pérez vs. Mexico. Case nº 11,565. Report nº 53/01, of 4/4/2001 (COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS, 2001)**: in its ruling, the Inter-American Commission on Human Rights (IACHR) understood that *sexual violence under certain circumstances* (as found in the case at trial) *constitutes crimes of torture* and makes the following considerations:

> **45. La violación sexual cometida por miembros de las fuerzas de seguridad de un Estado contra integrantes de la población civil constituye en todos los casos una grave violación de los derechos humanos protegidos en los artículos 5 y 11 de la Convención Americana, así como de normas de derecho internacional humanitario** […] las consecuencias de la violencia sexual "son devastadoras para las víctimas desde el punto de vista físico, emocional y psicológico".
> 47. **En el derecho internacional, bajo determinadas circunstancias, la violación constituye además tortura** […]
> La violación produce un sufrimiento físico y mental en la víctima. Además de la violencia sufrida al momento que se perpetra, las víctimas habitualmente resultan lesionadas, o en algunos casos, incluso quedan embarazadas. El hecho de ser objeto de un abuso de esta naturaleza les ocasiona asimismo un trauma psicológico, que resulta por un lado del hecho de ser humilladas y victimizadas, y por el otro, de sufrir la condena de los

> miembros de su comunidad, si denuncian los vejámenes de los que fueron objeto […].
> 48. **El Relator Especial de las Naciones Unidas contra la Tortura ha señalado que la violación es uno de los métodos de tortura física, utilizada en algunos casos para castigar, intimidar y humillar** […]
> **La violación de una persona detenida por un agente del Estado debe considerarse como una forma especialmente grave y aberrante de tratamiento cruel**, dada la facilidad con la cual el agresor puede explotar la vulnerabilidad y el debilitamiento de la resistencia de su víctima. Además, la violación deja profundas huellas psicológicas en la víctima que no pasan con el tiempo como otras formas de violencia física y mental.
> 49. […] La jurisprudencia internacional y los informes del Relator Especial demuestran un impulso hacia la definición de la violación como tortura cuando se verifica en el marco de la detención e interrogatorio de las personas y, en consecuencia, como una violación del derecho internacional. La violación se utiliza por el propio interrogador o por otras personas asociadas con el interrogatorio de una persona detenida, como medio de castigar, intimidar, coaccionar o humillar a la víctima, o de obtener información, o una confesión de la víctima o de una tercera persona (COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS, 2001, emphasis added).

4.2.4 Inter-American Court on Human Rights

As mentioned above, the Inter-American Court on Human Rights is an autonomous judicial body, part of the Inter-American Human Rights System. It is headquartered in San Jose, Costa Rica and aims to apply and interpret the American Convention on Human Rights as well as other Human Rights Treaties. The emblematic cases of the Inter-American Court on Human Rights concerning crimes of sexual violence against women are presented below.

- **Criminal Case Miguel Castro Castro vs. Peru - Sentence of November 25th, 2006 (CORTE INTERAMERICANA DE DIREITOS HUMANOS, 2006)**: in this trial, the Court *defines what sexual violence is and makes it clear that crime takes on different hues concerning women* to whom it affects in greater proportion, especially if they are mothers or pregnant. It also established that vaginal inspection, undertaken within the framework of the case, not required for a health reason and performed in a military hospital, is characterized as rape (sexual violation) and considered torture for its effects.

They also established that, in the case in question, women were affected differently and more severely compared to men because *the violence they suffered was directed specifically at them for being women*. The sexual violence they suffered was used as a *symbolic act to humiliate them*, it aimed to punish, intimidate, pressure, degrade, repress. They were a form of "giving a message, a lesson".

In the context considered, a more cruel and violent treatment was waived to women considered "suspects", accused of crimes of terrorism and treason to the motherland.

The forced nudity for a long period to which the women were subjected in the military hospital was considered an act violating personal dignity, and as sexual violence. The fact characterizing of sexual violence was that they were constantly watched by male guards, which

aggravated the constant fear of suffering sexual violation, causing severe psychological and moral suffering that added to the physical suffering of their wounds.

The fact that they had to use the bathroom accompanied by an armed male guard, who did not allow them to close the door and pointed the gun at them while doing their physiological needs was also included as sexual violence.

Important precedent was to consider that:

> 306. […] la violencia sexual se configura con acciones de naturaleza sexual que se cometen en una persona sin su consentimiento, que además de comprender la invasión física del cuerpo humano, pueden incluir actos que no involucren penetración o incluso contacto físico alguno.
> 310. […] la violación sexual no implica necesariamente una relación sexual sin consentimiento, por vía vaginal, como se consideró tradicionalmente. Por violación sexual también debe entenderse actos de penetración vaginales o anales, sin consentimiento de la víctima, mediante la utilización de otras partes del cuerpo del agresor u objetos, así como la penetración bucal mediante el miembro viril (CORTE INTERAMERICANA DE DIREITOS HUMANOS, 2006, p. 107-108).

It established that sexual violence committed by a State agent is especially serious and reprehensible in view of the vulnerability of the victim and the abuse of power of the agent.

- **González and others vs. Mexico ("Algodonero Camp" – Sentence of November 16th, 2009 (CORTE INTERAMERICANA DE DIREITOS HUMANOS, 2009b)**: *the Court used for the first time the expression femicide to refer to the murder of the woman for reasons of gender*, having as structural causes persistent gender violence and discriminatory culture against women. It defined the jurisdiction of the Court to judge violations of the Convention of Belém do Pará. *It also used, for the first time, the concept of gender stereotype* (preconception as to the attributes, characteristics and roles that "should" be played by men and women, respectively), indicating it as a cause and consequence of gender violence against women.

It stated that impunity – whether due to State inaction, tolerance of violence against women, disqualification of the victim credibility, tacit attribution of responsibility for the facts to the victim - causes a vicious circle that favors the perpetuation of gender-based violence and is, in itself, discrimination in terms of access to justice.

- **Massacre de las Dos Erres vs. Guatemala - Sentence of November 24th, 2009 (CORTE INTERAMERICANA DE DIREITOS HUMANOS, 2009a)**: in this sentence, the Court ruled that the rapes committed in the context of the case being tried were a *state practice directed against the dignity of women* on cultural, social, family, and individual levels, which *should be considered crimes against humanity*.

5 Concerning the effectiveness of International Charters

From the perspective of the Brazilian structure, the applicability of the international provisions is only possible from the moment the requirements for its proper integration of the constitutional legal order are met, namely: (i) the conclusion of an international convention; (ii) the approval by the Parliament; and (iii) the ratification by the Head of State - concluded with the issuance of a Decree, from which derive three basic effects: (a) the enactment of an international treaty; (b) the official publication of its text; and (c) the enforcement of the international act, which, from that moment, becomes binding and mandatory in domestic substantive law (BRASIL, 2009, p. 1139).

There are provisions in the Brazilian Federal Constitution (CF/88) that signal a constitutional openness to international and supranational law. Namely:

> Art. 4. .....
> Sole paragraph. The Federative Republic of Brazil shall seek the economic, political, social, and cultural integration of the peoples of Latin America, aiming at the formation of a Latin American community of nations. [...]
> Art. 5. .....
> Paragraph 2. The rights and guarantees expressed in this Constitution do not exclude others arising from the regime and principles adopted by it, or from international treaties to which the Federative Republic of Brazil is a party.
> Paragraph 3. International treaties and conventions on human rights that are approved in each House of the National Congress, in two rounds, by three-fifths of the votes of the respective members, shall be equivalent to constitutional amendments. (Included by Constitutional Amendment nº 45 of 2004)
> Paragraph 4. Brazil submits to the jurisdiction of an International Criminal Court to which it has expressed its adherence. (Included by Constitutional Amendment nº 45 of 2004)

According to Celso de Mello (BRASIL, 2009, p.1150), sole paragraph of article 4 represents a clear choice of the constituent for the integration of Brazil into supranational bodies.

It should also be noted that "several Latin-American countries have moved towards their insertion in supranational contexts, reserving international human rights treaties a special place in the legal system, sometimes granting them constitutional normative value", which reveals "a contemporary tendency of worldwide constitutionalism to prestige international standards aimed at the protection of the human being" (BRASIL, 2009, p. 1151).

However, the main problem of the internationalization process is the effectiveness of the rights proclaimed in the international charters. As an example, even today, almost seventy years after the Universal Declaration, the rights enunciated in it are largely ineffective; more precisely, their practice is largely handed over to national institutions. In some countries, and in some periods, the violation of those rights constituted and constitutes normality, as testimonies and reports of international agencies show. The establishment of authoritarian regimes was observed, as in the case of dictatorial Brazil, that, although officially recognizing the rights

enunciated in international declarations, often did not favor their practice and justified the violation in the name of other priorities: from political unity to stability, to religion, to economic development (FACCHI, 2011, p .138).

The international system for the protection of human rights does not have a judicial body with jurisdiction to adjudicate individual cases of violation, limited to the issuance of reports prepared by Member States and, sometimes, to "interstate communications and individual petitions considered by the Committees or Commissions (non-jurisdictional bodies) specially set up to monitor compliance with international conventions" (BARRETO, 2012, p. 12).

Despite the undeniable contributions, a difficulty persists regarding the implementation of the sentences of International Courts at the domestic level, namely in ensuring the effective investigation of the facts and the identification and punishment of those responsible for the violations, especially when State agents are or may be involved (CEIA, 2013, p. 151).

The protection of the international community through transnational judicial bodies is an attempt to give effect to human rights. However, there is a lack of rules establishing sanctions for governments that do not respect the rights and a lack of transnational judicial bodies to apply these rules and issue the sanction. The establishment of an International Criminal Court is an important step in this direction (FACCHI, 2011, p. 138).

In the absence of legal guarantees, the instruments available to the international community to pressure governments are mainly: (1) economic sanctions; (2) the embargo; (3) the importance of maintaining good relations with neighboring countries and, in general, with other States (FACCHI, 2011, p. 139).

It should be noted that the the CEDAW Committee is the UN body in charge of monitoring, specifically, the implementation of the Women's Convention. This Committee had jurisdiction only to analyse the reports prepared by the Member States. However, the approval in March 1999 of the Optional Protocol to CEDAW (document E/CN.6/1999/WG/L.2) allowed women or groups of women from States that ratify it to make individual or group complaints or petitions for violations of their rights before the Committee.

As previously seen, another relevant instrument is the IACHR, to which Brazil recognizes the contentious jurisdiction and in which it has already had some cases tried. However, there is no specificity concerning gender crimes or sexual crimes in the jurisprudence of this Court in trials from Brazil. The IACHR considers crimes against humanity as imprescriptible and unamnestiable (CORTE INTERAMERICANA DE DIREITOS HUMANOS, 2010, p. 47) and has access to reports on Women's Rights. Because the guiding principle of the international system is State sovereignty, there is no exclusive jurisdiction of a supra-state body over related matters (BULL, 1977, p. 2). In this sense, applicable sanctions cannot involve curtailing the freedom of individuals (which would contravene the principle of

State sovereignty), weakening the punitive power of such organizations and international treaties[9], which have only historically verified real effectiveness against individuals in scenarios where the jurisdictional state power was in itself weakened, such as at the end of wars or acts of genocide.

The international legal system, according to the jurisprudence of the courts that bind Brazil, has powers of jurisdiction mainly against the States that ratify the conventions, and not against the citizens of these nations. Only in specific cases have extra-conventional political cuts been formed for the punishment of war crimes and genocide, such as in the former Yugoslavia and in Rwanda, where State sovereignty was seriously weakened and international intervention was already in place. The real effectiveness of international human rights tribunals will only be achieved with a substantial change in the founding principles of the International System of Sovereign States, with the possibility of trying individuals and the effectiveness of international law trials at the national level.

6 Conclusion and final considerations

In this article, we sought to analyze the historical panorama of the recognition and combat of sexual violence against women in contexts of war in Public International Law.

For an extended period, little or no mention of acts of sexual violence are found in international laws, a period in which international laws were made by men for men, in a true erasure by the non-recognition of violence against women. This period was broken with the signing of the 1949 Geneva Convention by recognizing the crime of rape in international legislation.

In this context, several international legal instruments followed (be them international declarations, treaties, covenants, statutes, protocols, or conventions) - which can be understood as agreements arising from the convergence of judgments between subjects of international law, formalized in writing, aiming to produce legal effects at the international level, i.e., stipulate rights and obligations among themselves – that were gradually recognizing women not only as a subject of human rights but admitting an incorporation of the sexual violence against women, focused on the multiple impacts of sexual violence against women. Among the main regulations, the following stand out: CEDAW, the Convention of Belém do Pará, the Rome Statute.

Equally important have been the UN Security Council Resolutions that discuss the

[9] It should be noted that, unlike the IACHR, the International Criminal Court (ICC) states in its "Chapter VII - The penalties", more specifically in article 77, that: “the Court may impose on a person convicted of a crime referred to in article 5 of the present Statute, one of the following penalties: (a) the Penalty of imprisonment for a certain number of years, up to a maximum of 30 years; or (b) the Penalty of life imprisonment, if the high degree of the illegality of the fact and the individual circumstances of the convicted person justify it. 2 - In addition to the penalty of imprisonment, the Court may apply: a) a fine, in accordance with the criteria provided for in the Procedural Regulation; b) the loss of products, goods, and property derived, directly or indirectly, from the crime, without prejudice to the rights of third parties who have acted in good faith."(TRIBUNAL PENAL INTERNACIONAL, 1998).

problem of sexual crimes with a gender focus, especially because of their binding effect on UN member countries.

In this logic, paradigmatic international jurisprudential decisions were also addressed, which brought for the first time the recognition of criminal situations and types related to the subject. The decisions of the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, the Inter-American Court of Human Rights, and the Inter-American Commission on Human Rights were highlighted. Together, these decisions have celebrated significant milestones, such as: listing, for the first time, rape as a crime against humanity and, therefore, is imprescriptable; considering rape not as a violation of the honor of women but, rather, as an attempt to humankind; considering that rape could be a crime of torture and genocide; innovating by extending the concept of sexual violence to beyond rape (penetration) and making it clear that the crime acquires different shades concerning women; recognizing the use of sexual violence as a symbolic gesture to humiliation; using, for the first time, the expression femicide to refer to killing a woman for reasons of gender; using, for the first time, the concept of a stereotype, indicating a cause and consequence of gender-based violence against women; recognizing that the State's practice directed against the dignity of women in the cultural, social, family, and individual levels should also be considered a crime against humanity.

The results indicate the development of legislation, complaint mechanisms, and jurisdiction that protect women's rights at the international level, limited, however, by national practices, by the difficulties of carrying out international judgments at the domestic level, and by the difficulty of applying individual liability by international courts.

Finally, it should be noted that the mapping carried out in this research extends from the mid-2010. Thus, many other important developments followed and should be the subject of future works.

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