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Elizabeth A. Kohn

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RAPE AS A WEAPON OF WAR: WOMEN'S HUMAN RIGHTS DURING THE DISSOLUTION OF YUGOSLAVIA

Elizabeth A. Kohn*

Serbs imprisoned women from Foca and surrounding villages in the town's Partizan Hall. At night, bearing flashlights, men entered the hall and picked their victims. They raped these women in nearby apartments, right past the local police station.¹

"They told me, 'We will do anything to make sure you never come home, . . . We want you to give birth to Chetnik children.'"²

I. INTRODUCTION

Serbian forces have raped an estimated 20,000 to 50,000 Bosnian Muslim women during the armed conflict which has accompanied the disintegration of the former Yugoslavia.³ Many of these women were repeatedly raped until they were impregnated and then imprisoned until it was too late to have a safe

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1. George Rodrigue, *Politics of Rape; Brutal, Degrading Act a Powerful Weapon in Violence that Rends Former Yugoslavia*, DALLAS MORNING POST, May 5, 1993, at A1.

2. *Id.* The word Chetnik is a name for Serbian nationalist forces which has roots in past regional conflicts. See generally William Pfaff, *Invitation to War*, FOREIGN AFF., Summer 1993, at 97.

3. See Roy Gutman, *Rape Camps; Evidence Leaders in Bosnia Okd Attacks*, NEWS-DAY (N.Y.), Apr. 19, 1993, at 5; see also Grace Halsell, *Human Rights Suit Came as a Surprise to Bosnian Serb Leader; Case Filed in U.S., but Alleged Actions Occurred Elsewhere*, DALLAS MORNING NEWS, Feb. 24, 1993, at A14.

abortion.⁴ These events are tantamount to one of the most egregious orchestrated human rights violations against women in this century.

The events in the former Yugoslavia have caused outrage throughout the world.⁵ Part of this emotion stems from the fact that the bloodshed is so similar to the genocidal events of World War II, a tragedy which the world said would never happen again.⁶ When evidence surfaced of a genocidal campaign to rape and impregnate Bosnian women in order to create an ethnically Serbian state, called "ethnic cleansing" by its perpetrators, the world was dumbfounded at the depth of the violence and hatred.⁷

After World War II, the need for a comprehensive system of international law led to the drafting of numerous documents designed to prevent the recurrence of such brutality and carnage.⁸ The impotence of the international community to stop the mass rapes in Bosnia demonstrates that post-World War II aspirations to protect human rights have failed to adequately consider and protect the human rights of women, a goal implicitly identified by the United Nations Charter⁹ and the Universal

4. Carol J. Williams, *Bosnia's Orphans of Rape: Innocent Legacy of Hatred*, L.A. TIMES, July 24, 1993, at A1.

5. See *EP Condemns Rapes in Former Yugoslavia*, REUTER EUROPEAN COMMUNITY REPORT, Mar. 11, 1993; Tamar Lewin, *The Balkan Rapes: A Legal Test for the Outraged*, N.Y. TIMES, Jan. 15, 1993, at B16; see also Roy Gutman, *Bosnia Rape Horror*, NEWSDAY (N.Y.), Aug. 9, 1992, at 5; see *Images of Horror*, (CNN television broadcast, Aug. 7, 1992).

6. John Darnton, *Does the World Still Recognize a Holocaust?*, N.Y. TIMES, Apr. 25, 1993, § 4, at 1.

7. For background on the history of ethnic cleansing generally and the ethnic cleansing which occurred in the Balkan region during World War II, see Andrew Bell-Fialkoff, *A Brief History of Ethnic Cleansing*, FOREIGN AFF., Summer 1993, at 110.

8. See generally FRANK NEWMAN & DAVID WEISSBRODT, INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS 1-2 (1990). Specifically, World War II resulted in the creation of the four 1949 Geneva Conventions relative to: the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter the Third Convention]; the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter the Civilian Convention].

9. The Charter of the United Nations, in setting forth its purposes, enumerates one of these purposes to be "promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion" (emphasis added) U.N. CHARTER art. 1, para. 3.

Declaration of Human Rights.¹⁰

The rape and forcible impregnation of women, and the failure of the international community to halt it, have illuminated fundamental flaws in current international law and how it affects the human rights of women. First, breaches of international law are not pursued in a uniform manner, and no formal and enforceable remedies exist for breaches of international law.¹¹ Compliance with international law is generally established on the offending state's desire to maintain good world relations and economic ties by submitting to or recognizing international jurisdiction, and peace negotiations are often maneuvered to shield wartime criminals from post-war prosecution.¹² A second problem with international law is that the male-created and controlled international legal system fails to explicitly emphasize

Although the United Nations Charter appears to emphasize a gender neutral approach to equality, subsequent U.N. documents such as the Convention on the Elimination of All Forms of Discrimination Against Women have recognized the need to implement affirmative action for women on at least a temporary basis. Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981, *reprinted in* 19 I.L.M. 33 (1980), art. 4(1); *see* Andrew C. Byrnes, *The "Other" Human Rights Treaty Body: The Work of the Committee on the Elimination of Discrimination Against Women*, 4 YALE J. INT'L L. 1, 28 (1989); *see* Katarina Tomasevski, WOMEN AND HUMAN RIGHTS 100 (1993); *see also* Rebecca J. Cook, *Women's International Human Rights Law: The Way Forward*, 15 HUM. RTS. Q. 230, 249 (1993) (discussing the need for "special treatment" for women in order to achieve equality in the area of freedom from violence).

The need for affirmative action measures in order to achieve equality of human rights for women has been used by some scholars to advocate special protection for women in areas where disregard for women's actual needs amounts to *de facto* discrimination against women. *See* YOUNGINDRA KHUSHALANI, DIGNITY AND HONOUR OF WOMEN AS BASIC FUNDAMENTAL HUMAN RIGHTS 109 (1982).

10. G.A. Res. 217 A(III), Dec. 10, 1948, U.N. Doc. A/810, at 71 (1948).

11. *See generally* Theodor Meron, *The Case for War Crimes Trials in Yugoslavia*, FOREIGN AFF., Summer 1993, at 122.

12. *See id.* at 124 (discussing the evasion of war crimes trials against Saddam Hussein of Iraq after the Persian Gulf War, and the tension between negotiating a ceasefire and demanding the arrest of Hussein as a war criminal). *See also* INTERNATIONAL HUMAN RIGHTS LAW GROUP, NO JUSTICE, NO PEACE: ACCOUNTABILITY FOR RAPE AND GENDER-BASED VIOLENCE IN THE FORMER YUGOSLAVIA 9 (1993) [hereinafter IHRLG Report].

Problems with prosecuting those responsible for the events in the former Yugoslavia have become apparent. The International War Crimes Tribunal has convened and has already been questioned about its ability to function because of a lack of documented proof. The Bosnian Serb leader, Radovan Karadzic, has stated that the Serb-controlled territory in Bosnia will not cooperate in the extradition of suspects. Without this cooperation, it is unlikely that many suspects will be tried before the Tribunal, because suspects cannot be tried in absentia. *War-Crimes Court on Balkans Opens: Doubts Persist on Sufficiency of Documented Evidence*, N.Y. TIMES, Nov. 18, 1993, at A4.

the human rights of women through omission of woman-specific concerns and the perpetuation of discrimination against women which exists at the state level.¹³

This article will discuss rape as a violation of women's human rights in wartime, specifically addressing the mass rapes in Bosnia, and will analyze the human rights documents currently in place to prevent and punish this violation. The author will discuss the current initiatives before the United Nations (U.N.), such as the Draft Declaration on the Elimination of Violence Against Women.¹⁴ This article will also discuss whether international law can effectively protect women from human rights violations.

II. THE MASS RAPE AND SEXUAL TORTURE OF WOMEN IN WARTIME BOSNIA

The Serbian military have perpetrated a range of offenses against the women of Bosnia.¹⁵ Testimonials have revealed tortures committed against women that are scarcely conceivable in

13. See Charlotte Bunch, *Women's Rights as Human Rights: Towards a Re-Vision of Human Rights*, 12 HUM. RTS. Q. 486, 492 (1990).

14. U.N. Economic and Social Council, Commission on the Status of Women, Working Group on Violence Against Women, *Adoption of the Working Group*, E/CN.6/WG.2/1992/L.3, Annex I (1992) reprinted in U.N. Economic and Social Council, *Resolutions and Decisions Adopted by the Economic and Social Council at Its Substantive Session of 1993*, E/1993/INF/6, at 28-33 [hereinafter Draft Declaration].

15. While all parties to the conflict have committed rape, the instances of Serbian forces raping Muslim women in Bosnia far outnumber those perpetrated by Muslim and Croatian forces. The rapes carried out by Serbian forces seem to demonstrate a systematic plan of intimidation based upon expelling Bosnians from their communities. AMNESTY INTERNATIONAL, BOSNIA-HERZEGOVINA: RAPE AND SEXUAL ABUSE BY ARMED FORCES 3-4 Jan. 1993; Tadeusz Madowiecki, Report on the Situation of Human Rights in the Territory of the Former Yugoslavia, U.N. Doc. A/48/92 - S/25341, Annex II, at 57, ¶ 260, and at 74, ¶ 59 (1993) [hereinafter Special Rapporteur Report].

Of course, Bosnian men have also been the victims of atrocities, but this article focuses on sex-based atrocities, the overwhelming majority of which are committed against women. The rape of Bosnian men has been chronicled, but only on a limited scale. See Louise Branson, *New Balkan Horror: The Rape of Men*, S.F. EXAMINER, Aug. 1, 1993, at A7. For further discussion of sexual assault during armed conflict and the inclusion of male victims under international law, see André G. De Busschere, *The Humane Treatment of Women in Times of Armed Conflict: Equality and the Law of Humanity*, 26 REVUE DE DROIT PÉNAL MILITAIRE 575 (1987) (promoting a gender-neutral approach to protection in international humanitarian law as the only true means to achieve equality, and recommending the explicit protection of men from sexual assault in the language of international documents or dispensing with language which affords heightened protection for women).

a supposedly modern civilization. Reports have told of women being raped in front of their families, the establishment of 'rape camps' to provide easy access to Muslim women,¹⁶ and the operation of forcibly impregnating women through repeated rape and confinement.¹⁷ This testimony recounts a concerted genocidal plan by Serbian leaders to eradicate the Muslim population through the destruction of Muslim women.¹⁸

Mass rape destroys the fabric of a society in ways that are both physical and psychological.¹⁹ Many cultures view the rape of women as an affront to men, women's protectors, and mass rape as a conspiracy against national honor and manhood.²⁰ This stereotype has been consciously used by those who planned the mass rapes; rape is used to assure the destruction of the Muslim population of Bosnia through the upheaval of the surviving families in addition to the seemingly never-ending bloodshed.²¹ The mass rapes have played an important part in the Serbian strategy of "ethnic cleansing" because families are not only traumatized, but women are forced to bear Serbian offspring to 'replace' the massacred Muslim population.²²

16. Roy Gutman, *Ethnic Cleansing, 'Rape' Camps: Bosnian War Is Savage as Ever*, ST. LOUIS POST-DISPATCH, Sept. 30, 1993, at A4.

17. IHRLG Report, *supra* note 12, at 3.

18. Roy Gutman, *Mass Rape; Muslims Recall Serb Attacks*, NEWSDAY (N.Y.), Aug. 23, 1992, at 5 (discussing how Bosnian rape survivors feel that rape has ruined their lives).

19. Beverly Allen, *Unspeakable: When Rape Becomes a Weapon of Genocide*, HOUS. CHRON., Apr. 4, 1993, at 5.

20. Susan Brownmiller, *Making Female Bodies the Battlefield*, NEWSWEEK, Jan. 4, 1993, at 37 [hereinafter Brownmiller, *Making Female Bodies the Battlefield*]. For a detailed look at the importance of women's chastity in Muslim cultures, see generally NAWAL EL SAADAWI, *THE HIDDEN FACE OF EVE: WOMEN IN THE ARAB WORLD* (Sherif Hetata trans., 1980).

21. Rape is a profoundly humiliating experience which often creates enduring social trauma. In many societies and cultures, women who have been raped are shunned or fear reprisals from their families and communities if they report rape. In many instances, the husbands of rape survivors will repulse their wives (mentally and physically) or simply leave them. AMNESTY INTERNATIONAL, *WOMEN IN THE FRONT LINE* 18 (1991); see Carol J. Williams, *Balkan War Rape Victims: Traumatized & Ignored*, L.A. TIMES, Nov. 30, 1992, at A1 (reporting how women are afraid to let others know they had been raped, for fear their husbands and fathers would reject them).

After the mass rapes of Bangladeshi women by Pakistani soldiers in 1971, the government of Bangladesh was so concerned about the number of husbands ostracizing raped women that it encouraged men to view rape survivors as national heroines. SUSAN BROWN MILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* 78-87 (1975).

22. A Croatian psychiatrist who specializes in treating women who have been raped says that the patriarchal culture of Serbia believes that a child's nationality comes from

As in peacetime, the rape of women is often viewed by society as the destruction of a woman's 'purity.'²³ Against this mentality, it is comprehensible that women who have been raped are somehow considered to be "damaged property."²⁴ Because of their culture, many Bosnian women, especially those in small villages, are ashamed to come forward and testify publicly about the torture they endured.²⁵ This is undoubtedly one of the motivations of the Serbian perpetrators, because deep psychological scars are left on the survivors and their families, and because the wartime situation does not give families the opportunity to receive support to heal their wounds.²⁶ By raping thousands of Bosnian women, the aggressors are destroying Muslim society in Bosnia by driving a wedge into its fundamental structure, and achieving their goal of dispossessing the Muslim population from the territory in Serbian control.²⁷

III. HOW RAPE DURING WARTIME HAS BEEN TREATED BY THE INTERNATIONAL COMMUNITY

The press has characterized the mass rapes of Bosnian women as historically unprecedented, when in fact this situation has a long history which the international community has never deemed 'serious' enough to include in scholarly history.²⁸ The rape of women in wartime is a historical custom subsequently forgotten "in light of the larger battlefield horror that is

its father. She explained that the Serbs therefore believe that by impregnating Bosnian women they are creating Serbian children. Rodrigue, *supra* note 1.

For an examination of how the mass rapes have been recorded as pornography and used as a tool of genocide, see Catharine A. MacKinnon, *Turning Rape into Pornography: Postmodern Genocide*, Ms., July-Aug. 1993, at 24.

23. DIANA E.H. RUSSELL, *THE POLITICS OF RAPE: THE VICTIM'S PERSPECTIVE* 62 (1975); see Brownmiller, *Making Female Bodies the Battlefield*, *supra* note 20.

24. Brownmiller, *Making Female Bodies the Battlefield*, *supra* note 20.

25. Helen Maserati, *War Crimes Trials; No Justice in Rape Cases?; Bosnian Peace Could Make Prosecutions Difficult*, ATLANTA CONST., Mar. 28, 1993, at A8; see Special Rapporteur Report, *supra* note 15, at 67, ¶¶ 22-24 (documenting that because of the stigma attached, rape is the most underreported crime worldwide).

26. Williams, *supra* note 21. See generally Adrien Katherine Wing & Sylke Merchán, *Rape, Ethnicity, and Culture: Spirit Injury from Bosnia to Black America*, 25 COLUM. HUM. RTS. L. REV. 1 (1993) (examining the intersection of rape, ethnicity and Bosnian culture, and discussing the "spirit injury" which afflicts rape victims and their culture).

27. Maserati, *supra* note 25.

28. Brownmiller, *Making Female Bodies the Battlefield*, *supra* note 20.

death."²⁹ Examples of mass rape which received scant if any historical notice are the actions of the Japanese, Russians, and Germans during World War II,³⁰ the United States during its war against Vietnam,³¹ and Pakistan against Bangladesh in 1971,³² to name but a few in this century. Significantly, the Nuremberg war crimes trials following World War II, which set the standards for future war crimes trials, did not bring any rape charges.³³ The only mention of wartime rape in the war crimes trials subsequent to World War II was at the Tokyo Tribunal, where rape received only a passing reference, even though the Japanese forced thousands of women into prostitution for its soldiers.³⁴

The mass rapes which have taken place in Bosnia have changed the world's perception of rape in wartime. Before the events in Bosnia, wartime rape was usually thought of as the result of revelous conquerors taking their spoils.³⁵ Throughout history, women have frequently been considered the booty of

29. Dianna Marder, *Once Again, Rape Becomes a Weapon of War*, ATLANTA CONST. Feb. 17, 1993, at A11.

30. During World War II, Japan occupied the Chinese capital of Nanking, resulting in what historians have called the "Rape of Nanking." Japanese forces pillaged the city and raped approximately 20,000 women and girls within the first month of occupation. BROWNMILLER, *supra* note 21, at 53-62; 2 LEON FRIEDMAN, *THE LAW OF WAR: A DOCUMENTARY HISTORY*, 1060-64 (1972).

The Japanese also engaged in an extensive campaign in which women from Korea and the Philippines were forcibly abducted and made to work as unpaid and unwilling sexual slaves for the Japanese military. Japan denied this operation after the war, and has only recently admitted to these egregious actions. Merrill Goozner, *Still Fighting Shame, Japanese Army's Sex Slaves Demand Justice*, CHI. TRIB., Apr. 4, 1993, at C1; T.R. Reid, *Openly Apologetic, Japan Recalls War's End*, WASH. POST, Aug. 16, 1993, at A12; James Sterngold, *August 1-7: An Apology From Japan, Finally, to War's Sex Slaves*, N.Y. TIMES, Aug. 8, 1993, § 4, at 2; *Japan's Uncomfortable Past*, N.Y. TIMES, Aug. 8, 1993, § 4, at 14; cf. *Japan's WWII Forced Prostitution Likened to Rapes in Former Yugoslavia*, UPI, May 27, 1993, available in LEXIS, Nexis Library, News File.

The actions of Russia and Germany, respectively, are documented in BROWNMILLER, *supra* note 21, at 63-72, and 43-53.

31. BROWNMILLER, *supra* note 21, at 87-118.

32. *Id.* at 78-87.

33. Terry Atlas, *U.N. Will Pursue War Crimes Trials for Bosnia Rapes*, CHI. TRIB., Jan. 30, 1994, at C1.

34. *Id.*; see *supra* text accompanying note 30.

35. Theodor Meron, *Henry the Fifth and the Law of War*, 86 AM. J. INT'L L. 1, 30 (1992). See Theodor Meron, *Rape as a Crime Under International Law*, 87 AM. J. INT'L L. 424, 425-26 (1993) (noting that throughout history, soldiers have often been given license to rape, and that rape was not mentioned as a crime in the precedential Nuremberg trial) [hereinafter Meron, *Rape as a Crime Under International Law*].

war, to be taken by the conquerors as the fighters' just reward.³⁶ However, the acts committed in Bosnia demonstrate a concerted scheme to annihilate the Muslim population of Bosnia through gender-determined genocide, and confirm the realization that rape is not a random or isolated wartime event.³⁷

IV. IDENTIFICATION OF INTERNATIONAL DOCUMENTS WHICH ADDRESS THE HUMAN RIGHTS OF WOMEN

In order to determine the effect of current international law on women's human rights, it is necessary to analyze the existing structure of international law to see if the problem lies in the lack of provisions for the protection of women or in their unequal application. This section analyzes some key international humanitarian and human rights documents and examines which could be used to prosecute Serbia for the mass rapes.

A. GENOCIDE CONVENTION

One of the most significant international conventions which emerged after World War II was the Genocide Convention.³⁸ The Genocide Convention recognized genocide as a crime under international law, and was a reaction to the brutality surrounding World War II, specifically the ethnic extermination carried out against the Jewish population of Europe.³⁹ The Genocide Convention defines the crime of genocide⁴⁰ and makes any party

36. Brownmiller, *Making Female Bodies the Battlefield*, *supra* note 20.

37. Marder, *supra* note 29.

38. Convention on the Prevention and Punishment of the Crime of Genocide, adopted Dec. 9, 1948, G.A. Res. 260 A(III), 78 U.N.T.S. 277 (entered into force Jan. 12, 1951) [hereinafter Genocide Convention].

39. ROBERT L. BLEDSOE & BOLESŁAW A. BOCZEK, *THE INTERNATIONAL LAW DICTIONARY* 67-69 (1987) [hereinafter BLEDSOE].

40. ARTICLE II of the Genocide Convention defines the crime of genocide as:

any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

to the crime fully liable, regardless of their status in society, notwithstanding a defense of following superior orders (*respondeat superior*).⁴¹

The mass rapes in Bosnia fit the definition of genocide within the Genocide Convention because they were committed in order to cause serious physical and mental harm to Bosnian women of Muslim ethnicity, and because they were calculated to destroy Muslim culture and society in Bosnia.⁴² This determination has been implicitly recognized by the International Court of Justice, when it issued a provisional ruling regarding Serbian acts against Bosnia.⁴³

-
- (d) Imposing measures intended to prevent births within the group;
 - (e) Forcibly transferring children of the group to another group.

ARTICLE III states:

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Genocide Convention, *supra* note 38.

41. ARTICLE IV of the Genocide Convention states: "Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals." Genocide Convention, *supra* note 38.

42. *Id.* art. II(b)-(d). For more analysis of the applicability of the Genocide Convention to ethnic cleansing, see John Webb, *Genocide Treaty- Ethnic Cleansing- Substantive and Procedural Hurdles in the Application of the Genocide Convention to Alleged Crimes in the Former Yugoslavia*, 23 GA. J. INT'L & COMP. L. 377 (1993).

43. The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should . . . ensure that any military, paramilitary or irregular armed units which may be directed or may be subject to its control, direction or influence, do not commit any acts of genocide, of conspiracy to commit genocide, of direct and public incitement to commit genocide, or of complicity in genocide, whether directed against the Muslim population of Bosnia and Herzegovina or against any other national, racial or religious group

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Yugo. (Serbia and Montenegro)), 1993 I.C.J. 3, at 24, para. 52.A.(2) (Provisional Measures, Order of 8 April 1993).

The International Court of Justice, situated in the Hague, the Netherlands, has jurisdiction over states based on its statute, which forms part of the United Nations Charter.

B. GENEVA CONVENTIONS AND PROTOCOLS

In order to analyze the applicability of international law to the war in the former Yugoslavia, it is also necessary to address the jurisdictional bases of international law over the conflict. The breakup of the former Yugoslavia into independent republics has complicated analysis under international humanitarian law, because the status of the conflict is not clearly defined as either international or non-international.⁴⁴ The general consensus of the international legal community has been that the independent republics are bound by international agreements because the former Yugoslavia was a party to many of these agreements, and successor states in the case of separation or splintering of a state are bound by the provisions of those agreements to which the predecessor state is a party.⁴⁵

A number of documents were also signed by the successor states which indicated their willingness to abide by international law. Firstly, all of the parties to the conflict signed an accord in which they agreed to honor the obligations of the former Yugoslavia under the Geneva Conventions.⁴⁶ Secondly, the successor states also accepted a "Statement of Principles" approved by the London Conference on Yugoslavia on August 26, 1992, concerning compliance with international humanitarian law and personal responsibility for violations of the Geneva Conventions.⁴⁷

1. *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*

The Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Civilian Convention) is one of the

44. A number of U.N. Security Council resolutions and other U.N. documents have apparently assumed that the conflict is to be governed by the standard of international armed conflicts. See, e.g., U.N. Doc. S/RES/771 (1992); U.N. Doc. S/RES/780 (1992); U.N. Doc. S/RES/808 (1993); *Letter Dated 9 February 1993 from the Secretary-General Addressed to the President of the Security Council*, U.N. Doc. S/25274 (1993); *Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)*, Annex I, at 14, ¶ 45, U.N. Doc. S/25274 (1993).

45. See IHLRG Report, *supra* note 12, at 7 n.24.

46. Meron, *supra* note 11, at 129.

47. *Id.*

four Geneva Conventions which was drafted at the end of World War II.⁴⁸ The Civilian Convention was specifically drafted as a means to protect civilians from persecution by their own governments as well as the acts of other states in wartime, a protection which was perceived to require improvement in the wake of World War II.⁴⁹

The Civilian Convention is highly applicable to the treatment of women because women are frequently a large proportion of a civilian population.⁵⁰ However the protection in place for civilians, and therefore women, is often not given the same weight as the protection for those who fight the wars.⁵¹ International organizations such as the United Nations were created by men, and often emphasize and pay more attention to the rights of men.⁵² Among international policymakers, there is an "old-boy club"⁵³ that determines which rights deserve the most protection; these men have chosen (either consciously or unconsciously) to stress the rights of prisoners of war.⁵⁴ This emphasis occurs because "the civilian is frequently viewed as nothing: weak, sometimes old, perhaps female. In many cultures there is nothing there to command respect."⁵⁵

Rape is specifically prohibited under article 27 of the Civilian Convention, which provides that: "Women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault."⁵⁶ Rape has recently been interpreted by the International Committee of the Red Cross (ICRC) to be a "grave breach" under article 147 of the Civilian Convention because it is "torture or

48. See Civilian Convention, *supra* note 8.

49. KHUSHALANI, *supra* note 9, at 39.

50. Civilians traditionally have been women, children, the elderly, and the sick. Although women are combatants in some areas, women will be considered largely part of the civilian population for the purposes of this article.

51. See Judith Gardam, *A Feminist Analysis of Certain Aspects of International Humanitarian Law*, 12 AUSTL. Y.B. INT'L L. 265, 270 (1992).

52. See generally Tomasevski, *supra* note 9, at 98 (discussing how many of the prototype U.N. documents tended to refer to men unless women were explicitly mentioned); see also *infra* part V.B. (discussing the perpetuation of women's second class status in international law).

53. DAVID P. FORSYTHE, *HUMANITARIAN POLITICS* 173 (1977).

54. Specifically, policymakers have chosen to emphasize the Third Convention. *Id.*

55. *Id.*

56. Civilian Convention, *supra* note 8, art. 27.

inhumane treatment . . . willfully causing great suffering or serious injury to body or health.”⁵⁷ The United States has also interpreted rape as a grave breach or a war crime under the Geneva Conventions.⁵⁸ This interpretation by both the ICRC and the United States signals a realization by international policy-makers that the Civilian Convention is a viable tool to prosecute rape in the context of Bosnia.⁵⁹

2. *Additional Protocols*

The Additional Protocols to the Geneva Convention were developed in order to clarify the 1949 Geneva Conventions and to address new types of warfare and political contexts which had not previously been considered.⁶⁰ Protocol I of the Geneva Conventions⁶¹ concerns international armed conflicts as well as foreign occupations. Article 76(1) of Protocol I specifically provides that “[w]omen shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.”⁶² Protocol II to the Geneva Conventions⁶³ pertains to non-international armed conflicts and prohibits “outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault.”⁶⁴ Both Protocols contain specific mention of rape as a crime under international law, and could therefore be used to prosecute the mass rapes regardless of whether the conflict is ultimately found to be international or non-international.

57. *Id.* art. 147; International Committee of the Red Cross, Aide-Memoire (Dec. 3, 1992).

58. Letter from Robert A. Bradtke, Acting Assistant Secretary for Legislative Affairs, to Senator Arlen Specter (Jan. 27, 1993).

59. See generally Meron, *Rape as a Crime Under International Law*, *supra* note 35, at 426-27.

60. BLEDSOE, *supra* note 39, at 370.

61. Protocol I Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, *opened for signature* Dec. 12, 1977, 1125 U.N.T.S. 3 (*entered into force* Dec. 7, 1978) [hereinafter Protocol I].

62. *Id.* art. 76(1).

63. Protocol II Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, *opened for signature* Dec. 12, 1977, 1125 U.N.T.S. 609 (*entered into force* Dec. 7, 1978).

64. *Id.* art. 4(2)(e).

C. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant on Civil and Political Rights⁶⁵ (ICCPR) is a binding agreement which imposes upon states a duty to ensure the civil and political rights of its people. There are a number of provisions in the ICCPR which are significant to women, but the provision of most importance is the prohibition against unlawful attacks on honor, and the corresponding duty which it imposes upon states to protect people from such attacks.⁶⁶ This provision would effectually hold Bosnian Serb leaders responsible for the mass rapes in the regions where they exert control. Another important provision of the ICCPR is its prohibition of "torture and other cruel, inhuman or degrading treatment or punishment."⁶⁷ Because rape can be considered such treatment, it indubitably violates the ICCPR and is binding on the states which have separated from the former Yugoslavia, which itself was a party to the ICCPR.⁶⁸

D. THE EFFECT OF INTERNATIONAL LAW ON WOMEN'S HUMAN RIGHTS

The international documents discussed above are applicable to help prosecute those who participated in the mass rapes, and specify that women are to be protected from human rights violations. However, none of these documents specifically stresses that women are to be protected from abuses based on gender. Many human rights violations committed against women are committed based on the gender of the victim,⁶⁹ but existing international documents do not take this into account. The international legal framework needs to be reconceptualized in order to embrace women's human rights as a focused goal, not an incidental one.⁷⁰

Although the above international treaties contain implicit or explicit prohibitions against the mass rape of women, the ques-

65. International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

66. *Id.* art. 17.

67. *Id.* art. 7.

68. IHRIG Report, *supra* note 12, at 7 n.24.

69. Bunch, *supra* note 13, at 486.

70. *See generally id.*

tion which begs an answer is whether these treaties have any real effect on the protection of women during armed conflict. Indeed, U.N. bodies and human rights scholars have found these treaties to be applicable to the situation in Bosnia,⁷¹ yet these findings do not stop the rapes. The actions by Serbs in Bosnia have been condemned throughout the world, and have been punished through diplomatic and economic channels,⁷² but the rapes continue without respite. The impetus for drafting many of the existing human rights treaties was to condemn the type of horrors witnessed during World War II, and to prevent them from happening again. But they are happening now, and the world appears to be fighting barbarism with noble but ineffectual principle.⁷³ The inescapable conclusion is that while the international community is adept at producing documents of condemnation, it has no ability to implement its aspirations and thus fails to protect women's human rights.⁷⁴

V. SHORTCOMINGS OF INTERNATIONAL LAW TO ADDRESS WOMEN'S HUMAN RIGHTS

A. INTERNATIONAL LAW IS DOMINATED BY MALE POLICYMAKERS

One of the first obstacles encountered by women whose human rights have been violated in wartime is that the international legal community, which documents and prosecutes violations of international law, is comprised almost entirely of male policymakers.⁷⁵ Most of the U.N. committee positions held by women are on those committees dealing exclusively with discrimination against women.⁷⁶ Therefore it was not surprising when women were not initially chosen as members of the U.N. War Crimes Tribunal for the former Yugoslavia, whose primary

71. Special Rapporteur Report, *supra* note 15; Meron, *Rape as a Crime Under International Law*, *supra* note 35.

72. U.N. Doc. S/RES/757 (1992); see Alan Riding, *Europeans Impose a Partial Embargo on Belgrade Trade*, N.Y. TIMES, May 28, 1992, at A1.

73. See Christopher Greenwood, *The International Tribunal for Former Yugoslavia*, 69 INT'L AFF. 641, 643 (1993).

74. See generally Cook, *supra* note 9, at 232 (discussing whether a rights based analysis of women's inequality corrects the disadvantages of women, which "are often based on structural injustice . . .").

75. Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613, 624 n.67.

76. *Id.*

duties include determining the extent of the mass rapes.⁷⁷ This is even more ironic when one considers that the crime of rape is more likely to be pressed by women, who have a more personal understanding of its complexity.⁷⁸ According to one international press source, U.N. negotiators were reluctant to raise the issue of mass rape with the Serbian forces because "it is very difficult to bring up these kinds of issues."⁷⁹ The omission of women from the U.N. panel and the 'difficulty' of the issue for men show that the international legal community is not seriously pursuing the claims made by Bosnian rape survivors.

B. DOMESTIC ATTITUDES ARE PERPETUATED IN INTERNATIONAL LAW: WOMEN'S ISSUES ARE SEEN AS 'PRIVATE' AND NOT WORTHY OF INTERNATIONAL CONCERN

Another problem resulting from a mostly male international legal construct is that the sexist stereotypes and practices which exist at the state level are projected onto the international level.⁸⁰ Although the U.N. has recognized the need to improve women's rights through the creation of a number of documents calling on nations to give women true equality,⁸¹ the international legal system itself does not follow its own prescriptions.⁸²

77. *All-Male War Crimes Panel Handling Rape Allegations*, TORONTO STAR, Mar. 5, 1993, at A2. Two women were subsequently added to the Commission after member Torkel Opsahl died and chair Frits Kalshoven resigned for health reasons. These women are Christine Cleiren and Hanne Sophie Greve, from the Netherlands and Norway respectively. The remaining members are Keba Mbaye (Senegal), William Fenrick (Canada), and the new chair, M. Cherif Bassiouni (the United States). *Women Legal Experts Named to U.N. War Crimes Panel*, REUTERS, Oct. 21, 1993, available in LEXIS, Nexis Library, News File.

78. Cf. IHRLG Report, *supra* note 12, at 30 (recommending that rape survivors be interviewed by other women, because rape survivors find it easier to talk to women about the trauma of rape).

79. Beatrix Campbell, *The New World Order of Intimate Warfare*, THE INDEPENDENT (U.K.), Apr. 28, 1993, at 22.

80. Charlesworth, *supra* note 75, at 622-24; see generally Gayle Kirshenbaum, *U.N. Exposé: Inside the World's Largest Men's Club*, Ms., Sept.-Oct. 1992, at 16, 19 (citing the "cultural defense" as a justification for the U.N.'s lack of highly ranked women).

81. See generally MALVINA HALBERSTAM & ELIZABETH F. DEFEIS, *WOMEN'S LEGAL RIGHTS: INTERNATIONAL COVENANTS AS AN ALTERNATIVE TO ERA?* 18-33 (1987); NATALIE KAUFMAN HEVENER, *INTERNATIONAL LAW AND THE STATUS OF WOMEN* 50-239 (1983) (listing U.N. documents applicable to the equality and rights of women).

82. See generally Kirshenbaum, *supra* note 80, at 16 (detailing the hiring and promotion practices of the U.N. and the consequent minimization of women's participation in U.N. policymaking).

This dilemma has manifested itself not only by the initial creation of an all male commission⁸³ to investigate the mass rapes, but through some of the comments this commission made publicly. Specifically, the original chair of the commission, Frits Kalshoven, opined that "it . . . is very easy for a woman to tell the story that she has been raped . . . when it is untrue."⁸⁴ Because male policymakers harbor these kinds of stereotypes about women, any work done by the international community is likely to undercut women's rights and exclude women's concerns from real consideration.⁸⁵

C. PUNISHMENT OF HUMAN RIGHTS VIOLATORS IS OFTEN SACRIFICED TO END HOSTILITIES

The unconditional surrender of World War II was an anomaly in the history of prosecuting war crimes and crimes against peace and humanity because the victors did not need to fight world opinion or negotiate with the defeated nations in order to prosecute.⁸⁶ The scenario which commonly occurs is that punishment of the aggressor or war crimes instigator is sacrificed to end hostilities.⁸⁷ While it is understandable for parties to be relieved when the violence has stopped, "this attitude is a powerful incentive for the conflicting parties to do whatever they want to do while the fighting lasts."⁸⁸ This may lead to the commission of even worse crimes by the belligerents.⁸⁹ Examples of this problem are illustrated by the incorporation of Khmer Rouge

83. *All-Male War Crimes Panel Handling Rape Allegations*, *supra* note 77.

84. *Id.*

85. Ironically, U.N. peacekeeping troops in Bosnia have been accused of frequenting a Serb-run brothel; the Bosnian government had previously charged that the women in this brothel were forced into prostitution. Roy Gutman, *Bosnia Outrage; Ex-Prisoners Say UN Troops Sexually Assaulted Detainees*, *NEWSDAY* (N.Y.), Nov. 1, 1993, at 3.

86. See Beth Stephens, *Women and the Atrocities of War: Rape is a First-Class Crime; But Its Victims Are Treated as Second-Class Casualties*, *HUM. RTS.*, Summer 1993, at 15.

87. Jack Silverstone, *War Crimes Hard to Prosecute*, *MONTREAL GAZETTE*, April 12, 1993, at B3; Rosalyn Higgins, *The New United Nations and Former Yugoslavia*, 69 *INT'L AFF.* 465, 480-82 (1993); see generally Payam Akhavan, *Punishing War Crimes in the Former Yugoslavia: A Critical Juncture for the New World Order*, 15 *HUM. RTS. Q.* 263, 283-87 (1993).

88. *FORSYTHE*, *supra* note 53, at 174.

89. An example of this type of behavior was documented in the Special Rapporteur Report, *supra* note 15, at 57, ¶ 263 (reporting the retention of civilian prisoners for use as "bargaining chips" by their captors).

leaders in the provisional Cambodian government after their genocidal extermination of at least a million people,⁹⁰ and the reluctance of United Nations members to push for war crimes trials of Iraqi leaders after the attempted genocide of the Kurds and the brutal invasion of Kuwait.⁹¹

The heinous human rights violations which have occurred in the Bosnian war are in danger of following this precedent and being set aside in order to end the hostilities. International legal experts have hypothesized that those responsible for ordering the mass rapes may emerge untouched because any peace treaty worked out between the warring groups may compromise prosecution of high-level leaders.⁹²

D. NO ENFORCEABLE REMEDIES EXIST AGAINST NONCOMPLYING STATES

One of the most difficult problems in prosecuting crimes such as rape during wartime lies in the fact that international legal documents fail to prescribe specific sanctions for these crimes.⁹³ Generally, grave breaches of the law of armed conflict are not pursued by the international community absent concrete gain for other states and unless the sanction can be enforced without serious resistance.⁹⁴ Unspeakable war crimes are frequently committed all over the world, but the international community does not intervene without overriding economic or diplomatic justifications.⁹⁵ Except in instances of unconditional surrender such as the Axis surrender in World War II, most of the world's most heinous offenses in armed conflicts have not been punished by the international community.⁹⁶

90. Hurst Hannum, *International Law & Cambodian Genocide: The Sounds of Silence*, 11 HUM. RTS. Q. 82, 93-94 (1989).

91. Meron, *supra* note 11, at 124.

92. *See id.* at 133.

93. *Final Outcome of the World Conference on Human Rights*, U.N. World Conference on Human Rights, Agenda Item 13, A/CONF.157/DC/1/Add.1 at 13, ¶ 19 (1993) [hereinafter Human Rights Conference].

94. *See generally* Meron, *supra* note 11, at 123-25.

95. *See* James Risen, *Bush Reasserts Economic Reason for Gulf Policy; Security: But Critics Say Oil Supply Is a Stronger Reason for Defending Saudis Than for Freeing Kuwait*, L.A. TIMES, Nov. 17, 1990, at A14.

96. Meron, *supra* note 11, at 124. As examples, Meron cites the regimes of Pol Pot in Cambodia, Idi Amin in Uganda, and Saddam Hussein in Iraq (against the Kurdish population). He opines that the gross war crimes committed by these governments were

VI. CURRENT PROGRESS TO STOP THE MASS RAPES IN BOSNIA

More than a year after the mass rapes and forcible impregnations were first reported, the results of the genocide campaign have become apparent. The mass rapes in Bosnia have produced more than the psychological destruction of women and their families: they have produced babies.⁹⁷ The forced impregnation of Muslim women has created an unascertainable number of infants who are the products of the violence and tangible reminders of the ordeal of rape. Thousands of women have given birth to babies which they despise and often abandon.⁹⁸ For these women, enduring an unwanted pregnancy was a constant reminder of the horrors they had survived. These births are tantamount to genocide because the women and their families feel tainted; Muslim rape survivors are not likely to resume their lives or the creation of their own families until they are able to heal their physical and emotional wounds.⁹⁹

A. THE CREATION OF A WAR CRIMES TRIBUNAL ON CRIMES COMMITTED IN THE FORMER YUGOSLAVIA

On May 23, 1993, the U.N. Security Council established a tribunal to prosecute war crimes committed in the former Yugoslavia.¹⁰⁰ In doing so, the Security Council adopted a statute proposed by the Secretary-General which gave the Tribunal jurisdiction over "persons responsible for serious violations of international humanitarian law committed in the territory of the

probably not pursued because they were the result of internal conflicts.

97. The number of babies born to rape survivors is difficult to determine because of the diaspora of the survivors; most statistics are based on interviews and reviews of salvageable medical records in Croatia, Bosnia and Serbia. Special Rapporteur Report, *supra* note 15, at 65-66, ¶¶ 7-14. The mission of the U.N. Special Rapporteur was able to verify one hundred and nineteen pregnancies resulting from rape during 1992, but acknowledges that reporting the statistics of the rapes has been complicated by the large number of refugees fleeing the area and by the number of abortions which have occurred. *Id.* at 65, ¶ 9, 66-67, ¶¶ 15-21. Other sources have estimated that at least one thousand babies have been born as a result of the mass rapes. See Nancy Nusser, *Bosnian Rape Victims Left Embittered*, ATLANTA CONST., Apr. 19, 1993, at A9.

98. Louise Branson, *Balkan 'Rape Babies' Face Dark Future*, STRAITS TIMES (Singapore), July 5, 1993, at 12.

99. See Genocide Convention, *supra* note 38, art. II (b)-(d).

100. U.N. Doc. S/RES/827 (1993).

former Yugoslavia since 1991.”¹⁰¹ The aims of the Tribunal are to end the war crimes in the region, bring the perpetrators to justice, and break the cycle of seemingly endless ethnic violence and retribution.¹⁰² A Commission of Experts was also established by the Security Council with the mission of gathering information on violations of international humanitarian law, and providing information to be used in the Tribunal.¹⁰³

While the establishment of the Tribunal was welcomed as a statement against the violence, critics say that the Tribunal is merely a show to “ease the world’s conscience over its failure” to actually stop the violence.¹⁰⁴ This critique stems from the fact that the Tribunal cannot try suspects in absentia and U.N. troops have no authority to arrest suspected war criminals; so unless suspects consent to be tried or are arrested by their government and presented to the Tribunal, it seems unlikely that justice will be served.¹⁰⁵ Although the Tribunal may have limited success in actually gaining custody of suspects, the omission of rape as a crime would be an inexcusable outrage to the women of Bosnia.¹⁰⁶

The formation of the Tribunal was regarded with skepticism by women’s groups because its eleven elected members were originally all men,¹⁰⁷ and the nomination of two women judges out of the nominee pool of twenty-three¹⁰⁸ was considered insignificant in light of the fact that such a large percentage of

101. U.N. Doc. S/RES/808 (1993); *Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993)*, Annex, art. 1, U.N. Doc. S/25704 (1993).

102. Andrew Kelly, *U.N. Convenes Yugoslavia War Crimes Tribunal, Amid Doubts*, REUTER EUROPEAN REPORT, Nov. 17, 1993.

103. U.N. Doc. S/RES/780 (1992).

104. *Yugoslavia War Crimes Court to Begin Trials in April*, REUTERS, Nov. 27, 1993, available in LEXIS, Nexis Library, News File.

105. See *id.*

106. The Commission of Experts has recently demonstrated its intention to actively pursue those responsible for the mass rapes. In the beginning of 1994, the Commission assembled an all-woman research team of lawyers and mental health experts to visit Croatia and gather testimony from victims of sexual assault. This evidence will be turned over to the War Crimes Tribunal for use by the prosecution. Atlas, *supra* note 33.

107. *All-Male War Crimes Panel Handling Rape Allegations*, *supra* note 77.

108. *Women Legal Experts Named to U.N. War Crimes Panel*, *supra* note 77. These two women are Elizabeth Odio Benito of Costa Rica and Gabrielle Kirk McDonald of the United States. *War Crimes: Justice Unserved*, Ms., Nov.-Dec. 1993, at 77.

the Tribunal's work will revolve around the crime of rape.¹⁰⁹

B. LAWSUIT INITIATED IN THE UNITED STATES TO PROSECUTE THOSE RESPONSIBLE FOR THE MASS RAPES

In the United States, two lawsuits have been filed on behalf of Bosnian rape survivors pursuant to the Alien Tort Claims Act,¹¹⁰ a federal statute which provides jurisdiction for crimes committed in other nations. This statute has had a recent revival as a means to prosecute and award punitive damages for international human rights violations in federal courts,¹¹¹ and was amended in 1992 as the Torture Victims Protection Act.¹¹² The lawsuits, *Doe v. Karadzic*,¹¹³ and *Kadic v. Karadzic*,¹¹⁴ are two of the first suits to be brought under the Torture Victim Protection Act.¹¹⁵ The suits allege that Radovan Karadzic, the Bosnian Serb leader, is responsible for the rapes of Muslim women in Bosnia, and seek damages or an injunction which would order Karadzic to stop the rapes.¹¹⁶

C. PROGRESS AND RECOMMENDATIONS MADE AT THE UNITED NATIONS WORLD CONFERENCE ON HUMAN RIGHTS

While the events in Bosnia have been widely recognized by the international community,¹¹⁷ it was the effort of women's

109. Edward Epstein, *World Insider; A Need for Women Judges*, S.F. CHRON., Sept. 17, 1993, at A12.

110. 28 U.S.C. § 1350 (1993).

111. See *Filártiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980) (interpreting the Alien Tort Claims Act to permit suits for international torts such as torture, disappearance, and summary execution committed in other countries to be brought in U.S. federal court).

112. Torture Victims Protection Act of 1991, 28 U.S.C. § 1350, Pub. L. No. 102-256, 106 Stat. 73 (1992).

113. No. 93 Civ. 0878 (S.D.N.Y. Feb. 11, 1993) [hereinafter *Doe*].

114. No. 93 Civ. 1163 (S.D.N.Y. Mar. 1, 1993) [hereinafter *Kadic*].

115. *Kadic* seeks injunctive relief and damages while *Doe* seeks damages only. Telephone Interview with Martha Davis, attorney at the NOW Legal Defense and Education Fund and local plaintiff's counsel in *Kadic* (Apr. 7, 1994). Catharine MacKinnon is the lead plaintiff's counsel for *Kadic*. See Matthew Goldstein, *Bosnian Suit Uses 200-Year Old Law*, N.Y. LAW JOURNAL, Sept. 28, 1993, at 1.

116. Goldstein, *supra* note 115.

117. See, e.g., U.N. Doc. S/RES/713 (1991), U.N. Doc. S/RES/764 (1992), U.N. Doc. S/RES/771 (1992), U.N. Doc. S/RES/780 (1992), U.N. Doc. S/RES/808 (1993), U.N. Doc. S/RES/827 (1993), U.N. Doc. S/RES/820 (1993).

groups that brought the mass rapes to the world's attention.¹¹⁸ Women's organizations worldwide heard rumors of the rapes and demanded media coverage. An umbrella organization of women's groups dedicated to promoting the human rights of women¹¹⁹ organized a tribunal on women's human rights at the 1993 U.N. World Conference on Human Rights in order to bring attention to human rights issues such as violence against women.¹²⁰ Although this tribunal was not part of the official U.N. Conference,¹²¹ it drew a significant portion of media attention.¹²²

The report drafted by the World Conference on Human Rights¹²³ incorporated many of the recommendations made by the preparatory Regional Meetings and non-governmental organizations (NGOs), especially concerning the recognition of women's rights as human rights. Women's human rights were specifically mentioned in the report of the Conference, and the importance of strengthening these rights was emphasized.¹²⁴ An-

118. Alan Riding, *Women Seize Focus at Rights Forum*, N.Y. TIMES, June 16, 1993, at A3.

119. The organization was the Global Campaign for Women's Human Rights, a coalition of approximately 950 women's organizations. Gayle Kirshenbaum, *After Victory, Women's Human Rights Movement Takes Stock*, Ms., Sept.-Oct. 1993, at 20.

120. This tribunal was named the Global Tribunal on Women's Human Rights, and scheduled sessions in the following areas: Human Rights in the Family, War Crimes Against Women in Conflict Situations, Violations of Women's Bodily Integrity, Socio-Economic Violations of Women's Human Rights, and Political Persecution and Discrimination. CENTER FOR WOMEN'S GLOBAL LEADERSHIP, BRIEF REPORT ON WOMEN'S ORGANIZING AT THE U.N. WORLD CONFERENCE ON HUMAN RIGHTS (VIENNA, JUNE 1993) (1993).

The tribunal was coordinated by the Center for Women's Global Leadership, in collaboration with the International Women's Tribune Centre, the Asia Pacific Forum on Women, Law and Development, the Asian Women's Human Rights Council, the Austrian Women's Shelter Network, the Caribbean Association for Feminist Research and Action, the Family Violence Prevention Fund, the Fund for a Compassionate Society, the Humanistic Committee on Human Rights, ILANUD and FIRE at Radio for Peace, the Match International Centre, Women in Law and Development in Africa, Women's Aid, and the International Solidarity Network of Women Living Under Muslim Laws. *Id.*

121. The tribunal was sponsored by non-governmental organizations (NGOs), but was held at the same facilities as the Conference.

122. Anne Reifenberg, *Women Appear Primed for Success at Human Rights Meeting*, DALLAS MORNING NEWS, June 14, 1993, at A1; David B. Ottaway, *Women Having Their Way at Rights Conference*, WASH. POST, June 17, 1993, at A35; Anne Reifenberg, *World Rights Conference Urged to End Violence Against Women*, DALLAS MORNING NEWS, June 18, 1993, at A1; *Women Succeed in Pressing for Rights Hearing in Vienna* (CNN television broadcast, June 22, 1993); Joanna Kerr, *UN Rights Conference: Women Take Centre Stage; Wrenching Testimony Hammers Home Urgency of Protecting Women From Abuse*, OTTAWA CITIZEN, June 29, 1993, at A11.

123. Human Rights Conference, *supra* note 93.

124. Violence against women was specifically stressed at the World Conference on

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other concrete step made at the Conference was the recommendation of the appointment of a Special Rapporteur on Violence Against Women, whose duty would be to monitor violence against women so that measures could be taken to incorporate women's human rights into existing human rights law.¹²⁵

The Conference also recommended the adoption of the Draft Declaration on the Elimination of Violence Against Women,¹²⁶ which addresses the particular character of violence against women and recognizes intimate violence against women as a human rights violation.¹²⁷ The Draft Declaration defines violence against women and includes gender-based violence that is either public or private.¹²⁸ The Draft Declaration addresses the

Human Rights.

In particular, the World Conference stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism. *The World Conference calls upon the General Assembly to adopt the draft Declaration on Violence Against Women in accordance with its provisions. Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response. (Emphasis added.)*

Id. at 23, ¶ 3.

125. *Id.* at 24, ¶ 5. The appointment of a Special Rapporteur has subsequently been adopted. The post is expected to be filled in early 1994 at the annual Geneva meeting of the U.N. Commission on Human Rights. Lynne Marek, *World Front: Human Rights Groups Marshaling Their Forces*, CHI. TRIB., Sept. 19, 1993, at 1.

126. Draft Declaration, *supra* note 14.

127. For an overview of recent progress in the area of women's human rights, see Pamela Goldberg & Nancy Kelly, *Recent Developments: International Human Rights and Violence Against Women*, 6 HARV. HUM. RTS. J. 195 (1993).

128. Violence against women shall be understood to encompass, but not be limited to the following:

- (a) Physical, sexual, and psychological violence occurring in the family, including battering, sexual abuse of children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence, and violence related to exploitation;
- (b) Physical, sexual, and psychological violence occurring

specific concerns of women, and acknowledges women's vulnerability to violence in times of armed conflict.¹²⁹ The Draft Declaration was adopted by the Third Committee towards the end of 1993;¹³⁰ this step indicates a willingness by the U.N. to make concrete progress on the inclusion and improvement of women's human rights.

VII. CONCLUSION

The armed conflict continues in the former Yugoslavia, and it seems as though nothing has significantly changed, even though the world community is apprised of events. Rape camps still operate in parts of Bosnia, and the ethnic cleansing continues.¹³¹ In order to improve the observance of the human rights of women in times of armed conflict, attention must be paid to the particular abuses which are committed against women. Unless specific and forceful steps are taken to practically improve women's human rights in light of this holocaust, there will be no reason for participants in future conflicts to heed the rights of women.

within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

- (c) Physical, sexual, and psychological violence perpetrated or condoned by the State, wherever it occurs.

Draft Declaration, *supra* note 14, art. 2, at 30.

129. "[S]ome groups of women, such as . . . women in situations of armed conflict, are especially vulnerable to violence . . ." *Id.* at 29.

130. *Wednesday Highlights*, FEDERAL NEWS SERVICE, Dec. 2, 1993, available in LEXIS, Nexis Library, News File.

131. John Kifner, *In North Bosnia, a Rising Tide of Serbian Violence: Refugees Forced Out in Systematic Drive of Ethnic Hatred*, N.Y. TIMES, Mar. 27, 1994, at A1; *U.N. Commission Says Rape in Former Yugoslavia Continues*, UPI, Feb. 22, 1994, available in LEXIS, Nexis Library, News File; Roy Gutman, *Ethnic Cleansing, 'Rape' Camps: Bosnian War Is Savage as Ever*, NEWSDAY (N.Y.), Sept. 30, 1993, at A4.