

Sexual Violence as a Weapon of War: from the Classification of War Crime to Crime Against Humanity and Genocide

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Abstract

This study examines the normative trajectory of sexual violence in international criminal law, analyzing its transition from mere “attacks on honor” to major legal classifications such as war crimes, crimes against humanity, and genocide. The objective is to demonstrate how the evolution of international jurisprudence, particularly that of the ad hoc tribunals (ICTY and ICTR), has transformed the legal perception of these acts, making them central elements of systemic macro-criminality. The analysis is based on four theoretical pillars: evolutionary positivism, macro-criminality, the constructivist approach to identity destruction, and the doctrine of due diligence. The results highlight that the classification as “torture” (war crime) now ensures the non-applicability of statutory limitations (imprescriptibility) to these acts, while the classification as a “crime against humanity” reveals their strategic function in the forced displacement of populations. Furthermore, the study highlights the genocidal dimension of rape when used as a weapon of biological and symbolic destruction aimed at the annihilation of a protected group. Finally, the research establishes a direct correlation between state failure and the persistence of impunity. It concludes that the threat of extreme international legal classification remains the most effective lever to compel national authorities to fulfill their responsibility to protect. This reflection calls for increased synergy between academic and judicial institutions to restore effective sovereignty of protection.

Keywords: Sexual Violence, International Criminal Law, Crime Of Genocide, Torture, Macro Criminality, Due Diligence, Impunity

1. Context and Legal Evolution

1.1. Recognition as a War Crime

Historically, the law of war initially treated rape as an attack on honor or family dignity rather than a grave violation of human integrity. However, with the adoption of the 1949 Geneva Conventions and their 1977 Additional Protocols, the legal framework became more precise. Under this classification, rape is considered a grave breach of International Humanitarian Law (IHL) committed within the context of an armed conflict. The International Criminal Tribunal for the former Yugoslavia (ICTY) played a pivotal role in this definition, affirming that sexual violence is used as an instrument of terror and torture to break the adversary’s resistance.

1.2. The Transition to Crimes Against Humanity

The true turning point occurred when sexual violence is committed as part of a “widespread or systematic” attack against a civilian population. According to Askin (2003), the landmark judgment

of the International Criminal Tribunal for Rwanda (ICTR) in the Akayesu case made history by classifying rape not only as a war crime but also as a crime against humanity. This classification makes it possible to prosecute acts that are not necessarily isolated, but are instead part of a state or organizational policy aimed at the enslavement of a human group.

1.3. The Genocidal Dimension

The pinnacle of legal classification is reached when sexual violence is used with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group. In the context of the genocide against the Tutsi in Rwanda, the ICTR established that rape could constitute a measure intended to prevent births within the group or to inflict conditions of life calculated to bring about its physical destruction [1]. As MacKinnon analyzes, sexual violence thus becomes a “biological” and identity-based weapon, aiming to alter the demographic and psychological composition

of the targeted group for generations to come [2]. Despite the international legal arsenal and the recognition of rape as a blatant violation of human rights, its use as a tactical instrument remains a constant feature of contemporary armed conflicts. The Gordian knot of this study lies in the flexibility of legal classification when faced with the horror of the facts. While rape is inherently a crime, at what precise moment and according to what rigorous criteria does it shift from an isolated offense (war crime) to a strategy of collective annihilation (genocide)?

The core of our inquiry revolves around the following points:

- **Proving Intent:** How does international criminal law manage to prove that sexual violence is not the result of an individual impulse, but rather the outcome of a deliberate policy aimed at destroying the adversary as a human entity? [3].
- **Establishing Scale in Asymmetric Contexts:** In contexts of asymmetric warfare, where the “digital fog” and the lack of traceability of orders are frequent, how can the “systematic or widespread” character required for the classification of a crime against humanity be established? [4].
- **Deterrent Effect vs. Doctrinal Construction:** Has the mutation of legal classifications—from a simple attack on honor to the crime of genocide—actually had a deterrent effect on theaters of operations, or does it remain a doctrinal construction disconnected from the reality of the victims? [5].

The central question of this research is whether the evolution of international jurisprudence, ambitious though it may be, is sufficient to transform sexual violence from an unpunished weapon of war into a universally sanctioned crime, or whether obstacles related to evidence and state sovereignty continue to shield perpetrators with impunity. The underlying premise is that the transition in the classification of sexual violence—from war crimes to crimes against humanity and genocide—is not merely a semantic evolution, but a vital necessity for the survival of the international legal order in the face of changing conflict dynamics. More specifically, we postulate that:

- **The limitation of war crimes:** The classification as a war crime, while essential, remains limited by its intrinsic link to the existence of an armed conflict. It fails to capture the structural and political dimension of sexual violence when used as a tool of governance through terror in times of peace or hybrid tensions [6].
- **The impact of crimes against humanity:** Elevating the act to a crime against humanity detaches it from a purely military context, linking it instead to a systematic attack on human dignity. We assume that this classification is the primary driver of the nonapplicability of statutory limitations (imprescriptibility) and universal jurisdiction, thereby reducing safe havens for those who give the orders [7].
- **The pinnacle of genocidal recognition:** Finally, we hypothesize that the recognition of rape as an act of genocide is the most advanced classification, as it identifies sexual violence as a weapon of biological and identity destruction. It no longer targets solely the body of the victim, but the very survival of the group, by altering lineage and imposing an insurmountable transgenerational trauma. Ultimately, the higher the legal classification rises within

the hierarchy of international crimes, the more it unveils the strategic dimension of sexual violence, thereby transforming a “private horror” into a “threat to international peace and security.”

2. Research Objectives

The main objective of this study is to analyze the normative trajectory of sexual violence in international law, in order to demonstrate how the evolution of its legal classification—from war crime to the crime of genocide—modifies the liability regime of perpetrators and the protection mechanisms for victims [8]. To achieve this general objective, the research will focus on the following points:

- Identify the factual and intentional thresholds (*mens rea*) that allow international jurisdictions to transition from a classification of a war crime to that of a crime against humanity .
- Determine, through the jurisprudence of the ICTR and the ICC, how sexual violence is utilized as a tool of biological and cultural destruction aimed at the annihilation of a protected group (Schabas, 2016).
- **Examine whether the increased severity of legal classifications** has a concrete impact on the fight against impunity, particularly in the conflicts of the Great Lakes region, or if procedural obstacles still impede justice (Viseur Sellers, 2011).
- **Formulate legal recommendations** to improve evidence collection and witness protection, ensuring that the gravest classifications can be successfully secured during international trials.

3. Theoretical Framework

The theoretical framework of this study is based on a multidimensional approach that intersects legal positivism, the theory of the protection of universal legal goods, and the feminist approach to international law [9].

3.1. The Theory of Functional Equivalence and Evolutionary Positivism

This theory constitutes the cornerstone of modern international criminal law. It is rooted in the idea that to remain effective, legal norms must not be interpreted statically (fixed at the time of their drafting), but rather dynamically in order to respond to emerging forms of criminality [10].

3.1.1. Teleological Interpretation: Beyond the Letter, the Spirit
The teleological approach prioritizes the object and purpose of a treaty over a strictly literal reading. In the realm of sexual violence, this means that if the objective of International Humanitarian Law (IHL) is to protect human dignity, then any act that gravely violates this dignity must be punishable, even if it is not explicitly named in the original 1949 texts [11]. As Schmitt (2017) analyzes, this method bridges “normative gaps” without waiting for new treaties, thereby ensuring that no lawless zones emerge from the technological or tactical innovations of combatants.

3.1.2. From an Attack on “Modesty” to the Recognition of “Torture”

The most spectacular application of this theory is the reclassification of rape. Historically perceived as a mere offense against morals or family honor, rape has been elevated to a grave violation of fundamental rights [12].

- **The Landmark Jurisprudence:** The International Criminal Tribunal for the former Yugoslavia (ICTY), in the Furundžija judgment, used functional equivalence to establish that rape committed by a state official, or with their consent, constitutes an act of torture.

- **The Legal Mechanism:** According to Cassese (2013), this mutation occurs through a constant interaction between international custom and jurisprudence. By demonstrating that the physical and psychological suffering inflicted by sexual violence is equal in intensity to that caused by traditional methods of torture, judges applied the principle of functional equivalence: since the effects are identical, the legal classification must be identical as well.

3.1.3. Evolutionary Positivism as a Shield Against Obsolescence

Classical positivism requires a written legal basis. Evolutionary positivism, however, accepts that the legal basis can be “reactivated” by judges to encompass contemporary acts. For Viseur Sellers (2011), this approach is what allowed the Geneva Conventions to survive the transition to asymmetric conflicts [13]. By classifying rape as “inhuman treatment” or “causing great suffering,” international criminal law does not create a new law *ex nihilo* (which would violate the principle of legality); instead, it clarifies the scope of existing law to adapt it to the realities of dematerialized or structural violence.

3.2. The Theory of the Hierarchy of Crimes (Macro-Criminality)

The theory of macro-criminality provides a fundamental doctrinal contribution to understanding why certain crimes, though committed by individuals, cannot be captured by the classic tools of ordinary criminal law. It rests on the idea that the criminal act is inseparable from an organizational or state context [14].

3.2.1. The Concept of Macro-Criminality According to Herbert Jäger

Initially developed by Jäger (1989), the concept of macro-criminality postulates that international crimes are not isolated instances of individual deviance, but rather “structural crimes.” From this perspective, the apparatus of power (whether a state or an organized armed group) is no longer a guarantor of order, but the driver or facilitator of the crime. Jäger highlights that within a macro-criminal system, normative frameworks are inverted: the criminal act (such as systematic rape) is legitimized by authority, which dilutes the individual responsibility perceived by the perpetrator. It is not just the weapon that kills or rapes; it is the hierarchical structure that enables the repetition and impunity of the act.

3.2.2. The Individual Act as a Fragment of a Global Policy

The transition from a war crime to a crime against humanity occurs precisely through this recognition of systemic character. According to Schabas (2016), for an act to be classified as a crime against humanity, it must be part of a “widespread or systematic attack.” The individual act of sexual violence is perceived by the law as a “fragment” of a larger whole. The theory of macro-criminality allows for the conceptualization of this connection: the crime is no longer linked solely to the existence of an armed conflict (*jus in bello*), but to a criminal policy directed against a civilian population. In macro-criminality, the victim is targeted not for what they have done, but for their membership in a group targeted by the perpetrator’s policy [15].

3.2.3. The Transition to Crimes Against Humanity: A Shift in Scale

The theory of hierarchy provides a legal justification for why a crime against humanity is considered more severe than an ordinary war crime. While a war crime can be an opportunistic act committed by an undisciplined soldier, a crime against humanity presupposes an organizational logic. As Sloane (2007) explains, this distinction is crucial for accountability: it allows the chain of command to be traced back to the “planners” of macro-criminality—those who, without having physically committed the act, made the crime possible by establishing a system of sexual violence used as a method of government or combat.

3.3. The Theory of Identity Destruction (Constructivist Approach)

The constructivist approach allows genocide to be understood not merely as the physical extermination of biological bodies, but as the destruction of a social, cultural, and symbolic entity [16]. Within this framework, sexual violence changes in nature: it becomes a tool for deconstructing the identity of the targeted group.

3.3.1. The Group as a Social and Symbolic Construction

Contrary to biological positivism, constructivism considers that the identity of a group (ethnic, national, or religious) relies on social structures, narratives, and kinship ties. The destruction of the group can therefore be achieved by severing these bonds. By targeting reproductive functions and family structures, the aggressor seeks not only to kill, but to prevent the group from regenerating as a distinct entity [17]. Sexual violence thus becomes the vehicle for a “social death” that precedes or accompanies physical death.

3.3.2. Rape as a Method of Social and Biological Destruction

The contribution of MacKinnon (2006) is fundamental here. She demonstrates that in a genocidal strategy, rape is used to “taint the lineage.” By imposing forced pregnancies or inflicting trauma that renders procreation impossible, the aggressor attacks the biological survival of the group [18]. Rape is also designed to shatter codes of honor and internal solidarity structures. In many cultures, the stigmatization of victims of sexual violence leads to their exclusion, thereby causing a disintegration of social cohesion

from within. As established by the ICTR jurisprudence (1998) in the Akayesu judgment, these acts are measures intended to prevent births within the group, thereby meeting the strict definition of genocide.

3.3.3. Theorizing Rape as a Non-Conventional Weapon of Mass Destruction

This approach allows for the reclassification of sexual violence: it is no longer a consequence of war, but a weapon of mass destruction. Unlike a conventional weapon that strikes a single target, genocidal rape has a radiating effect that impacts the family, the community, and future generations (transgenerational trauma). By transforming women's bodies into a "battlefield," the aggressor appropriates the future of the group. Rape becomes a non-conventional weapon because it destroys a people's capacity to project themselves into the time ahead, replacing their identity with that of the aggressor or with an identity void. This theorization is essential to justify the application of the 1948 Convention, even in the absence of immediate mass slaughter [3].

3.4. The Theory of State Responsibility and Due Diligence

The doctrine of due diligence transforms sovereignty from a "privilege of exclusion" into a "responsibility to protect." In the context of sexual violence, this theory moves beyond the sole sphere of individual criminal responsibility to examine the structural responsibility of the State.

3.4.1. The Obligation of Means and Reasonable Vigilance

Due diligence does not rely on an obligation of result (preventing every crime), but on an obligation of conduct. The State must implement all reasonable means to prevent human rights violations. According to Ziolkowski (2013), this obligation becomes imperative when the State has knowledge, or should have knowledge, that sexual violence is being planned or committed on its territory, whether by its own forces or by irregular armed groups [8]. The doctrine imposes four successive duties: prevention (education, legal reform), investigation (rigorous procedures), punishment (prosecution of perpetrators), and reparation (victim support).

3.4.2. The Link Between Sovereign Failure and Individual Responsibility

The contribution of Orentlicher (2007) is crucial here for international criminal law [6]. She demonstrates that the international responsibility of the State is engaged not because it is the direct perpetrator of the rape, but because its omission or inaction has created an environment of impunity. When a State willfully abstains from investigating sexual violence committed by militias, it transforms a series of individual crimes into an "internationally wrongful act." This sovereign failure then justifies the international community lifting the shield of national sovereignty to prosecute the perpetrators. This theory contends that sovereignty is no longer an absolute shield. If the State fails in its protective mission, it forfeits its exclusive jurisdiction,

paving the way for universal jurisdiction or the intervention of the International Criminal Court (ICC).

3.4.3. International Justice as a Substitute Mechanism

Due diligence serves as the theoretical foundation for the principle of complementarity. Research shows that the intervention of international tribunals is the direct consequence of the collapse of "national ramparts." As the ICIRC (2019) highlights, by elevating the fight against sexual violence into an erga omnes obligation (owed to all), the theory of due diligence ensures that a State's inaction is no longer a guarantee of impunity for criminals [9]. It makes each State a guarantor of stability and human dignity, transforming the protection of civilians into a criterion of legitimacy on the international stage. Here is the professional, academically rigorous English translation of your methodology and research findings. The legal, doctrinal, and jurisprudential terms have been translated using standard International Criminal Law (ICL) and International Humanitarian Law (IHL) terminology.

4. Methodology

This research adopts a qualitative approach based on a doctrinal and comparative method, supplemented by an analysis of international jurisprudence.

4.1. The Doctrinal Method (Legal Analysis)

The study relies primarily on the examination of formal sources of international criminal law. We conduct a rigorous exegesis of the Rome Statute (1998), the Geneva Conventions (1949), and their Additional Protocols (1977) [10]. The objective is to dissect the constitutive elements (*actus reus* and *mens rea*) of each crime in order to delineate the boundaries between war crimes, crimes against humanity, and genocide. Reference to the works of leading legal scholars, such as Cassese (2013) and Schabas (2016), serves to stabilize theoretical concepts such as functional equivalence and macro-criminality [7,3].

4.2. The Jurisprudential Method (Case Studies)

The evolving nature of this topic requires an in-depth analysis of decisions from ad hoc tribunals. The analysis focuses on the landmark judgments of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia [1,11]. These seminal cases serve as empirical foundations to observe the concrete shift from one legal characterization to another within the judges' reasoning. The study also integrates recent decisions from the International Criminal Court (ICC), notably cases related to the situations in the DRC and Sudan, to evaluate persisting challenges regarding the proof of sexual violence.

4.3. The Comparative Method

We employ comparative analysis to highlight asymmetries in protection. We compare the protection afforded during international armed conflicts with that provided in contexts of structural or internal violence. Thus, the analysis is grounded in the tension

between national judicial systems (based on the principle of sovereignty) and international intervention (based on the theory of due diligence).

4.4. Data Collection and Analysis Techniques

- **Desk Research (Documentary Research):** Systematic collection via international legal databases (HUDOC, Oxford Reports on International Law, GESIS).
- **Content Analysis:** Analytical processing of UN Expert Reports and ICRC documents (2019) to confront legal norms with the socio-political realities of theaters of war [9].

5. Research Findings

The systematic analysis of jurisprudence and doctrine reveals four major findings regarding the transition of legal characterizations (qualifications juridiques) of sexual violence.

5.1. The Consolidation of Rape as an Act of Torture (Legal Characterization: War Crime)

This finding marks a major epistemological break in the history of international law. Long perceived as a mere byproduct of hostilities or a simple offense against modesty, rape is now understood through the prism of severe suffering and intentional humiliation.

5.1.1. The Jurisprudential Anchor of the ICTY

The analysis of the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY) reveals that characterizing rape as torture is no longer an interpretative option, but an established norm.

- **The Furundžija Judgment (1998):** This judgment is seminal. The judges affirmed that rape committed for the purpose of obtaining information, punishing, breaking resistance, or discriminating against the victim fulfills all the constitutive elements of torture.

- **The Constitutive Elements of Rape-Torture:** For this characterization to be retained as a war crime, three cumulative conditions must be met:

1. The infliction of severe physical or mental suffering.
2. The intentionality of the act for a specific purpose (intimidation, coercion, punishment).
3. The involvement of a State agent (military, police) or a person acting with their consent or acquiescence.

5.1.2. Evolutionary Interpretation: From Honor to Dignity

The analysis confirms that IHL has undergone a conceptual transition: it no longer protects family honor or public morality (a classic patriarchal vision), but rather the physical and psychological integrity of the individual. By applying functional equivalence, the law recognizes that sexual trauma is, by its very nature, of an intensity equal to or greater than traditional methods of physical torture.

5.1.3. Legal Consequences of the Torture Characterization

The shift to the characterization of torture radically transforms the prosecution regime:

As Cassese (2013) highlights, torture is a violation of a jus cogens norm [7]. This implies that the obligation to prosecute perpetrators (erga omnes) falls upon the entire international community. The crime is imprescriptible (never expires by the passage of time). Unlike minor or political war crimes, which may occasionally be subject to pardons under peace agreements, rape characterized as torture cannot be granted any legal amnesty under international law. This characterization enables any State, by virtue of the principle of universal jurisdiction, to prosecute a suspected perpetrator found on its territory, regardless of where the crime was committed or the nationality of the parties.

5.2. Rape as the Pivot of Criminal Policy (Crimes Against Humanity)

This finding demonstrates that when sexual violence is elevated to a crime against humanity, its socio-pathological nature changes: it is no longer a behavioral deviance linked to the chaos of combat, but an instrument of governance through terror. **2.1. Rape as a Vector for Displacement and Control**

The analysis of field data, particularly the reports of the UN Group of Experts on the Great Lakes Region, reveals a striking statistical correlation between waves of sexual violence and forced migratory movements. In approximately **80% of documented cases**, gang and public rape acts as a social detonator. It does not merely target direct victims but seeks to break the resilience of the entire community, provoking an immediate and massive flight of civilian populations. Beyond displacement, rape is used to territory-marking. By sexually enslaving a segment of the population, armed groups establish a climate of total domination that neutralizes any impulse for resistance or collaboration with legal authorities.

5.2.2. The Organizational Scale: The Policy Criterion

The legal transition to a crime against humanity relies on proof of a “widespread or systematic attack.” Unlike a war crime, which can be episodic, a crime against humanity presupposes methodical repetition and planning. Our findings indicate that logistics (troop transport, choice of ethnic or geographical targets) suggest a coordination that goes far beyond the individual soldier’s initiative. As Schabas (2016) analyzes, the act becomes a crime against humanity when it serves as the enforcement tool of a State or organizational policy [3]. Sexual violence thus becomes a “fragment” of a global plan aimed at altering the demographic or political composition of a region.

5.2.3. Macro-Criminality at the Service of Civil Destructuring

Systemic rape is the weapon of choice for macro-criminality. By targeting the pillars of family and community structures, this criminal policy seeks to render a return to the status quo ante impossible. Even after hostilities end, social cohesion remains shattered by trauma and stigmatization. This legal characterization allows high-ranking officials to be prosecuted for crimes against humanity based on **command responsibility**, even if they were not physically present at the scene of the atrocities. It allows the

law to judge the very design of the system of violence rather than its physical manifestations alone.

5.3. The Biological and Symbolic Function of Rape (Legal Characterization: Genocide)

This finding constitutes the focal point of the research. It demonstrates that in certain conflict configurations, sexual violence dissociates from its function of torture or control to become an agent of total destruction of the targeted group.

5.3.1. Rape as a Measure Intended to Prevent Births

The analysis relies on the historical turning point of the Akayesu judgment, which revolutionized the interpretation of Article II(d) of the 1948 Genocide Convention [1]. Rape is recognized as a means to destroy a group, not only through killing, but by rendering procreation impossible or deeply traumatic. This includes physical genital mutilation, but also psychological trauma so profound that it leads to a refusal or inability to procreate among survivors. In identity-based conflicts, imposing pregnancy through rape aims to alter the ethnic or national composition of future generations. By implanting the aggressor's identity into the victims' bodies, the perpetrator seeks to extinguish the biological lineage of the targeted group.

5.3.2. Social and Symbolic Death

Beyond biology, this research uses a constructivist framework to demonstrate that genocidal rape targets the mental and cultural structures that sustain the group's existence. As MacKinnon (2006) emphasizes, rape is designed to be a weapon of social death. In deeply patriarchal or communitarian societies, the rape survivor is often marginalized, as is the child born of rape. By fracturing the family unit, the aggressor ensures that the group can no longer transmit its values, culture, and identity. Unlike kinetic weapons (bombs, rifles) that destroy instantly, genocidal rape is a delayed-action weapon. Its destructive effect unfolds over decades, altering collective mental health and group cohesion long after the guns fall silent.

5.3.3. The Intent to Destroy (*Dolus Specialis*)

Recharacterizing the act as genocide depends on the proof of *dolus specialis*: "the intent to destroy, in whole or in part, a protected group." Rape ceases to be a crime against humanity and becomes an act of genocide when it can be demonstrated that the perpetrator uses the female body as a tool to permanently sever the group's chain of transmission. According to Schabas (2016), this characterization is indispensable to account for the "biopolitical" dimension of the crime, where mass murder alone fails to explain the intent of symbolic annihilation.

5.4. The Correlation Between State Failure and Impunity (State Responsibility)

This final finding demonstrates that impunity for sexual violence is not an inevitable fatality linked to the nature of conflicts, but rather the direct consequence of a breach of the obligation of **Due**

Diligence.

5.4.1. Omission as an Internationally Wrongful Act

The analysis of domestic judicial proceedings shows that impunity feeds on State inertia. In international law, the silence of authorities in the face of mass crimes is never neutral. When a State fails to conduct rigorous investigations into allegations of systematic rape, it sends a signal of tolerance to the perpetrators. This lack of action is legally interpreted as complicity by omission. In many contexts, particularly in areas where State authority is contested, the failure is not a deliberate choice but a technical and institutional incapacity. However, under the doctrine of due diligence, incapacity does not absolve the State of its international responsibility; it obliges it to request or accept international assistance.

5.4.2. Impact: International Justice as a Compensatory Mechanism

State failure acts as the legal trigger for international intervention. Under the Rome Statute, the ICC only intervenes if the State is "unwilling or unable" to genuinely carry out the investigation. Our findings confirm that the systematic refusal to characterize rapes as "crimes against humanity" at the national level is one of the primary criteria used by the ICC to establish a State's inability to render justice. The research highlights an interesting paradox: it is often the threat of a "genocide" characterization by international bodies that compels States to initiate domestic judicial reforms. As Orentlicher (2007) analyzes, the diplomatic shame and the risk of sanctions associated with the qualification of the "crime of crimes" constitute the primary lever of pressure capable of forcing States to assume their sovereignty as a responsibility to protect.

5.4.3. Conditional Sovereignty

The overarching conclusion of this research axis is that a State's sovereignty is henceforth conditional upon the fulfillment of its obligations to protect. Persisting impunity in the Great Lakes Region can only be resolved by shifting from reactive justice (punishing the individual soldier) to structural justice (holding the failing State accountable). The findings suggest that the State must be held accountable for its silence just as the perpetrator is held accountable for the act, for the latter cannot sustainably thrive without the former.

6. Discussion of Findings

The discussion addresses the permanent tension between the normative ambition of international law and the persistence of sexual violence as a strategic tool. It is structured around three core pillars: the effectiveness of enforcement, the transformation of sovereignty, and the evidentiary challenge.

6.1. The Paradox of Norm and Reality: The Effectiveness of Characterization

The first point of discussion interrogates the actual utility of the increasing severity of legal characterizations. While elevating an

act to the crime of genocide constitutes a symbolic and doctrinal victory, what is its tangible impact on the ground? Our findings confirm the thesis of Engle (2005), which posits that the increased criminalization of sexual violence can, paradoxically, lead to the marginalization of victims if justice focuses exclusively on high-level leaders. However, the evolution toward characterizing rape as torture (Finding No. 1) yields a concrete effect: it bars the door to political amnesties [5]. The discussion emphasizes here that legal characterization is not merely a label; it serves as a safety lock against diplomatic compromises that frequently sacrifice justice for the sake of peace.

6.2. The Reconstruction of Sovereignty Through Accountability

The discussion of Finding No. 4 (due diligence) allows for a reimagining of the State's role in modern conflicts. Traditionally, sovereignty served as a shield against foreign intervention. Our findings suggest, in line with Orentlicher (2007), that impunity represents a form of ceding sovereignty to the benefit of criminals. The transition toward international justice is not an act of aggression against the State, but rather a direct consequence of its failure. For a State like the DRC, the discussion suggests that the restoration of authority necessarily depends on the capacity to characterize and adjudicate these crimes at the domestic level, thereby preventing the systematic internationalization of cases.

6.3. The Evidentiary Challenge of Judicial Truth Within the Fog of War

One of the most complex points of the discussion concerns proving the *dolus specialis* (specific intent) required for the crime of genocide (Finding No. 3). How can one prove the intent to destroy a group when orders are verbal or encrypted? The discussion draws upon a constructivist analysis to propose that intent must be inferred from the systematization of acts rather than from physical evidence of a written order. Following MacKinnon (2006), this study discusses the concept that the woman's body becomes the "document" of the crime. The repetition of identical traumas inflicted upon the same category of a population should suffice, in law, to establish genocidal intent.

7. Conclusion

This study has demonstrated that the transformation of the legal characterizations of sexual violence does not constitute a mere terminological evolution, but rather a fundamental transition toward recognizing sexual violence as a weapon of systemic destruction.

In conclusion, three major imperatives emerge from our analysis:

- Through a teleological and evolutionary interpretation, international law has successfully extracted rape from the domain of "offenses against honor," placing it at the very core of the crime of torture. This characterization as a war crime now guarantees imprescriptibility, which is indispensable to justice.
- The elevation of these acts to the status of crimes against humanity has brought to light the strategic function of rape. It is no longer viewed as an isolated act, but as the pivot of a macro-criminality

aimed at territorial control and population displacement, particularly within the Great Lakes Region.

- Relying on a constructivist approach, we have demonstrated that rape can constitute an act of genocide when it targets the biological and "social death" of a protected group. This extreme characterization reflects the intent to annihilate the very future of a community.

Despite these normative advancements, persistent impunity highlights the limitations of criminal enforcement alone. State responsibility, through the doctrine of due diligence, remains the weakest link. Sovereignty must no longer serve as a smokescreen for inaction, but rather as an active commitment to protection.

Moving forward, this research calls for the strengthening of national judicial capacities and enhanced synergy between academic institutions and courts of law. It is through the scientific mastery of these legal characterizations that legal practitioners will be able to transform judicial truth into a genuine lever for sustainable peace and reconciliation.

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