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Sexual Violence and Armed Conflict: United Nations Response

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Introduction

Sexual violence during armed conflict is not a new phenomenon. It has existed for as long as there has been conflict. In her 1975 book *Against Our Will: Men, Women and Rape*, Susan Brownmiller presented stark accounts of rape and other sexual atrocities that have been committed during armed conflict throughout history. While historically very few measures have been taken to address sexual violence against women committed during armed conflict, it is not true to say that there has always been complete silence about the issue. Belligerents have often capitalized upon the abuse of their women to garner sympathy and support for their side, and to strengthen their resolve against the enemy. Usually, the apparent concern for these women vanishes when the propaganda value of their suffering diminishes, and they are left without any prospect of redress. It is true to say that the international community has, for a long time, failed to demonstrate a clear desire to do something about the problem of sexual violence during armed conflict. The turning point came in the early 1990s as a result of sexual atrocities committed during the conflict in the former Yugoslavia, and it

seems that finally, the issue has emerged as a serious agenda item of the international community.

Towards the end of 1992, the world was stunned by reports of sexual atrocities committed during the armed conflict in the former Yugoslavia. Newspaper headlines decried: "Serbian 'rape camps': Evil Upon Evil" and "Serben vergewaltigen auf obersten Befehl" (Serbs rape on highest orders)¹. The media reported that rape and other sexual atrocities were a deliberate and systematic part of the Bosnian Serb campaign for victory in the war. A perception was generated that detention camps had been set up specifically for the purpose of raping women, and that the policy of rape had been planned at the highest levels of the Bosnian Serb military structure. Strong and persistent demands for a decisive response to these outrages came from around the globe.

it is important to recognize their different experiences when responding to the problem. Secondly, it must be emphasized that sexual violence is only one of the issues that arise when considering women's experience of armed conflict. For example, more women than men become refugees or displaced persons during conflict, and women's primary responsibility for agriculture and water collection in many societies renders them particularly vulnerable to injury from certain types of weapons used in conflict, such as land-mines. Further, women's overall position of disadvantage within the community means that the general hardships accompanying armed conflict frequently fall more heavily upon women than upon men. Women who serve as combatants experience armed conflict differently to male combatants, and the culture of militarism impacts upon women in particular ways.² Although not within the scope of the present issue, the many other ways that armed conflict affects women warrant serious attention and concern.

In the first part of this issue, consideration is given to the failure of the international community to address the issue of war-time sexual violence during the early years of the UN. Developments

are traced to the early 1990s when the international community finally recognized that human rights violations committed against women during armed conflict, including sexual violence, violate fundamental principles of international human rights and humanitarian law. In the second part of this issue, the manner in which sexual violence during armed conflict emerged as an item of serious concern within the UN is examined. The role of women's NGOs in exerting pressure for change is highlighted, and the UN's response described. The concluding section examines how the issue may be advanced in the next century.

Sexual Violence During Armed Conflict: A Hidden Atrocity?

The Nature of Sexual Violence During Armed Conflict

The term "sexual violence" refers to many different crimes including rape, sexual mutilation, sexual humiliation, forced prostitution, and forced pregnancy. These crimes are motivated by a myriad of factors. For example, a commonly held view throughout history has been that women are part of the "spoils" of war to which soldiers are entitled. Deeply entrenched in this notion is the idea that women are property -- chattel available to victorious warriors. Sexual violence may also be looked upon as a means of troop mollification. This is particularly the case where women are forced into military sexual slavery. Another reason that sexual violence occurs is to destroy male, and thereby community, pride. Men who have failed to "protect their women" are considered to be humiliated and weak. It can also be used as a form of punishment, particularly where women are politically active, or are associated with others who are politically active. Sexual violence can further be used as a means of inflicting terror upon the population at large. It can shatter communities and drive people out of their homes. Sexual violence can also be part of a genocidal strategy. It can inflict life-threatening bodily and mental harm, and form part of the conditions imposed to bring about the ultimate

destruction of an entire group of people.

Sexual Violence and World War II

Historical records are largely silent about the occurrence of sexual violence during World War II. This is not because sexual violence did not occur, but for a variety of other reasons. Part of the problem is that sexual violence was perpetrated by all sides to the conflict. Consequently, it was difficult for one party to make allegations against the other at the conclusion of hostilities. Moreover, sexual violence had long been accepted as an inevitable, albeit unfortunate, reality of armed conflict. This was compounded by the fact that in the late 1940s sexual matters were not discussed easily or openly, and there was no strong, mobilized women's movement to exert pressure for redress.

Only in recent years have writers and others begun to reconsider the issue of sexual violence during World War II. At the centre of this has been the belated recognition of crimes committed against women and girls who were forced into military sexual slavery by the Japanese. These women have become known as "comfort women". In 1992, the Japanese Government apologized for compelling these women into military sexual slavery, and has written to each survivor. The UN's Special Rapporteur on violence against women has reported that these women were
"...multiple rape on an everyday basis in the 'military comfort houses'...Allegedly, soldiers were encouraged by their commanding officers to use the "comfort women" facilities rather than civilian brothels 'for the purpose of stabilizing soldiers' psychology, encouraging their spirit and protecting them from venereal infections', as well as a measure to prevent looting and widespread raping during military attacks on villages."³

The Special Rapporteur has stated that the tales of the "comfort women" are amongst the most horrendous she has ever heard. Yet the stories of these women remained buried for nearly 50 years.

Post-World War II War Crimes Trials

Following World War II, two multinational war-crimes tribunals were established by the Allies to prosecute suspected war criminals, one in Tokyo, and the other in Nuremberg. Despite the fact that rape and other forms of sexual violence had been prohibited by the laws of armed conflict for centuries, no reference was made to sexual violence in the Charters of either the Nuremberg or the Tokyo tribunals. Although some evidence of sexual atrocities was received by the Nuremberg Tribunal, sexual crimes committed against women were not expressly charged nor referred to in the Tribunal's Judgement. Indictments before the Tokyo Tribunal did expressly charge rape, evidence was received, and the Tokyo Judgement referred to rape. For example, evidence of rape during the Japanese occupation of Nanking was presented during the trial of General Matsui who had the command of Japanese forces there. Matsui was convicted of war-crimes and crimes against humanity based in part on evidence of rape committed by his troops. However, none of the women who had been raped were actually called to testify, and the subject of women's victimization was only given incidental attention.

Additional war crimes trials were held pursuant to Control Council Law No. 10, which was adopted by the Allies in 1945 to provide a basis for the trial of suspected Nazi war criminals who were not dealt with at Nuremberg. This document represented an advance over the Charters of the Nuremberg and Tokyo Tribunals in that rape was explicitly listed as one of the crimes over which the Control Council had jurisdiction. However, no charges of rape were actually brought pursuant to Control Council Law No.10.

Control Council Law No.10 Article II(1)(c) of, gave the Council jurisdiction over "Atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or

religious grounds whether or not in violation of the domestic laws of the country perpetrated." (emphasis added).

Many of these provisions seek to protect women in their capacity as expectant mothers, maternity cases and nursing mothers; others regulate the treatment of female prisoners. There are also provisions dealing explicitly with sexual violence.

Problems with provisions of the law of armed conflict that prohibit sexual violence

In the 1949 Geneva Conventions and Additional Protocol I, certain crimes are designated as "grave breaches". Classification of a particular crime as a grave breach is significant because States have a duty to search for persons who are alleged to have committed grave breaches and, if found within their territory, to bring them before their courts or alternatively to extradite them for prosecution. The effect of the grave breach system is to create a hierarchy, with some violations of the law of armed conflict considered more egregious than others. Sexual violence is not expressly designated as a grave breach, although the view that sexual violence fits within other categories of grave breaches, such as "wilfully causing great suffering or serious injury to body or health", and "torture or inhuman treatment", has gained acceptance. Nonetheless, the absence of express reference to sexual violence as a grave breach is a reflection of the international community's historical failure to appreciate the seriousness of sexual violence during armed conflict.

Another problem with provisions of the Geneva Conventions and Additional Protocols is that they characterize rape and other forms of sexual violence as attacks against the "honour" of women, or at most as an outrage upon personal dignity. The implication is that "honour" (or dignity) is something lent to women by men, and that a raped woman is thereby dishonoured. Failure of these

instruments to categorize sexual violence as a violent crime that violates bodily integrity, presents a serious obstacle to addressing crimes of sexual violence against women. It directly reflects and reinforces the trivialization of such offences. In addition, as one writer has pointed out, the provisions are protective rather than prohibitive.⁴

The only requirement is for particular care to be taken, presumably by men, to protect women against sexual violence. Thus the provisions appear to be more about the role of the "male warrior" during armed conflict than about recognizing sexual violence as a violation of the rights of women and prohibiting it.

What is the "law of armed conflict"?

The body of international legal principles found in treaties and in the practice of States, that regulates hostilities in situations of armed conflict. "Armed conflict" is the preferred legal term rather than the term "war" because the law applies irrespective of whether there has been a formal declaration of war. Other terms with the same meaning

UN Responses to Sexual Violence

One of the first major references within the UN system whether special protection should be accorded to particular women and children during armed conflict. It emphasizes the corresponding need to accord them special protection under the Geneva Conventions, that offer important guarantees of protection during armed conflict. Yet, as the Special Rapporteur on human rights during the conflict in Bangladesh.⁶ In light of this, the original intent at the time the Declaration was adopted, concern over the lack of and very limited recognition was given to issues affecting women during armed conflict. The Fourth Geneva Convention of 1949 stipulates that all necessary steps shall be taken to prohibit sexual violence.⁷

Throughout the 1980s, the UN continued to refer to the prevalence of sexual violence. The practice of considering women as care-givers.

include:

"international humanitarian law", "the humanitarian laws of war" and "jus in bello".

Different rules apply depending upon whether a conflict is internal (i.e. a civil war) or international (i.e. a war between two or more states or state-like entities).

Internal conflicts are regulated by fewer laws than international conflicts.

Is the law of armed conflict different from international human rights law?

Yes, the law of armed conflict and international human rights law have historically developed as separate bodies of law, with the former directed at the alleviation of human suffering in times of

armed conflict, and the latter directed at the alleviation of human suffering during times of peace. Since the establishment of the UN, there has been a tendency to regard the law of armed conflict as part of the broader international human rights law framework.

Does the law of armed conflict deal explicitly with sexual violence?

Yes, the relevant provisions are:

Geneva Convention IV Relative to the Protection of Civilian Persons;
Article 27: "*Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.*" Additional

Protocol I of 1977;
Article 76(1):
"Women shall be the
object of special
respect and shall be
protected in
particular against
rape, forced
prostitution and any
other form of
indecent assault."

Additional Protocol
II of 1977; Article
4(2)(e) prohibits:
*"Outrages upon
personal dignity, in
particular
humiliating and
degrading treatment,
rape, enforced
prostitution and any
form of indecent
assault."*

For example, commencing in the 1980s the ECOSOC agreed a series of resolutions on the situation of Palestinian women and children in the occupied Arab territories, as well as the situation of women and children in Namibia, and women and children living under apartheid. These resolutions recognized the poor living conditions of women but did not refer to their vulnerability to sexual violence. It seems unlikely that, in contrast to the majority of other conflicts throughout history, sexual violence was not a feature of these particular conflicts.

At the end-of-decade Conference held in Nairobi in 1985, the Forward-looking Strategies for the Advancement of Women, adopted to provide a blueprint for the advancement of women to the Year 2000, referred to the especially vulnerable situation of women affected by inter alia armed conflict, including the threat of physical abuse. The general vulnerability of women to sexual abuse and rape in everyday life was recognized, but sexual violence was not specifically linked to armed conflict.⁸

Even in the mid-1980s, sexual violence during armed conflict largely remained unrecognized.

The 1990s: International Concern Over Sexual Violence During Armed Conflict

The Gulf War and the Creation of the United Nations Compensation Commission

Some of the first steps towards progress on the issue of wartime sexual violence taken by the UN have gone almost unnoticed. As in the case of other conflicts, when Iraq invaded Kuwait in 1990, sexual violence was a frequent occurrence during the ensuing hostilities. A UN report documented the prevalence of rape perpetrated against Kuwaiti women by Iraqi soldiers during the invasion.⁹

Although the UN Security Council did not expressly refer to sexual violence against women in its resolutions relating to the Gulf conflict, it did create the United Nations Compensation Commission (UNCC) to compensate victims who suffered damage as a result of Iraq's unlawful invasion of Kuwait. The UNCC is primarily funded by a 30 per cent levy on Iraq's annual oil exports. Initially, Iraq refused to resume oil exports under the conditions imposed by the UN, thereby crippling the capacity of the fund to operate as intended. However, in 1995, an agreement was reached

known as the "oil for food" arrangement, and money has subsequently become available for the payment of claims. The UNCC determined that it would compensate "serious personal injury" which expressly includes physical or mental injury arising from sexual assault. Some claims asserting rape by members of the Iraqi military forces were filed with the UNCC, and guidelines were adopted to facilitate proof of these claims making it much easier for women to receive compensation. In one case, a woman claimed she had been subjected to sexual assault by Iraqi soldiers and suffered a miscarriage as a result. The woman requested that her name be withheld from her claim. The government filing the claim on her behalf could provide confirmation of her identity and, recognizing the difficulties faced by sexual assault victims, the Panel of Commissioners recommended compensation for her claim despite the absence of her name.¹⁰

The conflict in the Former Yugoslavia

It was not until sexual atrocities were committed during the conflict in the former Yugoslavia that consistent references began to appear throughout the UN to the problem of sexual violence during armed conflict. Security Council resolution 798 of 18 December 1992 referred to the "massive, organized and systematic detention and rape of women, in particular Muslim women, in Bosnia and Herzegovina". Similar resolutions followed. As part of its response to the conflict, the Security Council established a Commission of Experts (Yugoslav Commission), to investigate violations of international humanitarian law committed in the former Yugoslavia. In its Interim Report, the Yugoslav Commission listed systematic sexual assault as one of the priority areas in its ongoing investigations,¹¹

and it subsequently collected information regarding approximately 1,100 reported cases of sexual violence. Most of the cases had occurred in Bosnia and Herzegovina between April and November

1992. In its Final Report the Yugoslav Commission concluded that, although all sides to the conflict had perpetrated sexual violence, the vast majority of the victims were Bosnian Muslims, the vast majority of the perpetrators were Bosnian Serbs, and that Serbs reportedly ran over 60 per cent of the detention sites where sexual assault occurred. According to the Yugoslav Commission, there was strong, although not conclusive, evidence of a systematic pattern of sexual assault by the Bosnian Serbs.¹²

The UN Commission on Human Rights appointed Mr Tadeusz Mazowiecki as Special Rapporteur on the Situation of Human Rights in the Territory of the Former Yugoslavia. In January 1993, the Special Rapporteur dispatched an international team of medical experts to investigate rape,¹³

and in February 1993, he endorsed the team's findings that rape had been used as an instrument of ethnic cleansing in Bosnia-Herzegovina and Croatia, and that persons in positions of power appeared to have made no effort to prevent these abuses.¹⁴

The ad hoc war crimes tribunal for the former Yugoslavia

In 1993, the Security Council created an ad hoc war crimes tribunal (Yugoslav Tribunal) to prosecute persons suspected of having committed violations of international humanitarian law during the war in the former Yugoslavia. The Yugoslav Tribunal is a subsidiary body of the Security Council, and is located in The Hague, The Netherlands. At the time of its creation, it was clearly envisaged that the Yugoslav Tribunal would prosecute crimes of sexual violence, and this is reflected in the governing statute of the Tribunal, which expressly refers to rape as constituting a crime against humanity.

"From multiple testimony and the witness statements submitted by the

An effort has also been made to struggle against women. The position of legal

Prosecutor to this Trial Chamber, it appears that women (and girls) were subjected to rape and other forms of sexual assault during their detention at Sušica camp. Dragan Nikolic and other persons connected with the camp are alleged to have been directly involved in some of these rapes or sexual assaults. These allegations do not seem to relate solely to isolated instances." "The Trial Chamber feels that the prosecutor may be well-advised to review these statements carefully with a view to ascertaining whether to charge Dragan Nikolic with rape and other forms of sexual assault, either as a crime against humanity or as grave breaches or war crimes."

Judge Jorda, Judge Odio Benito and Judge Riad, In re Dragan Nikolic: Decision of Trial Chamber I, *Review of Indictment Pursuant to Rule 61* (The Prosecutor v Dragan Nikolic) 1995 I.C.T.Y., No IT-94-2-R61, (Oct 20), para 33.

properly addressed. Patricia Sellers v greatly improved the Yugoslav Tribunal the issue. In addition, one investigation comprised of both women and men. look at the sexual assault component violence investigations by the OTP c which took place at the Sušica detention during a reconfirmation of the indictment Sušica camp. On the basis of this evidence

The question must be asked as to why these charges of sexual violence were not investigated earlier.

A commitment to prosecuting crimes of sexual violence is reflected in the Yugoslav Tribunal's Rules of Procedure and Evidence (Yugoslav Rules), which provide a series of measures designed to protect victims and witnesses testifying before the Tribunal. It was largely the anticipated prosecutions for sexual

violence that prompted these provisions.

"In the light of the particular nature of the crimes committed in the former Yugoslavia, it will be necessary for the International Tribunal to ensure the protection of victims and witnesses. Necessary protection measures should therefore be provided in the rules of procedure and evidence for victims and witnesses, especially in cases of rape or sexual assault."

Secretary-General's Report on Aspects of Establishing an International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia (Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993)), S/25704, 1993, para. 108.

The Yugoslav Tribunal has been pr
measures for victims and witnesses
victim's identity; the giving of testi
images; and prohibitions on photog
granted by the Yugoslav Tribunal h
to be kept from the accused even at
recommend protective measures fo
the time of its creation, it was envis
hiring qualified women wherever p

Rule 96 deals with issues of corroboration, the defence of consent, and evidence of the prior sexual conduct of the victim.

The OTP of the Yugoslav Tribunal has issued a number of indictments charging sexual violence committed against both women and men during the conflict in the former Yugoslavia. In June 1996, the first indictment which deals exclusively with sexual violence was issued in relation to events that took place in the municipality of Foca, to the south east of Sarajevo. This indictment alleges that when the area was taken over by Serb forces in April 1992, many Muslim women were detained in houses, apartments,

schools and other buildings, and were subjected to repeated rape by soldiers. The indictment also alleges that women and girls were enslaved in houses run like brothels, where they were also forced to perform domestic work such as washing the soldiers' uniforms.²²

Two months into the first prosecution brought before the Yugoslav Tribunal, the Tadic case, the Trial Chamber heard the first ever testimony in history, at the international level, from women regarding wartime rape. Although Tadic had been initially charged with raping a female prisoner at the Omarska camp, the charge was withdrawn prior to the commencement of the trial. However, evidence of rape was still used as general evidence against Tadic. The Celebici case, which is presently proceeding before the Yugoslav Tribunal and is expected to conclude in 1998, involves charges of rape.

Assessing the Progress

There is no doubt that the UN's response to sexual violence in the former Yugoslavia constitutes a long overdue acknowledgment that sexual violence during armed conflict is a crime that must be addressed. The problem has been formally recognized, but concerns remain about the extent to which women affected by sexual violence have actually been assisted as a result. More than four years has elapsed since the creation of the Yugoslav Tribunal, but no defendant has yet been convicted for rape. Part of the problem has been the initial inability to take defendants into custody, which frustrated the Yugoslav Tribunal's work for a number of years. This situation began to change in the second part of 1997 when several covert arrests by NATO resulted in suspects being transferred to The Hague. In addition, 10 Bosnian Croats surrendered themselves to the Yugoslav Tribunal in August 1997, approximately doubling the number of defendants in custody. In February 1998, two Bosnian Serbs surrendered themselves to the Yugoslav Tribunal, being the first Serb indictees to do so. As at 16

February 1998 there were 22 defendants in the Scheveningen detention facility in The Hague. As a result, the Tribunal's workload has increased dramatically, triggering renewed hope regarding the utility of the endeavour as a whole. It also improves the prospect of bringing to justice those persons accused of committing sexual violence during the conflict in the former Yugoslavia. Some of the defendants recently taken into custody face charges of sexual violence. For example, Anto Furundzija, who was arrested in December 1997, faces charges of sexual violence. It is alleged that he was a commander who was present while a prisoner was sexually assaulted, and that he did nothing to curtail the assault.²³

However, it is still the case that most of the indictees charged with sexual violence are not in custody.

Less encouraging is the likelihood that women who have been subjected to sexual violence will ever receive compensation for their suffering. The Yugoslav Tribunal can order the restitution of property acquired by criminal conduct.²⁴

This is an important power, because the misappropriation of dwellings, livestock and other valuables is a frequent and devastating component of conflict. However, the Yugoslav Tribunal does not have power to order compensation as part of the penalties imposed upon convicted persons, nor has a parallel claims commission, like the UNCC for example, been created. Judgements of the Tribunal do constitute conclusive proof of criminal responsibility for the injury, but the victim is required to pursue compensation claims through domestic channels. This approach assumes that domestic systems have in place the appropriate structure to provide victims with compensation. This is frequently not the case, especially in countries recovering from armed conflict.

Despite these limitations, there is now substantial evidence that the mind set of the international community has changed regarding sexual violence during armed conflict. Over the course of half a century, the issue of women and armed conflict has developed within the UN framework from a limited concern with the situation of women as mothers and care-givers to a recognition that sexual violence against women and girls is a violation of international human rights and humanitarian law that must be addressed. As described below, the issue has also been taken up in a number of other fora within the UN system.

The Vienna Conference on Human Rights, 1993

The 1993 UN World Conference on Human Rights held in Vienna was a watershed for women's human rights. Of particular significance was the recognition that violence against women, such as domestic abuse, mutilation, burning and rape, is a human rights issue. Previously, these acts had been regarded as private matters, and therefore not appropriate for government or international action. Even the Convention on the Elimination of all Forms of Discrimination Against Women (Women's Convention), adopted in 1979, has no specific provision on violence against women. In 1985, the Nairobi Forward-looking Strategies had acknowledged the problem of violence against women, and urged governments to respond, but there was no explicit recognition that violence against women is a human rights issue. In the years following Nairobi, the issue of violence against women received consideration within the ECOSOC, particularly by the Commission on the Status of Women. In addition, in 1992 the Committee on the Elimination of Discrimination Against Women (CEDAW), the body created to monitor the Women's Convention, adopted a general recommendation on "Violence against Women."²⁵

These developments were due in part to intensified efforts by women's NGOs to draw attention to the problem. The International

Women's Rights Action Watch, established to monitor the Women's Convention and the activities of CEDAW, was particularly active on the issue, as was the International League for Human Rights.²⁶

The Vienna Declaration and Programme of Action, 1993

Article 38: "Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response."

At the Vienna Conference on the Elimination of Violence against Women, Asian Women's Human Rights Committee was recognized under the umbrella of the Vienna Declaration and Programme of Action. At that time, the conference recognized the violation of women's rights, of the Vienna Declaration and Programme of Action.

conference. The vulnerability of women to sexual violence during armed conflict is explicitly recognized and condemned as a human rights violation requiring a "particularly effective response."²⁸

At the Vienna Conference, a Tribunal organized by NGOs heard testimonies regarding violations of women's human rights around the world, including sexual violence during armed conflict. These testimonies included statements from former "comfort women", Palestinian, Somali, and Peruvian women, as well as women from the former Yugoslavia, who had been invited by the organizers to "testify".²⁹

The Declaration on the Elimination of Violence against Women Developments regarding the problem of violence against women coalesced in December 1993 when the UNGA adopted the Declaration on the Elimination of Violence against Women. The Declaration identifies three main categories of violence against

women, namely physical, sexual and psychological violence occurring in the family, within the general community, and that perpetrated or condoned by the State. It explicitly recognizes that women in conflict situations are especially vulnerable to violence.³⁰

The Special Rapporteur on Violence against Women

In 1994 the Commission on Human Rights appointed a Special Rapporteur on violence against women, its causes and consequences, and Radhika Coomaraswamy of Sri Lanka was named to fill the position. The Special Rapporteur has divided her reports to reflect the three main categories of violence identified in the Declaration on the Elimination of Violence against Women. In her preliminary report, the Special Rapporteur identified sexual violence against women during armed conflict as one of the areas to be given consideration in her future report under the third category, namely violence perpetrated or condoned by the State. The Special Rapporteur is due to submit this report in 1998. It will include information collected by Ms Coomaraswamy during visits to Rwanda, Afghanistan and Haiti.³²

The Special Rapporteur on the situation of systematic rape, sexual slavery and slavery-like practices during armed conflict

Consideration has been given to the issue of sexual violence by the UN Sub-commission on the Prevention of Discrimination and the Protection of Minorities. In September 1993, Ms. Linda Chavez, a member of the Sub-Commission, submitted a preparatory document on the Question of Systematic Rape and Sexual Slavery and Slavery-like Practices During Wartime."³³

She subsequently submitted a working paper on the topic,³⁴

and following this the Sub-commission decided that the topic warranted further consideration. Accordingly, Ms. Chavez was

appointed as the Special Rapporteur on the situation of systematic rape, sexual slavery and slavery-like practices during periods of armed conflict. In July 1996 Ms Chavez submitted her preliminary report.³⁵

The final report on the topic will be completed by Ms Gaye McDougal in 1998.

The Fourth World Conference on Women At the Fourth World Conference on Women

At the Fourth World Conference on Women, held in Beijing in November 1995, sexual violence against women during armed conflict was a major theme. This is reflected in the Beijing Declaration and Platform for Action, which identifies women and armed conflict as one of the 12 critical areas of concern to be addressed by Member States, the international community and civil society.³⁶

Beijing Platform for Action, 1995

Para. 135: "While entire communities suffer the consequences of armed conflict, women and girls are particularly affected because of their status in society and their sex. Parties to armed conflict are prohibited from attacking civilians, and women and girls are particularly vulnerable to sexual violence, including systematic rape and sexual slavery, and violations of the human rights of women in such situations is experienced as a form of discrimination. Women and girls who are victims of such violence suffer displacement, loss of home and property, loss or involuntary disappearance, family separation and disintegration, and who are victims of acts of murder, torture, disappearance, sexual slavery, rape, sexual abuse and forced pregnancy in situations of armed conflict, especially as a result of policies of ethnic cleansing and other new and emerging forms of violence, compounded by the life-long social, economic and psychologically traumatic consequences of foreign occupation and alien domination."

Platform for Action Critical Area E: Women and Armed Conflict

The Final Report states that rape is an egregious breach of international humanitarian law and a crime against humanity.⁴⁰

Overall, however, the issue was given minimal consideration by the Rwanda Commission.

NGO information on sexual violence in Rwanda was also referred to in some of the later reports of Mr René Degni-Ségui, the Human Rights Commission's Special Rapporteur for Rwanda. In January 1996 the Special Rapporteur reported that "[r]ape was systematic and was used as a 'weapon' by the perpetrators of the massacres..." and that "[a]ccording to consistent and reliable testimony, a great many women were raped; rape was the rule and its absence was the exception."⁴¹

"Under-age children and elderly women were not spared. Other testimonies mention cases of girls aged between 10 and 12. Pregnant women were not spared. Women who were about to give birth or who had just given birth were also the victims of rape in hospital. This situation was all the more alarming in that they were raped by members of the military, some of whom were AIDS virus carriers (as was the case of the national chief of police)."42

militias, as several witnesses report). Women who had just given birth developed fulminating infections and died. Women who were "untouchable" according to (e.g. nuns) were also involved and even corpses, in the case of women who were just after being killed." Report on the Situation of Human Rights in Rwanda Submitted by René Degni- Ségui, Special Rapporteur of the Commission on Human Rights, E/CN.4/1996/68, 29 January 1996, para. 17

She told how the Interahamwe would come in and take away young girls and women into a nearby forest and rape them. Witness JJ described a series of occasions on which she was raped multiple times. She also explains how, by pure chance, she narrowly escaped being massacred along with the other women in the commune, because she was out buying food for her baby when the killings began.

Despite the horrifying nature of the abuses that Witness JJ described, and the need for the international community to acknowledge and redress such suffering, her story very nearly remained untold. The original indictment against Akayesu did not allege sexual violence. The trial commenced, and when other witnesses began to make consistent references in their testimony to widespread sexual violence in the Taba Commune it became clear the issue could no longer be disregarded. At this time, there was also an Amicus Curiae (friend of the court) Brief filed by the Coalition for Women's Human Rights in Conflict Situations,⁴⁴

which urged the Rwanda Tribunal to request an amendment of the indictment to include sexual violence.⁴⁵

There was a break in the trial, and when it resumed in October 1997, Akayesu was facing an amended indictment which included charges of sexual violence against displaced women who sought refuge at the Taba commune. It is not alleged that Akayesu

personally committed any acts of sexual violence but rather that he is responsible for acts of sexual violence committed by others because he was present, was in a position of authority, but failed to take any action to prevent it.⁴⁶

Factors Affecting the Response to Sexual Violence During Armed Conflict

There are many factors that affect the extent to which sexual violence against women and girls during armed conflict is recognized and addressed. Between Nuremberg and Tokyo on the one hand, and the former Yugoslavia on the other, a strong and mobilized feminist movement has emerged that is exerting pressure and demanding redress for atrocities specifically directed at women and girls. Women's NGOs have been instrumental in insisting that steps be taken to address crimes of sexual violence.

**NGOs
Assisting
Women in
the Former
Yugoslavia
Include:**
B.a.B.e.
(Zagreb)
Center for
Women War
Victims
(Zagreb)
Humanitarian
Law Fund
(Belgrade)
Kareta
(Zagreb)
SOS

However, as the case of Rwanda demonstrates, continued vigilance over the failure to address sexual violence in Rwanda is that cultural influence the way that women react to sexual violence and often frequently find it difficult to talk about sexual violence. However, women must be given a viable way to minimize the associated trauma. Women must be given a viable way to come forward. Necessary measures include the establishment of a court.

The absence of adequate witness protection has been a significant problem in Rwanda. The Rwanda Tribunal provide the same protections to victims and witnesses between the local authorities and the Tribunal's witness protection program. Women are not coming forward due to fear of death, harassment and intimidation.

(Belgrade)

Tresnjevka

(Zagreb)

NGOs

**Assisting
Women in
Rwanda**

Include:

Association
de solidarité
des femmes
rwandaises

(Asoferwa)

Association
des veuves
du génocide
d'Avril

(AVEGA)

Association
des
volontaires
de la paix

(AVP)

Benishyaka
Group

Kamaliza

IsanganoPro-
Femmes/Twe
se Hamwe

A report called Witness Protection, Gender and the ICTR, has been prepared by the Centre for Constitutional Rights, International Centre for Human Rights and Democratic Development, International Women's Law Clinic and MADRE. It asks for the provision of trauma counsellors for women, support persons to

accompany witnesses travelling to the seat of the Rwanda Tribunal in Arusha, together with consistent follow-up.⁴⁷

Conclusions: Future Perspectives There have been several signs that sexual violence against women during armed conflict will continue to be accorded attention within the UN framework. In addition to the upcoming reports of the Special Rapporteur on violence against women, and the report of the Special Rapporteur on systematic rape, sexual slavery, and slavery-like practices during periods of armed conflict, there has been specific consideration given to the impact of armed conflict upon girl children. In 1993, the GA requested that a study be carried out on the impact of armed conflict upon children, and Ms. Graça Machel was appointed to head the study. Ms. Machel's Final Report recognizes that children, and especially girls, are vulnerable to sexual exploitation in many settings during armed conflict. For example, girls who become child soldiers are frequently subjected to rape and other forms of abuse, as are girls who are refugees or displaced persons. The report states that "[c]hildren may also become victims of prostitution following the arrival of peacekeeping forces."⁴⁸

In September 1997 the UN Secretary-General appointed Mr Olara Otunnu as his Special Representative for Children in Armed Conflict. Sexual violence perpetrated against children falls within the terms of his mandate.

UN Expert Group Meeting on Gender Persecution Toronto, Canada, November 1997 (Excerpts)

Recommendations: A. Legal Definitions and Standards Sex-based crimes be referred to in the Statute of the ICC, but they should not be explicitly defined, so that the legal meaning of these crimes can be informed by the progressive interpretation of international law...; Sexual violence be considered to be within the definition of torture for the purposes of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or

Punishment, 1984.

B. Training, Dissemination and Education. Adequate professional support and appropriate gender training should be provided for all departments of the ad hoc War Crimes Tribunals and the ICC, especially the Witness Protection Unit of the Registry. All UN peace-keepers should receive adequate training in international humanitarian law, human rights law and gender issues. The training and pre-training programmes of UN peacekeepers with regard to their mission should reflect sensitivity to women's particular security rights and be informed on cultural specificities. Trainers should include civilians, women and experts in gender issues. A Code of Conduct for UN peace-keepers should be elaborated, including behaviour of forces with respect to women. Women in afflicted areas should be given training in land-mine awareness classes that are accessible to all people.

C. Participation

Gender balance in international judicial posts should be an explicitly stated goal; gender balance should be a consideration in judicial appointment alongside the existing requirement of geographic distribution, and professional and personal qualities;

D. Implementation, Monitoring and Accountability. The international community should take responsibility for the safety of those willing to testify before international tribunals to ensure effective administration of justice. An adequate protection programme for witnesses and potential witnesses and other forms of ancillary services, including physical and mental health, social and other services to promote the interests of witnesses and potential witnesses and to ensure the effective functioning of the ad hoc War Crimes Tribunals and the ICC is essential; A trust fund to assist in the provision of financial resources for witness protection and related services should be established; Special attention should be directed to long-term health needs such as psychological consequences arising from trauma and the effects of violations of reproductive rights such as being forced into bearing children or being denied the freedom to bear children.

Formal recognition of the problem is an important first step, but this must now be translated into a positive outcome for women and girls affected by sexual violence in all armed conflicts.

This issue of women2000 was compiled by the Women's Rights Unit, United Nations Division for the Advancement of Women, with Michelle Jarvis, Consultant.

Notes

1 The Miami Herald, 18 December 1992, and Die Welt, October 1, 1992, cited in C. MacKinnon, "Crimes of War, Crimes of Peace", in S. Shute & S. Hurley (eds), On Human Rights: The Oxford Amnesty Lectures 1993, New York, Basic Books, 1993, p. 83.

2 Related issues were explored during an Expert Group Meeting on "Male Roles and Masculinities in the Perspective of a Culture of Peace", held by UNESCO in Oslo, Norway from 24-28 November 1997. For further information contact UNESCO, .

3 United Nations, Preliminary Report Submitted by the Special Rapporteur on violence against women, its causes and consequences, (E/CN.4/1995/42), 1994, paras. 288 and 290.

4 J. Gardam, "Women and the Law of Armed Conflict: Why the Silence"?, International and Comparative Law Quarterly, vol. 46, 1997, p. 55.

5 United Nations, Declaration on the Protection of Women and Children in Emergency and Armed Conflict, General Assembly Resolution 3318 (XXIX), 14 December 1974. See preamble para. 9 and para 3.

6 United Nations, Preliminary Report, op. cit., para. 271(a).

7 Declaration on the Protection of Women and Children in Emergency and Armed Conflict, op. cit., para. 4.

8 United Nations, Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, held in Nairobi from 16 to 26 July 1985; including the Agenda and Nairobi Forward Looking Strategies for the Advancement of Women, (A/CONF.116/28/Rev.1), 1986, para. 41. See also Part III Peace, para. 243 (recognizing women as one of the most vulnerable groups affected by armed conflict), para. 258 (violence against women), para. 261 (the threat posed to women and children by armed conflict), para. 232 (the obstacle armed conflict poses to the advancement of women) and para. 262 (compliance with international treaties providing protection to women and children during armed conflict).

9 See, United Nations, Report of the Special Rapporteur on the Situation of Human Rights in Kuwait under Iraqi Occupation, (E/CN.4/1992/26), 1992.

10 United Nations Compensation Commission Decision No 3, Personal Injury and Mental Pain and Anguish, reprinted in R. Lillich (ed.), The United Nations Compensation Commission, New York, Transnational Publishers Inc., 1995, p. 404; and United Nations, Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Second Instalment of Claims for Serious Personal Injury or Death (Category "B" Claims), (S/AC.26/1994/4), 15 December 1994, p. 10, para. 17.

11 United Nations, Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution 780, (1992), (S/25274), 10 February 1993, para. 66(c). See also paras. 58-60.

12 United Nations, Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780(1992), (S/1994/674), 24 May 1994, (Annexes, Summaries and Conclusions), 31 May 1995, Annex IX, para. 4(a), para. 10, para.

21 and para. 26.

13 United Nations, Rape and Abuse of Women in the Territory of the Former Yugoslavia, Report of the Secretary- General, (E/CN.4/1994/5), 30 June 1993, para. 8.

14 United Nations, Report on the Situation of Human Rights in the former Yugoslavia, Submitted by Mr Tadeusz Mazowiecki, Special Rapporteur of the Commission of Human Rights, pursuant to Commission resolution 1992/S-1/1 of 14 August 1992, (E/CN.4/1993/50), 10 Feb 1993, para. 84.

15 United Nations, Report of the Secretary-General on the Rape and Abuse of women in the Areas of Armed Conflict in the Former Yugoslavia, (A/51/557), 25 October 1996, para. 23.

16 International Criminal Tribunal for the Former Yugoslavia, Bulletin, No. 7, 21 June 1996, p.5.

17 In re Dragan Nikolic: Indictment (The Prosecutor v Dragan Nikolic), 1994, I.C.T.Y. No. IT-94-2-I.

18 International Criminal Tribunal for the Former Yugoslavia, Bulletin, op. cit. p 5.

19 See In re Dušan Tadic: Decision on the Prosecutor's Protective Measures for Victims and Witnesses, (The Prosecutor v Dušan Tadic) 1995, I.C.T.Y. No. IT-94-I-T (Aug 10); and In re Blaškić: Decision on the Application of the Prosecutor Dated 17 October 1996 Requesting Protective Measure for Victims and Witnesses (The Prosecutor v Blaškić) 1996, I.C.T.Y. No. IT-95-14-T (Nov 5).

20 Rule 34, Yugoslav Tribunal Rules.

21 United Nations, Report of the International Tribunal for the

Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, (A/49/342, S/1994/1007), 29 August 1994.

22 In re Dragan Gagovic & Ors: Indictment (The Prosecutor v Dragan Gagovic & Ors) 1996 I.C.T.Y. No. IT-96-23-I (June 26).

23 International Criminal Tribunal for the Former Yugoslavia, Press Release, (CC/PIO/277-E), The Hague, 18 December 1997. Press releases for the Yugoslav Tribunal may be accessed at

24 Article 24(3) of the Yugoslav Statute. Restitution of property is dealt with further in the Yugoslav Rules.

25 United Nations, Committee on the Elimination of Discrimination against Women, Eleventh Session, General Recommendation 19 (CEDAW/C/1992/L.1/Add.15), 1992.

26 J. Connors, "NGOs and the Human Rights of Women at the United Nations", in P. Willetts (ed), *The Influence of Non-Governmental Organisations in the U.N. System*, London, Hurst & Company, 1996, p. 165.

27 C. Bunch & N. Reilly, *Demanding Accountability: The Global Campaign and Vienna Tribunal for Women's Human Rights*, (Rutgers University: Center for Women's Global Leadership, 1994), pp 4-6.

28 United Nations, Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights held in Vienna from 14 to 25 June 1993, (A/CONF.157/24), 13 October 1993.

29 N. Reilly (ed), *Testimonies of the Global Tribunal on*

Violations of Women's Human Rights at the United Nations World Conference on Human Rights, Vienna, June 1993. A video of the Tribunal produced by Augusta Productions in collaboration with the Center for Women's Global Leadership. For further information contact the Center for Women's Global Leadership, Douglass College, Rutgers University, 27 Clifton Avenue, New Brunswick, NJ 08903 USA, PH (908) 932-8782 FAX: (908) 932-1180.

30 United Nations, Declaration on the Elimination of Violence against Women, (A/RES/48/104), 20 December 1993, preamble para. 7 and Article 2.

31 United Nations, Preliminary Report, *op. cit.*, paras. 261-292.

32 Interview with Radhika Coomaraswamy, *Libertas*, *op. cit.*

33 United Nations, Preparatory Document on the Question of Systematic Rape, Sexual Slavery and Slavery-like Practices During Wartime, (E/CN.4/Sub.2/1993/447), 7 September 1993.

34 United Nations, Working Paper on the Situation of Systematic Rape, Sexual Slavery and Slavery-like Practices During Wartime, Including Internal Armed Conflict, (E/CN.4/Sub.2/1995/38), 13 July 1995.

35 United Nations, Preliminary Report of the Special Rapporteur on the Situation of Systematic Rape, Sexual Slavery and Slavery-like Practices During Periods of Armed Conflict, (E/CN.4/Sub.2/1996/26), 16 July 1996.

36 United Nations, Report of the Fourth World Conference on Women held in Beijing from 4 to 15 September 1995, including the Agenda, the Beijing Declaration and the Platform for Action, (A/CONF.177/20), 17 October 1995.

37 N. Reilly (ed), *Without Reservation: The Beijing Tribunal on Accountability for Women's Human Rights*, Center for Women's Global Leadership, 1996.

38 Human Rights Watch, and Federation Internationale des Ligues des Droits de l'Homme, *Shattered Lives: Sexual Violence During the Rwandan Genocide and its Aftermath*, September 1996.

39 United Nations, Preliminary Report of the Independent Commission of Experts Established in Accordance with Security Council Resolution 935 (1994), (S/1994/1125), 4 October 1994.

40 United Nations, Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 935 (1994), (S/1994/1405), 9 December 1994, paras. 136-137.

41 United Nations, Report on the Situation of Human Rights in Rwanda submitted by Mr René Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/1 of 25 May 1994, (E/CN.4/1996/68), 29 Jan 1996, para. 16.

42 The jurisdiction of the Rwanda Tribunal differs from that of the Yugoslav Tribunal due to the fact that Rwanda is primarily classified as an internal conflict, where as the conflict in the former Yugoslavia has elements of both internal and international conflicts. Common Article 3 of the 1949 Geneva Conventions and Additional Protocol II apply specifically to internal conflicts.

43 An indictment charging sexual violence was issued secretly by the Rwanda Tribunal in May 1997, although it was not made public until several months later. See: *In re Pauline Nyiramasuhuko and Arsene Sholom Ntahobali: Indictment (The Prosecutor v Pauline Nyiramasuhuko and Arsene Sholom Ntahobali)*, I.C.T.R.-97-24-I, 26 May 1997

44 This coalition is comprised of more than 100 organizations working on issues related to women's human rights in conflict situations, and is coordinated by the International Center for Human Rights and Democratic Development, in Montreal, Canada. For further information about the Coalition, contact Isabelle Solon-Helal via email

45 Amicus Brief Respecting Amendment of the Indictment and Supplementation of the Evidence to Ensure the Prosecution of Rape and Other Sexual Violence Within the Competence of the Tribunal, May 1997. The Amicus Brief can be accessed online at

46 *In re Jean Paul Akayesu: Indictment, (The Prosecutor v Jean Paul Akayesu)*, (1996) I.C.T.R. No. 96-4-I (Amended June 1997), para. 12(B).

47 *Libertas*, op. cit. p 4.

48 United Nations, *Impact of Armed Conflict on Children*, Report of the Expert of the Secretary-General, Ms Graça Machel, Submitted Pursuant to A/RES/48/157, (A/51/306), 26 August 1996, para. 98.

49 The Women's Caucus for Gender Justice in the ICC can be contacted at +1-212-697-7741 or email.

50 For further details see United Nations Expert Group Meeting on Gender-based Persecution, 9-12 November 1997, (EGM/GBP/1997/Report).

