

Hilmi M. Zawati, "Gendered Violence as a Weapon of Mass Destruction," in Hilmi M. Zawati, *The Triumph of Ethnic Hatred and the Failure of International Political Will: Gendered Violence and Genocide in the Former Yugoslavia and Rwanda* (Lewiston, N.Y.: The Edwin Mellen Press, 2010) pp. 139-197.

Chapter Four

Gendered Violence as a Weapon of Mass Destruction

"When they were killing and raping older women, they were raping and killing the history. When they were raping young women, they were destroying future generations. Destroying a woman is destroying the essence of a nation."¹

Bosnian Muslim Rape Survivor
Calling the Ghosts

In warfare, as well as in peacetime, women have long been, and still are, targeted for and subjected to different forms of visible and invisible violence, as well as gender-based persecution.² During both civil and international armed

¹ *Calling the Ghosts*. Produced by Maury Solomon and Anita Saewitz. Directed by Mandy Jacobson and Karmen Jelinčić. Running Time 01:00:00. Women Make Movies, 1996. (Videocassette). [hereinafter *Calling the Ghosts*].

² In a study on wars in world history from 1496 B.C. to 1861 A.D., that is, a period of 3,357 years, it was concluded that there have been only 227 years of peace as opposed to 3,310 years of war: that is to say, one year of peace to 13 years of war. In a more recent study, it was found, furthermore, that in the course of 5,566 years, from the beginning of known human history until 2001, a total of 14,551 wars have been fought. Since the end of World War II, the world has witnessed 290 wars, some lasting for no more than a few weeks or even months, but some for much longer. This means that humanity faces a new war every four months or so. It is worth mentioning that ninety percent of the victims of these wars, which have claimed the lives of millions of people, were civilians, mainly minor children, elderly men, and helpless women. Many of these women have been drafted for several different patterns of military sexual violence and gender-based assaults, including genocidal and systematic mass rape, forced prostitution and sexual slavery, sterilization and castration, forced impregnation and forced maternity, and sexual mutilation and torture. This gender-based violence, based on religious,

conflicts, women have been victimized at home, in public, and in refugee camps with reference to their ethnic, national, and religious backgrounds.³ However,

racial or political motives, has been utilized as a physical and psychological weapon to destroy the entire culture and the fabric of the opponent's society. See C. Williams, "Balkan War Rape Traumatized and Ignored," *Los Angeles Times* (30 November 1992) A1; E. Kohn, "Rape as a Weapon of War: Women's Human Rights during the Dissolution of Yugoslavia," (1994) 24:1-3 *Golden Gate University Law Review* 206 [hereinafter Kohn]; H. Tillema, *International Armed conflict since 1945: A Bibliographic Handbook of Wars and Military Interventions* (London: Westview Press, 1991) 276-286; H., Zawati, *The Inhuman Treatment of Women in International Humanitarian Law: Systematic Mass Rape Crimes as a Weapon of War in the Former Yugoslavia*. Professor I. Cotler's Seminar on Equality, Discrimination and the Law, Faculty of Law, McGill University, Montreal, Quebec, Canada, January 25, 1996, p. 10 [hereinafter Zawati]; I. Filice & C. Vincent, "Women Refugees from Bosnia-Herzegovina: Developing a Culturally Sensitive Counselling Framework," (1994) 6:2 *International Journal of Refugee Law* 213; J. Gardam, *Non-Combatant Immunity as a Norm of International Humanitarian Law* (Dordrecht, The Netherlands: Martinus Nijhoff Publishers, 1993) 1 [hereinafter Gardam]; J. Laber, "Bosnia: Questions about Rape," *The New York Review of Books* 40:5 (25 March 1993) 3; K. Askin, *War Crimes against Women: Prosecution in International War Crimes Tribunals* (The Hague, The Netherlands: Martinus Nijhoff Publishers, 1997) 12 [hereinafter Askin]; M. C. Bassiouni & P. Manikas, *The Law of the International Criminal Tribunal for the Former Yugoslavia* (Irvington-on-Hudson, N.Y.: Transnational Publishers, Inc., 1996) 556 [hereinafter Bassiouni]; R. Rummel, "Power, Genocide and Mass Murder," (1994) 31:1 *Journal of Peace Research* 1; S. Brownmiller, "Making Female Bodies the Battlefield," *Newsweek* 121:1 (4 January 1993) 37 [hereinafter Brownmiller]; T. Lewin, "The Balkans Rapes: A Legal Test for the Outraged," *The New York Times* (15 January 1993) B8 [hereinafter Lewin].

³ Rape, whether in peace or in times of war, is an integral part of human history, and constitutes a persistent and pervasive element in women's and men's lives. In the United States alone, which has the highest sexual assault rate among countries that report such crimes, more than 65 percent of women do not feel safe in their own homes at night, as a woman is raped every 2-5 minutes. In fact, approximately 350,000 rapes are reported to American law enforcement officials every year. See A. Cahill, *Rethinking Rape* (Ithaca, N.Y.: Cornell University Press, 2001) 1 [hereinafter Cahill]; Amnesty International, News Release, AI-Index: EUR 72/001/2003, "Slovakia: Illegal Sterilization of Romani Women," (22 July 2003); *Bahrain: Women and Children Subject to Increasing Abuse*, Amnesty International, July 1996, AI-Index: MDE 11/18/96, at p. 2; D. Dripps, "Panel Discussion: Men, Women, and Rape," (1994) 63 *Fordham Law Review* 134 [hereinafter Dripps]; *The Final Report of the First African Regional Consultation on Violence against Women* (Montreal, Quebec: Rights & Democracy and Geneva Institute for Human Rights, 2005) 84 [hereinafter the Final Report]; L. Gold & T. Hofheinz, *Sexual Assault* (Austin, Tex.: Texas Commission on Law Enforcement and the University of Texas at Austin, 2000) 10 [hereinafter Gold]; R. Carrillo, "Violence against Women: An Obstacle to Development," in C. Bunch & R. Carrillo, eds., *Gender Violence: A Development and Human Rights Issue* (Rutgers, N.J.: Center for Women's Global Leadership, 1991) 21 [hereinafter Carrillo]; UN Commission on Human Rights, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Ms. Radhika Coomaraswamy, Submitted in Accordance with Commission on Human Rights Resolution 1995/85*, UN Doc. E/CN.4/1996/53 (6 February 1996) 15 [hereinafter Causes and Consequences]; UN Commission on Human Rights, *Report of the Special Rapporteur on*

the systematic wartime rape of women in the former Yugoslavia and Rwanda, which took on an organized form and was adopted on a massive scale as a strategic weapon of war, leaving tens of thousands of physically and psychologically devastated women, brought this grievous crime into the international legal arena.⁴

In times of war, rapists have different motivations for assaulting the opponent's female population. In WWII, Russian soldiers raped German women motivated by revenge and, after the break up of the former Soviet Union, raped Chechnyan women and girls in order to humiliate them and desecrate one of the most highly regarded values in Muslim society: women's chastity and honour.⁵

Violence against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy, UN Doc. E/CN.4/1997/47 (12 February 1997) 13 [hereinafter *Violence against Women*].

⁴ C. Lindsey, "Women and War: An Overview," (2000) 839 *International Review of the Red Cross* 565 [hereinafter Lindsey]; *Conflict in the Former Yugoslavia: An Encyclopedia*, 1st ed., "Rape," by J. Allcock, at 233; L. Gilbert, "Rights, Refugee Women and Reproductive Health," (1995) 44:4 *American University Law Review* 1224; R. Coomaraswamy & L. Kois, "Violence against Women", in K. Askin & D. Koenig, eds., *Women's International Human Rights Law*, vol.1 (Ardsley, N.Y.: Transnational Publishers, Inc., 1999) 215 [hereinafter Coomaraswamy]; UN High Commissioner for Refugees, *Sexual Violence against Refugees: Guidelines on Prevention and Response* (Geneva: UNHCR Publications, 1995) 7 [hereinafter refugees]; V. Nikolić-Ristanović, "Definitions of Violence in War and the Experience of Women: The Subject of Research," in V. Nikolić-Ristanović, ed., *Women, Violence and War: Wartime Victimization of Refugees in the Balkans* (Budapest: Central European University Press, 2000) 21 [hereinafter Nikolić-Ristanović]; V. Nikolić-Ristanović, "Refugee Women in Serbia - Invisible Victims of War in the Former Yugoslavia," (2003) 73 *Feminist Review* 109 [hereinafter Invisible Victims]; V. Nikolić-Ristanović, et al., eds., *Zene Krajine: rat, egzodus i izbeglistvo* [Women from Krajina: War, Exodus and Exile] (Belgrade: IKSI, 1996) 21 [hereinafter Women from Krajina] *Serbo-Croat*.

⁵ In Muslim societies, including Bosnia-Herzegovina and Kosovo, women are valued for their sexual purity. Sexual intercourse is forbidden outside marriage, and if a woman has engaged in unlawful sexual acts, even against her will, she will be blamed and judged by her family and society for this victimization. Of course, this attitude is due to customary and traditional values, not to Islamic teachings and rules. See A. Beevor, *Berlin: The Downfall 1945* (London: Penguin Books, Ltd., 2002) 29 [hereinafter Beevor]; A. Grossmann, "A Question of Silence: The Rape of German Women by Occupation Soldiers," (1995) 72 *October* 49 [hereinafter Grossmann]; E. Bumiller, "Deny Rape or be Hated: Kosovo Victims Choice," *The New York Times* (22 June 1999) A1 & A13 [hereinafter Bumiller]; *Endless Brutality: Ongoing Human Rights Violations in Chechnya* (Boston, Mass.: Physicians for Human Rights, 2001) 11; H-M. Teo, "The Continuum of Sexual Violence in Occupied Germany, 1945-1949," (1996) 5:2 *Women's History Review* 191 [hereinafter Teo]; G. Mezey, "Rape in War," (1994) 5:3 *The*

Frustration and hatred motivated U.S. soldiers to rape Vietnamese and Iraqi women. And it was ethnic cleansing that inspired the use of rape as a strategic weapon of war by Serbs, who carried out this policy to humiliate Bosnian and Kosovar Muslims and terrorize them into fleeing their homes, never to return. Moreover, most Serbian rapists were directed by their leaders to enforce this policy on a mass scale and to impregnate Muslim women by force as part of their ethnic cleansing strategy.⁶

Journal of Forensic Psychology 589 [hereinafter Mezey]; M. Rauch, "Rape from a Woman's Perspective," (1994) 82 Illinois Bar Journal 614 [hereinafter Rauch]; M. Stewart, et al., "'Real Rapes' and 'Real Victims': The Shared Reliance on Common Cultural Definitions of Rape," (1996) 4 Feminist Legal Studies 160 [hereinafter Stewart]; *Old Weapon, New Crimes: Wartime Rape of Kosovar Women as a Crime against Humanity*. A Public Lecture by Hilmi M. Zawati. Produced by The Institute of Islamic Studies, McGill University. Directed by Üner Turgay. Running Time 01:55:00. The Institute of Islamic Studies Lecture Series, McGill University, 15 March 2000. (Videocassette); P. Donat & J. D'Emilio, "A Feminist Redefinition of Rape and Sexual Assault: Historical Foundations and Change," (1992) 48:1 Journal of Social Issues 9, reprinted in L. O'Toole & J. Schiffman, eds., *Gender Violence: Interdisciplinary Perspectives* (New York, N.Y.: New York University Press, 1997) 189 [hereinafter Donat].

⁶ In the former Yugoslavia, as well as in Rwanda, rape and other forms of sexual violence, as ethnically motivated crimes, were considered an extension of war to demonstrate the victors' power and dominance, and to inflict a systematic campaign of terror and intimidation on the victims and their societies in order to force them from their homes. See A. de Zayas, "The Right to One's Homeland, Ethnic Cleansing and the International Criminal Tribunal for the Former Yugoslavia," (1995) 6:2 Criminal Law Forum 294 [hereinafter de Zayas]; B. Moshan, "Women, War and Words: The Gender Component in the Permanent International Criminal Court's Definition of Crimes against Humanity," (1998) 22 Fordham International Law Journal 158 [hereinafter Moshan]; C. Hardy, "An Act of Force: Male Rape Victims," (2002) 12:1 Torture Journal 19 [hereinafter Hardy]; D. Roberts, "Rape, Violence and Women's Autonomy," (1993) 69 Chicago Kent Law Review 360 [hereinafter Roberts]; F. Aolain, "Radical Rules: The Effects of Evidential and Procedural Rules on the Regulation of Sexual Violence in War," (1997) 60:3 Albany Law Review 883 [hereinafter Aolain]; G. Carlton, "Equalized Tragedy: Prosecuting Rape in The Bosnian Conflict under the International Tribunal to Adjudicate War Crimes Committed in the Former Yugoslavia," (1997) 6:1 Journal of International Law and Practice 102 [hereinafter Carlton]; J. Corr, "Rape, Sex, and the U.S. Military: Questioning the Conclusions and Methodology of Madeline Morris by Force of Arms," (2000) 10 Transnational Law & Contemporary Problems 195 [hereinafter Corr]; J. Falvey, Jr., "Criminal Sexual Conduct as a Violation of International Humanitarian Law," (1997) 12:2 St. John's Journal of Legal Commentary 385-386 [hereinafter Falvey]; K. Compton & D. Chechile, "Sexual Violence, Rape, and War," in E. Kramer, et al., eds., *Immigrant Women's Health: Problems and Solutions* (San Francisco, Calif.: Jossey-Bass Publishers, 1999) 191; K. Stuhldreher, "State Rape: Representations of Rape in Viet Nam," Online: Nobody Gets Off the Bus: The Viet Nam Generation Big Book (1994) 5:1-4 <http://lists.village.virginia.edu/sixties/HTML_docs/Texts/Scholarly/Stuldreher_Rape.html> (Accessed on: 5 July 1998); M. Epp, "The Memory of Violence: Soviet and East European Mennonite Refugees and Rape in the Second World War,"

Wartime rape must be regarded as one of the most grievous crimes against humanity. This act of aggression, motivated by hatred, contempt, oppression, and intimidation, is seldom driven by the perpetrator's sexual desire, since the rapist's sexuality is used simply as a mechanical weapon of war to execute a violent act that humiliates and inflicts a spiritual injury upon both the victim and her society. In most cases, wartime rape stems from the traditional belief that women are the property of men and that, by ravishing them, the perpetrators will gain an upper hand over their male opponents.⁷ This chapter establishes a framework for understanding the nature and contours of sexual violence through case-studies of systematic rape as an integral element of ethnic conflict and genocide in the former Yugoslavia and Rwanda. It provides a critical view of the ideology of wartime sexual violence, wartime rape motivations, and the historical invisibility of this crime of which women were, and still are, the primary targets and defenceless victims. Moreover, it argues that the wartime rape of mainly Bosnian Muslim and Rwandan Tutsi women emerged as a powerful instrument of annihilation, whether as a deliberate policy of ethnic cleansing or as the inspiration of a moment, driven by deep ethnic hatred. Finally, it demonstrates how such victimization shaped the Serb and Hutu rapists' ethno-national agenda.

(1997) 9:1 *Journal of Women's History* 59 [hereinafter Epp]; *Rwanda: Death, Despair and Defiance* (London: African Rights, 1995) 748 [hereinafter *Despair and Defiance*]; UN Commission on Human Rights, *Report on the Situation of Human Rights in the Territory of the Former Yugoslavia Submitted by Mr. Tadeusz Mazowiecki*, UN Doc. E/CN.4/ 1993/50 (10 February 1993) 19-20.

⁷ A. Medea & K. Thompson, *Against Rape* (New York, N.Y.: Farrar, Straus and Giroux, 1974) 11 [hereinafter *Medea*]; Bassiouni, *supra* note 2, at 362-363; C. Roberts, *Women and Rape* (New York, N.Y.: New York University Press, 1989) 25 [hereinafter *Roberts*]; E. Levin, *Sex and Society in the World of the Orthodox Slavs, 900 -1700* (Ithaca, N.Y.: Cornell University Press, 1989) 212 [hereinafter *Levin*]; M. Koss, *The Rape Victim: Clinical and Community Interventions*, 2nd ed. (Newbury Park: Sage Publications, 1991) 1 [hereinafter *Koss*]; M. Sanchez, *War, Rape Tragically Linked*, Online: Centre Daily Times, 8 July 2006 <<http://www.centredaily.com/mld/centredaily/news/opinion/14983314.htm>> (Accessed on: 8 July 2006); V. Wiehe & A. Richards, *Intimate Betrayal: Understanding and Responding to the Trauma of Acquaintance Rape* (Thousand Oaks, Calif.: SAGE Publications, 1995) 3 [hereinafter *Wiehe*].

I. Women, Armed Conflict, and the Ideology of Sexual Violence

1. Militarism and Sexual Violence

Wartime rape, as this study demonstrates, is a persistent and brutal aspect of conflict, whether during or in the aftermath of hostilities. Terrible stories of sexual slavery and other forms of sexual assault, often systematic and widespread, are among the most abhorrent features of ethnic conflict. Women have been regularly targeted by the enemy, who see them as the property of their opponents, and by police officials and peacekeepers who take advantage of their powerlessness and displaced status. Thousands of women and girls in Bosnia-Herzegovina, Croatia, Kosovo, Rwanda, Chechnya, Afghanistan, and Iraq have been gang-raped, mutilated, sexually enslaved, and often killed. Recently, the issue of food and protection from killing in exchange for sex has become a well known feature of the UN peacekeeping industry in Congo, Somalia, Sierra Leone, and other war-torn countries.⁸

⁸ After ignoring sexual exploitation and other sexual assaults by its peacekeepers and other field staff for decades, the United Nations Department of Peacekeeping Operations (UNDPKO) is currently investigating a suspected child prostitution ring involving its soldiers in the Democratic Republic of Congo (DRC). Moreover, in East Timor, peacekeepers were accused of rape and prostitution, but no one was charged although they abandoned at least 20 babies fathered there. In 2005 alone, there were 340 complaints of sexual exploitation by peacekeeping personnel, with 209 of them in the DRC, which has the largest UN peacekeeping mission. See A. Naik, *Protecting Children from the Protectors: Lessons from West Africa*, Online: Humanitarian Accountability Partnership-International (2002) <<http://www.hapinternational.org/hapgeneva/pdf/fmr15.7.pdf>> (Accessed on: 5 February 2007); B. Finley, *The Destruction of a Society: A Qualitative Examination of the Use of Rape as a Military Tool* (M.A., University of North Texas, 2004) 8 [hereinafter Finley]; D. Thomas & R. Ralph, "Rape in War: Challenging the Tradition of Impunity," (1994) 14 SAIS Review 81 [hereinafter Thomas]; J. Dohnal, "Situation of Human Rights in the Territory of the Former Yugoslavia," (Commission on Human Rights, Forty-Ninth Session, 10 February 1993). [Unpublished]; K. Layton, Book Review of *Women, Violence and War: Wartime Victimization of Refugees in the Balkans* by V. Nikolić-Ristanović, ed., (2000) 15 Balkan Academic Book Review, Online: <<http://www.seep.ceu.hu/balkans/>> (Accessed on: 14 July 2006); M. Korac, *The Power of Gender in the Transition from State Socialism to Ethnic Nationalism Militarization, and War: The Case of Post-Yugoslav States* (Ph.D., York University, 1998) 221 [hereinafter Korac]; N. Heyzer, "Frameworks for Responding to sexual Violence in Conflict, Recovery and Reconstruction," in *International Symposium on Sexual Violence in conflict and Beyond*. A Conference sponsored by UNFPA, European Union and Belgian Development cooperation, Brussels, Belgium, 21-23 June 2006 [unpublished]; *Selections from UNHCR: "Sexual Violence against Refugees,"* (New York, N.Y.: Human Rights Watch, 2000) 5; *Sierra Leone: Rape and Other Forms of Sexual Violence against Girls and Women*, Amnesty International, June 2000, AI-Index: AFR.

Throughout the history of armed conflict, rape and other sexual assaults had been regarded as a natural outcome and standard operating procedure of warfare. It has been, and will continue to be, one of the most important components of the male war strategy. As an expression of hatred, it joins a long list of weapons and tactics used to dominate, humiliate, conquer, and destroy the enemy male.⁹

The chronicle of wartime rape is a long and painful one. In the last century alone, since WWI, widespread rape of women and girls has been conducted as a political weapon of war and gender-based persecution in several internal and international conflicts. The systematic mass rape and sexual enslavement of Chinese and Korean women by Japanese soldiers formed part of this outrageous pattern. As well, thousands of women were drafted for rape and sexual slavery in the 1970s and 80s in Kashmir, Bangladesh, and Central America. In the early 1990s, rape was used as a tool of war in Bosnia-Herzegovina, Croatia, Kosovo, Chechnya, Rwanda, Congo, and Sierra Leone.¹⁰

51/35/00, at p.1 [hereinafter Sierra Leone]; “UN Congo Peacekeepers Accused in Child Sex Abuse,” *Reuters*, New York, 17 August 2006.

⁹ Askin, *supra* note 2, at 13; C. Ball, *Women, Rape and War: Patriarchal Functions and Ideologies*, (1986) 12:1 *Atlantis* 83 [hereinafter Ball]; J. Nagel, *Race, Ethnicity, and Sexuality: Intimate Intersections, Forbidden Frontiers* (New York, N. Y.: Oxford University Press, 2003) 185 [hereinafter Nagel]; M. Morokvasić, “The Logics of Exclusion: Nationalism, Sexism and the Yugoslav War”, in N. Charles & H. Hintjens, eds., *Gender, Ethnicity and Political Ideologies* (New York, N.Y.: Routledge, 1998) 79 [hereinafter Morokvasić]; M. Morris, “By Force of Arms: Rape, War, and Military Culture,” (1996) 45:4 *Duke Law Journal* 652 [hereinafter Morris]; M. Stetz, “Wartime Sexual Violence against Women: A Feminist Response”, in M. Stetz & B. Oh, eds., *Legacies of the Comfort Women of World War II* (Armonk, N.Y.: M. E. Sharpe, 2001) 91 [hereinafter Stetz]; *Violence against Women in Armed Conflict: A Fact Sheet*, Amnesty International, 2006.

¹⁰ During the twentieth century, wartime rape took on a new function. It was used as an effective strategy of war in an efficient way to destroy and terrorize women and their communities. Tracing the history of wartime rape since WWI, researchers have found staggering and awful numbers of victimized women: Belgian and French women were massively raped by German troops in 1914; more than 20,000 Chinese women and girls were sexually enslaved during the first month of the Japanese occupation of the city of Nanking, known today as the “Rape of Nanking”; during WWII, Russian troops raped approximately 2,000,000 German women, 900,000 of them in the greater Berlin area, as a payback for the Nazi

Women are always the most vulnerable victims of war, either directly as casualties or spoils of war, or indirectly through the breakdown of their communities for which they serve as guardians of the culture.¹¹ In the former Yugoslavia and Rwanda,¹² women's bodies became an extension of the

soldiers' rape of Russian women; simultaneously, Japanese troops invented the phenomenon of "comfort women" by drafting more than 200,000 Korean women for systematic rape and sexual slavery; not long ago, in 1971, Pakistani soldiers allegedly raped between 200,000 and 400,000 Bengali women, resulting in 25,000 pregnancies; and in addition to rape patterns in the former Yugoslavia and Rwanda in early 1990s, thousands of women were also brutally raped and sexually tortured during armed conflicts in Kuwait, Central America, Chechnya, Sierra Leone; Congo, Burundi, Somalia, Afghanistan, Kashmir, East Timor, and Iraq. See A. Jones, "Gender and Ethnic Conflict in Ex-Yugoslavia," (1994) 17:1 *Ethnic and Racial Studies* 115 [hereinafter Jones]; D. Nebesar, "Gender-Based Violence as a Weapon of War," (1998) 4 *University of California Davis Journal of International Law and Policy* 149-150 [hereinafter Nebesar]; G. Mezey, "Rape in War," (1994) 5:3 *The Journal of Forensic Psychology* 585 & 588-593 [hereinafter Mezey]; J. Morrison, *Ravensbüeck: Everyday Life in a Women's Concentration Camp, 1939-1945* (Princeton, N.J.: Wiener, 2000) 177 [hereinafter Morrison]; Kohn, *supra* note 2, at 205; L. Fletcher, et al., "Human Rights Violations against Women," (1994) 15 *Whittier Law Review* 319 [hereinafter Fletcher]; L. Morrow, "Unspeakable: Is Rape an Inevitable and Marginal-Part of War?," *Time* 141:8 (22 February 1993) 28 [hereinafter Morrow]; N. Gullace, "Sexual Violence and Family Honor: British Propaganda and International Law during the First World War," (1997) 102:3 *American Historical Review* 718 [hereinafter Gullace]; P. Summerfield, "Gender and War in the Twentieth Century," (1997) 19:1 *The International History Review* 6 [hereinafter Summerfield]; R. Harris, "The Child of the Barbarian: Rape, Race and Nationalism in France during the First World War," (1993) 141 *Past & Present* 170 [hereinafter Harris]; R. Schott, "Gender and 'Postmodern War'," (1996) 11:4 *Haypatia* 24 [hereinafter Schott]; R. Seifert, "The Second Front: The Logic of Sexual Violence in Wars," (1996) 19:1-2 *Women's Studies International Forum* 37 [hereinafter Seifert]; S. Brownmiller, *Against our Will: Men, Women and Rape* (New York, N.Y.: Simon and Schuster, 1975) 97 [hereinafter Brownmiller]; S. Brownmiller, "Making Female Bodies the Battlefield," *Newsweek* 121:1 (4 January 1993) 37 [hereinafter Female Bodies]; S. Grayzel, *Women's Identities at War: Gender, Motherhood and Politics in Britain and France during the First World War* (Chapel Hill, N.C.: North Carolina Press, 1990) 31 [hereinafter Grayzel]; S. Pryke, "Nationalism and Sexuality, What are the Issues?," (1998) 4:4 *Nations and Nationalism* 538 [hereinafter Pryke].

¹¹ A. El Jack, *Gender and Armed Conflict: Overview Report*, Online: Institute of Development Studies (August 2003) <<http://www.bridge.ids.ac.uk/reports/CEPConflict-Report.pdf>> (Accessed on: 13 April 2006); K. Bennoune, "The Impact of Armed Conflict on Women," (2003) 24 *Women's Rights Law Reporter* 173 [hereinafter Bennoune]; S. Swiss, "Rape and Sexual Abuse in Armed Conflict and Political Violence," in *Gender, Armed Conflict and Political Violence. A Conference Held in Washington, D. C., 10-11 June 1999* (Washington, D.C.: The World Bank, 1999), Online: World Bank <<http://www.Worlbank.org/gender/events/armedconflict.htm>> (Accessed on: 28 November 2004) [hereinafter Swiss].

¹² Besides being a traumatic experience for victimized women and girls, rape has been used as a strategic weapon to demoralize and break down the social structure of the victims' societies. The impact of this strategy was clear in the huge number of Bosnian and Kosovar

battlefield, while rape was utilized as a deliberate strategy of war to annihilate the victims' entire ethnic group and subdue the enemy on every possible level.

Dominance and destruction of the other are central values in patriarchal and militarized societies. The populations of such societies, particularly women, accept the notion of the dominant-submissive relationship between men and women; indeed, the latter form part of the military institution, and acknowledge the use of force and violence to control the society and ensure its social stability. This ideology, which is based on power and oppression, creates and justifies institutionalized marginalization, discrimination and organized violence against women. Moreover, even in non-militarized societies, the concepts of manhood, masculinity, and the superiority of maleness in the social order are affected by the ideological structure of patriarchy and military values. Accordingly, feminists find an explicit relationship between militarism and violence against women; they view women's oppression and wartime rape as a fundamental part of the warrior's ideology, and consider it as a sexual expression of aggression rather than an aggressive expression of sexuality. In this sense, wartime rape of the enemy's women became an acceptable means of exercising male power and domination.¹³

victimized women who committed suicide and in the increased number of women who were rejected by their families and ethnic groups. See A. Bhimji, *Rape and War*, Online: (1996) <<http://www.wco.com/~altaf/rapewar.html>> (Accessed on: 25 April 1996); Bumiller, *supra* note 5, at A1 & A13; M. Hewitt, "Women as Victims of War," Online: TWATCH-L (1998) <TWATCH-L@LISTSERV.ACSU.BUFFALO.EDU> (Received on: 18 February 1998); M. Wilbers, "Sexual Abuse in Times of Armed Conflict," (1994) 7:2 *Leiden Journal of International Law* 43 [hereinafter Wilbers]; Nebesar, *supra* note 10, at 148; P. Albanese, "Nationalism, War, and Archaization of Gender Relations in the Balkans," (2001) 7:9 *Violence against Women* 999 [hereinafter Albanese]; S. Mežnarić, "The Rapists' Progress: Ethnicity, Gender and Violence," (1993) 24:3-4 *Revija za Sociologiju* 119 [hereinafter Mežnarić].

¹³ A. Hauk, *Revealing Ideology: A Linguistic Analysis of the Raping of Women in the Former Yugoslavia* (M.A., School of Arts, California State University, 1994) 18-19 [hereinafter Hauk]; B. Connell, "Masculinity, Violence, and War", in M. Kimmel & M. Messner, eds., *Men's Lives* (New York, N.Y.: Macmillan, 1989) 125 [hereinafter Connell]; Ball, *supra* note 9, at 85; C. Burke, "Women and Militarism," *Women's International League for Peace and Freedom, WILPF Essays, No.1* (December 1994) 2-4 & 7 [hereinafter Burke]; C. Chinkin, "Women and Peace: Militarism and Oppression," in K. Mahoney & P. Mahoney, eds., *Human*

2. *Wartime Rape Motivations*

In both ancient and modern times, men have frightened, humiliated, and intimidated women in times of both peace and war. During armed conflict, men are motivated by anger, hatred, and dominance to inflict their ultimate masculine humiliation on their male opponents by destroying women, their most valuable property. The brutal rape of a two-year-old Tutsi child by Hutu militants, the systematic mass rape of Bosnian Muslim and Croatian women and girls from six to eighty-four years old by Serb forces and paramilitaries, and the gang-rape of a seventy-six-year-old Serbian woman by Bosnian Muslim forces, demonstrate the fact that the primary goal of wartime rape of women in the former Yugoslavia and Rwanda was to exercise power, not to have sex, and that it was utilized as a strategic weapon of war.¹⁴

Rights in the Twenty-first Century: A Global Challenge (Dordrecht, The Netherlands: Martinus Nijhoff Publishers, 1993) 409 [hereinafter Chinkin]; C. Enloe, "Beyond 'Rambo': Women and the Varieties of Militarized Masculinity," in E. Isaksson, ed., *Women and Military System* (London: Harvester, 1988) 72 [hereinafter Enloe]; C. Palmer, "Twelve Reasons Why Rape is not Sexually Motivated: A Skeptical Examination," (1988) 25 *The Journal of Sex Research* 515 [hereinafter Palmer]; J. Benjamin, "Master and Slave: The Fantasy of Erotic Domination," in A. Snitow, et al., eds., *Powers of Desire: The Politics of Sexuality* (New York, N.Y.: Monthly Review Press, 1983) 281 [hereinafter Benjamin]; J. Gardam, "A Feminist Analysis of Certain Aspects of International Humanitarian Law," (1992) 12 *Australian Yearbook of International Law* 265 [hereinafter Gardam]; J. Gardam, "The Law of Armed Conflict: A Feminist Perspective," in K. Mahoney & P. Mahoney, eds., *Human Rights in the Twenty-First Century: A Global Challenge* (Dordrecht, The Netherlands: Martinus Nijhoff Publishers, 1993) 423 [hereinafter *Armed Conflict*]; J. Kalajdžić, "Rape, Representation and Rights: Permeating International Law with the Voices of Women," (1996) 21:2 *Queen's Law Journal* 464-465 [hereinafter Kalajdžić]; J. Kersten, "Culture, Masculinities and Violence against Women," (1996) 36:3 *British Journal of Criminology* 381 [hereinafter Kersten]; K. Browne, "Woman at War: An Evolutionary Perspective," (2001) 49: 1 *Buffalo Law Review* 95 [hereinafter Browne]; R. Seifert, *War and Rape: Analytical Approaches*, (Geneva: Women's International League for Peace and Freedom, 1993) 1, reprinted in A. Stiglmeier, ed., *Mass Rape: The War against Women in Bosnia-Herzegovina* (Lincoln, Neb.: University of Nebraska Press, 1994) 54-72 [hereinafter Seifert]; S. McKay, "The Effects of Armed Conflict on Girls and Women," (1998) 4:4 *Journal of Peace and Psychology* 384 [hereinafter McKay]; V. Nikolić-Ristanović, et al., eds., *Žene, Nasilje i Rat* [Women, Violence and War] (Beograd: Institut Za Kriminološka i Sociološka Istraživanja, 1995) 33 [hereinafter Nikolić-Ristanović] *Serbo-Croat*.

¹⁴ Amnesty International, News Release, AI-Index: ASA 33/20/99, "Pakistan: Women Killed in the Name of Honour," (21 September 1999); Amnesty International, News Release, AI-Index: EUR 44/01/99, "Turkey: Kurdish Girls Raped and Sexually Abused in Police Custody," (19 November 1999); C. Chinkin, "Gender-Related Crimes: A Feminist Perspective"

Whether individual and isolated or systematic and widespread, wartime rape has been committed by soldiers of all ranks in different wars, regardless of their religious or racial backgrounds. Assaulting women in wartime arises from different motivations; revenge and retaliation, frustration, and as cold-blooded strategy of war designed to humiliate the enemy's male pride and inflict terror and destruction on opponents.¹⁵ To confront and prevent the wartime rape

in R. Thakur and P. Malcontent, eds., *From Sovereign Impunity to International Accountability: The Search for Justice in a World of States* (New York, N.Y.: United Nations University Press, 2004) 121-122 [hereinafter Chinkin]; C. Mackinnon, "Turning Rape into Pornography: Postmodern Genocide," *Ms.* 4:1 (July-August 1993) 28, reprinted in A. Stiglmeier, ed., *Mass Rape: The War against Women in Bosnia-Herzegovina* (Lincoln: University of Nebraska Press, 1994) 73-81 [hereinafter MacKinnon]; C. Taylor, *Sacrifice as Terror: The Rwandan Genocide of 1994* (Oxford, N.Y.: Berg, 1999) 152 [hereinafter Taylor]; D. Thomas & R. Ralph, "Rape in War: The Case of Bosnia", in S. Ramet, ed., *Gender Politics in the Western Balkans: Women and Society in Yugoslavia and the Yugoslav Successor States* (University Park, Pa.: Pennsylvania State University Press, 1999) 209 [hereinafter Thomas]; F. Keane, *Season of Blood: A Rwandan Journey* (London: Viking, 1995) 167 [hereinafter Keane]; K. Conway-Turner & S. Cherrin, *Women, Families, and Feminist Politics: A Global Exploration* (New York, N.Y.: Haworth Press, 1998) 180-181 [hereinafter Conway]; N. Kressel, *Mass Hate: The Global Rise of Genocide and Terror* (Boulder, Colo.: Westview Press, 2002) 40 [hereinafter Kressel]; *Nepal: Human Rights at a Critical Crossroads*, Amnesty International, March 1999, AI-Index: ASA. 31/06/99, at p.2; R. Thornhill & C. Palmer, *A Natural History of Rape: Biological Bases of Sexual Coercion* (Cambridge, Mass.: The MIT Press, 2000) 124 [hereinafter Thornhill]; *Raping Serbian Women*. Produced and Directed by Tanja Peternek-Aleksić. Running Time 00:55:00. SAT, 1993. (Videocassette); S. Bóasdóttir, *Violence, Power and Justice: A Feminist Contribution to Christian Sexual Ethics* (Uppsala: Uppsala University, 1998) 68 [hereinafter Bóasdóttir]; "State Sanctioned Torture: Rape and Sexual Abuse by Government Agents," *Amnesty International Bulletin* 19:2 (February/March 1992) 4; UN Commission on Human Rights, *Preliminary Report Submitted by the Special Rapporteur on Violence against Women, its Causes and Consequences, Ms. Radhika Coomaraswamy, in Accordance with Commission on Human Rights Resolution 1994/45*, UN Doc. E/CN.4/1995/42 (22 November 1994) 12-13; V. Nikolić-Ristanović, "War and Violence against Women," in J. Turpin and L. Lorentzen, eds., *The Gendered New World Order: Militarism, Development, and the Environment* (New York, N.Y.: Routledge, 1996) 202 [hereinafter Nikolić-Ristanović].

¹⁵ During WWII, Russian soldiers took revenge by raping German women in Berlin in 1945, while Bosnian Muslim and Croatian militants raped Serbian women for the same reason in the 1990s. On the other hand, the anger and frustration of American troops during the 1960s' Vietnam war and the current Iraq war drove them to sexually assault Vietnamese and Iraqi women and girls, cut their throats, shoot them to death, and burn their homes. The 1990s mass rape of women in the former Yugoslavia and Rwanda was considered a strategic weapon of war, a war tactic, and a tool of ethnic cleansing and genocide by terrorizing and subjugating the victims' ethnic population and bounding them forcefully from their homes. See C. Schiessl, "An Element of Genocide: Rape, Total War, and International Law in the Twentieth Century," (2002) 4:2 *Journal of Genocide Research* 198; D. Aydelott, "Mass Rape during War: Prosecuting Bosnian Rapists under International Law," (1993) 7:2 *Emory International Law Review* 624

phenomenon, it is vital that the factors and circumstances that favour it be specified and analyzed. Indeed, perusal of a considerable number of various legal works and official reports on the topic reveals that the above motivations could be categorized under three main headings: non-political, political, and strategic.

The non-political hypothesis maintains that wartime rape is a gender-motivated crime and a part of gender discrimination policy against women, manifested in many cultures and societies as a result of domestic patriarchal misogyny and commonly assumed to be a natural product of the war itself. In many cases, combatants are challenged by their societies to prove their masculinity by engaging in aggressive actions, including wartime rape and other forms of sexual assault. Feminists in particular believe that soldiers who assault women at war are responding to a social pressure and demonstrating their superiority over the victims. Accordingly, women are raped in wartime because of their gender and vulnerability or because soldiers desire to express their dominance over them, or because of their relationship to the enemy.¹⁶

[hereinafter Aydelott]; G. Borchett, "Sexual Violence against Women in War and Armed Conflict," in A. Barnes, ed., *The Handbook of Women, Psychology, and the Law* (San Francisco, Calif.: Jossey-Bass, 2005) 299 [hereinafter Borchelt]; J. Goldstein, *War and Gender: How Gender Shapes the War System and Vice Versa* (Cambridge, U.K.: Cambridge University Press, 2001) 362-363 [hereinafter Goldstein]; Kalajdžić, *supra* note 13, at 467; L. Boose, "Crossing the River Drina: Bosnian Rape Camps, Turkish Impalement, and Serb Cultural Memory," (2002) 28:1 *Signs* 75 [hereinafter Boose]; M. Jarvis, *Redress for Female Victims of Sexual Violence during Armed Conflict: Security Council Responses* (LL.M., Faculty of Law, University of Toronto, 1997) 70 [hereinafter Jarvis]; R. Morgan, "Their Bodies as Weapons: Rapes in Conflict Zones Result from the Idea that Violence is Erotic, and it Pervades the US Military," *The Guardian* (21 August 2006) A1 [hereinafter Morgan]; *Rape and Abuse of Women in the Areas of Armed Conflict in the former Yugoslavia*, GA Res. A/RES/51/115 (12 December 1996) 1-2; S. Sarai, *The Rape of the Balkan Women: An Argument for the Full Recognition of Wartime Rape as a War Crime* (M.A., Queen's University at Kingston, 2000) 32 [hereinafter Sarai]; Seifert, *supra* note 13, at 4; T. Tompkins, "Prosecuting Rape as a War Crime: Speaking the Unspeakable," (1995) 70:4 *Notre Dame Law Review* 863-866 [hereinafter Tompkins].

¹⁶ Brownmiller, *supra* note 10, at 32 & 64; J. Gottschall, "Explaining Wartime Rape," (2004) 41:2 *The Journal of Sex Research* 130 [hereinafter Gottschall]; J. Stoltenberg, *Refusing to be Male: Essays on Sex and Justice* (Portland, Or.: Breitenbush Books, 1989) 23; K. Washburn, *Rape as a War Tactic: The Gendered Politics of War Crimes* (B.A., Wesleyan University, 1996) 14-15 [hereinafter Washburn]; Morris, *supra* note 9, at 654; S. Sackellares,

Furthermore, under this theory, a number of scholars have argued that wartime rape of women is associated with cultural pathology and socio-cultural factors. In other words, they attribute the commission of this crime to the perpetrator's national-psycho-historical factors, which influence him to carry out hostile actions against women, including rape. A case in point was the sexual crimes committed by Japanese soldiers before and during WWII as a result of Japanese society's "sado-masochistic tendencies" brought on by collective trauma.¹⁷

Other scholars have argued that the availability of explicit pornography prior to war operations increases soldiers' aggressiveness and encourages them to dehumanize women. Reports from the Gulf War indicated that U.S. pilots had been watching pornographic movies before bombing Iraqi targets. Similarly, British soldiers who participated in the Falklands War had watched pornographic films before engaging in battle. Another example was the 1991 Serb government's decision to allow the broadcast of sex films by public TV stations in Belgrade accompanied with graphic war pictures of widespread killings.¹⁸

"From Bosnia to Sudan: Sexual Violence in Modern Armed Conflict," (2005) 20 Wisconsin Women's Law Journal 143 [hereinafter Sackellares]; R. Seifert, "War and Rape: A Preliminary Analysis," in A. Stiglmeier, ed., *Mass Rape: The War against Women in Bosnia-Herzegovina* (Lincoln, Neb.: University of Nebraska Press, 1994) 65 [hereinafter Seifert]; Tompkins, *supra* note 15, at 852 & 875.

¹⁷ Testimonies from wartime rape survivors indicated that Serb rapists, who acted under the pressure of national historical myths, triumphantly screamed at their victims "Turkish whore" or "Ustaša whore," showing their national pride and establishing power over Muslim and Croatian women. Similarly, testimonies of Sudanese women from West Darfur, collected by Amnesty International in May 2004, emphasize that those women were exposed to arbitrary arrests, torture, and rape on racial and religious bases. See Boose, *supra* note 15, at 75; Gottschall, *supra* note 16, at 31; S. Rosenman, "The Spawning Grounds of the Japanese Rapists of Nanking," (2000) 28:1 Journal of Psychohistory 15 [hereinafter Rosenman]; Sackellares, *supra* note 16, at 140; *Sudan, Darfur: Rape as a Weapon of War: Sexual Violence and its Consequences*, Amnesty International, 19 July 2004, AFR 54/076/2004, at 13 [hereinafter Darfur].

¹⁸ A. Dworkin, *Life and Death* (New York, N.Y.: The Free Press, 1997) 75; Goldstein, *supra* note 15, at 351-353; Gottschall, *supra* note 16, at 131; H. Chew, *Why War is Sexist*, Online: Left

In this connection, however, one may add that the sexual deprivation of military personnel for long periods, particularly those at war or on ships at sea, may increase the occurrence of wartime rape and sexual slavery.¹⁹

The political hypothesis is that wartime rape is a tactic of war motivated by the desire to express superiority and domination over the enemy, rather than concupiscence. From the beginning of the known history of mankind, rape in armed conflict had been considered a reward for victorious soldiers, and seen as an effective mechanism for consolidating victory. Wartime rape is, by this measure, a political weapon of war, rather than a soldier's proof of virility and accomplishments. According to this theory, it has been used in threefold

Hook, an American Online Journal, (29 November 2005) <<http://www.lefthook.org/politics/chew112905.html>> (Accessed on: 15 May 2006); H. Elkin, "Aggressive and Erotic Tendencies of Army Life," (1946) 51:5 *American Journal of Sociology* 411 [hereinafter Elkin]; Mackinnon, *supra* note 14, at 77.

¹⁹ The Islamic law of nations treated this problem as early as the seventh century. It did not allow the absence of Muslim soldiers from their homes for more than four months. Primary sources of Islamic law indicated that while ʿUmar Ibn al-Khaṭṭāb, the second Muslim orthodox caliph, was patrolling the streets of al-Madīna at night, he heard a woman reciting a poem, in which she explicitly expressed her desire to sleep with her husband. When ʿUmar was informed, the following day, that her husband had been sent on a military mission to Iraq, he asked his daughter Ḥafṣa: How long would a married woman tolerate the absence of her husband? She replied: two to three months, and would lose patience in four months. Immediately he passed a law that forbade the absence of any Muslim soldier from his family for more than four months, and took a twofold decision: he ordered the leader of the Muslim army in Iraq to send back the woman's husband, and ordered his chief of staff to carry out the law without delay. See A. al-Bayhaqī, السنن الكبرى [The Grand Traditions], 10 vols. (Ḥaydar Abād: Maṭbaʿat Majlis Dā'irat al-Maʿārif al-ʿUthmāniyya, 1925) 9:29 [hereinafter al-Bayhaqī] *Arabic*; A. al-Ṣanʿānī, مصنف عبدالرزاق [The Classified Book of ʿAbdul-Razzāq], 11 vols. (Beirut: Dār al-Maktab al-Islāmī, 1983) 7:151 [hereinafter al-Ṣanʿānī] *Arabic*; I. Ibn Kathīr, تفسير ابن كثير [The Interpretation of Ibn Kathīr], 4 vols. (Beirut: Dār al-Fikr lil-Ṭibāʿa wal-Nashr wal-Tawzīʿ, 1981) 1: 269 [hereinafter Tafṣīr Ibn Kathīr] *Arabic*; M. Ibn Qudāma & S. Ibn Qudāma, المغني وبلية الشرح الكبير [The Adequate Book Followed by Great Explanation], 12 vols. (Beirut: Dār al-Kitāb al-ʿArabī, 1983) 7: 232 & 416 [hereinafter al-Mughnī]; M. al-Qurṭubī, الجامع لأحكام القرآن [The Inclusive Interpretation of the Holy Qurʾān], 20 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1988) 3: 108 [hereinafter al-Qurṭubī] *Arabic*; Morris, *supra* note 9, at 676-677; S. al-Khurāsānī, كتاب السنن [The Book of Traditions] 2 vols. [Kuwait: al-Dār al-Salafiyya, 1982] 2:212 [hereinafter al-Khurāsānī] *Arabic*; U. al-Anṣārī, خلاصة البدر المنير [The Essence of the Luminous Full Moon], 2 vols. (al-Riyāḍ: Maktabat Ibn Rushd, 1989) 2:228 [hereinafter al-Anṣārī] *Arabic*.

measure; as expressing the totality of victory over the enemy, as a means of retaliation and vengeance, and as an effective propaganda tool.²⁰

The strategic rape theory is constructed on the notion that wartime rape of women by their enemy is the ultimate humiliation that can be inflicted on a human being and an absolute expression of victory. It is a straightforward message to the defeated men and a direct attack on their masculinity and honour for having failed to protect their women. Notwithstanding the psychological effects and demoralization of both the targeted women and their society, systematic mass rape in times of war symbolizes the destruction of the victim's culture and is regarded as an attack on the whole community. Accordingly, perpetrators used rape as a weapon of mass destruction to terrorize opponent civilians and force them to flee their homes, once and for ever. It is an instrument of forced exile.²¹

²⁰ C. Mackinnon, "Rape, Genocide, and Women's Human Rights," (1994) 17 *Harvard Women's Law Journal* 12, reprinted in A. Stiglmyer, ed., *Mass Rape: The War against Women in Bosnia-Herzegovina* (Lincoln: University of Nebraska Press, 1994) 183-196 [hereinafter MacKinnon]; M. Shermarke & J. Malik, "Political Rape: Impact and Implications in Different Cultural Contexts," *Speaking about Rights* 13:1 (1998) 9; Sackellares, *supra* note 16, at 140; Seifert, *supra* note 16, at 63; Tompkins, *supra* note 15, at 859, 863 & 869; Washburn, *supra* note 16, at 16.

²¹ Askin, *supra* note 2, at 267; Brownmiller, *supra* note 10, at 22; J. Campanaro, "Women, War, and International Law: The Historical Treatment of Gender-Based War Crimes," (2001) 89: 8 *Georgetown Law Journal* 2571 [hereinafter Campanaro]; J. Short, "Sexual Violence as Genocide: The Developing Law of the, International Criminal Tribunals and the International Criminal Court," (2003) 8 *Michigan Journal of Race and Law* 508 [hereinafter Short]; R. Lehr-Lehnardt, "One Small Step for Women: Female-Friendly Provisions in the Rome Statute of the International Criminal Court," (2002) 16 *Brigham Young University Journal of Public Law* 320 [hereinafter Lehr-Lehnardt]; S. Fisher, "Occupation of the Womb: Forced Impregnation as Genocide," (1996) 46:1 *Duke Law Journal* 93 [hereinafter Fisher]; S. Reynolds, "Deterring and Preventing Rape and Sexual Slavery during Periods of Armed Conflict," (1998) 16:2 *Law and Inequality: A Journal of Theory and Practice* 606 [hereinafter Reynolds]; S. Swiss & J. Giller, "Rape as a Crime of War: A Medical Perspective," (1993) 270:5 *The Journal of the American Medical Association* 612 [hereinafter Swiss]; Sackellares, *supra* note 16, at 141-142; Seifert, *supra* note 16, at 62; T. Salzman, "Rape Camps as a Means of Ethnic Cleansing: Religious Cultural and Ethical Responses to Rape Victims in the Former Yugoslavia," (1998) 20:2 *Human Rights Quarterly* 355. Reprinted as "Former Yugoslavia: Women Speak, 'Rape Camps', Forced Impregnation, and Ethnic Cleansing: Religious, Cultural, and Ethical Responses to Rape Victims in the Former Yugoslavia," in A. Barstow, ed., *War's Dirty Secret: Rape, Prostitution, and other Crimes against Women* (Cleveland, Ohio: The Pilgrim Press, 2000) 63-92 [hereinafter Salzman]; Thomas, *supra* note 8, at 85; Washburn, *supra* note 16, at 17-18.

This theory, which is considered the most influential wartime rape theory, has flourished in socio-legal literature since the mass rape atrocities in the former Yugoslavia and Rwanda were brought to light in the early 1990s. Notwithstanding this fact, the weapon had been used on a large scale for many years before this date: rape was inflicted on thousands of women in the Pakistan civil war of 1971; on Kashmiri women by Indian soldiers in early and late 1990s; on Korean and Chinese women and girls before and during WWII,²² and on countless women in the Congo, Chechnya, Iraq, Sierra Leone, Sudan, and other war-torn places throughout the world.

3. Women as Primary Targets and the Most Vulnerable of Victims

As stated above, women are the primary victims in any warfare, although they are not normally involved on the battlefield. They suffer as mothers, wives, and daughters, supporting their combatant men, and sustaining grievous experiences as spoils of war, exposed to horrific sexual assaults by their enemies. For many years, the wartime rape and sexual slavery of women became a cross-culturally tolerated practice, although it did result in the tragic death and destruction of hundreds of thousands of women victims, whose suffering remains hidden in most cases, while atrocities continued to go unreported, whether committed by friend, foe or peacekeeper.²³

²² C. Chung, "Korean Women Drafted for Military Sexual Slavery by Japan," in H. Keith, ed., *True Stories of the Korean Comfort Women* (New York, N.Y.: Cassell, 1995) 12 [hereinafter Chung]; Gottschall, *supra* note 16, at 132; Seifert, *supra* note 10, at 35; Thomas, *supra* note 8, at 93; Tompkins, *supra* note 15, at 866.

²³ A. Orfort, "The Politics of Collective Security," (1996) 17 *Michigan Journal of International Law* 377 [hereinafter Orfort]; *Bosnia-Herzegovina: Rape and Sexual Abuses by Armed Forces*, Amnesty International, January 1993, AI-Index: EUR.63/01/93, at p.3 [hereinafter Rape by Armed Forces]; C. Chinkin, "Rape and Sexual Abuse of Women in International Law," (1994) 5:3 *European Journal of International Law* 326 [hereinafter Chinkin]; J. Gardam, "Women and the Law of Armed Conflict: Why the Silence?," (1997) 46 *The International and Comparative Law Quarterly* 58-59 [hereinafter Gardam]; J. Peck, "The UN and the Laws of War: How Can the World's Peacekeepers be Held Accountable?" 21 *Syracuse Journal of International Law and Commerce* 287 [hereinafter Peck]; UN Security Council, *Report to the Secretary-General on Humanitarian Needs in Kuwait and Iraq in the Immediate Post-crisis Environment by a Mission to the Area Led by Mr. Martti Ahtisaari*,

In ancient and modern conflicts, as well as in local and supranational wars, sexual violence has emerged as the rule rather than an exception.²⁴ Horrible atrocities committed against women in the former Yugoslavia and Rwanda were preceded and followed by severe sexual assaults perpetrated against women and girls in various other war-torn areas, including Afghanistan,²⁵ Bangladesh,²⁶ Burma,²⁷ Chechnya,²⁸ China,²⁹ Congo,³⁰ East

Under-Secretary-General for Administration and Management, UN Doc. S/22366 (20 March 1991) 11.

²⁴ B. Allen, "'Toward a New Feminist Theory of Rape': A Response from the Field," (2002) 27:3 *Signs* 780; J. Gardam & H. Charlesworth, "Protection of Women in Armed Conflict," (2000) 22:1 *Human Rights Quarterly* 148 [hereinafter Gardam & Charlesworth]; J. Gardam, & M. Jarvis, "Women and Armed Conflict: The International Response to the Beijing Platform for Action," (2000) 32 *Columbia Human Rights Law Review* 17 [hereinafter Gardam & Jarvis].

²⁵ A. Ahmad, "*Behind the Purdah: Wartime Sexual Violence in Afghanistan*," Online: CBC News Analysis and Viewpoint (28 May 2005) <http://www.cbc.ca/news/viewpoint/vp_ahmad/20050526.html> (Accessed on: 20 July 2005); Amnesty International, News Release, AI-Index: ASA 11/12/95, "Afghanistan: An Update on the Human Rights Situation," (1 October 1995); Amnesty International, News Release, AI-Index: ASA 11/16/95, "Afghanistan: Foreign-Sponsored Human Rights Disaster Ignored by the World," (29 November 1995); Amnesty International, News Release, AI-Index: ASA 11/03/99, "Public Statement: Afghanistan Human Rights Abuses against Women," (17 February 1999); *Hidden Scandal, Secret Shame: The Torture and Ill-Treatment of Children*, Amnesty International, November 2000, AI-Index: ACT. 76/05/00; J. Mertus, *War's Offensive on Women: The Humanitarian Challenge in Bosnia, Kosovo and Afghanistan* (Bloomfield, Conn.: Kumarian Press, 2000) 53 [hereinafter Mertus]; *Women in Afghanistan: A Human Rights Catastrophe*, Amnesty International, May 1995, AI-Index: ASA 11/03/95; *Women in Afghanistan: Pawns in Men's Power Struggles*, Amnesty International, November 1999, AI-Index: ASA. 11/11/99; UN Commission on Human Rights, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences*, Ms. Radhika Commaraswamy, Submitted in accordance with Commission Resolution 1997/44, UN Doc. E/CN.4/1998/54 (26 January 1998), 6-8 [hereinafter Commaraswamy].

²⁶ A. Pasha, *Raiphela, Roti, Aorata* [Rifles, Bread, and Women] (Dhaka: Bangla Academy, 1976) 45 [hereinafter Pasha] *Bangla*; J. Imam, *Ekaattarer Dinguli* [Of Blood and Fire: The Untold Story of Bangladesh's War of Independence] (Dhaka: Academic Publishers, 1991) 118-119 [hereinafter Imam] *Bangla*; R. Islam, *Noroholta o Nari Nirjatoner Kodca, 1971* [Chronology of Genocide and Persecution of Women in 1971] (Dhaka: Munirul Haque, 1998) 69 [hereinafter Islam] *Bangla*; N. Ibrahim, *Ami Birangana Bolchi* [Wartime Raped Women Speaking] (Dhaka: Faysal Arifin Dipan, 1998) 28 [hereinafter Ibrahim] *Bangla*; S. Rozario, "'Disasters' and Bangladeshi Women," in R. Lentin, ed., *Gender and Catastrophe* (London: Zed Books, 1997) 257 [hereinafter Rozario].

²⁷ B. Apple, *School for Rape* (New York, N.Y.: Earth Rights International, 1998) 9 [hereinafter Apple]; H. Lang, "Women as Refugees: Perspectives from Burma," (1995) *Cultural Survival Quarterly* 55 [hereinafter Lang].

²⁸ Amnesty International, News Release, AI-Index: EUR 46/19/00, "Rape and Torture of Children in Chernokozovo 'Filtration Camp'," (23 March 2000); Amnesty International, News Release, AI-Index: EUR 46/36/00, "Russian Federation: Continuing Torture and Rape in Chechnya," (8 June 2000); Amnesty International, News Release, AI-Index: EUR 46/06/02, "Russian Federation: Women and Girls - Daily Victims in the Cycle of Violence and Impunity," (25 January 2002); Human Rights Watch, Backgrounder, "Russian Federation: Serious Violations of Women's Human Rights in Chechnya," (January 2002); Human Rights Watch, Press Release, "Hundreds of Chechens Detained in 'Filtration camps': Detainees Face Torture, Extortion, Rape," (18 February 2000); Human Rights Watch, Press Release, "More Evidence of Rape by Russian Forces in Chechnya," (30 March 2000); Human Rights Watch, Press Release, "Rape allegations Surface in Chechnya," (20 January 2000); Human Rights Watch, Press Release, "Russia: Investigate Sexual Violence by Troops in Chechnya," (10 April 2002); *Russia/Chechnya: February 5: A Day of Slaughter in Novye Aldi*, Human Rights Watch, June 2000, Vol.12, No.9 (D), at p.2; *Russia/Chechnya: "No Happiness Remains," - Civilian Killings, Pillage, and Rape in Alkhan-Yurt, Chechnya*, Human Rights Watch, April 2000, Vol.12, No.5 (D), at p.8; *Russian Federation: Brief Summary of Concerns about Human Rights Violations in the Chechen Republic*, Amnesty International, April 1996, AI-Index: EUR. 46/20/96, at p.2-3; *Russian Federation: Summary of Concerns on the Human Rights of Women and Girls*, Amnesty International, January 2002, AI-Index: EUR. 46/07/02, at p.1; "Welcome to Hell," *Arbitrary Detention, Torture, and Extortion in Chechnya* (New York, N.Y.: Human Rights Watch, 2000) 42.

²⁹ A. Mills, *Breaking the Silence: Rape of Nanking*, Online: Metro Publishing Inc. (1996) <<http://www.metroactive.com/papers/metro/12.12.96/cover/china1-9650.html>> (Accessed on: 20 February 1998); *A Report on Taiwanese Comfort Women*, The Korean Council for Women Drafted for Military Sexual Slavery by Japan, Report, 1993; C. Roland, "Massacre and Rape in Hong Kong: Two Case Studies Involving Medical Personnel and Patients," (1997) 32:1 *Journal of Contemporary History* 57-59 [hereinafter Roland]; A. Yang, "Challenges of Transnational History: Historians and the Nanjing Atrocity," (1999) 19:2 *SAIS Review* 133 [hereinafter Yang]; D. Chang, "Challenges of Transnational History: Historians and the Nanjing Atrocity," (1999) 19:2 *SAIS Review* 133 [hereinafter Yang]; I. Chang, *The Rape of Nanking: The Forgotten Holocaust of World War II* (New York, N.Y.: Basicbooks, 1997) 52-53 [hereinafter Chang]; I. Johnson, "Breaking Silence: Beijing Permits Screening of Nanjing Massacre Film (Wu Ziniu's Rape of Nanjing)," *Far Eastern Economic Review* 158 (24 August 1995) 40; J. Fogel, Book Review of *the Rape of Nanking: The Forgotten Holocaust of World War II* by I. Chang (1998) 57:3 *Journal of Asian Studies* 819; J. Fogel, "The Controversy over Iris Chang's Rape of Nanking," (2000) 27:1 *Japan Echo* 55; K. Baker, "The Rape of Nanjing," (1995) 267:1556 *Contemporary Review* 126; K. Neill, "Duty, Honor, Rape: Sexual Assault against Women during War," (2000) 2:1 *Journal of International Women's Studies* 37 [hereinafter Neill]; L. Shen & M. Shen, Book Review of *The Rape of Nanking* by I. Chang (1998) 18:2 *Sais Review* 220; M. Yamamoto, *Nanking: Anatomy of an Atrocity* (Westport, Conn.: Praeger, 2000) 271; Rosenman, *supra* note 17, at 3.

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³⁸ *Peru: Two Teenage Girls Abused by the Army*, Amnesty International, July 1992, AI-Index: AMR. 46/38/92, at p. 1 [hereinafter Peru]; UN Commission on Human Rights, *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Ms. Radhika*

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⁴¹ C. Moorehead, "Hostage to a Male Agenda: From Somalia to the Balkans, from Rwanda to Colombia, Rape has Become the Ultimate Weapon in the Dying Century's Wars," *Index on Censorship* 4 (1995) 65 [hereinafter Moorehead]; Global Report, *supra* note 33, at 26; K. Huckshorn, "Rape Stalks Somali Women," *The Toronto Star* (29 December 1992) D20; *The*

Sudan.⁴³ Wartime rape and sexual assaults in general took many forms⁴⁴ and were conducted in many different situations.⁴⁵

Usually, wartime rape is associated with serious physical violence, which is particularly imposed on victims who refuse to comply with the perpetrator's orders, including but not limited to : sexual torture; genital mutilation; electric shocks; forcing sharp objects and broken bottles into the victim's vagina; slashing victims' breasts; deprivation of sleep for long periods; whipping with lashes and beating with rough sticks; applying lighted cigarette ends to sensitive parts of the body, mainly the nipples of the breasts; pulling finger and toe nails with ordinary pincers; injecting pepper solutions in the body,⁴⁶ particularly the

Nightmares Continues: Abuses against Somali Refugees in Kenya (London: African Rights, 1993) 13 [hereinafter Nightmare]; *Seeking Refuge, Finding Terror: The Widespread Rape of Somali Women Refugees in North Eastern Kenya*, Human Rights Watch, October 1993, Vol. 5, No.13, at p. 9 [hereinafter finding Terror].

⁴² A. Wing, "Critical Race Feminism and the International Human Rights of Women in Bosnia, Palestine and South Africa: Issues for Latcrit Theory," (1996) 28:2 *University of Miami Inter-American Law Review* 341 [hereinafter Wing]; A Wing, "A Critical Race Feminist Conceptualization of Violence: South African and Palestinian Women," (1997) 60:3 *Albany Law Review* 957-958 [hereinafter Conceptualization of Violence]; *Facing the Truth with Bill Moyers*. Produced by Public Affairs Television Inc. Directed by Gail Pellett. Running Time 02:00:00. Public Affairs Television, Inc., 1998. (Videocassette); P. Scully, "Rape, Race and Colonial Culture: The Sexual Politics of Identity in the Nineteenth Century Cape Colony, South Africa," (1995) 100:2 *American Historical Review* 353 [hereinafter Scully]; *The Report of the Truth and Reconciliation Commission*, Online: The Truth and Reconciliation Commission of South Africa (1998) <<http://www.polity.org.za/govdocs/commissions/1998/trc/execsum.htm>> (Accessed on: 14 December 2004) [hereinafter The Truth].

⁴³ Darfur, *supra* note 17, at 13; T. Hampton, "Agencies Speak Out on Rape in Darfur," (2005) 294:5 *the Journal of the American Medical Association* 542 [hereinafter Hampton].

⁴⁴ These assaults may include rape, forced impregnation, forced prostitution, forced sterilization, and sexual mutilation. See Gardam & Jarvis, *supra* note 24, at 12-13.

⁴⁵ During armed conflict in the former Yugoslavia, Rwanda, and other war-torn areas, sexual violence against women and girls took place in concentration camps, check points, borders, public places including hospitals and hotels, and refugee gathering places.

⁴⁶ *ABC News, Nightline: Bosnia - The Hidden Horrors (Parts 1 & 2)*. Produced by ABC News. Directed by Dave Marash. Running Time 00:22:30. American Broadcasting Corporation, 1992. (Videocassette); *ABC News, Nightline: Rape in Bosnia*. Produced by ABC News. Directed by Dave Marash. Running Time 00:24:00. American Broadcasting Corporation, 1994.

vagina and the anus; spraying women with chemicals; and hanging them by the legs or hair for long periods.

Rape is meeting death without dying. Psychologically, women survivors of wartime rape live shattered lives. They die in silence several times a day, particularly those traumatized women who have been unable to speak out or receive psychological counselling. A woman victim feels that she has lost her self-esteem, integrity, and control over her own body's reproductive life. The rapist has made her feel that she has lost her sexual autonomy by invading her body and occupying her womb.

Many of those assaulted women were forced to strip completely in front of strangers or their children, while others were brutally raped by their neighbours, teachers, and physicians in public or in front of family members, particularly husbands and children. Consequently, many of them were severely traumatized, while others committed suicide, being unable to bear the stigma and shame.⁴⁷

(*Videocassette*); J. Quiroga & J. Jaranson, "Politically-Motivated Torture and its Survivors: A Desk Study Review of the Literature," (2005) 15:2-3 *Torture Journal* 62-63 [hereinafter Quiroga]; *Jane Doe, et al. v. Radovan Karadžić*, 866 F. Supp. 734 at 741 (U.S. Dist. 1994); *Jane Doe, et al. v. Radovan Karadžić*, 34 I.L.M. 1592 at 1600 (2nd Cir. 1994); UN Commission on Human Rights, *Question on the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, in Particular: Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc. E/CN.4/1993/26 (15 December 1992) 7; UN Commission on Human Rights, *Rape and Abuse of women in the Territory of the Former Yugoslavia: Report of the Secretary General*, UN Doc. E/CN.4/1994/5 (30 June 1993) 2; UN Commission on Human Rights, *Systematic Rape and Sexual Slavery during Periods of Armed Conflict*, UN Doc. E/CN.4/Sub.2/1995/L.20 (15 August 1995) 3; Tompkins, *supra* note 15, at 874-875; War Crimes in Bosnia-Herzegovina, vol.2 (New York, N.Y.: Helsinki Watch, a Division of Human Rights, 1993) 253 [hereinafter War Crimes].

⁴⁷ Brownmiller, *supra* note 10, at 57; D. Russell, *The Politics of Rape: The Victim's Perspective* (New York, N.Y.: Stein and Day Publishers, 1975) 62; *Rape and Forced Pregnancy in War and Armed Conflict Situations: Stark Violations of Women's Reproductive and Sexual Self Determination*, Center for Reproductive Law and Policy, Reproductive Freedom News, 30 April 1996, p.7 [hereinafter Forced Pregnancy]; *Shattered Lives: Sexual Violence during the Rwandan Genocide and Its Aftermath* (New York, N.Y.: Human Rights Watch, 1996) 73-74 [hereinafter Shattered Lives]; Tompkins, *supra* note 15, at 875; *Wounded Souls: Women of Bosnia-Herzegovina*. Produced and Directed by the Islamic Relief Organization. Running Time

Socially speaking, wartime rape usually sends two destructive messages: one to the victim who was touched by the enemy, declaring her no longer acceptable as a wife or candidate for marriage; and the other to her society that their blood and race are polluted by the fact of their women giving birth to the children of their enemy. The main aim of these two messages is to damage the fabric of the enemy society, since many women victims suffer a backlash from their peers, being rejected by husbands and fathers. In many cases, they are killed by relatives because they have allegedly brought shame to their family, even though they had been raped against their will. This was due to the fact that the concepts of honour and shame, particularly in most Eastern societies, see no difference in whether or not a woman victim consents to sexual intercourse.⁴⁸ Tragically, the most dangerous part of the problem, particularly in Muslim societies, is that the women victims blame themselves. In most cases,⁴⁹ many of

00:32:00. The Islamic Relief Organization, 1994. (*Videocassette*); *Yugoslavia: A War against Women*. Produced and Directed by ORF. Running Time 00:47:00. ORF, 1992. (*Videocassette*).

⁴⁸ Neither punishing the victim nor committing suicide, for any reason, is permitted under the Islamic criminal justice system. Islamic law has strictly forbidden the killing of women victims, conventionally known as honour killing, or their children, considering such an act to constitute wilful killing and first degree murder punishable under the law. Women victims are protected under Islamic law, and considered as deserving the highest degree of sympathy and care for themselves, as well as for their children who were born as a result of wartime rape. Although such cases are rare in traditional Muslim societies, Muslim jurists consider the baby to be innocent and Muslim, regardless of the ethnicity or religious background of his/her rapist father. See A. Naṣīr, A Letter to the Author from Dean Amīna Muḥammad Naṣīr, Faculty of Islamic Studies, Alexandria University, Egypt (15 March 1998); M. Abū Layl, A Letter to the Author from Maḥmūd Aḥmad Abū Layl, Professor, Faculty of Sharīʿa and Law, UAE University (2 November 1998); M. Faydh-Allah, A Letter to the Author from Muḥammad Fawzī Faydh-Allah, Professor, Faculty of Sharīʿa and Islamic Studies, Kuwait University (14 February 1998); M. Olujić, “Embodiment of Terror: Gendered Violence in Peacetime and Wartime in Croatia and Bosnia-Herzegovina,” (1998) 12:1 *Medical Anthropology Quarterly* 44 [hereinafter Olujić]; M. Şarṭawī, A Letter to the Author from Dean Maḥmūd Şarṭawī, Faculty of Sharīʿa, the University of Jordan (11 February 1998); W. al-Zuḥaylī, A Letter to the Author from Wahba al-Zuḥaylī, Professor, Faculty of Sharīʿa, University of Damascus (13 February 1998).

⁴⁹ Brownmiller, *supra* note 10, at 82; Bumiller, *supra* note 5, at A1 & A13; K. Huckshorn, “Rape: Victims Pay a Double Price,” *The Ottawa Citizen* (28 December 1992) A6 [hereinafter Huckshorn]; L. Sowers, “Angered into Action,” *Houston Chronicle* (8 June 1995) A1; T.

them believe that they should be punished to wash away the shame, while others even ask the men in their families to kill them.

II. Wartime Rape and Ethno-Religious Nationalism

1. *Shaping the Rapists' Ethno-National Agenda*

Nothing in recent decades has fired the Serbs' militant nationalism more than the alleged Albanian rape of Serbian women in Kosovo in the 1980s. At that time, it was believed that no Kosovar Serb was safe from rape or sexual assault, and that every Kosovar Albanian was a potential or actual rapist.⁵⁰ This highly aggravated socio-political incident became a central issue in the Serb national question, drew a dramatic link between masculinity and nationalism, and awakened Serbs' national feelings, contributing to the bloody break-up of Yugoslavia in the early 1990s and leading to the rape and sexual torture of Bosnian, Croatian, and Kosovar Albanian women; a national victimization designed and carried out according to the Serb nationalists' rape agenda. Accordingly, sexuality has shaped⁵¹ the model of Serb soldiers and

Wilkinson, "A Double Ordeal for Female Prisoners," *Los Angeles Times* (11 May 2004) A1; Tompkins, *supra* note 15, at 878.

⁵⁰ This notion began to spread in the 1980s and early 1990s as a result of the alleged rapes of Kosovar Serbs by Kosovar Albanians. Incidents of rape of Serbian women brought the national question to the centre of the political debate among Serb nationalists, who considered these incidents as a national victimization and a crisis of masculinity. They asserted that Albanians used rape as a deliberate policy of terrorizing and humiliating the Kosovar Serbs to force them out of the province and create an ethnically pure Kosovo. Later on, the politically motivated rape of Kosovar Serbs was used to legitimize militant Serbian nationalism. See B. Diken & C. Laustsen, "Becoming Abject: Rape as a Weapon of War," (2005) 11:1 *Body and Society* 114. Formerly published in *Academy for Migration Studies in Denmark (AMID) Working Paper Series 34/2004*, Online: AMID, Aalborg University, Denmark, 2004 <http://www.amid.dk/pub/papers/AMID_34-2004_Diken_&_Bagge_Laustsen.pdf> (Accessed on: 1 February 2007) [hereinafter Diken]; M. Sells, "On the Famous Albanian Mass-Rapes of Serb Women," Online: JUSTWATCH-L (1999) <JUSTWATCH-L@LISTSERV.ACSU.BUFFALO.EDU> (Received on: 14 May 2004); W. Bracewell, "Rape in Kosovo: Masculinity and Serbian Nationalism," (2000) 6:4 *Nations and Nationalism* 564-565 [hereinafter Bracewell].

⁵¹ B. Allen, "Rape Warfare in Bosnia-Herzegovina: The Policy and the Law," (1996) 3:1 *The Brown Journal of World Affairs* 314 [hereinafter Allen]; Bracewell, *supra* note 50, at 563; E. Hague, "Nationalism, Gender and Genocidal Rape: Constructing Identities in the War in

paramilitaries,⁵² who used rape as an effective strategy to destroy non-Serb ethnic groups in Bosnia-Herzegovina, Croatia, and Kosovo to establish a “Greater Serbia.”

Gendered nationalism and masculine rhetoric have, in fact, long been organically associated with the Serbs’ national identity and are deeply rooted in the Serbian tradition. The connection between masculinity and Serb militant nationalism was clearly reflected and illustrated in *Čas anatomije*, a polemical novel published in 1978 by the famous Serbian writer Danilo Kiš. In his words: “Testicles are a national symbol and a trademark of the race: other nations have fortune, tradition, history and reason, but we alone have balls.”⁵³

Bosnia-Herzegovina,” in *The Proceedings of the 1996 Maxwell Colloquium* (Syracuse, N.Y.: The Maxwell School of Citizenship and Public Affairs, Syracuse University, 1996) 142 [hereinafter Hague]. E. Molloy, *Sexual Politics and the Art of War: Patriarchy and the Military* (M.A., Department of Political Science, The University of New Brunswick, 1999) 64-65 [hereinafter Molloy]; G. Halsell, “Women’s Bodies a Battlefield in War for ‘Greater Serbia,’” *Washington Report on Middle East Affairs* 11:9 (April 1993) 8 [hereinafter Halsell]; J. McGinn, *Ethnic Nationalism’s Role in the Disintegration of Yugoslavia* (M.A., California State University, Dominguez Hills, 1998) 6 [hereinafter McGinn].

⁵² B. Allen, “Rape Warfare in Bosnia-Herzegovina: The Policy and the Law,” (1996) 3:1 *The Brown Journal of World Affairs* 314 [hereinafter Allen]; Bracewell, *supra* note 50, at 563; E. Hague, “Nationalism, Gender and Genocidal Rape: Constructing Identities in the War in Bosnia-Herzegovina,” in *The Proceedings of the 1996 Maxwell Colloquium* (Syracuse, N.Y.: The Maxwell School of Citizenship and Public Affairs, Syracuse University, 1996) 142 [hereinafter Hague]. E. Molloy, *Sexual Politics and the Art of War: Patriarchy and the Military* (M.A., Department of Political Science, The University of New Brunswick, 1999) 64-65 [hereinafter Molloy]; G. Halsell, “Women’s Bodies a Battlefield in War for ‘Greater Serbia,’” *Washington Report on Middle East Affairs* 11:9 (April 1993) 8 [hereinafter Halsell]; J. McGinn, *Ethnic Nationalism’s Role in the Disintegration of Yugoslavia* (M.A., California State University, Dominguez Hills, 1998) 6 [hereinafter McGinn].

⁵³ Danilo Kiš (1935-1989) was born in Subotica, in the north of Vojvodina, Serbia, to a Montenegrin mother and a Jewish father who died with other family members in various Nazi camps during WWII. He studied comparative literature at the University of Belgrade. During the 1970s and 1980s, Kiš was awarded a great many prestigious national and international awards for his prose and poetry. He spent most of his life in Paris where he died of cancer. See Bracewell, *supra* note 50, at 570; D. Kiš, “An Interview with Danilo Kiš,” Interview by Brendan Lemon, *the Review of Contemporary Fiction* 14:1 (1994) 5-9; D. Kiš, *Čas anatomije* [The Anatomy Lesson] (Beograd: Nolit, 1978) 61 [hereinafter Kiš] Serbo-Croatian]; Danilo Kiš, Online: East European Prose in Translation, Swarthmore College (Fall 2004) <<http://www.swarthmore.edu/Humanities/sforres1/syllabi/15R/kis.html>> (Accessed on: 9 February 2007);

Although Serbian legislators partially amended the Serbian criminal code to punish “ethnic rape” in the late 1980s, Serb forces waged a systematic ethnic rape campaign between 1991-1995 in Bosnia-Herzegovina and Croatia, as a policy of ethnic cleansing, under the slogan of *Rodit ces Četnika*⁵⁴ (you will give birth to a *Četnik*). However, rape accounts have revealed that Serbian women were also raped on reciprocal bases by Croatian and Bosnian Muslim forces. Molested Serbian women, who provided a number of horrific testimonies, claimed that they were brutally raped and told by their rapists that they should “give birth to little Ustašas” or “must bear Muslim children.” This behaviour was in turn perceived by its perpetrators as transgenerational revenge and punishment inflicted on Serbian women for mass rape crimes committed against Bosnian Muslim and Croatian women by Serb combatants.⁵⁵

Danilo Kiš, Online: Wikipedia, the Free Encyclopedia <http://en.wikipedia.org/wiki/Danilo_Ki%C5%A1> (Accessed on: 9 February 2007).

⁵⁴ D. Apter, *Rethinking Development* (London: Sage, 1987) 237; G. Vucković, *Ethnic Cleavages and Conflict, the Sources of National Cohesion and Disintegration: the Case of Yugoslavia* (Ph.D., University of Southern California, 1996) 14277 [hereinafter Vucković]; Rape by Armed Forces, *supra* note 23, at 3; S. Mežnarić, “Gender as an Ethno-Marker: Rape, War, and Identity Politics in the Former Yugoslavia,” in V. Moghadam, ed., *Identity, Politics and Women: Cultural Reassertions and Feminism in International Perspective* (Boulder, Colo.: Westview Press, 1994) 77 [hereinafter Mežnarić].

⁵⁵ A. Brouwer, *The Serb Femicide*, Online: Domovina Net (1997) <http://www.xs4all.nl/~fra_nkti/warcimes/ga_femicide_en.html> (Accessed on: 29 May 2006); D. Djokić, “Depositions of Serbian Women Given to the State Commission for War Crimes and an Analysis of the Medical-Psychological Examination of One Group of People Released through the Exchange of Prisoners,” A Letter to the Secretary-General from Dragomir Djokić, the Chargé d’affaires of the Permanent Mission of Yugoslavia to the United Nations (18 December 1992), UN Doc. A/47/813-S/24991, Annex, p. 2 & 7 [hereinafter Djokić]; D. Djokić, “Memorandum on the Crime of Rape of Children, Girls, and Women of Serbian Nationality in the Village of Novi Grad, the Commune of Odzak, in Bosnia and Herzegovina,” A Letter to the Secretary-General from Dragomir Djokić, the Chargé d’affaires of the Permanent Mission of Yugoslavia to the United Nations (3 February 1993), UN Doc. A/48/74-S/25216, Annex, p.5 [hereinafter Memorandum]; L. Arcel, “Torture, Cruel, Inhuman and Degrading Treatment of Women: Psychological Consequences,” in *The International Symposium on Human Rights Protection and Anti-Torture in the 21st Century*. A Conference Sponsored by the Institute of Law of Chinese Academy of Social Sciences and Danish Center for Human Rights, Beijing, China, 19-20 April 2001. Online: Asian Legal Resource Centre, 11 November 2002 <<http://www.alrc.net/doc/mainfile.php/torture>> (Accessed on: 13 November 2007) 12, reprinted in (2002) 12:1 Torture Journal 5-16 [hereinafter Arcel]; UN Security Council, *Annex IX, Rape and Sexual*

Historically, wartime rape has been considered an unfortunate by-product of war and collateral damage inflicted by victorious warriors to humiliate the victim and reward the troops.⁵⁶ Throughout the history of ethnic conflicts, whether fought across national borders or within the same state boundaries, rape and sexual exploitation of the enemy's women were among its most destructive weapons and techniques of terror and warfare. Sexual conquering and forced impregnation of women, particularly young girls in ethnic conflicts in Bosnia-Herzegovina, Croatia, Kosovo and Rwanda, were utilized as a strategic weapon of war and physical invasion by the enemy to pollute the victims' race and destroy their national identity.⁵⁷

Assault, UN SCOR, UN Doc. S/1994/674/Annex IX (28 December 1994) 26-27 [hereinafter Annex IX]; V. Nikolić-Ristanović, "Sexual Violence," in V. Nikolić-Ristanović, ed., *Women, Violence and War: Wartime Victimization of Refugees in the Balkans* (Budapest: Central European University Press, 2000) 67 [hereinafter Sexual Violence]; Z. Krstanović, *Genocidom Protiv Srba, 1992-1994* [Genocide against the Serbs, 1992-1994] (Belgrade: Committee for Compiling Data on Crimes Committed against Humanity and International Law, 1995) 69-71 [hereinafter Krstanović] *Serbo-Croatian*.

⁵⁶ In the former Yugoslavia and Rwanda, systematic rape shifted the concept of this atrocity from being a "by-product" of war to an act of politically motivated sexual torture and a weapon of terror. It was an endemic of war, not incidental or collateral damage to women. Those women who didn't flee their homes, or who were captured in the fields and woods, were taken to concentration camps and raped *en masse*. See A. Milne, "Prosecuting Cases of Gender Violence in The International Criminal Tribunal for Rwanda," (2005) 11 Buffalo Human Rights Law Review 111 [hereinafter Milne]; C. Cockburn, *The Space between Us: Negotiating Gender and National Identities in Conflict* (London: Zed Books, 1998) 169 [hereinafter Cockburn]; J. Barkan, "As Old as War Itself: Rape in Foča," (2002) 49:1 Dissent 63 [hereinafter Barkan]; L. Arcel, "Deliberate Sexual Torture of Women in War: The Case of Bosnia-Herzegovina," in A. Shalev, et al., eds., *International Handbook of Human Response to Trauma* (Dordrecht, The Netherlands: Kluwer Academic Publishers, 2000) 179-180. An earlier version of this chapter was published under the title "Sexual Torture of Women as a Weapon of War: The Case of Bosnia-Herzegovina," in L. Arcel & G. Šimunković, eds., *War Violence, Trauma and the Coping Process: Armed Conflict in Europe and Survivor Responses* (Copenhagen: Rehabilitation Center for Torture Victims, 1998) 183-211 [hereinafter Arcel].

⁵⁷ F. Wilmer, *The Social Construction of Man, the State, and War: Identity, Conflict and Violence in Former Yugoslavia* (London: Routledge, 2002) 213 [hereinafter Wilmer]; J. Vickers, "At his Mother's Knee: Sex/Gender and the Construction of National Identity," in G. Nemiroff, ed., *Women and Men: Interdisciplinary Readings on Gender* (Markham, Ont.: Fitzhenry & Whiteside, 1990) 487 [hereinafter Vickers]; D. Kozarić-Kovačić, "Rape, Torture and Traumatization of Bosnian and Croatian Women: Psychological Sequelae," (1995) 65:3 American Journal of Orthopsychiatry 429 [hereinafter Kozarić-Kovačić]; M. Bloom, *Failures of*

Nothing has changed in the interval. Recent and current armed conflicts have shown that both women and men have experienced all forms of gender-based sexual violence and torture. In the former Yugoslavia, Rwanda, Chechnya, Congo, Sierra Leone, and occupied Iraq, women and adolescent girls have been targeted for and subjected to all forms of sexual violence, including systematic mass rape, sexual mutilation, sexual slavery, enforced prostitution, forced impregnation, sterilization or abortion, and sexual torture.⁵⁸ Similarly, men and adolescent boys were raped, castrated, and sexually tortured both physically and psychologically. Wartime male rape of enemy civilians tends to convey a two-fold message: to destroy the victims' sense of masculinity or manhood on the one hand, and to confirm their failure to protect their women and motherland on the other. Nevertheless, the Yugoslav and Rwandan nationalism-driven wars provided unprecedented cases of gendered violence, hitherto unknown in the course of the history of mankind.⁵⁹

As this analysis reveals, systematic mass rape was employed in the former Yugoslavia and Rwanda as a weapon of war for different purposes, including humiliation, extracting information, political terror, intimidation, ethnic cleansing, and breaking down the morale of the opponent's civilian population by inflicting physical and psychological injuries on the victims and stigmatizing them and their families.⁶⁰ The pervasive rape in Bosnia-

Intervention: The United Consequences of Mixed Messages and the Exacerbation of Ethnic Conflict (Ph. D., School of Arts and Sciences, Columbia University, 1999) 153-154 [hereinafter Bloom]; Nagel, *supra* note 9, at 181.

⁵⁸ L. Sharlach, *Sexual Violence as Political Terror* (Ph.D., University of California, Davis, 2001) 157 [hereinafter Sharlach]; United Nations, *Women, Peace and Security* (New York, N.Y.: United Nations, 2002) 15 [hereinafter Peace and Security].

⁵⁹ J. Benderly, "Balkans: Rape, Feminism, and Nationalism in the War in Yugoslav Successor States," in L. West, ed., *Feminist Nationalism* (New York, N.Y.: Routledge, 1997) 59 [hereinafter Benderly]; Peace and Security *supra* note 57, at 16.

⁶⁰ *A Fact Sheet on Sexual Violence: A Human Rights Violation*, Amnesty International, 2006, at p.1 [hereinafter Sexual Violence].

Herzegovina and Rwanda inflicted deep spiritual injury upon Muslim and Tutsi women victims, who were attacked on the basis of their racial, ethnic, or religious identity. This ethnically motivated sexual assault had a political agenda linked to the ethnic and cultural roots of both the perpetrator and the victim.⁶¹ Moreover, it was used as a weapon of mass destruction, shattering the lives of the victims and their families, as well as their national identity. Women and girls who were raped and impregnated inevitably suffered from post-traumatic stress disorder (PTSD), a psychological disorder resulting from extreme situations of stress. Victims shared the same sense of profound shame and self blame, while their fathers, brothers, sons and husbands felt deeply humiliated over their failure to protect them.⁶² The abhorrent forms of sexual violence and torture inflicted mainly on Bosnian and Tutsi women can be seen

⁶¹ Ethnic identity has played a significant role in targeting rape victims. Accordingly, Bosnian Muslim and Rwandan Tutsi women were assaulted not only for their gender, but because of their membership in a rival social group. See A. Wing & S. Merchan, "Rape, Ethnicity and Culture: Spirit Injury from Bosnia to Black America," (1993) 25:1 Columbia Human Rights Law Review 1 & 5 [hereinafter Wing]; B. Tocker, "Intervention in the Yugoslav Civil War: The United Nations' Right to Create an International Criminal Tribunal," (1994) 12:3 Dickinson Journal of International Law 528 [hereinafter Tocker]; H. Sander & R. Willemssen, *Gewaltakte: Männerphantasien und Krieg* [Acts of Violence: Male Fantasies and War] (Hamburg: I. Klein, 1993) 53 [hereinafter Sander] *German*; P. Gourevitch, *We Wish to Inform you that Tomorrow we will be Killed with our Families: Stories from Rwanda* (New York, N.Y.: Farrar Straus and Giroux, 1998) 15 [hereinafter Gourevitch]; P. Seawell, "Rape as a Social Construct: A Comparative Analysis of Rape in the Bosnian and Rwandan Genocides and U.S. Domestic Law," (2004) 18:1 National Black Law Journal 198 [hereinafter Seawell].

⁶² Gender-based violence has been characteristic of wars fought throughout the history of mankind, but it never achieved the level of an organized atrocity that it did in the conflicts in the former Yugoslavia and Rwanda. There, it was not just a sexual act but a deed based on ethnicity and ethnic lineage. Accordingly, the injury was not limited to the victims, but was extended to their families, communities and nations. See *Bosnia: The Unforgettable Oppressed*, Organization for Defending Victims of Violence, 1996, at p. 19 [hereinafter the Unforgettable]; C. Sperling, "Special Feature: Women as Perpetrators of Crime: Mother of Atrocities: Pauline Nyiramasuhuko's Role in the Rwandan Genocide," (2006) 33 Fordham Urban Law Journal 659 [hereinafter Sperling]; Calling the Ghosts, *supra* note 1; Fletcher, *supra* note 10, at 319-320; L. Fletcher, et al., "No Justice, No Peace: Accountability for Rape and Gender-Based Violence in the Former Yugoslavia," (1994) 5:1 Hastings Women's Law Journal 108. This paper was reprinted within another article entitled: "Human Rights Violations against Women," (1994) 15 Whittier Law Review 349-390 [hereinafter No Justice]; S. Jakulić & M., Krstić, "Rape as Psychotrauma in War Conditions," in P. Kalicanin, et al., eds., *The Stresses of War* (Belgrade: Institute of Mental Health, 1993) 177 [hereinafter Jakulić]; Sarai, *supra* note 15, at 36; Zawati, *supra* note 2, at 14.

as vicious psychological warfare. Sons and fathers who were forced to rape their mothers or daughters or to hold them to be raped by Serb and Hutu militants now bear lifetime scars in their minds and souls.⁶³ Indeed, besides destroying the physical and psychological entity of the victims, the systematic rape and forced impregnation of Muslim and Rwandan women extended its consequences to devastate the victims' entire social group and to defile their national identity. It can also be seen, therefore, as a conspiracy against national honour and manhood.⁶⁴

⁶³ Rape and sexual torture were conducted in public places and witnessed by others in scenes of unprecedented cruelty, humiliation, and degradation. Based on horrific testimonies collected from assaulted women, there were four different types of rape committed: individual rape; gang rape, rape by other victims or by forcing members of the same family to have incestuous sexual relations, for example, brothers and sisters, fathers and daughters, and sons and mothers; and finally, rape by thrusting sharp or rough objects into the victims' genitals and extinguishing cigarettes and affixing electrodes to their breasts and sensitive parts. In many cases, sons and fathers were forced, at a gun point, to hold their women to prevent them resisting while they were raped by the enemy. In this connection, Peter Landesman cited the ICTR tribunal prosecutor describing the "case of a 45-year-old Tutsi woman who was raped by her 12-year-old son, with *Interahamwe* holding a hatchet to his throat, in front of her husband, while their five other children were forced to hold open her thighs". See Annex IX, *supra* note 54, at 9-15; Arcel, *supra* note 54, at 12; B. Allen, *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia* (Minneapolis, Minn.: University of Minnesota Press, 1996) 78 [hereinafter Allen]; B. Stephens, "Women and the Atrocities of War," *Human Rights* 20:3 (Summer 1993) 12 [hereinafter Stephens]; J. Elshtain, "Women under Siege, Let's Finally Right the Wrongs: Rape is a War Crime," *On the Issues* 2:3 (Summer 1993) 42 [hereinafter Elshtain]; M. Pratt & L. Werchick, *Sexual Terrorism: Rape as a Weapon of War in Eastern Democratic Republic of Congo: An Assessment of Programmatic Responses to Sexual Violence in North Kivu, South Kivu, Maniema, and Orientale Provinces*, Online: USAID/DCHA (January 2004) <<http://www.peacewomen.org/resources/DRC/USAIDDCHADRC.pdf>> (Accessed on: 1 February 2007) [hereinafter Pratt]; P. Landesman, "A Woman's Work," *The New York Times* (Magazine Desk), Section 6 (15 September 2002) 116 [hereinafter Landesman]; S. Russell-Brown, "Rape as an Act of Genocide," (2003) 21 *Berkeley Journal of International Law* 353 [hereinafter Russell-Brown]; Women's Bodies, *supra* note 30.

⁶⁴ An observer has phrased it thus: "When I rape your women, I destroy your property. I insult you. I humiliate you. If I rape all your women, I defile an entire generation. And if I force your women to bear my children, I pollute your race." See B. Allen, *Unspeakable: When Rape becomes a Weapon of Genocide*, *Houston Chronicle* (4 April 1993) A5; UN Commission on Human Rights, *Report of the Special Rapporteur on the Situation of Human Rights in the Territory of the Former Yugoslavia*, U.N. Doc. E/CN.4/1993/50 (1993), 10 February 1993 paragraph 85 [hereinafter Mazowiecki]; D. Marder, "Once again, Rape becomes a Weapon of War," *The Atlanta Journal - Constitution* (17 February 1993) A 11 [hereinafter Marder]; Kohn, *supra* note 2, at 203; Seifert, *supra* note 10, at 35; "Sexual Torture – Still a Hidden Problem," (2002) 12:1 *Torture Journal* 3.

The traditions of Muslim peoples, who comprised the majority of Bosnian and Kosovar societies, prize girls' and women's chastity, virginity, and fidelity as these represent the honour, purity, and integrity of their societies. Accordingly, women will face divorce or abandonment if they are raped, even if inflicted against their will. The Bosnian and Kosovar women who were victimized often couldn't stand the stigma and shame associated with the attacks. Many of them committed suicide as they preferred to die rather than live with their ordeal. Based on this stigma, it has proven extremely difficult to determine the exact number of women who were abused in the war. Rarely has a victimized Muslim woman admitted that she was raped. Women who conceded or were impregnated were ostracized by their families and communities.⁶⁵ Knowing that assaulting a Muslim woman meant ravishing one of the most sacred values of the Muslim society, Serb militants conducted systematic mass rape, as a strategic mass destruction weapon, to undermine the Bosnian and Kosovar Muslim societies. The forceful impregnation of Muslim women was used to demolish their reproductive capacity in many ways: they were forced to bear the enemy's child; they were shunned by their husbands as wives and their families as unmarried; and they lost possible chances to get married and raise families, since their societies required their sexuality to be controlled and limited to marriage.⁶⁶

Similarly, Hutu extremists committed rape and sexual torture on an astronomical scale and utilized them as political weapons to demoralize and

⁶⁵ S. Ramet, *Balkan Babel: The Disintegration of Yugoslavia from the Death of Tito to Ethnic War*, 2nd ed., (Boulder, Colo.: Westview Press, 1996) 129 [hereinafter Ramet]; Sarai, *supra* note 15, at 37; Seifert, *supra* note 13, at 64; *Sexual Violence as a Weapon of War*, Online: The State of the World's Children (1996) <<http://www.unicef.org/sowc96pk/sexviol.htm>> (Accessed on: 23 September 2006); Tompkins, *supra* note 15, at 866; *Viewpoint: Armies at War Use Rape as a Weapon*, Online: National Organization for Women (1999) <<http://www.now.org/nnt/fall-99/viewpoint.html>> (Accessed on: 24 January 2006).

⁶⁶ G. Doblhofer, *Vergewaltigung in der Antike* [Rape in Antiquity] (Stuttgart: B.G. Teubner, 1994) 103-104 [hereinafter Doblhofer] *German*; K. Howarth, *The Legal Narrative of War-Time Sexual Violence against Women: Transformation and Transformative Potential* (LL.M., University of Toronto, 2003) 40-41 [hereinafter Howarth]; Wing, *supra* note 42, at 344.

humiliate Tutsi women and to undermine the social context of their families and communities. Women were raped *en masse* and tortured constantly in ways that defy human imagination. In Rwanda too, sexual violence was aimed at destroying the social structure of the enemy. As was made clear earlier, the European colonial system heightened the differences between Rwandan ethnic groups by favouring the Tutsi minority over the Hutu majority. This discrimination created racial stereotypes that represented the Tutsi women as arrogant and more attractive than Hutu women, encouraging them to refrain from marrying Hutu men. First-hand accounts acquired from Rwandan survivors of rape detected the impacts of these stereotypes on the Hutu perpetrators, who told their victims: “If there were peace, you would never accept me!”⁶⁷ Rwandan genocidal rape survivors have been faced with a cluster of overwhelming problems, including but not limited to: social isolation and stigma; sexual health complications, particularly from sexual torture and vaginal

⁶⁷ Hatred, gender and ethnicity were the themes of what *Interahamwe* said to their Tutsi women victims before or during rape campaigns. Ms. Nowrojee, of Human Rights Watch, has reported a number of similar statements collected from Tutsi women in response to her interview question: “What was said during the rape?” Here are some examples:

- “They said that they were raping me to see if Tutsi women were like Hutu women”;
- “Before he raped me, he said that he wanted to check if Tutsi women were like other women”;
- “He told me that I was forbidden to cry because Tutsi had no rights at that moment”;
- “One *Interahamwe* said, “You Tutsi women are very sweet, so we have to kill the men and take you”; and
- “They said that they had to take Tutsi women because before the war they were not able to take them”.

These statements and more confirm what Jean-Paul Akayesu apparently said to his *Interahamwe* militants when encouraging them to rape Tutsi women: “Never ask me again what a Tutsi woman tastes like.” For more statements, see E. Baines, “Body Politics and the Rwandan Crisis,” (2003) 24:3 *Third World Quarterly* 488 [hereinafter Baines]; E. Neuffer, *The Key to My Neighbors House: Seeking Justice in Bosnia and Rwanda* (New York, N.Y.: Picador, 2001) 271 [hereinafter Neuffer]; Despair and Defiance, *supra* note 6, at 410; Milne, *supra* note 55, at 111; Nduwimana, *infra* note 106, at 16; *Prosecutor v. Jean-Paul Akayesu*, (1998) Judgement, 2 September 1998, ICTR-96-4-T, at paragraph 422 [hereinafter Akayesu Judgement]; S. Logan, “Remembering the Women in Rwanda: When Humans Rely on the Old Concepts of War to Resolve Conflict,” (2006) 21 *Affilia* 235 [hereinafter Logan]; Shattered Lives, *supra* note 47, at 43-55.

mutilation, which resulted in permanent reproductive damages; and economic problems, specifically the lack of resources to sustain themselves and to raise their children of wartime rape.⁶⁸

During the Rwandan genocide, educated Tutsi women and girls were primarily targeted for systematic rape by armed Hutu men, including soldiers, gendarmes, militiamen and paramilitaries who considered these women as spoils of war, and brutally tortured and raped them with the aim of humiliating and degrading them.⁶⁹ The perpetrators sought thereby to destroy the interpersonal relations of the Tutsi national group by shattering the relationships of raped women with their families and community, particularly, those who were impregnated as a result of rape.⁷⁰

2. Gender as a Double- Edged, Powerful Weapon

Ethno-national conflicts in the former Yugoslavia and Rwanda exploited gender as an instrument in destroying opposing ethnic groups by attacking the

⁶⁸ In many cases, victims suffer a cluster of physical and psychological problems including sexually transmitted diseases such as gonorrhoea; syphilis, and HIV; urinary tract infections; dyspareunia; inability to trust a sexual partner; and fear of sexual activity specially when the victim does not want to inform a sexual partner that she or he was sexually abused. See *Shattered Lives*, *supra* note 47, at 72; United Nations, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (Geneva: United Nations Publications, Professional Training Series No. 8/Rev.1, 2004) 43 [hereinafter *Istanbul Protocol*].

⁶⁹ One of the most humiliating and degrading methods of sexual violence, which does not require penetration or physical contact, is to force the victim to strip naked whether in public or in front of friends and family members. In the *Akayesu* Judgement, the Trial Chamber I of the ICTR considered the act of undressing KK, a Tutsi student, by the *Interahamwe* and forcing her to do gymnastics naked in the public courtyard of the bureau communal, in front of a crowd, to be an act of sexual violence. Nudity and subjecting the victims to random full-body cavity strip searches are abhorrent forms of sexual torture and ill-treatment. Such acts enhance the psychological terror of every aspect of torture and make victims vulnerable to potential assault, rape or sodomy. Keeping women or men naked in cells with other family members or friends would break cultural taboos. Furthermore, the absence of privacy when using toilet facilities makes the situation more complicated. See *Akayesu* Judgement, *supra* note 66, at paragraph 688; *Istanbul Protocol*, *supra* note 67, at 41.

⁷⁰ A number of heart-breaking testimonies may be found in *Despair and Defiance*, *supra* note 6, at 750-768.

grassroots of their national culture and racial purity;⁷¹ the women. An appreciation of the controversial relationship between nationalism, ethnicity, and gendered violence would provide a better explanation of the nature of those conflicts.⁷² In the former Yugoslavia and Rwanda, wartime rape emphasized the interrelationship between ethnicity and gender. National and racial motives were the central elements in the dehumanization process of Bosnian, Kosovar,⁷³ and Tutsi women by making their bodies the battlefield where warriors displayed their hatred systemically and systematically.

To understand the reproduction strategy and the politics of gendered nationalism during wars and ethno-national armed conflicts, one should take into consideration the status of women within the framework of the socio-national process. In the situations under study, Bosnian, Kosovar, and Tutsi women, particularly young girls, were sexually targeted as biological reproducers of their group members. They were intentionally enslaved, gang raped, and forcibly impregnated to bear the children of the enemy of another national or social group. Some women, particularly those who failed to bear the enemy's offspring, were sterilized or sexually tortured in a way that they would never again have children who might defend their national cause in the future,

⁷¹ Testimonies collected from wartime rape survivors have brought to light that sexual torture was perpetrated with the aim of damaging the reproductive capacity of the victims by forced sterilization, castration, breast amputation, and genital mutilation, See Allen, *supra* note 62, at 78; D. Koenig, "Women and Rape in Ethnic Conflict and War," (1994) 5:2 *Hastings Women's Law Journal* 131.

⁷² Taylor, *supra* note 14, at 155.

⁷³ Brownmiller, *supra* note 2, at 37; C. Snyder, et al., "On the Battleground of Women's Bodies: Mass Rape in Bosnia-Herzegovina," (2006) *Affilia* 189; D. Rejali, "After Feminist Analyses of Bosnian Violence," in L. Lorentzen & J. Turpin, eds., *The Women and War Reader* (New York, N.Y.: New York University Press, 1998) 27 [hereinafter Rejali]; K. Patel, "Recognizing the Rape of Bosnian Women as Gender-Based Persecution," (1994) 60 *Brooklyn Law Review* 930 [hereinafter Patel]; P. Akhavan, "Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?," (2001) 95:1 *American Journal of International Law* 10. Reprinted in R., Falk, et al., eds., *Human Rights: Critical Concepts in Political Science*, 5 vols. (New York, N.Y.: Routledge, 2007) III: 123-159 [hereinafter Akhavan].

or knifed to death starting from their genitals.⁷⁴ One of the most shocking accounts in this respect was the story of Jana, a young Croatian woman, who was captured by Serb forces when she was in her eighth month of pregnancy. The *Četniks* ripped open her womb with a broken knife,⁷⁵ removed the foetus, placed two small cats in her uterus, and stitched it up. She mercifully expired right away.

On the other hand, women were attacked as guardians of the national culture and as the ones responsible for perpetuating the ideology of their social group. In the Bosnian and Rwandan societies, women were, and still are, the primary socializers of their children as mothers and educators. They usually structure and shape their children's behaviours and beliefs, and determine their views and loyalties. Moreover, in addition to the fact that these women served as biological and social reproducers, they also played a central role in shaping their societies' national and political identities. The activities of many women extended beyond the boundaries of motherhood. Many of them shared the same

⁷⁴ As the identity of the child, in most societies, is determined by the ethnicity of the biological father, wartime rape and forcible impregnation may be considered a genetic weapon to undermine the national, political, and cultural identity of the victim and her society. See A-M. de Brouwer & S. Chu, eds., *The Men Who Killed Me : Rwandan Survivors of Sexual Violence* (Vancouver, B.C.: Douglas & McIntyre, 2009) 11 [hereinafter *The Men Who Killed Me*]; C. Card, "Rape as a Weapon of War," (1996) 11:4 *Hypatia* 9 [hereinafter Card].

⁷⁵ Impregnated women have experienced additional destructive emotional feelings resulting from the fact of bearing the enemy's child; the child of the perpetrator. Accordingly, many women sought even late abortion, committed suicide, or abandoned the babies and refused to look at them. As a comparison, Iraqi women who were raped or impregnated by American interrogators or the sectarian Iraqi government police officers at Abu Ghraib prison have committed suicide or have been killed by their relatives when released. See H. Zawati, "We Beg you to Kill Us All: Inhuman Treatment, Gang Rape, and Forced Impregnation of Iraqi Women at Abu Ghraib Prison," (A Parallel Lecture on the Margin of the IX IRCT International Symposium on Torture, 8 December 2006, Berlin, Germany) [hereinafter Zawati]; M. Welsler, *Am Ende wünschst du dir nur noch den Tod: die Massenvergewaltigungen im Krieg auf dem Balkan* [At the End, All you Wish for is Death: The Mass Rapes in the War on the Balkans] (München: Knaur, 1993)38 [hereinafter Welsler] *German*; R. Schott, "Philosophical Perspectives on the Crisis of War Rape," (2002) 12:2 *Torture Journal* 47 [hereinafter Schott]; V. Peterson, "Gendered Nationalism: Reproducing 'Us' Versus 'Them'," in L. Lorentzen & J. Turpin, eds., *The Women and War Reader* (New York, N.Y.: New York University Press, 1998) 43 [hereinafter Peterson].

responsibilities as men, serving as politicians, decision makers, and even combatants on the front line.⁷⁶

For Hutu and Serb perpetrators, masculinity and national identity were closely linked. In the systematic mass rape of Bosnian and Croatian women, there was a national mechanism reinforcing Serb rapists' masculine ideals when it came to dominating and humiliating the females of their male opponents on the other side of the front line. The feminist analyses in the works of L. Arcel and E. Hague reveal that Serb combatants and paramilitaries proved the notion of their national superiority and powerful masculine identity by raping or watching the rape of Bosnian Muslim and Croatian Catholic women and men in Serb rape camps. The same national and racial feelings were behind the sexual torture of Tutsi women and girls who, having descended from a different race, were treated and negatively labelled by their perpetrators as inferior human beings, or *inyenzi*.⁷⁷

In the former Yugoslavia and Rwanda, women's reproductive capabilities were utilized by Serb and Hutu leaders as a double-edged weapon in both constructive and destructive ways, but always in keeping with traditional patriarchal notions of male domination, and female subordination.⁷⁸ Although

⁷⁶ P. Albanese, *Mothers of the Nation, Guardians of the Hearth: Women, Family and Nationalism in 20th Century Europe* (Ph.D., University of Toronto, 2003) 121 [hereinafter Albanese]; Peterson, *supra* note 74, at 44.

⁷⁷ E. Hague, "Rape, Power and Masculinity: The Construction of Gender and National Identities in the War in Bosnia-Herzegovina," in R. Lentin, ed., *Gender and Catastrophe* (London: Zed Books, 1997) 56 [hereinafter Hague]; L. Arcel, *supra* note 55, at 198-199.

⁷⁸ With the eruption of the Yugoslav ethnic conflicts and the wars leading to the dissolution of Yugoslavia, Serb leaders, including politicians, clergymen, military leaders, and learned people, posited an overwhelming link between gender and nationalism, and knew how to successfully apply it in two contradictory ways to serve their national project: increasing Serbian women's reproductive capabilities by encouraging high birth rates among Serbian women, the mothers of the Serbian nation, on the one hand, and reducing birth rates among non-Serb ethnic groups by violating their women's bodies in pursuance of the policy of *etničko čišćenje*; a national goal to bound all non-Serbs out of the territory, on the other. See H. Hynes, "On the Battlefield of Women's Bodies: An Overview of the Harm of War to Women," (2004) 27 *Women's Studies International Forum* 440 [hereinafter Hynes]; Seawell, *supra* note 60, at 180.

there is unanimous agreement on the fact that rape and sexual violence were conducted by all factions involved, the most extensive and well-planned sexual assault campaign was mainly executed against Bosnian and Kosovar Muslim women by Serbs, and against Tutsi women by Hutus.⁷⁹ For Serbians, the constructive part of the equation was presented to politicians and the Orthodox Church as a way of maximizing Serbs reproductive capacities. The objectives of Serbian nationalism would be met by producing more children to increase the Serbian population.⁸⁰

To achieve this goal, Serb advocates of the new vision of nationalist womanhood knew how to employ historical and religious myths so as to encourage Serbian women to produce combatants and eventually sacrifice them in the cause of creating “Greater Serbia,” their “mother-homeland.” When war had spread throughout Yugoslavia towards the end of 1992, Serbian politicians, academics, and Orthodox Church leaders sounded alarm bells in the form of a

⁷⁹ Kingdom of Denmark, Ministry of Foreign Affairs, *EC Investigative Mission into the Treatment of Muslim Women in the Former Yugoslavia: Report to EC Foreign Ministers* (Copenhagen, Kingdom of Denmark, 1993). Reprinted in B. Haakonsen, “European Community Investigative Mission into the Treatment of Muslim Women in the Former Yugoslavia: Report to European Community Foreign Ministers,” A Letter to Boutros Boutros-Ghali, the Secretary-General of the United Nations from Bent Haakonsen, the Permanent Representative of Denmark to the United Nations (3 February 1993), UN Doc. S/25240 [hereinafter Warburton Report]; S. Milošević, *Rocks and Rattlesnakes: The Civil War in Bosnia and Herzegovina* (Hamilton, Ont.: Canadian Serbian Council, 1995) 34 [hereinafter Milošević]; Salzman, *supra* note 21, at 349.

⁸⁰ During the revival of ethnic nationalism in the former Yugoslavia in the early 1990s, Serb politicians linked Serbia’s national security with women’s biological role as reproducers of the defenders of the nation. They took a further step when they explicitly identified producing children with Serb women’s national duty, and described those women who protested the abortion’s law and who demonstrated against the war as enemies of the Serbian people, killers of their unborn children, and apostate from the Serbian Orthodox Church. See B. Einhorn, “Links Across Difference: Gender, Ethnicity, and Nationalism,” (1996) 19:1-2 *Women’s Studies International Forum* 1 [hereinafter Einhorn]; D. Hughes & K. Foster, “War, Nationalism and Rape: Women Respond by Opening a Centre against Sexual Violence in Belgrade, Serbia,” (1996) 19:1-2 *Women’s Studies International Forum* 183 [hereinafter Hughes]; L. Hansen, “Gender, Nation, Rape: Bosnia and the Construction of Security,” (2001) 3:1 *International Feminist Journal of Politics* 62–65 [hereinafter Hansen]; M. Korac, “Understanding Ethnic-National Identity and its Meaning: Questions from Women’s Experience,” (1996) 19:1-2 *Women’s Studies International Forum* 136-137 [hereinafter Korac]; S. Zajović, *Women for Peace* (Belgrade: Women in Black, 1993) 26 [hereinafter Zajović].

document entitled “Warning,” in which they brought to light alleged demographic dangers encompassing the Serbian nation. Concentrating on the imbalanced demographic growth among Yugoslav ethnic groups as a result of high reproduction rates among Kosovar Albanians and Bosnian Muslims as opposed to low birth rates among Serbians, Serb leaders adopted the strategy of encouraging Serbian women to bear children to preserve Serbia’s national identity and encouraged controlling birth rates in non-Serb areas, “which went beyond national and human reproduction,” as they claimed. They warned that high reproduction rates among non-Serbs would mean the Serbian nation would be outnumbered and if it were to continue,⁸¹ Serbs would become an ethnic minority, a development that would put the persistence of the Serbian nation in risk.

Accordingly, Serb nationalists envisaged a threefold role for Serbian women in maintaining the Serbs’ national identity: (a) serving as biological producers of future generations, to which purpose they passed laws that denied women the right to abortion and granted them maternity leaves and rewards to encourage them to stay home and raise Serbian children; (b) serving as family caretakers and cultural transmitters from one generation to another, as historical, national and religious myths play a prominent role in constructing and shaping a Serb’s national identity; and (c) becoming the symbol of the Serbian nation as a

⁸¹ Bracewell, *supra* note 50, at 564; Korac, *supra* note 79, at 136; N. Cigar, *Genocide in Bosnia: The Policy of “Ethnic Cleansing”* (College Station, Tex.: Texas A & M University Press, 1995) 79 [hereinafter Cigar]; R. Connell, “The State, Gender and Sexual Politics: Theory and Appraisal,” (1990) 19 *Theory and Society* 507; Salzman, *supra* note 21, at 349-351; T. Djurić-Kuzmanović, et al., “Gendered War, Gendered Peace: Violent Conflicts in the Balkans and their Consequences,” in D. Pankhurst, ed., *Gendered Peace: Women’s Struggles for Post-War Justice and Reconciliation* (New York, N.Y.: Routledge, 2008) 279 [hereinafter Djurić-Kuzmanović]; W. Bracewell, “Mothers of the Nation,” *Warreport* 36 (September 1995) 28 [hereinafter Mothers of the Nation]; W. Bracewell, “Women, Motherhood, and Contemporary Serbian Nationalism,” (1996) 19:1-2 *Women’s Studies International Forum* 25-26 [hereinafter Serbian Nationalism]; Z. Pubovski, “Yugoslav Origins of the Post-Yugoslav Situation and the Bleak Prospects for Civil Society,” in P. Akhavan & R. Howse, eds., *Yugoslavia: The Former and Future* (Washington, D.C: Brookings Institution, 1995) 125 [hereinafter Pubovski].

mother who sacrifices her children for the cause of the mother-homeland.⁸² This state-sponsored nationalism placed severe restrictions on Serbian women, limiting them to their reproductive and nurturing capabilities; indeed, any woman who refused to carry out this policy would be shunned by society and sanctioned by the church.⁸³

The other phase of the Serbs' gender war was the destruction of non-Serb women's and men's sexuality and reproductive capacities by utilizing systematic rape and sexual torture as a strategic weapon of war and by physically dominating the Bosnian and Kosovar Muslim female body to demoralize and dehumanize her and her entire community. The rapists used women's bodies to convey a strong historical message: that the man who cannot protect his woman in time of war will not be able to protect his homeland or even fight anymore.⁸⁴ Serbs used several methods to implement this policy,⁸⁵

⁸² A. Milić, "Women and Nationalism in the Former Yugoslavia," in N. Funk & M. Mueller, eds., *Gender Politics and Post-Communism: Reflections from Eastern Europe and the Former Soviet Union* (New York, N.Y.: Routledge, 1993) 109 [hereinafter Milić]; J. Mertus, "'Woman' in the Service of National Identity," (1994) 5:1 *Hastings Women's Law Journal* 14 & 16 [hereinafter Mertus].

⁸³ In pursuing their political agenda, Serb politicians used social, cultural, historical, and religious pressure to enforce their new vision of nationalist womanhood by encouraging Serbian women to fulfil their material duty by bearing more children to defend Serbs' national interests. Inspiring these women to give birth to a hundred fighters for every Serbian soldier killed in the battle on the Slovenian borders in 1991, politicians awakened the courageous image of the Mother of Jugovići, the epic heroine, who sacrificed and never mourned her nine sons, killed while fighting the Turks, in the Battle of Kosovo in 1389. See J. Allcock, "Rhetoric of Nationalism in Yugoslav Politics," in J. Allcock, et al. eds., *Yugoslavia in Transition: Choices and Constraints* (Oxford: Berg Press, 1992) 277 [hereinafter Allcock]; J. Stojavljević, "Women, Conflict and Culture in Former Yugoslavia," (1995) 3:1 *Gender and Development* 38 [hereinafter Stojavljević]; M. Coote, "Women's Songs in Serbo-Croatian," (1977) 90:357 *The Journal of American Folklore* 331 [hereinafter Coote]; M. Swindell, "Mothering Children or Soldiers: Advancing Paradigms of the Women's Movement in Former Yugoslavia," (2005) 3:2 *Social Work & Society* 237 [hereinafter Swindell]; Mothers of the Nation, *supra* note 80, at 27; Salzman, *supra* note 21, at 349.

⁸⁴ Hardy, *supra* note 8, at 19; Seawell, *supra* note 60, at 185.

⁸⁵ In carrying out the Nazi policy of *Lebensborn* (the source of life), German soldiers had impregnated more than 10,000 Norwegian women during their occupation of the country in 1940-1945. German soldiers had been encouraged to father children with Norwegian women, who were considered desirable stock for an Aryan master race. Most rape children were later

including sterilization and forcibly impregnating non-Serb women and girls to bear Serbian children. Such crimes had a twofold impact on the victims and their societies in that they undermined the social foundations of the community and severed familial relations: if the raped woman were married, her husband would, at best, refuse even to touch her and might even treat her as no longer his wife. And if she were single, she would lose the opportunity to get married since she had lost her virginity before marriage. Serb perpetrators believed, and rightly so, that Muslim woman's virginity and chastity are highly cherished in the Bosnian and Kosovar Muslim cultures.⁸⁶

Both Serb and Hutu decision-makers used racist stereotypes, negative labelling, and national propaganda to incite and justify sexual violence and torture against non-Serb and Tutsi women, respectively. Bosnian Muslim women, particularly girls who were taken to concentration camps,⁸⁷ were often filmed to be used as a form of pornographic entertainment for other Serb

denounced, discriminated against, and treated appallingly after Norway's liberation. See *Nazi War Children Want Recognition*, Online: Aljazeera Net (14 April 2007) <<http://english.aljazeera.net/news/europe/2007/04/200852514726535269.html>> (Accessed on: 14 April 2007).

⁸⁶ A. Stiglmyer, "The War in the Former Yugoslavia," in A. Stiglmyer, ed., *Mass Rape: The War against Women in Bosnia-Herzegovina* (Lincoln, Neb.: University of Nebraska Press, 1994) 14 [hereinafter Stiglmyer]; Aydelott, *supra* note 15, at 586; B. Diken & C. Lausten, "Becoming Abject: Rape as a Weapon of War," (2005) 11:1 *Body and Society* 111-128. Formerly published in AMID Working Paper Series 34/2004, Online: Academy for Migration Studies in Denmark (AMID), Aalborg University, Denmark, 2004 <http://www.amid.dk/pub/papers/AMID_34-2004_Diken_&_Bagge_Laustsen.pdf> (Accessed on: 1 February 2007) [hereinafter Diken]; Huckshorn, *supra* note 49, at A6; J. Kuzmanović, "Legacies of Invisibility: Past Silence, Present Violence against Women in the Former Yugoslavia," in J. Peters & A. Wolper, eds., *Women's Rights Human Rights: International Feminist Perspectives* (New York, N.Y.: Routledge, 1995) 57 [hereinafter Kuzmanović]; Marder, *supra* note 63, at A11; P. Flaherty, "The Balkan Wars and Ethnic Cleansing," *Monthly Review* 46 (October 1994) 35 [hereinafter Flaherty]; R. Gutman, "Serbs Rape of Muslim Women in Bosnia Seen as Tactic of War," *Houston Chronicle* (23 August 1992) A1 [hereinafter Gutman]; Seawell, *supra* note 60, at 19; Seifert, *supra* note 16, at 55; Thomas, *supra* note 8, at 85; V. Folnegović-Smalc, "Psychiatric Aspects of the Rapes in the War against the Republics of Croatia and Bosnia-Herzegovina," in A. Stiglmyer, ed., *Mass Rape: The War against Women in Bosnia-Herzegovina* (Lincoln, Neb.: University of Nebraska Press, 1994) 175 [hereinafter Folnegović-Smalc]; W. Pfaff, "Invitation to War," (1993) 72:3 *Foreign Affairs* 97 [hereinafter Pfaff].

⁸⁷ Bloom, *supra* note 56, at 147-148; Mackinnon, *supra* note 20, at 185; Seawell, *supra* note 60, at 185.

soldiers. Moreover, the *Radio Televizija Republika Srpska* (RTRS) aired fabricated documentaries showing Serbian women being raped by Bosnian Muslims and Croats. Similarly, *Pravoslavlje*, a religious Serbian newspaper, published information about Serbian women and girls aged 17-40 years old who were singled out and drafted for rape and sexual violence on the orders of Bosnian and Kosovar fundamentalist leaders.⁸⁸

Although the rape of Tutsi women was not organized like that of Bosnian and Kosovar women, it was deliberately used to demoralize and break down Tutsi women and their community. Due to the short period of the genocidal war, Hutu perpetrators did not have enough time to set up rape camps. They did, however, adopt a policy of raping, mutilating and killing whenever possible. Like the Serbian media, Hutu-operated *Radio télévision libre des mille collines* (RTL) and *Kangura*, a bimonthly magazine, were leading disseminators of ethnic hate messages and regularly incited listeners to the mass killing and rape of Tutsi women.⁸⁹

3. A Deliberate Policy of Ethnic Cleansing and a Brutal Act of Execution

There was a specific political agenda behind wartime rape atrocities and sexual torture in the Balkans. In carrying out their violent national campaign of ethnic cleansing and mass expulsion of non-Serb populations from Serb-claimed territories in Croatia and Bosnia, the *Republika Srpska* (RS) and the *Republika*

⁸⁸ Mackinnon, *supra* note 20, at 190; R. Gutman, *A Witness to Genocide* (New York, N.Y.: Maxwell Macmillan International, 1993) X [hereinafter Gutman]; S. Vrcan, "Faith under Challenge," *Warreport* 40 (April 1996) 26 [hereinafter Vrcan]; Salzman, *supra* note 21, at 352-353; Stiglmeier, *supra* note 85, at 14.

⁸⁹ A-M. de Brouwer & S. Chu, eds., *The Men Who Killed Me : Rwandan Survivors of Sexual Violence* (Vancouver, B.C.: Douglas & McIntyre, 2009) 15 [hereinafter *The Men Who Killed Me*]; F. Chalk, "Hate Radio in Rwanda," in H. Adelman & A. Suhrke, eds., *The Path of a Genocide: The Rwanda Crisis from Uganda to Zaire* (New Brunswick, N.J.: Transaction Publishers, 1999) 95-96 [hereinafter Chalk]; P. Akhavan, "Justice and Reconciliation in the Great Lakes Region of Africa: The Contribution of the International Criminal Tribunal for Rwanda," (1997) 7:2 *Duke Journal of Comparative & International Law* 333 [hereinafter Akhavan]; Seawell, *supra* note 60, at 185.

Srpska Krajina (RSK), and as a practical step to create an ethnically and nationally pure “Great Serbia,” the *Jugoslavenska narodna armija* (JNA) and Bosnian Serb paramilitaries utilized a well planned policy of systematic mass rape and forced impregnation of Croatian and Bosnian Muslim women. Wartime rape became a gruesome means of implementing the Serbs’ national policy of ethnic cleansing.⁹⁰

⁹⁰ The genocidal rape campaign directed at Bosnian Muslim and Croatian women and girls took different forms: rape at home by Serb paramilitaries and irregulars in front of neighbours and close relatives to humiliate the victims; rape at concentration camps spread all over Bosnia and parts of Croatia, and rape detention centres including special rape camps, hospitals, hotels, schools, and factories. See A. Ahmed, “‘Ethnic Cleansing’: A Metaphor for Our Time,” in S. Meštrović, ed., *The Conceit of Innocence: Losing the Conscience of the West in the War against Bosnia* (College Station, Tex.: Texas A & M University Press, 1997) 57-58. Previously published in (1995) 18:1 *Ethnic and Racial Studies* 1-25 [hereinafter Ahmed]; A. Bell-Fialkoff, “A Brief History of Ethnic Cleansing,” (1993) 72:3 *Foreign Affairs* 120 [hereinafter Bell-Fialkoff]; *Bosnia-Herzegovina: The Fall of Srebrenica and the Failure of UN Peacekeeping*, Human Rights Watch, October 1995, Vol.7, No.13, 26 [hereinafter Srebrenica]; *Bosnia-Herzegovina: Sarajevo*, Human Rights Watch, October 1994, Vol.6, No.15, 12 [hereinafter Sarajevo]; “Briefing on the Situation of Women in Yugoslavia,” Memorandum by Diana Bronson, Rights & Democracy, 3 December 1992; C. Merrill, *Only the Nails Remain: Scenes from the Balkan Wars* (London: Rowman & Littlefield Publishers, Inc., 1999) 130-131 [hereinafter Merrill]; *Calling the Ghosts*, *supra* note 1 (*Videocassette*); D. Acheson, “Health, Humanitarian Relief and Survival in Former Yugoslavia,” (1993) 307:6895 *British Medical Journal* 45 [hereinafter Acheson]; J. Čačić-Kumpes, “Etičnost, rat i silovanje,” [Morality, War and Rape] (1992) 8:2 *Migracijske teme* 102. (Serbo-Croatian); J. Honig & N. Both, *Srebrenica: Record of a War Crime* (New York, N.Y.: Penguin Books, 1997) 74 [hereinafter Honig]; M. Mercier, *Crimes without Punishment: Humanitarian Action in Former Yugoslavia* (London: Pluto Press, 1995) 117 [hereinafter Mercier]; N. Cigar, *Genocide in Bosnia: The Policy of ‘Ethnic Cleansing.’* (College Station, Tex.: Texas A & M University Press, 1995) 90 [hereinafter Cigar]; *Rape: A Crime of War*. Produced by Silva Basmajian. Directed by Shelley Saywell. Running Time 00:59:00. National Film Board of Canada, 1996. (*Videocassette*); S. Draculić, “Women Hide behind a Wall of Silence,” in R. Ali & L. Lifschultz, eds., *Why Bosnia?: Writings on the Balkan War* (Stony Creek, Conn.: Pamphleteer’s Press, Inc., 1993) 117 [hereinafter Draculić]; S. Hunt, *This was Not Our War: Bosnian Women Reclaiming the Peace* (Durham, N.C.: Duke University Press, 2004) 49 [hereinafter Hunt]; S. Phillips, *The Systematic Rape of Bosnia’s Muslims: Genocide, the Physical and Psychological Effects on the Victim and the Community, and the Morality of Indifference* (Th. M., The Faculty of the Candler School of Theology, Emory University, 1998) 65 [hereinafter Phillips]; T. Cushman, “The Reflexivity of Evil: Modernity and Moral Transgression in the War in Bosnia,” in J. Geddes, ed., *Evil after Postmodernism: Histories, Narratives, and Ethics* (London: Routledge, 2001) 82 [hereinafter Cushman]; U. Šeparović, *Masovna silovanja kao ratni zločin* [Mass Rape as War Crime] (Zagreb: Hrvatsko žrtvoslovno društvo, 1993) 53. (Serbo-Croatian); NU Commission de droits de l’homme, *Situation des droits de l’homme dans le territoire de l’Ex-Yougoslavie* [The Human Rights Situation in the Former Yugoslavian Territory], NU Doc. E/CN.4/1996/9 (22 août 1995) à la p. 11[ci-après droit de l’homme]; W. Bert, *The Reluctant Superpower: United States’ Policy in Bosnia, 1991-1995* (New York, N.Y.: St. Martin’s Press, 1997) 52 [hereinafter Bert]; *War Crimes in Bosnia-Herzegovina*, vol.2 (New York, N.Y.: Helsinki Watch, a Division

The large scale and wide prevalence of wartime rape in Bosnia-Herzegovina took the whole world by surprise. Special rape camps and detention centres were set up for this purpose. Serbs held Muslim women for months in Foča's indoor sports arena, and made them into sexual slaves with the aim of impregnating them to give birth to *Četniks*. Many women were systematically and repeatedly raped in concentration rape camps throughout Bosnia-Herzegovina and North-eastern Croatia, impregnated and detained until it was too late for them to obtain an abortion.⁹¹

of Human Rights Watch, 1993) 242 [hereinafter War Crimes]; *War Crimes in Bosnia-Herzegovina: UN Cease-Fire Won't Help Banja Luka*, Human Rights Watch, June 1994, Vol.6, No. 8, at 13 [hereinafter Banja Luka].

⁹¹ A. LeBor, *Milošević: A Biography* (New Haven, Conn.: Yale University Press, 2004) 186 [hereinafter LeBor]; *Bosnia-Herzegovina: How can they Sleep at Night? Arrest Now!*, Amnesty International, October 1997, AI-Index: EUR 63/22/97, 3-5 [hereinafter Arrest Now]; *Compilation of Different Reports on Rape of Bosnian Women*. Produced and Directed by BBC, TV B & H, and HTV. Running Time 00:30:57. BBC, TV B & H, and HTV, 1992. (Videocassette); *Getting Away with Murder: Rape of Muslim Women in Foča*. Produced by Mike Robinson. Directed by Sue Rock. Running Time 00:41:26. Program Resources Group, 1994. (Videocassette); I. Agger, "Psychosocial Assistance during Ethnopolitical Warfare in the Former Yugoslavia," in D. Chirof & M. Seligman, eds., *Ethnopolitical Warfare: Causes, Consequences and Possible Solutions* (Washington, D.C.: American Psychological Association, 2001) 311 [hereinafter Agger]; J. Zoltanski, *The Construction of Rape as a Crime against Humanity: Recognition and Prosecution by the International Criminal Tribunal for the Former Yugoslavia* (Ph. D., Brandeis University, 2006) 36 [hereinafter Zoltanski]; L. Mladjenović & D. Hughes, *Feminist Resistance to War and Violence in Serbia* (New York, N.Y.: Garland Press, 1999) 7-8 [hereinafter Mladjenović]; M. Scharf, "Responding to Rwanda: Accountability Mechanisms in the Aftermath of Genocide," (1999) 52:2 *Journal of International Affairs* 624 [hereinafter Scharf]; M. Glenny, *The Fall of Yugoslavia: The Third Balkan War*, 3rd ed. (New York, N.Y.: Penguin Books, 1996) 208 [hereinafter Glenny]; N. Kressel, *Mass Hate: The Global Rise of Genocide and Terror* (New York, N.Y.: Plenum Press, 1996) 13 [hereinafter Kressel]; *Prosecutor v. Gagović et al*, Indictment of 26 June 1996, IT 96-23/2, Online: The International Criminal Tribunal for the Former Yugoslavia <<http://www.un.org/icty/ind-e.htm>> (Accessed on: 18 February 2005) [hereinafter Gagović]; R. Cohen, "Secrets of Susica: How Muslims Died in Bosnia, Part 1," *The New York Times* (1 August 1994) A1 [hereinafter Susica]; T. Gjelten, *Sarajevo Daily: A City and its Newspaper under Siege* (New York, N.Y.: Harper Collins Publishers, 1995) 135 [hereinafter Gjelten]; NU Commission des droits de l'homme, *Situation des droits de l'homme dans le territoire de l'Ex-Yougoslavie* [The Human Rights Situation in the Former Yugoslavian Territory], NU Doc. E/CN.4/1994/110 (21 février 1994) à la p. 11 [ci-après rapport de l'Ex-Yougoslavie]; UN Commission on Human Rights, *Systematic Rape and Sexual Slavery during Periods of Armed Conflict*, UN Doc. Sub-Commission Resolution 1995/14, 27th meeting (18 August 1995); "War Crimes Suspect Attacks New Bosnian Court," *Reuters*, Sarajevo, Bosnia-Herzegovina, 23 December 2005.

The UN Commission of Experts (UNCE), established pursuant to Security Council Resolution 780 (1992) and chaired by M. Cherif Bassiouni, identified 162 detention centres where women were kept and raped. Of those centres, 88 were controlled by Bosnian Serbs, 17 were run by Croats, 8 by Muslims, 14 jointly directed by Croats and Muslims, and the rest operated anonymously. This means that all warring factions in the former Yugoslavia committed grave war crimes, including rape and sexual violence. Overwhelming evidence suggests that there were hundreds of Serb women⁹² subjected to rape and sexual violence by Croatian and Muslim troops in the Posavina region, the commune of Odžak, and some villages close to Sarajevo.

Although all war parties were guilty of rape and sexual violence, investigations have confirmed that most victims were Muslim females and that the major perpetrators were Serb military and paramilitary force members. For the first time in the history of ethnic armed conflicts, Bosnian Serbs had introduced wartime rape and forced impregnation of Bosnian Muslim women and girls as a deliberate weapon of war and as an instrument of ethnic cleansing and torture designed to humiliate the victims and drive them and their families out of their homes. The forcible impregnation of Muslim women was used by

⁹² Annex IX, *supra* note 54, at 7; *Bosnia-Herzegovina: "Ethnic Cleansing" Continues in Northern Bosnia*, Human Rights Watch, November 1994, Vol.6, No.16, 16 [hereinafter *Ethnic Cleansing*]; C. Jacobsen, "War Crimes in the Balkans: Media Manipulation, Historical Amnesia, and Subjective Morality," in R. Thomas & H. Friman, eds., *The South Slav Conflict: History, Religion, Ethnicity and Nationalism* (New York, N.Y.: Garland Publishing, Inc., 1996) 334 [hereinafter *Jacobsen*]; D. Djokić, "Memorandum on the Crime of Rape of Children, Girls, and Women of Serbian Nationality in the Village of Novi Grad, the Commune of Odžak, in Bosnia and Herzegovina," A Letter to the Secretary-General from Dragomir Djokić, the Chargé d'affaires of the Permanent Mission of Yugoslavia to the United Nations (3 February 1993), UN Doc. A/48/74-S/25216, at 2 [hereinafter *Djokić*]; UN Commission on Human Rights, *Fourth Periodic Report on the Situation of Human Rights in the Territory of the Former Yugoslavia, Submitted by Mr. Tadeusz Mazowiecki*, UN Doc. E/CN.4/1994/8, (26 September 1993) 3 [hereinafter *Fourth periodic Report*]; Glenny, *supra* note 90, at 208; R. Mounts, et al., "War Crimes and other Human Rights Abuses in the Former Yugoslavia," (1995) 16 *Whittier Law Review* 399 [hereinafter *Mounts*]; S. Meštrović, "Introduction," in S. Meštrović, ed., *Genocide after Emotion: The Postemotional Balkan War* (London: Routledge, 1996) 7 [hereinafter *Meštrović*]; *Serbian TV: Testimonies about Abuse of Women*. Produced and Directed by Serbian TV. Running Time 00:54:40. Serbian TV, 1993. (*Videocassette*).

perpetrators as a means of mass torture that extended to victims' relatives and that, until today, remains as a haunting reminder of the atrocities.⁹³

Wartime rape in Croatia and Bosnia-Herzegovina was aimed at the demoralization of the victim's family and society, and in the process destroyed the victim's community as well. Bosnian Serb leaders used rape as a strategic weapon of war against Muslim women to humiliate them and demoralize Bosnian Muslims in such a way that they would either surrender or flee their homes. It was used as a deliberate strategy of ethnic cleansing since these women were targeted and abused on religious and ethnic grounds.⁹⁴

⁹³ Although reports indicated that women and girls from all ethnic groups, particularly Muslims, were targeted and subjected to rape and sexual brutality by their enemies, there was strong evidence that these women were also abused by their own people. Fatima, a Bosnian Muslim woman, who arrived in the United States with refugee status, said that she was arrested and repeatedly gang-raped by fellow Muslim soldiers due to her marriage with a Serb man. During her twenty-day confinement, she was physically and psychologically tortured by scarring and tattooing her breasts, arms and shoulders. They left her with haunting memories of her ordeal that are likely to remain with her for the rest of her life. See N. Naimark, *Fires of Hatred: Ethnic Cleansing in Twentieth-Century Europe* (Cambridge, Mass.: Harvard University Press, 2001) 167 [hereinafter Naimark]; R. Bower, et al., "Case Presentation of a Tattoo-Mutilated Bosnian Torture Survivor," (2004) 14:1 *Torture Journal* 17-18 [hereinafter Bower]; R. Gutman, *A Witness to Genocide* (New York, N.Y.: Maxwell Macmillan International, 1993) 65 [hereinafter Gutman]; R. Holbrooke, *To End a War: The Inside Story, from Sarajevo to Dayton* (New York, N.Y.: Random House, 1998) 334-335 [hereinafter Holbrooke]; *Rape of Bosnian Muslim Women*. Produced and Directed by Davor Rocco. Running Time 00:33:00. Islamic Relief, Croatia, 1993. (Videocassette).

⁹⁴ In his lecture entitled "New Kinds of War Crimes: Ethnic Cleansing and Rape in War against Croatia and Bosnia-Herzegovina," at Palmer Theatre, McGill University, Ivica Kostović, Dean of the School of Medicine at the University of Zagreb, has categorized the rape of Muslim and Croatian women, ranging in age from 6- year-old girls to 80-year-old women, as follows: (1) below 14 years of age, particularly in Bosnia-Herzegovina; (2) married or unmarried fertile women aged between 15 and 35 years of age kept in holding stations and detention centres and raped repeatedly, mostly in the form of gang-rape with the aim of impregnating them and forcing them to carry the pregnancy to term as sort of torture and intimidation; and (3) elderly women, just to terrorize them and their families and force them to flee their homes. See M. Barnes, *Beyond Conflict: The Structure and Purposes of Genocide in the 20th Century* (Ph.D., Department of Conflict Analysis and Resolution, George Mason University, 1999) 831-834 [hereinafter Barnes]; F. Wilmer, *The Social Construction of Man, the State, and War: Identity, Conflict and Violence in Former Yugoslavia* (London: Routledge, 2002) 414 [hereinafter Wilmer]; F. Pilch & J. Derdzinski, "The UN Response to the Balkan Wars," in J. Morton, et al., eds., *Reflections on the Balkan Wars: Ten Years after the Break up of Yugoslavia* (New York, N.Y.: Palgrave Macmillan, 2004) 98 [hereinafter Pilch]; I. Kostović, "New Kinds of War Crimes: Ethnic Cleansing and Rape in War against Croatia and Bosnia-Herzegovina," (Palmer Theatre, Faculty of Medicine, McGill University, 26 February 1993); J.

As a strategic tool of ethnic cleansing, the rape of Bosnian and Croatian women by Serb forces exceeded all traditional limits. It involved more than holding victims in detention centres and assaulting them sexually, even in a systematic way. Before being raped, for instance, victims were often forced to watch the slaughter of their children or family members, or following the act, the killing of their husbands or fathers who were forced to watch the rape of their women beforehand. These women were then forced to flee their looted and burnt houses under heavy fire and were loaded, in most cases naked, into cattle trucks and sent to rape camps. The genocidal gang-rape of Bosnian and Croatian young women and girls, with the aim of impregnating and forcing them to give birth to “little Četniks,” destroyed⁹⁵ the social fabric of their societies by

Cigelj, “A Chilling Smile from my Torturer,” *The Bosnian Institute, Bosnia Report No. 32-34* (December 2002-July 2003) 27 [hereinafter Cigelj]; M. Kaldor, *New and Old Wars: Organized Violence in a Global Era* (Cambridge, U.K.: Polity Press, 1999) 52 [hereinafter Kaldor]; Note by the Secretary-General, *Report on the Situation of Human Rights in the Territory of the Former Yugoslavia Prepared by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, Pursuant to Paragraph (15) of Commission Resolution 1992/S-1/1 and Economic and Social Council Decision 1992/305*, UN Doc. A/47/666 – S/24809 (17 November 1992), at 63 [hereinafter Mazowiecki]; *Srebrenica: Reconstruction, Background, Consequences and Analysis of the Fall of a Safe Area*, Online: Netherlands Institute for War Documentation (2002) <http://www.srebrenica.nl/en/a_index.htm> (Accessed on: 21 July 2003) at Part 1, Chap 9, p. 69 [hereinafter Netherlands]; UN Commission on Human Rights, *Fifth Periodic Report on the Situation of Human Rights in the Territory of the Former Yugoslavia Submitted by Mr. Tadeusz Mazowiecki*, UN Doc. E/CN.4/1994/47 (17 November 1993) 15 [hereinafter Tadeusz]; UN Commission on Human Rights, *Impact of Armed Conflict on Children*, UN Doc. E/CN.4/1996/110 (5 February 1996) 10 [hereinafter Armed Conflict]; UN Commission on Human Rights, *Situation of Human Rights in Bosnia-Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro)*, UN Doc. E/CN.4/1997/L.88 (10 April 1997) 4 [hereinafter Montenegro].

⁹⁵ D. Petrović, “Ethnic Cleansing: An Attempt at Methodology,” (1994) 5:3 *European Journal of International Law* 347 [hereinafter Petrović]; I. Kostović, et al., “Medical Documentation of Human Rights Violations and War Crimes on the Territory of Croatia during the 1991/1993 War,” (1993) 34:4 *Croatian Medical Journal* 286-289 [hereinafter Kostović]; J. Brand, et al., “Life and Death in the Camps,” *Newsweek* 120:7 (17 August 1992) 22 [hereinafter Life and Death]; J. Jackson, J., “No Rush to Judgement,” *Time* 143:26 (27 June 1994) 51 [hereinafter Jackson]; L. Boose, “Crossing the River Drina: Bosnian Rape Camps, Turkish Impalement, and Serb Cultural Memory,” (2002) 28:1 *Signs* 72-73 [hereinafter Boose]; M. Aboutanos & S. Baker, “Wartime Civilian Injuries: Epidemiology and Intervention Strategies,” (1997) 43:4 *Journal of Trauma* 722 [hereinafter Aboutanos]; S. Vranić, *Breaking the Wall of Silence: The Voices of Raped Bosnia* (Zagreb: Antibarbarus, 1996) 194 [hereinafter Vranić]; T. Day, “Ode to Sarajevo: Where have All the People Gone?” (1997) 12:2 *St. John’s Journal of*

damaging parent-child and spousal relationships and by rendering the rape survivors unmarriageable or unable to bear children. It destabilized the social and cultural infrastructure of the victims' communities and the entire nation.

Inter-ethnic wartime rape of Bosnian and Croatian women obliged them to produce the children of the enemy, which caused them several kinds of pain: physical, psychological, and social. Many of those victims were very young and were forced to bear their enemies' children rather than seek abortion on religious or medical grounds. Many other victims died in horrific conditions because they didn't receive adequate medical care. Those women who survived and gave birth were psychologically devastated. They were torn between the natural desire to keep the innocent child, who would bear the physical countenance of its rapist father, and the terrible memories of rape. This emotional conflict caused them horrible pain and trauma. Socially, victimized women were rejected by their husbands or fathers, and lost the ability to have peace of mind. Wartime rape, as a tool of ethnic cleansing, is a severe aggression on the victims' reproductive rights and is comprised in fact of two crimes; the crime of rape and the crime of forced impregnation.⁹⁶

Legal Commentary 421[hereinafter Day]; V. Jukić, "Medical Center for Human Rights," (1993) 34:1 Croatian Medical Journal 86-87 [hereinafter Jukić].

⁹⁶ Ahmed, *supra* note 89, at 19-20; D. Temple-Raston, *Justice on the Grass: Three Rwandan Journalists, Their Trial for War Crimes, and a Nation's Quest for Redemption* (New York, N.Y.: Free Press, 2005) 154 [hereinafter Temple-Raston]; F. Pelka, "Voices from a War Zone," *Humanist* 55 (March 1995) 8 [hereinafter Pelka]; The Humanitarian Crisis and the Medicolegal Investigation of War Crimes in the Former Yugoslavia: Testimony of Eric Stover before the U.S. Commission on Security and Cooperation in Europe, Physicians for Human Rights, (25 January 1993) 7 [hereinafter Stover]; M. Welser, *Am Ende wünschst du dir nur noch den Tod: die Massenvergewaltigungen im Krieg auf dem Balkan* [At the End, All You Wish for is Death: The Mass Rapes in the War on the Balkans] (München: Knaur, 1993) 25. (German); Republic of Croatia, Ministry of Health, Division of Information and Research, *Civilian Casualties in the War against Croatia, 1991/1992 and Severe Violations of Human Rights of Civilian Population: War Crimes, Crimes against Humanity, Ethnic Cleansing and Rape as a New Kind of War Crime in Croatia and Bosnia-Herzegovina* (Zagreb: Ministry of Health, 1992) 3 [hereinafter Civilian Casualties]; R. Bower, et al., "Case Presentation of a Tattoo-Mutilated Bosnian Torture Survivor," (2004) 14:1 Torture Journal 17 [hereinafter Bower]; Republic of Croatia, Ministry of Health, Division of Information and Research, *The Extent of Violation of Human Rights of Women and Rape as a New Type of War Crime in Croatia and Bosnia-*

Serb sources argued that Western media reports on the systematic mass rape of Bosnian Muslim women as a conscious policy and a deliberate strategy sponsored by the Bosnian Serb leadership were not authentic. Pro-Serb writers maintained that the Western media hadn't examined the sources on this issue, including governmental, non-governmental, regional, and international reports, and had used rape propaganda to accelerate Western military intervention and stimulate blind hatred against Serbs. Serb writers tried to play on the contradictory nature of the reports as to the numbers of alleged rapes of Muslim women and girls, which ranged between twenty and one-hundred thousand cases according to the United Nations reports. In support of their claims, they cited Jerome Bony, a French television reporter commenting on this issue: "When I was fifty kilometres from Tuzla, I was told: 'Go to Tuzla high school grounds. There are four thousand raped women.' At twenty kilometres this figure dropped to four hundred. At ten kilometres only forty were left. Once at the site, I found only four women willing to testify."⁹⁷

Although the above report casts some doubt on the numbers, its author didn't deny the existence of rape victims at the site. Moreover, having only four victims willing to testify does not mean that other women were not victimised. The issue of the number of Bosnian Muslim rape victims may be an object of

Herzegovina (Zagreb: Ministry of Health, 1992) 2 [hereinafter *New Type of War*]; United States, United States Government, *Second Report on the War Crimes in the Former Yugoslavia Submitted to the United Nations Security Council* (Washington, D.C.: U.S. Government Printing Office, 1992) 16-18 [hereinafter *Second Report*]; V. Nikolić-Ristanović, "Definitions of Violence in War and the Experience of women: The Subject of Research," in V. Nikolić-Ristanović, ed., *Women, Violence and War: Wartime Victimization of Refugees in the Balkans* (New York, N.Y.: Central European University Press, 2000) 21 [hereinafter *Nikolić-Ristanović*]; V. Nikolić-Ristanović, "War, Nationalism and Mothers," (1996) 8:3 *Peace Review* 361-362 [hereinafter *Nationalism and Mothers*].

⁹⁷ J. Merlino, "Rapes: Numbers in Question," *Le Point* (13 March 1993) 1; L. Grant, "Anyone here have been Raped and Speak English?" *The Guardian* (2 August 1993) 1; S. Flounders, "Bosnia Tragedy: The Unknown Role of the Pentagon," in R. Clark, et al., *NATO in the Balkans: Voices of Opposition* (New York, N.Y.: International Action Center, 1998) 56-57 [hereinafter *Flounders*]; S. Milošević, *Rocks and Rattlesnakes: The Civil War in Bosnia and Herzegovina* (Hamilton, Ont.: Canadian Serbian Council, 1995) 33-37 [hereinafter *Milošević*].

controversy, but this by no means minimizes the dreadful fact that there were such victims.⁹⁸

Indeed, it is extremely difficult to figure out the real numbers of rape victims for the following facts: (a) it was not easy to acquire first-hand testimonies, since those women who were strong enough to break the wall of silence and tell the world about their ordeals became symbolic speakers for thousands of others who preferred to keep silent; (b) the majority of the assaulted women, regardless of their ethnic or religious backgrounds, found it very hard to report their sufferings, while many of them had been killed after having been raped or during the gang-rape process; and (c) in collecting information, organizations depended on sample testimonies given by victims who voluntarily testified or whose horrific conditions obliged them to speak out. It was impossible for any organization or fact-finding mission to reach every victim. Consequently, it becomes evident from the foregoing⁹⁹ that it is not a

⁹⁸ While the Warburton Mission suggested that there were 20,000 cases of rape resulting in 1,000 pregnancies, the UN commission of experts was able to identify only 1,600 cases of actual rape. Moreover, in a report prepared by a team of experts on rape victims in Bosnian, Croatian and Serbian hospitals, an estimate was made of 12,000 cases of rape, mostly committed by Serbs against Muslim women. See A. Kovalovska, "Rape of Muslim Women in Wartime Bosnia," (1997) 3:3 *ILSA Journal of International & Comparative Law* 933 [hereinafter Kovalovska]; Boose, *supra* note 94, at 71; D. Thomas & R. Ralph, "Rape in War: Challenging the Tradition of Impunity," (1994) 14 *SAIS Review* 85 [hereinafter Thomas]; Kingdom of Denmark, Ministry of Foreign Affairs, *EC Investigative Mission into the Treatment of Muslim Women in the Former Yugoslavia: Report to EC Foreign Ministers* (Copenhagen, Kingdom of Denmark, 1993) 4, reprinted in B. Haakonsen, "European Community Investigative Mission into the Treatment of Muslim Women in the Former Yugoslavia: Report to European Community Foreign Ministers," A Letter to Boutros Boutros-Ghali, the Secretary-General of the United Nations from Bent Haakonsen, the Permanent Representative of Denmark to the United Nations (3 February 1993), UN Doc. S/25240 [hereinafter Warburton Report]; L. Burg & P. Shoup, *The War in Bosnia-Herzegovina: Ethnic Conflict and International Intervention* (Armonk, N.Y.: M. E. Sharpe, 1999) 170 [hereinafter Burg]; Mazowiecki, *supra* note 93, at 67; Report of the Security-General, *Rape and Abuse of Women in the Territory of the Former Yugoslavia*, UN Doc. E/CN.4/1994/5 (30 June 1993) 5 [hereinafter Rape of Women]; UN Commission on Human Rights, *Situation of Human Rights in the Territory of the Former Yugoslavia: The Rape and Abuse of Women*, UN Doc. E/CN.4/1993/L.21 (22 February 1993) 3 [hereinafter Abuse of Women].

⁹⁹ A. Adams, "The Kosmar of Bosnia-Herzegovina," *INSCAN* 6:4 (March 1993) 1 [hereinafter Adams]; *Balkan Trail of Tears: On the Edge of Catastrophe*, Women's Commission for Refugee Women and Children, 1992, 6 [hereinafter Balkan Trail]; R. Gutman,

wise idea to focus on numbers of rapes and forget the horrific part of the issue: rape as a crime of war and a crime against humanity.

During the war in Kosovo, the main aim of the mass rape of Albanian women and girls was not only to inflict huge physical and psychological pain on the individual victims but to undermine the identity of the Kosovar Albanian communities in order to terrorize them and force them from their homes. Although a number of human rights organizations and fact-finding missions succeeded in interviewing a very limited number of victims, it was extremely difficult to obtain first-hand information on wartime rape and other sexual assaults during the Kosovar Albanians' ethnic cleansing campaign of 1998-1999. These crimes were under-reported due to the conservative nature of Albanian society, the tremendous shame and stigma associated with those inhuman and degrading offences, and the lack of enough training and professionalism in getting individual or collective testimonies.¹⁰⁰

The rape of ethnic Albanian women by Serb officers, JNA regulars and paramilitaries fell within the broader concept of sexual violence defined by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (UNSCPDPM). The offences took different forms and fell into

“Finding Truth about Bosnia,” *New York Newsday* (22 April 1993) 29 [hereinafter Finding Truth]; UN Commission on Human Rights, *Working Paper on the Situation of Systematic Rape, Sexual Slavery and Slavery-Like Practices during Wartime, Including Internal Armed Conflict, Submitted by Ms. Linda Chavez*, UN Doc. E/CN.4/Sub.2/1995/38 (13 July 1995).

¹⁰⁰ *Kosovo as Seen, as Told: An Analysis of the Human Rights Findings of the OSCE Kosovo Verification Mission, October 1998 to June 1999*, vol.1, Organization for Security and Cooperation in Europe, 1999, 27 [hereinafter Kosovo as seen]; *Old Weapon, New Crimes: Wartime Rape of Kosovar Women as a Crime against Humanity*. A Public Lecture by Hilmi M. Zawati. Produced by The Institute of Islamic Studies, McGill University. Directed by Üner Turgay. Running Time 01:55:00. The Institute of Islamic Studies Lecture Series, McGill University, 15 March 2000. (Videocassette); Physicians for Human Rights, Press Release, “War Crimes in Kosovo,” (15 June 1999), at 3 [hereinafter Crimes in Kosovo]; United States, Department of State, *Erasing History: Ethnic Cleansing in Kosovo* (Washington, D.C.: U.S. Government Printing Office, 1999) 13 [hereinafter Erasing History]; *Under Orders: War Crimes in Kosovo* (New York, N.Y.: Human Rights Watch, 2001) 121 [hereinafter Under Orders]; *War Crimes in Kosovo - A Population-based Assessment of Human Rights Violations against Kosovar Albanians* (Boston, Mass.: Physicians for Human Rights, 1999) 80-81 [hereinafter Kosovar Albanians].

various time frames: before the escalation of March 1999; during the period of North Atlantic Treaty Organization (NATO) forces' air strikes; and at the time of mass displacement and exodus.¹⁰¹

Albanian women, particularly young girls, were targeted and sexually assaulted at their homes in front of family members, relatives, and neighbours. Many of them were abducted and gang-raped during Serb attacks on the Albanians' villages. Furthermore, they were singled out from convoys fleeing Kosovo, robbed and taken to detention centres for sexual slavery. Many victims were tortured to death or killed immediately after they were raped, or thrown into wells alive.¹⁰²

¹⁰¹ Citing Bassiouni's work on sexual violence in former Yugoslavia, and the Human Rights Watch report on wartime rape in Rwanda, Ms. Gay J. McDougall, a UN Special Rapporteur, concluded in her final report on contemporary forms of slavery during armed conflict that "Sexual violence covers both physical and psychological attacks directed at a person's sexual characteristics, such as forcing a person to strip naked in public, mutilating a person's genitals, or slicing off a woman's breasts." See Mazowiecki, *supra* note 93, at 7-8; Shattered Lives, *supra* note 47, at 62.

¹⁰² In a meeting on 30 June 1999, between the UN High Commissioner of Human Rights and the Chairperson of the Centre for Protection of Women and Children in Priština, the latter deemed that the unreported cases of rape in Kosovo were very high. Ms. De Leval, a Belgian psychologist working with *Médecins sans frontières* (MSF), added that "They [The Albanian women] would rather die than be raped, especially the unmarried, whose lives are then essentially over." The OSCE Kosovo verification Mission (KVM), documented a number of rape cases, and confirmed that "Traditionally in Kosovo Albanian society sexual violence is a topic that is met with a compact of silence. The stigma of rape is so deep that it is often stated that a 'good' woman would rather kill herself than continue to live after having been raped. A woman who admits having been raped can be rejected or expelled by her husband, her family or her husband's family." See C. Bird, "Kosovo's Wounded Women Find no Peace: Widespread Stress Exists but War Victims Hide their Pain, Say Counsellors," *The Guardian* (19 October 1999) 14 [hereinafter Bird]; C. Kennedy-Pipe & P. Stanley, "Rape in War: Lessons of the Balkan Conflicts in the 1990s," in K. Booth, ed., *The Kosovo Tragedy: The Human Rights Dimensions* (Portland, Or.: Frank Cass, 2001) 78-80 [hereinafter Pipe]; Human Rights Watch, Kosovo Flash No. 31, "Rape of Ethnic Albanian Women in Suva Reka Municipality," (28 April 1999); Human Rights Watch, Kosovo Flash No.50, "Violent Abuses by KLA Members: Beating, Killings and Rape Taking Place in Kosovo," (25 June 1999); Kosovo as Seen, *supra* note 99 at 78-80; S. Ahmeti, "My Father was Burned Alive?: Testimonies from Kosovo Refugees," in W. Buckley, ed., *Kosovo: Contending Voices on Balkan Interventions* (Grand Rapids, Mich.: William B. Eerdmans Publishing Company, 2000) 41-42 [hereinafter Ahmeti]; UN Commission on Human Rights, *Report of the High Commissioner for Human Rights on the Situation of Human Rights in Kosovo, Federal Republic of Yugoslavia*, UN Doc. E/CN.4/2000/10 (27 September 1999) 3 [hereinafter Rights in Kosovo]; Under Orders, *supra* note 99 at 122.

Ethnic Albanian women were not the only ones subjected to sexual violence in Kosovo. Albanian men were also sexually assaulted. The Organization for Security and Cooperation in Europe–Kosovo Verification Mission (OSCE-KVM), which documented a number of those accounts, believed that most cases of such assaults took place in detention and Serb police stations. Sexual violence against Kosovar Albanian men was used as a deliberate tactic to damage their social identity. Cases of sexual assaults reported by the OSCE-KVM on Kosovar men ranged from being forced to strip naked in public for the purpose of humiliating them to actually being raped by Serb interrogators. The OSCE-KVM found out that the assaulted men had as much difficulty as women to speak out about such atrocities.¹⁰³

Wartime rape in Rwanda was also a weapon of war. Although the architects of genocide had time to draw up plans and prepare death lists, they happily improvised when it came to those women and girls whom they would rape. As part of their campaign to exterminate the Tutsi or force them to leave the country, the *Forces armées rwandaises* (FAR) soldiers, gendarmes, and other paramilitary groups sexually assaulted Tutsi women and girls, some as young as two years old, in extraordinary brutal ways. During the genocide, Tutsi women were systematically raped, tortured to death, and, in most cases, mutilated before they were executed.¹⁰⁴

¹⁰³ C. Jacquemin, *Human Rights Crisis and International Response: Framing Rwanda and Kosovo* (Ph. D., University of California, Irvine, 2003) 194 [hereinafter Jacquemin]; Kosovo as Seen, *supra* note 99 at 62; Rights in Kosovo, *supra* note 101 at 13.

¹⁰⁴ In a well-researched and documented report, Human Rights Watch asserted that perpetrators were incited by propaganda and stereotypes flourished before and during genocide that Tutsi women were beautiful, arrogant, and considered Hutu men unworthy of their attention. Accordingly, these women were often humiliated by their rapists and kept for weeks or months in sexual servitude. In many cases, Tutsi girls were mutilated in a brutal way by cutting off their breasts, piercing their vaginas with sharp arrows, and slashing their thin noses and any other body parts that would identify them as Tutsi. See “*Leave None to Tell the Story*,”: *Genocide in Rwanda* (New York, N.Y.: Human Rights Watch, 1999) 10 & 215 [hereinafter *Genocide in Rwanda*]; *Rwanda-Killing the Evidence: Murder, Attacks, Arrests and Intimidation of Survivors and Witnesses* (London: African Rights, 1996) 39 [hereinafter *Killing the Evidence*]; *Rwanda: Death, Despair and Defiance* (London: African Rights, 1995) 748 [hereinafter *Rwandans’ Death*]; *Shattered Lives*, *supra* note 47, at 24-54.

Sexual violence took different forms during the 1994 Rwandan genocide and was not restricted to women. Besides raping Tutsi women and girls, soldiers of the Rwandese government forces (RGF) and members of the *Interahamwe* militia emasculated many Tutsi men, including young boys, in an attempt to reduce their capacity to reproduce. Hutu extremists employed techniques of brutality and intimidation similar to those used by *Četniks* in Bosnia-Herzegovina to humiliate their victims. Tutsi adults were forced, at gun-point, to have incestuous intercourse with their sons, daughters and other family members before they were killed. Moreover, rape was extended to religious institutions. Though “untouchable” according to Rwandan custom, “nuns” were not spared, while some Hutu priests of the Catholic Church were also involved in the systematic rape of Tutsi young girls.¹⁰⁵

There are neither reliable statistics nor accurate numbers for those women who were subjected to unimaginable forms of rape and sexual degradation. This was due to the fact that rape was conducted on such a large scale and to the socio-religious values of the Rwandan peoples, who were unwilling to accept unmarried mothers. Consequently, many women, particularly young girls, were ashamed to ask for medical assistance, and sought illegal and unsafe abortions. Although the Ministry for the Family and the Promotion of Women has recorded 15,700 women raped during the Rwandan genocide, it should be pointed out that this disputed number underestimates the actual cases of rape for the following reasons: (a) this number covered only atrocities committed during

¹⁰⁵ C. Bonnet, “Le Viol des femmes survivantes du génocide au Rwanda,” dans R. Verdier, et al., dirs., *Rwanda: un génocide du xxe siècle*, Paris, Éditions L’Harmattan, 1995, à la p.19; E. Mukakayumba, “Rwanda: la violence faite aux femmes en contexte de conflit armé généralisé,” (1995) 8:1 *Recherches féministes* 147; *Father Wenceslas Munyeshyaka: In the Eyes of the Survivors of Sainte Famille*, African Rights, *Journal Witness to Genocide*, Issue 9 (April 1999) 77-78 [hereinafter Wenceslas]; J-P. Gouteux, *Un Génocide secret d'état: La France et le Rwanda, 1990-1997* [A Secret State Genocide: France and Rwanda, 1990-1997], Paris, Editions Sociales, 1998, à la p. 36 [ci-après Gouteux]; L. Melvern, *A People Betrayed: The Role of the West in Rwanda's Genocide* (London: Zed Books, 2000) 193 [hereinafter Melvern]; Taylor, *supra* note 14 at 140-141; UN Commission on Human Rights, *Report on the Situation of Human Rights in Rwanda Submitted by Mr. René Deqni-Séqui*, UN Doc. E/CN.4/1996/68 (29 January 1996) 6-8 [hereinafter Ségui].

genocide and excluded cases of rape that took place in refugee camps where thousands of Tutsi women were abducted by Hutu extremists and considered as spoils of war and sexual slaves; (b) there were thousands of women who were killed during or after the rape process, while many other women and girls were too ashamed to report their cases, preferring to take the secret with them to the grave; and (c) according to the records of the Ministry of Health, there were two to five thousand pregnancies. If we agree to consider that of every one-hundred rape cases there may have resulted one case of pregnancy, based on medical statistics and physicians' assumptions, the actual number of rape cases would be between 200,000 and 500,000.¹⁰⁶

As has been explained in this analysis, wartime rape was an instrument of genocide in Rwanda. Victimized Tutsi women in addition to suffering psychologically trauma were often socially rejected by their families and communities. Like Bosnian Muslim and Kosovar Albanian women, Tutsi women met with a double jeopardy when they received a backlash from their families and communities. Those women who failed to obtain an abortion and were able to carry their pregnancies to term had another kind of suffering; delivering "children of shame" or "little *Interahamwe*." Besides the mutilation and torture suffered by sexually assaulted women, perpetrators also used the Human Immunodeficiency Virus (HIV) as a bio-terror and strategic weapon of war by letting infected Hutu militia members conduct rape on a large scale.¹⁰⁷

¹⁰⁶ L. Flanders, "Rwanda's Living Casualties," *Ms. Magazine* 8:5 (March-April 1998) 27 [hereinafter Flanders]; *The Men Who Killed Me*, *supra* note 88, at 11; *Rwandans' Death*, *supra* note 103 at 748; *The Rwanda Women and the Genocide*. Produced and Directed by Fulgence Kamali and TOR. Running Time 00:12:33. TOR, 1995. (*Videocassette*); Ségui, *supra* note 104 at 6-7.

¹⁰⁷ Employing rape as a weapon of war in armed conflicts could be viewed as a form of gender genocide and a virtual death sentence, particularly for women victims who had been deliberately infected with the HIV disease. An actual study reveals that approximately seven percent of the Rwandan people in general, and 67 percent of the Rwandan women wartime rape survivors in particular, were infected. Recently, the Sudani government accused the African Union (AU) peacekeeping troops in Darfur of raping and sexually assaulting many Sudani women and girls who have been infected as a direct result of this crime. A more recent study claims that the HIV infection rate among African military personnel and informal militias is 50

Concluding Remarks

As already noted, Yugoslav and Rwandan national and religious extremists, particularly Bosnian Serbs and Rwandan Hutu, successfully used nationalism, racism and ancient hatred to motivate mass killings and genocidal rape—both effective instruments of ethnic cleansing and mass destruction. The myths of land and blood, as well as ethnic hatred, governed the minds of the warlords in the former Yugoslavia and Rwanda when they decided to apply wartime rape to the task of devastating the fabric of their opponents' ethnic societies.

This chapter argued that wartime rape and other forms of sexual violence were used to shape the national and political identities of warring factions in the former Yugoslavia and Rwanda. During armed conflicts, rapists usually have different motives for assaulting the opponent's female population, including revenge, hatred and frustration. But Bosnian Serbs and Rwandan Hutu extremists utilized wartime rape instead as a strategic and political weapon of war, systematically and on a massive scale, to demoralise and terrorize victims and hound them from their homes. It demonstrated that the wartime rape of mainly Bosnian Muslim and Rwandan Tutsi women emerged as a powerful instrument of annihilation and a deliberate policy of ethnic cleansing.

times higher than its rate among African civilian populations. In this connection, it is estimated that 60 percent of the Congo combatants, and 70 percent of the Zimbabwean army are infected with this deadly disease. See *Backwards and Forwards: The Struggle for Justice, Father Wenceslas Munyeshyaka is Arrested and Released in France*, African Rights, Journal Witness to Genocide, Issue 1 (October 1995) 22-25 [hereinafter Backwards]; C. Chelala, "Rape as a Weapon of War: It Persists in Africa where HIV/AIDS Takes a Heavy Toll," *San Francisco Chronicle* (26 June 2005) F3 [hereinafter Chelala]; F. Nduwimana, *Le Droit de survivre: femmes, violence sexuelle et VIH/SIDA* [Right to Survive: Women, Sexual Violence and VIH/SIDA] (Montreal, Quebec: Rights & Democracy, 2004) 11 [ci-après Nduwimana]; Flanders, *supra* note 105, at 30; *HIV/AIDS and Democratic Governance in South Africa: Illustrating the Impact on Electoral Processes* (Pretoria: Institute for Democracy in South Africa, 2004) 78; *Joseph Ruyenzi: Prisoner without a Conscience*, African Rights, Journal Witness to Genocide, Issue 5, January 1997, 14 [hereinafter Ruyenzi]; Ségui, *supra* note 104 at 7.

Drawing a dynamic link between masculinity and nationalism, Bosnian Serb nationalists successfully used sexuality as a double edged weapon. They explored the use of gender as a weapon of mass destruction against Bosnian Muslim and Kosovar Albanian ethnic and religious groups by attacking women as guardians of their national ideology and culture. On the other hand, they knew how to employ historical and religious myths to awaken Serbian women's national feelings and encourage them to produce combatants, and how to sacrifice them in the cause of creating "Greater Serbia," their national "mother-homeland."

Similarly, Hutu extremist leaders stirred up racial stereotypes created as a result of the European colonial system that heightened the differences between Rwandan's two major ethnic groups. These stereotypes, which represented Tutsi women as arrogant and more attractive than Hutu women, were reflected in the Akayesu's provocative statement, inciting his *Interahamwe* associates: "never ask me again what a Tutsi woman tastes like!" These words inspired the Hutu militiamen and gendarmes to utilize rape and other forms of sexual violence as a political weapon of war to dehumanize Tutsi women and undermine the social foundations of their families and communities.

Towards this end, it is worthwhile to mention here that this heinous crime and other forms of gender-based atrocities were committed in the face of an international conspiracy of silence and the abject failure of the international community to prevent or stop the war—a point that will be critically discussed in chapter five of this analysis.