

EVOLVING INTERNATIONAL LAW AND INTERNATIONAL NORMS.

INTERNATIONAL RESPONSE TO CONFLICTS INVOLVING
SYSTEMATIC SEXUAL VIOLENCE: A CASE STUDY OF
BOSNIA AND HERZEGOVINA, RWANDA, AND THE
DEMOCRATIC REPUBLIC OF THE CONGO.

by

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At the heart of this thesis is the belief that the violence against women is not inevitable, but a problem with a solution.

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TABLE OF CONTENTS

	Page
ACKNOWLEDGEMENTS	iv
CHAPTER	
I: INTRODUCTION	1
II: HISTORY OF INTERNATIONAL LAW REGARDING SEXUAL VIOLENCE.....	10
III: LITERATURE REVIEW	28
IV: CASE STUDY: BOSNIA AND HERZEGOVINA	40
V: CASE STUDY: RWANDA.....	55
VI: CASE STUDY: THE DEMOCRATIC REPUBLIC OF THE CONGO	70
VII: CONCLUSION	84
REFERENCES	93

CHAPTER I

Introduction

During the civil conflicts in Bosnia and Herzegovina, Rwanda, and the Democratic Republic of the Congo sexual violence was used systematically as an instrument of war and for the first time, international institutions and international law recognized rape and sexual violence as a weapon of war. This thesis examines the conflicts and rampant sexual violence during civil conflicts in Bosnia and Herzegovina, Rwanda, and the Democratic Republic of the Congo, with emphasis on the international response to the atrocities, to trace the development of international norms and law regarding sexual violence during warfare. The goal of this thesis is to evaluate whether or not the international system has adapted sufficiently to respond to and prosecute conflict-related sexual violence, and examine how the legal response to the conflict in Bosnia was utilized as precedent in later African conflicts. Though the progress in prosecuting and handling cases of conflict-related sexual violence made since the 1990s is expansive and unparalleled in history, this thesis shows that more must be done within the international system to make it more responsive to instances of conflict-related sexual violence.

War is an unfortunate reality of the human experience and has continually brought forth some of the worst realities of human nature. Throughout human history, war has been brutal, often characterized by bloodshed, destruction, and immense suffering. This has not changed in contemporary society. War continues to plague the international system, although in the post-Cold War world inter-state conflict is becoming increasingly rare and intra-state conflict has replaced it as the norm. Intra-state or civil conflict categorize a majority of the instances of war and conflict in the last thirty years. Armed intra-state conflict, to be used interchangeably with civil war, will be defined in this

thesis as a “political conflict in which armed combat involves the armed forces of at least one state” and one or multiple “armed factions seeking to gain control of all or part of the state” territory.¹

Historically, the suffering brought forth by war has been gendered. Men were often killed during battle while women and children typically became the spoils of war, belonging by right to the victor of war meaning that they often fell victim to sexual violence, slavery, and sex trafficking. In addition to use as a reward for the victors, rape has been used as an actual weapon of war to terrorize and humiliate the enemy, disparage women, expose the powerlessness of the defeated force as a whole, and in some cases to change the ethnic make-up of a population.² Ruth Seifert, a renowned psychiatrist with expertise in armed conflict, notes that rape serves as a function in conflict zones because of its power to destroy families and communities. Seifert and other scholars assert that conflict-related sexual violence features an added dimension of cultural destruction because a woman’s body functions as the “symbolic representation of the body politic.”³ On top of the physical and emotional consequences of sexual violence on the victim, sexual violence is an act that deliberately tears, sometimes permanently, the social fabric of immediate families and communities.⁴

For clarification, in 2002 the World Health Organization characterized sexual violence as “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using

¹ Kathryn Farr, “Extreme War Rape in Today’s Civil-War-Torn States: A Contextual and Comparative Analysis,” *Gender Issues* 26, no. 1 (2009): 3.

² *Ibid.*, 4.

³ Tonia St. Germain and Susan Dewey, “Introduction,” in *Conflict-Related Sexual Violence: International Law, Local Responses*, (Sterling, VA: Kumarian Press, 2012), 2.

⁴ *Ibid.*, 11.

coercion, by any person, regardless of their relationship to the victim, in any setting.”⁵

To be even more specific, the terms “sexual violence,” “sexual assault,” and “rape” will be used interchangeably in this thesis and are inclusive of the following forcible or unwanted acts: sexual touching, sexual penetration (including with a penis and other foreign objects), sexual mutilation or other torture, forced pregnancy completion or termination, and sexual slavery or trafficking.⁶

There are accounts of sexual violence being utilized as a tool of war dating back thousands of years, in even the earliest accounts of war. Rape is thoroughly documented in the wars described in the Bible, found in the Old Testament books of Deuteronomy, Isaiah, and Lamentations.⁷ Accounts of rape during war can also be found in the Torah, the *Odyssey*, the Hindu epic *Ramayana*, and many more. Despite the clear centrality of sexual violence against women in wartime narratives, from Biblical times to present day, the international community has only recently started to treat it as an “offense against individual women rather than the family honor of her male relatives.”⁸ Prior to the late-1970s, the international community largely viewed violence against women, including sexual violence, as a private matter to be dealt with among individuals, families, and churches and not a public matter that merited a national or international response. However in the 1980s, prompted by the women’s movement in places like the United States and the efforts of many different non-governmental organizations, the international

⁵ St. Germain and Dewey, “Introduction,” 2.

⁶ Farr, “Extreme War Rape,” 3.

⁷ Jonathan Gottschall, “Explaining Wartime Rape,” *Journal of Sex Research* 41, no. 2 (2004): 130.

⁸ St. Germain and Dewey, “Introduction,” 2.

community began to focus on violence against women as a worldwide health issue and as a violation of human rights.⁹

There are three civil conflicts in particular from the past thirty years that have generated widespread discussion about conflict-related sexual violence, culminating in changes to international law and norms: in Bosnia and Herzegovina, Rwanda, and the Democratic Republic of the Congo. These conflicts shocked and horrified much of the world and generated unique responses from the international community, including the first prosecutions of rape as a war crime.

1) Bosnia and Herzegovina: (1992-1995)

During the civil war in Bosnia approximately twenty to fifty thousand Bosnian women were raped. The United Nations Security Council set up the first international war crimes tribunal since Nuremberg, the International Criminal Tribunal for the Former Yugoslavia (ICTY) in May of 1993. The ICTY has had profound and far reaching effects on international humanitarian law.¹⁰ The ICTY, in *Prosecutor v. Kunarac et. al.*, found three soldiers guilty of raping and torturing women and classified “sexual enslavement as a crime against humanity” in February of 2001.¹¹ This landmark case represents a huge stepping stone in prosecuting conflict-related sexual violence and has been instrumental in changing international norms regarding warfare conduct.

⁹ Luisa Blanchfield, Rhoda Margesson, and Clare Ribando-Seelke, *International Violence Against Women* (New York: Nova Science Publishers, 2009), 1.

¹⁰ Alexandra Stiglmayer, ed., *Mass Rape: The War Against Women in Bosnia-Herzegovina*, trans. Marion Faber (Lincoln, NE: University of Nebraska Press, 1994), ix.

¹¹ Katie C. Richey, “Several Steps Sideways: International Legal Developments Concerning War Rape and the Human Rights of Women,” *Texas Journal of Women and the Law* 17, no. 1 (2007): 110.

2) Rwanda: (1994)

During the one-hundred day civil war in Rwanda in 1994 some five hundred thousand people were killed and approximately 250,000-500,000 women were raped. In 1994, the UN Security Council established a war crimes tribunal for Rwanda, modeled after the ICTY.¹² The decision of the International Criminal Tribunal for Rwanda (ICTR) in *Prosecutor v. Akayesu* first recognized that rape constituted genocide.¹³ This ruling is a landmark in terms of establishing a precedent for prosecuting sexual violence.

3) The Democratic Republic of the Congo: (1996-ongoing)

The Democratic Republic of the Congo (DRC) has been engulfed in civil conflict since 1996. Congolese women have been subjected to sexual violence on a scale never witnessed before. Hundreds of thousands (estimates range from two hundred to four hundred thousand) of women were raped between 1998 and 2008.¹⁴ Crimes committing during the ongoing war in the DRC are being addressed by the newly formed International Criminal Court, which came into force in 2002. The ICC's statute contains "structural, procedural, and substantive provisions to ensure gender justice."¹⁵ In *Prosecutor v.*

Germain Katanga, the ICC acquitted a Congolese warlord of rape.¹⁶ While

¹² Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York: Basic Books, 2002), 385.

¹³ Richey, "Several Steps Sideways," 110.

¹⁴ Sara Meger, "Rape of the Congo: Understanding Sexual Violence in the Conflict in the Democratic Republic of Congo," *Journal of Contemporary African Studies* 28, no. 2 (2010): 126.

¹⁵ Beth Van Schaack, "Obstacles on the Road to Gender Justice: The International Criminal Tribunal for Rwanda as Object Lesson," *American University Journal of Gender, Social Policy & the Law* 17, no. 2 (2009): 367.

¹⁶ Marlise Simons, "Congolese Militia Leader Convicted in Attack on Village," *New York Times*, March 7, 2014.

there was not a conviction of sexual violence, this ICC case still indicates progress because the charges included sexual violence for the first time. There are other cases, yet to be ruled on by the ICC regarding sexual violence in the DRC.

Every year the periodical *Foreign Policy* releases the Fragile States Index (formerly named the Failed State Index). The index, created by the think-tank The Fund for Peace, puts countries into perspective by providing a yearly look at their “vitality and stability (or lack thereof)” and then ranking accordingly, from most unstable to least.¹⁷ The index examines several common indicators for fragile states, including weak or ineffective central governments, the availability of public services, levels of corruption in governments, and the numbers of refugees and involuntary movement of populations.¹⁸

The 2014 publication of the Fragile States Index, which uses data collected from 2013, highlights Bosnia as the most improved country in the index. Bosnia now holds the eighty-fifth place on the index.¹⁹ In 2005, the first year of the index, Bosnia was ranked twenty-second so there has been significant improvement.²⁰ There are still concerns in Bosnia about ethnic tensions, corruption, and governance. However, economic disparities between different population groups, and the situation regarding refugees and internally displaced persons, and demographic pressures (like food scarcity and mortality rates) have greatly improved. Rwanda is currently ranked thirty-fourth.²¹ This is also a significant improvement from ten years ago, when it was ranked twelfth.²² The

¹⁷ The Fund for Peace, “Fragile State Index,” *Foreign Policy*, July/August 2014, 72.

¹⁸ *Ibid.*

¹⁹ *Ibid.*, 74.

²⁰ “The Failed States Index 2005,” The Fund for Peace, accessed June 20, 2014, <http://ffp.statesindex.org/rankings-2005-sortable>.

²¹ The Fund for Peace, “Fragile State Index,” 74.

²² “The Failed States Index 2005.”

Democratic Republic of the Congo is currently ranked fourth.²³ In 2005, the DRC was ranked second so there has been some improvement, although it has been minimal.²⁴ All three of the countries chosen for the case studies have improved some in their measures of state stability after turbulent civil wars.

All three of these conflicts began in the 1990s, included rampant systematic sexual violence, have brought forth charges of rape and sexual violence, and have changed the way international law treats sexual violence. All three conflicts also warranted United Nations Peacekeeping Missions and attracted widespread international attention to the realities of conflict related sexual violence. They have also all shown some measures of improvement in the last decade.

Potential cases:

There are also several civil conflicts that fit (roughly) the same criteria, but were not selected as case studies. This is not an exhaustive list of potential studies, but several applicable conflicts that were not chosen for this thesis, but merit attention.

1) Sierra Leone:

The civil war in Sierra Leone, which waged from 1991 until 2002, constitutes a potential case study for this research. The war in Sierra Leone also received international media attention and condemnation for the widespread sexual violence during the conflict. During the conflict approximately 64,000 women were the victims of sexual violence.²⁵ It also occurred around the same time as the chosen studies. The United Nations

²³ The Fund for Peace, "Fragile State Index," 74.

²⁴ "The Failed States Index 2005."

²⁵ Janie L. Leatherman, ed., *Sexual Violence and Armed Conflict*, (Cambridge, UK: Polity Press, 2011), 2.

Security Council and the national government of Sierra Leone created the Special Court for Sierra Leone (SCSL) in 2002 to prosecute egregious breaches of international humanitarian and domestic law. Ten people have been charged with rape as a crime against humanity under the SCSL statute.²⁶

Sierra Leone is a potential case study (and could prove to be an interesting chapter for future research), however this thesis did not utilize it because the SCSL expounded on the precedent for prosecuting rape established by the ICTY, the ICTR, and the ICC.²⁷ While the indictments and convictions of rape as a war crime by the SCSL are undoubtedly important and have far reaching implications, the SCSL builds off of the courts for the crimes in Bosnia, Rwanda, and the DRC and mirror those interpretations so those conflicts prove to be more suitable cases.

2) Sudan:

The civil war that has plagued Sudan, specifically in Darfur, since 2003 also serves as a potential case study for this thesis. The violent civil conflict, waged largely by the Sudanese government forces and Janjaweed militia, has resulted in the death of thousands of innocent civilians. There have been tens of thousands documented instances of rape. Sexual violence has been committed both strategically and opportunistically in Darfur.²⁸ The ICC is also handling the perpetrators of international humanitarian law for this

²⁶ Thekla Hansen-Young, "Defining Rape: A Means to Achieve Justice in the Special Court for Sierra Leone," *Chicago Journal of International Law* 6, no. 1 (2005): 479.

²⁷ *Ibid.*

²⁸ Kelly D. Askin, "Prosecuting Gender Crimes Committed in Darfur: Holding Leaders Accountable for Sexual Violence," in *Genocide in Darfur: Investigating the Atrocities in the Sudan*, ed. Samuel Totten (New York: Routledge, 2006), 143.

conflict. In March of 2005, the United Nations Security Council voted to give the ICC jurisdiction over Sudan, even though the country is not party to the Rome Statute (the charter of the International Criminal Court).²⁹

While the conflict in Sudan has certainly been fraught with rampant sexual violence and has attracted international attention, this conflict did not begin the 1990s. Therefore the ramifications of any indictments and prosecutions of sexual violence will be more difficult to determine. The Democratic Republic of the Congo conflict is also being handled by the ICC, making it a more applicable case study.

The conflicts in Bosnia, Rwanda, and the Democratic Republic of the Congo brought about the transition from the international community dismissing sexual violence during war as an inevitable byproduct of conflict to it being recognized as a weapon of war and prosecuted as such. The legal response to the systemic sexual violence in these conflicts indicates a major shift from the historical approach to international law.³⁰ Before examination of these conflicts, it is first necessary to understand how conflict-related sexual violence has historically been treated by international law.

²⁹ Kudzaishe Marecha and Percyslage Chigora, "The Sudanese Conflict: War Crimes and International Criminal Court," *Alternatives: Turkish Journal of International Relations* 10, no. 4 (2011): 38.

³⁰ Avery Faucette, "Improvements in the Legal Treatment of Systematic Mass Rape in Wartime: Where Do We Go from Here," in *Conflict-Related Sexual Violence: International Law, Local Responses*, ed. Tonia St. Germain and Susan Dewey (Sterling, VA: Kumarian Press, 2012), 54.

CHAPTER II

Brief history of international law regarding sexual violence

War and conflict have been a reoccurring and inescapable reality over the course of humanity. Though undeniably destructive, conduct during war has been limited by participants for centuries. Even in ancient times, customary and local rules of war existed in many societies to limit and control conduct during armed conflict, like the “ancient law of the Marches,” which governed the border separating England and Scotland.³¹ Even though even the earliest accounts of war detail acts of gender-based violence, these rules of war did not prohibit crimes against women. In some ancient societies, women were regarded as the property of men. The capture and use of enemy property, including women and children, was considered a legitimate goal of war. In ancient Greece, women captured from the enemy were considered “legitimate booty, useful as wives, concubines, slave labor or battle-camp trophy.”³² It is widely accepted by historians that sexual assault of female captives was a regular part of warfare in the ancient world, in both the Greek and Roman traditions.³³

While sexualized brutality is present in wartime narratives of antiquity, it was and has been a fairly obscure topic in the historiography, both ancient and contemporary. Ancient historians, such as Herodotus, Thucydides, and Polybius were, at best, brief about this aspect of warfare. Polybius even criticized other ancient historians who

³¹ Maurice Hugh Keen, *The Laws of War in the Late Middle Ages* (London: Routledge & Kegan Paul, 1965), 7.

³² Julie A. Mertus, *War's Offensive on Women: The Humanitarian Challenge in Bosnia, Kosovo and Afghanistan* (Bloomfield, CT: Kumarian Press, 2000), 72.

³³ Kathy L. Gaca, “Girls, Women and the Significance of Sexual Violence in Ancient Warfare,” in *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human Rights*, ed. Elizabeth Heineman (Philadelphia: University of Pennsylvania Press, 2011), 75.

dwelted on the topic for producing sensationalistic and “womanish” narratives.³⁴ Non-combatants began to be afforded more protection from combat later in ancient times, however the rape of civilian women in wartime continued to be “accepted as a natural outcome of war.”³⁵

St. Augustine wrote “City of God” in the early fifth century, in response to the 410 CE sack of Rome by the Visigoths. In this work, Augustine addresses the women who were violated during the sacking, asserting that they bore no guilt. Augustine asserted that rape does not violate the woman’s chastity. He went on to claim that women who had been raped should not commit suicide, as had been suggested by some, for their rape was a crime against their body and not their soul.³⁶ Augustine’s comments constitute a crucial shift in the definition of rape, from the accepted pagan conception of sexual misconduct to a chastity-based and specifically Christian notion.³⁷ The rise of Christianity helped to further develop rules and laws that afforded civilians more protection, though these practices were partially inherited from the Greek and Roman traditions, the concept of a just war dating back, at least, to Aristotle.³⁸ The Christian principle of human dignity of men and women as children of God, prevented someone from being treated as property. Thus, the writings of St. Augustine are not the origination of teaching respect for women, but a continuation of the larger Judeo-Christian tradition.

³⁴ Ibid.

³⁵ Mertus, *War's Offensive*, 72.

³⁶ Augustine, *City of God: Books 1-7* (Baltimore, MD: Catholic University of America Press, 1950), 46.

³⁷ Jennifer J. Thompson, “Accept This Twofold Consolation, You Faint-Hearted Creatures: St. Augustine and Contemporary Definitions of Rape,” *Simile: Studies in Media & Information Literacy Education* 4, no. 3 (2004): 2.

³⁸ Anne Curry, “The Theory and Practice of Female Immunity in the Medieval West,” in *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human Rights*, ed. Elizabeth Heineman (Philadelphia: University of Pennsylvania Press, 2011), 176.

The existence of war burdened the Christian Church from the very beginning, theologians have struggled to justify wars waged between Christians.³⁹ Therefore, circumstances under which war was “legal” became defined, largely centered on the “notion that only properly constituted political authority could declare a ‘just war’”. This is known as *jus ad bellum*, or right to war.⁴⁰ During the Middle Ages, the principle of *jus in bello*, or rights in war, further developed, placing greater restrictions on the conduct of war. The writings on *jus in bello* during this period were inspired by the expansion of scholasticism and of canon law. The legal developments at this time were not considered to be novel, instead they were clarified, recorded and then disseminated more formally. Throughout the whole of medieval Christendom during the Middle Ages, sexual attacks on women were forbidden, during times of peace and war. Rape fell into the category of sexual offense by the Church and so required the performance of a penance.⁴¹ Hugo Grotius brought attention to the mistreatment of women during war in his 1624 work, *De Jure Belli ac Pacis*. Grotius’s work is considered by feminist scholars as a milestone and “its influence was linked to the growing recognition in the Middle Ages that wartime gender-based violence is a crime.”⁴² However, that recognition was not coupled with sufficient enforcement efforts and sexual violence during war continued.⁴³

Enlightenment thinkers of the eighteenth century further developed the rights of noncombatants and the limitations that were placed on warfare. During this period, rape was not necessarily perpetrated as an explicit “effort of war to terrorize the enemy”, but

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid., 175

⁴² Mertus, *War's Offensive*, 73.

⁴³ Ibid.

as a reward for soldier's victory and to send a message to the side that had been conquered.⁴⁴ Rape was not viewed as a strategy and it was not regarded as necessary to win a war and fell under the category of impermissible conduct.⁴⁵

By the mid-nineteenth century there were a set of, mainly unwritten, rules and principles that “governed the conduct of armies engaged in international wars among Europeans and other Western nations.” Modern international humanitarian law descended from “early laws and usages of war.”⁴⁶ Dr. Francis Lieber, a German scholar who settled in the United States in the 1820s, is credited with helping to formally articulate the proper set of guidelines to be used on the battlefield as “a guide to the laws and usages of war.”⁴⁷ The subsequent 1863 Lieber Code is considered to be a forerunner to the codification of the international laws and customs of war “issued at a pivotal moment in the history of the law of war, and of international law in general.”⁴⁸

The Lieber Code prohibited rape and treated it as a capital offense.⁴⁹ Though sexual violence during the American Civil War has been largely neglected in most narratives of the war, historians have found that nearly four hundred soldiers were prosecuted for crimes of sexual violence in U.S. army courts-martial and military commissions. The majority of these assaults were perpetrated on Southern women by

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Burrus M. Carnahan, “The Civil War Origins of the Modern Rules of War: Francis Lieber and Lincoln's General Order no. 100,” *Northern Kentucky Law Review* 39, no. 4 (2012): 661

⁴⁷ Ibid., 669.

⁴⁸ Ibid., 670.

⁴⁹ Rhonda Copelon, “Toward Accountability for Violence Against Women in War: Progress and Challenges,” in *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human Rights*, ed. Elizabeth Heineman (Philadelphia: University of Pennsylvania Press, 2011), 235.

soldiers of the invading Union army. The later court proceedings were fraught with racial tension.⁵⁰

Historians assert that most military commanders of the Union and Confederacy never deliberately intended to use the assault of women as an instrument of war, but many rank-and-file soldiers considered women to be part of the “spoils of war” to which they were entitled. In March of 1863 the United States’ Congress made crimes including sexual crimes, murder, theft, and assault subject to military justice. The American Civil War is distinctive because of the decision to prosecute soldiers for committing civilian and, in particular, sexual crimes, which is rare in the annals of history. These trials reveal a pioneering attempt to mediate the ravages of war on innocent women and girls and an attempt to bring about justice for the victims of sexual violence in conflict zones.⁵¹

By the close of the nineteenth century, many nations began to take action on the subject of sexual violence in the codes of conduct and regulations for armed forces and customary principles related to the conduct of warfare began to be codified in international instruments. At the turn of the century, a series of conferences, held primarily in Geneva and The Hague, brought together states and began a long process of codifying the existing customary rules and developing new rules to govern the conduct of armed conflict.⁵² The Hague Conferences departed from the Lieber Code approach because they prohibited sexualized violence implicitly rather than explicitly.⁵³ The 1907 Hague Convention includes a provision that applies to gender-based violence. The 1907

⁵⁰ Susan E. Barber and Charles F. Ritter, “Unlawfully and Against Her Consent: Sexual Violence and the Military during the American Civil War,” in *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human Rights*, ed. Elizabeth Heineman (Philadelphia: University of Pennsylvania Press, 2011), 202, 212.

⁵¹ *Ibid.*, 203, 205, 214.

⁵² Mertus, *War's Offensive*, 73.

⁵³ Copelon, “Toward Accountability,” 235.

Convention VI echoes earlier codes with “Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.”⁵⁴

The Hague treated women as carriers of male honor and did not explicitly criminalize sexual violence.⁵⁵

Less than a decade after the 1907 Hague Convention, the practice of systematic rape during World War I resulted in the first efforts to document violence against women during armed conflict. The War Crimes Commission, established after the fighting ceased in 1919, sought to examine offenses of the laws and customs of war and found that during war innocent civilians, both men and women, who had been killed in large numbers.⁵⁶ This reflects the change in the methods of warfare that took place. During World War I, new technologies such as long-range artillery and aircraft placed civilians under fire more than had ever been experienced before.⁵⁷ This “total war” between world powers resulted in the death of approximately forty million (both military and civilian) people.⁵⁸ Though there was extensive documentation of rape during the Great War and existing international customary law implicitly prohibiting rape during armed conflict, rape and other gender-based crimes were not tried as war crimes. There was a lack of political will to prosecute and punish violators of customary and treaty-based international law.⁵⁹ There were several women’s groups, including the International Committee of Women for Permanent Peace, who demanded to be included in the post-

⁵⁴ Mertus, *War's Offensive*, 73.

⁵⁵ Copelon, “Toward Accountability,” 235.

⁵⁶ Mertus, *War's Offensive*, 74.

⁵⁷ Susan R. Grayzel, “The Souls of Soldiers: Civilians Under Fire in First World War France,” *Journal of Modern History* 78, no. 3 (2006): 589.

⁵⁸ Allen Ruff, “The Highest Stage of Catastrophe: World War I and Its Century,” *Against the Current* 29, no. 3 (2014): 11.

⁵⁹ Mertus, *War's Offensive*, 74.

war negotiations but they were largely excluded because of the belief that “women’s issues” are separate from the realities of war and peace and disbelief that women would “contribute effectively to the process.”⁶⁰ The rules of warfare continued to develop in the practice of states through international agreements and as a matter of customary international law. However, developments on the battlefield did not reflect the evolution in norm-building.⁶¹

The Geneva Convention in 1929 spoke specifically of women prisoners of war, and indicated that they “shall be treated with all consideration due to their sex.” Early conventions regarding conduct during war addressed rape in terms of honor and gender-based propriety, not as acts of violence against women.⁶²

World War II proved to be fundamental for the development of human rights and humanitarian international law. Sexual violence was an intrinsic part of war during and immediately following World War II.⁶³ The unprecedented global war was rife with gendered and sexual violence, “including rape, forced prostitution, forced sterilization, forced abortion, sexual mutilation, and other forms of sexual violence.” Many forces, on both sides of the war, perpetrated the widespread sexual violence.⁶⁴ Only recently has western scholarship begun to explore the vast amount of Soviet and post-Soviet data on conflict-related sexual violence on the Western Front. There is also a growing awareness of the central role of sexual violence in German-occupied zones in the East. In ways that

⁶⁰ Ingrid Sharp, “Feminist Peace Activism 1915 and 2010: Are We Nearly There Yet?,” *Peace & Change* 38, no. 2 (2013): 161.

⁶¹ Mertus, *War's Offensive*, 74.

⁶² Copelon, “Toward Accountability,” 235.

⁶³ Jeffrey Burds, “Sexual Violence in Europe in World War II, 1939—1945,” *Politics & Society* 37, no. 1 (2009): 63.

⁶⁴ Mertus, *War's Offensive*, 75.

scholars are only beginning to understand, wartime sexual violence on a large scale in occupied and liberated Europe has had a profound effect on the citizenry.⁶⁵

There was also extensive documented sexual violence on the Pacific Front of the war. Japan forced “tens of thousands of women,” known as comfort women, “into sexual slavery for Japan’s imperial troops” throughout the war.⁶⁶ In the 1990s, the United Nations condemned Japan for this wartime behavior. The victims were mostly “lowest class young” women from Korea, occupied by imperial Japan, but also included “Japanese women and women of other occupied territories such as Taiwan, the Philippines, Indonesia, Burma, and Thailand.”⁶⁷ The estimated number of women subjected to sexual slavery ranges from approximately seventy thousand to two hundred thousand, about eighty percent of which were Korean women. The use of “comfort women” for the Japanese forces was unprecedented because it was “systematic, long-term institutionalization of female sexual slavery,” and the victims “were mostly colonial subjects from poor families who were coercively drafted by a state power.”⁶⁸

The Nuremburg War Crimes Tribunal and the Tokyo Tribunal were established by the victorious allies to try those accused of war crimes.⁶⁹ The jurisdiction of the two tribunals included three classes of crimes: crimes against the peace, war crimes, and crimes against humanity.⁷⁰ Under the Nuremberg Charter, crimes against humanity were defined as:

“murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or

⁶⁵ Burds, “Sexual Violence in Europe,” 37, 64.

⁶⁶ Chunghee Sarah Soh, “The Korean ‘Comfort Women’: Movement for Redress,” *Asian Survey* 36, no. 12 (1996): 1226.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*, 1238.

⁶⁹ Mertus, *War's Offensive*, 76.

⁷⁰ *Ibid.*, 77.

persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”⁷¹

The Tribunal for the Far East utilized the “core elements of” the Nuremberg Charter, with some small charges.⁷² These WWII tribunals shaped contemporary understanding of international humanitarian law.⁷³

Wartime rape and other types of gender-based violence, implicitly prohibited under the Hague Convention of 1907 and customary international law, were included in the jurisdiction of the postwar tribunals by the explicit and implicit language of the charters of both Nuremberg and Tokyo.⁷⁴ Accordingly, sexual violence could be tried under the charters as a violation of the laws of war or as a war crime, specifically the prohibitions against the ill treatment of the civilian population.⁷⁵ Sexual abuse might have also been interpreted as an “inhumane act” constituting a crime against humanity. These approaches were taken by prosecutors at Tokyo but not by prosecutors in Nuremberg. Although testimony and documentation of sexual assault and violence was presented to the war crimes tribunals at both Nuremberg and Tokyo, the Nuremberg indictment did not list rape or other kinds of sexual abuse against women.⁷⁶ While none of the war criminals were charged with rape at Nuremberg, several prosecutors submitted evidence of rape and since the Tribunal Judgment does not specify all the individual crimes, some scholars assert that rape can be considered to be subsumed in the Judgment. Scholars of this war have attributed the failure to prosecute rape officially to be, in part,

⁷¹ Charles Chernor Jalloh, “What Makes a Crime Against Humanity a Crime Against Humanity?,” *American University International Law Review* 28, no. 2 (2013): 393.

⁷² *Ibid.*

⁷³ Mertus, *War's Offensive*, 77.

⁷⁴ *Ibid.*

⁷⁵ Copelon, “Toward Accountability,” 235.

⁷⁶ Mertus, *War's Offensive*, 77.

because of a reluctance to confront the acts of sexual violence perpetrated by some members of the Allied forces. Allied Control Council Law No. 10 also authorized additional trials of Nazi war criminal and did specifically list rape as a violation under crimes against humanity. However, none of the offenders were prosecuted. While the naming of rape was historic, the absence of prosecution perpetrated impunity.⁷⁷

Unlike the Nuremberg indictment, rape was included in the general list of crimes in the Tokyo indictment. During the Tokyo proceedings, sexual violence was successfully prosecuted as “a violation of the prohibitions against ‘inhumane treatment’, ‘ill-treatment’, and ‘failure to respect family honour and rights.’”⁷⁸ Although there was little attention paid to sexual violence during the Tokyo trials, it has value for the prosecution of rape as a war crime and helped to pave the way for the prosecution of rape before the international criminal tribunals for the former Yugoslavia and Rwanda some fifty years later.⁷⁹ The Tribunal, run by the military of the United States completely ignored the use of “comfort women” and the “extensive system of military sexual slavery.”⁸⁰ However, the tribunals at Tokyo and Nuremberg provided a modern precedent for establishing individual responsibility for war crimes through international investigations and trials. The trials underscored that a country could no longer assert the maltreatment of its own nationals to be a matter exclusively within domestic jurisdiction.⁸¹

⁷⁷ Copelon, “Toward Accountability,” 235.

⁷⁸ Mertus, *War's Offensive*, 77.

⁷⁹ Ibid.

⁸⁰ Copelon, “Toward Accountability,” 236.

⁸¹ Mertus, *War's Offensive*, 78.

In the aftermath of World War II, a diplomatic conference, with representatives from nearly sixty states, gathered in Geneva, Switzerland in August of 1949, and adopted four new Geneva Conventions. The Geneva Conventions were the product of years of “intense and almost continuous” negotiations that were arranged by the International Committee of the Red Cross (ICRC). The new Geneva Conventions, which encompass impermissible conduct of warfare including the proper treatment of combatants and non-combatants, are considered to be a great humanitarian and political achievement and are currently still in force.⁸² The Fourth Convention, which deals with the treatment of civilians during wartime, specifically notes that “women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.”⁸³

The adoption of the Universal Declaration of Human Rights by the United Nations General Assembly in December of 1948 forever altered “the moral terrain of international relations.”⁸⁴ The 1948 United Nations Universal Declaration of Human Rights is another important component of modern international humanitarian law and a part of what has been come to be known as the International Bill of Human Rights.⁸⁵ The International Bill of Human Rights includes the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights. The principle of “non-discrimination upon the basis of sex” and the acknowledgement of the inequality between the sexes is clearly

⁸² Francois Bugnion, “The Geneva Conventions of 12 August 1949: From the 1949 Diplomatic Conference to the Dawn of the New Millennium,” *International Affairs (Royal Institute of International Affairs 1944-)* 76, no. 1 (2000): 41.

⁸³ St. Germain and Dewey, “Introduction,” 4.

⁸⁴ Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), xv.

⁸⁵ St. Germain and Dewey, “Introduction,” 4.

embedded in these pieces of international law, as well as the United Nations Charter.⁸⁶ While these treaties lay the groundwork for protecting women from human rights violations and attempt to protect women from various forms of discrimination (which would seemingly include gender-based violence), they do not explicitly discuss sexual violence. These important legal instruments have been critical to the change in how the international community responds to cases of sexual violence during armed conflict.

The Genocide Convention of 1948 is an important instrument of international law that has been evoked by the tribunals in Bosnia and Rwanda as well as by the International Criminal Court. The Genocide Convention of 1948 has been called a “major step forward” towards protection of population groups and “recognition of their right to be different from others on religious, ethnic, racial, or other grounds.”⁸⁷ The Genocide Convention emphasized that all groups have the “right to live and develop in peace,” and to not be “destroyed in war or civil war, or eliminated by other policies, such as starvation.”⁸⁸ The Genocide Convention was the “first human rights treaty” of the modern states system to codify “an international norm that protects the right to life and to existence of national, ethnic, racial and religious minorities.” The document establishes critical “principles in the areas of prosecution and prevention that have since been amplified and developed in other instruments and institutions.”⁸⁹

The collection of post-World War II international gatherings and other initiatives formed the basis for what is now known as international humanitarian law (IHL), the

⁸⁶ Elissavet Stamatopolou, “Women's Rights and the United Nations,” in *Women's Rights, Human Rights: International Feminist Perspectives*, ed. Julie Peters and Andrea Wolper (New York: Routledge, 1995), 37.

⁸⁷ Harmen van der Wilt et al., eds., *The Genocide Convention: The legacy of 60 Years* (Leiden, NL: M. Nijhoff Publishers, 2012), xxiv.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*, 4.

body of law that seeks to “reduce and redress the human suffering” brought about by war.⁹⁰ IHL governs international, and increasingly non-international, armed conflicts.⁹¹ IHL provides for the human treatment of civilians and is generally regarded as binding on all states regardless of whether they are a formal party to the convention or not.⁹² IHL is distinguishable from human rights law because it applies to the conduct between states during conflict and “protects individuals from enemy powers”, while human rights law applies primarily during “times of peace as a way to protect individuals from their own governments”. IHL can also safeguard those “who are not (or are no longer) participating in” conflict and “restricts the means and methods of warfare”. Violating international human rights laws results mostly in customary claims of state responsibility, while violations of IHL could lead not only to state responsibility but “also to individual criminal liability for perpetrators.”⁹³ Given its focus on sexual violence during civil conflict, this research will deal mostly with changes to international humanitarian law and examine how it has been used to address systematic sexual violence during conflict. There is some overlap between the two legal regimes and since the birth of the United Nations scholars and policymakers alike have often regarded humanitarian law as “part of the broader international human rights framework,” as it is widely recognized that human rights concerns commonly arise during armed conflict.⁹⁴

The Universal Declaration, along with the body of post-war conventions, helped to provoke the “international human rights movement” that emerged in the 1970s. The

⁹⁰ St. Germain and Dewey, “Introduction,” 3.

⁹¹ Askin, “Prosecuting Gender Crimes,” 290.

⁹² Mertus, *War's Offensive*, 79.

⁹³ St. Germain and Dewey, “Introduction,” 3.

⁹⁴ Mertus, *War's Offensive*, 80.

Universal Declaration had roots in the “great charters of humanity’s first rights moment” during the seventeen and eighteenth centuries.⁹⁵ Political instruments like the British Bill of Rights of 1689, the American Declaration of Independence in 1776, and the French Declaration of Man and Citizen of 1789 were all “born out of the struggles to overthrow autocratic rule and established governments based on the consent of the governed.” These documents all proclaimed that the “purpose of government was to protect man’s natural liberties” and “gave rise to the modern” conception and language of rights.⁹⁶ The international human’s rights movement, along with the women’s movement, helped to bring about the conception of violence against women as a worldwide health issue and as a violation of human rights.⁹⁷ The Geneva Conventions and other documents that outline acceptable treatment of persons in war and peace are the product of Europe’s imperial legacy and growth and the “psychological and moral product of inherent human preference and need” to recognize the “moral reality of war.”⁹⁸

There are other legal instruments, arising well after World War II, that have been instrumental to addressing wartime sexual violence in both international humanitarian law and international human rights law. In 1979, the United Nations General Assembly “adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)”, which pronounced a commitment to lessening gender-based discrimination and violence. Gender-based violence was “defined as any act or threat that targets an individual or group upon the basis of their gender”.⁹⁹ The definition of

⁹⁵ Glendon, *A World Made New*, xvii.

⁹⁶ *Ibid.*

⁹⁷ Blanchfield, Margesson, and Ribando-Seelke, *International Violence Against Women*, 1.

⁹⁸ Geoffrey Francis Andrew Best, *Humanity in Warfare* (New York, NY: Columbia University Press, 1980), 3.

⁹⁹ St. Germain and Dewey, “Introduction,” 4.

discrimination includes both the private and public spheres of political life.¹⁰⁰ The removal of the artificial barriers between the “private” and “public” spheres has been instrumental in subsequent international efforts to fight discrimination and violence against women because the shield of silence that protects cultural, religious, and other traditions and longstanding prejudices has been lifted. This allows for acts such as the assault and rape of women, sexual mutilation, and honor killing to be recognized and punished as human rights violations (the subsequent Convention on the Rights of the Child also sets an important precedent in this respect).¹⁰¹ CEDAW, of the Women’s Convention, stands as a guideline for all policies and programs established for refugee, displaced, and war-imperiled women.¹⁰² The United Nations has emphasized that CEDAW applies to both conflict and post-conflict contexts, making it an instrument of international human rights and international humanitarian law.

There is now also a body of “soft” law (declarations and resolutions) that addresses sexual violence which emerged following international recognition and condemnation of the sexual violence against women in the chosen conflicts in Bosnia, Rwanda, and the DRC. In 1993, the United Nations General Assembly adopted the Declaration on the Elimination of Violence against Women, which recognizes violence against women as an important human rights issue and points to areas that governments should address, with special emphasis on sexual violence.¹⁰³ The Declaration is a significant additional to the legal definition of the human rights of women.¹⁰⁴

¹⁰⁰ Mertus, *War's Offensive*, 91.

¹⁰¹ Stamatopolou, “Women's Rights,” 37.

¹⁰² Mertus, *War's Offensive*, 92.

¹⁰³ *Ibid.*, 97.

¹⁰⁴ Stamatopolou, “Women's Rights,” 39.

In October of 2000, the United Nations Security Council issued Resolution 1325 which called for an increase in women in decision making entities and for states to “adopt a gender perspective that included the special needs of women and girls during repatriation and resettlement, rehabilitation, reintegration and post-conflict reconstruction.”¹⁰⁵ This marks a formal acknowledgement from the UN Security Council to the international community that the experiences of women during conflict are different from men and need to be treated as such. The language of the Resolution 1325 has since been called too broad and vague. The politicians, military personnel and other people mandated to implement the Resolution struggled to operationalize it.¹⁰⁶

UN Security Council Resolution 1820 was adopted in 2009 and formally establishes rape as a war crime, though the language is temperate. This Security Council Resolution was the first to exclusively address sexual violence in armed conflict.¹⁰⁷ Article four states that “rape and other forms of sexual violence *can* constitute a war crime against humanity, or a constitutive act with respect to genocide” (emphasis added). The Resolution acknowledges that women and girls are “targeted by the use of sexual violence during conflict as a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group.”¹⁰⁸ While this Resolution uses watered down language and is difficult to enforce, as it is a piece of “soft” law, it does signify that the world body has acknowledged that sexual violence is a

¹⁰⁵ Bronwyn Winter, “International Versus Transnational? The Politics of Prefixes in Feminist International Relations,” in *Conflict-Related Sexual Violence: International Law, Local Responses* (Sterling, VA: Kumarian Press, 2012), 15.

¹⁰⁶ Inger Skjelsbæk, *The Political Psychology of War Rape: Studies from Bosnia and Herzegovina* (New York: Routledge, 2012), 128.

¹⁰⁷ Ibid.

¹⁰⁸ United Nations Security Council, Resolution 1820, “Security Council Demands Immediate and Complete Halt to Acts of Sexual Violence Against Civilians in Conflict Zones,” June 19, 2008, <http://www.securitycouncilreport.org>.

security concern. This body of soft law regarding sexual violence in war does signify recognition of the problem and efforts to address them.

Rape has “historically, as an international legal matter,” been prohibited, though its prohibition has been rarely enforced or prosecuted.¹⁰⁹ During the civil wars in Bosnia and Herzegovina, Rwanda, and the Democratic Republic of the Congo sexual violence was employed as tool of war. Subsequently, international institutions and international law prosecuted sexual crimes and recognized rape and sexual violence as a weapon of war for the first time. This thesis examines the conflicts and rampant sexual violence during civil conflicts in the Bosnia and Herzegovina, Rwanda, and Democratic Republic of the Congo, with emphasis on the international response to the atrocities to trace the development of international norms and law regarding sexual violence during warfare. Overall, this thesis seeks to determine whether or not the international system has adequately adapted to respond sufficiently to conflict-related sexual violence. The progress over the last two decades in prosecuting conflict-related sexual violence is unprecedented. These prosecutions have established important “precedential authority for redressing” incidents of sexual violence in other arenas and other armed conflicts.¹¹⁰ The recent changes in norms regarding permissibility of sexual violence during war can change the realities of the women who are living in the midst of war. Research on the changes to treatment of sexual violence during armed conflict is important because it can identify potential options for handling future conflicts with high instances of sexual

¹⁰⁹ Copelon, “Toward Accountability,” 235.

¹¹⁰ Kelly D. Askin, “Prosecuting Wartime Rape and Other Gender-Related Crimes Under International Law: Extraordinary Advances, Enduring Obstacles,” *Berkeley Journal of International Law* 21, no. 2 (2003): 288.

violence and it can also clarify appropriate the channels for current victims to seek justice.

It is important to note that while men have also undoubtedly experienced untold suffering during these conflicts, this research will focus on crimes against women. Men and women experience conflict differently but women's experiences are often grouped in with those of men when providing aid to war torn areas and addressing any crimes committed after the fact. In an ongoing scholarly effort to remedy this problem, this research will separate the experiences of men and women and attempt to examine the response to ongoing, systematic violence against women in particular.

CHAPTER III

Literature Review

Although conflict related sexual violence is certainly not a new phenomenon, intensive research on it is. Research began in the 1970s (with some work done before), mostly done by feminist scholars, but it was not until the 1990s that the topic began to attract extensive scholarly attention. The prevalent literature on sexual violence in wartime primarily focuses on the various theoretical explanations for the use of sexual violence during civil war, details of the sexual violence that occurred during specific conflicts, methods of stemming and preventing sexual violence, and international reactions and responses to instances of sexual violence in war. While there is a plethora of existing work on conflict-related sexual violence, there is very little that examines the changes in international law and norms with regard to the response to the conflicts in Bosnia, Rwanda, and the Democratic Republic of the Congo.

The literature can be crudely grouped into five categories (with several books and articles fitting into multiple categories): theories for conflict related sexual violence, international law and international response to conflict-related sexual violence, sexual violence in Bosnia and Herzegovina, sexual violence in Rwanda, and sexual violence in the DRC.

Theories for conflict-related sexual violence:

The literature on rape and wartime rape emerged with Susan Brownmiller's 1975 revolutionary work *Against our Will: Men, Women, and Rape* (initially released in 1975, it was re-released in 1993). Brownmiller's work, considered a groundbreaking and seminal book to the United States and international feminist movement, is both highly

acclaimed and controversial. *Against our Will* is cited by nearly every other source found in this research and it is credited with sparking the movement to change legal practices regarding sexual violence in the United States and abroad. Brownmiller, a civil and women's rights activist and writer with experience as a journalist, hypothesizes regarding the human tendency to commit rape, which she claimed to be common for humans during both conflict and everyday life. She provides details about rape in war from the establishment of the Roman Empire to the end of the Vietnam War. Using sociobiological theory, Brownmiller claims that rape occurs partially because the female is anatomically vulnerable to attack. Brownmiller also details the historical background of law and how it has failed to represent all members of the human race by subjugating women to be dependent on men. Brownmiller's research influenced much of the subsequent work on sexual violence and guides most of the scholarship on the feminist theory of wartime rape. While this is certainly an important piece of scholarship that any literature review regarding rape would be remiss without, "Against our Will" discusses rape fairly generally and relies on some problematic assumptions regarding men's propensity to rape. Some historians, including Edward Shorter, have also raised issues with her historical treatment of rape in warfare.¹¹¹

Jonathan Gottschall, a scholar specializing in literature and evolution, published "Explaining Wartime Rape" in *The Journal of Sex Research* in 2004. This article condenses the literature on wartime rape with historical context, and also provides a critical examination of the four predominant theories for the root causes of wartime rape: "the feminist theory, the cultural pathology theory, the strategic rape theory, and the

¹¹¹ Numerous other academics, including anthropologists and sociologists, have also raised concerns with "Against Our Will" since its initial publication.

biosocial theory.” Gottschall contends that the “biosocial theory of wartime rape is the only one capable of bringing all the phenomena associated with wartime rape into a single explanatory context.”¹¹² From this article, this thesis garnered clarification on the different theories regarding wartime rape.

Kathryn Farr, a professor at Portland State University with many published works related to gendered violence, published “Extreme War Rape in Today’s Civil-War-Torn States: A Contextual and Comparative Analysis” in *Gender Issues* in 2009. This research is a comparative analysis of twenty-seven countries in which war rape is occurring or has recently ended. Farr’s quantitative study finds similarities between the perpetuation of war rape, as well as the conditions that foster it. Farr finds and identifies four patterns of war rape. This work draws from a multitude of both primary and secondary sources and provides well-founded explanations for systematic war rape that account for the context of the conflict. Though there is some analysis of the widespread sexual violence in the conflicts in Bosnia, Rwanda, and the DRC (along with twenty-four others) it is extremely brief, and there is very little discussion of the context of the conflicts, international law or international response to mass rape.

Sexual Violence and Armed Conflict was written by Janie L. Leatherman, a professor of political science and international relations at Fairfield University, and published in 2011. In an effort to understand why sexual violence is a devastating weapon of war, this book offers extensive analysis on the causes, consequences, and responses to sexual violence in contemporary armed conflict. In order to understand the motivation of the men (and occasionally women) who commit these violent acts,

¹¹² Gottschall, “Explaining Wartime Rape,” 129.

Leatherman details the role played by systemic and situational factors like patriarchy and militarized masculinity. The book concludes with strategies of prevention and protection of the victims. There is some sporadic mention and description of the conflicts in the Bosnia, Rwanda, and the Democratic Republic of the Congo (among others) but not much detail or historical context. Leatherman includes some explanation of international law and responses to instances of widespread sexual violence, but most of the analysis focusses on problems with the theoretical approaches. This book offers this research explanation of the various theories of sexual violence as well as ample description of international norms regarding wartime sexual violence.

International Law and International Response to Conflict-Related Sexual Violence:

Samantha Power, previously a professor of human rights and foreign policy at Harvard's John F. Kennedy School of Government and the current United States Ambassador to the United Nations, published the Pulitzer Prize winning book, *A Problem from Hell: America and the Age of Genocide* in 2002. Power examines in-depth the US and international community's responses to a series of genocides including in Turkey, Iraq, Bosnia, Rwanda, and Kosovo. Power offers an in-depth and critical analysis of U.S. and United Nations' policy during the genocides in Bosnia and Rwanda. While there is not significant specific analysis of wartime sexual violence during these conflicts, there is provocative scrutiny of the UN's response and UN leadership with regards to genocide and ethnic conflict. Power, who actually began her career as a journalist covering the Yugoslav Wars, provides historical context of the civil war in Bosnia, which this thesis utilizes.

Kelly Dawn Askin, a prominent scholar on international law and human rights, has many published works regarding gender, sexual violence, and international law, including the 2003 article “Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles” which featured in *Berkeley Journal of International Law*. Askin details the advancements in efforts to impose criminal responsibility upon military leaders and others that are responsible for flagrant violations of international law that occurred during conflict. Askin focuses on the advances in addressing crimes committed disproportionately against women and girls. This article reviews the “historical development of the international laws most relevant to women during” war, particularly international humanitarian law, with emphasis on the historical lack of action towards crimes affecting women and girls. Askin also examines how gender-related crimes were treated at the post-World War II criminal tribunals. Askin concludes with review of the most pertinent “gender jurisprudence developed in the Yugoslav and Rwanda Tribunals and by the Statute of the International Criminal Court.”¹¹³ From this article, this research draws further understanding of the history legal treatment of sexual violence and how Bosnia and Rwanda have affected international laws.

Elizabeth D. Heineman edited the scholarly collaboration *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human Rights* which was published by University of Pennsylvania Press in 2011. This publication is a compilation of research, conducted by a number of academics, mostly historians, including E. Susan Barber, Rhonda Copelon, Kathy L. Gaca, Atina Grossmann, and Charles Ritter. Copelon

¹¹³ Askin, “Prosecuting Wartime Rape,” 288.

was a renowned human rights lawyer and constitutional scholar. She helped draft briefs used by the International Criminal Tribunals for both the former Yugoslavia and Rwanda that recognized rape as a crime of genocide and torture. She also is credited with helping to ensure that the Rome Statute was written to account for gender. She is the only author in this work that is not solely a historian.¹¹⁴ Heineman, a historian of women's history and professor at the University of Iowa, also authored the introduction chapter of the book in which she argues that the current understanding of the history of conflict-related sexual violence is largely based on generalizations drawn from recent conflicts. She asserts a need for more scholarship on historical episodes and indicates an existing limitation in the current body of literature and goes on to say that studying these neglected times can provide academics with a more thorough understanding of the long-term consequences of sexual violence and more accurate depictions of how societies achieve post-conflict peace and stability.

With this neglect of historical examples in mind, the chapters in *Sexual Violence in Conflict Zones* contribute compelling examples of conflict-related sexual violence that occurred before 1990, including in ancient Greece, Rome, biblical examples, the Medieval West, Seventeenth-Century England, the American Revolution, the American Civil War, Late Precolonial and Early Colonial Tanzania Uzbekistan in 1917, World War I, World War II, and East Pakistan/ Bangladesh in 1971. The last section of the book, consisting of the chapters by Copelon and Yuma Totani, includes a review of the legal history of sexual violence in international humanitarian and human rights law. Copelon also discusses developments that have led toward more accountability in addressing

¹¹⁴ Heineman, Elizabeth, ed. 2011. *Sexual violence in conflict zones: From the ancient world to the era of human rights*. Philadelphia: University of Pennsylvania Press. Pg. 322

sexual violence in conflict, due largely to initiatives and activities by survivors' groups and women's human rights advocates. This book is utilized for this thesis predominately for its excellent historical treatment of conflict-related sexual violence and its review of changing international humanitarian and human rights law. This thesis hopes to continue to help fill the gaps in the existing literature by providing a more thorough historical survey of instances of conflict-related sexual violence.

The 2012 book, *Conflict-Related Sexual Violence: International Law, Local Responses*, is a product of the collaboration between several different academic disciplines. Edited by Tonia St. Germain (the director of gender studies at Eastern Oregon University) and Susan Dewey (a gender/women's studies professor at the University of Wyoming), this book presents scholarly work by anthropologists, international human rights attorneys and other legal experts, political scientists, psychologists, historians, and other activists. *Conflict-Related Sexual Violence* weaves together their individual research regarding responses to sexual violence during conflict in many places, including Afghanistan, Haiti, Liberia, Sierra Leone, and Bosnia. The core of the book examines the policy efforts and failures of the international community to address instances of conflict-related sexual violence. *Conflict-Related Sexual Violence* hinges on consultation with hundreds of primary and secondary sources including United Nation documents, treaties and conventions, personal interviews, scholarly articles, news reports, case law, legal briefs, etc. St. Germain and Dewey's work provides a provocative interdisciplinary approach to sexual-violence during conflict.

From *Conflict-Related Sexual Violence: International Law, Local Responses*, this research draws details of international humanitarian and human rights law, both historical

and contemporary, and the norms regarding sexual violence as well as an understanding of how it has been addressed by international organizations. However, while there is ample explanation of the changes in international law and international norms regarding sexual violence with ample historical context, this book lacks significant analysis of the conflicts in the Democratic Republic of the Congo and Rwanda.

Sexual Violence in Bosnia and Herzegovina:

Alexandra Stiglmayer's powerful compilation of research, *Mass Rape: the War against Women in Bosnia-Herzegovina*, is a diverse piece of scholarship on the mass rape in Bosnia and Herzegovina. Stiglmayer's book begins an overview of the history of the region, and goes on to feature other author's research on the topic of mass rape. The book, published in 1994, features leading scholars in the field of wartime sexual violence including Ruth Seifert, preeminent international law scholar Catharine MacKinnon, Rhonda Copelon, Cynthia Enloe, and Susan Brownmiller. Stiglmayer herself includes an essay with compiled interviews of twenty rape victims and three Serbian rapists. This chapter is brutal and tragic, and exposes rape in wartime as aggression and humiliation of the enemy through an attack on his women. The other essays examine the systematic sexual violence in this conflict through several different lenses, including psychotherapy, human rights legal theory, military analysis, and power dynamics. The authors of the different chapters have a diverse background, including careers in political science, sociology, psychology, medicine, and journalism, among others. These essays offer differing theoretical approaches to the crisis in Bosnia and Herzegovina. From this piece of scholarship, this thesis draws information about the background of the conflict,

specifics about the sexual violence, details of the international humanitarian response efforts and military tribunals, and how international law was utilized.

Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia was written by Beverly Allen, a professor at Syracuse University and published in 1996. Allen was involved in humanitarian efforts during the crisis in the former Yugoslavia and spent years researching the details of the conflict, including spending time there fact finding, meeting with local groups, and interviewing women in the area. Allen was one of the first to write about ethnic cleansing in Bosnia. Allen explains that the rape of women is common in every armed conflict on every side, including even by those serving in peacekeeping forces. Allen provides ample documentation from the UN and other forces, personal testimony and news reports to passionately prove that the ethnic cleaning and systematic sexual violence were premeditated and targeted women and children directly. Allen provides potential solutions for effective humanitarian intervention during genocidal war. From this work, this research draws understanding of the context of the conflict in Bosnia, as well as specifics regarding the international response to the tragedies.

Sexual Violence in Rwanda:

The article “We are going to rape you and taste Tutsi women: Rape during the 1994 Rwandan Genocide” written by Christopher W. Mullins, a criminology professor at Southern Illinois University Carbondale, was published in 2009 in *The British Journal of Criminology*. This article examines the specifics of the sexual violence that occurred during the Rwandan genocide. Mullins utilizes victim testimonies from the International Criminal Tribunal for Rwanda proceedings to identify three broad types of assaults

present during the conflict: opportunistic assaults, episodes of sexual enslavement, and genocidal rape. This article is utilized for its description of the rampant sexual violence during the 1994 conflict in Rwanda and the examination of testimony at the International Criminal Tribunal for Rwanda and the outcomes of the trials. The methodology of examining victim testimony and other court testimony is also mimicked in the case studies of this thesis.

The book, *Genocide, Political Violence, Human Rights: We Cannot Forget: Interviews with Survivors of the 1994 Genocide in Rwanda*, was published in 2011 and is a collection of personal stories from witnesses and survivors of the conflict in Rwanda, edited by Samuel Totten and Rafiki Ubaldo. Totten, also who wrote the introduction chapter of the book, is a professor at University of Arkansas is a genocide scholar who has spent time working and studying in Rwanda. Ubaldo is a journalist and scholar of genocide studies as well as a survivor of the 1994 genocide in Rwanda. The introduction provides information about the cultural tensions that ultimately culminated in the conflict (with lengthy descriptions about the Hutu and Tutsi distinction), the timeline of the conflict, description of the international response, and background of the different interviewees. This book describes the tension and violence that foreshadowed the genocide, how it began and played out, and also what the conditions have been like since the conflict ended. This book was utilized mostly for its wealth of background knowledge of the 1994 conflict in Rwanda and for a more personal look at the effects of the tragedy.

Sexual Violence in the Democratic Republic of the Congo:

Sara Meger, a PhD candidate at the University of Melbourne¹¹⁵ and researcher on gender and international relations with expertise on sexual violence in conflict, published “Rape of the Congo: Understanding sexual violence in the conflict in the Democratic Republic of the Congo” in *Journal of Contemporary African Studies* in 2010.. Meger’s article looks at the ongoing utilization of sexual violence in the Democratic Republic of the Congo and utilizes other literature to provide a conceptual framework for rape as a weapon of war and what its function is in the conflict. Meger also argues that the use of rape as a weapon cannot be understood without knowledge of the “social constructs of masculinity” present in the state and how the “politics of exploitation” have altered the history of the state.¹¹⁶ This article provides well documented explanations for the widespread and systematic rape in the DRC conflict with some historical context that is pertinent to understanding the root of the conflict. It does not, however, contain analysis of international law or norms in regards to war rape and it does not address the international response to the civil war or the UN Peacekeeping Mission at all. This article offers an overview of the conflict in the DRC, and how and why sexual violence was used on such a broad scale.

This literature review only skims the surface of the available scholarly work on conflict related sexual violence and international law. However, this review does reveal the trends in scholarly work available on the topic of conflict-related sexual violence and extrapolates on the pieces of work that were vital to this research. There has been extensive research done on the subject of conflict-related sexual violence however, there

¹¹⁵ Meger completed her PhD in 2012, her dissertation was entitled “Militarized Masculinities and the Political Economy of Wartime Sexual Violence in the Democratic Republic of the Congo”.

¹¹⁶ Meger, “Rape of the Congo,” 119.

are some gaps in the existing scholarship that this project can hopefully help to fill. For instance, there is a plethora of work on each of the conflicts in Bosnia, Rwanda, and the DRC individually, but very little of the available scholarly work on the subject of rape in war talks about all three of the chosen cases together. There is also little discussion of how each chosen civil conflict has contributed to the evolution of international law and international norms and why. Scrutinizing the conflicts in Bosnia, Rwanda, and the Democratic Republic of the Congo and the subsequent international responses together can be beneficial in furthering understanding of the different ways in which sexual violence is used and the possibilities for responding within the international legal system. This comparative approach also provides for the possibility of showing how precedent from the legal treatment of the war in Bosnia was later applied to African conflicts. Analysis of how these three conflicts have shaped international norms and law can also help to hypothesize whether or not the international system has been molded to sufficiently handle any future conflicts with widespread sexual violence.

This project was conducted by consultation with research coming from a multitude of academic disciplines, including: political science, law, history, sociology, criminology, anthropology, psychology, medicine, and gender studies, among others. There has also been consultation with research by academics all over the world, not just in the United States and Western Europe, including published works coming out of Africa, Australia, Asia, and Eastern Europe. This assortment of available research is beneficial in providing a diversified outlook on the multidimensional issues associated with this complicated topic, which will result in a finished product that is more sensitive to the realities of conflict and sexual violence.

CHAPTER IV

Case Study: Bosnia and Herzegovina

Before the outbreak of Bosnian war, the 1990s began with enthusiasm and optimism for the future. The end of the Cold War, the boom of democracy and the end of long-standing conflicts in Latin America and Africa were perceived to many as signs of a start of a new and more peaceful time. The displays of nationalism that began to emerge in the early 1990s in places around the world, including previously communist countries, were at first perceived as positive. However, this nationalism eventually gave rise to a new kind of war- war within states, and between people in organized groups with religious or ethnic characteristics. The new intrastate wars have not been fought with the latest technology, but with knives, rudimentary rifles, and rape. It is these wars which have changed the way in which war rape has come to be understood. One of the most important conceptual change of the 1990s was that wartime rape and conflict-related sexual violence began to be recognized as a weapon of war.¹¹⁷ The war and rampant sexual violence in Bosnia helped facilitate that shift, which occurred in the scholarly literature and war rhetoric and has begun to be reflected in international legal institutions.

Bosnia and Herzegovina (sometimes written as Bosnia-Herzegovina, hereafter Bosnia) is a multiethnic republic. The eastern European nation is surrounded by Croatia to the west and Serbia to the east.¹¹⁸ The rampant sexual violence in Bosnia occurred during the 1992-1995 inter-ethnic civil war that raged across the country, following the

¹¹⁷ Skjelsbæk, *Political Psychology of War Rape*, 60.

¹¹⁸ Cindy S. Snyder et al., "On the Battleground of Women's Bodies: Mass Rape in Bosnia-Herzegovina," *Affilia* 21, no. 2 (2006): 184.

breakup of the former Yugoslavia.¹¹⁹ The Yugoslav Wars were a series of wars that resulted in the eventual dissolution of the FPRY, taking place between 1991 and 1995. There are three separate but related wars to consider, the “Ten-Day War” in Slovenia in 1991, the Croatian Wars of Independence from 1991 until 1995, and the Bosnian War from 1992 till 1995.¹²⁰ While each of the separate wars was undeniably fraught with its own atrocities and some degree of sexual violence, this chapter will focus on the war in Bosnia.

In the aftermath of World War I, the Balkan states of Bosnia-Herzegovina, Serbia, Montenegro, Croatia, Slovenia, and Macedonia became part of the Federal People’s Republic of Yugoslavia (FPRY) somewhat reluctantly. After longtime Yugoslav leader Josip Broz Tito died in 1980, nationalism (forbidden under Tito’s rule) boiled over in the different republics, threatening to tear the FPRY apart. The growing discontent between the different states following Tito’s death and the catastrophic economic situation (involving 27 percent inflation rate, 4 billion dollar budget deficit, and 19 billion dollars in foreign debt) propelled Yugoslavia towards disintegration.¹²¹

One fervent promoter of nationalism was Serbian leader Slobodan Milosevic. Milosevic rose to power in Serbia in the 1980s, emerging as a political force as president of the Serbian Community Party.¹²² In response an uprising of Kosovo Albanians in 1981, Milosevic helped to ferment discontent between the Serbians in Bosnia and Croatia and

¹¹⁹ Teodora Todorova, “Giving Memory a Future: Confronting the Legacy of Mass Rape in Post-Conflict Bosnia-Herzegovina,” *Journal of International Women’s Studies* 12, no. 2 (2011): 4.

¹²⁰ Courtney Ginn, “Ensuring the Effective Prosecution of Sexually Violent Crimes in the Bosnian War Crimes Chamber: Applying Lessons from the ICTY,” *Emory International Law Review* 27, no. 1 (2013): 565.

¹²¹ Stiglmeier, *Mass Rape*, 14.

¹²² Katherine Pruitt, “Destroying the Legacy of the ICTY: Analysis of the Acquittals of Jovica Stanisic and Franko Simatovic,” *San Diego International Law Journal* 15, no. 2 (2014): 362.

their Croatian, Bosniak, and Albanian neighbors in the mid-1980s. Following increasingly divisive rhetoric from Milosevic regarding relations between Serbians and the other populations within the FPRY, Slovenia, Croatia, and Macedonia declared independence in 1991, a brutal war in Croatia followed.¹²³

Later in 1991 Bosnian Serbs made attempts to declare the “autonomy” of Bosnia and join a new Serbian state. This was rejected by a majority of the population, mostly the Bosnian Muslims.¹²⁴ In 1991 Bosnia, Muslims represented 43.7 percent of the population, Serbs made up 31.3 percent, and Croats 17.3 percent.¹²⁵ This made Bosnia the most ethnically diverse of the Yugoslavia republics, and a sizeable Serb population made Bosnian independence tenuous.¹²⁶ In March of 1992 after a people’s referendum received 62.7 percent support (mostly from Muslims and Croats), Bosnia and Herzegovina joined the other republics and declared independence from the FPRY. In April, the United States the European Community recognized Bosnia and Herzegovina’s independence, prompting Serbian troops to attack.¹²⁷

The ensuing armed-conflict in Bosnia pitted the Yugoslavian Federal Army (made up of between 80,000 and 100,000 soldiers), volunteer Bosnian Serbs, and a coalition of paramilitary groups redirected from other republics against the virtually unarmed and unprepared Bosnian Muslims and Croats. Serbian forces broke the resistance of the Bosnian Muslims quickly. Muslims were pushed back into 15-20 percent of Bosnian territory and the Croats retained approximately 20-25 percent (an area

¹²³ Stigmayer, *Mass Rape*, 14-15.

¹²⁴ Ibid.

¹²⁵ Snyder et al., “Battleground of Women's Bodies,” 184.

¹²⁶ Power, *Problem from Hell*, 247.

¹²⁷ Stigmayer, *Mass Rape*, 17.

largely unclaimed by Serbian leaders).¹²⁸ Serbian military leaders then become concerned with winning more territory and driving out all of the “non-Serbs” in the territory. While this went on, Milosevic amped up propaganda that targeted Serbs, conveying that Serbs were being threatened by “genocide” from the Muslims, who were “dangerous extremists” and “fascist, genocidal Croats”.¹²⁹ While Serbian troops fired on Sarajevo, the television reported that “Muslim extremists” were shooting at their own people.¹³⁰

The Serbians were concerned with creating a population that would be receptive to Serbian objectives. Since the Bosnian Muslims and Croats were unlikely to acquiesce to the desires of the Serbs, there were purposeful efforts to drive them out permanently. The Serbs’ practice of targeting civilians and ridding the area of non-Serbs was euphemistically dubbed *etničko čišćenje* or “ethnic cleansing”.¹³¹ Muslims and Croats were murdered, imprisoned in camps, and deported. While in camps many Muslims and Croats were terrorized, tortured, and raped to discourage them from returning to their homes. Over the course of the conflict, between 20,000 and 50,000 women were raped, many repeatedly.¹³² (Men were also the victims of sexual violence, however it was disproportionately directed at women.¹³³) The houses and cultural sites of Muslims and Croats were also destroyed so there would be nothing left to want to return to.¹³⁴ Bosnian Serb units destroyed most cultural and religious sites in an attempt to cleanse the memory

¹²⁸ Ibid.

¹²⁹ Ibid., 20.

¹³⁰ Ibid.

¹³¹ Power, *Problem from Hell*, 251.

¹³² Stigmayer, *Mass Rape*, 19.

¹³³ Anne-Marie L. M De Brouwer, *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR*, School of Human Rights Research Series, vol. 20 (Antwerp: Intersentia, 2005), 9.

¹³⁴ Stigmayer, *Mass Rape*, 19.

of a Muslim or Croat presence in what they would call “Republika Srpska”.¹³⁵ Bosnian Muslims were herded onto busses and trains and transported to makeshift detention camps. These camps were the location of “routine rape and torture by Bosnian Serb paramilitary forces”. Many observers saw these so-called ‘rape camps’ as reminiscent of Nazi concentration camps during World War II.¹³⁶ The victims were predominantly Muslim women from Bosnia. The rapes happened as part of Serbian plans to systematically impregnate Bosnia women. Because of the patrilineal structure of Bosnian culture, the resulting children would inherit the father’s ethnicity, Serbian.¹³⁷

The estimated twenty thousand plus rapes during the conflict were not the errant actions of a few soldiers, but a systematic policy encouraged by the commanders of both the regular Serbian army and the paramilitary groups.¹³⁸ Widespread victim and witness accounts and news reports detailed the use of sexual violence against Bosnian women systematically as a tactic of the Serb forces to “intimidate and [terrorize] the Muslim population in order to ‘ethnically cleanse’ Bosnian territories”.¹³⁹ The Yugoslav army, the Bosnian Serbs, and the Belgrade government were named as the aggressors in an illegal international aggression in which they sought to take territory belonging to Bosnia and Herzegovina, a recognized sovereign state.¹⁴⁰ While, the United States and parts of the international community viewed Bosnia as a sovereign nation, Serbia did not. Serbia and others argued that the conflict was as an internal dispute, “protected from

¹³⁵ Power, *Problem from Hell*, 249.

¹³⁶ Todorova, “Giving Memory a Future,” 4.

¹³⁷ Ginn, “Effective Prosecution,” 572.

¹³⁸ Christopher Scott Maravilla, “Rape as a War Crime: The Implications of the International Criminal Tribunal for the Former Yugoslavia’s Decision in *Prosecutor v. Kunarac, Kovac, & Vukovic* on International Humanitarian Law,” *Florida Journal of International Law* 13 (2001): 322.

¹³⁹ Todorova, “Giving Memory a Future,” 4.

¹⁴⁰ Beverly Allen, *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia* (Minneapolis, MN: University of Minnesota Press, 1999), 43.

international intervention by the veil of Yugoslav state sovereignty.”¹⁴¹ It should also be noted that all actors in this conflict are guilty of impermissible actions, the Muslim forces committed offenses as well.¹⁴²

The media played a central role in alerting the general public around the world to the pervasive sexual violence in Bosnia and generating widespread public outrage over gross human rights violations. The reports of sexual violence from Bosnia and other parts of the former Yugoslavia aroused international recognition of gender-based violence and conflict-related sexual violence as a violation of human rights and helped to spur new analysis of the “gendered nature of conflict and of humanitarian responses”.¹⁴³ The events in Bosnia also prompted the transformation of the United Nations High Commissioner for Refugees (UNHCR) Executive Committee to reform their statements on women into a set of comprehensive guidelines. The United Nations, the Organization on Security and Cooperation in Europe (OSE), the European Community (EC) and other international and regional institutions adopted successive resolutions condemning war crimes and crimes against humanity in Bosnia, all paying special attention to sexual abuse and violence against women and girls.¹⁴⁴ Media attention to the atrocities in Bosnia played an important role in creating a political climate that made important procedural changes and the subsequent trials for conflict-related sexual violence possible.

Despite the media attention and reports of genocide in Bosnia, the international community was slow to react to the escalation of war in the former Yugoslavia. After

¹⁴¹ Neven Andjelic, “The State of International Humanitarian Law as a Consequence of the History of South Slavs' Nation-Building Processes,” *Politicka Misao: Croatian Political Science Review* 50, no. 5 (2013): 63.

¹⁴² Power, *Problem from Hell*, 307.

¹⁴³ Mertus, *War's Offensive*, 21-22.

¹⁴⁴ *Ibid.*, 22.

finally acting to help end the conflict, the United Nations Security Council established the first international war crimes tribunal since Nuremburg in May of 1993.¹⁴⁵ The International Criminal Tribunal for the former Yugoslavia (ICTY) was established, at The Hague, by the Security Council with the task of bringing “to justice those responsible for serious violations of international humanitarian law” during the conflict in the former Yugoslavia.¹⁴⁶ The Tribunal has permanently altered understanding of international humanitarian law. The mission of the ICTY was to investigate, to indict, and to try those suspected of crimes against humanity during the wars that marked the breakup of Yugoslavia.¹⁴⁷ As of June 2014, the ICTY has indicted one-hundred and sixty one persons for serious violations of the international humanitarian law, trials have concluded for one-hundred and forty one accused, and there are ongoing proceedings for twenty accused persons.¹⁴⁸

The ICTY Statute is narrowly focused, authorizing the court to prosecute violations of the Geneva Conventions and the Convention on Genocide.¹⁴⁹ The ICTY Statute does not explicably list sexual assault, and rape is included only explicitly as a crime against humanity and implicitly as a war crime by reference to the Geneva Conventions.¹⁵⁰ The ICTY Statute gives the Tribunal power to prosecute persons responsible for crimes against humanity under Article 5. The crimes are defined as the

¹⁴⁵ Maravilla, “Rape as a War Crime,” 322.

¹⁴⁶ Kirsten Campbell, “Rape as a Crime Against Humanity: Trauma, Law and Justice in the ICTY,” *Journal of Human Rights* 2, no. 4 (2003): 507.

¹⁴⁷ Stiglmeier, *Mass Rape*, ix.

¹⁴⁸ United Nations International Criminal Tribunal for the former Yugoslavia, “Key Figures of the Cases” <http://www.icty.org/sections/TheCases/KeyFiguresoftheCases>.

¹⁴⁹ Stiglmeier, *Mass Rape*, ix.

¹⁵⁰ Leo Van Den Hole, “A Case Study of Rape and Sexual Assault in the Judgments of the International Criminal Tribunals for Rwanda (ICTR) and the Former Yugoslavia (ICTY),” *Eyes on the ICC* 1, no. 1 (2004): 63.

following acts when “committed in armed conflict, whether international or internal in character, and directed against civilians: Murder; extermination; enslavement; deportation; imprisonment; torture; rape; persecutions on political, racial, and religious grounds; and other inhumane acts”.¹⁵¹ Prosecuting a crime against humanity requires a heavy burden of proof. The prosecutor must prove that “widespread and systematic attacks” were carried out against civilians during an armed conflict.¹⁵² This can make investigations into crimes against humanity difficult because evidence must be gathered under post-conflict conditions. Crimes against humanity trials mean difficult investigations and a heavy burden of proof on the ICTY Prosecutor.¹⁵³

The ICTY has carried out extensive investigations and prosecutions of conflict-related sexual violence since its inception. Since the first trial in 1995, more than seventy individuals have been charged with crimes of sexual violence and around thirty have been convicted.¹⁵⁴ Though there are many more cases to choose from, this examination of ICTY sexual violence cases will focus on four important cases: the Tadić case, the Celebici case, the Furundzija case, and the Kunarac case.

The first person to be tried by the ICTY was Duško Tadić, the former President of the Local Board of the Serb Democratic Party in the Bosnian town of Kozorac. Tadić was involved with the deportation and killing of non-Serb citizens in Kozorac. Tadić’s trial was the first international war crimes trial to involve charges of sexual violence.¹⁵⁵ The prosecutors initially charged Tadić with sexually violent crimes, committed against men

¹⁵¹ Campbell, “Crime Against Humanity,” 508.

¹⁵² Ginn, “Effective Prosecution,” 574.

¹⁵³ Ibid.

¹⁵⁴ United Nations International Criminal Tribunal for the Former Yugoslavia, “Landmark Cases,” <http://www.icty.org/sid/10314>.

¹⁵⁵ Pruitt, “Destroying the Legacy of the ICTY,” 370-371.

and women.¹⁵⁶ The case involved (amongst other sexual crimes) involved the forced castration of a male detainee by two other detainees in the Omarska camp in Kozorac.¹⁵⁷

Tadić's trial was originally expected to be the first international war crimes trial to prosecute rape separately as a war crime and not in conjunction with other crimes. Tadić was first indicted for rape as a crime against humanity and a grave breach, and violation of the laws or customs of war. However, during trial proceedings the Prosecutor withdrew the individual rape charges from the indictment because of several problems. First, one of the key witnesses against Tadić was too frightened to testify in court. Later, another witness was discredited upon cross-examination and the Tribunal disregarded the evidence provided by that witness. As a result, the prosecution could not prove, beyond a doubt, that Tadić raped or otherwise sexually assaulted anyone personally. However, the evidence provided during trial established that sexual violence was "pervasive and rampant" in Kozorac.¹⁵⁸ The trial left the door open for future trials to prosecute and convict leaders, "non-state actors, and low-level participants" of "aiding and abetting crimes of physical, mental, and sexual violence."¹⁵⁹ The dropping of the independent rape charges was disappointing to many in the international legal community, however, the prosecutor ultimately convicted Tadić under another provision of the ICTY Statute for, among other things, crimes of sexual violence, namely aiding and abetting the sexual mutilation of a male Omarska prisoner, and aiding and abetting persecution, including

¹⁵⁶ Christin B. Coan, "Rethinking the Spoils of War: Prosecuting Rape as a War Crime in the International Criminal Tribunal for the Former Yugoslavia," *North Carolina Journal of International Law & Commercial Regulation* 26 (2000): 191.

¹⁵⁷ Copelon, "Toward Accountability," 246.

¹⁵⁸ Kelly D. Askin, "Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status," *The American Journal of International Law* 93, no. 1 (1999): 101, 105.

¹⁵⁹ *Ibid.*, 105.

sexual assault.¹⁶⁰ After indictment, trial, and appeal Tadić was convicted of willful killing, torture and inhuman treatment, and murder.¹⁶¹ While it is certainly problematic that this trial focused mostly on sexual violence against men and not the rampant sexual violence against women that occurred under Tadić's command, the decision did establish important precedence for convicting others of sexual crimes.

In the 1998 *Prosecutor v. Mucić et al* case (also called the Celebici case), four defendants (Zdravko Mucić, Hazim Delić, Esad Landzo, and Zejnil Delalić) were charged with participation in atrocities committed at the Celebici prison camp where prisoners were "killed, tortured, sexually assaulted, beaten, and otherwise subjected to cruel and inhuman treatment."¹⁶² Like in the Tadić case, the prosecutors tried crimes of sexual violence that had been committed against men and women. The ICTY convicted Celebici defendant Zdravko Mucić under the doctrine of command responsibility for sexually violent crimes that took place within his battalion. The prosecutor charged these acts as "cruel treatment" and "willfully causing great suffering or serious injury."¹⁶³ The Tribunal found Hazim Delić guilty of the brutal and repeated rapes of two women imprisoned in the Celebici prison camp.¹⁶⁴ Delić was convicted of breaching the Geneva Conventions and committed war crimes as acts of torture for his part in the rapes that took place in the Celebici camp. Neither Mucić nor Delić was convicted specifically of rape, only torture and command responsibility.¹⁶⁵ The ICTY did not find Esad Landzo guilty of any sex crimes. However, the Trial Chamber noted that Landzo had been

¹⁶⁰ Coan, "Rethinking the Spoils of War," 190.

¹⁶¹ Pruitt, "Destroying the Legacy of the ICTY," 371.

¹⁶² Coan, "Rethinking the Spoils of War," 191.

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*, 192.

¹⁶⁵ Maravilla, "Rape as a War Crime," 337.

involved in several instances of sexual violence. Zejnil Delalić was acquitted of all charges.¹⁶⁶

In 1998, shortly after the Celebici judgment, the ICTY ruled in the Furundzija case.¹⁶⁷ The case was the first to focus “entirely on charges of sexual violence”, concentrating on the multiple rapes of Bosnian Muslim women in the Lasva River Valley in Bosnia committed by members of the Jokers, “a special unit of the Croatian Defence Council”, led by Anto Furundzija.¹⁶⁸ This case established a second principal definition of rape.¹⁶⁹ The first made by the International Criminal Tribunal for Rwanda in the Akayesu case and defined rape as “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive.”¹⁷⁰ The Furundzija Judgement implied that the Akayesu definition of rape was not sufficiently specific, and clarified the definition of rape under international law. The Furundzija decision asserted that rape was a violation of customary international law and was a “a violation of personal dignity, and rape in fact constituted torture when inflicted by or at the instigation of or with the consent or acquiescence of a public official or other persons acting in an official capacity.”¹⁷¹ Rape was defined in the Furundzija judgment by the ICTY as “1) sexual penetration of the vagina, anus, or mouth of the perpetrator by the penis or the vagina or anus of the victim by an object used by the perpetrator, and 2) by coercion or force or

¹⁶⁶ Coan, “Rethinking the Spoils of War,” 191-192.

¹⁶⁷ De Brouwer, *Supranational Criminal Prosecution*, 111.

¹⁶⁸ United Nations International Criminal Tribunal for the Former Yugoslavia, “Landmark Cases.”

¹⁶⁹ De Brouwer, *Supranational Criminal Prosecution*, 112.

¹⁷⁰ Miller, Alexandra A. 2003. From the international criminal tribunal for Rwanda to the international criminal court: Expanding the definition of genocide to include rape. *Penn State Law Review* 108, no. 1: 363.

¹⁷¹ Chad G. Marzen, “The Furundzija Judgment and Its Continued Vitality in International Law,” *Creighton Law Review* 43, no. 2 (2010): 506.

threat of force against the victim or a third party.”¹⁷² The Tribunal also affirmed that the crime of torture attained the status of a *jus cogens* or peremptory norm of international law that allows no derogation by states in any circumstances. The Tribunal’s statement on the prohibition against torture as a norm of *jus cogens* ensures that no international action or treaty can ever legitimize the use of torture.¹⁷³

The Furundzija decision was the ICTY’s first to consider war crimes charges solely stemming from rape.¹⁷⁴ The Tribunal’s judges also confirmed that rape may be used as a tool of genocide.¹⁷⁵ Furundzija was charged with “individual criminal responsibility for grave breaches of the Geneva Conventions and war crimes, including three individual counts of torture and inhumane treatment, torture, and outrages upon human dignity, including rape”.¹⁷⁶ Furundzija was convicted of violations of the laws of war for torture and outrages upon human dignity, including rape even though he did not personally rape anyone. Furundzija would allow his subordinates to commit rape, and did nothing to curtail their actions. The Court found that he had aided and abetted these outrages upon human dignity.¹⁷⁷ In this case, “the ICTY established that rape may constitute a violation of the laws or customs of war.” The Court also ruled that “rape can also constitute a grave breach of the Geneva Conventions in the form of torture,” however, the grave breach charges were later dismissed.¹⁷⁸

¹⁷² Ibid., 513.

¹⁷³ Ibid., 506, 515.

¹⁷⁴ Ibid., 506.

¹⁷⁵ United Nations International Criminal Tribunal for the Former Yugoslavia, “Landmark Cases.”

¹⁷⁶ Marzen, “The Furundzija Judgment,” 508.

¹⁷⁷ Pruitt, “Destroying the Legacy of the ICTY,” 372.

¹⁷⁸ Kimberly E. Carson, “Reconsidering the Theoretical Accuracy and Prosecutorial Effectiveness of International Tribunals’ ad hoc Approaches to Conceptualizing Crimes of Sexual Violence as War Crimes, Crimes Against Humanity, and Acts of Genocide,” *Fordham Urban Law Journal* 39, no. 4 (2012): 1269.

Among the three ICTY cases following Tadić that recognized rape and sexualized violence against women as war crimes and crimes against humanity (the Celebici Case, the Furundzija case, and the Kunarac case), the most significant is the Kunarac case.¹⁷⁹ The ICTY was in its sixth year of proceedings and had completed more than fifteen cases before hearing the Kunarac case.¹⁸⁰ In 2001, the ICTY, in *Prosecutor v. Kunarac, Kovac, and Vukovic*, found three soldiers guilty of raping and torturing women and classified “sexual enslavement as a crime against humanity.”¹⁸¹ The landmark ICTY decision by the Trial Chamber in *Prosecutor v. Kunarac, et al* marks the first occasion that an international legal body “explicitly ruled that the systematic rape of women during an armed conflict constitutes a war crime”.¹⁸² The Court found that rape was “used by members of the Bosnian Serb armed forces as an instrument of terror.”¹⁸³ This case represents an important stepping stone in prosecuting conflict-related sexual violence and has been instrumental in changing international norms regarding warfare conduct.

The Prosecutor v. Kunarac et al Judgment convicted three Serbian soldiers, Kunarac, Kovac, and Vukovic, of rape as a crime against humanity. The case, also known as the ‘rape camp case’, charges arose from the rape of Muslim women held by Serb soldiers as part of ‘ethnic cleansing’ in the Foca region of Bosnia. The case represents the first convictions of sexual violence as a crime against humanity and authoritatively affirms that rape in armed conflict is a crime against humanity under international

¹⁷⁹ Copelon, “Toward Accountability,” 246.

¹⁸⁰ United Nations International Criminal Tribunal for the Former Yugoslavia, “Judgment List,” <http://www.icty.org/sid/10095#2001>.

¹⁸¹ Richey, “Several Steps Sideways,” 110.

¹⁸² Maravilla, “Rape as a War Crime,” 322.

¹⁸³ Public Information Services/Press Unit. Judgement of trial chamber II in the Kunarac, Kova^ and Vukovi] case. United Nations International Criminal Tribunal for the former Yugoslavia. http://www.icty.org/x/cases/kunarac/tjug/en/010222_Kunarac_Kovac_Vukovic_summary_en.pdf (accessed 7/10, 2014).

humanitarian law.¹⁸⁴ The Chamber ruled that the sexual violence that occurred in Foca constituted a blatant violation of international humanitarian law. The Chamber also ruled that rape constituted an “outrage upon personal dignity under Article 3 (c) of the Geneva Conventions”.¹⁸⁵

The Kunarac decision possesses far reaching implications for the further development of international law.¹⁸⁶ Specifically, the case represents an important development of international criminal law, international humanitarian law, and international customary law’s treatment of sexual violence. The Tribunal’s decision provides an authoritative decision on the legal components of the offence of rape under international criminal law, which was later confirmed on appeal.¹⁸⁷ The ICTY adopted that principle that rape constitutes a war crime under customary international law. Prior to the decision, no precedents existed under customary international law to confirm that rape is a crime against humanity.¹⁸⁸

Despite some problems like the variation in how crimes committed against men and against women were charged, the legacy of the ICTY has been undeniably positive regarding legal treatment of conflict-related sexual violence and the convictions for rape and other crimes have set a positive precedence. Prosecuting sexually violent crimes leads not only to retributive and restorative justice, but also to international condemnation of the mindsets that led to their committal in the first place. Although the ICTY expanded criminal liability for sexually violent acts committed during the Yugoslav wars, an

¹⁸⁴ Campbell, “Rape as a Crime Against Humanity,” 507.

¹⁸⁵ Maravilla, “Rape as a War Crime,” 326.

¹⁸⁶ *Ibid.*, 339.

¹⁸⁷ Campbell, “Rape as a Crime Against Humanity,” 508.

¹⁸⁸ Maravilla, “Rape as a War Crime,” 339.

undeniable positive, the conviction rate for sexually violent crimes has been much lower than the conviction rate for other crimes.¹⁸⁹ This low conviction rate is problematic, considering the evidence of the widespread sexual violence over the course of the war in Bosnia.

The ICTY has encountered a number of difficulties prosecuting sexually violent crimes, including an absence of expertise along with gender bias in the Office of the Prosecutor, a reluctance of victims to testify because of fears of retribution, and problems with the coordination between the Office of the Prosecutor and the Victims and Witnesses Unit. The gender bias was evident in the ICTY when the Office of the Prosecutor treated sexual violence against women and the same crime against men differently in several cases. In the Tadić Case, if the sexually violent act was committed against a woman, the act was prosecuted as a “grave breach” and if it the same act was committed against a man it was prosecuted as a “war crime.”¹⁹⁰ Under international law, war crimes and grave breaches have been considered to be separate concepts. War crimes are classified as “certain acts and omissions carried out” during war that are criminalized by international law. Grave breaches are a limited set of “serious violations of the Geneva Conventions.” War crimes have been treated as the more “dynamic of the two.”¹⁹¹ The legacy of prosecuting sexual violence by the ICTY is not perfect, however the cases examined in this thesis represent the first prosecutions for armed-conflict related sexual violence and have laid the groundwork for work done by the International Criminal Court.

¹⁸⁹ Ginn, “Effective Prosecution,” 565. 573.

¹⁹⁰ Ginn, “Effective Prosecution,” 575,578.

¹⁹¹ Öberg, Marko Divac. 2009. The absorption of grave breaches into war crimes law. *International Review of the Red Cross* 91, no. 873: 163-164.

CHAPTER V

Case Study: Rwanda

In one hundred days, between April 6th and July 4th of 1994, members of the Hutu ethnic majority in Rwanda murdered some five hundred thousand people (though some estimates put this number as high as one million, mostly of the Tutsi minority, in a brutal clash that has been since classified as genocide.¹⁹² Though there were plenty of warning signs, the surge of violence still took the world by surprise.¹⁹³ During the 1994 Rwandan Civil War, approximately 250,000 people (mostly women) were raped, some estimates put it as high as 500,000.¹⁹⁴ The implications of the war and the subsequent global outcry against the violence and rampant sexual violence in Rwanda have helped to facilitate a shift in regarding the legal treatment of conflict-related sexual violence and bring about prosecutions of sexual violence as a war crime.

The tensions between the Hutu and Tutsi originated during Belgium's rule of the country, which ended in 1962. Previously, the two groups "spoke the same language, Kinyarwanda, practiced the same religion", and generally lived and worked side by side, even intermarrying.¹⁹⁵ Generally the division of people in Rwanda was socio-economic, the Tutsi were largely cattle-farmers and the Hutu were farmers (the Twa, or Pygmies, also made up a small minority, and they were foragers). It was possible for individuals to switch classifications in the event of change in social status (acquiring land or cattle,

¹⁹² Samuel Totten and Rafiki Ubaldo, eds., *Genocide, Political Violence, Human Rights: We Cannot Forget: Interviews with Survivors of the 1994 Genocide in Rwanda* (Piscataway, NJ: Rutgers University Press, 2011), 2.

¹⁹³ Olaifa Temitope Abimbola and Danjibo Nathaniel Dominic, "The 1994 Rwandan Conflict: Genocide or War?," *International Journal on World Peace* 30, no. 3 (2013): 31.

¹⁹⁴ Jennifer L. Green, "Uncovering Collective Rape: A Comparative Study of Political Sexual Violence," *American Sociological Association* 34, no. 1 (2004), 97.; Van Schaack, "Obstacles on the Road to Gender Justice," 367.

¹⁹⁵ Totten and Ubaldo, *Genocide, Political Violence, Human Rights*, 2.

marriage, etc.). Belgium gained control of Rwanda following World War I. The ruling Belgian's favored the Tutsi and began systemically removing Hutu from positions of power and excluded them from higher education. The Belgians introduced mandatory identification cards in the 1930s that denoted an individual as Hutu, Tutsi, or Twa. Many Hutu began to resent their second-class treatment.¹⁹⁶ There were clashes between the two groups over the next several decades.

In a series of attempts to maintain control of Rwanda, the Belgian government and the Catholic Church switched alliances in 1959 and began supporting the Hutu majority, and subsequent Hutu atrocities, and forced as many as three hundred thousand Tutsis to flee. This change began the practice of overt discrimination against the Tutsi. Belgium officially granted independence to Rwanda in July of 1962, and the ethnically motivated conflict persisted in the years following. In 1990, a civil war broke out between the government of Major General Juvenal Habyarimana and the predominately Tutsi rebel Rwandan Patriotic Front (RPF) when the RPF invaded Rwanda from Uganda. Thousands upon thousands of Tutsi were arrested and killed, accused of allegiance to the RPF. A series of "test massacres" of Tutsi took place throughout Rwanda.¹⁹⁷ The United Nations called for peace negotiations in 1992 and ceasefire and the first round of agreements were signed in July, called the Arusha Accords. In August of 1993, another agreement was signed that called for a transitional government that would include the RPF. A UN mission, United Nations Observer Mission Uganda-Rwanda (UNOMUR) was authorized in 1993, it was later revamped and became the United Nations Assistance

¹⁹⁶ Ibid., 2-4.

¹⁹⁷ Ibid., 4-7.

Mission for Rwanda (UNAMI) to help facilitate the peace agreements.¹⁹⁸ However, violence continued unabated and in January of 1994 the US Central Intelligence warned that if it continued up to half a million Rwandan could die.¹⁹⁹

On April 6th, 1994 a plane carrying the Rwandan President Habyarimana (a Hutu) and Burundi's president Cyprien Ntaryamira was shot down²⁰⁰ over Kigali, Rwanda, leaving no survivors. The presidents were returning from a series of meetings in Dar es Salaam, Tanzania concerning the Arusha Peace Agreements. This attack was the catalyst for the bloody conflict in Rwanda.²⁰¹ Within an hour of the crash, roadblocks were erected across Kigali and the systematic rape and slaughter of the Tutsi (and moderate Hutu) began.²⁰² Approximately, three-quarters of the inhabitants of Rwanda were killed or displaced over the course of the one hundred day conflict, in which ten to fifteen percent of the population was killed, two million people were internally displaced, and another two million became international refugees.²⁰³ Over the one-hundred days as many as half a million women and girls were raped. Rape was also accompanied by sexual mutilation and torture, and women and girls were often raped to death by perpetrators wielding machetes, sticks, broken glass, and other instruments. By some accounts, virtually every female survivor (including the very young) in Rwanda was the victim of sexual violence.²⁰⁴ Rwandan officials sanctioned and encouraged sexual

¹⁹⁸ Power, "Problem from Hell," 331.

¹⁹⁹ Totten and Ubaldo, *Genocide, Political Violence, Human Rights*, 8.

²⁰⁰ It has never been determined absolutely who was responsible for the assassinations, both extremist Hutu groups and the RPF have been implicated.

²⁰¹ Totten and Ubaldo, *Genocide, Political Violence, Human Rights*, 8.

²⁰² Alexandra A. Miller, "From the International Criminal Tribunal for Rwanda to the International Criminal Court: Expanding the Definition of Genocide to Include Rape," *Penn State Law Review* 108, no. 1 (2003): 350.

²⁰³ Chitra Nagarajan, "An Appraisal of Rwanda's Response to Survivors Who Experienced Sexual Violence in 1994," *Wagadu: A Journal of Transnational Women's & Gender Studies* 10 (2012): 108.

²⁰⁴ Van Schaack, "Obstacles on the Road to Gender Justice," 367.

violence.²⁰⁵ Most of the Rwandans who were killed, perished in the first month of the conflict, April 1994. The number of murders per days was five times the amount carried out in the Nazi camps.²⁰⁶

While it can be said the Rwandan civil war actually began in 1990, the majority of the systematic sexual violence accompanied the one-hundred day genocidal war in 1994, which will be the focus of this chapter. The 1994 Rwandan genocide had particularly damaging implications for women. Pervasive ethnic and gender stereotypes, “propagated by the Hutu majority before” and during the conflict, helped to incite widespread sexual violence against women.²⁰⁷ Hutu propaganda painted Tutsi women as “condescending seductresses inaccessible to Hutu men.”²⁰⁸ When women in an ethnic caste are embodied as “sexual temptresses they become by definition unchaste and therefore subject to sexual abuse without legal redress.”²⁰⁹ These prevalent images “contributed to the racist attitude that Tutsi women were objects to be dominated, dehumanized, and destroyed by Hutu” forces.²¹⁰

In 1994, the United Nations Security Council set up a war crimes tribunal for Rwanda, modeled after the one set up to punish crimes committed in the former Yugoslavia.²¹¹ The International Criminal Tribunal for Rwanda (ICTR) was established in Arusha, Tanzania to prosecute those responsible for the genocide and other reprehensible breaches of international humanitarian law. Like the ICTY, the ICTR has

²⁰⁵ Stephanie K. Wood, “A woman Scorned for the ‘Least Condemned’ War Crime: Precedent and Problems with Prosecuting Rape as a Serious War Crime in the International Criminal Tribunal for Rwanda,” *Columbia Journal of Gender and Law* 13 (2004): 284.

²⁰⁶ Miller, “International Criminal Tribunal for Rwanda,” 351.

²⁰⁷ Wood, “The ‘Least Condemned’ War Crime,” 284.

²⁰⁸ *Ibid.*

²⁰⁹ *Ibid.*, 285.

²¹⁰ *Ibid.*

²¹¹ Power, “Problem from Hell,” 385.

had a profound impact on the advancement of international humanitarian law in the twenty years since its inception. The ICTR was established in Arusha for several reasons. First, Nairobi in Kenya, a far more developed metropolis, did not want to host the court. Next, Arusha holds symbolic value as the town where the failed Rwandan peace process was negotiated before the genocide occurred.²¹² The judges had to first gather at The Hague to establish the official rules and procedures because the Arusha facility was not completed. The proceedings were moved to Arusha in September of 1996.²¹³

The Tribunal, created to “contribute to the process of national reconciliation and to restoration and maintenance of peace in the region,” is addressing sexual violence directly.²¹⁴ The ICTR was established to prosecute those “responsible for genocide and other violations of international humanitarian law committed in Rwanda” in 1994 (from January 1st to December 31st).²¹⁵ The ICTR has “subject matter jurisdiction over crimes of genocide, crimes against humanity, and violations” of the Geneva Conventions.²¹⁶ Rape is punishable “under Article 3(g) of the ICTR Statute as a crime against humanity” and under Article 4(e) as a war crime.²¹⁷ As of July 2014, the ICTR has completed seventy five cases, of which fifty two have been convicted and appealed, eleven are pending appeal, and twelve have been acquitted. There are also nine indicted individuals who remain at large.²¹⁸

²¹² Kingsley Chiedu Moghalu, *Rwanda's Genocide: The Politics of Global Justice* (New York: Palgrave Macmillan, 2005), 1, 53.

²¹³ Galina Nelaeva, “The Impact of Transnational Advocacy Networks on the Prosecution of Wartime Rape and Sexual Violence: The Case of the ICTR,” *International Social Science Review* 85, no. 1 (2010): 9.

²¹⁴ Miller, “International Criminal Tribunal for Rwanda,” 357.

²¹⁵ *Ibid.*, 358.

²¹⁶ *Ibid.*, 359.

²¹⁷ Van Den Hole, “Rape and Sexual Assault,” 64.

²¹⁸ United Nations International Criminal Tribunal for Rwanda, “Status of Cases,” <http://www.unictr.org/Cases/tabid/204/Default.aspx>.

In the early stages of investigation, sexual crimes did not appear on a single ICTR indictments which was met with harsh criticism from human rights activists. Some accused the investigators (comprising mostly of white men) of treating traumatized victims in Rwanda with condescension, preventing any kind of productive testimony from being collected.²¹⁹ One journalist and activist (the late Elizabeth Neuffer) accused the UN investigators of often not asking survivors about rape and not considering it important enough to ask about.²²⁰ These problems were later corrected and new investigators, including some women, joined the team.²²¹ It was in 1996 that a sexual assault unit of the investigative team of the Office of the Prosecutor was created, consisting of “three officers, one psychologist, one nurse, two lawyers, and one policeman.”²²² By May of 1997, the tribunal, responding to pressure from the Human Rights Watch and other groups “included charges of rape and sexual violence in its indictments.”²²³ During the first three years of the tribunal, under the leadership of prosecutor Richard Goldstone, no rape indictments were issued and sexual violence was not a part of the general prosecutorial strategy of the tribunal.²²⁴

However, though indictments for sexual violence began to appear after the departure of Goldstone, the ICTR did not rid itself of problems with gender justice. Under the tenure of Carla Del Ponte as Chief Prosecutor, from 1999 to 2003, the ICTR proceeded without a coherent strategy for investigating sexual violence, or even an

²¹⁹ Nelaeva, “Transnational Advocacy Networks,” 9.

²²⁰ Jonneke Koomen, “Without These Women, the Tribunal Cannot Do Anything: The Politics of Witness Testimony on Sexual Violence at the International Criminal Tribunal for Rwanda,” *Signs* 38, no. 2 (2013): 258.

²²¹ Nelaeva, “Transnational Advocacy Networks,” 10.

²²² Heidi Haddad, “Mobilizing the Will to Prosecute: Crimes of Rape at the Yugoslav and Rwandan Tribunals,” *Human Rights Review* 12, no. 1 (2011): 115.

²²³ Nelaeva, “Transnational Advocacy Networks,” 10.

²²⁴ Haddad, “Mobilizing the Will to Prosecute,” 116.

articulated idea of how sexual violence fit into the way in which genocide, war crimes, and crimes against humanity were committed during the conflict. The sexual assault investigative team was disbanded in 2000, which brought even more criticism. As a result of these missteps, during much of the early years of the Tribunal the prosecutor's office neglected, de-emphasized, and even botched the prosecution of crimes of sexual violence committed in Rwanda.²²⁵

This chapter will examine the following ICTR cases: *Prosecutor v. Akayesu*, *Prosecutor v. Sylvestre Gacumbitsi*, *Prosecutor v. Muhimana*, *Prosecutor v. Bagosora, et al.*, and *Prosecutor v. Nyiramasuhuko et al.* While there are other cases that deal with sexual violence, these five are some of the most significant to come out of the court over its twenty year existence.

The International Criminal Tribunal for Rwanda made its first ruling, *Prosecutor v. Akayesu*, in September 1998.²²⁶ The landmark Akayesu decision brought about a definition of rape in international law (a definition that was later clarified by the ICTY) and recognized that the sexual violence committed against the Tutsi women of Rwanda “represented a form of genocide.”²²⁷ Rape was defined by the Tribunal as “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive.”²²⁸ The evidence describing the acts of sexual violence in the Akayesu case actually emerged during trial, from unsolicited witness testimony. Two witnesses testified that they have been raped and had witnessed the rape of others in Akayesu's commune.

²²⁵ Van Schaack, “Obstacles on the Road to Gender Justice,” 366, 367, 375.

²²⁶ Green, “Uncovering Collective Rape,” 97.

²²⁷ Nelaeva, “Transnational Advocacy Networks,” 11.

²²⁸ Suzanne Chenault, “And Since Akayesu? The Development of ICTR Jurisprudence on Gender Crimes: A Comparison of Akayesu and Muhimana,” *New England Journal of International and Comparative Law* 14 (2008): 222.

One victim even said that she had not been asked about rape by tribunal investigators. After hearing this testimony, one women's group, the Coalition for Women's Human Rights in Conflict Situations, "submitted an amicus curiae brief on behalf of over forty other NGOs and law clinics" encouraging the Trial Chamber to urge the prosecutorial team to amend the indictment to include specific charges of "rape as a war crime, a crime against humanity, and an act of genocide."²²⁹ The prosecution amended the indictment, and the trial continued.²³⁰

The ICTR, in *Prosecutor v. Akayesu*, was the first tribunal to rule that "rape constitutes a crime against humanity." Jean-Paul Akayesu, a former Hutu mayor, was "prosecuted for his participation in widespread violence against Tutsis in the Taba Commune", including "systematic rape, sexual mutilation, and forced nudity".²³¹ The judgment established that Akayesu was personally criminally responsible for the systematic sexual violence committed by the soldiers under his command. It was found that he had condoned and even encouraged the rape of women in Taba.²³²

In *Akayesu*, the ICTR "held that sexual violence is within the scope of the crimes against humanity of rape, torture, other inhumane acts, outrages upon personal dignity, and infliction of serious bodily or mental harm".²³³ The Tribunal ruled that "rape constituted a crime against humanity, a war crime, and an act of genocide" because it was utilized as a "part of the attack against the Rwandan civilian population and resulted in the both physical and psychological destruction of Tutsi women, their families and their

²²⁹ Van Schaack, "Obstacles on the Road to Gender Justice," 369-370.

²³⁰ Van Schaack, "Obstacles on the Road to Gender Justice," 370.

²³¹ Carson, "Theoretical Accuracy and Prosecutorial Effectiveness," 1270.

²³² Koomen, "Without These Women," 255.

²³³ Carson, "Theoretical Accuracy and Prosecutorial Effectiveness," 1270.

communities.”²³⁴ Akayesu was convicted of “the crimes against humanity of rape, torture and other inhumane acts, and incitement to commit genocide.”²³⁵ Akayesu was condemned to life in prison.²³⁶

In June of 2004, the ICTR Trial Chamber III delivered its judgment in *Prosecutor v. Sylvestre Gacumbitsi*. Gacumbitsi was charged with criminal responsibility for his role in organizing and executing a campaign against Tutsi people in the Rusumo Commune in April 1994 while he was *bourgmestre* (or mayor).²³⁷ The Prosecutor proved that Gacumbitsi actively planned the genocide in his commune between April 7th and 14th of 1994, and that he organized meetings during which he incited the attendants to kill Tutsis. It was also proven that he personally murdered a Tutsi during the event. Gacumbitsi gave a signal to start the mass killings, thereby inciting the population to attack Tutsis taking refuge at a church in Rusumo and personally participating in the massacre.²³⁸ Gacumbitsi was found guilty of eight counts of rape and acquitted of three because of insufficient evidence to demonstrate that Gacumbitsi himself had instigated the crimes.²³⁹ The Trial Chamber found him guilty of genocide and the crimes against humanity of extermination and rape, and not guilty of complicity in genocide and the crime against humanity of murder.²⁴⁰

²³⁴ Koomen, “Without These Women,” 255.

²³⁵ Carson, “Theoretical Accuracy and Prosecutorial Effectiveness,” 1270.

²³⁶ Chenault, “And Since Akayesu?,” 241.

²³⁷ Anna Triponel, “*Sylvestre Gacumbitsi v. Prosecutor*: Case No. ICTR-2001-64-T,” *Human Rights Brief* 12, no. 3 (2005): 1.

²³⁸ Daryl A. Mundis and Fergal Gaynor, “Current Developments at the ad hoc International Criminal Tribunals,” *Journal of International Criminal Justice* 2, no. 4 (2004): 1164.

²³⁹ Nick Leddy, “*Sylvestre Gacumbitsi v. Prosecutor*: Case No. ICTR-2001-64-A,” *Human Rights Brief* 14, no. 1 (2006): 3.

²⁴⁰ Triponel, “*Sylvestre Gacumbitsi v. Prosecutor*,” 1.

In June of 2006, the Appeals Chamber of the ICTR released its verdict of the Gacumbitsi ruling. The Appeals Chamber upheld the convictions and additionally found Gacumbitsi guilty of aiding and abetting the murder (as a crime against humanity) of two of his female Tutsi tenants. The Appeals Chamber also instituted a lifetime prison sentence, replacing the Trial Chamber's original thirty-year prison sentence.²⁴¹ The Gacumbitsi ruling and appeal signifies a shift in the treatment of sexual violence, even when not explicitly committed by a commander, instead by those under their rule. The life-sentence also signals the seriousness of the crimes perpetrated against the Tutsis and the end of impunity for those responsible.

The ICTR ruled in the *Prosecutor v. Muhimana* in 2005. Makaeli Muhimana was a well-known local official in the Gishyita Commune during the genocide. Muhimana was indicted on charges of genocide, complicity in genocide, and crimes against humanity (rape and murder), "pursuant to Articles 1 and 2 of the" ICTR Statute.²⁴² Muhimana allegedly mobilized, armed, and led assailants in attacks on some 5,000 Tutsi civilians who sought refuge in a church. Muhimana was also said to have raped numerous women and children and murdered many Tutsis in the parish, hospital, and nursing school in Gishyita.²⁴³

The factual allegations in the indictment for Muhimana were significantly more specific than those in the Akayesu indictment. The Muhimana indictment included the identities of the rape victims, as well as the dates, times, and places of the rapes. Despite these details, the Trial Chamber for Muhimana did not find the defendant guilty of all of

²⁴¹ Leddy, "*Sylvestre Gacumbitsi v. Prosecutor*," 1, 3-4.

²⁴² Chenault, "And Since Akayesu?," 241.

²⁴³ Ibid.

the acts of rapes because the information in the indictment was slightly different than the testimonies of the witnesses. Muhimana was convicted for personally raping and aiding and abetting other to rape twelve identified Tutsi women and children. He was acquitted for the rapes of ten other identified women because of insufficient evidence and lack of precision regarding dates and locations of the crimes. In convicting Muhimana of rape as a crime against humanity, the Trial Chamber found him to responsible for both committing and abetting sexual crimes. He was also found guilty for committing and instigating the murder of eight named Tutsi men and women. Muhimana was sentenced to life in prison. Both the sentence and the convictions were upheld on appeal.²⁴⁴ While some may find it disappointing that Muhimana was acquitted for the rapes of some individuals, the conviction of rape at all strengthens the legacy of the Akayesu verdict and further strengthens the global norm against the use of conflict-related sexual violence.

In 2008, the ICTR ruled in *Prosecutor v. Bagosora, et al.*, also commonly referred to as the “Military I Tribunal”. Three individuals, Colonel Théoneste Bagosora, Major Aloys Ntabakuze, and Colonel Anatole Nsengiyumva were found to have committed multiple counts of genocide, crimes against humanity (including rape), and war crimes. Given their convictions for the genocide, the defendants were acquitted on counts of conspiracy to commit genocide.²⁴⁵ Bagosora put together and functionally ran a provisional government after the assassination of President Habyarimana. Bagosora, a former Rwandan military officer, was the so called “mastermind” of the genocide, widely

²⁴⁴ Ibid., 241-243, 247.

²⁴⁵ Jennifer Goldsmith, “*Prosecutor v. Bagosora et al.*: Case No. ICTR-98-41-T,” *Human Rights Brief* 16, no. 3 (2009): 49.

recognized as having coordinated its actual execution.²⁴⁶ The defendants were convicted for both directly ordering the attacks and through the doctrine of superior responsibility.²⁴⁷ The Prosecution was able to prove that Bagosora had command authority over the Rwandan military and civilian militia in his capacity as head of Ministry Defense and that he had actual knowledge that his subordinates were intending to commit crimes or had already committed them and failed to prevent or punish the behavior.²⁴⁸

In 2011, the Appeals Chamber of the ICTR “affirmed Bagosora’s convictions for genocide, extermination and prosecution as crimes against humanity, and violation to life as a war crime”, murder as a crime against humanity, rape as a crime against humanity and other inhumane acts (including stripping female refugees) as crimes against humanity, and “outrages upon personal dignity as a war crime for rapes.”²⁴⁹ The conviction (and subsequent appeal judgments) were considered to be big victories towards ending impunity and holding those responsible for the Rwandan genocide accountable.²⁵⁰

Pauline Nyiramasuhuko and five other defendants (Aresene Shalom Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, Joseph Kanyabashi, and Elie Ndayambaje) were convicted by the ICTR the *Prosecutor v. Nyiramasuhuko et al.* in 2011. The trial has also been called the Butare Case, taking place in the Butare Préfet during 1994. The

²⁴⁶ Parker Patterson, “Partial Justice: Successes and Failures of the International Criminal Tribunal for Rwanda in Ending Impunity for Violations of International Criminal Law,” *Tulane Journal of International & Comparative Law* 19, no. 1 (2010): 385.

²⁴⁷ Kelly Brouse, “Criminal Courts and Tribunals: Judgment Summaries: International Criminal Tribunal for Rwanda,” *Human Rights Brief* 20 (2012): 51.

²⁴⁸ Patterson, “Partial Justice,” 386.

²⁴⁹ Brouse, “Criminal Courts and Tribunals,” 51.

²⁵⁰ Patterson, “Partial Justice,” 384.

case was the ICTR's largest and longest running, lasting over ten years with 189 witnesses, 13,000 pages of documentation submitted into evidence, and 125,000 pages of course proceedings.²⁵¹

All of the six defendants were "charged with genocide, conspiracy to commit genocide, complicity in genocide, the crimes against humanity of extermination, murder, persecution, and other inhumane acts, and violence to life as a war crime." Additionally Nyiramasuhuko and Ntahobali were "charged with rape as a crime against humanity, and with outrages upon personal dignity as a war crime".²⁵² Pauline Nyiramasuhuko, the former minister of family and women's development for the interim Rwandan government during the war, was convicted for ordering the rapes of Tutsi women and girls. Nyiramasuhuko was the first woman to be tried by the ICTR, and her conviction stands as proof that men are not the only perpetrators of sexual violence during conflict.²⁵³ Nyiramasuhuko was the first woman to be indicted by the ICTR as well as the first woman in the history of international criminal law to be "indicted and convicted of rape as a crime against humanity".²⁵⁴

While the Akayesu case stands as a victory because crimes of sexual violence were added to the list of charges after victim testimony, there are multiple cases that did not have the same success. In the *Prosecutor v. Bagambiki* case (also referred to as the Cyangugu trial) a woman testified during the trial about sexual violence that she had

²⁵¹ Elena Baca et al., "ICTR in the Year 2011: Atrocity Crime Litigation Review in the Year 2011," *Journal of International Human Rights* 11, no. 3 (2013): 215.

²⁵² *Ibid.*, 214.

²⁵³ International Criminal Tribunal for Rwanda, *Prosecution of Sexual Violence: Best Practices Manual for the Investigation and Prosecution of Sexual Violence Crimes in Post-Conflict Regions – Lessons Learned from the Office of the Prosecutor for the International Criminal Tribunal for Rwanda* (Arusha, 2014).

²⁵⁴ Baca et al., "ICTR in the Year 2011," 215.

experienced. The same Coalition for Women’s Human Rights in Conflict Situation moved to amicus, urging the ICTR to call upon the prosecution to consider amending the indictment to include charges of sexual violence. The Prosecution opposed the Coalition’s motion this time, arguing that the choice of which charges to bring against the defendant was up to the prosecutor. The prosecution indicated its intention to submit a new indictment that would include rape allegations against at least two of the accused. Ultimately, the new indictment never materialized. There are multiple cases with failures regarding treatment of sexual violence that are very similar to the Bagambiki case, including *Prosecutor v. Kankera* and *Prosecutor v. Ntagerura*, among others.²⁵⁵

The failure of investigators for the prosecutors to uncover allegations of sexual violence in early investigations may be, at least in part, because the majority of the original investigators were men drawn from national police or armed forces with little or no experience and training in taking rape testimony from women and making it trial ready. Collectively, these factors create a reinforcing cycle of under-prosecution for sexual violence and gender crimes. Properly investigating these situations before trial, would have alleviated the need to seek amendments for indictments and would have ensured that case went to trial without evidentiary gaps.²⁵⁶

The ICTR has established important precedence for prosecuting sexual violence as crimes against humanity and as genocide, however, the deficiencies within the court “illustrate the continued struggle to enforce international norms protecting women from violence during armed conflict.”²⁵⁷ The levels of sexual violence in 1994 Rwanda were

²⁵⁵ Van Schaack, “Obstacles on the Road to Gender Justice,” 372-374.

²⁵⁶ *Ibid.*, 374-375.

²⁵⁷ Wood, “The ‘Least Condemned’ War Crime,” 276.

shocking, however the results of the cases before the ICTR do not reflect the frequent occurrences of sexual violence during the conflict.²⁵⁸ The ICTR has been plagued with problems with prosecuting sexual violence from the beginning, evident from the lack of any indictments of sexual violence for the first three years. Sexual violence was not high on the agenda at the ICTR, as it was at the ICTY. When comparatively, “92% of completed rape cases resulted in successful convictions for the ICTY”, whereas only 25% have for the ICTR. Further exaggerating this disparity, is that there were twenty times the number of women raped during the Rwandan than in Bosnia.²⁵⁹ This problematic disparity speaks of the lack of prosecutorial political will and investigative procedures to back up indictments with solid foundations at the ICTR.²⁶⁰ While the Akayesu case set an important precedent and was largely hailed as a success by the international community, the ICTR’s legacy regarding sexual violence is deficient.

The track record of the gender justice and the prosecution of sexual violence before the ICTR provides a harsh “object lesson” for prosecutors for the ICC (and other international criminal tribunals) in “which crimes of sexual violence can be poorly or under-prosecuted and thus rendered invisible or un-redressed.”²⁶¹ While it is largely too late for the ICTR, the precedence set by several court cases and the lessons learned in this court have the ability to pave the way for the ICC, whose statute contains “enlightened structural, procedure, and substantive provisions to ensure gender justice”, that will hopefully culminate in more positive outcomes for victims elsewhere.²⁶²

²⁵⁸ Haddad, “Mobilizing the Will to Prosecute,” 117.

²⁵⁹ *Ibid.*

²⁶⁰ *Ibid.*, 118.

²⁶¹ Van Schaack, “Obstacles on the Road to Gender Justice,” 364.

²⁶² *Ibid.*, 366.

CHAPTER VI

Case Study: The Democratic Republic of the Congo (DRC)

The sexual violence in the Democratic Republic of the Congo (DRC), formerly known as Zaire, has occurred within the context of a brutal civil conflict that dates back to 1996, and is commonly called Africa's World War.²⁶³ The ongoing conflict is one of the bloodiest wars since World War II, more than five million people have been killed.²⁶⁴ Since the outbreak of war, women in the DRC have been the victims of sexual violence on a scale never witnessed before. The United Nations has called the DRC the "rape capital of the world".²⁶⁵ Between 1998 and 2008, hundreds of thousands of women and girls were raped in the DRC (estimates range from two to four hundred thousand).²⁶⁶ Michael Van Rooyen, director of Harvard Humanitarian Initiative, asserted that "rape in the DRC... has emerged as one of the great human crises of our time."²⁶⁷

The conflict in the DRC is large and complex and there is no solid overarching narrative or ideology to easily explain it. There are at least twenty different rebel groups involved along with the armies of nine different countries.²⁶⁸ The conflict in the DRC takes place in close proximity to and shares some of the same actors as the civil war in Rwanda, however they are separate and identifiable events. The civil war in the DRC is embedded within the larger context of other conflicts, including in Sudan, Uganda, and

²⁶³ Thomas Turner, *The Congo Wars: Conflict, Myth, and Reality* (London: Zed Books, 2007), 1.

²⁶⁴ Jeffrey Gettleman, "The World's Worst War," *New York Times*, December 16, 2012.

²⁶⁵ K'Shaani O. Smith, "Prosecutor v. Lubanga: How the International Criminal Court Failed the Women and Girls of the Congo," *Howard Law Journal* 54 (2011): 467.

²⁶⁶ Meger, "Rape of the Congo," 126.

²⁶⁷ Patrick Cannon, "A Feminist Response to Rape as a Weapon of War in Eastern Congo," *Peace Review* 24, no. 4 (2010): 478.

²⁶⁸ Jason K. Stearns, *Dancing in the Glory of Monsters: The Collapse of the Congo and the Great War of Africa* (New York: Public Affairs, 2011), 5.

Angola.²⁶⁹ The Rwandan Genocide and the implications of that conflict did not cause the implosion in the DRC but acted as a catalyst, precipitating a crisis that had been latent for many years.²⁷⁰

The conflict can be best understood in three separate episodes or parts. The first began in 1996 when Laurent Kabila, backed by the Rwandan Patriotic Army and Uganda's People Defence Force, led a coup against long-serving Zairean President Mobutu Sese Seko.²⁷¹ The first episode ended with the toppling of Mobutu Sese Seko in May of 1997.²⁷² After a brief lull in fighting, violence erupted with attempts to overthrow Kabila in August of 1998. A coalition of rebel groups opposing Kabila was the driving force, and there is evidence that some of these groups were backed by the governments of Rwanda and Uganda. Kabila was able to stave off the attempted coup with the support of Zimbabwe and Angola.²⁷³ Unlike in 1996, a transition of power did not happen quickly and the violence dragged on for years. This stage of the conflict waged on until the country was reunified by a peace deal in 2003. Despite the peace agreement, fighting wages on in the eastern Kivu region of the DRC, and can be considered the third episode of the war.²⁷⁴ While there are distinctions between the three stages of conflict, all three episodes will be grouped together in analysis of the conflict-related sexual violence the DRC.

All of the armed groups involved in the conflict have been implicated in the rampant sexual violence, including the national armed forces of the DRC, and the

²⁶⁹ Meger, "Rape of the Congo," 126.

²⁷⁰ Gérard Prunier, *Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe* (New York: Oxford University Press, 2009), xxxi.

²⁷¹ Meger, "Rape of the Congo," 125.

²⁷² Stearns, *Dancing in the Glory of Monsters*, 8.

²⁷³ Meger, "Rape of the Congo," 125.

²⁷⁴ Stearns, *Dancing in the Glory of Monsters*, 8.

national police force, and even United Nations peacekeepers from the United Nations Organization Mission in the Democratic Republic of the Congo (UN MONUC).²⁷⁵ Many of the victims of sexual violence have been subjected to mutilation as well. The intensity of violence occurring in the DRC suggests that sexual violence is being used systematically to terrorize the civilian population, “weaken communities, instill fear and intimidation, and obtain control.”²⁷⁶ Perpetrators of the unrestrained sexual violence in the DRC have enjoyed relative impunity, due to the weak government and unstable power allocation in the country. The “Congolese government has attempted to promulgate laws” condemning sexual violence, however “the laws have not been enforced”.²⁷⁷

An intensive study utilizing survey data and multivariate logistic regression, published in the *American Journal of Public Health* in 2011, found the actual magnitude of sexual violence in the DRC is in all likelihood much higher than any previous estimates offered. The study concluded that an estimated 1,150 women were raped every single day in the year preceding publication, an estimated total of about 419,750 women raped in the DRC in a single year.²⁷⁸ This study is considered the most authoritative report to date on rape occurring in the DRC.²⁷⁹ While there are some limitations (particularly the disclaimer that intimate partner sexual violence is also a problem in the Democratic Republic of the Congo, and not all sexual crimes are committed by armed

²⁷⁵ Meger, “Rape of the Congo,” 126.

²⁷⁶ Meger, “Rape of the Congo,” 126; Smith, “*Prosecutor v. Lubanga*,” 470.

²⁷⁷ Smith, “*Prosecutor v. Lubanga*,” 471.

²⁷⁸ Amber Peterman, Tia Palermo, and Caryn Bredenkamp, “Estimates and Determinants of Sexual Violence Against Women in the Democratic Republic of Congo,” *American Journal of Public Health* 101, no. 6 (2011): 1060, 1064.

²⁷⁹ Laura Heaton, “What Happened in Luvungi? On Rape and Truth in Congo,” *Foreign Policy*, March 4, 2013.

forces) to this research and its methodology, it is clear that the previous estimates of sexual violence in the DRC are very likely grossly underestimated.²⁸⁰

Unlike the conflicts in Bosnia and Rwanda, crimes committed during the ongoing war in the DRC are being addressed by the newly formed International Criminal Court (ICC), which came into force after the ICC Statute (also called the Rome Statute) was ratified by sixty countries in 2002. The ICC's statute "contains structural, procedural, and substantive provisions to ensure gender justice".²⁸¹ Drawing from the precedent of the ICTY and ICTR, the ICC explicitly laid down a number of sexual violence crimes, unprecedented in supranational criminal law. The Rome Statute was the first time that "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence" were specified in an international instrument as both "a crime against humanity and as a war crime".²⁸²

The ICC is also one of the first international tribunals to recognize the interests of the victims of international crime and the importance of the participation of victims during the justice process.²⁸³ Effective and meaningful victim participation in international criminal proceedings is a critical component of transitional justice.²⁸⁴ To help ensure that the interests of the victims are recognized, the "ICC has established a Victims and Witnesses Unit (VWU) to provide protective measures, legal and socio-psychological support, and other supportive measures for victims and witnesses" of

²⁸⁰ Peterman, Palermo, and Bredenkamp, "Estimates and Determinants of Sexual Violence," 1065.

²⁸¹ Van Schaack, "Obstacles on the Road to Gender Justice," 367.

²⁸² De Brouwer, *Supranational Criminal Prosecution*, 20.

²⁸³ Solange Mouthaan, "Victim Participation at the ICC for Victims of Gender-Based Crimes: A Conflict of Interest?," *Cardozo Journal of International & Comparative Law* 21, no. 3 (2013): 619.

²⁸⁴ Harry Hobbs, "Victim Participation in International Criminal Proceedings: Problems and Potential Solutions in Implementing an Effective and Vital Component of Justice," *Texas International Law Journal* 49, no. 1 (2014): 1.

international crime. The Rome Statute also allows for reparations to be made to victims.²⁸⁵

The ICC is seen by many as the culmination of international efforts to replace impunity with accountability for international crimes.²⁸⁶ The ICC's arrival in the DRC to investigate criminal actions committed during the conflict symbolized to many the "beginning of the end" of the impunity enjoyed by perpetrators of egregious acts of violence. The deputy prosecutor of the ICC announced the belief that the perpetrators of the sexual violence "must know that they would be punished and that justice is an important factor in ending the cycle of violence against women in the DRC."²⁸⁷ To date, five cases have been brought before the ICC for crimes committed during the civil conflict in the DRC: two individuals have been convicted (Lubanga and Katanga), one is awaiting trial (Ntaganda), another was charged but later released (Mbarushimana), and one person has been tried and acquitted of the charges (Chui). Another person has been charged but is still at large (Mudacumura). All of these individuals, with the exception of Lubanga, have been charged with rape or another crime of sexual violence in some capacity.²⁸⁸

When the ICC launched its investigation into crimes committed in the DRC, Colonel Thomas Lubanga Dyilo was one of the first warlords captured, and *Prosecutor v. Lubanga* became the seminal trial of the ICC. Lubanga, the previous commander of the

²⁸⁵ Mouthaan, "Victim Participation," 619-620.

²⁸⁶ Ashley Joy Stein, "Reforming the Sentencing Regime for the Most Serious Crimes of Concern: The International Criminal Court Through the Lens of the Lubanga Trial," *Brooklyn Journal of International Law* 39, no. 1 (2014): 523.

²⁸⁷ Smith, "*Prosecutor v. Lubanga*," 472.

²⁸⁸ International Criminal Court, "Situation in Democratic Republic of the Congo," July 3, 2014, <http://www.iccpi.int>.

Union of Congolese Patriots (UPC), was charged with and tried for “conscripting and enlisting children” into his forces.²⁸⁹

Lubanga and his forces operated in the Ituri District of the DRC. Ituri has seen some of the worst fighting of the war, partially because the area is fertile and rich in resources like gold, diamonds, oil, and timber, which many groups have sought to exploit.²⁹⁰ Lubanga’s forces were predominantly Hema peoples. There is longstanding ethnic tension between the Lendu and Hema peoples in Ituri which has also, in part, fueled the conflict. The Lendu are traditionally farmers and the Hema cattle herders, landowners, and traders and are sometimes resented for their wealth.²⁹¹ The Belgian colonial rulers emphasized the divisions between the Hema and Lendu and favored the Hema, who maintained their elite status after independence from Belgium.²⁹²

Lubanga was arrested, under the ICC’s jurisdiction in March of 2006, and his trial finally began in January of 2009. During the trial, dozens of witnesses and victims testified for the prosecution. Over one hundred total victims participated in the trial.²⁹³ The Court heard that Lubanga’s militia reportedly invaded a school and took the entire fifth grade for training.²⁹⁴ Lubanga allegedly authorized and even directed the soldiers under his command to commit acts of sexual violence throughout the country to terrorize and demoralize the people. He also conscripted young women into his forces to serve as

²⁸⁹ Smith, “*Prosecutor v. Lubanga*,” 468.

²⁹⁰ Adam Hochschild, “The Trial of Thomas Lubanga,” *Atlantic* 304, no. 5 (2009): 78; Adrian Fulford, Elizabeth Odio Benito, and Rene Blattmann, “Situation in the Democratic Republic of the Congo in the Case of *Prosecutor v. Thomas Lubanga Dyilo*,” Judgment Pursuant to Article 74 of the Statute, Public Court Records Chamber, vol. 1 (The Hague, 2012), 43.

²⁹¹ Hochschild, “The Trial of Thomas Lubanga,” 78.

²⁹² Fulford, Benito, and Blattmann, “Situation in the Democratic Republic of the Congo,” 44.

²⁹³ Smith, “*Prosecutor v. Lubanga*,” 473-474.

²⁹⁴ Hochschild, “The Trial of Thomas Lubanga,” 78.

sex slaves.²⁹⁵ After the prosecution rested their case in July of 2009, some attorneys of the victims argued that sexual slavery and other sexual crimes should be added to the charges. The ICC ruled that the “additional charges could be brought as long as they were based on existing evidence or facts that emerged at trial.”²⁹⁶ Since multiple young women had testified to being sex slaves in Lubanga’s army, the new charge was seemingly already part of existing facts and evidence. The prosecution, however, went ahead with the original charges of recruiting, conscripting, and using child soldiers during. By failing to include charges of rape or sexual slavery in the indictment, even though the victim’s testimony and other available evidence could have supported the charges, the prosecutor seemed not to appreciate the severity of conflict-related sexual violence, thereby “depriving several hundred thousand victims of justice”.²⁹⁷

During the trial, the prosecution focused charges on the use of child soldiers to the detriment of other crimes, particularly crimes of sexual violence and other gender-based crimes. In the dissenting opinion, ICC Judge Odio Benito asserted that the “invisibility of sexual violence in the legal concept of recruitment and use of child soldiers leads to discrimination against the victims of recruitment.”²⁹⁸

The seminal verdict of the ICC was announced in 2012, when Colonel Thomas Lubanga Dyilo was found guilty of recruiting child soldiers.²⁹⁹ The ICC judges sentenced Lubanga to the minimum sentence required by the statute, giving him fourteen years after deducting the six years that he had already spent in detention before the

²⁹⁵ Smith, “*Prosecutor v. Lubanga*,” 468.

²⁹⁶ *Ibid.*, 473.

²⁹⁷ *Ibid.*, 473-474.

²⁹⁸ Mouthaan, “Victim Participation,” 637, 639.

²⁹⁹ Marlise Simons, “Congolese Militia Leader Convicted in Attack on Village,” *New York Times*, March 7, 2014.

conviction.³⁰⁰ While there were procedural and other problems during the Lubanga trial, especially regarding the treatment of conflict-related sexual violence, the decision does strengthen the global norm against child soldiers.³⁰¹ This is absolutely a positive and praiseworthy step in terms of international law. However, such a positive judgment in regards to the use of child soldiers, came at the unnecessary detriment of prosecuting wartime sexual violence.

In March of 2014, the ICC announced their ruling for *Prosecutor v. Katanga*. Germain Katanga, a militia leader from the DRC, was tried for an attack on Bogoro, a Congolese village in the Ituri region, in February of 2003 in which more than two-hundred people were killed and multiple women were raped and abducted as sex slaves.³⁰² Katanga was at first tried jointly with Mathieu Ngudjolo Chui, but in November of 2012, the case was severed and Chui was tried separately. Chui was acquitted of the charges in December of 2012.³⁰³

Katanga was found by the Court to be the commander-in-chief of the Ngiti combatants of Walendu-Bindi collectivité, who became known as the ‘Force de résistance patriotique en Ituri’ (the Patriotic Force of Resistance in Ituri or FRPI), with centralized command over the combatants in respect to both civilian and military matters.

³⁰⁰Stein, “Reforming the Sentencing Regime,” 522; Mark A. Drumbl, “The Effects of the Lubanga Case on Understanding and Preventing Child Soldiering,” *Yearbook of International Humanitarian Law* 15 (2012): 88.

³⁰¹ Eric Allen Engle, “The International Criminal Court and Lubanga: The Feminist Critique and Jus Cogens,” *National Lawyers Guild Review* 71, no. 1 (2014): 24.

³⁰² Simons, “Congolese Militia Leader.”

³⁰³ Women's Initiative for Gender Justice, “Katanga Sentenced to 12 years by ICC: A Statement,” news release, May 23, 2014, <http://www.iccwomen.org>.

Katanga exercised command over the militia during the attack on Bogoro, giving him authority over the crimes committed.³⁰⁴

The ethnic tension between the Hema and Lendu peoples was also a factor in the attack on Bogoro. Katanga's FRPI was a collaboration of mostly Lendu combatants, fighting against the Hema-affiliated UPC in Bogoro. Bogoro was attacked in the very early morning of February 24th, 2003, while it was still dark and most inhabitants were sleeping. The FRPI encircled the village, armed with guns and machetes, and began to systematically kill the inhabitants including children and the elderly. There were UPC combatants present in their camp who retaliated with gunfire, but were at a disadvantage and vastly outnumbered. Even those with no part in the fighting, who were trying to flee to the Bogoro Institute (where civilians routinely sought refuge) were killed. The Institute was then surrounded and those inside were killed, as well as those hiding in nearby houses. Once Bogoro fell and the fighting ceased, FRPI militants continued to track down civilians hiding in the bush, they either raped, captured, or killed those that they found. The ICC Chamber ruled that the civilian people in Bogoro were the primary target of the attack.³⁰⁵

The judges for the ICC found that the means and methods used for the attack indicated, beyond a reasonable doubt, that the combatants intended to directly target the Hema civilian population of Bogoro, thereby committing murder as a crime against humanity (under article 7(1)(a) of the Rome Statute), and a war crime (under article 8(2)(c)(i) of the statute) and attacking a civilian population as a war crime (under

³⁰⁴ Fatoumata Dembele Diarra, Bruno Cotte, and Christine Van den Wyngaert, "Summary of Trial Chamber II's Judgment of 7 March 2014, Pursuant to Article 74 of the Statute in the Case of *Prosecutor v. Germain Katanga*," International Criminal Court (The Hague, 2014), 5.

³⁰⁵ *Ibid.*, 8-13.

8(2)(e)(i) of the Rome Statute). The Chamber also found that the houses belonging to the Hema people of Bogoro were destroyed, either by fire or having the roofs removed by combatants during the attack, constituting the war crimes of destroying enemy property and pillaging.³⁰⁶

Katanga was convicted of being an accessory to four counts of war crimes and one crime against humanity. However, he was acquitted of charges of rape and using child soldiers. Various human rights and women's groups immediately criticized the acquittal on rape charges, expressing concern that there appeared to be a different standard of proof for sexual crimes than for others like pillaging, murder and the destruction of property.³⁰⁷ In April of 2014, the prosecution appealed the acquittal for sexual violence charges.³⁰⁸ While there was not a conviction of sexual violence, this ICC case still indicates progress because the charges included sexual violence for the first time.

The ICC judges found that the crimes of rape and sexual slavery had absolutely been committed by combatants during the attack on Bogoro. This was determined by the testimony and evidence of three witnesses, who testified as direct victims of rape and sexual slavery. All three victims, identified as P-132, P-249, and P-353, were raped on the day of the Bogoro attack after being driven out of their respective hiding places. They were taken to military camps where they were repeatedly raped and held captive for several weeks. The Chamber found that the presented evidence established, "beyond reasonable doubt that sexual slavery as a war crime and a crime against humanity under

³⁰⁶ Ibid, 11.

³⁰⁷ Simons, "Congolese Militia Leader."

³⁰⁸ Women's Initiative for Gender Justice, "Katanga Sentenced."

articles 8(2)(e)(vi) and 7(1)(g)” of the Rome Statute were intentionally committed during and in the immediate aftermath of the battle in Bogoro.³⁰⁹ However, the presiding judges did not conclude that the crimes of sexual violence “formed part of the common purpose” of the incursion against Bogoro, “unlike the crimes of directing an attack against a civilian population, pillage, murder, and destruction of property.”³¹⁰ To many this decision seems inconsistent, since Katanga was held responsible for the other crimes committed during the attack, it seems to follow that he would be held responsible for the sexual crimes as well.³¹¹

On June 9, 2014 Pre-Trial Chamber II of the ICC unanimously confirmed charges of multiple war crimes (including “murder and attempted murder; attacking civilians; rape; sexual slavery of civilians; pillaging; enlistment and conscription of child soldiers under the age of fifteen years and using them to participate actively in hostilities”) and “crimes against humanity (murder and attempted murder; rape; sexual slavery; persecution; forcible transfer of population) against Bosco Ntaganda” and committed him for trial before a Trial Chamber.³¹² Like Lubanga, Ntaganda was also a leader for the UPC in the Ituri region of the DRC from 2002 to 2003. Based on the evidence possessed by the ICC, the judges have found that the UPC’s organizational policy was to systematically attack the civilian population that was perceived to be non-Hema, such as those belonging to Lendu, Bira and Nande ethnic groups.³¹³ There is hope that this case could culminate in the first conviction for sexual violence for the ICC.

³⁰⁹ Diarra, Cotte, and Van den Wyngaert, “Summary of Trial Chamber II’s Judgment,” 12.

³¹⁰ Women's Initiative for Gender Justice, “Katanga Sentenced.”

³¹¹ Ibid.

³¹² International Criminal Court, “Pre-Trial Chamber II Commits Bosco Ntaganda to Trial,” June 9, 2014, <http://www.icccpi.int>.

³¹³ Ibid.

In light of the ruling in the Katanga case and growing concern over sexual crimes during conflict, Fatou Bensouda, the chief prosecutor of the International Criminal Court, published a policy paper in June of 2014 on the “investigation and prosecution of sexual and gender-based crimes”, pledging to step up the Court’s investigation and prosecution of such crimes.³¹⁴ Bensouda, who has been the chief prosecutor of the ICC since 2011, has emphasized her office’s commitment to fighting sexual and gender-based crimes since taking the position. However, this policy paper constitutes her “strongest effort to date” to petition the ICC and national governments to pay more attention to conflict-related sexual violence and related crimes.³¹⁵ The paper introduces new policies and a new commitment from the Office of the Prosecutor regarding their treatment of sexual and gender-based crimes, to decrease impunity. The paper offers a guide to the ICC prosecutors and investigators for applying the legal framework of the Rome Statute to sexual crimes.³¹⁶

Following this renewed commitment, high-level officials of the ICC, including the President, Judge Sang-Hyun Song, and chief prosecutor, Bensouda, along with the Assembly of States Parties to the Rome Statute participated in the Global Summit to End Sexual Violence in Conflict in London mere weeks after the policy paper was published.³¹⁷ The high-profile event was opened by British foreign secretary, William Hague, and American film star Angelina Jolie. Human Rights Watch’s senior researcher, Ida Sawyer, and others spoke at length about the situation in the Democratic Republic of

³¹⁴ Simons, “Congolese Militia Leader.”

³¹⁵ Marlise Simons, “International Criminal Court to Focus on Sex Crimes,” *New York Times*, June 6, 2014.

³¹⁶ Fatou Bensouda, *Policy Paper on Sexual and Gender-Based Crimes*, special report prepared by the Office of the Prosecutor, International Criminal Court (The Hague, 2014).

³¹⁷ International Criminal Court, “ICC, ASP and TFV Join in Global Summit to End Sexual Violence in Conflict,” news release, June 11, 2014, <http://icc-cpi.int>.

the Congo specifically.³¹⁸ The ICC officials were actively engaged in the unprecedented Summit, aimed at creating momentum towards the elimination of sexual violence in conflict.³¹⁹

The new policy paper and the London summit help build confidence that the ICC will handle future cases that include charges of sexual violence, like the upcoming trial of Ntaganda and others in different conflicts, with more sensitivity and produce verdicts and sentences that reduce impunity for the perpetrators and will strengthen the global norms against conflict-related sexual violence.

It has been said that the ICC, like many international bodies, moves at a molasses pace.³²⁰ It is clear that international law and the proceedings at the ICC are not equipped to handle cases of sexual violence with the speed, vigor, and efficacy that is necessary to adequately protect the women and girls of the DRC and end the culture of impunity. Since neither Lubanga nor Katanga were convicted of sexual crimes (despite testimony and evidence of the crimes), it is evident to many critics that sexual violence is not being evaluated in the same way as other war crimes. However, it is undeniable that the rampant sexual violence in the DRC is being recognized by the ICC and given the policy paper and demonstrated new commitment in handling cases of sexual violence there is hope that one of the war criminals on trial currently will face an actual conviction for rape. It can also be said the testimony of the dozens of sexual violence, sex trafficking and slavery victims have brought more attention to the ongoing problems in the DRC. This in itself is historic. The global norms against sexual violence have been strengthened

³¹⁸ Alan Cowell, "High-Profile Conference to Draw Attention to Sexual Violence in War," *New York Times*, June 11, 2014.

³¹⁹ International Criminal Court, "ICC, ASP and TFV."

³²⁰ Hochschild, "The Trial of Thomas Lubanga," 76.

by the recognition of these problems and there is reason to believe that the ICC will continue to further strengthen these norms in the immediate future.

CHAPTER VII

Conclusion

Though the progress of the International Criminal Tribunals for Yugoslavia and Rwanda and the International Criminal Court regarding legal treatment of sexual violence is mixed, the advances that have been made are historic and unparalleled in human history. These courts have handed down historic verdicts that have punished conflict-related sexual violence for the first time. Thanks to the intensive and expansive lobby of many women NGOs specifically, the long ignored crimes of sexually violent crimes have finally been recognized by the international community as violent crimes.³²¹ These groups, who have also helped to facilitate in increased media coverage, have been instrumental in creating the political climate for actually prosecuting crimes of sexual violence during war.

The ICTY and ICTR have established that “sexual violence constitutes a war crime, crime against humanity, and act of genocide” under international criminal law.³²² On top of handing down convictions for wartime rape, the establishment of the ICTY and the ICTR gave the Geneva Conventions and other instruments of international humanitarian law that had been ignored for the previous fifty years some teeth.³²³ This is unequivocally a success. While the Tribunals for Rwanda and the former Yugoslavia have provided some advancements in the realm of prosecuting conflict-related sexual violence, there remains a question as to why the ICTY was more successful than the

³²¹ De Brouwer, *Supranational Criminal Prosecution*, 102.

³²² Carson, “Theoretical Accuracy and Prosecutorial Effectiveness,” 1268.

³²³ Van Den Hole, “Rape and Sexual Assault,” 63.

ICTR and why these conflicts resulted in tribunals while others from the same period did not.

There is some scholarly consensus (based predominantly on the work of Margaret Keck and Kathryn Sikkink) that sexual violence was belatedly treated as an international crime in the 1990s because of the work of NGOs, specifically transnational advocacy groups. Locally based, regional, and international advocacy networks for women grew and gained influence in the 1990s, and women started to become more active in the formulation and implementation of international law. These factors combined, along with the reports of widespread sexual violence coming out of Bosnia and then Rwanda helped to move the perception of rape as a private issue to a serious international issue. Feminist legal scholars in the United States stood on the forefront of the movement to assure that crimes of sexual violence were high on the agenda of the ICTY and then later the ICTR.³²⁴

In the case of Bosnia, the media was actively engaged in informational politics by gathering and disseminating information. The media coverage constructed a common narrative about the widespread rapes and the rape camps. However, the media coverage about the systematic sexual violence in Rwanda was almost negligible in 1994 and 1995, with coverage happening remarkably after the fact. The media can draw attention to conflict as well as interpret the events and construct narratives of the conflict, drawing on existing frames or narratives. One frame puts the wartime rapes in Bosnia within the larger analogy of the genocide in Bosnia to the Holocaust and the Nazi concentration camps (for instance, out of 139 media articles that discuss conflict-related sexual violence

³²⁴ Nelaeva, "Transnational Advocacy Networks," 4.

in Bosnia, 20 directly reference the Nazis, the Holocaust, or death camps).³²⁵ While concentration camps were not a Nazi invention the term provoked association with the Holocaust.³²⁶

While the analogy between the Holocaust and the genocide in Bosnia may be appropriate in many ways, using this analogy attaches meaning to the conflict in Bosnia beyond merely reporting the situation. When associated within the Holocaust narrative, the Bosnian conflict evokes the remorse and historical memory of the atrocious implications of delayed world action and the assurances of “never again” occurring again in Europe, specifically. The Holocaust analogy frames the murder and mass rapes in Bosnia as an issue that demands and requires world attention and action. Therefore, when analyzing how the media facilitated action and response to the sexual violence in Bosnia by utilizing the Holocaust analogy, the geopolitical location of Bosnia cannot be overlooked.³²⁷ Bosnia’s location in Europe helped to evoke memories of the Holocaust and its proximity to western feminists, The Hague and other European institutions certainly helped to strengthen mobilization efforts to prosecute conflict-related sexual violence.

In the case of the dramatically uneven nature of the media attentional and subsequent advocacy mobilization around the issue of conflict-related sexual violence in Bosnia and Rwanda, global media access was not the problem. Instead, the conflict in Rwanda was not in the sphere of interest of the western mainstream media. During the height of the genocide in Rwanda, the majority of the reports the murder and rape were

³²⁵ Haddad, “Mobilizing the Will to Prosecute,” 125-126

³²⁶ Power, *Problem from Hell*, 269.

³²⁷ Haddad, “Mobilizing the Will to Prosecute,” 126-127.

gathered and disseminated by advocacy groups like the Human Rights Watch, UN peacekeepers, and some newspaper journalists. The lack of prioritization of the conflict in Rwanda by the media reflected the larger apathy by the world community and the United States government to prioritize Rwanda as part of the national interest. In addition to seeing Rwanda as outside of national interest, implicit racism, fueled by deep prejudices and misconceptions about long-lasting bloody ethnic wars in Africa, also altered people's values and expectations about the comparative worth of human life and suffering.³²⁸

In 1991, local and transnational feminist and peace organizations mobilized in protest against the conflict in Yugoslavia with marches, antiwar protests, and by providing social services to women. Connections between feminists in Yugoslavia, NGO workers, and prominent U.S. feminists (like Catherine MacKinnon) also helped to establish notable relationships within the transnational advocacy network that sparked increased attention to a broad base of western feminists. In Rwanda, local women's organizations did not have the same depth of connections with transnationals organizations as the Yugoslav groups. Rwandan women's groups also did not have issue alignment over the prioritization of sexual violence justice through the mechanism of the ICTR.³²⁹

The war in the Democratic Republic of the Congo has encountered the same problem as in Rwanda. The conflict is so conceptually messy and difficult to understand, full of many overlapping narratives, that the media coverage in the West has been negligible. *The New York Times*, one of the few popular American publications with extensive foreign coverage, gave the conflict Darfur nearly four times the coverage of the

³²⁸ Ibid.

³²⁹ Ibid, 128.

DRC in 2006 even though the people in the DRC were perishing at nearly ten times the rate of the people in Darfur.³³⁰ Though the incidences of sexual violence in the DRC has far exceeded the figures in Bosnia and Rwanda, the media coverage has been considerably less. The lack of media coverage can be attributed to the difficulty in access to the DRC, which can be very dangerous. The DRC also does not register as high-priority on a geo-political map, and not many of the major world powers have invested political interest in the country.³³¹

In the DRC there are transnational advocacy networks, NGOS, and other international and domestic actors that have been influential in criminalizing sexual violence in domestic courts, enforcing the Rome Statute, and ensuring that some warlords are brought to justice in the ICC.³³² Networks of NGOs, international organizations, and domestic actors successfully promoted legislation that reforms the law against sexual violence to include the broader range of sexual attacks committed during the conflict, in the DRC.³³³ While these entities have been important in the DRC, they do not have the connections to the West that those in Bosnia enjoyed and have not evoked the same fervor and will to prosecute. The importance of strong international non-governmental actors cannot be overlooked. The work of transnational advocacy networks and non-governmental organizations is vital in states where domestic institutions are weak, as in the Democratic Republic of the Congo.³³⁴ Weak domestic institutions and less influential NGOs, coupled with the lacking media coverage of the conflict outside of Africa, has

³³⁰ Stearns, *Dancing in the Glory of Monsters*, 5.

³³¹ Jan Goodwin, "Silence = Rape," *Nation*, March 8, 2004, 20.

³³² Elena Baylis, "Reassessing the Role of International Criminal Law: Rebuilding National Courts Through Transnational Networks," *Boston College Law Review* 50 (2009): 53.

³³³ Catherine M. Yang, "Accounting for Accountability: A Post-Conflict Role for Transnational Advocacy Networks in East Timor," *Georgetown Journal of International Law* 45 (2014): 604.

³³⁴ Baylis, "Reassessing the Role of International Criminal Law," 61.

hampered the implementation of the international norms against conflict-related sexual violence.

While the two conflicts in Rwanda and the DRC received notably less coverage and attention by Western media than the conflict in Bosnia, there are other civil conflicts that occurred around the same time that have resulted in even less coverage and have not brought about any kind of international prosecution for sexual violence. There are a plethora of examples, Peru and Guatemala serve as several notable ones.

In Peru, sexual violence accompanied a twenty year civil conflict between the insurgent groups Shining Path and the Túpac Amaru Revolutionary Movement, and the national army from 1980 till 2000.³³⁵ In 1991, U.S Department of State reported that rape by security forces was so numerous that the abuse can considered a common practice, condoned, or at least ignored, by military leadership. Sexual violence was used systematically by the state and opposition forces.³³⁶ The sexual violence was part of a larger pattern of genocide and collective violence against indigenous peoples in Peru. Though prevalent, sexual violence does not seem to have been perpetrated for the “purpose of altering the reproductive capacity” of the indigenous people, as it was in Bosnia.³³⁷ Some war crimes committed by both sides in the conflict have been addressed by national criminal courts. However, the perpetrators of sexual violence have enjoyed impunity. International law provides mechanisms to build cases for prosecution, following the precedence of the ICTR and ICTY, but few domestic prosecutors and

³³⁵ Jelke Boesten and Melissa Fisher, *Sexual Violence and Justice in Post-Conflict Peru* (Washington, D.C.: U.S. Institute of Peace, 2012), 2.

³³⁶ Farr, “Extreme War Rape,” 34

³³⁷ Michele L. Leiby, “Wartime Sexual Violence in Guatemala and Peru,” *International Studies Quarterly* 53, no. 2 (2009): 465.

judges in Peru are sufficiently familiar with these frameworks or willing to apply them.³³⁸

Though Peru's legal infrastructure and domestic institutions are considerably stronger than a state like the DRC, there were not compelling efforts to encourage prosecution of sexual violence or efforts to prosecute at the international level.

In Guatemala, sexual violence accompanied a long running civil war that was fought between 1960 and 1996. Sexual violence was a critical component of the Guatemalan government's strategy towards counterinsurgents. The sexual violence was mostly committed against indigenous women (mainly of Mayan origin), part of a larger strategy to terrorize and destroy communities.³³⁹ The systematic human rights violations in Guatemala reveal the Inter-American human rights system's failure to actively challenge state-sponsored abuses directed at women. The ability to address sexual violence within the domestic legal structure of Guatemala has been severely hindered by the inferior position of women within the legal structure.³⁴⁰ The local and national prosecution and redress of sexual violence in Guatemala has been lacking.³⁴¹ The impunity for sexual violence committed during the civil war in Guatemala further demonstrates that while there have been advancements in prosecuting wartime sexual violence, these have not taken place across the board.

The principles and jurisprudence of international human rights law had provided women's groups, transnational advocacy networks, human rights advocates, and victim

³³⁸ Boesten and Fisher, *Sexual Violence and Justice*, 7.

³³⁹ Leiby, "Wartime Sexual Violence," 461.

³⁴⁰ Scott Splittgerber, "The Need for Greater Regional Protection for the Human Rights of Women: The Cases of Rape in Bosnia and Guatemala," *Wisconsin International Law Journal* 15, no. 1 (1996): 14.

³⁴¹ Sarah England, "Protecting a Woman's Honor or Protecting Her Sexual Freedom? Challenging the Guatemalan Patriarchal State through Reforms to Sexual Violence Legislation," *Latin American Perspectives* 41, no. 1 (2014): 4.

support groups with important tools to influence norm setting and public policy on the national level.³⁴² This is important because the ICC or ad hoc tribunals cannot substitute for a working national government and court system to prosecute violators. In theory the ICC can act during an ongoing conflict, but in its twelve year existence it has won just two convictions, both of Congolese warlords, and in both cases, well after their offences were committed. Neither man was held responsible for his fighters' sexual crimes.³⁴³ It is clear that from the number of prosecutions (astronomically smaller than the number of persecutors) by the ad hoc tribunals and the ICC that the international system cannot satisfactorily achieve justice for the survivors of these atrocities. Also the international system has not prosecuted sexual violence emerging from every conflict in which it was widespread, Guatemala and Peru only a fraction of the available examples. The achievements made by these Courts are unprecedented and hugely important to standardizing the norm against sexual violence during wartime. However, without the recognition of this norm by domestic institutions and local actors, the international system will be constantly lagging behind in addressing and prosecuting these issues.

Sexualized violence in conflict is inseparable from violence, abuse, gender inequality, racism, and poverty, all of which contribute to the oppression of women in everyday life and form a matrix that can exacerbate violence in war. A true transformation and implementation of the norm against conflict-related sexual violence would require that women are provided with the means to strengthen themselves.³⁴⁴ While international law and international organizations have made great headway in

³⁴² Ibid., 2.

³⁴³ "Drawing a Line: Sexual Violence in Conflict," *Economist*, June 14, 2014, 55.

³⁴⁴ Copelon, "Toward Accountability," 256.

pushing forward prosecution of wartime sexual violence, without the adjustment of domestic actors, domestic institutions, and even personal values in certain nation-states the international system will not be able to affect real and tangible change for women in conflict.

While this thesis has been critical of the track-record for enforcing international law regarding sexual violence, there are some positives to look to. The ICTY and ICTR have established that “sexual violence constitutes a war crime, crime against humanity, and act of genocide” according to international law.³⁴⁵ These judgments signify a tremendous shift in the discourse regarding conflict-related sexual violence, as it had been treated as an inevitable by-product of war for thousands of years. The International Criminal Court has built on the progress of the tribunals, integrating gender sensitivity and explicit language forbidding sexual violence into its statute. The ICC has also taken great efforts toward ensuring effective victim participation during trials. The Victims and Witnesses Unit of the ICC has the resources to provide protective measures, legal and socio-psychological support, as well as the resources and ability to award reparations to victims of international crime. These changes can be considered a win for the victims and survivors of sexual violence in war and combined with recent policy changes made by the Chief Prosecutor are setting the stage for future successful trials for the perpetrators of sexual violence in the DRC and other states. While it cannot completely eradicate sexual violence during war or even punish every instance of it, the ICC, following the groundwork laid by the ICTY and ICTR, has the tools and the momentum to further strengthen the norms against conflict-related sexual violence.

³⁴⁵ Carson, “Theoretical Accuracy and Prosecutorial Effectiveness,” 1268.

REFERENCES

- “Drawing a Line: Sexual Violence in Conflict.” *Economist*, June 14, 2014, 55.
- Abimbola, Olaifa Temitope and Danjibo Nathaniel Dominic. “The 1994 Rwandan Conflict: Genocide or War?” *International Journal on World Peace* 30, no. 3 (2013): 31-54.
- Acquaviva, G. “The Lubanga Trial Comes to an End: Reflections on the First Conviction by the International Criminal Court.” *Journal of International Criminal Justice* 10, no. 4 (2012): 881-885.
- Agbor, Avitus Agbor. “The Problematic jurisprudence on instigation under the statute of the ICTR: The consistencies, inconsistencies and misgivings of the trial and appeal chambers of the ICTR.” *International Criminal Law Review* 13, no. 2 (2013): 429-472.
- Alison, Miranda. “Wartime Sexual Violence: Women's Human Rights and Questions of Masculinity.” *Review of International Studies* 33, no. 1 (2007): 75-90.
<http://www.jstor.org/stable/20097951>.
- Allen, Beverly. “Toward a New Feminist Theory of Rape: A Response from the Field.” *Signs* 27, no. 3 (2002): 777-781. <http://www.jstor.org/stable/10.1086/337935>.
- . “Rape Warfare in Bosnia-Herzegovina: The Policy and the Law.” *Brown Journal of World Affairs* 3, no. 1 (1996): 313-323.
- . *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia*. Minneapolis, MN: University of Minnesota Press, 1996.
- Alvarez, Jose E. “Rush to Closure: Lessons of the Tadić Judgment.” *Michigan Law Review* 96 (1998): 2031.
- Ambos, Kai. “A Workshop, a Symposium, and the Katanga Trial Judgment of 7 March 2014.” *Journal of International Criminal Justice* 12, no. 2 (2014): 219-229.
- Andjelic, Neven. “The State of International Humanitarian Law as a Consequence of the History of South Slavs' Nation-Building Processes.” *Politicka Misao: Croatian Political Science Review* 50, no. 5 (2013): 54-73.
- Aranburu, Xabier Agirre. “Sexual Violence Beyond Reasonable Doubt: Using Pattern Evidence and Analysis for International Cases.” *Law & Social Inquiry* 35, no. 4 (2010): 855-879.

- Askin, Kelly D. "Prosecuting Gender Crimes Committed in Darfur: Holding Leaders Accountable for Sexual Violence." In *Genocide in Darfur: Investigating the Atrocities in the Sudan*, edited by Samuel Totten, 141-160. New York: Routledge, 2006.
- . "Prosecuting Wartime Rape and Other Gender-Related Crimes Under International Law: Extraordinary Advances, Enduring Obstacles." *Berkeley Journal of International Law* 21, no. 2 (2003): 288-349.
- . "Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status." *The American Journal of International Law* 93, no. 1 (1999): 97-123.
- Augustine. *City of God: Books 1-7*. Baltimore, MD: Catholic University of America Press, 1950.
- Baaz, Maria Eriksson, and Maria Stern. "Why Do Soldiers Rape? Masculinity, Violence, and Sexuality in the Armed Forces in the Congo (DRC)." *International Studies Quarterly* 53, no. 2 (2009): 495-518.
- Baca, Elena, Jessica Dwinell, Liu Chang, Joy McClellan Dineo, Alexandra McDonald, and Takeshi Yoshida. "ICTR in the Year 2011: Atrocity Crime Litigation Review in the Year 2011." *Journal of International Human Rights* 11, no. 3 (2013): 211-231.
- Bailey, Kenneth. "Making International Law in the United States." *American Society of International Law Proceedings* 61 (1967): 233-239.
- Barber, E. Susan, and Charles F. Ritter. 2011. "Unlawfully and Against Her Consent: Sexual Violence and the Military During the American Civil War." In *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human Rights*, edited by Elizabeth Heineman, 202-214. Philadelphia: University of Pennsylvania Press, 2011.
- Bartels, Susan, Jocelyn Kelly, Jennifer Scott, Jennifer Leaning, Denis Mukwege, Nina Joyce, and Michael Vanrooyen. "Militarized Sexual Violence in South Kivu, Democratic Republic of Congo." *Journal of Interpersonal Violence* 28, no. 2 (2013): 340-358.
- Baylis, Elena. "Reassessing the Role of International Criminal Law: Rebuilding National Courts Through Transnational Networks." *Boston College Law Review* 50 (2009): 1-85.
- Bennoune, Karima. "Do We Need New International Law to Protect Women in Armed Conflict?" *Case Western Reserve Journal of International Law* 38, no. 2 (2006): 363-391.

- Bergoffen, Debra B. "From Genocide to Justice: Women's Bodies as a Legal Writing Pad." *Feminist Studies* 32, no. 1 (2006): 11-37.
<http://www.jstor.org/stable/20459063>.
- Best, Geoffrey Francis Andrew. *Humanity in Warfare*. New York: Columbia University Press, 1980.
- Bewicke, Aurora. "Realizing the Right to Reparations for Girl Soldiers: A Child-Sensitive and Gendered Approach." *Columbia Journal of Gender and Law* 26, no. 182 (2014): 181-233.
- Bijleveld, Catrien, Aafke Morssinkhof, and Alette Smeulers. "Counting the Countless: Rape Victimization During the Rwandan Genocide." *International Criminal Justice Review* 19, no. 2 (2009): 208-224.
- Blanchfield, Luisa, Rhoda Margesson, and Clare Ribando-Seelke. *International Violence Against Women*. New York: Nova Science Publishers, 2009.
- Block, Sharon. 2011. "Rape in the American Revolution." In *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human Rights*, edited by Elizabeth Heineman, 25-38. Philadelphia: University of Pennsylvania Press, 2011.
- Brouse, Kelly. "Criminal Courts and Tribunals: Judgment Summaries: International Criminal Tribunal for Rwanda." *Human Rights Brief* 20 (2012): 51-58.
- Browne-Miller, Angela, ed. *Violence and Abuse in Society: Understanding a Global Crisis*. Santa Barbara, CA: ABC-CLIO, 2012.
- Brownmiller, Susan. *Against Our Will: Men, Women, and Rape*. New York: Ballantine Books, 1993.
- Bugnion, Francois. "The Geneva Conventions of 12 August 1949: From the 1949 Diplomatic Conference to the Dawn of the New Millennium." *International Affairs (Royal Institute of International Affairs 1944-)* 76, no. 1 (2000): 41-50.
- Buisman, Caroline. "Delegating Investigations: Lessons to be Learned from the Lubanga Judgment." *Northwestern University Journal of International Human Rights* 11, no. 13 (2013): 30-82.
- Burds, Jeffrey. "Sexual Violence in Europe in World War II, 1939-1945." *Politics & Society* 37, no. 1 (2009): 35-73.
- Burnet, Jennie E. "Situating Sexual Violence in Rwanda (1990-2001): Sexual Agency, Sexual Consent, and the Political Economy of War." *African Studies Review* 55, no. 2 (2012): 97-118.

- Buss, Doris E. "Rethinking Rape as a Weapon of War." *Feminist Legal Studies* 17, no. 2 (2009): 145-163.
- Byron, Christine. *Melland Schill Studies in International Law: War Crimes and Crimes Against Humanity in the Rome Statute of the International Criminal Court*. Manchester, UK: Manchester University Press, 2009.
- Campbell, Kirsten. "Rape as a Crime Against Humanity: Trauma, Law, and Justice in the ICTY." *Journal of Human Rights* 2, no. 4 (2003): 507-515. doi:10.1080/1475483032000137093.
- Canning, Victoria. "Who's Human? Developing Sociological Understandings of the Rights of Women Raped in Conflict." *The International Journal of Human Rights* 14, no. 6 (2010): 849-864. doi:10.1080/13642987.2010.512127.
- Cannon, Patrick. "A Feminist Response to Rape as a Weapon of War in Eastern Congo." *Peace Review* 24, no. 4 (2012): 478-483.
- Card, Claudia. "Genocide and Social Death." *Hypatia* 18, no. 1 (2003): 63-79.
- . "Rape as a Weapon of War." *Hypatia* 11, no. 4 (1996): 5-18.
- Carnahan, Burrus M. "The Civil War Origins of the Modern Rules of War: Francis Lieber and Lincoln's General Order No. 100." *Northern Kentucky Law Review* 39, no. 4 (2012): 661-697.
- Carpenter, R. C. "Setting the Advocacy Agenda: Theorizing Issue Emergence and Nonemergence in Transnational Advocacy Networks." *International Studies Quarterly* no. 1 (2007): 99-120.
- Carson, Kimberly E. "Reconsidering the Theoretical Accuracy and Prosecutorial Effectiveness of International Tribunals' ad hoc Approaches to Conceptualizing Crimes of Sexual Violence as War Crimes, Crimes Against Humanity, and Acts of Genocide." *Fordham Urban Law Journal* 39, no. 4 (2012): 1249-1300.
- Chappell, Louise. "Conflicting Institutions and the Search for Gender Justice at the International Criminal Court." *Political Research Quarterly* 67, no. 1 (2014): 183-196.
- . "The International Criminal Court: A New Avenue for the Diffusion of Women's Rights Norms?" American Political Science Association Conference, 2009.
- Chenault, Suzanne. "And Since Akayesu? The Development of ICTR Jurisprudence on Gender Crimes: A Comparison of Akayesu and Muhimana." *New England Journal of International and Comparative Law* 14 (2008): 221.

- Cigar, Norman. *Genocide in Bosnia: The Policy of Ethnic Cleansing*. College Station, TX: Texas A&M University Press, 1995.
- Classen, Albrecht. *Sexual Violence and Rape in the Middle Ages: A critical Discourse in Pre-Modern German and European Literature*. Berlin: De Gruyter, 2011.
- Coan, Christin B. "Rethinking the Spoils of War: Prosecuting Rape as a War Crime in the International Criminal Tribunal for the Former Yugoslavia." *North Carolina Journal of International Law & Commercial Regulation* 26 (2000): 183.
- Cohen, Dara Kay. "Explaining Rape During Civil War: Cross-National Evidence (1980–2009)." *American Political Science Review* 107, no. 3 (2013): 461-477.
- Copelon, Rhonda. "Gendered War Crimes: Reconceptualizing Rape in Time of War." In *Women's Rights, Human rights: International Feminist Perspective*, edited by Julie Peters and Andrea Wolper, 197-214. New York: Routledge, 1995.
- . "Toward Accountability for Violence Against Women in War: Progress and Challenges." In *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human Rights*, edited by Elizabeth Heineman, 232-256. Philadelphia: University of Pennsylvania Press, 2011.
- Cowell, Alan. "High-Profile Conference to Draw Attention to Sexual Violence in War." *New York Times*, June 11, 2014.
- Curry, Anne. "The Theory and Practice of Female Immunity in the Medieval West." In *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human Rights*, edited by Elizabeth Heineman, 173-188. Philadelphia: University of Pennsylvania Press, 2011.
- De Brouwer, Anne-Marie. *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR*." School of Human Rights Research Series, vol. 20. Antwerp: Intersentia, 2005.
- . "What the International Criminal Court Has Achieved and Can Achieve for Victims/Survivors of Sexual Violence." *International Review of Victimology* 16, no. 2 (2009): 183.
- Diken, Bülent and Carsten Bagge Laustsen. "Becoming Abject: Rape as a Weapon of War." *Body & Society* 11, no. 1 (2005): 111-128.
- Doherty, Justice Teresa. "Sexual Violence and the Role of the International Courts." *New Zealand Journal of Public & International Law* 11, no. 3 (2013): 693-705.
- Donat, P. L. N., and J. D'Emilio. "A Feminist Redefinition of Rape and Sexual Assault: Historical Foundations and Change." *Journal of Social Issues* 48, no. 1 (1992): 9-22.

- Drumbl, Mark A. "The Effects of the Lubanga Case on Understanding and Preventing Child Soldiering." *Yearbook of International Humanitarian Law* 15 (2012): 87-116.
- Eboe-Osuji, Chile. *International Law and Sexual Violence in Armed Conflicts*. Leiden, UK: Nijhoff Publishers, 2012.
- . "Rape as Genocide: Some Questions Arising." *Journal of Genocide Research* 9, no. 2 (2007): 251- 273.
- Ellis, Mark. "Breaking the Silence: Rape as an International Crime." *Case Western Reserve Journal of International Law* 38, no. 2 (2006): 225-247.
- England, Sarah. "Protecting a Woman's Honor or Protecting Her Sexual Freedom? Challenging the Guatemalan Patriarchal State Through Reforms to Sexual Violence Legislation." *Latin American Perspectives* 41, no. 1 (2014): 124-142.
- Engle, Eric Allen. "The International Criminal Court and Lubanga: The Feminist Critique and Jus Cogens." *National Lawyers Guild Review* 71, no. 1 (2014): 24-43.
- Engle, Karen. "Feminism and Its (Dis)Contents: Criminalizing Wartime Rape in Bosnia and Herzegovina." *American Journal of International Law* 99, no. 4 (2005): 778-816.
- Farr, Kathryn. "Extreme War Rape in Today's Civil-War-Torn States: A Contextual and Comparative Analysis." *Gender Issues* 26, no. 1 (2009): 1-41.
- Farwell, Nancy. "War Rape: New Conceptualizations and Responses." *Affilia* 19, no. 4 (2004): 389-403.
- Faucette, Avery. "Improvements in the Legal Treatment of Systematic Mass Rape in Wartime: Where Do We Go from Here?" In *Conflict-Related Sexual Violence: International Law, Local Responses*, edited by Tonia St. Germain and Susan Dewey, 53-70. Sterling, VA: Kumarian Press, 2012.
- Feimster, Crystal N. "General Benjamin Butler & the Threat of Sexual Violence During the American Civil War." *Daedalus* 138 (2009): 126.
- Finnemore, Martha, and Sikkink, Kathryn. "International Norm Dynamics and Political Change." *International Organization* 52, no. 4 (1998): 887-917.
- Fountain, Caleb J. "Sexual Violence, the Ad Hoc Tribunals, and the International Criminal Court: Reconciling Akayesu and Kunarac." *ILSA Journal of International & Comparative Law* 19 (2013): 251.
- Franco, Jean. "Rape and Human Rights." *PMLA* 121, no. 5 (2006): 1662-1664.
<http://www.jstor.org/stable/25501642>.

- Freedman, Estelle B. *Redefining Rape: Sexual Violence in the Era of Suffrage and Segregation*. Cambridge, MA: Harvard University Press, 2013.
- Freedman, Jane. "Treating Sexual Violence as a 'Business': Reflections on National and International Responses to Sexual and Gender-Based Violence in the Democratic Republic of Congo." *Advances in Gender Research* 18B (2014): 125-143.
- Gaca, Kathy L. "Girls, Women, and the Significance of Sexual Violence in Ancient Warfare." In *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human Rights*, edited by Elizabeth Heineman, 73-88. Philadelphia: University of Pennsylvania Press, 2011.
- Gekker, Elena. "Rape, Sexual Slavery, and Forced Marriage at the International Criminal Court: How Katanga Utilizes a Ten-Year-Old Rule but Overlooks New Jurisprudence." *Hastings Women's Law Journal* 25 (2014): 105-134.
- Gettleman, Jeffrey. "The World's Worst War." *New York Times*, December 16, 2012.
- Ginn, Courtney. "Ensuring the Effective Prosecution of Sexually Violent Crimes in the Bosnian War Crimes Chamber: Applying Lessons from the ICTY." *Emory International Law Review* 27, no. 1 (2013): 565-601.
- Glendon, Mary Ann. *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*. New York: Random House, 2001.
- . "At Century's Dawn: The Future and Past of Human Rights and the Rule of Law: The Rule of Law in the Universal Declaration of Human Rights." *Northwestern University Journal of International Human Rights* 2 (2004): 5-27.
- Goldsmith, Jennifer. "*Prosecutor v. Bagosora, et al.*: Case No. ICTR-98-41-T." *Human Rights Brief* 16, no. 3 (2009): 47-52.
- Goldstone, Richard J. "Prosecuting Rape as a War Crime." *Case Western Reserve Journal of International Law* 34 (2002): 277-285.
- Goodwin, Jan. "Silence = Rape." *Nation*, March 8, 2004, 18.
- Gottschall, Jonathan. "Explaining Wartime Rape." *The Journal of Sex Research* 41, no. 2 (2004): 129-136.
- Grayzel, Susan R. "The Souls of Soldiers: Civilians Under Fire in First World War France." *The Journal of Modern History* 78, no. 3 (2006): 588-622.
<http://www.jstor.org/stable/10.1086/509209>.
- Green, Jennifer L. "Uncovering Collective Rape: A Comparative Study of Political Sexual Violence." American Sociological Association Conference, 2004.

- Haddad, Heidi. "Mobilizing the Will to Prosecute: Crimes of Rape at the Yugoslav and Rwandan Tribunals." *Human Rights Review* 12, no. 1 (2011): 109-132.
- Hansen-Young, Thekla. "Defining Rape: A Means to Achieve Justice in the Special Court for Sierra Leone." *Chicago Journal of International Law* 6, no. 1 (2005): 479-494.
- Hartmann, Heidi I., and Ellen Ross. "Comment on 'On Writing the History of Rape'." *Signs* 3, no. 4 (1978): 931-935. <http://www.jstor.org/stable/3173135>.
- Hayden, Robert M. "Rape and Rape Avoidance in Ethno-National Conflicts: Sexual Violence in Liminalized States." *American Anthropologist* 102, no. 1 (2000): 27-41.
- Heaton, Laura. "What Happened in Luvungi? On Rape and Truth in Congo." *Foreign Policy*, March 4, 2013.
- Heineman, Elizabeth. "The History of Sexual Violence in Conflict Zones: Conference Report." *Radical History Review* no. 101 (2008): 5-21.
- . *Sexual Violence in Conflict Zones: From the Ancient World to the Era of Human Rights*. Philadelphia: University of Pennsylvania Press, 2011.
- Henry, Nicola. "The Fixation on Wartime Rape: Feminist Critique and International Criminal Law." *Social & Legal Studies* 23, no. 1 (2014): 93-111.
- Hobbs, Harry. "Victim Participation in International Criminal Proceedings: Problems and Potential Solutions in Implementing an Effective and Vital Component of Justice." *Texas International Law Journal* 49, no. 1 (2014): 1-33.
- Hochschild, Adam. "The Trial of Thomas Lubanga." *Atlantic* 304, no. 5 (2009): 76-82.
- Igwe, Chikeziri Sam. "The ICC's Favorite Customer: Africa and International Criminal Law." *The Comparative and International Law Journal of Southern Africa* 41, no. 2 (2008): 294-323. <http://www.jstor.org/stable/23253187>.
- Jackson Preece, Jennifer. "Ethnic Cleansing as an Instrument of Nation-State Creation: Changing State Practices and Evolving Legal Norms." *Human Rights Quarterly* no. 4 (1998): 817-842.
- Jalloh, Charles Chernor. "What Makes a Crime Against Humanity a Crime Against Humanity?" *American University International Law Review* 28, no. 2 (2013): 381-441.
- Johnson, Larry D. "The Lubanga Case and Cooperation Between the UN and the ICC." *Journal of International Criminal Justice* 10, no. 4 (2012): 887-903.

- Kalra, Gurvinder, and Dinesh Bhugra. "Sexual Violence Against Women: Understanding Cross-Cultural Intersections." *Indian Journal of Psychiatry* 55, no. 7 (2013): 244-249.
- Kaufman, Joyce P., and Kristen P. Williams. *Women and War: Gender Identity and Activism in Times of Conflict*. Sterling, VA: Stylus Publishing, 2010.
- Keen, Maurice Hugh. *The Laws of War in the Late Middle Ages*. London: Routledge & Kegan Paul, 1965.
- Khan, Karim A. A., and Anand A. Shah. "Defensive Practices: Representing Clients Before the International Criminal Court." *Law & Contemporary Problems* 76, no. 3 (2014): 191-233.
- Knop, Karen, ed. *Gender and Human Rights*. Oxford, UK: Oxford University Press, 2004.
- Koo, Katrina Lee. "Confronting a Disciplinary Blindness: Women, War, and Rape in the International Politics of Security." *Australian Journal of Political Science* 37, no. 3 (2002): 525-536. doi:10.1080/1036114022000032744.
- Koomen, Jonneke. "Without These Women, The Tribunal Cannot Do Anything: The Politics of Witness Testimony on Sexual Violence at the International Criminal Tribunal for Rwanda." *Signs* 38, no. 2 (2013): 253-277.
- Koshy, Ninan. "A Landmark Verdict: Conviction for War Crimes." *Economic and Political Weekly* 32, no. 24 (1997): 1389-1390. <http://www.jstor.org/stable/4405507>.
- Leatherman, Janie L., ed. *Sexual Violence and Armed Conflict*. Cambridge, UK: Polity Press, 2011.
- Leddy, Nick. "*Sylvestre Gacumbitsi v. Prosecutor*: Case No. ICTR-2001-64-A." *Human Rights Brief* 14, no. 1 (2006): 1-4.
- Leiby, Michele L. "Wartime Sexual Violence in Guatemala and Peru." *International Studies Quarterly* 53, no. 2 (2009): 445-468.
- Lincoln, Ryan S. "Recent Developments: Rule of Law for Whom? Strengthening the Rule of Law as a Solution to Sexual Violence in the Democratic Republic of the Congo." *Berkeley Journal of Gender, Law & Justice* 26 (2011): 139-167.
- Littlewood, Roland. "Military Rape." *Anthropology Today* 13, no. 2 (1997): 7-17.
- MacKinnon, Catharine A. "Defining Rape Internationally: A Comment on Akayesu." *Columbia Journal of Transnational Law* 44, no. 3 (2006): 940-958.

- . “The ICTR's Legacy on Sexual Violence.” *New England Journal of International and Comparative Law* 14, no. 2 (2008): 211-220.
- Maedl, Anna. “Rape as a Weapon of War in the Eastern DRC? The Victims' Perspective.” *Human Rights Quarterly* 33, no. 1 (2011): 128-147.
- Maravilla, Christopher Scott. “Rape as a War Crime: The Implications of the International Criminal Tribunal for the Former Yugoslavia's Decision in *Prosecutor v. Kunarac, Kovac, & Yukovic* on International Humanitarian Law.” *Florida Journal of International Law* 13 (2001): 321-336.
- Marecha, Kudzaishe and Percyslage Chigora. “The Sudanese Conflict: War Crimes and the International Criminal Court.” *Alternatives: Turkish Journal of International Relations* 10, no. 4 (2011): 37-49.
- Marks, Zoe. “Sexual Violence in Sierra Leone's Civil War: ‘Virginisation’, Rape, and Marriage.” *African Affairs* 113, no. 450 (2014): 67-87.
- Marzen, Chad G. “The Furundzija Judgment and Its Continued Vitality in International Law.” *Creighton Law Review* 43, no. 2 (2010): 505-527.
- Meger, Sara. “Rape of the Congo: Understanding Sexual Violence in the Conflict in the Democratic Republic of Congo.” *Journal of Contemporary African Studies* 28, no. 2 (2010): 119-135.
- Mertus, Julie A. *War's Offensive on Women: The Humanitarian Challenge in Bosnia, Kosovo, and Afghanistan*. Bloomfield, CT: Kumarian Press, 2000.
- Miller, Alexandra A. “From the International Criminal Tribunal for Rwanda to the International Criminal Court: Expanding the Definition of Genocide to Include Rape.” *Penn State Law Review* 108, no. 1 (2003): 349-373.
- Moghalu, Kingsley Chiedu. *Rwanda's Genocide: The Politics of Global Justice*. New York: Palgrave Macmillan, 2005.
- Mouthaan, Solange. “Victim Participation at the ICC for Victims of Gender-Based Crimes: A Conflict of Interest?” *Cardozo Journal of International & Comparative Law* 21, no. 3 (2013): 619-651.
- Moyn, Samuel. *The Last Utopia: Human Rights in History*. Cambridge, MA: Belknap Harvard University Press, 2010.
- Mugwanya, George William. “Recent Trends in International Criminal Law: Perspectives from the U.N. International Criminal Tribunal for Rwanda.” *Journal of International Human Rights* 6, no. 3 (2008): 415-458.

- Mullins, Christopher W. "He Would Kill Me with His Penis: Genocidal Rape in Rwanda as a State Crime." *Critical Criminology* 17, no. 1 (2009): 15-33.
- . "We Are Going to Rape You and Taste Tutsi Women: Rape During the 1994 Rwandan Genocide." *The British Journal of Criminology* 49, no. 6 (2009): 719-735.
- Mundis, Daryl A. and Fergal Gaynor. "Current Developments at the Ad Hoc International Criminal Tribunals." *Journal of International Criminal Justice* 2, no. 4 (2004): 1163-1187.
- Nagarajan, Chitra. "An Appraisal of Rwanda's Response to Survivors Who Experienced Sexual Violence in 1994." *Wagadu: A Journal of Transnational Women's & Gender Studies* 10 (2012): 108-131.
- Nahapetian, Kate. "Selective Justice: Prosecuting Rape in the International Criminal Tribunals for the Former Yugoslavia and Rwanda." *Berkeley Women's Law Journal* 14 (1999): 126-135.
- Nelaeva, Galina. "The Impact of Transnational Advocacy Networks on the Prosecution of Wartime Rape and Sexual Violence: The Case of the ICTR." *International Social Science Review* 85, no. 1 (2010): 3-27.
- N'Gambwa, Kitenge. *Leadership, Peace, Stability, and Prosperity in the DRC*. Washington, D.C.: United States Institute of Peace, 2011.
- Niarchos, Catherine N. "Women, War, and Rape: Challenges Facing the International Tribunal for the Former Yugoslavia." *Human Rights Quarterly* 17, no. 4 (1995): 649-690. <http://www.jstor.org/stable/762485>.
- Öberg, Marko Divac. "The Absorption of Grave Breaches into War Crimes Law." *International Review of the Red Cross* 91, no. 873 (2009): 163-183.
- Olujić, Maria B. "Embodiment of Terror: Gendered Violence in Peacetime and Wartime in Croatia and Bosnia-Herzegovina." *Medical Anthropology Quarterly* 12, no. 1 (1998): 31-50. <http://www.jstor.org/stable/649476>.
- Owen, David. *Balkan Odyssey*. New York: Harcourt Brace, 1995.
- Park, Augustine S. J. "Other Inhumane Acts: Forced Marriage, Girl Soldiers, and the Special Court for Sierra Leone." *Social & Legal Studies* 15, no. 3 (2006): 315-337.
- Patterson, Parker. "Partial Justice: Successes and Failures of the International Criminal Tribunal for Rwanda in Ending Impunity for Violations of International Criminal Law." *Tulane Journal of International & Comparative Law* 19, no. 1 (2010): 369-395.

- Pernoud, Régine. *Those Terrible Middle Ages: Debunking the Myths*. Translated by Anne Englund Nash. San Francisco, CA: Ignatius Press, 2000.
- Perry, Ashlie. "Sexual Violence as Politics: Policy Implications of Sexual Violence as a Tactic of Armed Conflict (the Former Yugoslavia and Rwanda Conflicts Case Studies)." New England Political Science Association Conference, 2010.
- Peterman, Amber, Tia Palermo, and Caryn Bredenkamp. "Estimates and Determinants of Sexual Violence Against Women in the Democratic Republic of Congo." *American Journal of Public Health* 101, no. 6 (2011): 1060-1067. doi:10.2105/AJPH.2010.300070.
- Peters, Julie and Andrea Wolper, eds. *Women's Rights, Human Rights: International Feminist Perspectives*. New York: Routledge, 1995.
- Philipose, Liz. "The Laws of War and Women's Human Rights." *Hypatia* 11, no. 4 (1996): 46-62. <http://www.jstor.org/stable/3810391>.
- Pillay, Navanethem. "Address-Interdisciplinary Colloquium on Sexual Violence as International Crime: Sexual Violence: Standing by the Victim." *Law & Social Inquiry* 35, no. 4 (2010): 847-853.
- Power, Samantha. *A Problem from Hell: America and the Age of Genocide*. New York: Basic Books, 2002.
- Pruitt, Katherine. "Destroying the Legacy of the ICTY: Analysis of the Acquittals of Jovica Stanisic and Franko Simatovic." *San Diego International Law Journal* 15, no. 2 (2014): 359-376.
- Pruitt, Lesley. "Looking Back, Moving Forward: The Role of the International Community in Addressing Conflict-Related Sexual Violence." International Studies Association Conference, 2010.
- Prunier, Gérard. *Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe*. New York: Oxford University Press, 2009.
- . "The Geopolitical Situation in the Great Lakes Area in Light of the Kivu Crisis." *Refugee Survey Quarterly* 16, no. 1 (1997): 1-25.
- Richey, Katie C. "Several Steps Sideways: International Legal Developments Concerning War Rape and the Human Rights of Women." *Texas Journal of Women and the Law* 17, no. 1 (2007): 109-129.
- Ruff, Allen. "The Highest Stage of Catastrophe: World War I and Its Century." *Against the Current* 29, no. 3 (2014): 11-14.

- Sadat, Leila Nadya. "Crimes Against Humanity in the Modern Age." *American Journal of International Law* 107, no. 2 (2013): 334-377. <http://www.jstor.org/stable/10.5305/amerjintelaw.107.2.0334>.
- Salzman, Todd A. "Rape Camps as a Means of Ethnic Cleansing: Religious, Cultural, and Ethical Responses to Rape Victims in the Former Yugoslavia." *Human Rights Quarterly* 20, no. 2 (1998): 348-378. <http://www.jstor.org/stable/762769>.
- Sharp, Ingrid. "Feminist Peace Activism 1915 and 2010: Are We Nearly There Yet?" *Peace & Change* 38, no. 2 (2013): 155-180.
- Shaver, Donald and Michael C. Pacella. "International Criminal Law." *International Lawyer* 44, no. 1 (2010): 143-153. <http://www.jstor.org/stable/40708239>.
- Shook, Lindsey. "Tracing Changes in War Rape Discourse: An Analysis of the Kunarac Trial in the International Criminal Tribunal of Yugoslavia." National Communication Association Conference, 2009.
- Shorter, Edward. "On Writing the History of Rape." *Signs* 3, no. 2 (1977): 471-482. <http://www.jstor.org/stable/3173297>.
- Simons, Marlise. "Congolese Militia Leader Convicted in Attack on Village." *New York Times*, March 7, 2014.
- . "International Criminal Court to Focus on Sex Crimes." *New York Times*, June 6, 2014.
- Skjelsbæk, Inger. *The Political Psychology of War Rape: Studies from Bosnia and Herzegovina*. New York: Routledge, 2012.
- . 2011. *War, Politics and Experience: Political Psychology of War Rape: Studies from Bosnia and Herzegovina*. Florence, KY: Taylor and Francis, 2011.
- Skjelsbaek, Inger. "Sexual Violence and War: Mapping out a Complex Relationship." *European Journal of International Relations* 7, no. 2 (2001): 211-237.
- Smith, K'Shaani O. "Prosecutor v. Lubanga: How the International Criminal Court Failed the Women and Girls of the Congo." *Howard Law Journal* 54 (2011): 467-500.
- Snyder, Cindy S., Wesley J. Gabbard, J. Dean May, and Nihada Zulcic. "On the Battleground of Women's Bodies: Mass Rape in Bosnia-Herzegovina." *Affilia* 21, no. 2 (2006): 184-195.
- Soh, Chunghee Sarah. "The Korean 'Comfort Women': Movement for Redress." *Asian Survey* 36, no. 12 (1996): 1226-1240. <http://www.jstor.org/stable/2645577>.

- Splittgerber, Scott. "The Need for Greater Regional Protection for the Human Rights of Women: The Cases of Rape in Bosnia and Guatemala." *Wisconsin International Law Journal* 15, no. 1 (1996): 185-227.
- St. Germain, Tonia and Susan Dewey. "Introduction." In *Conflict-Related Sexual Violence: International Law, Local Responses*, edited by Tonia St. Germain and Susan Dewey, 1-14. Sterling, VA: Kumarian Press, 2012.
- Stamatopolou, Elissavet. "Women's Rights and the United Nations." In *Women's Rights, Human Rights: International Feminist Perspectives*, edited by Julie Peters and Andrea Wolper, 36-50. New York: Routledge, 1995.
- Stearns, Jason K. *Dancing in the Glory of Monsters: The Collapse of the Congo and the Great War of Africa*. New York: Public Affairs, 2011.
- Stein, Ashley Joy. "Reforming the Sentencing Regime for the Most Serious Crimes of Concern: The International Criminal Court Through the Lens of the Lubanga Trial." *Brooklyn Journal of International Law* 39, no. 1 (2014): 521-563.
- Stephens, Beth and MaryAnn Dadisman. "Women and the Atrocities of War." *Human Rights* 20, no. 3 (1993): 12-30. <http://www.jstor.org/stable/27879773>.
- Stiglmyer, Alexandra, ed. *Mass Rape: The War Against Women in Bosnia-Herzegovina*. Translated by Marion Faber. Lincoln, NE: University of Nebraska Press, 1994.
- Tétreault, Mary Ann. "Justice for All: Wartime Rape and Women's Human Rights." *Global Governance* 3, no. 2 (1997): 197-212. <http://www.jstor.org/stable/27800163>.
- The Fund for Peace. 2014. "Fragile State Index." The Fund for Peace *Foreign Policy*, 72.
- . The failed states index 2005. The Fund for Peace. <http://ffp.statesindex.org/rankings-2005-sortable2014>).
- Thompson, Jennifer J. "Accept This Twofold Consolation, You Faint-Hearted Creatures: St. Augustine and Contemporary Definitions of Rape." *Simile: Studies in Media & Information Literacy Education* 4, no. 3 (2004): 1-17.
- Todorova, Teodora. "Giving Memory a Future: Confronting the Legacy of Mass Rape in Post-Conflict Bosnia-Herzegovina." *Journal of International Women's Studies* 12, no. 2 (2011): 3-15.
- Totten, Samuel and Rafiki Ubaldo, eds. *Genocide, Political Violence, Human Rights: We Cannot Forget: Interviews with Survivors of the 1994 Genocide in Rwanda*. Piscataway, NJ: Rutgers University Press, 2011.

- Trenholm, J. E., P. Olsson, and B. M. Ahlberg. "Battles on Women's Bodies: War, Rape and Traumatization in Eastern Democratic Republic of Congo." *Global Public Health* 6, no. 2 (2011): 139-152. doi:10.1080/17441690903212065.
- Tripone, Anna. "Sylvester Gacumbitsi v. Prosecutor: Case No. ICTR-2001-64-T." *Human Rights Brief* 12, no. 3 (2005): 1-4.
- Turner, Thomas. *The Congo Wars: Conflict, Myth, and Reality*. London: Zed Books, 2007.
- Van Den Hole, Leo. "A Case Study of Rape and Sexual Assault in the Judgments of the International Criminal Tribunals for Rwanda (ICTR) and the Former Yugoslavia (ICTY)." *Eyes on the ICC* 1, no. 1 (2004): 61-79.
- Van Schaack, Beth. "Obstacles on the Road to Gender Justice: The International Criminal Tribunal for Rwanda as Object Lesson." *American University Journal of Gender, Social Policy & the Law* 17, no. 2 (2009): 361-406.
- Vité, Sylvain. "Between Consolidation and Innovation: The International Criminal Court's Trial Chamber Judgment in the Lubanga Case." *Yearbook of International Humanitarian Law* 15 (2012): 61-85.
- Ward, Jeanne and Mendy Marsh. "Sexual Violence Against Women and Girls in War and Its Aftermath: Realities, Responses and Required Resources: A Briefing Paper." Brussels Symposium on Sexual Violence in Conflict and Beyond. June 21-23, 2006.
- Weiner, Phillip. "The Evolving Jurisprudence of the Crime of Rape in International Criminal Law." *Boston College Law Review* 54, no. 3 (2013): 1207-1236.
- Weitsman, Patricia A. "The Politics of Identity and Sexual Violence: A Review of Bosnia and Rwanda." *Human Rights Quarterly* 30, no. 3 (2008): 561-578.
<http://www.jstor.org/stable/20072859>.
- Whiting, Alex. "Dynamic Investigative Practice at the International Criminal Court." *Law & Contemporary Problems* 76, no. 3 (2014): 164-189.
- Wilt, Harmen van der, J. Vervliet, G. K. Sluiter, and J. Thomas M. Houwink ten Cate, eds. 2012. *The Genocide Convention: The Legacy of 60 Years*. Leiden, UK: M. Nijhoff, 2012.
- Winter, Bronwyn. "International Versus Transnational? The Politics of Prefixes in Feminist International Relations." In *Conflict-Related Sexual Violence: International Law, Local Responses*, edited by Tonia St. Germain and Susan Dewey, 33-52. Sterling, VA: Kumarian Press, 2012.

Wood, Stephanie K. "A Woman Scorned for the 'Least Condemned' War Crime: Precedent and Problems with Prosecuting Rape as a Serious War Crime in the International Criminal Tribunal for Rwanda." *Columbia Journal of Gender and Law* 13 (2004): 274-327.

Wood, Elisabeth Jean. "Armed Groups and Sexual Violence: When is Wartime Rape Rare?" *Politics & Society* 37, no. 1 (2009): 131-161.

Yang, Catherine M. "Accounting for Accountability: A Post-Conflict Role for Transnational Advocacy Networks in East Timor." *Georgetown Journal of International Law* 45 (2014): 589-615.

Young, Rebecca. "Internationally Recognized Human Rights Before the International Criminal Court." *The International and Comparative Law Quarterly* 60, no. 1 (2011): 189-208.