THE SHAME OF IT: GENDER-BASED TERRORISM IN THE FORMER YUGOSLAVIA AND THE FAILURE OF INTERNATIONAL HUMAN RIGHTS LAW TO COMPREHEND THE INJURIES

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Inequality on the basis of sex, women share. It is women’s collective condition. The first task of a movement for social change is to face one’s condition and name it.¹

The concept of human rights, like all vibrant visions, is not static or the property of any one group; rather, its meaning expands as people reconceive their needs and hopes in relation to it.²

INTRODUCTION

The deliberate use of rape as a weapon of war was³ a central strategy in the Serbian effort to seize and maintain territorial control in the former Yugoslavia.⁴ Although the Serbian policy of “ethnic cleansing”⁵ included the use of concentration

4. Although all sides committed rape during the war, the Serbian military began this systematic strategy of rape and were the principal aggressors. See Laurel Fletcher et al., Human Rights Violations Against Women, 15 WHITTIER L. REV. 319, 322 (1994) (reporting that systematic rape was practiced only by Serbian forces); see also Ivana Nizich, Violations of the Rules of War by Bosnian Croat and Muslim Forces in Bosnia-Herzegovina, 5 HASTINGS WOMEN’S L.J. 25, 25 (1994) (describing Serbia’s human rights violations in Bosnia and Croatia as primary strategy for maintaining territorial control). Therefore, I routinely will refer to the aggressors as Serbian and to the victims as Bosnian and Croatian.
5. “Ethnic cleansing is a formal domestic policy of removing ‘undesirable’ minority populations from a given territorial unit on the basis of religion, ethnicity, political affiliation, or ideology to create homogeneity in the larger population.” Karl Arthur Hochkammer, Note, The Yugoslav War Crimes Tribunal: The Compatibility of Peace, Politics, and International Law, 28 VAND. J. TRANSNAT’L L. 119, 120-21 n.4 (1995) (citing Andrew Bell-Fialkoff, A Brief History of Ethnic Cleansing, FOREIGN AFF., Summer 1993, at 110). “Ethnic cleansing” is the term used to refer to the Serbian effort to eradicate other ethnic groups during their conquest of physical territory. See, e.g., Christopher C. Joyner, Enforcing Human Rights Standards in the Former Yugoslavia: The Case for an International War Crimes Tribunal, 22 DENV. J. INT’L L. & POL’Y 235, 250-51 (1994) (describing Serb tactics of “ethnic cleansing” such as torture, rape, summary executions, mass arrests, and property destruction); Nizich, supra note 4, at 52 (asserting that goal of Serbian war effort was physical territory and that primary weapon used to consolidate territorial gains was “ethnic cleansing”); Elissavet Stamatopoulou, Women’s Rights and the United
camps, torture, the burning of entire villages, it was the use of rape as a weapon of war that captured the media's eye and the world's attention. The mainstream media have focused on rape, but many other gender-based crimes also have occurred, including forced pregnancy, forced motherhood, prostitution, and spousal and familial abuse. As a result of these crimes, the victims have been ostracized socially, further prostituted, and some have attempted or committed suicide. In the process of voyeuristically sensationalizing the rape of thousands of women,
many media have failed to contextualize these crimes within the lives and within the culture of the survivors. The women interviewed have become objectified as "rape victims," rather than portrayed as the complete and multi-faceted women that they are—women suffering many kinds of injuries, only one of which is rape, and surviving. They have indeed become "a nameless, faceless group, victims with neither name nor identity."

At the same time, however, the fact that we learned of the systematic rape of women in this war almost simultaneously with its occurrence is significant. For the first time, the use of rape as a military strategy at least has been reported, even if reported incompletely. Warring states always have used the sexual terrorism of women to win wars, either by setting up brothels in order to boost

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16. A delegation sent by the International Human Rights Law Group to the former Yugoslavia in 1993 emphasized in its report that efforts to document the sexual victimization of survivors should place that violation in the broader context of the survivors' experiences, which may include other physical attacks, the loss of family members, and the destruction of their communities. See International Human Rights Law Group, supra note 8, at 104.

17. See Fletcher, supra note 15, at 76 (discussing Western journalists' tendency to "commodify" rape survivors); see also International Human Rights Law Group, supra note 8, at 104 (stating that journalists should not treat survivors as "women who have been raped"). As Maria Olujie recognizes, rape survivors are "further victimized" by their objectification under scrutiny. See Olujie, supra note 14, at 29. By objectifying rape survivors as Rape Victims, interviewers inadvertently may reinforce the survivor's own sense of shame and humiliation. See International Human Rights Law Group, supra note 8, at 110. As one concentration camp survivor stated, "Once again I feel like an object, but now in different hands. [The journalists] are stirring up the wounds in my soul. Our tragedies are their stepping stones in their careers." Olujie, supra note 14, at 25.

18. Olujie, supra note 14, at 22.

19. As Ivana Nizich has noted, "In Bosnia-Herzegovina, the world has watched, recorded, documented, and debated the violations taking place . . . ." Nizich, supra note 4, at 52. Nizich goes on to note correctly that despite the public nature of these abuses, the world did little to stop them. See id.; see also infra note 243 and accompanying text (discussing international community's reluctance to involve itself in this conflict).

20. One factor lending to the visibility of the use of rape in this conflict undoubtedly was the fact that the conflict was taking place in Europe, and that both the aggressors and the victims were white. See Copelon, supra note 5, at 198. By contrast, other modern uses of rape in war and military dictatorships, involving victims of color, such as in Haiti, Peru, Liberia, and Burma, have been virtually invisible. See id. For example, according to the leader of a United Nations study probing the plight of children in war zones, during the war in Rwanda, soldiers infected with the HIV virus from the Hutu tribe systematically raped women and girls from the Tutsi tribe, "the objective being to inflict a slow and lingering but certain death on the Tutsi."

Rape Used Increasingly as War Weapon, U.N. Says, REUTERS, Sept. 15, 1995 (quoting Graca Machel, leader of the United Nations study). Soldiers in Rwanda assaulted homes, hospitals, and refugee camps in search of Tutsi women and girls to rape. See Drago, supra note 10. Girls as young as five years old were raped, sometimes in front of a crowd. See id. Press coverage of the systematic use of rape in Rwanda, however, has been sporadic at best.

21. See U.N. EDUC., SCI., & CULTURAL ORG., INTERNATIONAL MEETING OF EXPERTS ON THE SOCIAL AND CULTURAL CAUSES OF PROSTITUTION AND STRATEGIES FOR THE STRUGGLE AGAINST PROCURING AND SEXUAL EXPLOITATION OF WOMEN 6 (March 1986) [hereinafter U.N.E.S.C.O. MEETING] (recognizing military brothels as oldest form of sexual manipulation on massive scale). One of the most egregious examples of the use of rape in war is the "rape of Nanking." See Copelon, supra note 5, at 209 n.3 (explaining that Japanese forces brutally raped and killed
the morale of soldiers;\textsuperscript{22} by using the systematic rape of the “enemy’s women”\textsuperscript{23} as a direct weapon calculated to subjugate an entire community or group of people;\textsuperscript{24} or by raping to impregnate and, therefore, “taint” the bloodline of the enemy.\textsuperscript{25} In the past, however, these abuses were considered an inevitable part of war.\textsuperscript{26}

\begin{itemize}
  \item Nanking citizens for several months with 20,000 women raped during first month).
  \item During World War II, for example, 200,000 to 400,000 Korean, Chinese, Filipino, Indonesian, and Dutch women were forced by the Japanese government to be “comfort women” for the Japanese troops. See Copelon, supra note 5, at 197. These so-called “comfort women” were moved from battlefield to battlefield to motivate and reward the Japanese soldiers. See id. One survivor reports that she was forced to provide sex to approximately 30 men a day throughout the war. See Elisabeth Rubinfield, Women of Sorrow, NEWSDAY, Aug. 13, 1995, at 33.
  \item The German military also forced thousands of women into brothels during World War II. See Nora V. Demleitner, Forced Prostitution: Naming an International Offense, 18 FORDHAM INT’L L.J. 163, 181 (1994). Similarly, members of the U.S. military raped Vietnamese women and established brothels for their soldiers during the Vietnam War. See Copelon, supra note 5, at 204-05.
  \item Although many observers label these practices “prostitution,” it also is accurate to call them “systematic rape,” particularly in the case of the “comfort women,” as the women were unable to leave and were forced to have sex with the soldiers. As Kathleen Barry recognizes, “Rape as a military strategy and as personal outlet, is inseparable from prostitution, especially when one considers countless naive, poor girls from the countryside of Paraguay, Vietnam, Thailand, Laos . . . for whom prostitution would have remained unknown had the demands of the military not brought them into the cities and onto the bases.” BARRY, supra note 13, at 75.
  \item See Copelon, supra note 5, at 198 (“In Bosnia, they are raping the enemy’s women.” (quoting Sonya Live (CNN television broadcast, Jan. 26, 1993))). Of course, as Copelon points out, women are targets not only because they “belong to” the enemy, but also because they are the enemy. See id. at 206. Women keep the civilian population functioning and are essential to its continuity. See id. Therefore, they are targeted both because of their role in the community and because they “belong to” the men.
  \item See Bunch, supra note 2, at 492-93 (discussing Bangladeshi women raped during Pakistan-Bangladesh war); Copelon, supra note 5, at 209 n.7 (discussing United Nations Mission finding that raping Haitian women identified as Aristide supporters was “an integral part of the political violence and terror” against Aristide supporters); Sima Wali, Human Rights for Refugee and Displaced Women, in WOMEN’S RIGHTS, HUMAN RIGHTS, supra note 5, at 335, 338 (discussing Thai strategy of raping Vietnamese women in front of family members to humiliate and shame victims). In her article, Rhonda Copelon also refers to the Russian rape of German women at the end of World War II to destabilize the German citizens and to break their resistance. See Copelon, supra note 5, at 204.
  \item In Ecuador, the systematic rape of indigenous Yuracruz women was used in a manner similar to the way the Serbian troops used rape against Bosnian and Croatian women: to “cleanse” the land by terrorizing and shaming women into fleeing their homes, families, and communities. See id. An international agribusiness company hired mercenaries to rape an estimated 50% of the Yuracruz women. See id. at 198. For a more complete discussion of the manner in which rape has been used to subjugate entire communities in Croatia and Bosnia, see infra notes 41-86 and accompanying text.
  \item See Copelon, supra note 5, at 197, 205 (referring to estimated 200,000 Bengali women raped by Pakistani army to lighten their race and to produce class of outcast mothers and children). For a more complete discussion of the use of forcible impregnation in the former Yugoslavia, see infra notes 97-107 and accompanying text.
  \item See Copelon, supra note 5, at 197 (“When war is done, rape is comfortably filed away as a mere and inevitable ‘by-product,’ a matter of poor discipline, the inevitable bad behavior of soldiers rewound, needly, and briefly ‘out of control.’”). As Fionnuala Ni Aolain states: Nothing that has occurred in the geographical location which was Yugoslavia is new for women. The sole distinguishing feature of this conflict, and the impetus for the War Crimes Tribunal created in May 1993, is the international media attention that has
Indeed, despite the thousands of women raped and prostituted during World War II,27 Vietnam,28 and the Bangladesh-Pakistan War,29 no one ever had been tried for rape as a war crime until this conflict.30

The public nature of the terrorism of women in the former Yugoslavia, then, is unique, affording us the opportunity to examine its dimensions and its consequences. To appreciate fully what the women have endured and what the men have done, it is imperative that the whole story be told and that the sexual terrorism in all of its manifestations be revealed. In addition, we must identify the ways in which international law fails to comprehend the gendered nature of these injuries,31 obscuring "who is doing what to whom"32 in order to protect the patriarchal structure of international law. Having described fully the injuries specific to this conflict and the failure of

placed victims and their suffering directly on the front pages of Western newspapers and the television screens of millions.


27. See Copelon, supra note 5, at 204; Demleitner, supra note 22, at 181.

28. See id. at 205.

29. See Bunch, supra note 2, at 480, 492-93.


In Bangladesh, amnesty was traded for independence. See Copelon, supra note 5, at 197. It was feared that the same would happen in the former Yugoslavia. See International Human Rights Law Group, supra note 8, at 100 (discussing reasons to oppose any political settlement in former Yugoslavia that would grant amnesty for human rights violators). In the Peace Agreement signed by the parties on December 14, 1995, all parties to the conflict in the former Yugoslavia agreed "to cooperate in the investigation and prosecution of war crimes and other violations of international humanitarian law." 1995 Peace Agreement, supra note 3, at 90. Because the Statute of the Tribunal contains no provisions for obtaining custody of the accused, such cooperation is crucial if many of those indicted for war crimes are ever to be brought to justice. See Hochkammer, supra note 5, at 153-54 (stating that Statute of the Tribunal contains no provisions for obtaining custody of accused, but rather relies solely on cooperation of combatants). In the past, one party's unconditional surrender has been a condition precedent to the successful prosecution of accused war criminals. See id. at 122. The International Tribunal for the Former Yugoslavia represents the first attempt by a non-combatant—the United Nations—to try individuals for crimes committed during a war in which there was no clear victor. See id.


32. MacKinnon, supra note 6, at 65.
international law to address these injuries, we then can extrapolate from this analysis the ways in which international law fails to comprehend injuries specific to women both in times of war and in times of so-called peace. Finally, we must begin to reformulate international human rights law in order to address the absence of women’s real experiences from its protection.

I. THE TERRORISM OF WOMEN IN BOSNIA-HERZEGOVINA

Muslim and Croatian women and girls are raped, then murdered, by Serbian military men, regulars and irregulars, in their homes, in rape/death camps, on hillsides, everywhere. Their corpses are raped as well. When this is noticed, it is either as genocide or as rape, or as femicide but not genocide, but not as rape as a form of genocide directed specifically at women. . . . Or, in the feminist whitewash, it becomes just another instance of aggression by all men against all women all the time, which is rape by some men against certain women. The point seems to be to obscure, by any means available, exactly who is doing what to whom and why.33

As Catharine MacKinnon emphasizes in this quotation, it is imperative that any discussion about the sexual terrorism of women in the former Yugoslavia begin by placing the violations in the context in which they have occurred. For too long, women and gender-based crimes have been absent from international human rights discourse.34 The experiences of women victimized in war have been recognized only to the extent that those experiences are similar to the experiences of men victimized in war.35 Therefore, our first task is to describe the injuries suffered by the women in the former Yugoslavia and, in particular, the ways in which these injuries are gender specific. By elucidating the gender-specific nature of many of the crimes committed against women, we then will be able to examine the law’s failure to comprehend these injuries.

33. Id.
34. See Charlotte Bunch, Transforming Human Rights from a Feminist Perspective, in WOMEN’S RIGHTS, HUMAN RIGHTS, supra note 5, at 11, 13 (noting that dominant definitions of human rights pertain primarily to violations that men who first articulated concept most feared and, therefore, exclude much of women’s experiences). Bunch details specific excuses offered by governments and human rights organizations for excluding women’s rights: gender equality is not important; the abuse of women is a privilege, not a political issue; women’s rights are not a human rights issue; and women’s subordination is too pervasive for human rights to address effectively. See Bunch, supra note 2, at 488.
35. See MacKinnon, supra note 6, at 70 (discussing male paradigm in international law and its exclusion of women’s injuries). For a more complete discussion of the exclusion of gender-specific injuries in international human rights law, see infra notes 211-58 and accompanying text.
There also is a danger, referred to by MacKinnon as the "feminist whitewash," in focusing too completely on gender such that we deny the conflict-specific details that are unique to these women's experiences. It is the unique characteristics of their victimization that enable us to place their experiences into the context in which they have lived. In the end, our goal should be to "recognize situational differences without losing sight of the commonalities."

The sexual terrorism endured by the women of the former Yugoslavia involved several distinct injuries to be described in the sections that follow. Although each injury suffered was distinct, some or all of these injuries combined to create the experience of each female victim of the war. Jasmina Kuzmanovic, tells the story of one seventeen-year-old whose experience illustrates the manner in which many female victims of ethnic cleansing simultaneously experienced different types of gender-specific injuries:

I met Marijana in a hospital in Zagreb. Her doctor told me she had arrived from Bosnia three days earlier. Though our interview was difficult, seventeen-year-old Marijana was beyond tears: dry, tense little face, child's body. She didn't exactly tell me what had happened; I had to coax the words out of her one by one. One day in April, Serb irregulars came to the village near Tesanj, in Central Bosnia, where Marijana, a Muslim-Croat, lived with her family. Marijana, her mother, and her seven-year-old sister were tending their vegetable garden. The soldiers raped Marijana and her mother there, then loaded Marijana on a truck, along with twenty-three other women from the village. This was the last time she saw her mother or her sister. Raping continued on the truck. The soldiers took the women to an improvised camp in the woods that operated as a military brothel. Women between the ages of twelve and twenty-five were kept in one room and raped daily. Marijana became pregnant in the first month. After four months, the soldiers let her and seven other visibly pregnant women go. Marijana says, "They told us to go and have our Serbian babies."

36. MacKinnon, supra note 6, at 65.
37. As Julie Mertus and Pamela Goldberg state:
   At times, gender must be singled out as an important factor if only to compensate for the failure of the international human rights community to recognize the human rights of women after so many years. Yet, though separating the gender aspect may prove politically advantageous, we cannot allow women's lives to be compartmentalized, excluding some while privileging others in the process. . . .
   In developing . . . an integrated approach, we must guard against the "add woman and stir" formulation.

38. Id.
Marijana's face was empty, and she had trouble speaking. The only time she became agitated was when asked about the delivery. "I will not give birth," she said with determination. That conviction seemed to be the only thing keeping her on this side of the precarious line of mental health. But her doctor told me they would not be able to perform an abortion, since Marijana had long since passed into the second trimester of pregnancy. Nobody in the hospital had dared to tell that to Marijana.39

In order to ensure that the entirety of the victims' experiences is acknowledged and addressed, we must begin by recognizing the absolute connection between all of the manifestations of sexual terrorism. From the victims' perspective, it is impossible to separate their experience of rape from their experience as tortured women, starved women, prostituted women, forcibly impregnated women, women forced into motherhood, and women persecuted because of their nationality, ethnicity, or gender. Each of the individual practices used to terrorize the women in this war combines to create a whole of sexual terrorism that equals far more than the sum of its individual parts.40 To recognize one manifestation but not another is to treat each injury as if it is dissociated from the others and to obscure their related effects. We begin, then, with a description of the sexual terrorism endured by the women of the former Yugoslavia.

A. Rape as a Strategy of War

This is ethnic rape as an official policy of war . . . . It is rape under orders: not out of control, under control.41

The victimization of the women in the former Yugoslavia begins with rape: not isolated incidents of soldiers gone astray, but rather a carefully conceived and effective war strategy of the systematic rape of thousands of women.42 Current estimates are that tens of thousands of women were raped as part of the Serbian war effort.43 The

41. MacKinnon, supra note 6, at 65-66.
42. See Copelon, supra note 5, at 204 ("The rape of women is a weapon of war where it is used to spread political terror ...."); Fletcher et al., supra note 4, at 520 (describing rape as "a tool of war").
43. See World News Tonight: Rape Used as Weapon in Bosnian War (ABC television broadcast, Sept. 6, 1995) (reporting that according to United Nations investigators, more than 20,000 rapes were committed); see also Joyner, supra note 5, at 252 (reporting estimate of 1000 women impregnated as result of rape).
victims’ ages ranged from six to eighty-one, and the rapes were condoned by, ordered by, and committed by commanding officers. When entering a village to be seized, one of the first actions typically taken by the Serb aggressors was to rape publicly several women thereby forcing the Croatian or Bosnian population to flee:

Serb paramilitary units would enter the village; several women would be raped in front of others so that word spread and a climate of fear was created. Several days later, Yugoslav Popular Army officers would arrive offering permission to the non-Serb population to leave the village; male villagers who had wanted to stay then decided to leave with their women and children in order to protect them. The rapes were committed in front of as many as two hundred witnesses, including children. As a result, the raped women became constant reminders to the entire community, their families, and themselves of Serbian suppression and domination.

In addition, the rapes often were committed by men familiar to the women: "They raped everyone, young and old, from 10 to 70 years of age. They came at all hours of the night, calling our names. They were our neighbors. They knew our names." Because this war was an ethnic war that literally divided communities in half, neighbors raped neighbors, colleagues raped colleagues, and persons considered friends before the war raped "friends." In addition, as Rhonda Copelon recognizes, "Because rape is a transportation of the intimate into violence, rape by acquaintances, by those who have been trusted, is particularly world-shattering and thus is a particularly effective

46. International Human Rights Law Group, supra note 8, at 95; see also Joyner, supra note 5, at 252 (stating that attacking Muslim towns and villages and publicly raping women were weapons of war intended to force families to leave their homes).
47. See Fletcher et al., supra note 4, at 320.
48. See Olujie, supra note 14, at 26; see also Mark R. von Sternberg, Per Humanitatem Ad Pacem: International Humanitarian Norms as a Jurisprudence of Peace in the Former Yugoslavia, 3 CARDOZO J. INT’L & COMP. L. 357, 372 (1995) (“The [rapists] seek[] to exploit the victim’s sense of shame and humiliation, and, to achieve this effect, the act of rape often took place in public or before close relatives—such as the victim’s children.”).
49. See Copelon, supra note 5, at 202, 205.
50. World News Tonight, supra note 43.
51. See Copelon, supra note 5, at 202.
method . . . of ethnic cleansing. Thus, in addition to the injury of sexual violation, the women of the former Yugoslavia experienced the additional trauma and overwhelming sense of betrayal associated with sexual violation by persons previously trusted.

Once the town was secured, women and men were separated. The women and children then were taken to a detention facility, and the rapes continued. A mission sent by the European Community to investigate the treatment of Muslim women in the former Yugoslavia concluded that rape was not incidental to the main purpose of the aggression; rather, it was perpetrated as a strategic purpose in and of itself. Rape was used as part of a carefully conceived plan to terrorize entire communities, driving them from their homes and demonstrating the power of the invading forces.

52. Id.; see also Charlesworth et al., supra note 31, at 629 (describing violence within home as most pervasive and significant violence sustained by women); Donna Sullivan, The Public/Private Distinction in International Human Rights Law, in WOMEN'S RIGHTS, HUMAN RIGHTS, supra note 5, at 126, 127 (asserting that family is source of many of most egregious violations of women's physical and mental integrity).

53. See Fletcher et al., supra note 4, at 320.

54. See Brandt, supra note 45, at 1420-21. Several survivors of these detention facilities have filed two class action law suits in the United States against Radovan Karadzic, head of the "Bosnian-Serb Republic" and leader of the Bosnian-Serb military forces, alleging multiple tortious acts in violation of international and state law. See id. at 1435-37 (discussing law suits). Specifically, these suits allege acts of rape, forced pregnancy, forced prostitution, forced maternity, torture, summary execution, and cruel and inhuman or degrading treatment. See id. at 1440. One plaintiff describes in her Complaint being raped ten times daily for twenty-one days. See id. at 1413. Another describes being raped while imprisoned in a Bosnian-Serb concentration camp and then having her breasts slashed by one of the soldiers. See id. A third plaintiff describes being beaten while she watched Bosnian-Serb soldiers rape her mother. See id. at 1413-14.

The district court dismissed the suits against Karadzic, citing a lack of jurisdiction to remedy individual acts of torture under the Alien Tort Claims Act, 28 U.S.C. § 1350 (1994); the Torture Victims Protection Act of 1991, id.; and the implied right of action under 28 U.S.C. § 1331 (providing district courts with "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States"). See Doe v. Karadzic, 866 F. Supp. 734, 740-41 (S.D.N.Y. 1994). Finding no federal cause of action, the court declined to find supplemental jurisdiction to decide the state claims raised by the plaintiffs. See id. at 743-44.

On appeal, the Second Circuit reversed and remanded, holding that jurisdiction existed under the Alien Tort Claims Act and that plaintiffs alleged violations of the law of nations actionable under that Act. See Kadic v. Karadzic, 70 F.3d 232, 244 (2d Cir. 1995), cert. denied, 116 S. Ct. 2524 (1996).

55. See Joyner, supra note 5, at 252. For a more thorough discussion of the Muslim culture in the Balkans and its effect on the women who have been raped, see discussion infra notes 60-63 and accompanying text.

56. More than 2.1 million people were displaced or became refugees as a result of this war. See Conclusions of the Peace Implementation Conference Held at Lancaster House, London, Dec. 8-9, 1995, 35 I.L.M. 223, 230 (1996).

57. See Joyner, supra note 5, at 252; see also International Human Rights Law Group, supra note 8, at 94-95 (reporting use of rape to humiliate entire community). One commentator goes even further, concluding that rape is the "essence of this war." Stephen Schwartz, Rape as a Weapon of War in the Former Yugoslavia, 5 HASTINGS WOMEN'S L.J. 69, 70 (1994). Although I am
In order to understand fully both the purpose and the effect of these rapes, however, we must appreciate the significance of rape within the cultures of the former Yugoslavia. Within these cultures "honor" is paramount and shame results from a loss of honor. Although both men and women are bound to be honorable, women are the objects through which men's honor is determined. Any time a woman has sex outside marriage, the men related to that particular woman temporarily lose their honor. The woman, on the other hand, permanently loses her honor. The men affected by the loss may be the woman's husband, her father, or her brother. Thus, dishonor brought about by a woman's sexual activity reflects upon the entire family.

The conditions under which a woman's honor is lost are irrelevant. The loss of honor, therefore, is no less real or significant because the sex outside marriage was the result of rape. The resulting loss of honor brought upon a man by a woman's sexual activity outside marriage is the same and the consequences for the woman are the same:

Inclined to agree with this view, I am not comfortable with his statement that "[t]he Serbian intention has been to rape whole cultures, to rape women and men, to rape social relationships going back five hundred years, to rape religion and art." Id. This statement uses the term "rape" in a manner that denies the element of sex in rape as experienced by Bosnian women. Central to the injury for Bosnian women (and all other women who are raped) is not only that they have been violated, but that they have been sexually violated by men. Because of the terrorism that all women experience as a result of the pervasiveness of the rape of women by men in all cultures, the experience of men in rape or of communities subject to the destruction of spiritual monuments cannot be equated to the systematic rape of thousands of women. As Kathleen Barry states in making a similar point with regard to prostitution, "The sex-power relationship between men and women makes male prostitution quite a different practice than female prostitution. The victimization and enslavement to which women are subject in male-dominated society find no equivalent in male experience." BARRY, supra note 13, at 11.

See BARRY, supra note 13, at 179 (describing how honor defines system of morality in Mediterranean cultures); International Human Rights Law Group, supra note 8, at 108 (explaining that cultures of former Yugoslavia attach particular stigma to rape, resulting in feelings of shame for rape survivors).

My use of the term "object" is deliberate. Because distinctions among women and the circumstances behind their "dishonor" are not recognized within the honor/shame construct, women serve merely as the vehicles of honor or dishonor, and their humanity is ignored.

Kathleen Barry discusses this concept of honor as it relates to Mediterranean cultures. As Barry recognizes, "[T]he significance [of honor] lies in the social recognition of others, how [the individual] is seen in others' eyes." BARRY, supra note 13, at 179.

Kathleen Barry explains the two different types of honor in Mediterranean cultures: men are bound by a flexible concept of honor called sharaf, and "women are bound to a specific, inflexible honor, 'ird, which determines their proper conduct and upon which men's honor, sharaf, depends." Id. at 180. When virginity is lost outside marriage, the woman permanently loses her 'ird and the man whose honor is affected by that woman temporarily loses his sharaf. See id. at 180-81. When he avenges that loss, his honor is restored. See id. at 181.

See id. at 181-82.

See id.

See id. at 181. This honor/shame construct assumes female guilt and responsibility regardless of the objective circumstances of the sexual activity. See id.
[A]fter my release from a concentration camp I... underwent one medical examination. . . . Because of all the fear I have not told the doctor what was really the matter with me. . . . After [a] couple of days . . . my uncle came to pick me up. Immediately after greeting me he told me that he would prefer to kill me now. Because of his rudeness I did not tell my family about anything that happened to me. Even so, after twenty days they kicked me out.65

For Bosnian women, the consequences of these rapes have been severe. There have been several reports of women being abused violently by their spouses after revealing that they had been raped.66 Similarly, women who have come forward and testified publicly about being raped have been ostracized from the refugee camp where they had been living.67 The other residents reportedly did not want their refugee camp to be seen as a "rape victims" camp.68 Maria Olujie reports that husbands have killed or abandoned their wives, young unmarried women have been disowned by their families, women of all ages are kept from suicide only by sedatives, and others have been driven crazy by their experiences and the pressure to maintain silence about those experiences.69

How can a man react to the rape of his wife in a culture where female honor depends on her chastity? If he believes that she had sex with another, whether by force or not, he must reject her to salvage his own male pride. To whom will the woman be able to tell her story? To no one. If she was lucky and did not get pregnant, she will bury her story inside of her to spare her family the dishonor. Anything that forces her to be public will be her further tragedy.70

In addition to the belief that a woman’s chastity determines her honor, "soil" and "blood" are metaphors for male honor in these cultures.71 To Serbian aggressors, occupying a woman’s uterus is synonymous with occupying physical territory.72 Rape is used to "pollute and water down" the bloodline, and through the use of rape, the Serbs “can violate not only the territory (‘soil’) but [also] the

66. See International Human Rights Law Group, supra note 8, at 103, 110; Fletcher et al., supra note 4, at 321.
67. See International Human Rights Law Group, supra note 8, at 108; Fletcher et al., supra note 4, at 321.
68. See International Human Rights Law Group, supra note 8, at 108; Fletcher et al., supra note 4, at 321.
69. See Olujie, supra note 14, at 25.
70. Id.
71. See id.
72. See id. at 26.
bloodlines” of the Bosnians and Croatians, exacerbating the humiliation of the loss.75

In Croatia, to become weaker means to become feminized—"to make a pussy out of a man."74 When Serb forces burned and pillaged villages around Dubrovnik, they left signs on the burnt houses, asking, "Where are you now Utasha pussies?"75 Additionally, the rape of Croatian women symbolizes the castration of Croatian men by the Serb forces.76 Because the public admission of rape means admitting to be weaker than the perpetrators, the silence of Croatian women about the rapes saves the honor of Croatian men.77

Survivors of rape in all cultures experience an overwhelming sense of shame and self-blame.78 The sense of shame, however, is particularly acute for survivors of rape in the former Yugoslavia, where culture attaches a particular stigma to rape.79 For example, after journalists visited a group of thirty-eight women in a refugee center and recorded their stories, seven of the women who had survived the worst aggression and violence committed suicide.80 Many other women are kept from suicide only by sedatives.81 As a result of family and community pressure to keep silent, accounts of rape have come predominantly from women who were isolated from these pressures.82 Almost all of the stories have come from divorced women, widows, or unmarried women who do not have to contend with outraged husbands or other family members.83

73. Id. (discussing rape used to impregnate forcibly).
74. Id. at 27. In the Croatian language "napraviti pizu od muskarca" is used to describe the weakening of a man in terms of his becoming like a woman; it literally means "to make a pussy out of a man." Id. 75. In the Croatian language the expression is "Gdje ste sada Ustaske picke?" Id. Utashi were Croatian extremists during World War II. See id.
76. See id.
77. See id.
79. See International Human Rights Law Group, supra note 8, at 108.
80. See Olujie, supra note 14, at 29. In her discussion of the honor construct in Mediterranean cultures, Kathleen Barry notes that the traditional method of restoring honor is through suicide. Barry, supra note 13, at 182. If the woman does not commit suicide, a man defends her honor by killing both the dishonored woman and the male responsible for her dishonor: "Crimes of honor represent the ideal of patriarchal values, the male fantasy of what the perfect society would be like if women were completely subdued." Id.; see also Wali, supra note 24, at 338 (describing how some communities "cleanse" themselves by allowing "honor" killing of rape victims).
81. See Olujie, supra note 14, at 23.
82. See id.
83. See id.
The Serbian forces who committed these mass rapes were well aware of the cultural significance of the rape of women in these cultures. They knew when they began their campaign that the systematic rape of Bosnian and Croatian women would be a particularly effective weapon in their effort to dominate, humiliate, and completely subjugate the women, their families, and their communities. It is because of the significance of rape that its use was so successful in inflicting a reign of terror on an entire ethnic group and thereby consolidating the territorial gains made by the Serbian soldiers. In addition, because the rapes were condoned and even ordered by superiors, soldiers had unfettered access to sex, maintaining and furthering their feelings of superiority and domination. As a result of the Serbs' use of systematic rape, in particular, and ethnic cleansing, in general, nearly two-thirds of Bosnia was put under Serbian control.

B. Concentration Camps as Brothels

In addition to the rapes committed by soldiers in front of relatives and community members, Serb forces interned many of the raped women in concentration camps where the sexual brutalization continued. Although it is not clear how many women were interned in these camps, it is clear that the purpose of these camps was the same purpose served by all brothels near military personnel during times of war: guaranteed access to native women. Women imprisoned in these camps were raped, and raped, and raped again. Many also were raped and then murdered.

Some readers may object to use of the term "brothel" to describe these camps, as "brothel" implies prostitution that allegedly is distinct from rape. These camps functioned as brothels, however, in that

84. See Nizich, supra note 4, at 52 (stating that war in former Yugoslavia is war for territory in which "ethnic cleansing" is primary weapon used to consolidate territorial gains).

85. The indictment of Zeljko Meakic, for example, states that he was in a position of authority at the Omarska death camp in the Prijedor region and that he gave orders that resulted in murder, torture, and rape. See Gregory Katz, War-Crimes Prosecutors Express Hope; Aim Is to Stop Repeats of Rwanda, Bosnia Horrors, DALLAS MORNING NEWS, Mar. 27, 1995, at 1A.

86. See Joyner, supra note 5, at 250-51.

87. See MacKinnon, supra note 6, at 66 (acknowledging existence of concentration camps functioning as brothels); see also Fletcher et al., supra note 4, at 320 (referring to detention facilities in which women and children were raped repeatedly); Kuzmanovic, supra note 59, at 57 (referring to improvised camp in woods operating as brothel); Olujie, supra note 14, at 25 (reporting on victim who survived concentration camp).

88. See supra note 39 and accompanying text (detailing story of 17-year-old taken to military brothel and raped daily along with other women between ages of 12 and 25 years old).

89. See Fletcher et al., supra note 4, at 320 (reporting that women were raped repeatedly during the time they were held); see also supra note 39 and accompanying text.

90. See MacKinnon, supra note 6, at 65.
their purpose was sexual access. In addition, to distinguish between repeated rape and the objective conditions of prostitution is specious.\textsuperscript{91} As Kathleen Barry notes, the only distinction between rape and prostitution is the element of time.\textsuperscript{92} With rape, the victim knows that there is a limited time during which she will be sexually brutalized. For the prostituted woman, there is no limit of time. The abuse can (and does) go on indefinitely: "[W]hen one foresees the probability of escape in ten minutes or ten hours, one will behave differently than if, in addition to all the torture and violence, there is no foreseeable probability of escape."\textsuperscript{93} In the case of the concentration camps, one nineteen-year-old girl reported that she was raped five or six times daily during her four-and-a-half month internment in a Serb-run detention facility in Bosnia—some 750 times total.\textsuperscript{94} As Rhonda Copelon emphasizes, the impact of rape is multiplied when it becomes sexual enslavement.\textsuperscript{95} The Serb forces used this impact to boost the morale of its soldiers who would feel more powerful and more invincible the more complete their domination was.\textsuperscript{96} The repeated rapes with no possibility of escape, then, describe another objective condition of the sexual terrorism women in the former Yugoslavia were forced to endure.

\textbf{C. Forced Pregnancy and Forced Motherhood}

Forced impregnation and motherhood is yet another facet of the sexual terrorism of the war in the former Yugoslavia. Although pregnancy can be expected to result from the massive rapes, the Serbian aggressors purposely attempted to impregnate women and to hold them as prisoners until it was too late to abort the fetus.\textsuperscript{97}

\begin{itemize}
  \item \textsuperscript{91} See Barry, supra note 40, at 19 ("Sex in prostitution is not unlike sex in rape. It exists for the taking.").
  \item \textsuperscript{92} See Barry, supra note 13, at 148-49.
  \item \textsuperscript{93} Id.
  \item \textsuperscript{94} See International Human Rights Law Group, supra note 8, at 109.
  \item \textsuperscript{95} See Copelon, supra note 5, at 202.
  \item \textsuperscript{96} See id.
  \item \textsuperscript{97} See Brandt, supra note 45, at 1421; Fletcher et al., supra note 4, at 920; Ohuje, supra note 14, at 26. Under domestic law women can obtain abortions as a matter of right within the first ten weeks. See International Human Rights Law Group, supra note 8, at 117. Between the tenth week and the sixth month of pregnancy women must obtain a certificate from a medical commission to obtain a legal abortion. See id. If a victim of forced pregnancy is released after the ten-week period but before the six months have expired, she must describe the circumstances of her impregnation to a physician before receiving an abortion. See id. Given the penalties for breaking the silence surrounding her abuse, see discussion supra text accompanying notes 65, 67, 70, a pregnant woman in this situation faces a classic "double bind" choice of forced motherhood or facing the wrath of a family who has been dishonored. For a discussion of the double bind construct within the oppression of women, see Marilyn Frye, Oppression, in THE POLITICS OF REALITY: ESSAYS IN FEMINIST THEORY 1-16 (1983).
\end{itemize}
Although it is impossible to know the precise statistics (especially given the veil of silence forced upon survivors), recent estimates are that approximately 1000 women were impregnated as a result of rape. Numerous survivors report that they were told by the aggressors, "you are going to have a chetnik [Serbian extremist] baby, and we will wipe out the Muslim blood" or "Now you'll have a Serb baby."

To appreciate the significance of these abuses, we must again consider the cultures of the Balkan region. Because "soil" and "blood" are metaphors for male honor and because occupying a woman's uterus is synonymous with occupying physical territory, forcible impregnation "pollutes" the Bosnian or Croatian bloodline with Serbian blood. The goal of making Muslim women bear "Serbian babies" reveals the patriarchal nature of these cultures in which the sperm determines ethnicity. Although the gender-specific nature of these crimes in particular cannot be denied, as only women are capable of conceiving and bearing children, the fact that the sperm is believed to be the sole determinant of ethnic identity further illustrates the crimes' gendered nature.

Although connected, the injuries caused by forcible impregnation and forced maternity are distinct: The expressed intent to make women pregnant is an additional form of psychological torture [to the rape itself]; the goal of impregnation leads to imprisoning women and raping them until they are pregnant; the fact of pregnancy, whether aborted or not, continues the initial torture in a most intimate and invasive form; and the fact of bearing the child in rape, whether placed for adoption or not, has a potentially lifelong impact on the woman, on her liberty, and on her place in the community.

Even under the best of circumstances pregnancy is invasive in terms of its effects on the mother's body. The experience of invasion is multiplied, however, when the pregnancy is the result of rape because the fetus represents the continued violation of the mother.

98. See, e.g., supra text accompanying notes 65, 67, 70.
100. Olujie, supra note 14, at 26.
101. International Human Rights Law Group, supra note 8, at 95; see also Fletcher et al., supra note 4, at 320; Copelon, supra note 5, at 205 (referring to commonly articulated goal of rapes to make Muslim women bear "Serbian babies").
102. See supra text accompanying notes 71, 72, 73.
103. See Fletcher et al., supra note 4, at 320.
105. See id.
Similarly, after birth, the presence of a child who is the product of rape serves as a constant reminder to the woman, her family, and her community of the sexual torture endured by the mother and the domination perpetrated by the Serbs. Not surprisingly, many of the women impregnated as a result of rape experience feelings of disgust and revulsion toward their pregnancies and the children they bear, frequently leading to the rejection of these children following their birth. Those who do not reject their children must raise and care for a child they were forced to bear. As those who raped the women often expressed their intent to force the women to have a Serb baby, mothers of such children are forced to raise the intended symbol of their domination. Regardless of whether these women keep their children or not, however, they are dishonored forever by the public manifestation of their sexual impurity, a shame neither they nor their families can ignore.

D. Prostitution

Although prostitution already has occurred in the Serbian concentration camps, further prostitution of many of the victims of the sexual terrorism in the Balkans is inevitable. Although women become involved in prostitution under objective circumstances that differ, there are several conditions that are common to victims of prostitution. Where these conditions exist, prostitution will result, if not for all of those subject to the conditions, then certainly for some and probably for most.

The first of these objective conditions is social isolation. When women are isolated socially from their community and especially from their family, they are far more likely to be induced into prostitution than if they have maintained familial and community connections. At its international meeting of experts on prostitution in 1986, the United Nations Educational, Scientific, and Cultural

106. See id. (stating that bearing child of rape aggravates stigma of rape).
108. See supra notes 59-63 and accompanying text.
109. See supra text accompanying notes 87-88.
110. See infra notes 111-25 and accompanying text.
111. See BARRY, supra note 40, at 5 (“Distancing begins with separation of self from family, home, and worlds of social legitimacy.”); see also WORLD HEALTH ORG., STD CONTROL IN PROSTITUTION: REVIEW OF THE PROBLEM—INTERVENTION STRATEGIES (Oct. 1988) (recognizing social isolation as common condition of prostituted women’s lives).
112. See BARRY, supra note 13, at 89 (suggesting that girls or women who recently have been rejected by or who have run away from family are targeted by procurers for prostitution).
Organization ("U.N.E.S.C.O.") recognized that the displacement of refugee persons often results in prostitution.\textsuperscript{113}

The second objective risk factor is a history of incest or rape.\textsuperscript{114} U.N.E.S.C.O. has recognized that violence against women and children, particularly incest and rape, causes its victims to lose all consciousness of their bodily integrity.\textsuperscript{115} U.N.E.S.C.O. cites this loss of awareness as one of the reasons women who seem to be in a similar economic and social class take different paths—one into a life of prostitution and the other successfully avoiding such a fate: "[Sexual victimization] has been found to be the first step in the breakdown of a woman's identity, which is necessary to render the human body into a sexual commodity for economic exchange."\textsuperscript{116}

The third objective risk factor is economic deprivation.\textsuperscript{117} Although women as a group are poorer than men in every society, women at the lower end of the socioeconomic scale within a society are particularly at risk for being induced into prostitution.\textsuperscript{118} Women suffering economically believe, however falsely, that prostitution offers a way out of the economic destitution in which they find themselves.\textsuperscript{119} This belief is created and reinforced by the men who profit from their prostitution.\textsuperscript{120}

\begin{itemize}
\item \textsuperscript{113} See U.N.E.S.C.O. MEETING, supra note 21, at 11 (finding that displacement of refugee persons often is precursor of prostitution).
\item \textsuperscript{114} See BARRY, supra note 40, at 8 (citing studies finding clear connection between past sexual abuse, particularly rape and incest, and prostitution).
\item \textsuperscript{115} See U.N.E.S.C.O. MEETING, supra note 21, at 6.
\item \textsuperscript{116} Id. at 11.
\item \textsuperscript{117} See WORLD HEALTH ORG., supra note 111, at 4 ("Economic necessity and financial aspirations are most important reasons for entry into prostitution both in the developing and developed countries."); see also BARRY, supra note 13, at 89 (noting that girls and women targeted for prostitution are "likely to be broke and without job skills").
\item \textsuperscript{118} See BARRY, supra note 13, at 89.
\item \textsuperscript{119} Prostituted women do not benefit financially from their abuse: Prostitution is not the economic alternative for women that many have believed it to be. The money a woman makes is usually not her own. The pimp takes most or all of it. He tells her where to work, how many hours a day, and what quota she must make before coming home. Id. at 96.
\item \textsuperscript{120} See U.N.E.S.C.O. MEETING, supra note 21, at 6 ("[T]he patriarchal system, which is based on a double moral standard, facilitates the development of prostitution and strengthens its economic causes."). U.N.E.S.C.O. also recognized that government institutions and social services often implicitly accept prostitution as being "natural for some women, an economic alternative, a form of work." Id. U.N.E.S.C.O. challenges this assumption, stating that prostitution "constitutes a commodity exchange of the woman's body in which there is a profound objectification of women. The 'sex' that the customer purchases requires that the body of the woman become an instrument for men to use." Id. at 11. As a result of its defining prostitution in these terms, U.N.E.S.C.O. concludes that prostitution constitutes an assault against the dignity of women and a form of sexual violence. See id. U.N.E.S.C.O. explicitly rejects the notion that there is a distinction between "forced" and "voluntary" prostitution and, therefore, refuses to recognize prostitution as a profession. See id. at 8, 11.
\end{itemize}
Finally, we know that prostitution will result from the use of women for sex during a military conflict because it always has. The women that men no longer need after a war are often recycled from the military market to major cities where businessmen congregate and sailors dock. At its 1986 international meeting of experts on prostitution, U.N.E.S.C.O. recognized military brothels as "the oldest form of sexual manipulation on a massive scale" and cited war as one precursor for prostitution. As Kathleen Barry recognizes: "The colonization of women's bodies in war begins with massive raping. It culminates in sexual slavery.

From a brief analysis of the applicability of these objective factors to the life circumstances of the women in the former Yugoslavia, it appears that some, and probably many, of them will be prostituted now that the war officially has ended. With regard to the first factor of social isolation, the sexual terrorism they have survived virtually guarantees their isolation because their code of honor and shame requires it. Already, families and communities have rejected and ostracized women survivors, and now that the fighting has ended and women survivors are returning home, many more will suffer the same fate. The second risk factor—a history of incest or sexual victimization—applies to all of the survivors of Serbian sexual terrorism. Thus, in the aftermath of a war in which systematic and mass rape was an intentional war strategy, thousands of women are vulnerable to procurers of prostitution based on this risk factor alone. It also is inevitable that the women of the former Yugoslavia will continue to be deprived economically and, therefore, the third risk factor will apply to survivors as well. Not only will the economies of the nations likely be shattered as a result of years of war, but also many of the women will be ostracized by their families and communities as a result of their sexual dishonor. Taken together, the social isolation the women survivors will experience, their previous and repeated sexual violation, the economic hardship they will face, 

121. See BARRY, supra note 13, at 74-76 (citing examples of prostitution resulting from military conflict).
122. Id. at 76.
124. See id. at 11.
125. BARRY, supra note 13, at 75.
126. See supra text accompanying notes 65, 67, 70.
127. See supra notes 67-69 and accompanying text.
128. See discussion supra Part II.A.
129. The cultural consequences of rape in the former Yugoslavia mandate this result. See supra notes 65-70 and accompanying text (noting that rape victims are rejected by and unable to re-enter community).
and the fact that prostitution always results from the use of women for sex during military conflict mean that the women of the former Yugoslavia are particularly vulnerable to procurement into prostitution.

In addition to these risk factors, many women procured into prostitution are conditioned further for prostitution by their pimps or procurers before they are "turned out" for prostitution. Kathleen Barry refers to this process as "seasoning." "Seasoning is meant to break its victim's will, reduce her ego, and separate her from her previous life. All procuring strategies include some form of seasoning." As Barry explains the process, seasoning constitutes different practices for different victims. Some women, for example, submit to the demand that they prostitute themselves relatively quickly after they are made offers of affection and promises of love. If a victim resists, however, her procurer may beat her, rape her, sodomize her, drug her, starve her, or torture her in other ways in order to force her to submit to the prostitution.

For the women who are repeatedly raped, beaten, starved, and tortured in military brothels, the seasoning process has taken place by the time they are released from the brothel or concentration

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130. "Turning out" refers to the affirmative action on the part of the pimp of placing a prostituted woman on the streets, in a brothel, or in any other location where she is "available" for a customer, or "john." See BARRY, supra note 13, at 5. Being "turned out" is the final step in completely severing any ties the prostituted woman has with the larger community. See id. at 94 (stating that purpose of "turning out" is to "separate[] the woman from her past and focus[] her totally on the moment in time when she belongs to this man"). When women are "turned out," they almost always take a new name and get new identity papers, such as a driver's license and a birth certificate. See id. The new identity is particularly important in preventing the police from tracing her real identity and age, as many women are young girls when they first are "turned out." See id.

131. Universally and with few exceptions, prostituted women are procured into prostitution and controlled by pimps. See id. at 86. These women are targeted by men looking to profit financially from them and are induced or forced into prostitution. See id.

132. Id. at 87 ("A procurer's goal is to ... con girls or young women into dependency, season them to fear and submission, and turn them out into prostitution.").

133. Id. at 93.

134. See id. at 4-5.

135. See id. Barry rejects the notion that a woman who is procured through love is not victimized to the same extent as one procured through physical violence:

[T]he bias that makes forced prostitution invisible as a form of slavery comes from a tendency to focus on how a girl gets into it. If she is kidnapped, purchased, or fraudulently contracted through an agency or organized crime, it is easy to recognize her victimization. But if she enters slavery having been procured through love and befriending tactics, then few, including herself, are willing to recognize her victimization.

Id. at 11-12.

136. See id. at 5, 93.

137. See supra note 89 and accompanying text.
camp—that is, if they are not murdered first.\textsuperscript{138} For many of the female survivors of the Serbian concentration camps, their futures may be little better. As discussed previously, once released, the women inevitably face social and familial isolation,\textsuperscript{139} economic deprivation,\textsuperscript{140} and a seasoning process designed to break them.\textsuperscript{141} They will be courageous survivors,\textsuperscript{142} but ultimately their survival may well be within a life of sexual violence.\textsuperscript{143} When all of the risk factors are combined with the seasoning that already has occurred, another facet of the sexual terrorism inflicted on the women of Bosnia and Croatia is a future life of prostitution and sexual slavery.\textsuperscript{144}

\section*{E. Persecution Based on Nationality, Ethnicity, and Gender}

Although not usually considered separate identifiable injuries, persecution of the women in the former Yugoslavia because of their nationality, their ethnicity, and their gender also was part of the overall sexual terrorism waged by the aggressors.\textsuperscript{145} Although these bases for persecution are linked inextricably from the victim's perspective\textsuperscript{146} (after all, she lives in Bosnia-Herzegovina, is Bosnian-Muslim, and is a woman all at the same time), they nonetheless constitute distinct injuries in terms of their cumulative effect. For it is one injury to be targeted because of your nationality; it is another injury to be targeted because you are of the “wrong” ethnicity; and,

\begin{enumerate}
\item \textsuperscript{138} See supra note 90 and accompanying text.
\item \textsuperscript{139} See supra notes 111-13 and accompanying text (describing how social isolation may result in prostitution).
\item \textsuperscript{140} See supra notes 117-20 and accompanying text (asserting that economic deprivation may lead to prostitution).
\item \textsuperscript{141} See supra notes 130-36 and accompanying text (explaining seasoning process).
\item \textsuperscript{142} See BARRY, supra note 13, at 46-49 (discussing importance of understanding actions of survivors of sexual terrorism as methods of \textit{survival}, rather than as simple objects of victimization). “The limitations of victimism confuse active survival with complicity, making it difficult to understand why a woman thinks and acts the way she does.” \textit{Id.} at 49.
\item \textsuperscript{143} See \textit{id.} at 40, 43 (noting that escape of sexual oppression often is impossible because women lack empowerment to change their situation).
\item \textsuperscript{144} Kathleen Barry defines “female sexual slavery” as any situation “where women or girls cannot change the immediate conditions of their existence; where regardless of how they got into those conditions they cannot get out; and where they are subject to sexual violence and exploitation.” \textit{Id.} at 40.
\item \textsuperscript{145} See Copelon, supra note 5, at 205 (recognizing that Bosnian-Muslim women are persecuted based on multiple elemental aspects of identity).
\item \textsuperscript{146} See BARRY, supra note 40, at 9 (“Human dignity cannot be segmented by age, race, gender or nationality.”); Bunch, supra note 2, at 497 (“[M]ost women experience abuse on the grounds of sex, race, class, nation, age, sexual preference, and politics as interrelated . . . .”); Mertus & Goldberg, supra note 37, at 294 (discussing interwoven nature of multiple oppressions); Arati Rao, \textit{The Politics of Gender and Culture in International Human Rights Discourse, in Women's Rights, Human Rights}, supra note 5, at 167, 172 (discussing interwoven nature of multiple oppressions).
\end{enumerate}
it is yet a third injury to be targeted because you are a woman.\textsuperscript{147} The female victims of Serbian ethnic cleansing were targeted for each of these reasons.\textsuperscript{148} Given this combination of who they are, the crimes committed against them were tailored to have the most devastating effect.\textsuperscript{149} Although these three sources of oppression cannot be separated in terms of their effect on their victims, the international community must recognize that each injury constitutes a distinct part of the sexual terrorism perpetrated by the aggressors of this war.

II. INTERNATIONAL LAW AND SEXUAL TERRORISM IN THE FORMER YUGOSLAVIA

[T]here can be no confidence in post-war respect for human rights unless those who are responsible are brought under the rule of law.\textsuperscript{150}

Because the perpetration of human rights abuses was a principle weapon used to wage the Balkan war,\textsuperscript{151} the aggressors must be held accountable for their actions if human rights are to be respected in the future.\textsuperscript{152} It is, in fact, the impunity with which the Serbs were able to implement their policy of "ethnic cleansing" that led to the increased abuses by Bosnian Croat and Muslim troops,\textsuperscript{153} particularly because "ethnic cleansing" was an effective method of solidifying territorial gains.\textsuperscript{154} In addition, accountability is imperative for any lasting peace to be established in the Balkans,\textsuperscript{155} where at least some

\begin{itemize}
\item \textsuperscript{147} See Rebecca J. Cook, State Responsibility for Violations of Women's Human Rights, 7 HARV. HUM. RTS. J. 125, 133 (1994) ("The denial of women's human rights may be compounded by women's status as members of disadvantaged racial, religious, and socioeconomic groups.").
\item \textsuperscript{148} See supra notes 84-85 and accompanying text (discussing use of rape as tool of war, specifically implemented to dominate Serbian communities).
\item \textsuperscript{149} See supra notes 84-85 and accompanying text (noting that rape was used because of known cultural impact and its use was highly effective in impacting entire ethnic group). Even when women's rights are being violated for reasons other than gender, they often also experience a particular form of abuse based on gender. See Bunch, supra note 34, at 12.
\item \textsuperscript{150} International Human Rights Law Group, supra note 8, at 101.
\item \textsuperscript{151} See Nizich, supra note 4, at 26 (examining historical use of human rights abuses as element of Balkan war).
\item \textsuperscript{152} See id. (criticizing international community for lack of action to punish ethnic cleansing by Serbian forces).
\item \textsuperscript{153} See id. at 25. Nizich opines that because little action was taken against abuses by Serbian forces, both Croat and Muslim troops "saw fit to adopt similar measures [of ethnic cleansing] in pursuit of their military and political aims." Id.
\item \textsuperscript{154} See Joyner, supra note 5, at 250-51 (noting that ethnic cleansing not only killed thousands of Bosnian Muslims, but also displaced 1.5 million).
\item \textsuperscript{155} See International Human Rights Law Group, supra note 8, at 101 (stating that accountability must be established or "the cycle of retaliation will continue to spin out of control"); Nizich, supra note 4, at 52 ("Unless these abuses are stopped and redressed, peace will not come to the Balkans for decades.").
\end{itemize}
of the violence was patterned after specific atrocities committed by national groups during World War II. Finally, bringing to justice those who are responsible for the sexual terrorism is crucial to the physical and emotional recovery of the survivors:

Accountability is the first step toward restoring the moral and political order of the survivors' society. Participating directly in that process helps restore survivors' sense of control over their own destinies, while lifting their sense of shame and powerlessness. So, while silence may be necessary during the initial period of some survivors' trauma recovery, participation in rebuilding the moral foundation of their societies by establishing accountability for war-related atrocities may be critical to their longer-term recovery.

Any peace, then, must address human rights abuses, particularly the gender-based crimes, and allow the survivors of those crimes to participate directly in the process of bringing the perpetrators to justice.

As a matter of conventional international law, human rights abuses that have occurred in the former Yugoslavia will be prosecuted and adjudicated by an international criminal tribunal established by the United Nations Security Council "for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991." 

156. See International Human Rights Law Group, supra note 8, at 100 (describing World War II incidents during which residents of Bosnian-Muslim village crossed river to Serb village and burned 29 homes and recent reprisal when residents of same Serb village burned precisely 29 homes in Muslim village). With regard to a policy of ethnic cleansing in particular, the Croatian minister of education stated in 1941, "[O]ne-third of the Serbs we shall kill, another we shall deport, and the last we will force to embrace the Roman Catholic religion and thus meld them into Croats." Andrew Bell-Fialkoff, A Brief History of Ethnic Cleansing, FOREIGN AFF., Summer 1993, at 116.

157. International Human Rights Law Group, supra note 8, at 103. Rhonda Copelon makes a similar point when she states that it is not enough for rape to be recognized as a crime; rather, "those responsible for rape and related crimes must be charged and prosecuted . . . if the women of Bosnia are to be understood as full subjects, as well as objects, of this victimization." Copelon, supra note 5, at 207.

158. I emphasize gender-based crimes because so many of the crimes committed against the women in the former Yugoslavia were committed, at least in part, because they are women.

159. Currently, 74 persons have been indicted publicly by the International Tribunal for the Former Yugoslavia for war crimes, and three are in custody in The Hague. See Theodor Meron, War Crimes Tribunal is Failing, SAN DIEGO UNION TRIB., Jan. 26, 1997, at G1. At the time of this writing one of the seven has pleaded guilty and has been sentenced to ten years imprisonment; five are in custody awaiting trial; and one, Dusan Tadic, is on trial. See id.; see also Bruce T. Smith, Vengeance on Trial: Sadism in the Dock, THE FED. LAW., Jan. 1996, at 24 (discussing International Tribunal and trial of Tadic). None of the seven are top political or military leaders who gave the orders, however, and the future of the Tribunal is uncertain beyond the fall of 1997, when the judges of the Tribunal will complete their four-year terms. See Meron, supra, at G1.

This tribunal will be governed by the Statute of the International Tribunal,\(^\text{161}\) which gives the tribunal jurisdiction to prosecute four types of crimes: (1) grave breaches of the 1949 Geneva Conventions;\(^\text{162}\) (2) violations of the laws or customs of war;\(^\text{163}\) (3) acts of genocide as set forth in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide;\(^\text{164}\) and (4) crimes against humanity.\(^\text{165}\) Each of these crimes and its applicability to the gender-based crimes perpetrated against the women of the former Yugoslavia will be considered in turn.

### A. Grave Breaches of the 1949 Geneva Conventions

Under the 1949 Geneva Conventions, “only grave breaches are subject to universal jurisdiction . . . triggering the obligation of every nation to bring the perpetrators to justice and justifying the trial of some crimes before an international tribunal.”\(^\text{166}\) “Grave breaches” are defined as crimes committed against certain protected persons or property.\(^\text{167}\) The term “grave breaches” includes, among other acts: (a) “Willful killing, torture, or inhuman treatment of protected persons; [and] (b) Willfully causing great suffering or serious injury to the body or health of protected persons . . . .”\(^\text{168}\) Article 4 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War defines “persons protected” as “those who, at a given moment and in any manner whatsoever, find themselves, in case of


\(^{163}\) See id. at 12, 32 I.L.M. at 1171.

\(^{164}\) See id. at 37, 32 I.L.M. at 1192.

\(^{165}\) See id. at 37-38, 32 I.L.M. at 1192-93.

\(^{166}\) Copelon, supra note 5, at 201.

\(^{167}\) See Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 147, 6 U.S.T. 3618 [hereinafter Geneva Convention IV]; Joyner, supra note 5, at 259 (listing crimes against humanity as covered by international tribunal).
a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.\textsuperscript{169}

Article 2 of the Statute of the International Tribunal explicitly gives the Tribunal the power to prosecute persons "committing or ordering to be committed" certain grave breaches, including: "(a) wilful killing; (b) torture or inhuman treatment, including biological experiments; and (c) wilfully causing great suffering or serious injury to body or health."\textsuperscript{170} In addition, Article 2 replaces the notion of "protected persons" with a specific designation of "civilians."\textsuperscript{171} As a result, civilians are protected from the commission of "grave breaches of the laws of war," even if the conflict is interpreted legally to be an internal, as opposed to an international, war.\textsuperscript{172}

Significantly, the Statute's definition of "grave breaches" does not explicitly include rape or any of the other gender-based crimes perpetrated by the Serbs. Because none of the definitions of "grave breaches" explicitly includes gender-based crimes, Bosnian and Croatian women will have to fit their experiences within this doctrine in order to convince the prosecutor that the Serbs committed a grave breach against them. Only if the survivors can argue successfully that their injuries are "male" enough to fit within a doctrine designed to redress crimes that men experience will the aggressors be held accountable for grave breaches committed against the women of the former Yugoslavia.

Despite the absence of an explicit reference to rape or any other gender-based crime, the International Committee of the Red Cross has declared that the grave breach of "wilfully causing great suffering or serious injury to body or health"\textsuperscript{173} includes rape.\textsuperscript{174} For those women interned in concentration camps, it seems clear that their abuse will rise to the level not only of "wilfully causing great suffering or serious injury to body or health," but also of "torture or inhuman

\textsuperscript{169} Geneva Convention IV, \textit{supra} note 167, 6 U.S.T. at 3520. In addition, Article 27 of the same Convention provides that "[w]omen shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault." \textit{Id.} at 3536. Because this Article does not state that these attacks constitute "grave breaches," it is unclear what effect this Article will have on Bosnian and Croatian women, as the Statute of the International Tribunal explicitly refers to "grave breaches."

\textsuperscript{170} \textit{Report of Secretary-General, supra} note 161, at 37-38, 32 I.L.M. at 1192.


\textsuperscript{172} \textit{See id.}

\textsuperscript{173} \textit{Report of Secretary-General, supra} note 161, at 37-38, 32 I.L.M. at 1192.

\textsuperscript{174} \textit{See} \textit{INTERNATIONAL LAW ANTHOLOGY} 230 (Anthony D'Amato ed., 1994).
Serbs who have murdered the women they have raped and tortured also are clearly guilty of the grave breach of "wilful killing." In addition, forced pregnancy and forced motherhood should constitute violations of "causing great suffering or serious injury to body or health." To the extent that the internment of women in concentration camps is recognized to have been for the purpose of sexually abusing them, those abuses, too, should be redressable under these provisions.

The beatings and killings by family members following the release of these women, however, may not be considered "grave breaches" because the Tribunal may determine that the Serb perpetrators did not willfully cause these crimes. Thus, despite the fact that the Serbs purposely used sexual terrorism as a weapon of war because they knew its effect in the Bosnian and Croatian cultures, it is unlikely that they will be held accountable for crimes that occur following the release of the victims. Furthermore, it is likely that Serb aggressors will not be held accountable for the prostitution that will result now that the victims have been released.

B. Violations of the Laws or Customs of War

The 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land and annexed regulations prohibit belligerent parties and their armed forces from certain forms of conduct during war. This prohibited conduct includes: "(a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering; (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity; and (c) attack, bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings . . . ." Although these rules of land warfare prohibit certain methods of waging war, they focus primarily on property. Bosnian and Croatian women could argue that the rapes constitute a "weapon[] calculated to cause unnecessary suffering" under subsection (a). Subsections (b) and (c) also seem to prohibit using civilians
as military targets by proscribing the wanton destruction or attack of cities and towns where civilians are most likely to live. However, the language of subsections (b) and (c) speaks of towns, villages, and other physical locations, rather than specific impermissible methods of waging war on persons because they represent the acquisition of territory. Within the cultures of the former Yugoslavia, occupying a woman’s uterus is synonymous with occupying territory, and “soil” and “blood” are metaphors for men’s honor. When sexually dominating women is equated in the mind of the aggressor with conquering territory and subjugating the enemy, the distinctions between civilian and soldier, and women and territory effectively collapse. Because the Hague Regulations target crimes experienced primarily by men, however, they are not drafted in a way that comprehends the unique victimization of women in this war. Therefore, it is unlikely that the perpetrators of gender-based crimes can be prosecuted under subsection (b) or (c), or perhaps under any provisions of the Hague Convention.

C. Genocide

Article 4 of the Statute for the International Tribunal states that the Tribunal will prosecute persons accused of genocide. “Genocide” is defined as acts “committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such.” Any of the following acts committed with such an intent are punishable under the genocide provisions:

(a) killing members of the group;
(b) causing serious bodily or mental harm to members of the group;

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183. See infra note 294 and accompanying text.
184. For this insight and for much more, I thank Meg Baldwin.
185. The fact that the rape of women is being used to humiliate men to whom the women “belong” reflects the fundamental objectification of women. See Copelon, supra note 5, at 206. The international community's inability to comprehend the gendered nature of these crimes helps perpetuate their use: “Women are the targets of abuse at the same time that their existence and subjectivity are completely denied. The persistent failure to acknowledge the gender dimension of rape and sexual persecution is thus a most effective means of perpetuating it.” Id.
186. Although the distinction between women and territory effectively collapses when sexually dominating women is equated with conquering territory, I am not sure that we would want to present that argument to the Tribunal in an effort to prosecute war criminals under subsections (b) or (c) of the 1907 Hague Convention. As discussed infra at Part III.C, we may not want to effectuate legally a view of women as territory.
187. See Report of Secretary-General, supra note 161, at 37-38, 32 I.L.M. at 1192-93.
188. Id.
The crimes perpetrated against Bosnian and Croatian women include murder, causing serious bodily and mental harm, and imposing conditions of life calculated to bring about their physical destruction. The question, then, is whether Bosnian and Croatian women constitute a national, ethnical, racial, or religious group. As discussed earlier, the Serbs have targeted these particular women because they are Bosnian nationals, because they are Bosnian-Muslim, and because they are women. Therefore, the crimes committed against them that qualify under subsections (a) through (e) should be prosecuted as genocide because the women were persecuted on the basis of nationality, ethnicity, or both. The abuses suffered by the victims of sexual terrorism in this war, however, also are gender-specific. The crimes committed against women are not the same as the crimes committed against men, regardless of their national, ethnical, racial, or religious identity. Nor do the crimes that seem to be the same (for example, rape) have the same consequences for men and women as distinct groups. As Catharine MacKinnon states, "[this is] rape as a form of genocide directed specifically at women." Therefore, even if some of the perpetrators can be prosecuted for genocide by virtue of the fact that these women also are members of an ethnic group explicitly targeted by the Serbs, such prosecutions will not hold the perpetrators accountable for the gender-specific violence inflicted on women during this war.


190. See supra notes 84-85 and accompanying text (charging that Serbs knew that cultural significance of rape would humiliate and subjugate women).

191. In addition to being raped, the female victims of "ethnic cleansing" were prostituted, forcibly impregnated, and forced to become mothers, all of which is unique to their experience. See MacKinnon, supra note 6, at 61. Furthermore, they were targeted for this unique sexual terrorism because they are women in addition to being Muslim or Croatian. See id. at 79. This distinction makes the abuse that the female victims endured fundamentally different from that which the male victims experienced.

192. See supra notes 66-77 and accompanying text (describing further abuse rape victims suffered at hands of their spouses after revealing they were raped).

193. MacKinnon, supra note 6, at 65.
By definition, genocide recognizes intersectional harms in that it recognizes the unique harm of being targeted for physical harm or extinction on the basis of group identity. Yet, because gender is not a group identity sufficient to invoke the laws against genocide, at least one facet of the intersectional harms suffered by the women survivors is not acknowledged under the law of genocide:

Rape and genocide are each atrocities. Genocide is an effort to debilitate or destroy a people based on its identity as a people, while rape seeks to degrade and destroy a woman based on her identity as a woman. Both are grounded in total contempt for and dehumanization of the victim, and both give rise to unspeakable brutalities. Their intersection in the Serbian (and, to a lesser extent, the Croatian) aggressions in Bosnia creates an ineffable living hell for women there. From the standpoint of these women, they are inseparable.

The statute, however, recognizes only persecution on the basis of nationality, ethnicity, race, and religion as sufficient to constitute genocide. Because the law of genocide does not identify gender as one of the bases for persecution that can give rise to a charge of genocide, part of the victims' experience goes unrecognized and, therefore, unredressed.

D. Crimes Against Humanity

Under Article 5 of the Statute for the International Tribunal, the Tribunal has jurisdiction to prosecute specific crimes against humanity. Crimes against humanity are considered to be the most serious war crimes and constitute those human rights crimes (1) perpetrated in a pervasive, systematic manner, and (2) that result from premeditated, systematic, governmental policies. Isolated offenses are not considered crimes against humanity, no matter how

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194. See Report of Secretary-General, supra note 161, at 12, 32 I.L.M. at 1173.
195. This exclusion of gender-based harms in international law can be analogized to the race/gender split in United States domestic sexual harassment law. Under anti-discrimination laws, a victim can be compensated for either sex discrimination or discrimination on the basis of race. See Symposium, Solidarity, Inclusion & Representation, Tensions & Possibilities Within Contemporary Feminism, 2 VA. J. SOC. POL’Y & L. 23, 26 (1994). Intersectional discrimination on the basis of both sex and race, however, is not recognized. See id. at 31. As a result, the unique harm experienced by women of color when discriminated against on both bases is neither redressed nor acknowledged.
196. Copelon, supra note 5, at 199.
197. See Report of Secretary-General, supra note 161, at 13, 32 I.L.M. at 1173.
198. See Joyner, supra note 5, at 261; see also INTERNATIONAL LAW ANTHOLOGY, supra note 174, at 228; International Human Rights Law Group, supra note 8, at 97 (defining “rapes of civilians committed on a mass scale as a tool of ‘ethnic cleansing’” as crimes against humanity).
199. See INTERNATIONAL LAW ANTHOLOGY, supra note 174, at 230.
heinous.\textsuperscript{200} Under the Statute of the International Tribunal, the following categories of crimes will be treated as crimes against humanity by the Tribunal: "(a) murder; (b) extermination; (c) enslavement; (d) deportation; (e) imprisonment; (f) torture; (g) rape; (h) persecution on political, racial or religious grounds; and (i) other inhumane acts."\textsuperscript{201}

Rape is included explicitly in the list of offenses\textsuperscript{202} that will be treated as crimes against humanity.\textsuperscript{203} As recognized by many observers, rape certainly was perpetrated on a systematic scale during this war.\textsuperscript{204} In addition, the internment of Bosnian and Croatian women in concentration camps can be prosecuted as "imprisonment" under subsection (e). To the extent that women were subjected to severe physical or mental pain or suffering with the purpose of humiliating them or of inflicting illegal, cruel, inhuman, or degrading punishment on them on a systematic scale, the perpetrators also should be subject to prosecution for torture under subsection (f).\textsuperscript{205} Finally, as we probably can characterize the women's internment in concentration camps as "sexual bondage," the perpetrators may be prosecuted for the crime of "enslavement" under subsection (c).\textsuperscript{206}

As with other human rights provisions defining prohibited bases of persecution, subsection (h) reveals its patriarchal roots in its omission of "sex" from its list of prohibited grounds for persecution.\textsuperscript{207} The
exclusion of sex from subsection (h) means that even if the physical injuries inflicted on the women of the former Yugoslavia are considered crimes against humanity, the additional injury of being targeted because they are women will not be considered a crime against humanity. Presumably then, persecution on the basis of gender is not considered a crime against humanity. Yet, rape is defined as a crime against humanity, and sexual persecution is the essence of what Bosnian and Croatian women have endured. Surely the combination of repeated rapes, prostitution, forced pregnancy, forced maternity, physical torture, and sexual slavery—all ways in which women in this war were persecuted because of their gender—rise to the level of the "acute revulsion" necessary for a practice to be designated a crime against humanity. Once again, the Statute of the International Tribunal seems to refuse to recognize and, therefore, to redress a central characteristic of the crimes endured by the women of the former Yugoslavia.

III. REDEFINING INTERNATIONAL HUMAN RIGHTS IN LIGHT OF THE SEXUAL TERRORISM OF THE BALKANS

Behind all law is someone's story; someone whose blood, if you read closely, leaks through the lines... The question—a question of politics and history and therefore law—is whose experience grounds what law.

208. See MacKinnon, supra note 6, at 68 (noting that international human rights law defines who is human and who is not).

209. See Joyner, supra note 5, at 261 (noting that rapes of civilians committed on mass scale constitute crimes against humanity under international law). The International Tribunal has established various rules intended to protect victims and witnesses. See Falvey, supra note 30, at 515-16. The Tribunal has established three evidentiary provisions specifically applicable to rape and other sexual assault prosecutions: (1) "No corroboration of the victim's testimony" is required to prove the crime; (2) Consent is not a defense "if the victim (a) has been subjected to or threatened with or has had reason to fear violence, duress, detention, or psychological oppression; or (b) reasonably believed that if [she] did not submit, another might be subjected to, threatened or put in fear;" and (3) "All evidence concerning the prior sexual history of the victim" is excluded. Id. at 523-27 (citing International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law committed in the Territory of the Former Yugoslavia Since 1991: Rules of Procedure and Evidence, Mar. 14, 1994, 33 I.L.M. 484, 535-36 (1994)). The "consent-is-not-a-defense rule" initially provided that consent would never be allowed as a defense. See id. at 525. The Tribunal amended the rule, however, to provide that consent is not a defense under the conditions stated above. See id. Although it is encouraging that consent is not always a defense, it seems specious to require that the victim prove coercion or fear of violence, when those charged with rape by the Tribunal allegedly have committed the crimes as a part of war.

210. See Joyner, supra note 5, at 261 (charging that crimes against humanity cause "acute revulsion").

211. MacKinnon, supra note 6, at 59.
From this analysis of the application of international human rights law to the perpetrators of sexual terrorism in the Balkans, it is clear that it is not the experience of women that grounds that law.\textsuperscript{212} Furthermore, the absence of women's experiences from human rights doctrine means the future denial of our rights:

Legal language does more than express thoughts. It reinforces certain world views and understandings of events. Its terms and its reasoning structure are the procrustean bed into which supplicants before the law must express their needs. Through its definitions and the way it talks about events, law has the power to silence alternative meanings—to suppress other stories.\textsuperscript{213}

In reconstructing human rights law such that it can respond effectively to violations of women's human rights, the experiences of women in all their diversity must ground our approach. We must ensure that a new formulation of human rights law does not suppress stories, by beginning with those stories and working toward a doctrine capable of recognizing real injuries as they actually are lived. The sexual victimization experienced by women in the former Yugoslavia and the failure of international human rights law to comprehend the women's injuries is the place to begin. From there we can move into a broader analysis of the ways in which the failure of international law in comprehending the injuries of Bosnian and Croatian women is representative of its failure to comprehend gender-specific injuries both in war and during times of so-called peace.

A. What the Experience of Bosnian and Croatian Women Teaches Us

These victims are faced with an experience that is an invisible reality—this is a victimization that has no name. Until we name the practice, give conceptual definition and form to it, illustrate its life over time and in space, those who are its most obvious victims will also not be able to name it or define their experience.\textsuperscript{214}

From the above analysis, it is clear that provisions specifically addressing gender-based crimes are missing from the Statute of the International Tribunal. It is true that many of the crimes committed by the Serbs during their reign of sexual terror can fit within the

\textsuperscript{212} See Cook, \textit{supra} note 147, at 130 ("While women were not necessarily ignored [during the development of international law], they were spoken for by men and by agencies and institutions that catered to men's interests and in which men prevailed.").


\textsuperscript{214} BARRY, \textit{supra} note 13, at 118.
various criminal provisions of the Statute. Nevertheless, by “squeezing” these crimes into definitions that are gender-neutral, we are failing to acknowledge an essential characteristic of the suffering that Bosnian and Croatian women have endured. For women who have been pressed into silence by every means possible because of their gender, it is imperative that we give voice to the entirety of their experience, not just to the part of their experience that is similar to the experiences of male victims.215

Therefore, in addition to rape, the definitions of “grave breaches” and crimes against humanity must include explicitly prostitution, forced pregnancy, and forced maternity. The use of sexual terrorism as a method of war must be recognized as a violation of the laws and customs of war prohibited by the Hague Regulations. In addition, because the Serb aggressors knew that physical beatings, social ostracism, prostitution, and even murder would result from their sexual terrorism of Bosnian and Croatian women,216 they should be held responsible for these violations, despite the fact that these manifestations of the terrorism did not occur until after the women were released from Serbian control. Finally, the definitions of genocide and crimes against humanity must include persecution on the basis of gender. To include ethnicity, race, religion, and nationality as prohibited grounds for persecution, yet to exclude gender, is to acknowledge that victims are targeted because of their ethnicity, race, religion, and nationality, while denying that they are targeted because they are women. The Serbian method of waging this war should have eradicated any doubts that women are targeted for persecution because they are women. If the Serbs are to be held fully responsible for the crimes they have committed, gender-based human rights violations must be acknowledged explicitly and must be redressed independently of other violations.

In addition, to fail to explicitly include gender-based human rights violations among war crimes provisions is to deny the full humanity of the principal victims of this war. Human rights law acknowledges the part of women that is like men but not the part of them that is uniquely woman:

Women’s absence shapes human rights in substance and in form, effectively defining what a human and [what] a right are. . . . [W]hat violates the dignity of others is dignity for [women]; what violates the integrity of others is integrity for [women]; what violates

215. See MacKinnon, supra note 6, at 60-61.
216. See supra notes 55-66 and accompanying text.
the security of others is as much security as [women] are going to get. . . . Half of humanity is thus effectively defined as nonhuman . . . .

As long as what is done to the women of Bosnia and Croatia "looks like" what is done to men, the International Tribunal can investigate the crime and prosecute it. The International Tribunal, however, has no jurisdiction over sexual terrorism that is unique to women. As Catharine MacKinnon states: "Human rights were born in a cauldron, but it was not this one."

Thus, the exclusion of gender-based crimes from the jurisdiction of the Tribunal clearly illustrates that despite the many international agreements addressing discrimination against women, when women's human rights are violated in war, their abuses will be investigated and prosecuted only to the extent they resemble abuses men also experience (such as rape, torture, imprisonment, and murder). That they are raped, prostituted, impregnated, tortured, and murdered because they are women is ignored. This limitation of the Tribunal's jurisdiction is particularly important because war crimes tribunals are one of the few vehicles for individual accountability

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218. MacKinnon, supra note 6, at 59-60.

219. Id. at 62.

220. See, e.g., Declaration on the Elimination of Violence Against Women, Feb. 23, 1994, 33 I.L.M. 1049; U.N. World Conf. on Human Rs.: Vienna Declaration and Programme of Action, June 25, 1993, 32 I.L.M. 1661; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 19 I.L.M. 33; GA. RES. 317, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949). As MacKinnon notes, there are many agreements addressing discrimination against women, yet they are virtually unenforceable: "For women, international human rights present the biggest gap between principle and practice in the known legal world." MacKinnon, supra note 6, at 74. The principal reason that these agreements are unenforceable is because under their provisions, states must bring an action against other states; individuals rarely have the ability to invoke these agreements. See id. at 70. As a result, the same institutions that permit rampant violence and discrimination against women (as it exists in every country in the world) are supposed to enforce another institution's failure to comply with agreements prohibiting discrimination against women. See U.N. World Conf. on Human Rs.: Vienna Declaration and Programme of Action, June 25, 1993, 32 I.L.M. 1661 (recognizing that women continue to be exposed to various forms of violence and discrimination all over the world). It is no wonder that the agreements are ineffective because the very institutions—that is, institutions run by men—that benefit from the oppression of women are expected to enforce its eradication. See id.

221. Although called "human" rights law, some commentators believe that international structures and principles only "masquerade as 'human' . . . [but] are more accurately described as international men's law." Charlesworth et al., supra note 31, at 644. As a result, women's concerns are relegated to a special, limited category. See id. at 625.
under international human rights laws.\textsuperscript{222} The vast majority of human rights agreements can be enforced only by other states,\textsuperscript{223} meaning that individuals rarely can have their specific injuries redressed.\textsuperscript{224} A war crimes tribunal, however, provides the unique opportunity to examine how much progress we have made in our ability to name and prosecute crimes against individuals.\textsuperscript{225} As illustrated by the jurisdiction of the Tribunal created to address war crimes in the former Yugoslavia, the international community has made little progress in naming and prosecuting gender-based crimes.\textsuperscript{226}

The extent to which the Tribunal is unable to reach the prostitution, beatings, and murders that will occur as a direct result of the gender-based human rights violations perpetrated by the Serbs represents the inadequacy of international human rights law in comprehending and addressing the reality of these women's lives.

\textsuperscript{222} This is true despite the fact that "[c]rimes against international law are committed by persons, not by abstract polities called states. Only by punishing individuals who commit such crimes can tenets of international humanitarian law actually be enforced." Joyner, \textit{supra} note 5, at 238.

\textsuperscript{223} \textit{See} MacKinnon, \textit{supra} note 6, at 70. MacKinnon points out the strategy behind this doctrine:

States are the only ones recognized as violating human rights, yet states are also the only ones who are empowered to redress them. Not only are men's so-called "private" acts against women left out; power to act against public acts is left exclusively in the hands of those who commit those acts.

\textit{Id.} Arati Rao similarly believes that the statist framework of the human rights movement leads to the state oppressor rather than the victim being heard. \textit{See} Rao, \textit{supra} note 146, at 169-70.

\textsuperscript{224} The significance of the requirement that the state act on behalf of women is that men generally have enough power to control and violate women without the state having to allow it explicitly. Therefore, most violations against women are not seen as violations by the state: A woman's condition is "regarded as pre-legal, social hence natural, so outside international human rights." MacKinnon, \textit{supra} note 6, at 70.

\textsuperscript{225} Wartime is unique because human rights violations committed "by soldiers against civilians are always state acts." \textit{Id.} at 71; \textit{see also} Sullivan, \textit{supra} note 52, at 129 (observing that acts of violence committed by agents of state directly engage state responsibility). It is important to remember, as MacKinnon emphasizes, that "men do in war what they do in peace, only more so." MacKinnon, \textit{supra} note 6, at 71. Therefore, the more a conflict can be characterized as domestic, the less violations of human rights are recognized as such. \textit{See id.}

International and regional human rights treaties also may hold the state accountable for its failure to exercise diligence to prevent violations committed by private actors. \textit{See} Sullivan, \textit{supra} note 52, at 130. How this framework for establishing state responsibility for violence by nonstate actors will be applied to particular forms of violence, however, has not been developed, \textit{see id.}, and states seldom are held responsible for ignoring their international obligations to respect women's human rights, \textit{see} Cook, \textit{supra} note 147, at 126-27.

\textsuperscript{226} Catharine MacKinnon explains the connection between the requirement for state action and the acts human rights law recognizes as wartime violations:

[T]he model of human rights violations is based on state action. The result is, when men use their liberties socially to deprive women of theirs, it does not look like a human rights violation. But, when men are deprived of theirs by governments, it does. Men's violations fit the paradigm of human rights violations because that paradigm has been based on the experiences of men.

MacKinnon, \textit{supra} note 6, at 69-70.
Particularly within the culture of the Balkans, the Serbs, the Bosnians and Croats, and international human rights groups all know that the sexual violence against the victims of Serbian sexual terrorism will continue long after they have been released.\footnote{See supra note 144 and accompanying text (explaining how women are trapped into life of sexual violence).} The sex discrimination inherent in the society to which survivors of gender-based injuries return reinforces their injuries by permanently stigmatizing these women and by permitting, and even requiring, further abuse of the survivors because of their perceived dishonor.\footnote{See supra notes 66-69 and accompanying text (addressing consequences women face after being raped).} In addition, although this continuation of the violence may be particularly predictable and recognizable in cultures based on the honor/shame construct, it is inevitable around the world: sexual terrorism in all of its manifestations is designed to keep women oppressed and to further oppress them, and one form of sexual terrorism often leads to other forms. Thus, most prostituted women have been victims of sexual abuse before; women who are beaten in their homes also are raped in their homes and prostituted;\footnote{See id.} and girls pressed into pornography become women in pornography.\footnote{See supra notes 130-36 and accompanying text (describing "seasoning" process that lures victim into life of sexual submission).} The simple truth is that sexual terrorism begets sexual terrorism.

Finally, the experience of Bosnian and Croatian women is instructive about the causes of sexual terrorism. As discussed previously, the Serbs waged this war through sexual terrorism because they knew it would be effective.\footnote{See supra notes 71-77 and accompanying text.} The Serbs knew the cultural norms that required submission and terror in the face of sexual violation.\footnote{See supra notes 84-86 and accompanying text (attributing Serbs’ territorial gains to sexual terrorism strategy).} They knew that once sexually violated, the women were dishonored forever and the men temporarily dishonored.\footnote{See supra notes 59-61 and accompanying text.} They knew that the sexual violation of Bosnian and Croatian women would humiliate in a way that no other weapon of war would because, after all, "occupying a woman’s uterus is synonymous with occupying territory."\footnote{Olujie, supra note 14, at 26.} The Serbs used sexual terrorism to subordinate entire communities because the sexuality of its women was the "property" of each community and, in particular, each family. Thus, the root of the sexual terrorism of this war lies in the sex discrimination that existed
long before the war over physical territory began. In war, the aggressors sexually brutalized their victims publicly and systematically, purposely subverting any cultural norms or mores that inhibited sexual access to the victims.\textsuperscript{235} The sex discrimination that still exists will cause further injury to its female victims, requiring their ostracism and punishment as a result of the shame they have brought to their families and communities.

International human rights law through a war crimes tribunal addresses only one moment during entire lives of sex discrimination and sexual terrorism experienced by the women of Bosnia and Croatia. Their experiences illustrate how international human rights law ignores each incident of sexual terrorism until a soldier representing a state violates women’s rights during time of “war” and the violation looks like other human rights violations experienced by men:\textsuperscript{236}

The worth of the person which cannot be disengaged from their experiences and the situations they are in is central to [an] international concept of human rights. It is this emphasis on human dignity that distinguishes human rights from instrumental rights. An act that violates an individual’s human rights is a violation in any and all of its occurrences.\textsuperscript{237} What is needed, therefore, is not only the inclusion of gender-based crimes into international war crimes tribunal jurisdiction, but also a redefinition of when such a tribunal may act and against whom.\textsuperscript{238}

B. The Public/Private Dichotomy and the War in the Former Yugoslavia

The dichotomy between the public and private spheres, traditionally maintained in both international and domestic law, has prevented a more effective response to the sexual terrorism in the former

\textsuperscript{235} Rhonda Copelon discusses the effect of war on rape: “War tends to intensify the brutality, repetition, public aspect, and likelihood of rape. War diminishes sensitivity to human suffering and intensifies men’s sense of entitlement, superiority, avidity, and social license to rape.” Copelon, \textit{supra} note 5, at 208.

\textsuperscript{236} As MacKinnon states, “[I]f your human rights are going to be violated, pray it is by someone who looks like a government, and that he already acted, and acted wrong.” MacKinnon, \textit{supra} note 6, at 69. The reality for women, as MacKinnon recognizes, is that “[f]ormal illegal or not, as policy or merely as what is systematically done, practices of sexual and reproductive abuse occur not only in wartime but also on a daily basis in one form or another in every country in the world.” \textit{Id.} at 62.

\textsuperscript{237} BARR, \textit{supra} note 40, at 9-10.

\textsuperscript{238} Charlotte Bunch raises the inadequacy of merely “adding women and stirring them into existing first generation human rights categories,” noting the contradiction in defining rape as a human rights violation only when it occurs in state custody but not on the streets or in the home. \textit{See} Bunch, \textit{supra} note 2, at 494. The contradiction in this approach is illustrated acutely by the experiences of Balkan women who have been raped in custody only to be beaten, ostracized, or killed when released.
Yugoslavia. First, international law historically regulates matters between nation-states and does not "interfere" in what are deemed to be domestic matters. Second, even when human rights law does regulate the treatment of citizens by their nation-states, it regulates only activities in the "public" sphere. Thus, crimes committed by private individuals against other private individuals are not deemed "public" enough for international protection.

For the women of the former Yugoslavia, this "reluctance to interfere" in matters internal to the nation-state has had at least three concrete ramifications. First, at least partly because this war was labelled an ethnic war, rather than a war in which one nation-state invaded another nation-state, the international community

239. The validity of the public/private distinction has been attacked and exposed as a culturally constructed ideology. See Charlesworth et al., supra note 31, at 627. Nevertheless, "[t]he language of the private/public distinction is built into the language of the law itself: law lays claim to rationality, culture, power, objectivity—all terms associated with the public or male realm." Id.

240. See Hilary Charlesworth, The Declaration on the Elimination of All Forms of Violence Against Women, AM. SOC'Y OF INT'L L. NEWSL., June 1994, at 1 ("The well-documented pattern of violence against women in all countries, ranging from murder and rape to domestic violence and genital mutilation, has traditionally been regarded as outside the scope of international law and a matter entirely within the domain of domestic national authorities."); Cook, supra note 147, at 134 ("Because of the historic respect international law has given to the principle of noninterference in states' domestic affairs... the injustices that women experience under domestic laws and practices have gone largely unrecognized by international lawyers."). Cook uses "domestic" to refer to matters considered internal to a nation-state. See id. The use of the term "domestic" in this sense seems particularly appropriate, however, because of its resonance for women who have fought for so long for protection from brutality in the more private domestic sphere of the home.

241. What constitutes the "public" sphere and what constitutes the "private" sphere may vary among and within states:

Although the demarcation of public and private realms is a gendered process, gender does not operate in isolation from other factors in the construction of public and private life. The parameters of "public life" are not uniform even within a single national setting. Demarcations of the public domain may vary among different classes, among different racial or ethnic groups, among different regions within a country, and between urban and rural environments.

Sullivan, supra note 52, at 128. Nevertheless, Sullivan goes on to note that "[t]he shared feature of the public/private distinction in different contexts is the attribution of lesser economic, social or political value to the activities of women within what is defined as private life." Id.

242. The public/private distinction is more than simply descriptive. It is normative as well, with greater significance attached to the public, male world than to the private, female world. See Charlesworth et al., supra note 31, at 626. In addition, "[a]cross cultures and throughout time, societies view violence against women in the private sphere as something apart from, and less egregious than, violence that occurs in the public sphere." Mertus & Goldberg, supra note 37, at 208; see also Margareth Etienne, Addressing Gender-Based Violence in an International Context, 18 HARV. WOMEN'S L.J. 139, 158 (1995) ("The doctrinal dichotomy between abuses occurring in the public versus the private spheres denies women legal protection from acts that occur outside the public sphere or without cognizable state action.").

243. See Olujie, supra note 14, at 11. As Olujie states:

Calling the conflict the "Yugoslav crisis," the "powder keg of the Balkans," the "Balkan quagmire," and the result of "centuries old hatreds" promoted the idea of an ethnic war. The jargon used in both the media and political arenas led not only to further
hesitated to become involved and took few steps aimed solely at punishing the principal aggressors.\textsuperscript{244} In addition, to the extent that the women victims were targeted because of their gender\textsuperscript{245} and international aid was invoked on that basis, their injuries were even further beyond the traditional reach of the international community.\textsuperscript{246} Persecution on the basis of ethnicity constitutes a human rights violation; persecution on the basis of gender is not even recognized.\textsuperscript{247} Therefore, the women of the former Yugoslavia are under two layers of invisibility: (1) to the extent the conflict is deemed "ethnic," and (2) to the extent their cry for attention is deemed gender-based.

Second, the reluctance of the international community to interfere in internal matters within a nation-state has meant its reluctance to

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confusion, but also encouraged excuses by the United States and Europeans to neither get involved nor recognize the national differences.\textsuperscript{id}

The reluctance of the international community to become involved in "ethnic conflicts" also may explain its inaction in Rwanda where the conflict also was portrayed as one primarily about ethnic hatred and where the international community also refused to halt atrocities. See generally Payam Akhavan, The International Criminal Tribunal for Rwanda: The Politics and Pragmatics of Punishment, 90 AM. J. INT'L L. 501 (1996) (discussing atrocities in Rwanda and international response); see also Lindsey Hilsum, Tribunal Must Ensure Genocide Is Never Denied, THE PLAIN DEALER, Jan. 27, 1997, at 9B (describing International Criminal Tribunal for Rwanda as "poor cousin" of International Tribunal for the former Yugoslavia in the Hague). Despite the fact that members of the Hutu government brutally murdered entire villages one after the other—brutality even more egregious than that perpetrated in the former Yugoslavia—hardly any mention was made of possible international intervention. See Akhavan, supra, at 502. Therefore, unlike in the former Yugoslavia, where there at least was a public debate about intervention, Rwanda was ignored almost completely. Part of the explanation for this silence may well lie in the Euro-centric roots of international law, making it more likely that intervention will occur in Western conflicts where the victims are mostly white than in conflicts in Africa, for example, where the victims are black.

\textsuperscript{244} See Schwartz, supra note 57, at 72 (observing that although all parties have violated human rights laws, Serbs are primary aggressors in this conflict); see also Olujie, supra note 14, at 31-32 (discussing fact that Serbia had been "brainwashing" its citizens for last three to five years using propaganda aimed at lowering Muslims and Croats "to something subhuman so that it was no longer a crime to rub them out").

\textsuperscript{245} See supra 33-34 and accompanying text (discussing rape as strategy of war).

\textsuperscript{246} See supra notes 33-38 and accompanying text (suggesting that gender-specific nature of crime may hinder intervention by human rights community).

Marie Olujie describes the invisibility of the victims compared with the public recognition given the perpetrators:

While the West is referring to the war criminals as "Mr. Milosevic," or "Mr. Karadzic," to these old [Croatian refugee] women no one has said, "Madam." In the Western media they became a nameless, faceless group, victims with neither name nor identity. They have lost their self esteem. And yet each one knows herself, her own story, her own personal experience. If they had been perceived as the individuals they were from the beginning, one of them told me, perhaps the West would have been moved to intervene at that time.

Olujie, supra note 14, at 22.

\textsuperscript{247} See supra notes 197-210 and accompanying text (discussing how persecution based on ethnicity is recognized as crime against humanity, but persecution based on sex is not).
condemn "cultural practices" specific to one nation or one group of people.\textsuperscript{248} Because political and civil rights are considered the domain of the public individual,\textsuperscript{249} cultural practices that determine gender roles in the home or community are considered private and, therefore, outside the realm of international regulation.\textsuperscript{250} For the women of the former Yugoslavia, this emphasis on political and civil rights means that war crimes committed by Serbian men against Bosnian and Croatian women can be prosecuted with little concern about the "cultural defense."\textsuperscript{251} However, any response by Bosnian men or their communities against "their" women is subject to the "cultural defense" and the international community will be reluctant to interfere.\textsuperscript{252} Therefore, to the extent that the victims are rejected

\textsuperscript{248} See Stamatopoulou, supra note 5, at 39 (discussing "the shield of silence that protects cultural, religious, or other traditions"). One of the problems with the international community's reluctance to interfere with practices deemed "cultural" is the issue of what practices constitute "cultural" practices:

[C]ulture is not a static, unchanging, identifiable body of information, against which human rights may be measured for compatibility and applicability. Rather, culture is a series of constantly contested and negotiated social practices whose meanings are influenced by the power and status of their interpreters and participants. Rao, supra note 146, at 172. Rao also points out, however, that "[r]egardless of the particular forms it takes in different societies, the concept of culture in the modern state circumscribes women's lives in deeply symbolic as well as immediately real ways." \textit{Id.} at 169. Women historically have been considered the "repositories, guardians, and transmitters" of culture and through their clothing and demeanor, women become visible embodiments of cultural symbols and codes. See id.; see also Charlesworth et al., supra note 31, at 690. As a result, "[n]o social group has suffered greater violation of its human rights in the name of culture than women." Rao, supra note 146, at 169.

\textsuperscript{249} See Bunch, supra note 2, at 488 (suggesting that consideration of women's rights is hindered by Western definition of human rights that narrowly focuses on state violations of civil and political liberties).

\textsuperscript{250} See, e.g., Barry, supra note 13, at 178 (stating that "sexual slavery is hidden first in the privacy of the home and . . . it is justified and protected as culturally specific and therefore a culturally unique practice"). As Charlotte Bunch recognizes, "The assumption that states are not responsible for violations of women's rights in the private or cultural sphere ignores the fact that such abuses are often condoned or even sanctioned by states even when the immediate perpetrator is a private citizen." Bunch, supra note 34, at 14.

\textsuperscript{251} "Cultural defense" refers to the argument that the practice is culturally specific and, therefore, not appropriately regulated by international human rights law. As Rao notes, "The resort to cultural explanations of women's status is usually defensive, combative, and specifically designed to placate an international audience consisting primarily of national political leaders and statist diplomats." Rao, supra note 146, at 169.

\textsuperscript{252} See id. at 168-69 (alleging that when "cultural defense" is raised to protect status quo of gender, governmental parties involved engage in "politics as usual," refusing to focus on private sphere or to interfere with cultural practices). Rao critiques the notion of censoring "bad" cultural practices without understanding the political uses of culture:

[T]he notion of culture favored by international actors must be unmasked for what it is: a falsely rigid, ahistorical, selectively chosen set of self-justificatory texts and practices whose patent partiality raises the question of exactly whose interests are being served and who comes out on top. We need to problematize all of culture, not just the perceived "bad" aspects. When we limit our inquiry to egregious violations, we limit our capacity to ameliorate human pain to just that one instance of a "bad cultural practice." Without questioning the political uses of culture, without asking whose
later and even harmed because of their "dishonor," the victim probably will have to rely on domestic law.

Third, as is historically true of United States domestic law, international human rights law does not apply to violence or discrimination within the family, the other domestic sphere. Despite the fact that the brutality endured by women within the family may be just as egregious as the violence that would qualify as a war crime if committed by someone else, international human rights law does not reach it. Therefore, the women of the former Yugoslavia who return to family members who then beat them, rape them, prostitute them, torture them, and even kill them have no recourse through international law. And, to the extent that such violence is considered socially acceptable, it is unlikely that domestic law will protect them. Furthermore, distinguishing the family from the state is essential to the perpetuation of the violence that occurs within it.

The politics of such a claim, particularly when it is made by a male national leader on behalf of the social group most directly affected by the practice: women. As Rao emphasizes, "We are compelled to question the politics of such a claim, particularly when it is made by a male national leader on behalf of the social group most directly affected by the practice: women." Id.


Although within most domestic law the state cites family privacy as a justification for refusing to interfere in violence within the private sphere, the state often promotes family reforms when increased participation of women in economic and political activity would advance economic change. See Julie Mertus, State Discriminatory Family Law and Customary Abuses, in WOMEN'S RIGHTS, HUMAN RIGHTS, supra note 5, at 135, 136. Thus, the state does interfere when it serves its purpose to interfere and refuses to interfere when nonintervention serves larger political and social goals. See id. at 135; see also Sullivan, supra note 52, at 128 ("The boundary between public and private life has long been permeable when the state seeks to exercise control over disempowered communities."). Donna Sullivan notes, for example, that in the United States the sanctity of the family has not protected women of color from sterilization abuse or other coercive reproductive health practices. See id.

For a discussion of the unique trauma involved when it is someone trusted and loved who injures, see supra note 52 and accompanying text.

Although considered "natural," the demarcation of public and private life within society is a political process that both reflects and reinforces power relations. See Sullivan, supra note 52, at 128; see also Bunch, supra note 34, at 14 (stating that distinction between private and public is used to justify female subordination and to exclude human rights abuses in home from public scrutiny). Kathleen Barry details the reality of family life for many women: considering the number of women subjected to wife battery, the numbers of daughters incestuously assaulted, the socialization in the family that encourages these practices, and the physical and sexual abuse of children which are preconditions to forced prostitution, the family can no longer be accepted as a neutral social institution but instead is seen as an institution which frequently promotes and protects female sexual slavery.

BARRY, supra note 13, at 178.
law will prosecute the perpetrator either. The fact that violence perpetrated by one who is trusted and even loved is more "world-shattering" than violence perpetrated by a stranger is ignored.

C. A New Response

Transforming the human rights concept from a feminist perspective . . . relates women's rights and human rights, looking first at the violations of women's lives and then asking how the human rights concept can change to be more responsive to women.

In order to reach all of the violence perpetrated against the women of the former Yugoslavia that is not committed by soldiers or other officials of the state, human rights law must move beyond its artificially constructed barriers between "public" and "private" actions:

A feminist perspective on human rights would require a rethinking of the notions of imputability and state responsibility and in this sense would challenge the most basic assumptions of international law. If violence against women were considered by the international legal system to be as shocking as violence against people for their political ideas, women would have considerable support in their struggle. . . . The assumption that underlies all law, including international human rights law, is that the public/private distinction is real: human society, human lives can be separated into two distinct spheres. This division, however, is an ideological construct rationalizing the exclusion of women from the sources of power.

The international community must recognize that violence against women is always political, regardless of where it occurs, because it affects the way women view themselves and their role in the world, as well as the lives they lead in the so-called public sphere. When

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257. See supra notes 66-70 and accompanying text (illustrating pervasiveness of Bosnian men's violence against Bosnian women who were victimized by Serbs).
258. Copelon, supra note 5, at 202 and text accompanying note 43.
259. Bunch, supra note 2, at 496.
261. See id. ("Violence against women is central to maintaining those political relations at home, at work, and in all public spheres."); see also Bunch, supra note 34, at 14 ("When women are denied democracy and human rights in private, their human rights in the public sphere also suffer, since what occurs in 'private' shapes their ability to participate fully in the public arena."). Charlotte Bunch discusses the impact of sexual terrorism on the daily lives of women:

Rape, like other forms of torture and terrorism, is used to keep women out of certain places. For example, gang rapes often occur because a woman enters a place, such as a bar, that men consider their territory. If a woman exercises her right to go into a bar and have a drink, as men do, the response may be sexual terrorism. The purpose of these human rights violations is to keep women in their places by making them afraid. Few women have not been in fear of sexual violence in some place at some
women are silenced within the family, their silence is not restricted to the private realm, but rather affects their voice in the public realm as well, often assuring their silence in any environment. For women in the former Yugoslavia, as well as for all women, extension beyond the various public/private barriers is imperative if human rights law "is to have meaning for women brutalized in less-known theaters of war or in the by-ways of daily life.

Because, as currently constructed, human rights laws can reach only individual perpetrators during times of war, one alternative is to reconsider our understanding of what constitutes "war" and what constitutes "peace." When it is universally true that no matter where in the world a woman lives or with what culture she identifies, she is at grave risk of being beaten, imprisoned, enslaved, raped, prostituted, physically tortured, and murdered simply because she is a woman, the term "peace" does not describe her existence. In addition to being persecuted for being a woman, many women also are persecuted on ethnic, racial, religious, sexual orientation, or other grounds. Therefore, it is crucial that our re-conceptualization of time, and it would be difficult to find a woman who hasn't shaped her life in some way to avoid this form of terrorism.

Id. at 16.

262. See Charlesworth et al., supra note 31, at 629.

263. Copelon, supra note 5, at 199.

264. Using the experiences of the women of the former Yugoslavia for comparison, Rhonda Copelon illustrates the similarities between rape in "war" and rape in "peace" for many women:

[T]he line between rape committed during wartime and at other times is not so sharp. Gang rape in civilian life shares the repetitive, gleeful, and public character of rape in war. Marital rape, the most private of all, also shares some of the particular characteristics of genocidal rape in Bosnia: it is repetitive, brutal, and exacerbated by a profound betrayal of trust; it assaults a woman's reproductive autonomy, may force her to flee her home and community, and is widely treated as legitimate by law and custom.

Id. at 208. Rhonda Copelon also emphasizes the significance of the designation of "war" or "peace" for victims of rape:

When women charge rape in war, they are more likely to be believed because their status as enemy, or at least as belonging to the enemy, is recognized and because rape in war is seen as a product of exceptional circumstances. When women charge rape in everyday life, they are disbelieved largely because the ubiquitous war against women is denied.

Id. at 207.

265. As Charlotte Bunch recognizes: "Female subordination runs so deep that it is still viewed as inevitable or natural, rather than seen as a politically constructed reality maintained by patriarchal interests, ideology, and institutions." Bunch, supra note 2, at 491. Sexual slavery practiced within the family is protected on the basis of family privacy and, in particular, cultural uniqueness. See BARRY, supra note 13, at 164. Public manifestations of sexual slavery, such as prostitution, sex tourism, and mail-order bride organizations, are seen as cultural universals and natural, based on the assumption that men in all cultures, through all time, have needed access to sex. See id.
human rights is not limited to violations based on gender.\footnote{266} Rather, our definitions of "war" and "peace" in the context of all of the world’s persecuted groups should be questioned. Nevertheless, in every culture a common risk factor is being a woman, and to describe the conditions of our lives as "peace" is to deny the effect of sexual terrorism on all women.\footnote{267}

Because we are socialized to think of times of "war" as limited to groups of men fighting over physical territory or land, we do not immediately consider the possibility of "war" outside this narrow definition except in a metaphorical sense, such as in the expression "the war against poverty." However, the physical violence and sex discrimination perpetrated against women because we are women is hardly metaphorical. Despite the fact that its prevalence makes the violence seem natural or inevitable, it is profoundly political in both its purpose and its effect. Further, its exclusion from international human rights law is no accident, but rather part of a system politically constructed to exclude and silence women.\footnote{268}

The appropriation of women’s sexuality and women’s bodies as representative of men’s ownership over women has been central to this "politically constructed reality."\footnote{269} Women’s bodies have become the objects through which dominance and even ownership are communicated, as well as the objects through which men’s honor is attained or taken away in many cultures.\footnote{270} Thus, when a man wants to communicate that he is more powerful than a woman, he may beat her. When a man wants to communicate that a woman is

\footnote{266. Kathleen Barry notes: "Human rights are not divisible. Human dignity cannot be segmented by age, race, gender, or nationality. If human dignity is violated then equal rights have been usurped." BARRY, supra note 40, at 9.}

\footnote{267. See BARRY, supra note 13, at 42 ("Terrorism goes beyond one woman’s experience of sexual violence. It creates a state of existence that captures the hearts and minds of all those who may be potentially touched by it. In the face of terrorism people reorganize their lives.").}

\footnote{268. See Bunch, supra note 2, at 491 (suggesting that subordination of women is not natural or inevitable, but a politically constructed reality maintained by patriarchal interests).}

\footnote{269. Mertus & Goldberg, supra note 37, at 209 (noting that violence against women has been sequestered from discourse on human rights just as its occurrence has been hidden from public scrutiny); see also Sullivan, supra note 52, at 126 (attributing silence in human rights discourse about gender-specific abuses to historic focus within international law on violations committed directly by state against individuals).}

\footnote{270. As Elissavet Stamatopoulou points out, part of the reason that women’s human rights issues have been kept from the mainstream of international debates is that most states permit or condone discrimination on the basis of sex, so abuses of women’s rights are not integral threats to peace, territorial integrity, or international relations. See Stamatopoulou, supra note 5, at 45. After all, "[n]o government determines its policies toward other countries on the basis of their treatment of women, even where aid and trade decisions are said to be based on a country’s human rights record." Bunch, supra note 34, at 12.}

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his to use as he pleases, he may rape her or prostitute her. The objectification of women is so universal that when one country ruled by men (Serbia) wants to communicate to another country ruled by men (Bosnia-Herzegovina or Croatia) that it is superior and more powerful, it rapes, tortures, and prostitutes the "inferior" country's women. The use of the possessive is intentional, for communication among men through the abuse of women is effective only to the extent that the group of men to whom the message is sent believes they have some right of possession over the bodies of the women used. Unless they have some claim of right to what is taken, no injury is experienced. Of course, regardless of whether a group of men sexually terrorizing a group of women is trying to communicate a message to another group of men, the universal sexual victimization of women clearly communicates to all women a message of dominance and ownership over women. As Charlotte Bunch explains, "The physical territory of [the] political struggle [over female subordination] is women's bodies."272

Given the emphasis on invasion of physical territory as the impetus of war between nations or groups of people within one nation, we may be able to reconceive the notion of "war" in order to make human rights laws applicable to women "in the by-ways of daily life."273 We could eradicate the traditional public/private dichotomy and define oppression of women in terms traditionally recognized by human rights laws by arguing that women's bodies are the physical territory at issue in a war perpetrated by men against women. Under this broader definition of "war," any time one group of people systematically uses physical coercion and violence to subordinate another group, that group would be perpetrating a war and could be prosecuted for human rights violations under war crimes statutes.274 Such an understanding would enable women to seek the prosecution of any male perpetrator of violence against women, regardless of

271. Kathleen Barry explains the progression from domination within personal relationships to domination within social and political institutions: It is in the private relationship between men and women that fundamental inequality is established. From individual domination, inequality is incorporated into the larger social, political, and economic order. Institutionalized sexism and misogyny—from discrimination in employment, to exploitation through the welfare system, to dehumanization in pornography—stem from the primary sexual domination of women in one-to-one situations. BARRY, supra note 13, at 194.

272. Bunch, supra note 34, at 15.


274. See Charlesworth et al., supra note 31, at 627 (discussing public/private distinction based on language used); Sullivan, supra note 52, at 126 (examining exclusion of women in human rights law based on public/private distinction).
whether that violence occurred inside a bedroom, on the streets of
the city, or in a concentration camp in a foreign country.

In addition, historical support exists for the comparison between
women and physical territory, or nature.\textsuperscript{275} During the Scientific
Revolution the metaphor of the earth as a nurturing mother began
to vanish as a second image, nature as disorder, began to predomi-
nate scientific thinking.\textsuperscript{276} As a result of this transition, mastery over
nature, still represented as female, became a core concept of the
modern world.\textsuperscript{277} As industrialization of Western culture occurred
in the 1600s, "the female earth and virgin earth spirit were subdued
by the machine."\textsuperscript{278} Then, as the economy became modernized and
the Scientific Revolution proceeded, the dominion metaphor spread
beyond the religious sphere into the social and political spheres as
well.\textsuperscript{279} Culture, then, meant domination over nature, and women
were identified with nature.\textsuperscript{280} Although this explanation for the
progression from woman as nature to woman dominated by man
applies primarily to Euro-centered cultures,\textsuperscript{281} its resonance is
experienced in the public/private dichotomy of and in the absence
of women's experience from international law.\textsuperscript{282}

The problem with this re-conceptualization of the definition of war
(and it is a big problem) is that it accepts and legally effectuates the
notion that women are property—that our bodies are the physical
territory in a war of subordination.\textsuperscript{283} Although the purpose would
not be to accept this notion, but rather to subvert the male-defined
notion of war in a way that turns it on its head and benefits women,
women would have to acknowledge legally that our bodies can be
analogized to property. Because such an analogy returns us to the
root of the problem, we should be reluctant to make it. Nevertheless,
this analysis, at the least, illustrates why the politically constructed
reality of international human rights law cannot simultaneously (1)
comprehend the reality of sexual terrorism and its effect on women's

\textsuperscript{275} For a thorough analysis of the connections between the exploitation of nature and the
subjugation of women, see CAROLYN MERCHANT, THE DEATH OF NATURE: WOMEN, ECOLOGY AND

\textsuperscript{276} See id. at 2.

\textsuperscript{277} See id.

\textsuperscript{278} Id.

\textsuperscript{279} See id. at 3.

\textsuperscript{280} See id. at 2-4.

\textsuperscript{281} Carole Pateman has pointed out how this universal explanation for the male
domination of women fails to recognize that the concept of "nature" may vary widely among
different cultures. See Charlesworth et al., supra note 31, at 626 (concluding that what is consid-
ered "public" in one society may be seen as "private" in another).

\textsuperscript{282} See supra notes 239-42 and accompanying text (discussing public/private dichotomy).

\textsuperscript{283} I thank my sister, Darby, for this insight.
human rights; and (2) do so in a way that acknowledges the full humanity of women. In order to fit within an understanding of "war" that even approximates our historical understanding of what "war" is, women must deny that we are complex human beings and instead become property once again.

CONCLUSION

The sexual terrorism perpetrated by the Serbian army against the women of Bosnia and Croatia was used as an effective and devastating weapon of war. The terrorism extended far beyond the massive rapes reported by the media and included most of the manifestations of sexual violence seen in the past. Although an international tribunal has been established to address human rights violations occurring during this war, its jurisdiction does not recognize the gender-specific nature of the crimes and, therefore, excludes a central component of the sexual terrorism perpetrated by the Serbs. In addition to including explicitly gender-based crimes, we must acknowledge that what came before and what will come after the specific incidents of war is more sexual terrorism against the survivors. Indeed, it is because of the sexual subordination of women in the cultures of the Balkans that the Serb strategy was so effective. In order to address the sexual terrorism that occurs every day in the lives of women in the Balkans and in the lives of women all over the world,\textsuperscript{284} human rights and what constitutes war and peace must be reconceptualized. Only by acknowledging that women are sexually terrorized daily in every country in the world and by holding the individual perpetrators, as well as the states, responsible, will the term "human rights" include women's experiences.

\textsuperscript{284} See U.N. World Conf. on Human Rts., \textit{supra} note 220.