

A woman wearing a black headscarf and glasses stands in front of a red playground structure. She is holding a bouquet of white flowers. The background shows a blue sky with clouds and bare trees. The text 'RAPE: ASYMMETRICAL WARFARE?' is written vertically in large white letters on the right side of the image. Below it, the name 'TANJA MRDJA' is written in smaller white letters.

# RAPE: ASYMMETRICAL WARFARE?

TANJA MRDJA

University of Sarajevo / Center for Interdisciplinary Postgraduate Studies /  
www.cps.edu.ba

The European Regional Master's Degree in Human Rights and Democracy  
in Southeast Europe/ERMA

Course War Crimes, Genocide and Memories  
www.war-crimes-genocide-memories.org

Edition:  
Listen/Talk/Reflect/Trust

Editors:  
Janja Beč-Neumann & Dan Bar-On

Tanja Mrdja: Rape: Asymmetrical Warfare?

Copyright © Tanja Mrdja

Publisher:  
University of Sarajevo / Center for Interdisciplinary Postgraduate Studies

On behalf of the publisher: Zdravko Grebo



Cover page photo:  
Haris Memija

Design / prepress / e-book:  
Nataša Teofilović

spring 2007 // copies 100

This e-book was published with support of Goethe Institute, Office Sarajevo  
and Open Society Fund Bosnia and Herzegovina



Open  
Society Fund  
Bosnia & Herzegovina



Fond  
otvoreno društvo  
Bosna i Hercegovina

**TANJA MRDJA**

# Rape: Asymmetrical Warfare?

Sarajevo 2007

MA thesis "ASYMMETRICAL WARFARE: RAPE AS A WEAPON OF WAR" done  
in Centre for Interdisciplinary Postgraduate Studies, University of Sarajevo,  
Bosnia and Herzegovina, European Regional Master in Human Rights and  
Democracy in Southeastern Europe, Universities Sarajevo and Bologna,  
2005/2006

supervisor Janja Beč-Neumann

## TABLE OF CONTENTS

<b>INTRODUCTION</b>	<b>I</b>
<b>WHY RAPE</b>	<b>01</b>
Patriarchy	03
Self - Sacrificing Matriarchy	05
Power and Domination	08
Altering the Terrain on which a Conflict is Fought - Battlefield	09
Top - Down Approach	10
Terror	14
Unconventionality	16
Forced Impregnation	18
<b>LEGAL DOCUMENTS</b>	<b>26</b>
Nuremberg and Tokyo Trials	27
ICTY and ICTR	29
Geneva Conventions	31
Definition of Rape	35
Rape defined as torture	36
Rape defined as crime against humanity	36
Crime that can amount to genocide	38
Investigation of crimes	40
ICC	42
<b>MEANS TO FIGHT BACK</b>	<b>50</b>
Silence versus Knowledge	51
Context: Stigma	52
Truth versus Lie	60
Becoming Independent	67
<b>CONCLUSION</b>	<b>72</b>
<b>BIBLIOGRAPHY</b>	<b>75</b>

## INTRODUCTION

The title of the essay in itself implies a profoundly disturbing phenomenon in the history of human warfare, yet consequently it invokes a plethora of controversy as well. It is a common observation that rape has always been an unavoidable part of wars. In charting the incidence of rape in conflict zones, a brief look at history reveals that women have always been sexually abused by soldiers. In ancient Greece, rape was "socially accepted behavior well within the rules of warfare" for warriors who considered the conquered women "legitimate booty, useful as wives, concubines, and slave labor or battle-camp trophy"<sup>1</sup>. "To the victor, goes the spoils" has been a slogan for centuries, and women were included as part of the spoils of warfare.

Two astonishing facts led to the controversial argument of this paper. At the outset, the number of raped victims grows higher with each war<sup>2</sup>. Whereas the lowest estimate of raped victims in the former Yugoslavia number 20,000, most of them Muslims,<sup>3</sup> in only 100 days of genocidal massacre and rape in 1994 in the Rwandan conflict it is estimated that 25,000 women were raped.<sup>4</sup> What does this signify? This is indicative of

what the following chapter will examine. Can an element of rape on such a large scale in wartime be considered as an accepted and expected phenomenon of warfare or is there a need for a new type of analysis vis-à-vis political and military assumptions about why and how wars are fought? Violence against women in war has confirmed the treatment of women as sexual objects in a terrible way. The world has come to speak of rape as an inevitable fact of war - the reality of the behavior of the armed forces. The origins of the systematic and methodical practice of rape need to be examined: why it is out of control in armed conflict situations, and what makes it so universally violent in nature.

This paper will hold that rape is a weapon of war but will furthermore seek to identify whether it is an asymmetrical tool to wage a war. Although there exists a number of widely accepted and interrelated postulates in both separate theories, theories of rape as a weapon of war and the theories of asymmetrical warfare, rape and asymmetrical warfare have five different elements in common. These include: power, terror, altering the terrain on which a conflict is fought, unconventional technique and values. This is highly relevant to what will become the central part of the thesis: *I will examine whether rape can be considered an asymmetrical means to fight a war because it is an unconventional tactic where an enemy, by using terror on the civilian population in an already established unequal power relation between him and his opponent, alters the terrain on which a conflict is fought to make a woman's body the battlefield.* This line of reasoning raises more questions than answers: are women the enemy? Or are they a way to get to the enemy? An important thing to note in this type of warfare is that it involves no innovative development in terms of military hardware, but instead it relies on an innovation in the military's perceptions on using already existent unconventional tools for fighting. In the

argument that rape is used as a deliberate instrument of war to cause physical harm, to spread terror, and to degrade women I generally consulted the following authors: Askin, Jones and Rosen, Donovan, Brunet and Rousseau, Sajour, Bishara and Kaldor.

The experiences of the abuses and atrocities committed towards women through the course of the history have proved that certain actions are wrong no matter what. The second chapter will reveal the position of women in armed conflict and will question how well the international law is responsive to these women. Covering the period from the Nuremberg and Tokyo trials to ICC one quickly concludes that there has been a major breakthrough in the international perception regarding rape being considered as a war crime. The International community excluded rape as a war crime from the International Military Tribunal (IMT) and trailed rape only in conjunction with other crimes with International Military Tribunal for the Far East (IMTFE), although the Charters provided with the possibility of condemning rape.

With no prevention mechanisms and mass rape occurring on enormous scale in Yugoslavia and Rwanda, we notice a gradual shift in the perception of rape as war crime. Its attitude towards women and their inclusion of atrocities done to them moves gradually from rape being considered as a torture, to it being seen as a crime against humanity as well as a crime that can constitute genocide. Further fundamental development in regards to laws that are related to women's situation in conflict zones have emerged with the International Criminal Court (ICC). The mentioned permanent institution ensures punishment of perpetrators not just in the case of rape, but other sexual violence that can finally be prosecuted as crimes against humanity. With rape being recognized as a unique form of violence

women finally became worthy enough to have their suffering acknowledged. In the analysis of legal documents I found critiques in the works of Campanaro, Durham and McCormack, Askin, Hoefgan and Booth.

In the third chapter I will apply Dan Bar-On's model of "working through trauma". The five stage model: knowledge, context, strong emotional reaction, counter reaction and becoming independent, will be applied through the interview conducted with Jadranka Cigelj<sup>5</sup> in order to see what are the necessary steps for a victim to go over this trauma. This chapter will also attempt to reveal and disguise the hidden truths and present them in their naked light of women who are impugned by the ones who should care for them the most after they have been vulnerable and abused, their loved ones, their family and friends. Naked truths are truths that are presented to us, striped of artifice or ornament, to be accepted at face value. Truths concerning such a fundamental aspects of human interrelations such as gender and power are far from transparent and natural, even in their denuded and dismantled incarnations. I encounter and discuss problematic issues such as silence of victims, stigmatization by society, and problems with the media. Furthermore, I raise the issue of whether at certain moment victim is no longer solely a victim, and whether she is fighting back with alternative means. In an attempt to clarify these concepts I generally referred to Dan Bar-On, Sarnavka and Cigelj.

The methodology used in this paper is, primarily, a thematic look of rape based on the analysis of two theories from different areas that are applied in the new field. Consequently, it poses a risk to the thesis, as there has not been any literature dealing with exactly the same subject. Nonetheless, the imperative object of the paper is to question through the analysis of the legal documents why does rape happen and how is interna-

tional law regulating it. A qualitative interview is provided in the third chapter in relation to Dan Bar-On's theory of working through trauma.

## Notes

1 Askin, Kelly Dawn. *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (The Hague: Martinus Nijhoff Publishers, 1997) 21-24.

2 Vesna Kesic, Vesna Jankovic, Biljana Bijelic, Ed. Vesna Kesic. "Women are Victims of War. But Women also Know 1,000 Ways to Survive. Women Can Change the World". *Women Recollecting Memories: The Center for Women War Victims Ten Years Later*. The Center for Women War Victims: Zagreb, 2003, p. 42.

3 Marlise Simons. "3 Serbs Convicted in Wartime Rapes". Feb 23, 2003, p.1.

4 Cherie Booth QC. "Ending Impunity of Sexual and Gender Crimes", p.3.

5 Jadranka Cigelj is rape survivor from two concentration camps. She was taken to the concentration camp Omarska on June 14<sup>th</sup> and was held there until August 30<sup>th</sup> 1992. From there she was transferred to another concentration camp Trnopolje, where she was held until August 8<sup>th</sup> 1992. She moved to Zagreb, Croatia on September 29<sup>th</sup> 1992, where she lives currently. She was the first to speak about rape in the concentration camps in public, and with other eleven women gave the first interview in November of 1992 to CNN. Five spoke publicly. At the time when I conducted a three hours long Personal Interview, August 2<sup>nd</sup>, 2006, Cigelj worked at the Croatian Government Office for cooperation with NGOs. Her perspective is particularly valuable not just from the perspective of a survivor but also from a perspective of a lawyer.

## WHY RAPE?

"We may conceptualize war as a distribution mechanism making allocations of scarce goods to competing parties".<sup>1</sup> When two sides disagree over the piece of territory or resources they fight a war in order to determine which side gets it. Thus, if war determines who gets what according to which side is stronger, then it determines the power relations between the two. Nonetheless, much of the recent literature is focused on what is called new wars, asymmetrical wars or fourth generation warfare (4GW). The prefix in front of the word war already points to the fact that these wars are different. New wars have different goals, fighting them with new means of warfare.<sup>2</sup> It is a common knowledge that rape is regularly practiced by soldiers. Yet, the higher numbers of victims with each successive war invokes the imperative question: is rape becoming a new means of warfare? What kind of warfare? With what aim? One of the victims reveals her experience and provides a possible explanation. "About 300 of us ended up in the concentration camp called Trnopolje. Thousands of people were already there. Women and children were separated from the men. The living conditions were terri-

ble.. And they used to take a dozen of young girls and women, and rape them all night long... Nobody was allowed to talk. Move, cry, not even mourn over somebody. I have no explanation for [the massive incidence of rape]. I do not know why. [But] I think it was planned in advance and intended to destroy the soul of a nation."<sup>3</sup>

Donovan explains that humankind's tolerance of sexual violence is not established by postwar international tribunals, but, rather, by societies in times of peace. "When the rules of peace classify forced intercourse within marriage and widow inheritance as men's entitlements; when domestic violence against women is quietly condoned as a necessary means of behavior modification; female genital mutilation is defendant as an acceptable precaution against promiscuity; when domination by males is seen as the natural order of the universe, rape exist in a limbo of mixed perceptions, viewed neither as laudatory nor especially loathsome."<sup>4</sup> If sex crimes are regarded as mere "misdemeanors" during the peacetime, it is very improbable that rape will be perceived as a high crime during the war. As long as violent aggression against women is tolerated in everyday life, the rule of law cannot change much.

The antithesis to this argument is given by Mary Robinson who states the opposite. The incapability of international lawmakers to "deconstruct the role of rape and sexual assault" during armed conflicts until recently can partially explain the incidence of mass rape in wars. Furthermore, she elaborates, the recognition, identification and prosecution of rape as violent crime were lacking.<sup>5</sup> If no one denounces or punishes perpetrators of rape, rape can with no obstacles become a tool of military strategy. Someone has to be held accountable for these human rights abuses. Otherwise, women have no protection against rape or any way of seeking help and compensation after

they have been assaulted. Robinson explains that when gender-based persecution during armed conflict has been recognized, it has been incorrectly understood in terms of attacks on women's honor. International criminal tribunals should persecute gender-specific crimes of violations against women by providing new legal models. Gender specific prosecution requires new laws that are gender sensitive, followed by judges that compose of both men and women. This certainly hasn't been the case before the International Criminal Tribunal for Rwanda (ICTR) was established, as there was only one female judge. If it was not for her contribution, rape would have never been prosecuted as war crime.<sup>6</sup> Lack of female representation in this sphere as in many others may be explained with the feminist theory of patriarchy.

## **Patriarchy:**

The origins of gender inequalities where men dominate women is a consequence of societal structure called patriarchy, feminist theory explains. Neo-feminist study of patriarchy finds that culture and civilization revolves around desire for power<sup>7</sup>. Historically, patriarchy emerged together with private property, monogamous family and state<sup>8</sup>. Accordingly, desire for power is manifested through violence of nature, class, and other man and women. As such it is recognized as the main culture in which we live.

Gender domination was not discussed as such before the 19<sup>th</sup> century when anthropologist Maine in analyzing the Bible, came up with the concept of patriarchy. Kunarac and Sarnavka point out that he describes Adam, the first man, as the absolute ruler in his house "as he rules with the life and death

of his household members."<sup>9</sup> Max Weber's argument is somewhat similar as he defines power of patriarchy as unconditional in the household sphere. Women and children in Weber's world represent property, Kunarac and Sarnavka elaborate. Weber, furthermore, argues that women are dependent on patriarchy "because that is the normal representation of superior physical and intellectual energy of men". Thus, repression of women can only be explained in this way for Paterman, who aims to make this oppression distinct from other forms of oppressions.<sup>10</sup> She further maintains that "the family has always been constructed to serve as a patriarchal institution of unfreedom. For women, consent is dubious, if not absent, individualness is subsumed under the authority of the husband, and freedom is effectively negated."<sup>11</sup>

Through gender domination man have a legitimate right over women's bodies as well as over capability of reproduction. This is manifested, Paterman critiques, through the separation of civil society from the private sphere, which is in fact the separation of men's minds and women's body.<sup>12</sup> Paterman argues that the downfall of patriarchal theory, "which had legitimized a system of power based on the supremacy of fathers and a hierarchy of families culminating in the royal family, was only half of revolution". It resulted in equality among burgoise men. Nonetheless, women were included in civil society, not as individuals, but in relation to husbands or fathers, being in the lower level to them. "Paterman interprets the term 'fraternity', as a literal description of a system governed by as brothers".<sup>13</sup> The social contract supposes, according to her reading of contract theory, a basic, and not very visible sexual contract by which men appropriate women's bodies.

Ortner seeks to portray women's subordination to men by comparing how we perceive culture and biology in relation to

men and women. He begins by explaining that humanity tries to rise above nature of existence by defining it as simple. Consequently, people always see nature as a lower level of organization then culture. Culture is identified as the creation of and the world of men. In contrast, women are identified with biology because of their body. They take care of the children who are not socialized and they do the household work, which makes them closer to nature. "Women and household are in this way shown as inferior in relation to cultural sphere and men's role in society, and women are seen as necessarily subordinated to men."<sup>14</sup>

In quoting Millet, Kunarac and Sarnavka explain that men practice unspoken gender politics. This is included in the structural establishment of power as well as in mechanisms by which one group controls the other. In case of patriarchy, men control the women. Male gender politics is multidimensional and functions on several levels. Two that hold importance to this paper are: the Societal level and the Power level. The Societal level explains that the main institution of gender politics is family which serves as the basis for male domination. The Power level elucidates that patriarchy is maintained by enforcements, impositions that are built into the legal framework as well as with the fact that rape and family violence exist.<sup>15</sup>

### **Self-sacrificing matriarchy:**

There are two different societal levels on which gender politics function: the patriarchal level and the micro-matriarchy<sup>16</sup>. The patriarchal level is the level which establishes man as the dominant gender, it is the level of history and the level of State and Nation. On the other hand micro-matriarchy refers to the family



and every day life where women take over the domination.<sup>17</sup> The author further maintains that women actually cooperate in the process of their repression as they willingly both take care of their children but also have their daily jobs, and they sacrifice themselves in order to perform well in both of these duties and in this way never have time for themselves. "Local patriarchy on the macro level correlates with the micro level self-sacrificing matriarchy, meaning: the structure of authority which gives power to the women on the level of primary groups."<sup>18</sup> Hence, if women have any power or domination they have to work twice as much, sacrificing themselves. In this way they are trapped in a vicious cycle of sacrifice that reproduces domination and vice-versa. The author points out that the problem is that they both reproduce patriarchy on the macro level.

Accordingly, in the micro self-sacrificing matriarchy women make all the important decisions in the household. Women's power and influence resides in the fact that all the household members are dependent on her.<sup>19</sup> Little girls from very early on are taught how to take care of the household so that they can take care of their men, who learn to be dependent on their mothers, sisters and wives. The author moreover describes how communism created an 'omnipotent' model of women. Meehan explains that the situation is not much different in the West, Ireland specifically. Due to the strong traditional feelings there were changes in the Civil Service in 1983. They expected the progress of women's rights, having an impact but on personal cost. Senior professional women disclose that they had to become 'superwomen', to adopt male work patterns and to behave at work as though their families did not exist.<sup>20</sup> This women does not lack any equality, she has too much of it. She is supposed to do all the housework plus the labor work. This creates misbalance in the equilibrium that women and men

share in matriarchy and patriarchy and crates a new, symmetrical model, as opposed to old, traditional, asymmetrical model. Disturbed equilibrium is rebalanced by self-sacrifice of women as the traditional model stopped working. During war time women self-sacrifice even more as everything depends on them. This form of patriarchy is the greatest during a war, "which on the macro scale presents the total domination of power and violence, while on the micro scale presents the complete affirmation of self sacrifice."<sup>21</sup>

In fact, most of the theories in today's literature trace back the prevalence of rape to patriarchal society where power relations between women and men were severely asymmetrical. "The manifestations and causes of violence, such as of mass rape, sexual slavery, custodial violence and enforced prostitution cannot be understood without attention being given to the patriarchal mode of society in general and the domination of men over women in all spheres of public and private life."<sup>22</sup>

Violence against women is imposed on women because of their gender and sex, Radhika Coomaraswamy argues. One of the Special Rapporteur's on Violence Against Women, she states that throughout the history power relations between men and women were always unequal. This domination resulted in discrimination against women, which paved the way for violence and prevented women's further advancement.<sup>23</sup> A lack of attention given to women's rights certainly reflects their position of inferiority in all countries, societies and communities. In her critique, Coomaraswamy pleads that it is crucial to recognize that violence, intimidation and fear are major obstacles to their full participation. "War is an inherently patriarchal activity, and rape is one of the most extreme expressions of the patriarchal drive toward masculine domination over the women. This patriarchal ideology is further enforced by the

aggressive character of the war itself, this is to dominate and control another nation or people."<sup>24</sup> To dominate another nation, one needs power. But, power does not necessarily mean only the armaments. There are other means to establish power, and one of them is rape.

### **Power and domination:**

But how is power defined and how does one nation establish control over the other? To identify this, we first need to define power and how does it relate to domination of one nation over the other by means of rape. Power is one of the means by which one nation communicates to another. "Power is a collection of possessions which creates an ability". Rosen and Jones further argue that it is the "ability of an international actor to use its tangible (material) and intangible (behavioral) resources and assets to achieve the desired objectives".<sup>25</sup> Thus, power is used to accomplish aims of the war. But power between two sides is most often not equivalent. When two parties of the conflict compete over an objective, their abilities to exert power may be nearly equal (a symmetrical power relations) or very unequal (an asymmetrical power relationship).<sup>26</sup>

In the argument that rape is a weapon of war, the tangible or material resources in establishing power are weapons and the intangible or behavioral asset is rape. Civilians are targets used in war strategies, and not the accidental victims of combat. Kaldor reveals that at the turn of the century, the ration of military to civilian casualties in wars was 8:1, whereas in the wars of the 1990s, the ratio of military to civilian casualties is approximately 1:8.<sup>27</sup> Bering in mind that women civilians, are already in disequilibria on the societal and power level as the

legal institutions support male dominance which also uses rape and sexual assault, their power of defense is trivial, not even to mention that they no not posses any armaments. Thus, rape is a behavioral means of power for achieving outcomes favorable to a party's objectives. If power is a means to ends<sup>28</sup>, then rape is an additional mean, an instrument for achieving subsequent objectives. Azra Smailkadic argues that "men are thought to use violence in order to realize their goals and this behavioral model is passed on from generation to generation".<sup>29</sup>

### **Altering the terrain on which a conflict is fought - battlefield**

Women are used as a means to humiliate the enemy. For centuries women were considered as men's 'property' and the guarantors of a family's high merit. As such, they are a target of choice for anyone aiming to degrade a man's honor. In doing so, he disturbs the peace of a community or people.<sup>30</sup> By disrupting normal social relations within the community, one can argue, one is killing the whole community. "Their [women's] bodies have been turned into a symbolic war front on which warrior man prove their twofold supremacy: as members of a warring side and as the sex that sends a message to the enemy that is capable of 'defeating and humiliating' him on the body of his wife, the reproductive nucleus and symbolic property that has to be destroyed in order to show who is stronger."<sup>31</sup> Hence, the question that arises from the previous statement is who is the real enemy if the battlefields are women's bodies? Women? The male enemy? Is it the civilians? Can we identify the enemy at all? And what kind of warfare does this constitute? What needs to be questioned is what kind of warfare this is so we can

find the necessary means in order to prevent it from happening in the future.

In trying to define the type of conflict, which is fought by using rape as a weapon of it, and thus establish the intended enemy, we need to turn to a completely different theory of conflict in international relations that points to the question of battlefield. This is the theory of the asymmetrical conflict. As we have seen earlier, new wars have different means of fighting a war. A classical definition of asymmetry is defined by the US National Defense Institute for National Strategic Studies in its 1998 Strategic assessment. "Asymmetrical threats or techniques are a version of not fighting fair, which can include the use of surprise in all its operational and strategic dimensions and the use of weapons in ways unplanned... **Not fighting fair** also includes the prospect of an opponent designing a strategy that **fundamentally alters the terrain on which a conflict is fought.**"<sup>32</sup>

## Top Down Approach

Thus, if the aim of the rape is to 'rape' the whole community, this implies that this is an ordered strategy from the top level and not the an accidental, sporadic incident. Turshen explains that military rape is perpetrated in a context of institutional policies and decisions, such as the national security or defense apparatus.<sup>33</sup> Hence, the question is not what are the psychological and material incentives of individual soldiers to rape. The real question is what directs military commanders to encourage rape by their forces. Therefore, it follows top-down approach, where rape is an order for soldiers by the state apparatus who designed this strategy to destroy one group, community or nation. In the inter-

view conducted with Jadranka Cigelj, a wartime rape survivor, she recounts the deliberateness of the strategy:

"Our tormentors were mostly the same, as if they were given an assignment. They thought of it as a working duty. After investigation, the guard having a conversation with you would leave a note. We would find those notes while we were cleaning, and on them was written who was to be liquidated, which would be carried out immediately. However, before the end, during the culmination, a few young men in uniforms came, who were probably mobilized, rather shocked. They kept themselves aside. Furthermore, they would even react humanly when being addressed. As if they were ashamed, uncomfortable, but they were holding weapon and had to protect the camp. You just know that he would shoot if you had tried to escape. There were those who would bring you some food, which was very dangerous for them, they were forbidden to do that. They would hide a bit of food in their uniform pocket, because it wasn't allowed. There were also situations like that."<sup>34</sup>

On my question did the orders to get the women always come from the outside she replies: "Of course, probably from the superiors"<sup>35</sup>. It was exactly known what women and which nights? She explains: "If they called by your last name when entering the door, you knew it was an order, otherwise they would call the nearest one. What happened to me was that I was taken outside for 3 nights by the camp commander Zeljko Mandic, he would call me by my full name. the first night he did it personally, on the second and the third night he sent some men to get me. But they brought me to him."

In her analysis of the phenomenon of military mass rape, Sajor reveals the cases during the Nanjing massacre in

the Sino-Japanese War (1931-37) and the mass rape of the women in the villages of Mapanique, Candaba, Pampanga in the Philippines during the genocidal attack by Japanese troops on 23 November 1944.<sup>36</sup> By systematic recruitment, abduction and kidnapping of women Japanese Imperial Forces made them sexual slaves. "The establishment, staffing, operation and control of the comfort stations were part of the logistics of war."<sup>37</sup> Numerous testimonies and evidence were presented at the Tokyo War Crimes Tribunal, held immediately after the Asia-Pacific War. The most significant case among these was the rape and the massacre of Chinese women by the Japanese 10<sup>th</sup> army and 16<sup>th</sup> Division in Nanjing in December 1937<sup>38</sup>. The event was described by American missionary James McCallum in his diary, which was presented in evidence at the Tokyo War Crimes Tribunal: "Never have I heard or read of such brutality. Rape! Rape! Rape! We estimated at least 1000 cases a night, and many by day. In case of resistance... there is a bayonet stab or bullet. We could write up a thousands cases a day"<sup>39</sup>.

In late February 1944 Japanese military forces took 35 Dutch women ages 16-26 from five women's detention camps and put them into four brothels (the Officers' Club, the Semarang Club, Hinomaru Club, and the Seiun-so). One Dutch woman who was forced to work in Semarang was Jeanne Ruff-O' Hearne. At first she was under arrest at Ambarawa camp together with her mother and her two young sisters. In February 1944 she was taken with nine other girls to the brothel. In her testimony she reveals:

"We were in this house for only one purpose: for the Japanese to have sex with us. We were enslaved into forced prostitution... We were all virgins and none of us new anything about sex... We were ordered to each go to our rooms, but we refused... My whole body was

burning with fear. It is a feeling I can not possibly describe, a feeling I shall never forget and never lose. Even after almost 50 years I still experience this feeling of total fear going through my body and limbs, burning me up... He took his sword out of its scabbard and pointed it at me, threatening me with it... He tore my clothes and ripped them off. He threw himself on top of me, pinning me down under his heavy body. I tried to fight him off, I kicked him, I scratched him, but he was too strong. The tears were streaming down my face as he raped me. I can find no words to describe this most inhuman and brutal rape. To me it was worse than dying... I can't remember exactly how long we were kept in the Semarang brothel, but it was at least three months. During that time the Japanese had abused me and humiliated me. They had ruined my young life. They had stripped me of everything, my self-esteem, my dignity, my freedom, my possessions, my family."<sup>40</sup>

There are many different theories of rape, yet all of them hold in common that rape dehumanizes a woman and breaks down her sense of personal identity. Rape is a violent assault on a woman's body by force, attacking her physically and emotionally. It is an aggressive act of perversely degrading violence. Brunet and Roussau argue that it is also an attack on her sex. It sends a message of repugnance towards women as a class. "The logic of appropriation and submission of the class of women holds rape to be an attack on women's honor, rather than a form of torture entailing physical and mental suffering inflicted to intimidate or apply pressure."<sup>41</sup>

In different countries, rape during war is used for different purposes. According to Brunet and Rousseau, "rape may be used as part of deliberate policy of ethnic cleansing (Bosnia-Herzegovina), a military strategy (Bosnia-Herzegovina), a politi-

cal terror tactic (Haiti), an instrument of armed struggle (Kashmir, Bangladesh, Kuwait), sexual violence inflicted to remind women of the restrictions on their sex, on their presence in the public sphere (Peru). It can be a symbol of the destruction of the social and cultural underpinnings of community (Bosnia-Herzegovina); a means of military propaganda; a method of persecution and intimidation of an ethnic, cultural, or religious group; an act of genocide (Rwanda, Bosnia-Herzegovina); an act of terror aimed at discouraging women from pursuing leadership roles that bolster civil society or from carrying on the activities, however minimal, that are necessary for economic survival; an act intended to 'defile the enemy's property'; a form of humiliation designed to hold up to ridicule the ability of a husband, brother or a father to 'protect' a woman. Finally, rape can be used to boost the morale of the troops, or as an expression of victory".<sup>42</sup>

Sexual assault is violent, and mass rape is group violence. The aim is to provoke hatred in victims for the perpetrators. Hayden explains that mass rape is a tool used to partition "an already consciously heterogeneous population" at the time when the territory in which these people live is being divided physically. "Thus mass rape is actually a corollary of the liminality<sup>43</sup> of the state when a heterogeneous territory is being surrendered into homogenous parts".<sup>44</sup> The assumption made here implies that rapists are not driven by hatred, but rather their acts are meant to induce hatred in the victims.

## Terror

Beverly Allen, the author of the book, *Rape Warfare: the Hidden Genocide in Bosnia-Herzegovina and Croatia*, defines rape warfare as "military policy for the purpose of the genocide currently

practiced in Bosnia-Herzegovina and Croatia by members of the Yugoslav Army, the Bosnian Serb forces, Serb militias in Croatia and Bosnia, the irregular Serb forces known as Chetniks, and Serb civilians."<sup>45</sup> Allen identifies "genocidal rape". Chetniks, or other Serb forces, enter Muslim or Croatian villages, take several women, rape them in public and leave. "Several days later, regular Bosnian Serb soldiers from the Yugoslav army arrive and offer the now-terrified residents safe passage away from the village on the condition they never return."<sup>46</sup> Hence, by raping, soldiers terrorize women so they do not feel safe in their society any longer. The message that is portrayed is that if they leave, they will be safe. But, if they decide to stay, they will be tortured again. Consequently, terror is a strategy, not a cause. Thus, again we have a different method of warfare with terror being one of its crucial components. The successive strategy of the perpetrators principally lies in terrorizing and tormenting population, Marwan Bishara clarifies. The mentioned author of asymmetrical warfare describes terror as the main aim of asymmetrical warfare.<sup>47</sup> Although there are number of different definitions to asymmetrical warfare, terrorizing and tormenting the civilian population is a common link to all asymmetrical attacks. "The inclination of future adversaries is to use 'psychological terror'".<sup>48</sup> What is one of the aims of rape? To terrorize the civilian population so they leave the territory and in this way create ethnically homogenous territory? What force to use, what instruments of force to attain these goals? And why rape? Although there is weaponry in the background, why isn't it sufficient enough to terrorize the enemy? "Terrorism is not a cause; rather, it is a strategy".<sup>49</sup> As Pentagon puts it simply: "The new enemy doesn't fight fair".

## Unconventionality:

Rape is a military strategy for the purpose of a destruction of a one group by terror rather than by arms, as wars are normally fought. For that reason, rape is an unconventional strategy as soldier is attacking a civilian and not a combatant, and a woman, not another male soldier. It neither punishes the actual perpetrator nor deters the operatives making the actual attacks.<sup>50</sup> Thus, the repist neither punishes the other military side or the actual enemy by killing them or shooting at them and in this way diminishes the number of soldiers on the other side, nor do they prevent the future attack. Consequently, it does not establish the ratio of power in a conventional way, necessary for allocation of scarce goods and resources, such as a disputed piece of territory or the control of an instrument of state, which normally define war, as it was mentioned and cited already from Rosen and Jones in the beginning of the chapter. Thus, *rape is a unconventional response to a conventional challenge, and is, at least in that sense asymmetrical.*

Asymmetrical warfare uses unconventional tactics to counter an adversary.<sup>51</sup> Asymmetrical warfare, or also called Fourth-generation warfare (4GW), in contrast to previous generations of warfare, does not attempt to win by defeating the enemy's military forces. "Instead, via the network, it directly attacks the minds of enemy decision makers to destroy the enemy's political will."<sup>52</sup> Soldiers by raping as well do not defeat the enemy's military forces, but they attack the minds of the enemy by attacking the women of the community, and consequently their honor.

"In most of the literature, the new wars are described as internal or civil wars or else as 'low intensity conflict'".<sup>53</sup> Martin Shawn uses the term "'degenerate warfare'". "For him there is a

continuity with the total wars of the twentieth century and their genocidal aspects; the term draws attention to the decay of the national frameworks, especially military forces."<sup>54</sup>

Tutsi women of Rwanda exemplify rape when used as an act of genocide in the horror of 100 days of genocidal massacre and rape in 1994.<sup>55</sup> It is estimated that 25,000 women were raped in Rwandan conflict.<sup>56</sup> The trial chamber determined: "[Rape crimes] constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such. Indeed, rape and sexual violence certainly constitute... one of the worst ways of inflict[ing] harm on the victim as he or she suffers both bodily and mental harm... Sexual violence was an integral part of the processes of destruction, specifically targeting Tutsi women and specifically contributing to their destruction of the Tutsi group as a whole. Sexual violence was a step in the process of destruction of the [T]utsi group - destruction of the spirit, of the will to live, and of life itself."<sup>57</sup>

In the case of Rwanda, it seems, rape alone was not enough for the perversely dangerous minds of the perpetrators to destroy the Tutsi group. They thought of another weapon to guarantee pain and suffering: HIV.<sup>58</sup> Accordingly, men carrying the virus described their intentions to the victims. Rape with the infection of HIV was an ultimate punishment that would guarantee long-suffering and tormented deaths. For countless women and girls who survived the rape only to learn that they were HIV positive at the end of the massacre in July 1994, was just the start of another torture. Donovan explains that indispensable to the plan to eliminate the Tutsi population was the systematic sexual molestation, mutilation, and rape of women and girls. Accounts of amputations and mutilations of breasts and genitals are abundant. Numerous women and girls traded sex for sur-

vival, and are now left emotionally, sexually and physically dysfunctional. According to the government reports after the genocide 2000 - 5000 children were born to women who were raped.<sup>59</sup>

## Forced impregnation - Values

Forced impregnation and forced pregnancy were punished for the first time on an international level with the Bosnia-Herzegovina conflict. Perpetrators that rape women want these female victims to bear the children of the perpetrator's ethnicity. These women are usually held in rape camps until it is too late to consider abortion. The UN High Commissioner for Human Rights, Robinson, states that rape, sexual violence and forced pregnancy are violations of the right to life, liberty and security of the person.

Bradford discloses that Muslim and Croatian women who were being held in Serb concentration camps were chosen at random to be raped. Serbs arrested Bosnian-Herzegovinian and Croatian women, imprisoned them in rape/death camps, and rape them repeatedly for long periods of time. Beverly Allen, the author of the book, *Rape Warfare: the Hidden Genocide in Bosnia-Herzegovina and Croatia*, explains that such rapes were either part of torture preceding death or part of torture leading to forced pregnancy.<sup>60</sup> Pregnant victims are raped consistently until their pregnancies had progressed beyond the possibility of safe abortion and are then released. In the first case, the death of the victims contributes to the "genocidal goal". In the second the birth of a child has the same effect because the child is of Serb nationality, regardless of the mother's nationality.<sup>61</sup>

In wars where military and civilian leaders use ethnicity and race as their ideology for mobilizing people, women are under attack from sexual violence because of their gender as well as their race or ethnic identity. Rapes happen together with attempt to displace the targeted ethnic group from the region. The threat and the act of rape are often used as a weapon against community identity, in particular where ethnic or religious purity is at risk. Degrading and humiliating women in such a societies is a way of violating and demoralizing men especially because rape is often performed openly in front of family and community.<sup>62</sup> In this sense it is an attack on the whole community although it is the women who suffer physically and bear the burden of shame and social ostracism. Hence, rape affects women's "eligibility" to marry or remain married. The primary aim of rape is not to make women reproduce for the other community, but to stop them from reproducing for their own community. Aware of the fact that women are the guarantors of the virtue of family, that their value, in certain societies, originates from and rests in their purity, an attacker is destroying one women's life as she is not capable to live normally in the system according to which value standards she does not apply any longer.

Having in mind that asymmetry emphasizes the qualitative differences in means, values and style of the new enemy<sup>63</sup> is it safe to say that the perpetrator of rape is an asymmetrical enemy? An asymmetrical enemy avoids the enemy's power and attacks its points of weakness. The asymmetrical enemy fights secretly against specific vulnerable targets using all the deadly means at his disposal.<sup>64</sup> Martin van Crevald in *The Transformation of War* points out the relative success of unconventional wars against conventional opponents. He elaborates on this idea by explaining that the way a society conducts a warfare is based in the type of social structure and beliefs it holds dear. He

further provokes by saying that it is probable that conventional militaries and high tech weapons are to become irrelevant.<sup>65</sup>

Taking all this into account, can one dare to argue that rape is an asymmetrical mean to fight a war because it is an unconventional tactic where an enemy is fighting unfairly in view of the fact that the power relation between him and his opponent are unequal and where he alters the terrain on which a conflict is fought by making women's bodies the battlefield?

The cultural significance of raping "enemy" women - women of a different race, ethnicity, religion, or political affiliation - is prominent is the analysis of rape in "sectarian conflicts": "ethnic cleansing rape as practiced in Bosnia has some aspects particularly designed to drive women from their homes or destroy their possibility of reproducing within and 'for' their community."<sup>66</sup> Military forces organize rape as a means of both intimidating and depriving their enemies. The Lord's Resistance Army (LRA) considered rape, along with killing and torture, "a tactic of warfare, a means of intimidation and control over the population."<sup>67</sup> Behind the cultural significance of raping "enemy" women lies institutionalization of attitudes and practices that regard and treat women as property. For instance, some societies require grooms to pay for brides. This is in fact a compensation for the wife's family as they lost their daughter's productive and reproductive labor value. Some societies recognize only male heads of household and give men exclusive control of the family's assets, including control of wife's labor and the product of that labor. Moreover, some societies encode women's lifetime status as minors under the custody of fathers, husbands, brothers, or sons.

## Notes

1 Walter S. Jones and Steven J. Rosen. *Logic of International Relations* (Little: Brown & Company, 1982) 194.

2 Mary Kaldor. *New and Old War: Organized Violence in a Global Era* (Stanford: Stanford University Press, 2001) 2.

3 Olivia Bennett, Jo Bexley and Kitty Warnock. *Arms to Fight, Arms to Protect: Women Speak Out About Conflict* (London: Panos, 1995) 250.

4 Paula Donovan. "Rape and HIV / AIDS in Rwanda". *The Lancet*. Dec 2002, p.4.

5 Mary Robinson. "Message from the UN High Commissioner for Human Rights". *Common Grounds: Violence Against Women in War and Armed Conflict Situations* (Quezon City: ASCENT, 1998) 21.

6 Cherie Booth QC. "Ending Impunity of Sexual and Gender Crimes", p. 10. The advancement of gender issues might not have come about were it not for the intervention of Judge Pillay, a South African, and the only female judge on the Rwandan tribunal at the time. The trial came into effect in February 1997. Jean-Paul Akayesu was soon arrested and charged with giving orders for, and participating in, crimes against humanity committed at the Taba Commune. In the beginning no charges or evidence of rape were brought at the trial. The prosecutor claimed that it was impossible to document rape since women would not talk about it. Nonetheless, Judge Pillay made imperative changes. The consequence was that in June 1997 the indictment was amended by the Prosecutor to add charges of sexual violence.

7 Suzana Kunarac and Sanja Sarnavka. *"Zenska" percepcija medijskih sadržaja: Nevinost bez zaštite* (Zagreb: B.a.B.e. Grupa za Ženska Ljudska Prava, 2006) 12. Translation of the parts cited from this book provided by the author of this paper.

8 Suzana Kunarac and Sanja Sarnavka. *"Zenska" percepcija medijskih sadržaja: Nevinost bez zaštite* (Zagreb: B.a.B.e. Grupa za Ženska Ljudska Prava, 2006) 12.

9 Suzana Kunarac and Sanja Sarnavka. *"Zenska" percepcija medijskih sadržaja: Nevinost bez zaštite* (Zagreb: B.a.B.e. Grupa za Ženska Ljudska Prava, 2006) 13.

10 Suzana Kunarac and Sanja Sarnavka. *"Zenska" percepcija medijskih sadržaja: Nevinost bez zaštite* (Zagreb: B.a.B.e. Grupa za Ženska Ljudska Prava, 2006) 13.



11 Elizabeth Meehan and Selma Sevenhuijsen, eds. *Equality, Politics and Gender* (London: SAGE Publications, 1991) 24.

12 Suzana Kunarac and Sanja Sarnavka. "*Zenska" percepcija medijskih sadržaja: Nevinost bez zaštite* (Zagreb: B.a.B.e. Grupa za Zenska Ljudska Prava, 2006) 16.

13 Elizabeth Meehan and Selma Sevenhuijsen, eds. *Equality, Politics and Gender* (London: SAGE Publications, 1991) 6.

14 Suzana Kunarac and Sanja Sarnavka. "*Zenska" percepcija medijskih sadržaja: Nevinost bez zaštite* (Zagreb: B.a.B.e. Grupa za Zenska Ljudska Prava, 2006) 17.

15 Suzana Kunarac and Sanja Sarnavka. "*Zenska" percepcija medijskih sadržaja: Nevinost bez zaštite* (Zagreb: B.a.B.e. Grupa za Zenska Ljudska Prava, 2006) 14. There are eight dimension to Male gender politics: Ideological level, Biological level, Societal level, Class level, Economic and educational level, Power, Myth and religion, and Psychological level.

16 Marina Blagojevic. *Gender, Nation, Identity* (Belgrade: Women in Black, 1995) 157.

17 Marina Blagojevic. *Gender, Nation, Identity*, (Belgrade: Women in Black, 1995) 157.

18 Marina Blagojevic. *Gender, Nation, Identity*, (Belgrade: Women in Black, 1995) 158.

19 Marina Blagojevic. *Gender, Nation, Identity*, (Belgrade: Women in Black, 1995) 159.

20 Elizabeth Meehan and Selma Sevenhuijsen, eds. *Equality, Politics and Gender* (London: SAGE Publications, 1991) 15.

21 Marina Blagojevic. *Gender, Nation, Identity*, (Belgrade: Women in Black, 1995) 160.

22 Indai Lourdes Sajour. *Common Grounds: Violence Against Women in War and Armed Conflict Situations* (Quezon City: ASCENT, 1998) 2.

23 Ariane Brunet and Stephanie Rousseau. *Common Grounds: Violence Against Women in War and Armed Conflict Situations* (Quezon City: ASCENT, 1998) 35. This statement is taken from the Special Rapporteur on Violence Against Women, which she noted in her first report to the Commission on Human Rights and is stated in the preamble to the "Declaration on the Elimination of Violence Against Women".

24 India Lourdes Sajour. *Common Grounds: Violence Against Women in War and Armed Conflict Situations* (Quezon City: ASCENT, 1998) 3.

25 Walter S. Jones and Steven J. Rosen. *Logic of International Relations* (Little: Brown & Company, 1982) 181

26 Walter S. Jones and Steven J. Rosen. *Logic of International Relations* (Little: Brown & Company, 1982) 182.

27 Mary Kaldor. *New and Old War: Organized Violence in a Global Era* (Stanford: Stanford University Press, 2001) 8.

28 Walter S. Jones and Steven J. Rosen. *Logic of International Relations* (Little: Brown & Company, 1982) 182.

29 Cited in Azra Smailkadic, "Violence against Women: 'From the Bedroom to Battlefield'", Andric-Ruzicic D., Peele H. (ed.), "Domestic Violence" in "*To Live Without Violence*", Infoteka, Medica Zenica, 1999: 43.

30 Ariane Brunet and Stephanie Rousseau. *Common Grounds: Violence Against Women in War and Armed Conflict Situations* (Quezon City: ASCENT, 1998) 36.

31 Vesna Kesic, Vesna Jankovic, Biljana Bijelic, Ed. Vesna Kesic. "Women are Victims of War. But Women also Know 1.000 Ways to Survive. Women Can Change the World". *Women Recollecting Memories: The Center for Women War Victims Ten Years Later*. The Center for Women War Victims: Zagreb, 2003, p. 42.

32 US National Defense University's Institute, <http://www.ndu.edu/inss/Strategic%20Assessments/sa98/sa98ch11.html>, p2.

33 Meredith Turshen. "The Political Economy of Violence Against Women During Armed Conflict in Uganda". *Social Research*. Fall 2000, p.7.

34 Jadranka Cigelj. Personal Interview. Zagreb: August 2nd, 2006: 6.

35 Jadranka Cigelj. Personal Interview. Zagreb: August 2nd, 2006: 13-14.

36 Sajor reveals that there are more than 200 000 women from Korea, Taiwan, the Philippines, Malaysia, China and Indonesia who were forced to become comfort women or sex slaves for the Japanese Imperial Army during the World War II.

37 Indai Lourdes Sajour. *Common Grounds: Violence Against Women in War and Armed Conflict Situations* (Quezon City: ASCENT, 1998) 3.

38 Yuki Tanaka. *Common Grounds: Violence Against Women in War and Armed Conflict Situations* (Quezon City: ASCENT, 1998) 149.

39 Yuki Tanaka. *Common Grounds: Violence Against Women in War and Armed Conflict Situations* (Quezon City: ASCENT, 1998) 149.

40 Yuki Tanaka. *Common Grounds: Violence Against Women in War and Armed Conflict Situations* (Quezon City: ASCENT, 1998) 163.

41 Ariane Brunet and Stephanie Rousseau. *Common Grounds: Violence Against Women in War and Armed Conflict Situations* (Quezon City: ASCENT, 1998) 37.

42 Ariane Brunet and Stephanie Rousseau. *Common Grounds: Violence Against Women in War and Armed Conflict Situations* (Quezon City: ASCENT, 1998) 38.

43 The transitional period of phase of a rite of passage, during which the participant lacks social status or rank, remains anonymous, shows obedience and humility, and follows prescribed forms of conduct, dress, etc. Random House Webster's Unabridged dictionary. Anthropological meaning.

44 Robert M. Hayden. "Rape and Rape Avoidance in Ethno-National Conflicts: Sexual Violence in Liminalized States". *American Anthropologist*. March 2000, p.13.

45 D.G. Bradford. "Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia". *Airpower Journal*. Fall 1998, p. 1.

46 D.G. Bradford. "Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia". *Airpower Journal*. Fall 1998, p. 2.

47 Marwan Bishara. Asymmetric Conflict. *International Herald Tribune*, 26.09.2001, p.2.

48 Marwan Bishara. Asymmetric Conflict. *International Herald Tribune*, 26.09.2001, p.4.

49 Michael, T. Klare. "What kind of War?" *Pacific News Service*, September 17, 2001, p.2.

50 US National Defense University's Institute, <http://www.ndu.edu/inss/Strategic%20Assessments/sa98/sa98ch11.html>, p.4.

51 "Asymmetric Warfare, The USS Cole, and the Intifada", *The Estimate*, Vol XII, Number 3, 2000, p.1.

52 Colonel Thomas X. Hammes. *The Sling and the Stone: on wars in 20<sup>th</sup> century* (St. Paul: Zenith Press, 2004) 2.

53 Mary Kaldor. *New and Old War: Organized Violence in a Global Era* (Stanford: Stanford University Press, 2001) 2.

54 Mary Kaldor. *New and Old War: Organized Violence in a Global Era* (Stanford: Stanford University Press, 2001) 2.

55 Paula Donovan. "Rape and HIV / AIDS in Rwanda". *The Lancet*. Dec 2002. Some 800 000 tutsi were killed by Hutu in genocide in 1994. Through UN international War Criminal Tribunal for Rwanda, which was established to investigate and prosecute those responsible for the 1994 genocide, sexual violence during civil war has been classified among the least tolerable of horrible acts. Rwanda Tribunal determined that rape committed in the armed conflict are not only war crimes, but also crimes against humanity, and in instances, acts of genocide. (p. 1).

56 Cherie Booth QC. "Ending Impunity of Sexual and Gender Crimes", p.3.

57 Kelly D. Askin. "Sexual Violence in Decision and Indictments of the Yugoslav and Rwandan Tribunals: Current Status." *American Journal of International Law* Jan 1999, p.12.

58 Paula Donovan. "Rape and HIV / AIDS in Rwanda". *The Lancet*. Dec 2002, p.4. Nearly 9% of adult Rwandans are infected with HIV / AIDS. It is not known what proportion was infected during the genocide.

59 Paula Donovan. "Rape and HIV / AIDS in Rwanda". *The Lancet*. Dec 2002, p.3.

60 D.G. Bradford. "Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia". *Airpower Journal*. Fall 1998, p. 2.

61 D.G. Bradford. "Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia". *Airpower Journal*. Fall 1998, p. 2.

62 Olivia Bennett, Jo Bexley and Kitty Warnock. *Arms to Fight, Arms to Protect: Women Speak Out About Conflict* (London: Panos, 1995) 8.

63 Marwan Bishara. Asymmetric Conflict. *International Herald Tribune*, 26.09.2001, p.2.

64 Marwan Bishara. Asymmetric Conflict. *International Herald Tribune*, 26.09.2001, p.3.

65 Colonel Thomas X. Hammes. *The Sling and the Stone* (St. Paul: Zenith Press, 2004) 12.

66 Meredith Turshen. "The Political Economy of Violence Against Women During Armed Conflict in Uganda". *Social Research*. Fall 2000, p.7.

67 Meredith Turshen. "The Political Economy of Violence Against Women During Armed Conflict in Uganda". *Social Research*. Fall 2000, p.8.

## LEGAL DOCUMENTS

Most casualties of today's wars are civilians, not soldiers. "If the numbers of displaced and wounded are added to the estimated death figure, the total proportion of war casualties who are civilians may be as high as 90%".<sup>1</sup> In modern conflicts, terrorizing civilian population has become a common means of waging war. This almost always involves the use of torture. More than fifty years ago, at the post World War II trials in Nuremberg and Tokyo, the international community successfully punished individuals for war crimes. Never before had individuals been held accountable by the international community for criminal acts committed during war. This chapter will examine how well is international law responsive to these women.

## Historical development of Law: Nuremberg and Tokyo Trials

During World War I, rape and other forms of sexual assaults not only occurred regularly and intentionally, but were also "given license, either as encouragement for soldiers or as an instrument of policy."<sup>2</sup> Both Nazi and Japanese governments implemented various forms of forced prostitution. Axis leaders expressed their opinions that "man should be trained for war and women for the recreation of the warrior."<sup>3</sup> Even though it was known that sexual atrocities were taking place during World War II, the International community did little, if anything, to prevent such atrocities from occurring or punishing those guilty of committing them. Under the International Military Tribunal at Nuremberg (IMT) and the International Military Tribunal for the Far East at Tokyo (IMTFE), the major war criminals of the Axis were brought to trial for war crimes, crimes against peace, and crimes against humanity. "Although the IMT and IMTFE Charters granted enough flexibility for the prosecution of rape and other sexual assaults committed against women during World War II, the failure to appropriately prosecute sexual crimes continued to minimize the particular harms suffered by women in times of war and resulted in an absence of forceful precedent for future punishment of wartime sexual assaults."<sup>4</sup>

Supplementary to conventional war crimes, the IMT Charter, gave the tribunal jurisdiction over two crimes never prosecuted before: crimes against peace and crimes against humanity. Article 6(a) of the IMT Charter defined crimes against peace as including the "planning, preparation, initiation or waging of a war of aggression, or a war in a violation in international treaties, agreements or assurances, or participation in a common plan of conspiracy."<sup>5</sup> As a result of adding crimes

against peace to the Charter, war became an illegal act. Furthermore, it permitted for individual government leaders to be criminally punished for starting a war of aggression. The IMT Charter defined crimes against humanity as including "murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population before or during war, or as persecution on political, racial, or religious grounds."<sup>6</sup>

Nowhere in the IMT Charter was "rape" or "sexual assaults" explicitly mentioned. The failure to prosecute sexual assaults undermined the terrible suffering of the women during World War II. Rape was not considered as severe as other war crimes. Although the gender-specific crimes were not directly included in the IMT Charter, the tribunal had an authority to include rape among the crimes. Article 6(b) of the IMT Charter defined war crimes to include, but "not to be limited to", a number of specifically listed crimes.<sup>7</sup> Campanaro points out that the language of this clause allowed the prosecution to charge rape as a war crime despite its absence from the list of specific offenses.

The IMT Charter could have also prosecuted rape as a crime against humanity. Article 6 (c) of the IMT Charter defines crimes against humanity as including the "other inhumane acts" in addition to those specifically named. Indictment brought under Article 6 (c) included violations of the "general principles of criminal law as derived from the criminal law of all civilized nations."<sup>8</sup> Thus, entailing the principles of the world's major legal systems, the tribunal's jurisdiction had an effect with violations such as "murder, rape, assault, battery, theft, robbery, destruction of property, slavery, kidnapping, forcible confinement, and abduction."<sup>9</sup> Therefore, provision stated the crimes against humanity. Furthermore, the tribunal had the ability to

prosecute those crimes that "violated general principles of criminal law". Rape and sexual assault certainly qualify as such.

Unlike the IMT, the IMFTE included rape among the crimes charged in the indictment. Nonetheless, rape was only prosecuted in addition to other crimes. Some defendants were charged and prosecuted for rape under prohibitions against "inhumane treatment", "ill-treatment", and "failure to respect family honor and rights."<sup>10</sup> The inclusion of rape in Tokyo indictments resulted in the first prosecution of the uncontrolled sexual violence of World War II. Adding rape in the indictment was established in the case of a high-ranking Japanese officer Tomoyuki Yamashita. He was convicted for the commission of war crimes, including "torture, rape, murder, and mass executions of large numbers of residents of Philippines, including women and children", Campanaro remarks.

## **ICTY and ICTR**

The most meaningful developments in the international approach to individual responsibility for human rights violations since World War II have occurred in the 1990s. One significant addition to human rights law was the United Nation's founding of an ad hoc criminal tribunals to prosecute human rights abusers in the former Yugoslavia and Rwanda. These two judicial bodies, the International Criminal Tribunal for the Former Yugoslavia (ICTY), established in 1993, and the International Criminal Tribunal for Rwanda (ICTR), established in 1994, advance international human rights law by explicitly recognizing rape as a war crime and by constantly prosecuting rapists. One of the most significant cases in the trial chamber of ICTY was the case of Prosecutor v. Kvočka<sup>11</sup> in November 2001 as the trial

chamber established that "rape, the threat of rape, and other forms of sexual violence can amount to torture"<sup>12</sup>. Furthermore, the ICTY judgment in the case Prosecutor vs. Zejnil Delalic: (paras 495) declared: "The condemnation and punishment of rape becomes all the more urgent where it is committed by, or at the instigation of, a public official, or with the consent or acquiescence of such an official. Rape causes severe pain and suffering, both physical and psychological. The psychological suffering of a persons upon whom rape is inflicted may be exacerbated by social and cultural conditions and can be particularly acute and long lasting."<sup>13</sup> Chein Reis identifies health effects of sexual violence:

Physical consequences include:

unwanted pregnancy,  
unsafe abortion,  
Sexually Transmitted Infections including HIV,  
sexual dysfunction,  
infertility,  
pelvic pain  
pelvic inflammatory disease,  
urinary tract infections,  
genital injuries  
bruises and lacerations.

Psychological consequences include:

Post Traumatic Stress Disorder (PTSD),  
depression,  
social phobias,  
anxiety,  
increased substance use and abuse,  
suicidal behaviour,  
sleep disturbances,  
eating disorders,  
sexual difficulties.<sup>14</sup>

### *Geneva Conventions:*

There is no definition of rape in international law. The ICTR (International Criminal Tribunal for Rwanda) defines rape under crimes against humanity.<sup>15</sup> The Tribunal did not limit the definition to the descriptions of objects and acts. Rather, it looked to the Convention against Torture or Other Cruel, Inhumane and Degrading Treatment<sup>16</sup>. This Convention lists rape, but does not define what the act of rape is. The ICTR had to define the acts before it could prosecute the crime of rape and analyze whether rape can fall under Geneva Convention. The four Geneva Conventions of 1949 and their Two Additional Protocols of 1977 are the main treaties which codify the laws of war. The Geneva Conventions prohibit the use of torture in international armed conflict against those protected by the Conventions, such as civilians in occupied territory and prisoners of war. "Under the Geneva Conventions, torture in international armed conflict is a 'grave breach of the laws of war-a war crime."<sup>17</sup>

Yet, the problem with these protocols is that there is no recognition of gender-based violations. Thus, rape is not specifically listed as a grave breach. The result of this exclusion is that rape as a war crime is not clearly covered by universal jurisdiction.<sup>18</sup> The International Committee of the Red Cross argues that the crime of rape should constitute a grave breach since this violation is a case of "willfully causing great suffering or serious injury to body or health."<sup>19</sup> In addition, in its resolution on the elimination of violence against women, the United Nations Commission on Human Rights stated in 1994 that acts of sexual violence against women and children constitute grave breaches of humanitarian law.

Furthermore, as Brunet and Rousseau point out, the only specific measure protecting against rape and other sexual

violence, is found in Article 27 of the Fourth Geneva Convention. It states that "acts of rape and other forced prostitution are defined as attacks against women's honor, or indecent assault, thereby setting the tone for the humanitarian law in its approach to the interpretation of gender-based violations."<sup>20</sup> Yet, this provision's language does not strongly prohibit rape. Rather, it presents women as in need of protection. This statement leads to two separate conclusions. "First are the concepts of protector and protected that are used both to justify recourse to armed force and to lessen the civil status of those deemed to need protection. Second, the designation of rape as a crime against honor embodies a masculine notion of women as property rather than as victims of violence, humiliation and degradation."<sup>21</sup>

Article 3, common to all four Conventions, defines the minimum standards of behavior that the parties to any conflict are bound to obey, irrespective of whether they have ratified the Conventions. Prohibited actions include violence to life and the person, cruel treatment and torture, and humiliating and degrading treatment.<sup>22</sup> Violations specific to women are not mentioned as such. They may be included in the general provision prohibiting violence to life and person, particularly as a form of cruel treatment or torture. They may also be covered by the provision prohibiting attacks against personal dignity, in particular, humiliating and degrading treatment. "Once again, the choice is left to the judicial authorities to determine the nature of the rape and other sexual violence in terms of these two possibilities, which are founded upon very different understandings of the crimes in question."<sup>23</sup> No clarification provides for confusion regarding women's experience during periods of conflict, as well as uncertainty as to what is meant by respect for their fundamental rights.

The Additional Protocols to the Conventions have as their objective the protection of women. Article 76 of Additional Protocol I states that "'women shall be the object of special respect and shall be protected in particular against rape, forced prostitution, and any other form of indecent assault.'"<sup>24</sup> Other references in the Geneva Conventions emphasize women's roles as child bearers and careers rather than as individuals with their own rights. 19 out of 34 provisions within Geneva Conventions that allegedly protect women, in fact primarily protect children.<sup>25</sup> This makes the position of women without children problematic.

It was the Tribunal of the former Yugoslavia that vigilantly considered the elements of the offence in the first case involving charges of crimes against humanity. This was the trial of Dusko Tadic, which resulted in many decisions that had a significant influence on the gender-based crimes under international law.<sup>26</sup> According to the Tribunal there must be evidence of systematic government planning for the charges of crimes against a civil population, not just against individual civilians, but acts do not have to occur during an armed conflict.<sup>27</sup>

The acceptance of war crimes worthy of forceful prosecution, crimes in which most victims are women, explicitly signals the acceptance of women as a group within the international community requiring recognition of their gender-specific human rights. The classification of rape in the Statute of the Tribunal affirms the importance of women as equal participants before international law and institutions. Yet, the omission of rape from the definition of grave breaches allows the perception that it is only where they reach the systematic and widespread level of crimes against humanity that they are punishable as war crimes. Durham and McCormack point that just as a single act towards the prisoner of war violates the Third

Geneva Convention so too must a single act of rape in armed conflict be regarded as illegal under the laws of war.

The founding statutes of the two ad hoc tribunals created by the UN Security Council maintain the terms and standards of current humanitarian law. Article 4 of the Statute of the International Criminal Tribunal for Rwanda lists the grave breaches set out in Article 3 of the Four Geneva Conventions and Additional Protocol II, those acts which constitute war crimes for this Tribunal. Brunet and Rousseau argue that a comparison of paragraphs (a) and (e) of this article illustrates the fundamental problem as regards the acknowledgment of violations of women's rights:

(a) Violence to life, health and physical and mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, forced prostitution and any form of indecent assault;<sup>28</sup>

The ICTY has jurisdiction over grave breaches of the Geneva Conventions, although "grave breaches include acts willfully committed and causing great suffering or causing injuries to body and health."<sup>29</sup> The classifications of rape and enforced prostitution are considered neither as acts of violence affecting women's physical and mental health nor acts of torture. Rather, these are considered merely as attacks on dignity, humiliating treatment or indecent acts.

The Geneva Conventions and Protocols are not the only legal regimes applicable to sexual violence in armed conflicts. A second category is that of crimes against humanity. Crimes against humanity were defined in the Nuremberg Char-

ter as: "murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population before or during the war, or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal whether or in violation of domestic law of the country where perpetrated."<sup>30</sup> The Nuremberg Charter did not provide an exhaustive definition of the elements for a crime against humanity.

### *Definition of rape:*

According to the ICTR rape is:

"A physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence, which involves rape, is considered to be any act of a sexual nature, which is committed on a person under circumstances, which are coercive. This act must be committed:

as part of a wide spread or systematic attack;

on a civilian population;

on certain catalogued discriminatory grounds, namely: national, ethnic, political, racial, or religious grounds...."<sup>31</sup>

There is no legal definition of sexual violence either but it includes rape, sexual slavery, forced marriage, forced impregnation and other. As mentioned already Geneva Conventions define laws and customs of war in conflict situations and thus, oblige armed groups to those rules. Armed groups are always responsible for acts of sexual violence committed by their

forces, in the case of rape, forced marriage, sexual slavery of forced pregnancy.<sup>32</sup>

*Rape defined as torture:*

Furthermore, the ICTY emphasized that many rapes amount to torture, such as when "used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person." Additionally, "like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when inflicted by or at instigation of or with the consent or acquiescence for a public official or other personal acting in an official capacity."<sup>33</sup> In the case of Semanza, Laurent (ICTR-97-20), the ICTR convicted Semanza of rape as a crime against humanity. The conviction was sustained on appeal. For committing rape as a crime against humanity, he was sentenced to seven years of imprisonment. Furthermore, the ICTR also charged him with initiating torture by rape and personally committing torture as a crime against humanity. For this charge he was sentenced to ten years. The sentence was maintained on appeal.<sup>34</sup>

*Rape defined as crimes against humanity:*

Yet, it was in June 1996 that the ICTY proclaimed judgment specifically for the crimes of rape and sexual abuse. The "Foca 8" indictment is significant because it is the first international criminal indictment dealing solely with crimes against sexual assaults and sexual degradation. The indictment resulted from an investigation on the operation of detention centers and commission of gender related crimes during the occupation of Bosnia. All of the victims are women. The indictment charges

eight Bosnian Serbs with sixty-two counts of criminal sexual violence.<sup>35</sup> The charges are conducted from the sexual assaults of Muslim girls and women in the Bosnian city of Foca. Between April 7 and April 17, 1992, Serb military forces entered Foca and began arresting Muslim and Croatian residents.<sup>36</sup> During these arrests many citizens were beaten and killed. Women and girls were sexually assaulted. The men were out in the local prison, while women, children, and the elderly moved to local houses, motels, or other detention centers.

One of the Foca 8 defendants, and the first to be taken into the custody by the ICTY, was Bosnian Serb Army Commander Dragoljub Kunarac. Kunarac was the first defendant to be indicted by an international court solely for acts of sexual violence.

The indictment accuses Kunarac of entering the Partizan Sports Hall detention and choosing Bosnian Muslim women and girls to take to his headquarters where they raped the victims. Kunarac was found guilty of keeping Muslim women in house for several months. They were treated as his personal property, which included forced cleaning and cooking. Women were frequently beaten and raped by Kunarec and other soldiers.

He is charged with twenty-one counts of rape and torture as crimes against humanity and violations of the laws of the customs of war.<sup>37</sup> Amela, one of the rape victims of "rape camps" in Foca, reveals: "One of the men who harmed me, I know he is dead, and I know he died very painfully. When I heard of it, my feelings of happiness were fighting in me. I was ashamed of those feelings... No reconciliation, no revenge will be good for me. Even if I saw them dead, all these men who did



this to me...nothing can bring me back. I do not exist as an emotional being. I am just surviving."<sup>38</sup>

At the time Amela was sixteen years old. She and other Muslim women were kept in the school and then in the sports hall. "In the fog of my mind I can see faces. Every single man reminds me of them. I'll never forget their hands, their dirty hands, the dirt under the fingernails. Their smell. The dirty language they used to humiliate me. I' am not certain how long it lasted. Maybe two days. I was found unconscious, covered in blood. My hand was broken. I have scars all over my body. But the worst scars are on my soul."<sup>39</sup> The lowest estimate made by research groups holds that during the conflict in the former Yugoslavia 20,000 women were raped, most of them Muslims.<sup>40</sup> With the conviction of Kunarac rape was, for the first time, defined as a crime against humanity, whereas before rape was defined as torture.

### *Crimes that can amount to genocide:*

In addition to rape being defined as torture, or crime against humanity, rape can also be defined as a crime that can amount to genocide. In the case of Jean Paul Akayesu (ICTR-96-4) in 1998 the ICTR was called upon to interpret the definition of genocide as termed in the Convention for the Prevention and Punishment of the Crime of Genocide (1948). "The Tribunal found that the accused had the requisite *mens rea*<sup>41</sup> to commit genocide, and had exhibited that aggravated criminal intention through, *inter alia*, the systematic rape of Tutsi women."<sup>42</sup> According to the ICTR, the systematic rape of Tutsi women was part of the method designed to mobilize the Hutus against the Tutsi, and the sexual violence was intended to "destroying the

spirit, will to live, or will to procreate, of the Tutsi group".<sup>43</sup> Akayesu was condemned to spend 15 years in prison for crimes against humanity rape, with the Tribunal upholding the sentence on appeal.

Since the creation of the War Crimes Tribunal for the Former Yugoslavia and Rwanda, women are no longer the forgotten victims of the war. With the conviction of Jean Paul Akayesu,<sup>44</sup> the Trial Chamber defined rape and sexual violence as acts of sexual nature not limited to domestic definitions of the crime. "The Akayesu decision in particular is historic because it authoritatively affirms the intricate linkage of sexual violence to the genocide committed during the Rwanda conflict."<sup>45</sup> Akayesu served as "burgomaster" of the Taba commune, which gave him an exclusive control over the communal police and responsibility for maintaining public order within the commune. The indictment defined acts of sexual violence to "include forcible sexual penetration of the vagina, anus or oral cavity by a penis and/or of the vagina or anus by some other object, and sexual abuse, such as forced nudity".<sup>46</sup> Including offences such as forced nudity in the indictment shows that violence is not only resulted from physical violence, but also includes mental violence of this nature.

The Chamber found that sexual violence might constitute a crime against humanity or a breach of Article 3 common to the Geneva Conventions and Additional Protocol II as an outrage on personal dignity. Furthermore, sexual violence constituted serious bodily and mental harm and could constitute genocide. Finally, the participation of the accused in the sexual violence does not have to be restricted to the role of the main offender but could include ordering, instigating, aiding and abetting the commission of such acts by allowing them to take place.<sup>47</sup>

### *Investigation of crimes:*

Investigations of crimes against women in the Former Yugoslavia and Rwanda came across many legal and practical problems: the dispersion of victims and witnesses all around the world; the unwillingness of women to speak of crimes committed against them through humiliation, shame, fear of public and family ostracism or fear of retaliation; the intervention of too many people wanting accounts of their experiences, as NGO's or supporting agencies, and official investigations; the passage of time and the desire not to relive atrocities; and the feeling that rape and sexual assaults are of less importance compared with the loss of community, home, possessions and the death or disappearance of family members.<sup>48</sup>

Rules and evidence relevant to the testimony of sexual assault victims is a delicate and political subject in both national and international law. In recognition of the exceptional nature of rape, the ICTY developed rule 96 to offer greater procedural protections for sexual assault victims. The rule states:

In case of sexual assault:

"(I) no corroboration of victim's testimony shall be required;

(II) consent shall not be allowed as a defense if the victim:

has been subject to or threatened with or has had reasons to fear violence, duress, detention, or psychological oppression, or

reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear;

(III) before evidence of the victim's consent is admitted, the accused shall satisfy the Trial Chamber on camera that the evidence is relevant and credible;

(IV) prior sexual conduct of the victim shall not be admitted in evidence.<sup>49</sup>

Rule 96 recognizes rape as unique form of violence and victimization. Since sexual assault is often perpetrated in private, rule 96 eliminates the necessity of witnesses. A victim may testify against the accused regardless of victim's verification. There is awareness that a victim may consent, fearing that refusal to submit to the assault could threaten her life or life of the lives of other members of her family. Under Rule 96 this consent is not legitimate defense. "The court must be satisfied in camera that any offered consent is valid defense before evidence of such consent reaches open court".<sup>50</sup> This gives victims an opportunity to stop illegitimate defenses before they reach an open court. This possibly prevents further humiliation of the victim in the case she decides to over exacerbate the story or she decides to provide with dishonest testimonies, which will be discussed in Chapter III.

Moreover, a victim's sexual history is legally irrelevant to the issue of whether there was forced sexual contact, and is therefore excluded. The final aspect of the Rule 96 seeks to protect victims from humiliation and supports principally the female victim-witnesses in verifying the accusations in the indictment.<sup>51</sup> Thus, in developing the Rule 96, the Tribunal realizes to what extent stigma is attached to rape and this appreciation of gender component of crimes of sexual violence is a first in international criminal prosecution.

"It is crucial in the elaboration of rules of procedures, witness protection, collection of evidence and the use of evi-

dence from a gender perspective to be incorporated in model for such an international court of law to be enabled to do justice to women victims of human rights violations.<sup>52</sup> Protection of women and their human rights during times of armed conflict must be linked to campaigns against violence in society in general, since gender equality is an integral component of peace.<sup>53</sup> The emphasis should be on non-violent resolution of conflict and women's role within the peace building processes, through conflict prevention and resolution.

### ICC:

In addition to the ad hoc tribunals, a major development in prosecuting rape as a war crime has come to existence with the International Criminal Court (ICC). The ICC statute, in contrast to the ad hoc tribunals is a permanent institution that ensures the punishment of such criminals. The Court's first cases included the DRC, Sudan and Uganda. They all involve allegations of sexual violence against women.<sup>54</sup> Findings of the special United Nations commission, led by Antonio Cassese, in investigating violence in the Darfur region in Western Sudan, has found that the sexual violence amounted to "crimes against humanity with ethnic dimensions". In its recommendation, the Commission stated that the war crimes and human rights violations seen should be submitted to the International Criminal Court. "In my view the prosecution before this Court of those guilty of sexual violence is a priority"<sup>55</sup>.

Crimes taking place in the Democratic Republic of Congo (DRC) oblige ICC's consideration of investigation and prosecution. Cherie Booth argues that the actions of criminals must be exposed so as to end impunity. It is these kinds of

actions that send a message to perpetrators that their acts of massacre, torture and rape will not be permitted, Booth elaborates.

Thus, only since 90s international criminal law brought sexual violence against women during armed conflict on its agenda. Through ICC the voice of sexually abused women, whose suffering has not been acknowledged only because they were women, is finally heard. This is clearly evident in the case of northern Uganda where sexual violence was included in three out of five arrest warrants against officials of the Lord's Resistance Army.<sup>56</sup> The advancement is also seen in the Rome Statute that allows for prosecution of a wide range of sex-based crimes. Apart from prohibiting sexual violence as a war crime in Article 8, Article 7(1) (g) of the Rome Statute explicitly bans the crime against humanity constituted by "*rape; sexual slavery; enforced prostitution; forced pregnancy; enforced sterilization; or any other form of sexual violence of comparable gravity*".<sup>57</sup> Thus, this is a major development in prosecuting sexual offences by ICC, in contrast to ICTY and ICTR that prosecute only rape as a crime against humanity. The crime of forced pregnancy is unambiguously defined by the ICC Statute in the Article 7 (2)(f) as "*the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law*"<sup>58</sup>. The Article 7 is imperative in international law in relation to women. Forced impregnation with the aim of affecting ethnic composition of a population is finally punishable by law.

Article 8 (2)(a) (xxii) of the Statute of the ICC lists war crimes committed during international armed conflict and includes: "Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2(f),

enforced sterilization or any other form of sexual violence also constituting a grave breach of the Geneva Conventions."<sup>59</sup> Durham in this article indicates that crimes of sexual assault may be starting to be recognized as a grave breach as well as serious violations.

## Notes

- 1 Olivia Bennet, Jo Bexley and Kitty Warnock. *Arms to Fight, Arms to Protect: Women Speak Out About Conflict* (London: Panos, 1995) 1. 1994 estimates show that about 75% of those killed in war are civilians, as opposed to 10-15% at the beginning of the century.
- 2 Jocelyn Campanaro. "Women, War, and International Law: the Historical Treatment of Gender-Based War Crimes." *The Georgetown Law Journal*. August 2001, p2.
- 3 Jocelyn Campanaro. "Women, War, and International Law: the Historical Treatment of Gender-Based War Crimes." *The Georgetown Law Journal*. August 2001, p2.
- 4 Jocelyn Campanaro. "Women, War, and International Law: the Historical Treatment of Gender-Based War Crimes." *The Georgetown Law Journal*. August 2001, p2.
- 5 Jocelyn Campanaro. "Women, War, and International Law: the Historical Treatment of Gender-Based War Crimes." *The Georgetown Law Journal*. August 2001, p2.
- 6 Jocelyn Campanaro. "Women, War, and International Law: the Historical Treatment of Gender-Based War Crimes." *The Georgetown Law Journal*. August 2001, p3.
- 7 Jocelyn Campanaro. "Women, War, and International Law: the Historical Treatment of Gender-Based War Crimes." *The Georgetown Law Journal*. August 2001, p 3.
- 8 Jocelyn Campanaro. "Women, War, and International Law: the Historical Treatment of Gender-Based War Crimes." *The Georgetown Law Journal*. August 2001, p 3.
- 9 Jocelyn Campanaro. "Women, War, and International Law: the Historical Treatment of Gender-Based War Crimes." *The Georgetown Law Journal*. August 2001, p 3.
- 10 Jocelyn Campanaro. "Women, War, and International Law: the Historical Treatment of Gender-Based War Crimes." *The Georgetown Law Journal*. August 2001, p2.
- 11 ICTY: The Prosecutor v. Miroslav Kvočka, Dragoljub Prcać, Milojica Kos, Mlado Radic, Zoran Zigic. Between 24 May 1992 and 30 August 1992, Bosnian Serb authorities in the Prijedor municipality unlawfully segregated, detained and confined more than 6,000 Bosnian Muslims, Bosnian Croats and other non-Serbs from the Prijedor area in the Omarska, Keraterm, and Trnopolje camps. In Omarska camp the prisoners included military-aged males and political, economic, social and intellectual leaders of the Bosnian Muslim and Bosnian Croat population. There were about

37 women detained in the camp. At the Keraterm camp, the majority of the prisoners were military-aged males. At the Trnopolje camp the majority of prisoners were Bosnian Muslim and Bosnian Croat women, children, and the elderly, although men were also interned there either with their families or alone.

In addition, many of the women detained at the Trnopolje camp were raped, sexually assaulted, or otherwise tortured by camp personnel, who were both police and military personnel, and by others, including military units from the area who came to the camp for that specific purpose. In many instances, the women and girls were taken from the camp and raped, tortured, or sexually abused at other locations. Some of the Bosnian Muslims and Bosnian Croats who were detained at Trnopolje had fled to the camp because they believed they were even less likely to survive if they stayed in their own homes and villages. Trnopolje camp served as the staging point for most of the convoys that were used to forcibly transfer or deport the Bosnian Muslims, Bosnian Croats and other non-Serbs from Prijedor municipality.

12 Judith G. Garda Michelle. "Women, Armed Conflict and International Law." *The American Journal of International Law*. Jul 2002, p.6.

13 Knut Dormann. *Elements of War Crimes under the Rome statute of the International Criminal Court: Sources and Commentary* (Cambridge: Cambridge University Press, 2002) 53.

14 Chen Reis. "Use of Medical Evidence in the Investigation of Sexual Violence". ICC Meeting on Investigation of Sexual and Gender Based Crimes in Darfur. The Hague, 24 May 2006. Department of Gender, Women and Health, World Health Organization., p.3.

15 The International Criminal Tribunal for the Former Yugoslavia (ICTY) was established in 1993 to prosecute war crimes committed during the Yugoslav conflict ; the International Criminal Tribunal for Rwanda (ICTR) was established in 1994 to prosecute war crimes committed during the Rwandan civil conflict.

16 Margaret A. Lyons. "Hearing the Cry Without Answering the Call: Rape, Genocide, and the Rwandan Tribunal", p. 10.

17 *Take a Step to Stamp Out Torture*. London: Amnesty International P, 2000. P 33.

18 Ariane Brunet and Stephanie Rousseau. *Common Grounds: Violence Against Women in War and Armed Conflict Situations* (Quezon City: ASCENT, 1998) 43.

19 Ariane Brunet and Stephanie Rousseau. *Common Grounds: Violence Against Women in War and Armed Conflict Situations* (Quezon City: ASCENT, 1998) 43.

20 Ariane Brunet and Stephanie Rousseau. *Common Grounds: Violence Against Women in War and Armed Conflict Situations* (Quezon City: ASCENT, 1998) 43.

21 Helen Durham and Timothy L.H. McCormack. *The Changing Face of Conflict and the Efficacy of International Humanitarian Law* (Hague: Martinus Nijhoff, 1999) 25.

22 Helen Durham and Timothy L.H. McCormack. *The Changing Face of Conflict and the Efficacy of International Humanitarian Law* (Hague: Martinus Nijhoff, 1999) 27.

23 Ariane Brunet and Stephanie Rousseau. *Common Grounds: Violence Against Women in War and Armed Conflict Situations* (Quezon City: ASCENT, 1998) 43.

24 Helen Durham and Timothy L.H. McCormack. *The Changing Face of Conflict and the Efficacy of International Humanitarian Law* (Hague: Martinus Nijhoff, 1999) 26.

25 Helen Durham and Timothy L.H. McCormack. *The Changing Face of Conflict and the Efficacy of International Humanitarian Law* (Hague: Martinus Nijhoff, 1999) 26. For example, Article 76 (2) of Additional Protocol I states "pregnant women and mothers having dependant infants who are arrested, detained or interned for reasons related to the armed conflict, shall have their cases considered with the utmost priority."

26 Kelly D. Askin. "Sexual Violence in Decision and Indictments of the Yugoslav and Rwandan Tribunals: Current Status." *American Journal of International Law* Jan 1999. The indictment alleged that Dusko Tadic, a Serb, had participated in the killing and "maltreatment" of Bosnian Serbs and Croats within and outside Omarsk camp. Approximately forty women were in Omarska where both female and male prisoners were "beaten, tortured, raped, sexually assaulted, and humiliated." Count 1 of the indictment charged Tadic with a crime against humanity (persecution on political, racial and/or religious grounds), for taking part in a "campaign of terror which includes killings, torture, sexual assaults and other physical and psychological abuse" and for his participation in "the torture of more than 12 female detainees, including several gang rapes". Counts 2-4 alleged that Tadic had subjected "F" to forcible sexual intercourse". For these acts Tadic was charged with a grave breach (inhumane treatment, Count 2), violation of the laws or customs of war (cruel treatment, Count 3), and a crime against humanity (rape, Count 4).

27 Helen Durham and Timothy L.H. McCormack. *The Changing Face of Conflict and the Efficacy of International Humanitarian Law* (Hague: Martinus Nijhoff, 1999) 28.

28 Ariane Brunet and Stephanie Rousseau. *Common Grounds: Violence Against Women in War and Armed Conflict Situations* (Quezon City: ASCENT, 1998) 45.

29 Helen Durham and Timothy L.H. McCormack. *The Changing Face of Conflict and the Efficacy of International Humanitarian Law* (Hague: Martinus Nijhoff, 1999) 26.

30 Helen Durham and Timothy L.H. McCormack. *The Changing Face of Conflict and the Efficacy of International Humanitarian Law* (Hague: Martinus Nijhoff, 1999) 27.

31 Margaret A. Lyons. "Hearing the Cry Without Answering the Call: Rape, Genocide, and the Rwanda Tribunal", p.11.

32 "Investigation of Sexual & Gender Based Crimes - SCCL / OTP Experience" p.1.

33 Kelly D. Askin. "Sexual Violence in Decisions of the Yugoslav and Rwandan Tribunals: Current Status." *American Journal of International Law*. Jan 1999, p.14.

34 Charity Kagwi-Ndungu. "Overview and Lessons Learnt and Best Practices of Sexual and Gender Crimes Investigations and Prosecutions in the International Criminal Tribunal for Rwanda". Presented to the Meeting on Investigation of Sexual and Gender Crimes International Criminal Court 24<sup>th</sup> May, 2006, p.2.

35 Ann M. Hoefgen. "'There will be no justice unless women are part of that justice': rape in Bosnia, the ICTY and 'gender sensitive' prosecutions". *Wisconsin Women's Law Journal*. Fall 1999, p.8.

36 Ann M. Hoefgen. "'There will be no justice unless women are part of that justice': rape in Bosnia, the ICTY and 'gender sensitive' prosecution". *Wisconsin Women's Law Journal*. Fall 1999, p.8.

37 Ann M. Hoefgen. "'There will be no justice unless women are part of that justice': rape in Bosnia, the ICTY and 'gender sensitive' prosecution". *Wisconsin Women's Law Journal*. Fall 1999, p.9.

38 Roger Thurow. "A Bosnian Rape Victims Suffers From Scars That Do Not Fade". Jul 17, 2000, p 1.

39 Roger Thurow. "A Bosnian Rape Victims Suffers From Scars That Do Not Fade". Jul 17, 2000, p 1.

40 Marlise Simons. "3 Serbs Convicted in Wartime Rapes". Feb 23, 2003, p.1.

41 Mental elements.

42 Cherie Booth QC. "Ending Impunity of Sexual and Gender Crimes", p.6.

43 Charity Kagwi-Ndungu. "Overview and Lessons Learnt and Best Practices of Sexual and Gender Crimes Investigations and Prosecutions in the International Criminal Tribunal for Rwanda". Presented to the Meeting on Investigation of Sexual and Gender Crimes International Criminal Court 24<sup>th</sup> May, 2006, p.2.

44 The judgment handed down on 2 September 1998 by the Rwanda Tribunal has resulted in the conviction of the defendant Jean-paul Akayesu for crimes of sexual violence. The Trial Chamber in that case made a number of findings.

45 Kelly D. Askin. "Sexual Violence in Decisions of the Yugoslav and Rwandan Tribunals: Current Status." *American Journal of International Law*. Jan 1999, p2. According to Askin, the Akayesu judgment resulted in the most progressive case law on gender ever pronounced by an international judicial body.

46 Kelly D. Askin. "Sexual Violence in Decisions of the Yugoslav and Rwandan Tribunals: Current Status." *American Journal of International Law*. Jan 1999, p.10.

47 Helen Durham and Timothy L.H. McCormack. *The Changing Face of Conflict and the Efficacy of International Humanitarian Law* (Hague: Martinus Nijhoff, 1999) 30.

48 Helen Durham and Timothy L.H. McCormack. *The Changing Face of Conflict and the Efficacy of International Humanitarian Law* (Hague: Martinus Nijhoff, 1999) 30.

49 Ann M. Hoefgen. "There Will Be No Justice Unless Women are Part of that Justice: rape in Bosnia, the ICTY and 'gender sensitive' prosecution". *Wisconsin Women's Law Journal*. V. 14 no2 (Fall 1999) 7.

50 Ann M. Hoefgen. "There Will Be No Justice Unless Women are Part of that Justice: rape in Bosnia, the ICTY and 'gender sensitive' prosecution". *Wisconsin Women's Law Journal*. V. 14 no2 (Fall 1999) 8.

51 Ann M. Hoefgen. "There Will Be No Justice Unless Women are Part of that Justice: rape in Bosnia, the ICTY and 'gender sensitive' prosecution". *Wisconsin Women's Law Journal*. V. 14 no2 (Fall 1999) 8.

52 Mary Robinson. "Message from the UN High Commissioner for Human Rights". Common Grounds: Violence Against Women in War and Armed Conflict Situations (Quezon City: ASCENT, 1998) 21.

53 Gordana Rabrenovic and Laura Raskos. "'Introduction : Civil Society, Feminism and the Gendered Politics of War and Peace". *NWSA Journal*. Summer 2001. Recognition of gender equality as an integral component of peace was proclaimed by U.N. Security Council in its Proclamation of International Women's Day in 2000. On October 24, 2000 it convened a special session of that body to consider the situation of women in armed conflict. Rabrenovic and Raskos point out that unequal access to resources by different groups undermine national and regional security, p4.

54 Cherie Booth QC. "Ending Impunity of Sexual and Gender Crimes", p.4.

55 Ms Cherie BOOTH (Blair) is a noted British Attorney and Human Rights Advocate. Ms BOOTH is Queen's Counsel with London's Matrix Chambers law firm, a title held by only 10 percent of English lawyers. Currently, she specializes in Public, Employment and European Community Law at Matrix Chambers law group in London.

Ms BOOTH is the Chancellor and Honorary Fellow of Liverpool John Moores University (JMU), Governor and Honorary Fellow of the London School of Economics and the Open University, Fellow of the Royal Society of Arts, Honorary Fellow of the Institute of Advanced Legal Studies, a Doctor of Laws (Westminster University) and a Fellow of the International Society of Lawyers for Public Service. Ms BOOTH is a Bencher of Lincoln's Inn London as well as honorary Bencher of Kings Inn Dublin.

56 Cherie Booth QC. "Ending Impunity of Sexual and Gender Crimes", p.5.

57 Rome Statute (01-07-2000). <http://www.icc-cpi.int/legaltools>. P.5.

58 Rome Statute (01-07-2000). <http://www.icc-cpi.int/legaltools>. P.6.

59 Helen Durham, 37.

## MEANS TO FIGHT BACK

Now that we have tried to understand why rape happens on such an enormous level and what does this mean in the legal aspect, it is of crucial importance to see how on the micro and macro level an individual can 'work through' this experience and try to return to normality. Is there a hope for an individual rape victim to overcome this horrific experience? Is there a hope for society? And how does she or the whole society fight against it? What are the means to the ends? What are means and what are the ends? Unconventional or conventional? And what does that mean? These are the questions we should try to answer, or at least raise awareness about it because ignorance breeds further violence, as Dan Bar On is fond of saying. In an attempt to establish a model of 'working through' Dan Bar-On provides an empirical way composed of five stages<sup>1</sup>. Although his research focused on the descendants of Nazi and descendants of Holocaust survivors, his approach can be applied on the global level.

## Silence/ Knowing: Silence versus Knowledge

The first stage is entitled knowing. Dan Bar-On elaborates by saying "one has to know what had happened and how one's own family members were affected by what had happened during the violent acts"<sup>2</sup>. Thus, there is necessity to know the facts, what happened, where it happened, how it happened, and why it happened. It is of crucial importance to have the information because if one does not know something one cannot possibly understand it, on the individual as well as societal level. Yet, rape is a very specific crime, where knowing the facts involves many other issues. It's a highly complex problem that requires understanding of the two fold effect of silence / knowing: if not talked about: silence breeds future violence and hatred, thus, no means for society to go back to normality and further, no means of preventing future terror of the same nature. If talked about, knowing produces a weapon against the perpetrator but stigma as well. Sanja Sarnavka raises here a question of crucial importance. To understand this particular silence we need to look silence from the broader context and ask, as she does so impeccably, "Are women silent because they are powerful or are they by not speaking, showing protest and disagreement with public discourse?"<sup>3</sup> In the search for the answer, Sarnavka cites Susan Gal's analysis of silence and gender by providing examples of where silence means power. To name just a few, silence of a priest, a psychoanalysis and a police inspector testifies to their power, as they silently judge speakers and make judgments about them<sup>4</sup>. Thus, Sarnavka concludes that "silence is equally eloquent and meaningful as speech, and we can explain it only by analysis in relation in which it appears with other signs and broader context in which it is realized".<sup>5</sup>

But what does silence and speech mean for women in general in society? Sarnavka further argues that women's voice

is still perceived and not interesting and powerful enough to be considered as the saying of the day, the year, or the century. When women are supposed to speak in public they most often become quiet because no one is listening. Girls from a very young age are thought to be pretty and quiet, while boys, on contrary are thought to be aggressive.<sup>6</sup> It is this that is preparing them for future rolls in life, stupid pretty girls, being silent because men know better, Sarnavka points out. Consequently, "the silence of women, it seems, is neither resistance nor power, but acceptance of powerless position".<sup>7</sup> Thus, silence is a sign of fear, or powerlessness.

As a result, if speaking for women in general creates problem, what does speaking for women in the context of rape, since sex is still being a taboo subject in many of undeveloped societies, where virginity is still considered women' greatest asset, mean? It means exactly this: stigma, which provides for rejection by the society. This is why women are silent. As we have mentioned earlier, this creates an immense problem: if they are silent, how do we and, thus society, know what has happened to them? Let's first consider some aspects of society in which they live. This brings us to the next level of Dan-Bar-On argument: context: "This knowledge has to be framed as a part of a wider understanding or meaning making. This could be religious, historical, ethical, psychological meaning making frames, or even a combination of them."<sup>8</sup>

### **Context: *Stigma*** <sup>9</sup>

One the most horrible effect of sexually abused women after they have been raped is that they are denied by their families and their community. Even if a society acknowledges that they

were the victims of war they only feel pity and they still ostracize and recluse this group of people. History shows that theses forms of social and cultural norms, behaviors and attitudes towards raped women did not change much from the period of ancient times till today. In ancient times the rape of a woman was considered a property crime, a crime committed against the man who owned her. During war, the value of women was even on the lower level.

Roy Porter states that the crime [of rape] was principally that of stealing or abducting a woman from those who owned her, normally her father or husband. Moreover in the case of a virgin, rape destroyed her property value on the marriage market, and brought shame on her family. Violated daughters might be given as offerings to nunneries, and in many societies, they were married off to the abductor or rapists<sup>10</sup>. Taking a close look into today's tradition Islamic / Muslim societies, one observes that this trend did not change much. Indeed, women are still supposed to get married as virgins in some cultures, even in some parts of Bosnia. In Medieval times raping a virgin of noble birth was considered an effective and common method for a low status knight to be able to marry above his station.

Even in modern times the shamefulness of rape is still so strong that it brings disgrace of the whole family, who instead should have some understanding for the victim. **"Society openly and forthrightly discusses the details and discloses the names of other brutal crimes and victims, such as murder, and this surrounds assault crimes with secrecy, and this secrecy provides shelter to ignorance. Surrounding sex crimes with secrecy, with something which should not be openly discussed, treating the subject as taboo, has displaced the shamefulness of the act onto the victim/survivor, instead of**



**the perpetrator, where it belongs**<sup>11</sup>. Sajor argues that many women who have been subjected to sexual violence during armed conflict have been ostracized and discriminated against by their families and communities. They are unjustly persecuted because of what has happened to them.

One of the victims in the India's Partition, Nirmal, explains how "even when they were united with their own families, brothers and fathers weren't ready to take them back". The women are no longer seen as deserving respect. "[People] pities these women, showed them kindness, but they thought of them as orphans, as deserted children... as if something had gone wrong with them".<sup>12</sup> Jadranka Cigelj shares her experience:

It happens with people who don't know so much about it. One prisoner that was in the concentration camp will never tell you that. But when you hear the word poor thing, it tells you everything. This word doesn't show compassion, this word stigmatizes. The same happened with the humanitarian people. For long time, they identified it as our profession, you know she is a prisoner, she was raped. And that is the person who, thanks to your misfortunate story, got somewhere on the top. But thanks to God there were people like that. Even the bad things become good in the end. It is people like these that made fighters out of us. But the word poor thing is already a stigma. And word raped and constant representation of that, and then in one moment when you come somewhere, you feel isolated, he used you, and then you can get lost, you are not worth further conversation. There were moments when they were teaching me how to seat in a plane, eat and rest. And you are full of negative energy, but if you show it they will say, she came from the concentration camp, she is crazy. Or, don't mind her, she was raped.

The society doesn't allow you to come back to normality. She is not allowed to get back to normally because then she is not in accordance with what the majority think. She has to be stigmatized until the end and must be crazy. We all came across this. A friend of mine is a stomathologist. People do not want her to do their teeth, because for God's sake, she was raped. Those little things, that are not our complexes, those are complexes of society that you come to.<sup>13</sup>

Damaged reputation constrains the women who are being devalued in their respective culture and enables them to regain confidence and self-respect, without which they can hardly carry on their normal lives or support others. In many instances women have had to flee from their countries for fear of their lives and that of their families. Sajor suggests that these acts of violence should be recognized as such by the international community and support systems should be developed to assist in adjustment process. These should include programs aimed at helping women achieve economic stability, as well as services for counseling and should also assist women to develop a long term sense of security<sup>14</sup>.

Forms of cultural and social observance in ex-Yugoslavia also attest that there is perhaps a bigger stigma attached to rape victims than in some Western culture. Hoefgan reveals that it is possible that the poorer and more rural areas of the former Yugoslavia attached a greater stigma to rape. Middle class and urban victims may be speaking up more than the poorer, rural victims, reflecting class divisions among their western counterparts. In her lecture 'The Forms of Violence after Genocide in Bosnia and Herzegovina', Janja Bec-Neumman points out that Yugoslavian society was a "peasant, deeply traditional, patriarchal society". Although in the span of 30 years, from 1940 to 1980s, about six million people moved from the

rural to the urban society, nonetheless the system of values, morals and culture did not change that rapidly.<sup>15</sup> Bec concludes: "Micro-self matriarchy was dominant and was strongly correlated with macro-level patriarchy supporting and reproducing it." Furthermore, Hoefgan argues, Serbs abused this notion during the war in Bosnia. The fact that the Serbs used rape as a weapon of war may be best explained with Dan Bar-On's concept of 'Backyard Psychology'. Historically, Serbs were for centuries in the 'backyard', domination of the Ottoman, Austro-Hungarian, Nazi, and Communist Empires. Always being in subordinate position, they internalized aggression. Consequently, this repressed aggression provides for lack of self-respect and lack of respect of others. Bec concludes that the result produced a Serbian society based on; "culture of violence, culture of lies, culture of denying, culture of envies, culture of greediness, culture of cruelty, culture of indifference for suffering of Others."<sup>16</sup>

In traditional Islamic / Muslim society, virginity is of crucial importance in maintaining family honor<sup>17</sup>. Raped women are considered unworthy of a man, spreading shame and disgrace on a whole family. Once it is lost, an unmarried woman will not be accepted, and according to religious tradition, Muslim husband would not take back his wife once she was touched by another man, even if she was raped. Rape as a torture has also been used in Iraq by Saddam Hussein's regime that operated a policy of official rape. It is another example where rape is used as a weapon of war also due to the fact that this is a terrible dishonor for Muslim women. "Rape has been used to crush the spirit of political prisoners, to recruit women into the internal spy network, and to 'break the eyes' of families and communities".<sup>18</sup>

Where does she go then? If rejected by father and husband, does she have any resources to support herself? The atti-

tude of Muslim men to raped wives was: "It would be better if she died". In some cases, women are not only denied their economic and social rights by their families, but also their fundamental right to life, as some women are even killed by their family or members of their society.

"The fear of punishment or rejection from one's own family for 'allowing' herself to be raped suppresses others from speaking". To avoid harming the reputation of other women in her village she will remain silent. Even sexually active women are taught that that "purity" and sexuality are invaded and changed by a rape<sup>19</sup>. In contrast to a rape victim, no one questions whether a victim of torture consented, nor is a torture victim seen as dishonored. Community members do not doubt torture victim's purity or morality. Procedures protecting rape victims' identities are critical in assuring victims' safety, and to maintain their credibility and integrity within their communities.

Thus, when ostracized by the community, women are deprived of their social standing<sup>20</sup>. Their 'stained' reputation has economic consequences in societies where women's access to resources, such as land, are dependent on their relationships with fathers, husbands, brothers and sons. Turshen discloses that customary and statutory laws regulate those relationships and severely limit women's political power in much of Africa. Women's ability to marry or remained married is greatly jeopardized if there are victims of rape and consequently their ability to provide for themselves and their children. The families of rape victims may reject their daughters and any children born of rape. As a result, they lose an access to an agricultural livelihood in rural societies. Perpetrators are aware of this, and intentionally and strategically commit the mentioned crime in the war zones.

Rape intensifies women's vulnerability because of the many social and cultural issues related to women's "cleanliness" and "good behavior". Ugandans regard non-marital sex as abhorrent even in circumstances where women and girls have been sexual slaves to soldiers. This does not spare them from being rejected from families and future husbands. Human Rights Watch reports that in returning to their communities the women experienced shame and humiliation. Some were ridiculed by men who said that they were "used products that have lost their taste". A study conducted in early 1997 of 36 married women raped by LRA or government soldiers found that 30 had been rejected by their husbands or husbands' relatives; three had not been chased away but their husbands no longer supported them and expressed fear that they carried the HIV virus, Turshen points out.

The AIDS epidemic has made women in polygamous households equally rejecting of co-wives who have been raped. In Rwanda, "among the weapons of choice calculated to destroy while inflicting maximum pain and suffering was HIV"<sup>21</sup>. What is of vital importance to note is that nearly 9% of adult Rwandans are infected with HIV/AIDS. It is not known what proportion of the population was infected during the genocide nor how many of the infected women were not provided with minimum care by their families in the moments of long suffering and tormented deaths.

In societies where marriage and motherhood define women's lives, divorce leads to economic deprivation. Many Ugandan customary laws discriminate against women in the cases of divorce and devolution of property in case of husband's death. In most areas in the country, women may not own or inherit property, nor may they have custody of their children under local customary law. Ugandan society stigmatizes single

women with children under customary law. In some situations this accusation becomes reality because many poor, socially ostracized women do turn to prostitution to feed themselves and their children. Apart from physical and psychological wounds, rape of women has also a great consequence because it undermines the capacity of both women and their communities. "In a war-torn society, becoming a prostitute or a camp follower may be a women's best economic option to support herself or her family"<sup>22</sup>.

As women are rejected by their communities after suffering rape, they have no choice but to live by servicing soldiers. Askin explains that this also occurred in Asia after the World War II ended, where many forced sexual slavery victims had no alternative but to continue prostitution because their families and society rejected them, and thus, they had no other means to support themselves<sup>23</sup>. A young Liberian woman, Agnes, illustrates this example with her story by a relationship with a soldier of the non-Liberian peacekeeping forces ECOMOG. The relationship is based entirely on economics. "We just believe in the barter system that started during the war. You get the pleasure of my body, I get the pleasure of your pocket", explains Agnes<sup>24</sup>. In this context, forced sexual violations are horrifying; surviving rape and bearing the child of a rapist means loss of family, community and livelihood. According to the government reports after the genocide in Rwanda, 2000 - 5000 children were born to women who were raped<sup>25</sup>.

Silence breeds ignorance, ignorance breeds violence. Knowledge provides power.

In the context of self-scarifying patriarchy, by keeping silent women are collaborating with the perpetrator. Caught up in the patriarchal structure, she self-sacrifices her well being, by

keeping her anguish and misfortune inside herself. She will keep silent because rape is shame, its unacceptable by the society. Raised with the patriarchal values, her biggest goal is to get married. Thus, we may conclude that women are legitimately silent. If she is already married, she will not talk about it again because it is shame for a husband to have a wife who was touched by another man. By not talking, she is protecting the man as well. Consequently, "she is silencing the acts and responsibility of the perpetrators"<sup>26</sup> But, Dan Bar-On pleads, suffering needs acknowledgment. It is of crucial importance of women to speak up in order to try to overcome her trauma. This brings us to the next point of Dan Bar-On's 'working through' model: strong emotional reaction. "After the knowledge has been framed, usually a strong emotional reaction will follow, which could be positive or negative, specifically toward parent toward this process is related."<sup>27</sup>

## Truth versus lie

Certain women, realizing what has happened, hurt and justifiably outraged decide to fight back. But what is their weapon of choice? Can rape be confronted by force? Women can not win in conventional combat, but are there any alternatives? They certainly can not use the same means that the perpetrator used. If the asymmetrical arguments holds, the counter weapon will be unconventional as well, due to the fact that the power relations between two sides are severely unequal. But to restore power disadvantages victims have to "resort to unconventional or asymmetrical means to fight it, avoiding its strength and concentrating on its vulnerabilities"<sup>28</sup> Bishara further more argues: "The answer to asymmetrical conflicts, lies beyond the definition of the asymmetrical enemy and could be found in the asymmet-

rical solution, like the possibility to deploy wide range of preventive measures to deter and preempt future threats and emanating from new enemies with new non-Orthodox means."<sup>29</sup> If we brake down this sentence and relate it to rape, can we then say that the asymmetrical solution of prevention measures is breaking the silence and saying the truth as this, as we have seen in the previous chapter, resulted in gender sensitive prosecution in international law and the Hague Statute that finally recognized rape as a war crime. Jadranka Cigelj, explains:

"Rape was starting to become a crime during the war. Mostly, thanks to women from Croatian and Bosnia, feminists who started analyzing what has happened. Us, victims, did not initially even think of this, but later on we also got included. That was sometime in 1993. We wanted to organize something like the Hague tribunal. We wanted to awaken the world leader's conscience with our stories, to prevent future deeds of the same sort. We knew that there are still women going through this, war continued until 1995. So we got activated, one by one, in November 1992. I was the first to speak, but other women spoke as well as they were coming from Prijedor to Zagreb. Its how we grew stronger. We gave the first interview in November of 1992 to CNN. It was eleven of us, but five spoke publicly.<sup>30</sup>

Cigelj explains that the truth was the women-victims weapon of choice:

In the beginning that was the revenge, that was our weapon against them. First two or three years that was our only weapon with which we could respond to the aggression that was done to us.<sup>31</sup> Truth, we knew that only our truth could do it.

As Dan Bar-On's mentions, there is a strong emotional reaction attached to it as well as a counter emotional reaction<sup>32</sup>: In the begging we were full of hatred. But later on, when you came back to normality you start thinking differently and start realizing that you cannot hate one nation, every nation has its bad people.<sup>33</sup> In quoting Habermas, Dan Bar-On points out "A change in asymmetric relationships happens only when it is publicly identified in the subjective language of the weaker side."<sup>34</sup> In identifying truth as a powerful weapon, Bar-On further argues that there is a need to reveal identities of victims as well as of the perpetrators.<sup>35</sup> Can we then say that ICTY and ICTR and media are the only tolls women have against these perpetrators? If the argument goes that the secrecy provides for shamefulness of the victim, and not the perpetrator, is it possible to argue that if the victim testifies and openly discusses what has happened, she is placing the shame where it actually belongs, on the perpetrator? She is not the victim any longer, she is fighting against the perpetrator.

Now that we have observed the positive features of how women victim's stories enormously contributed to the development of the international law, we can question are there any negative aspects involved. The question of great importance that imposes itself is how do we know something is true in the first place? How do we know that all of these stories are completely accurate? And how do these stories affect, still on going war, society, if anyhow? Are there any downfalls to over exacerbation of numbers or raped women as well? Indeed, there are claims that many women decided to lie as well. Recall from the last chapter that the confidentiality of women are guaranteed. The prosecution needs only the testimonies of witnesses. Furthermore, women may talk to a psychologist so he / she judges her present psychological condition, but interestingly

enough, the defense does not have access to these documents.<sup>36</sup> Certain women feel that their traumas are not enough and at certain times they accuse innocent people. Are their stories always credible? Can we always know what the truth is? Who decides upon this truth? Why don't we ever hear about the truth of German women that were raped by Russian soldiers in the World War II?

On this delicate issue, Cigelj's recollections testify and speak volumes:

Maybe there was even a greater number of victims but women are silent. But also on the other hand, I got information that there was less numbers of victims where it was said there was more. Numbers are not good signs of showing the destiny of human misfortune. Every side is keen on execration. It would be horrible if it was one victim, what's more 200, 300 thousand that they said it was. Then there would be many more children born. Not all women victims had educational background in a way to have birth control mechanism. In our group only one got pregnant, but that was after she got out of the camp. Her torturer fell in love and continued to rape her even after she got out of the camp.<sup>37</sup>

In some moments some of us execrated stories, but we would stop it. The truth was so horrific that there was no need to say anything that would overcome it. And I think that today it is not for the purpose of revenge, but for the purpose of enlightenment of all the horrific things that war brings along with it. All the negative that happened to you, you can change into something positive. Then you see the purpose of what you did, and also in some way you the purpose of why destiny threw you into that hell; to go out of it, so you

don't drawn in your pity but rather that with your truth you stop this cycle and save someone else from the same hell.<sup>38</sup>

There were women from our group that didn't want to tell their story. But we told their story. Not mentioning their names. The testimonies were accepted after the investigation. There were cases when they over execrated stories. This is that psychological moment when women though that if they don't add someone else's misery as part of their own, they will not be convincing enough. Majority said the truth, but there were times when you here some story and you stay speechless. You don't know how to react because it is your friend that lied. You have to find some excuse for her. There were times when you think whether to add that to your story as well, or to pretend you didn't notice she lied in the first place. Or you try to find an explanation. Depends who is interviewing you. If that is a professional, as in my case the federal prosecutor of Germany, I decided to tell the truth. In Dusko Tadic case women over execrated. They said he raped me. He did not rape me. Tadic really did not come to us women. Men should testify about him. In one way ICTY tried to make me say that I saw what he did. Then they said that I am an unreliable witness<sup>39</sup>.

That was when the story that I am an unreliable witness started. Then there was other time as well. It was when the attorney of Miroslav Kvočka came to ask me will I testify as a witness for defense. I said why not. I am not afraid, who ever has to testify against him, let him testify. He really helped us. Whenever he was in charge, every other night, men were not allowed to come to us. He was there until June 24<sup>th</sup>, when his position of deputy commander was degraded. The orders always came from outside. There were times when they want-

ed, when they came and they asked to take women out, but he put the guards in front and did not allow it. I will never forget that.<sup>40</sup>

Thus, by deciding to speak these women gained power, which in turn, on one side stigmatized them, and on the other liberated them of the shame. That bring us to the question of who is talking about women war victims and why? In Croatia it was NGOs and an independent media. But was the media always used correctly? Did it further reinforce nationalism if the number of women victims of rape used as a weapon of war exacerbated? From the perspective of the Croatian NGO's, The Center for Women War Victims, Vesna Kesic claims that women victims are used for spreading the hate, national intolerance and war propaganda.<sup>41</sup> Furthermore, she claims that media showed these victims if this benefited nationalistic propaganda. Victims were perceived as "passive and defeated victims of the demoralized enemy".

The manipulation of victims, use of unchecked statement and information as well as number of victims was for the reinforcement of nationalistic discourse that was the dominant ideology in Croatia at the time. She claims that this *"turned women into yet another means of war and political account - settling and exacerbation of ethnic hatred, which, in turn, led to new war conflicts and further victimization of women*. The media did not shrink from the crudest commercial and sensational exploitation of war crime to sell all the nationalist - conditioned mass market. They competed in exclusive carrying off drastic stories and exaggerated the numbers. The data was supplied by the state and professional institutions whose ethnic is supposed to guarantee secrecy and non-misuse of data. *The ultimate example of misogyny, hysterical nationalism, and utterly inconsiderate attitude towards women in the article Hrvatices silo-*

*vane da bi rodile cetnike (Croat Women raped to Give birth to Chetniks), was published in Slobodni tjednik of 1<sup>st</sup> July 1993. The report on the raped women included shots of pornographic movies in which women are tortured.*<sup>142</sup>

If we consider that the role of media is instrumental in how we perceive and interact with each other in the world<sup>43</sup>, keeping in mind the influence of the role of media in the socialization roles<sup>44</sup>, thus nationalistic belonging as well, we may conclude that the media texts such as these, supplied by state and professional institutions, in addition to reinforcing them with the image, which has even stronger impact on the public, had as its aim to reinforce nationalist feelings by pointing to the public of Croatia pitiable Croatian women that are raped.

With reinforcement of patriarchy the media in 1990's changed especially in representing women. Much research done on the subject proves that the media had for its aim to shape and strengthen the traditional women's role. These analyses of media show that women had less and less of public value. Women's interest in public sphere are focused on their bodies as mothers or sexual objects.<sup>45</sup> Media pays more attention to 'women's subjects' than when the state controlled the media. Women were mostly shown as victims and passive objects, and many reports have unnecessary details of pictures and description of violence and sex.<sup>46</sup>

Thus one can conclude that media played big part in reproducing roles established by patriarchy. The testimonies of victims were not shown for the 'right reason', no one in media cared about these women. It was shown for the 'wrong' reasons, and that is to benefit the existing nationalistic propaganda. Thus, it reinforced nationalism and hatred. But those 'wrong' reason might be the 'right' for the enemy. So in this way, the

portrayal of rape becomes an unconventional form of warfare as well. By using media, even if certain crimes did not happen, the society still thinks that they did, and thus is it unconventional because it produces fear and terror, being one of the asymmetrical enemy's aims. Looking from this perspective, the enemy succeeded in his strategy. Media, which reinforces psychological terror, is one of the greatest assets an asymmetrical enemy can have. Simply put, the media knows it all, and we can only watch the news to get the truth.

### **Becoming Independent:**

Nonetheless, without media women would never reach the fifth stage Dan Bar-On explains as becoming independent: "If one succeeded in working through all these 4 phases s/he may be able to integrate the knowledge, understanding, , the strong emotional reaction and the splitting and become independent from the person / event in question."<sup>47</sup> Cigelj explains that even though it was hard to talk about her intimacy in public it helped her get stronger. She explains that the danger to keeping your story inside yourself is that a victim is prone to depression and other psychological illness. Thus a victim can not reach the fifth stage of becoming independent from the trauma. On the other hand, talking about it makes victims feel that they are contributing to something good by sharing with people their traumas and that they in turn, begin to view the war in negative light, especially the behavior towards women in war. Repeating the story numerous times is of crucial importance: "finally you feel emptiness, as if this enormous pain came out of you. *There is no secret anymore, you are not hiding anything, they cannot hurt you anymore.* All of sudden, as you become stronger, and all of us became stronger, and you start saying your story without cry-

ing, you feel as if you speak of someone else. The respect towards you starts to grow as well. People respect you as a person, and your strength, and your wish to come back to normal life. You start to get rid of the stigma. But you are not aware of this as it is happening, you realize this only later."<sup>48</sup>

## Notes

- 1 Dan Bar-On, Aryeh Neier, Janja Bec. "Reconciliation Revisited". Course War Crimes, Genocide and Peace. IFSH, University of Hamburg, 2005 / 2006. p.42.
- 2 Dan Bar-On, Aryeh Neier, Janja Bec. "Reconciliation Revisited". Course War Crimes, Genocide and Peace. IFSH, University of Hamburg, 2005 / 2006. p.43.
- 3 Sanja Sarnavka. *Put do Vlastitog Pogleda* (Zagreb: B.a.B.e. Grupa za Zenska Ljudska Prava, 2006) 8. Translation provided by the author of this paper.
- 4 Sanja Sarnavka. *Put do Vlastitog Pogleda* (Zagreb: B.a.B.e. Grupa za Zenska Ljudska Prava, 2006) 8. Text cited from Susan Gal's *Between Silence and Speech: problems of analysis: Gender and Language*. Translation provided by the author of this paper.
- 5 Sanja Sarnavka. *Put do Vlastitog Pogleda* (Zagreb: B.a.B.e. Grupa za Zenska Ljudska Prava, 2006) 8.
- 6 In my research on toys for boys and girls in the Disney store in Paris in I noticed a great difference in the toys for girls and boys. Section for girls contains the games such as putting make up on dolls or plying to be a nurse, while section for boys contains toys such as being a doctor, a soldier.
- 7 Sanja Sarnavka. *Put do Vlastitog Pogleda* (Zagreb: B.a.B.e. Grupa za Zenska Ljudska Prava, 2006) 11.
- 8 Dan Bar-On, Aryeh Neier, Janja Bec. "Reconciliation Revisited". Course War Crimes, Genocide and Peace. IFSH, University of Hamburg, 2005 / 2006. p.44.
- 9 Stigma - the situation of individual who is disqualified from full social acceptance. Erving Goffman. *Stigma* (London: Penguin Books, 1990) 9.
- 10 Askin, Kelly Dawn. War Crimes Against Women: Prosecution in International War Crimes Tribunals (The Hague: Martinus Nijhoff Publishers, 1997) 21.
- 11 Askin, Kelly Dawn. War Crimes Against Women: Prosecution in International War Crimes Tribunals (The Hague: Martinus Nijhoff Publishers, 1997) xvi.
- 12 Bennett, Olivia, Jo Bexley and Warnock Kitty. Arms to Fight, Arms to Protect: Women Speak Out About the Conflict (London: Panos, 1995) 9.
- 13 Jadranka Cigelj. Personal Interview. Zagreb: August 2nd, 2006: 6.



- 14 Indai Lourdes Sajor. *Common Grounds: Violence Against Women in War and Armed Conflict Situations* (Quezon City: ASCENT, 1998) 9.
- 15 Janja Bec-Neumman. "The Forms of Violence after Genocide in Bosnia and Herzegovina". Lecture at the Universitat Ajume I de Castello, Spain. Septemebf 13, 14, 15, 2006, p4.
- In 1948 rural population numbered 10.606.000, in comparison to urban of 3.288.652. 1981 statistics figures of rural society amount to 4.277.388 comparing to 10.336.854 or urban society.
- 16 Janja Bec-Neumman. "The Forms of Violence after Genocide in Bosnia and Herzegovina". Lecture at the Universitat Ajume I de Castello, Spain. Septemebf 13, 14, 15, 2006, p4.
- 17 Askin, Kelly Dawn. *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (The Hague: Martinus Nijhoff Publishers, 1997) 269. One rape victim describes is as: "What happened to me, happened to many, but women keep it a secret. It is shameful. Thus, the mother conceals it if it happened to her daughter so she can marry and if it happened to an older woman, she wants to protect her marriage. It is a huge embarrassment".
- 18 Cherie Booth QC. "Ending Impunity of Sexual and Gender Crimes", p.2.
- 19 Hoefgen, Anne M. "There Will be no Justice Unless Women Are Part of That Justice". Wisconsin Women's Law Journal 1555, Fall 1999, 5.
- 20 Turshen, Meredith. "The Political Economy of Violence Against Women During Armed Conflict in Uganda". Social Research Fall 2000, Vol. 67 Issue 3, 804-815.
- 21 Paula Donovan. "Rape and HIV/ AIDS in Rwanda", Dec 2002, 4.
- 22 Bennett, Olivia, Jo Bexley and Warnock Kitty. *Arms to Fight, Arms to Protect: Women Speak Out About the Conflict* (London: Panos, 1995) 8.
- 23 Askin, Kelly Dawn. *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (The Hague: Martinus Nijhoff Publishers, 1997) 84.
- 24 Bennett, Olivia, Jo Bexley and Warnock Kitty. *Arms to Fight, Arms to Protect: Women Speak Out About the Conflict* (London: Panos, 1995) 8.
- 25 Paula Donovan. "Rape and HIV-AIDS in Rwanda". *The Lancet*, Dec 2002, 3.
- 26 Dan Bar-On, Aryeh Neier, Janja Bec. "Reconciliation Revisited". Course War Crimes, Genocide and Peace. IFSH, University of Hamburg, 2005 / 2006. p.53.
- 27 Dan Bar-On, Aryeh Neier, Janja Bec. "Reconciliation Revisited". Course War Crimes, Genocide and Peace. IFSH, University of Hamburg, 2005 / 2006. p.45.
- 28 Marwan Bishara. Asymmetric Conflict. International Herald Tribune, 26.09.2001, p.3.
- 29 Marwan Bishara. Asymmetric Conflict. International Herald Tribune, 26.09.2001, p 5.

- 30 Jadranka Cigelj. Personal Interview. Zagreb: August 2<sup>nd</sup>, 2006: 7.
- 31 Jadranka Cigelj. Personal Interview. Zagreb: August 2<sup>nd</sup>, 2006: 7.
- 32 Dan Bar-On, Aryeh Neier, Janja Bec. "Reconciliation Revisited". Course War Crimes, Genocide and Peace. IFSH, University of Hamburg, 2005 / 2006. p.46. Counter emotional reaction: "A phase of splitting will follow, in which the strong initial emotional reaction will be contrasted to the opposite emotion one feels toward that person".
- 33 Jadranka Cigelj. Personal Interview. Zagreb: August 2<sup>nd</sup>, 2006: 9.
- 34 Dan Bar-On, Aryeh Neier, Janja Bec. "Reconciliation Revisited". Course War Crimes, Genocide and Peace. IFSH, University of Hamburg, 2005 / 2006. p.59.
- 35 Dan Bar-On, Aryeh Neier, Janja Bec. "Reconciliation Revisited". Course War Crimes, Genocide and Peace. IFSH, University of Hamburg, 2005 / 2006. p.33.
- 36 Johan J. du Toit.. Personal interview. Bertinoro: September 12, 2006.
- 37 Jadranka Cigelj. Personal Interview. Zagreb: August 2<sup>nd</sup>, 2006: 10.
- 38 Jadranka Cigelj. Personal Interview. Zagreb: August 2<sup>nd</sup>, 2006: 8.
- 39 Jadranka Cigelj. Personal Interview. Zagreb: August 2<sup>nd</sup>, 2006: 8-9.
- 40 Jadranka Cigelj. Personal Interview. Zagreb: August 2<sup>nd</sup>, 2006: 10.
- 41 Vesna Kesic., Vesna jankovic, Biljana Bijelic, eds. *Women Recollecting Memories: the Center for Women War Victims Ten Years Later*. The Center for Women War Victims: Zagreb, 2003, 42. The Center for women War Victims was organized by 10 women from Zagreb's women's groups and peace groups in November 1993. Their aim was to help the women who were victims of war in dealing with their suffering. It supported all women regardless of their nationality or religion.
- 42 Vesna Kesic., Vesna jankovic, Biljana Bijelic, eds. *Women Recollecting Memories: the Center for Women War Victims Ten Years Later*. The Center for Women War Victims: Zagreb, 2003, 43.
- 43 Sanja Sarnavka. *Put do Vlastitog Pogleda* (Zagreb: B.a.B.e. Grupa za Zenska Ljudska Prava, 2006) 44.
- 44 Sanja Sarnavka. *Put do Vlastitog Pogleda* (Zagreb: B.a.B.e. Grupa za Zenska Ljudska Prava, 2006) 57.
- 45 Suzana Kunarac and Sanja Sarnavka. *"Zenska" percepcija medijskih sadržaja: Nevinost bez zastite* (Zagreb: B.a.B.e. Grupa za Zenska Ljudska Prava, 2006) 18.
- 46 Suzana Kunarac and Sanja Sarnavka. *"Zenska" percepcija medijskih sadržaja: Nevinost bez zastite* (Zagreb: B.a.B.e. Grupa za Zenska Ljudska Prava, 2006) 20.
- 47 Dan Bar-On, Aryeh Neier, Janja Bec. "Reconciliation Revisited". Course War Crimes, Genocide and Peace. IFSH, University of Hamburg, 2005 / 2006: 47.
- 48 Jadranka Cigelj. Personal Interview. Zagreb: August 2<sup>nd</sup>, 2006: 7-8.

## CONCLUSION

Cigelj is one example of a person who was able to reach all of the five stages, which Bar-On describes, even though sharing this kind of trauma in the society where she lives does not always come without its consequences. She moved beyond emotions of hatred, where she used her story as a means to get back at the perpetrator, to emotions where she understands that hating one nation is not a way to move forward in her life. Nonetheless, the media also could have abused her story to get to the enemy as well. Whether her tactic has proved to be conventional or unconventional, symmetrical or asymmetrical, it remains for the reader to decide. The important thing is that she is able to live her life normally and tell her story for a different reason, so it serves a humane purpose. At the end of the three hour-long interview she concluded: who ever pays a high price in life knows how to appreciate it and knows life's values. Then you try to act positively, and this means you deserve your life.

She was one of the first to go to the media, along with other similar stories with the support of NGOs, which contributed to the development of rape being prosecuted by international law as a crime against humanity, and a crime that can amount to genocide. Will international tribunals succeed in stopping rape from happening in the future conflicts by punishing its use as a weapon of war? Gender sensitive prosecution evolved over time in a process of historical continuity and cumulative experience, from the IMFTE to ICC, which achieved a major breakthrough in terms of women's acceptance in international law. However one can't help but wonder: is this a prevention mechanism that can stop future perpetrators from using rape as a weapon of war? What do the crises in Uganda, Sudan and the Democratic Republic of Congo signal and behold for the 21<sup>st</sup> century? To conclude, legal statuses have their risks and rewards: on the one hand we have rape classified as a war crime, however numerous aspects of that classification leave the door open to allow it to become an even greater asymmetrical weapon of war, such as the lack of need for witnesses.

Rape crimes are committed for a multitude of reasons in all wars. Rarely is sexual assault committed for just one reason, and frequently, the various reasons combine and merge, making them difficult to distinguish concretely or separate exceptionally. The growing numbers of raped victims with each new war signifies that rape is not a side-effect of war but rather that it is becoming a crucial methodology in fighting an asymmetrical conflict. As such, the rape project has both, the short term and the long term goals. Almost always rape is about power and abhorrence. The short term aim of rape is humiliation, degradation, subordination, and severe physical and psychological injury. Women are particularly affected in an armed conflict because of their gender status in society. The fact that the 'ene-

my' attacks a civilian woman rather than a male soldier testifies that women's bodies have been turned into a symbolic war front. Women of all ages suffer displacement, loss of home and property, poverty and family separation and disintegration. In the long run, the asymmetrical rape technique aims at population expulsion by terrorizing civilian population, at destroying the possibility of procreation in the community by attacking the values one society holds dear, and in this unconventional way it intend to destroy one group of people.

In its almost immeasurable complexity and multifaceted impact, rape is an ideal asymmetric weapon in today's unconventional wars. While legal remedies can justly punish its use in the international arena, on the fragmented, local battlefields of today's conflicts its calculated use as a strategic weapon of hatred may only be beginning to be used to its full effect. Instead of focusing on how to dissuade its use and explaining its growing prevalence, we must instead further argue for its codification as a heinous tool of war and further develop comprehensive processes, such as Bar-On's in order to help its victims overcome their stigma and suffering.

Moreover the international community must remain vigilant in the face of those who would develop further ways to exploit rape as a weapon of war. While the foot soldiers may simply follow their commander's orders to rape the female population of in order to achieve a full stranglehold over their opponent's terrain, what of the various other media and nationalist interests that can and have exploited the image of the raped women on the battlefield? Women need not only to have international law on their side, as well as a proven technique for helping victims, but they must also have the understanding, sympathy, and compassion of society as a whole, both on the macro and micro levels.

## BIBLIOGRAPHY

- Askin, Kelly D. "Sexual Violence in Decision and Indictments of the Yugoslav and Rwandan Tribunals: Current Status." *American Journal of International Law* Jan 1999.
- Askin, Kelly Dawn. *War Crimes Against Women: Prosecution in International War Crimes Tribunal*. The Hague: Martinus Nijhoff Publishers, 1997.
- Bar-On, Dan, Aryeh Neier, Janja Bec. "Reconciliation Revisited". Course War Crimes, Genocide and Peace. IFSH, University of Hamburg, 2005 / 2006.
- Barry, Buzan. *People, States and Fear*. New York: Harvest Wheatsheaf, 1991.
- Bec-Neumann, Janja. "The Forms of Violence after Genocide in Bosnia and Herzegovina". Congreso Europeo: Sobre Igualdad Entre Mujeres y Hombres: Todas las mujeres podemos? genero... y multiculturalidad." Lecture at the Universitat Ajume I de Castello, Spain. September 13, 14, 15, 2006.
- Bennett, Olivia, Jo Bexley and Warnock Kitty. *Arms to Fight, Arms to Protect: Women Speak Out About a Conflict*. London: Panos, 1995.
- Bishara, Marwan. "Asymmetric Conflict". *International Herald Tribune* 26.09.2001.
- Blagojevic, Marina. "Women and War: The Paradox of Self-Sacrifice or the Anatomy of Passivity." *Gender, Nation, Identity*. Ed. Dana Johnson. Belgrade: Women in Black, 1995: 151-161.
- Booth, Cherie. "*Ending Impunity of Sexual and Gender Crimes*". Presented at Investigation of Sexual and Gender Based Crimes in Darfur. International Criminal Court, May 24, 2006. Document on stock with the author.
- Bradford, D.G. "Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia". *Airpower Journal* Fall 1998.
- Brunet, Ariane and Stephanie Rousseau. *Common Grounds: Violence Against Women in War and Armed Conflict Situation*. Quezon City: ASCENT, 1998.
- Campanaro, Jocelyn. "Women, War, and International Law: The Historical Treatment of Gender-Based War Crimes." *The Georgetown Law Journal* August 2001.
- Cigelj, Jadranka. Personal Interview. Zagreb: August 2<sup>nd</sup>, 2006.
- Donovan, Paula. "Rape and HIV/ AIDS in Rwanda". *Lancet* Dec 21, 2002, Vol. 360, Issue 9350.

Dormann, Knut. *Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary*. Cambridge: Cambridge University Press, 2002.

Durham, Helen and Thimothy L.H. McCormack. *The Changing Face of Conflict and the Efficacy of International Humanitarian Law*. Hague: Martinus Nijhoff, 1999.

Garda, Judith G. Michelle. "Women, Armed Conflict and International Law." *The American Journal of International Law* Jul 2002.

Goffman, Erving. *Stigma*. London: Penguin Books, 1990.

Hammes, Colonel Thomas X. *The Sling and the Stone*. St. Paul: Zenith Press, 2004.

Hoefgen, Anne M. "There Will be no Justice Unless Women Are Part of That Justice". *Wisconsin Women's Law Journal* 1555, Fall 1999.

Indai Lourdes Sajor. *Common Grounds: Violence Against Women in War and Armed Conflict Situations*. Quezon City: ASCENT, 1998.

"Investigation of Sexual & Gender Based Crimes - SCCL / OTP Experience". Document on stock with the author.

Jones, Walter S. and Steven J. Rosen. *Logic of International Relations*. Little, Brown & Company, 1982.

Kaldor, Mary. *New and Old War: Organized Violence in a Global Era*. Stanford: Stanford University Press, 2001.

Kagwi-Ndungu, Charity. "Overview and Lessons Learnt and Best Practices of Sexual and Gender Crimes: Investigations and Prosecutions in the International Criminal Tribunal for Rwanda". Presented at the Meeting on Investigation of Sexual and Gender Crimes, International Criminal Court, May 24<sup>th</sup>, 2006. Document on stock with the author.

Kesic, Vesna, Vesna Jankovic, Biljana Bijelic, eds. *Women Recollecting Memories: the Center for Women War Victims Ten Years Later*. Zagreb: The Center for Women War Victims, 2003.

Klare, Michael, T. "What kind of War?" *Pacific News Service* September 17, 2001.

Kunarac, Suzana and Sanja Sarnavka. "Zenska" percepcija medijskih sadržaja: Nevinost bez zaštite. Zagreb: B.a.B.e. Grupa za Zenska Ljudska Prava, 2006.

Lyons, Margaret A. "Hearing the Cry Without Answering the Call: Rape, Genocide, and the Rwandan Tribunal".

Meehan, Elizabeth and Selma Sevenhuijsen, eds. *Equality, Politics and Gender*. London: SAGE Publications, 1991.

Parusheva, Dobrinka. "Women and War in the Balkans: Unaccommodated Differences and (Some of) it Scapegoats". Institute of Balkan Studies, Bulgaria. Document on stock with the author.

Babrenovic, Gordana and Laura Raskos. "Introduction : Civil Society, Feminism and the Gendered Politics of War and Peace". *NWSA Journal* Summer 2001.

Reis, Chein. "Use of Medical Evidence in the Investigation of Sexual Violence". Presented at the ICC Meeting on Investigation of Sexual and Gender Based Crimes in Darfur. Department of Gender, Women and Health, World Health Organization. The Hague, 24 May 2006.

Robinson, Mary. "Message from the UN High Commissioner for Human Rights". Common Grounds: Violence Against Women in War and Armed Conflict Situations. Quezon City: ASCENT, 1998.

Rome Statute (01-07-2000). <http://www.icc-cpi.int/legaltools>.

Sarnavka, Sanja. *Put do Vlastitog Pogleda*. Zagreb: B.a.B.e. Grupa za Zenska Ljudska Prava, 2006.

Sellers, Patricia Visuer. "Sexual Violence Practice in Leadership Cases at the International Criminal Tribunal for the Former Yugoslavia: Background to the Oral Presentation." Presented at the Investigation of Sexual and Gender Based Crimes in Darfur. International Criminal Court, May 24, 2006. Document on stock with the author.

Simons, Marlise. "3 Serbs Convicted in Wartime Rapes". Feb 23, 2003.

Smailkadic, Azra. *From the Bedroom to the Battlefield*. October 2005. Master's Thesis on the stock with the author.

*Take a Step to Stamp Out Torture*. London: Amnesty International P, 2000.

Thurow, Roger. "A Bosnian Rape Victims Suffers From Scars That Do Not Fade". Jul 17, 2000.

Toit, Johan J. du.. Personal interview. Bertinoro, Italy: 12.09.2006.

Turshen, Meredith. "The Political Economy of Violence Against Women During Armed Conflict in Uganda". *Social Research* Fall 2000, Vol. 67 Issue 3.

"Asymmetric Warfare, The USS Cole, and the Intifada", *The Estimate* Vol XII, Number 3, 2000.

## INTERNET SOURCE:

US National Defense University's Institute, <http://www.ndu.edu/inss/Strategic%20Assessments/sa98/sa98ch11.html>.

ICTY website. <http://www.un.org/icty/>