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The Bosnian Conflict: Justice, Genocide, Ethnic Cleansing, and the Systematic Use of
Rape

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An abstract of
A thesis submitted to the Faculty of the
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Abstract

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By Kaitlin McKenzie

The 1992-1995 Bosnian conflict changed the face of war in a post-United Nations world. By the time the Dayton Peace Accords were signed ending the conflict, approximately 200,000 people were killed and 2 million displaced, while the international community stood horrified at the unfolding genocide. There are four first's that make the Bosnian conflict unique: the first international criminal tribunal created since the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East, the first time rape was used as a systematic weapon of war, the first time the term "ethnic-cleansing" was used (in an effort to avoid using the term genocide, which would enact legal responsibilities via the Genocide Convention), and the first European genocide since WWII. The systematic rape of Muslim women, the mass expulsion of Muslims from Bosnia, and the deliberate killing of thousands of Bosnian civilians culminated into an "ethnic cleansing," which the United Nations deemed a form of genocide. Lessons learned from examining this modern day genocide may be used to prevent similar atrocities from taking place in the future.

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List of Acronyms

AP- Associated Press

CRC- Convention on the Rights of the Child

ICC- International Criminal Court

ICRC- International Committee of the Red Cross

ICTR- International Criminal Tribunal for Rwanda

ICTY- International Criminal Tribunal for the Former Yugoslavia

NATO- North Atlantic Treaty Organization

OHCHR- Office of the United Nations High Commissioner for Human Rights

SPS- Socialist Party of Serbia

UN- United Nations

UNPROFOR- United Nations Protection Force

Definitions

Genocide-

(1) “Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group” (OHCHR, 1948).

(2) “Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group” (ICTY, 2009).

Refugee- “Anyone owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it” (OHCHR, 1950).

Ethnic Cleansing- “The elimination of an ethnic group from territory controlled by another ethnic group” (Power, 2002).

Crimes Against Humanity- “Crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation;
- (e) imprisonment;
- (f) torture;
- (g) rape;
- (h) persecutions on political, racial and religious grounds;
- (i) other inhumane acts” (ICTY, 2009).

Background of the Conflict in Bosnia

The 1992-1995 Bosnian conflict is one of the most complex and horrific conflicts ever seen. By the time the Dayton Peace Accords were signed ending the conflict, approximately 200,000 people were killed and 2 million displaced, while the international community stood horrified at the unfolding genocide. The United Nations (UN) passed countless resolutions and enacted measures at their disposal: condemning the violence, creating an embargo, and establishing an international criminal tribunal to prosecute human rights violations. However, while the UN was hard at work trying to stop the conflict, the first European genocide since World War II ensued. The Bosnian conflict began with a call for independence and grew into one of the most gruesome ethnic conflicts the world has ever seen.

At the end of the First World War, the Kingdom of Serbs, Croats and Slovenes was created, encompassing territories affected by the break-up of the Austro-Hungarian and Ottoman Empires (Hashi, 1992). After being renamed several times, the Socialist Federal Republic of Yugoslavia was established in 1963, consisting of Serbia, Croatia, Slovenia, Montenegro, Macedonia, and Bosnia-Herzegovina (See Appendix A). On June 25, 1991, Slovenia and Croatia declared independence from Yugoslavia, with the Republic of Macedonia declaring independence shortly thereafter in September that same year (Weller, 1992). Bosnia followed in March 1992, when the Muslim and Croat citizens of Bosnia successfully voted for independence in a referendum boycotted by the Serbs (Reuters, 1998). By this point, Bosnia-Herzegovina was a truly multi-ethnic state with 44 percent of the population being Muslim, 31 percent Croat, 17 percent Serbian, and 6 percent Yugoslavs (Klemenčič and Žagar, 2004). The fall of communism

throughout Europe prompted all three ethnic groups in Bosnia to have different plans for where the country should go after independence. Muslim nationalists wanted an independent Bosnia, Serb nationalists wanted to stay in Yugoslavia, and Croats wanted to join the independent Croatian state (BBC News, 2011). Supported by neighbors and allies in near-by Serbia and Montenegro, the Bosnian Serbs responded violently to news of independence. Bosnian Serbs immediately proclaimed a separate State and set out to partition republics along ethnic lines and then join Serbian held areas into a “Greater Serbia” (CIA, 2011).

By April, fighting in the Muslim controlled capital city Sarajevo grew intense (BBC News, 2011). On May 3rd Alija Izetbegovic, the Bosnian Muslim president, was taken hostage by Yugoslav troops and subsequently released the next day (The New York Times). The following day, the Yugoslav army relinquished command of approximately 100,000 troops in Bosnia, effectively creating a Bosnian Serb army (The New York Times). At this point, Serbs occupied approximately 70 percent of Bosnia (Reuters, 1998). On May 30, 1992 the UN Security Council passed Resolution 757 to “call for the immediate cessation of forcible expulsions and attempts to change the ethnic composition of that population” (UN, 1992a). This Resolution also declared an embargo to prevent “the import into their territories of all commodities and products originating in the Federal Republic of Yugoslavia (Serbia and Montenegro)” (UN, 1992a).

A couple of months later in August 1992, the UN Security Council passed Resolution 771 “expressing grave alarm” at the reports of “mass forcible expulsion and deportation of civilians, imprisonment and abuse of civilians in detention centres, deliberate attacks on non-combatants, hospitals and ambulances, impeding the delivery of

food and medical supplies to the civilian population, and wanton devastation and destruction of property” (UN, 1992b). This Resolution also strongly condemned “any violations of international humanitarian law, including those involved in the practice of ‘ethnic cleansing,’” and reminded State Parties “breaches of the Conventions are individually responsible in respect of such breaches” (UN, 1992b).

Unfortunately, condemnation from the UN did not prevent this conflict from escalating. During this time “ethnic cleansing” was said to be taking place in Bosnian Serb controlled areas (BBC News, 2011). Taking its most substantive action to date, on October 9, 1992 the UN Security Council passed Resolution 781 to establish a “ban on military flights in the airspace of Bosnia and Herzegovina” (UN, 1992c). On February 22, 1993 the UN Security Council went one step further by passing Resolution 808, establishing an International Tribunal for the former Yugoslavia (ICTY) for the “prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991” (UN, 1993a).

In March of 1993 the war increased complexity after Bosnian Croats and Muslims began fighting each other over land not yet seized by Bosnian Serbs (The New York Times). In April, a Serb attack on the city of Srebrenica created a refugee crisis as citizens tried to escape the violence. In response to the increasing large numbers of displaced persons, the UN set up six “safe areas” for Bosnian Muslims in Sarajevo, Tuzla, Bihac, Srebrenica, Zepa, and Gorazde (The New York Times). The UN established the “safe areas” to be “free from armed attacks and from any other hostile acts which endanger the well-being and the safety of their inhabitants” (UN, 1993b). The fighting continued through the rest of 1993, into 1994. On February 5, 1994 more than

60 civilians were killed and 200 wounded when a mortar shell hit a downtown marketplace in Sarajevo (The New York Times). In March, the Bosnian Muslim-led government and Bosnian Croats united by signing an agreement creating the Bosniak/Croat Federation of Bosnia and Herzegovina (CIA, 2011).

In December of 1994, at the invitation of Bosnian Serb rebel leader Radovan Karadzic, United States President Jimmy Carter traveled to Bosnia to mediate a peace agreement (Los Angeles Times, 1994). On December 20th, President Carter announced a four-month ceasefire agreement, which took effect January 1, 1995 (The New York Times). The cease-fire agreement quelled fighting everywhere except Bihac, a Muslim stronghold in the northwest part of the country. Unfortunately, the cease-fire expired on May 1st, without a lasting peace deal being brokered. On May 25th, the violence took a turn for the worse when Serbs begin firing on UN held “safe areas,” including Tuzla, where 71 people were killed (The New York Times). The next day, on May 26th, Serbs took more than 300 UN peacekeepers hostage (The New York Times). The hostages were gradually released over the next few weeks while Serbs increased their attacks on “safe areas,” focusing on Sarajevo. Originally, the Security Council deployed the United Nations Protection Force (UNPROFOR) on April 7, 1992 to “create the conditions of peace and security required for the negotiation of an overall settlement of the Yugoslav crisis” (UN Security Council, 1992a). On September 30, 1994, the Security Council extended UNPROFOR’s mandate through 1995 and extended activities to include mine-clearance, public information, and civilian police (UN Security Council, 1994a).

In July 1995 the worst massacre of the Bosnian conflict took place in the “safe area” of Srebrenica, which contained tens of thousands of citizens seeking refuge under

the control of approximately 600 lightly armed Dutch-UN peacekeepers (BBC News, 2005). On July 6th, as Bosnian Serbs began their attack on Srebrenica, Bosnian Muslims immediately asked for the weapons they surrendered upon arrival in Srebrenica to be returned to them (BBC News, 2005). Their request for weapons was denied, leaving them unable to protect themselves against the heavily armed Bosnian Serbs.

Inadequately armed and running low on supplies like fuel and food, which had not be replenished since May, the Dutch commander requested “close air support” after undergoing rocket fire, but the North Atlantic Treaty Organization (NATO) air strikes were unable to advance (The New York Times). On July 9th, the Bosnian Serbs intensified their shelling, while thousands of refugees fled ahead of the progressing Serbs (BBC News, 2005).

On July 10th, Dutch Commander Colonel Karremans filed a request for UN air support after intense shelling from the Bosnian Serbs (BBC News, 2005). At 9:00 am the following day, Colonel Karremans received word he filed the request using the wrong form. Although he refilled the proper paperwork an hour and a half later, NATO planes were already on their way back to Italy to refuel. By noon that day, more than 20,000 refugees had reached the main Dutch base Potocari seeking refuge. At 2:30 pm Dutch fighters were finally able to drop two bombs on Serb positions outside Srebrenica. However, the Serbs threat of killing Dutch hostages caused the Dutch to call-off any further air strikes. It was at this point that Serbs finally overran and took control of Srebrenica’s “safe area” (The New York Times). On July 12th, Serbs began separating out men from the age of 12 to 77 for “interrogation for suspected war crimes” (BBC News, 2005). Meanwhile 23,000 women and children were deported to the Muslim held

area Tuzla (The New York Times). That same day the UN Security Council passed Resolution 1004, expressing “grave concern” at the “situation in and around the safe area of Srebrenica and at the plight of the civilian population there” (UN, 1995).

Overnight approximately 15,000 Bosnian Muslim fighters attempted to escape Srebrenica and were fired-upon while fleeing through the mountains; only 4,000 fighters made it to Tuzla (BBC News, 2005). On July 13th, Dutch peacekeepers exchanged the 5,000 Muslims they were protecting at Potocari for the release of fourteen Dutch peacekeepers who were being held captive (BBC News, 2005). On July 16th the Dutch left Srebrenica after negotiations between the UN and Bosnian Serbs (BBC News, 2005). In just five horrific days, Bosnian Serb forces murdered more than 7,000 Muslim men (BBC News, 2005). On July 25, 1995 the ICTY issued arrest warrants for Radovan Karadzic, president of the Bosnian Serb administration of Pale, and Ratko Mladic, commander of the army of the Bosnian Serb administration, under the charges of genocide and crimes against humanity (ICTY, 1995).

The tide began to turn on August 4th, when Croatia launched a massive attack on the Serbs, taking back most of Serb-held land in four days, resulting in tens of thousands of Serbs fleeing toward Bosnia (The New York Times). On August 30th, NATO planes and UN ground troops launched a massive attack on Serbs surrounding Sarajevo (The New York Times). On September 1st NATO ceased the attack, announcing that warring parties agreed to discuss a peace deal (The New York Times). On September 13th, Croats and Muslims began to advance on Serbs in central and western Bosnia (The New York Times). The following day, the President of Socialist Republic of Serbia, Slobodan Milošević, announced Bosnian Serbs would withdraw guns from around Sarajevo (The

New York Times). Getting closer and closer to peace, all warring parties agreed to a 60-day cease fire on October 5th (The New York Times). Finally on November 21, 1995 all sides signed a peace agreement in Dayton, Ohio that put an end to the three-year conflict. The Dayton Peace Accords stipulated a multi-ethnic democratic government to run Bosnia-Herzegovina (CIA, 2011). 51 percent of Bosnian territory was granted to the Muslim-Croat federation and the remaining 49 percent was given to the Serbs (The New York Times).

Legal Framework

Yugoslavia joined the United Nations as one of the original fifty-one members in 1945 (UN, 2011). One of the purposes for establishing the UN listed in the UN Charter was “suppression of acts of aggression or other breaches of the peace” (UN, 1945a). Article 2 states that “all members shall fulfill in good faith the obligations assumed by them in accordance with the present Charter” (UN, 1945a). Article 6 of the UN Charter details that any state which “persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council” (UN, 1945a). The UN enacted this principle on September 19, 1992 when the UN Security Council dropped Yugoslavia from the General Assembly (The New York Times). The Republic of Bosnia and Herzegovina had already been admitted as a Member of the United Nations by the General Assembly on May 22, 1992.

The UN took their castigation of Yugoslavia one step further in 1993. Chapter VII, Article 39 of the UN Charter states that the Security Council can decide what “measures shall be taken to maintain or restore international peace and security” (UN, 1945a). It is under this provision that the ICTY was established through UN Security Council Resolution 827 in May 1993, “for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory for the former Yugoslavia” beginning in 1991 (UN Security Council, 1993c).

In addition to being responsible for upholding the UN Charter, Bosnia signed and ratified many key international humanitarian law treaties after being granted statehood that were applicable during the conflict. On December 29, 1993, Bosnia ratified the

Convention on the Prevention and Punishment of the Crime of Genocide (OHCHR, 1948). As one of the staples of international humanitarian law, the Genocide Convention declares, “genocide is a crime under international law” which State Parties “undertake to prevent and to punish” (OHCHR, 1948). State Parties were also required to enact “necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide” (OHCHR, 1948).

Bosnia ratified the 1949 Geneva Convention (III) relative to the Treatment of Prisoners of War on December 31, 1992, promising that prisoners of war “shall in all circumstances be treated humanely,” and “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” is prohibited (ICRC, 1949a). That same day Bosnia also ratified the Convention (IV) relative to the Protection of Civilian Persons in Time of War, declaring “persons taking no active part in the hostilities shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria” (ICRC, 1949b). More specifically, “violence to life and person, outrages upon personal dignity, in particular humiliating and degrading treatment, and carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples” were prohibited (ICRC, 1949b).

On January 9, 1993, Bosnia ratified the Convention on the Right of the Child (CRC). The CRC emphasizes that appropriate measures be taken to ensure children are protected against all forms of discrimination or punishment, and requires States Parties

ensure to the maximum extent possible the survival and development of the child, recognizing their inherent right to life (OHCHR, 1989).

Bosnia also ratified the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity on January 9, 1993 (ICRC, 1968). As part of this Convention, Bosnia agreed, “no statutory limitation shall apply to war crimes and crimes against humanity” (ICRC, 1968). Similarly, Bosnia ratified the Rome Statute of the International Criminal Court (ICC) on November 4, 2002. Establishing a permanent international court to prosecute war crimes, crimes against humanity, genocide and the crime of aggression, the ICC was formed so the most serious crimes of concern to the international community would not go unpunished (ICRC, 1998).

Finally, Bosnia ratified the International Convention on the Elimination of All Forms of Racial Discrimination on July 16, 1993 (OHCHR, 1965). This Convention upholds “each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions” (OHCHR, 1965). In principle, this Convention was meant to eliminate “racial discrimination in all its forms and manifestations,” although discrimination was a driving force in the Bosnia conflict (OHCHR, 1965).

Many of these treaties were ratified by Bosnia after becoming independent of the Socialist Federal Republic of Yugoslavia, while the conflict was taking place. Ratifying these treaties while atrocious human rights violations were being committed shows the colossal hypocrisy of the government agreeing to prevent and punish the crime of genocide, knowing genocide was unfolding against the Bosnian Muslims. Ratifying

these treaties during the middle of the conflict also made the government not legally responsible for upholding any treaty obligations before ratification, since there is no retroactivity. For this reason, it was up to the UN Security Council, acting under Chapter VII of the UN Charter, to demand the cessation of all internationally unlawful activities.

UN Security Council Resolution 713 stated “all States shall, for the purposes of establishing peace and stability in Yugoslavia, immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia until the Security Council decides otherwise” (UN Security Council, 1991).

Additionally, UN Security Council Resolution 819 condemned “all violations of international humanitarian law, in particular the practice of ‘ethnic cleansing’” and reaffirmed that “those who commit or order the commission of such acts shall be held individually responsible in respect of such act” (UN Security Council, 1993b). Through this Resolution the Security Council also demanded “the immediate cessation of armed attacks by Bosnian Serb paramilitary” (UN Security Council, 1993b).

Methodology

As stated in *Synthesizing Research: A Guide of Literature Reviews*, “Secondary channels, especially reference databases, should form the backbone of any comprehensive literature search. These sources probably contain the information most closely approximating all research” (Cooper, 1998). Electronic peer reviewed journals found in reference databases formed the majority of research completed for this literature review.

The specific databases searched include: PubMed, PAIS International, LexisNexis Statistical, LexisNexis Congressional, LexisNexis Academic, JSTOR, Journals@Ovid, Global Health, Factiva, EUROPA World, and American Bibliography of Slavic and East European Studies (ABSEES). Key words used to search each database included: Bosnian conflict, 1992-1995 Bosnian war, Former Yugoslavia, Bosnian systematic rape, Bosnian genocide, Bosnian war crimes tribunal, the International Criminal Tribunal for the former Yugoslavia, Bosnian ethnic cleansing, and Bosnian Muslim genocide.

In an effort to review articles most relevant to this specific literature review, inclusion and exclusion criteria were established. Abstracts returned by the database were examined to see they met at least one of the following four inclusion criteria. First, articles were reviewed if the abstract discussed the systematic use of rape as a weapon of war and how this crime was prosecuted. Second, articles about ethnic cleansing were reviewed if the abstract discussed the origin of the term, its application to this particular conflict, or how it was used to divert obligations derived from the Genocide Convention. Third, articles about the Bosnian genocide were reviewed if the abstract discussed how Serbs specifically targeted the Muslims and the particular tactics documented in this

pursuit. Finally, articles were reviewed if the abstract mentioned the formation of the International Criminal Tribunal for the former Yugoslavia and the mandate of this war crimes tribunal. Articles were excluded from being included in the literature review if they did not meet the above criteria, if the events discussed fell outside of the 1991-1995 time frame, or did not contain any new information relevant to the topic.

In addition, Samantha Power's *A Problem from Hell: America and the Age of Genocide* was read and included in the literature review. Because this project does not involve human subjects research, Institutional Review Board approval was not needed.

Significance

The 1992-1995 Bosnian conflict changed the face of war in a post-United Nations world. There are four first's that make the Bosnian conflict unique: the first international criminal tribunal created since the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East, the first time rape was used as a systematic weapon of war, the first time the term "ethnic-cleansing" was used (in an effort to avoid using the term genocide, which would enact legal responsibilities via the Genocide Convention), and the first European genocide since WWII.

Aimed at punishing individuals responsible for the Bosnian conflict and deterring such human rights violations from taking place in the future, the UN Security Council decided an *ad hoc* international criminal tribunal should be created to punish the human rights violations committed in the former Yugoslavia. Article I of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) states that genocide is "a crime under international law" (OHCHR, 1948). Article VI explains "persons charged with genocide shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal" (OHCHR, 1948). Contrary to what unfolded, both the former Yugoslavia and Bosnia-Herzegovina were party to the Genocide Convention, with the former Yugoslavia ratifying on August 29, 1950 and Bosnia-Herzegovina ratifying on December 29, 1992 (UN Treaty Collections, 2012). Because no permanent international criminal court was established before the Bosnian conflict, the UN Security Council adopted Resolution 827 on May 25, 1993 establishing the International Criminal Tribunal for the former Yugoslavia (ICTY) (UN Security Council, 1993c). While the ICTY was the first war

crimes court created by the UN, it was also the first international criminal tribunal since the Nuremberg and Tokyo tribunals (ICTY). According to the UN, the ICTY was created to hold individuals accountable for those atrocious human rights violations they committed during the conflict and, by so doing, deter similar crimes in the future (UN, 1999).

UN Security Council Resolution 827 also “expressed grave alarm at reports” of “massive, organized, systematic detention and rape of women” (United Nations Security Council, 1993c). Although rape has certainly been present in previous conflicts, the systematic use of rape as a weapon of war originated in the Bosnian conflict. According to the UN High Commissioner for Human Rights, approximately 20,000 women were raped in the former Yugoslavia from 1992 to 1994 (Nahapetian, 1999). Bosnian Muslim women were often raped by Serb soldiers following orders and then detained until it was no longer legal to get an abortion, left to bear a Serb baby (Nahapetian, 1999). Rape was categorized in this conflict as a weapon of war because Muslims and Serbs trace their ethnicity paternally, so when a Serb impregnates a Muslim, the Muslim paternal line is destroyed and the baby is considered a Serb (Carlton, 1997).

Also addressed in UN Security Council Resolution 827 was extreme concern over “the continuance of the practice of ‘ethnic cleansing’” (UN Security Council, 1993c). Similar to genocide, the definition of ethnic cleansing is “the elimination of an ethnic group from territory controlled by another ethnic group” (Power, 2002). The Genocide Convention defines genocide as “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group” (OHCHR, 1948). The Genocide Convention enacted legal responsibilities for State Parties to prevent and punish the crime

of genocide (OHCHR, 1948). Article I of the Convention states, “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish” (OHCHR, 1948). The international community was extremely reticent to use the term genocide when describing the Bosnian conflict because that would admit their failure to prevent the genocide from occurring, and would enact their legal obligations to get involved and stop the genocide. Therefore, the term “ethnic cleansing” was created to avert such legal responsibilities, while still stressing the gravity of what was taking place in the former Yugoslavia.

UN General Assembly Resolution 47/121, which was signed by the United States, confirmed the Bosnian “ethnic cleansing” amounted to genocide when holding Serbian forces responsible for aggression and for “the abhorrent policy of ‘ethnic cleansing,’ which is a form of genocide” (UN General Assembly, 1992). One year later the United Nations Security Council warned the “Government of the Federal Republic of Yugoslavia should immediately, in pursuance of its undertaking in the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948, take all measures within its power to prevent the commission of the crime of genocide” (UN Security Council, 1993b).

However, some believe that the Serbian policy towards Muslims did not meet the definition of genocide because it was focused on expelling Muslims from Bosnia, and the “intentions was to get rid to the Muslims, not to exterminate them” (Slazman, 1998). Contrary to this opinion, the literature supports the fact that the Serbs set out to destroy the Bosnian Muslim population and were doing everything they could to ensure the

Muslims would never recover by systematically killing and expelling Muslim civilians from Bosnia (Power, 2002). The evidence detailing the murders and expulsion of Bosnian Muslims conclusively indicates the acts committed by the Serbian military constitute genocide. Specifically, “killing members of another group on the basis of their religion, physical and mental torture, using measures whose aim is to prevent births within the group, and forcibly transferring children from one group to another” are all acts committed by the Serbs in violation of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Salzman, 1998). The ethnic cleansing and systematic rape of women, combined with numerous other crimes in Bosnia, culminated in the first European genocide since World War II.

The four first’s seen in the Bosnian conflict, the first international criminal tribunal since the Nuremberg and Tokyo tribunals, the first time rape was used as a systematic weapon of war, the first time the term “ethnic-cleansing” was used, and the first European genocide since WWII, make the Bosnia conflict extraordinarily interesting to examine. Furthermore, lessons learned from examining this conflict may be used to prevent similar atrocities from taking place in the future.

Chapter Two: Formation of the ICTY

At the end of World War II, the Allies were determined to seek postwar justice through an international criminal tribunal created to address egregious human rights violations committed by their opponents. First representatives from nine occupied European countries met in London in January 1942 to compile the St. James Declaration (Anti-Defamation League, 2006). This declaration stated that “(they) place among their principal war aims the punishment, through the channel of organized justice, of those guilty of or responsible for these crimes” (Alfaro, 1950). Almost two years later in November 1943, the United States, Great Britain, and the Soviet Union assembled the Moscow Declaration, which affirmed “members of the Nazi party who have been responsible for or have taken a consenting part in the above atrocities, massacres, and executions will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries” (Alfaro, 1950).

With war close to its conclusion in February 1945, the Allies met at the Yalta Conference to discuss Europe’s postwar reorganization. Although the Soviet Union helped construct the Moscow Declaration, it was at this conference that Stalin suggested 50,000 people should be killed in lieu of a criminal tribunal (Silber & Miller, 1993). While the Prime Minister of Great Britain did not go as far as Stalin, he suggested “a list of the major criminals of this category should be drawn up here and they should be shot once their identity is established” (Yalta Conference, 1945). The United States however, represented by President Roosevelt, insisted that trials be conducted in an international court (Meron, 2006b). Six months later in August 1945, the Allies agreed on the

“Prosecution and Punishment of the Major War Criminals of the European Axis” in the London Agreement (London Agreement, 1945). Drawing from the Moscow Declaration, the London Agreement officially created an “International Military Tribunal for the trial of war criminals whose offenses have no particular geographical location whether they be accused individually or in their capacity as members of the organizations or groups or in both capacities” (London Agreement, 1945).

After a political consensus was reached among the Allies on the formation of an international military tribunal, the specific crimes/laws had to be codified in order to bring charges before the Court. Article 6 of the Constitution of the International Military Tribunal declared its establishment for “the trial and punishment of the major war criminals of the European Axis countries, whether as individuals or as members of organizations, [who] committed any of the following crimes: Crimes Against Peace, War Crimes, and Crimes Against Humanity” (UN, 1945b). Article 3 of the London Agreement gave signatory parties the responsibility “to make available for the investigation of the charges and trial of the major war criminals detained by them who are to be tried by the International Military Tribunal” and any “major war criminals not in the territories of any of the Signatories” (London Agreement, 1945).

The first set of trials conducted by the International Military Tribunal at Nuremberg were of leading officials of the Third Reich. After nine months of trial, three defendants were acquitted, seven received prison terms, and twelve were sentenced to death (Meron, 2006b). Following this first set of trials, the American occupation authorities tried an additional 177 less prominent leaders of Nazi Germany’s government, military, and economy (Meron, 2006b). Similarly, twenty-five senior officials, or “Class

A” criminals, were tried for war crimes in the International Military Tribunal for the Far East’s first set of trials (Meron, 2006b). All defendants were convicted of at least one charge and seven were sentenced to death (Meron, 2006b). In a second set of trials, 980 less senior officials, or “Class B and C” criminals, were tried for war crimes and crimes against humanity (Meron, 2006b). Eventually, some of those convicted returned to work for the Japanese government after their release from prison, indicating public opinion viewed those convicted not as criminals, but as victims of the vindictive Allies (Meron, 2006b).

Several important principles were established during the Nuremberg/Tokyo trials that influenced future tribunals. First, the principle of individual criminal accountability, which the Court addressed when saying, "crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced" (UN, 1999). Additionally, the principle that official capacity does not exonerate a perpetrator from liability was also established. Finally, the Courts refused to recognize authorization of an international crime by national law as grounds of justification. President Truman spoke of these precedents when declaring, “The historic precedent set at Nuremberg abundantly justifies the expenditure of effort. This precedent becomes basic in the international law of the future” (King, 2003).

At the conclusion of World War II, the dissolving League of Nations left a hole in the international community that the formation of the United Nations (UN) quickly filled. Officially coming into existence on October 24, 1945, the UN was created to “unite [member nations’] strength to maintain international peace and security” (UN, 1945a).

Beginning in 1992, the United Nations Security Council began devoting an inordinate amount of attention to the Bosnia conflict. Resolution 764 adopted on July 13, 1992 affirmed all involved parties were bound by international humanitarian law and “that persons who commit or order the commission of grave breaches of the Conventions are individually responsible” (UN Security Council, 1992b). One month later, Security Council Resolution 771 expressed “grave alarm at continuing reports of widespread violations of international humanitarian law,” specifically the “practice of ‘ethnic cleansing’” (Security Council, 1992d). In October 1992, the Security Council officially requested the Secretary-General to establish “an impartial commission of experts to examine and analyse” substantiated information submitted by international humanitarian organizations “relating to violations of humanitarian law committed in the territory of the former Yugoslavia” (UN Security Council, 1993c). In response, the Secretary-General created a five-member commission chaired by Professor Frits Kalshoven, which submitted its report to the Security Council in February 1993 (Greenwood, 1993). The Commission found that “a decision to establish an ad hoc international tribunal in relation to the events in the territory of the former Yugoslavia would be consistent with the direction of its work” (UN Security Council, 1993a).

The Secretary-General considered creating a tribunal by treaty, but decided that would take too long and could result in States declining to become a party to the treaty (Greenwood, 1993). Therefore the Secretary-General suggested the Security Council enact Chapter VII powers, to “determine the existence of any threat to the peace, breach of the peace, or act of aggression and decide what measures shall be taken to maintain or restore international peace and security” (UN, 1945a). Because Article 25 of the UN

Charter binds all member states to “accept and carry out the decisions of the Security Council,” member states had a legal obligation to accept its jurisdiction and cooperate with the ICTY statute (UN, 1945a). With previous resolutions already proving the Bosnian conflict’s threat to international peace and security, it was up to the Security Council to propose the solution.

UN Security Council Resolution 808 decided “an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991” (UN Security Council, 1993a). Finally, in May 1993 the UN Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) through Resolution 827 “for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory for the former Yugoslavia between 1 January 1991 and a date to be determined” (UN Security Council, 1993c). The ICTY was mandated to be an organ of the UN, but a completely separate body from the International Court of Justice (Greenwood, 1993).

The ICTY became the first international criminal tribunal created after the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East. The Nuremberg and Tokyo trials were created after World War II as a form of victors’ justice, established by the victorious allies to punish their defeated enemies. The ICTY, on the other hand, was created on behalf of the entire international community as the first war crimes court created by the UN Security Council and not by a charter (Greenwood, 1993). Establishing the ICTY was also the first time the Security Council

setup a judicial process as a means of restoring peace and prosecuting both sides of the conflict (Greenwood, 1993).

Article 9 of the ICTY Statute declared the tribunal “shall have primacy over national courts” (ICTY, 2009). Article 2 gave the tribunal power to prosecute grave breaches of the 1949 Geneva Convention, such as “willful killing; torture or inhuman treatment, willfully causing great suffering or serious injury to body or health; extensive destruction and appropriation of property; willfully depriving a prisoner of war or a civilian of the rights of fair and regular trial; unlawful deportation or transfer or unlawful confinement of a civilian; and taking civilians as hostages” (ICTY, 2009). The tribunal was also charged with prosecuting “violations of the laws or customs of war, genocide, and crimes against humanity” (ICTY, 2009).

Since its establishment, the ICTY has tried several top officials involved in the genocide, including Yugoslav President Slobodan Milošević, who became the first sitting head of state indicted by an international court (ICTY, 2011a). Unfortunately, Milošević died of natural causes on March 11, 2006 and therefore his proceedings were terminated on March 14, 2006. Overall, of the 161 individuals indicted by the ICTY, 13 have been acquitted, 81 sentenced, and 18 still have on going proceedings (ICTY, 2011a). Additionally, 13 have been referred to national jurisdiction, 36 had their indictments withdrawn or are deceased, and 35 are in custody at the UN ICTY Detention Unit (ICTY, 2011a). As of 2010, out of the ten cases in the trial or pre-trial stage, four will be concluded in 2011, five will be concluded in 2012 and all appeals should be completed by the end of 2014 (ICTY).

Chapter Three: Systematic Rape

Although rape has forever been considered an inevitable byproduct of conflict and war, the conflict in Bosnia marked the first time rape was used as a systematic weapon of war, and the first time the international community reacted so vigorously to rape's presence in a conflict. The rapes committed during this conflict fall into five patterns: rapes committed before fighting broke out in a region; rapes in conjunction with invasion and capture of towns and villages; rapes while women were being held in detention; rapes in large and well organized "rape camps"; and rapes in brothels where women were forced to sexually entertain soldiers (Niarchos, 1995). The commonalities with which rapes were executed across the different patterns point to a systematic, planned policy that used rape and forced impregnation as a tool of ethnic cleansing and genocide (Salzman, 1998).

During the conflict, Serbian government and military powers utilized systematic rape as a weapon to achieve their genocidal goal of destroying the Muslims living in Bosnia (Salzman, 1998). Because Muslims and Serbs trace their ethnicity paternally, when a Serb impregnates a Muslim, the Muslim paternal line is destroyed and the child is considered a Serb (Carlton, 1997). Serbian leaders strategically planned and executed the policy of genocide with the intention to create a "Greater Serbia," a religiously, culturally, and linguistically homogenous Serbian nation (Salzman, 1998). In February 1996, the UN General Assembly was left "convinced that this heinous practice constitutes a deliberate weapon of war in fulfilling the policy of 'ethnic cleansing' carried out by Serbian forces and that the abhorrent policy of ethnic cleansing was a form of genocide" (UN General Assembly, 1996).

Furthermore, the Serb army frequently forced Bosnian Serbs not just to witness the rape and murder of their Muslim neighbors but to participate in such acts themselves, lessening Serbs and Muslims ability to live together in the future and reducing the likelihood that any Bosnian Serb observers would report the war crimes they witnessed (Boose, 2002). Upon conclusion of the conflict, many attackers claimed they were ordered to rape in order to ensure that the victims and their families would never want to return to their homes (Niarchos, 1995). By using rape as a tool of genocide and ethnic cleansing, the Serbs sought to “terrorize and displace the local population, to force the birth of children of mixed ‘ethnic’ descent in the group, and to demoralize and destroy” (Niarchos, 1995).

In 1993 the UN Special Rapporteur on the former Yugoslavia was appalled at the “extent of persecution by ‘ethnic cleansing’ against those of Muslim ethnic origin” and reminded the “world that the Muslim community in Bosnia and Herzegovina is threatened with extermination” (United Nations, 1993c). That same year the UN General Assembly expressed its concern over rape’s “systematic use against the Muslim women” taking place in Bosnia and expressed “outrage that the systematic practice of rape is being used as a weapon of war and an instrument of ‘ethnic cleansing’” (UN General Assembly, 1993). Within the same resolution the UN expressed their desire for those “perpetrating rape and sexual violence as a weapon of war in the areas of armed conflict in the former Yugoslavia” to be “brought to justice by the International Tribunal where appropriate” (UN General Assembly, 1993).

The UN Commission on Human Rights also expressed their anger over the “widespread, systematic” use of rape, which they viewed as “a deliberate weapon of war

in fulfilling the policy of ethnic cleansing” (UN Commission on Human Rights, 1993). One year later in 1994, the UN Security Council asserted “‘ethnic cleansing,’ sexual assault, and rape have been carried out by some of the parties so systematically that they strongly appear to be the product of a policy” (UN Security Council, 1994b). Furthermore, the Security Council determined that “consistent failure to prevent the commission of such crimes and the consistent failure to prosecute and punish the perpetrators of these crimes clearly evidences the existence of a policy by omission. The consequence of this conclusion is that command responsibility can be established” (UN Security Council, 1994b).

What made rape in the Bosnia conflict different from rape present in previous conflicts is the systematic military policy organized before the outbreak of the war directed at cleansing Muslims from Serbian territory (Salzman, 1998). In October 1992, a document entitled "Warning" gained support from the Serbian ruling party, the Socialist Party of Serbia (SPS), the Serbian Academy of Arts and Sciences, and the Serbian Orthodox Church. "Warning" focused on the perceived imbalance of growth of various ethnic groups, particularly the "high birth rate" of Albanians and Muslims, which were stated to be "beyond rational and human reproduction" (Salzman, 1998). After publication the Serbian Parliament enacted a resolution promoting "population renewal," seeking to increase the birth rate among predominantly developed Serbian areas while suppressing it in predominantly undeveloped Albanian and Muslim areas (Salzman, 1998). Ideologically, the Serbs were looking for strategies to increase their ethnic dominance over the Albanians and Muslims.

Beginning in the fall of 1991 and continuing until the end of 1993, with a concentration of cases between April and November 1992, the Serbs translated their quest for dominance and victory over the non-Serbs into the practice of rape as a systematic tool of war (Niarchos, 1995). Although rapes of Serbian, Croatian, and Muslim women were reported, the majority of rape cases involved Muslim women from Bosnia and Herzegovina being raped by Serbian men, including soldiers, paramilitary groups, local police, and civilians (Niarchos, 1995). Estimates of rape survivors range from 20,000 reported by the United Nations Special Rapporteur to 50,000-70,000 reported by the Bosnian government (Salzman, 1998). Additionally, the Bosnian government estimates that approximately 35,000 primarily Muslim women became pregnant from rape (Salzman, 1998). Some literature specifies the ratio of the number of rapes to resulting pregnancies is approximately 100:1, which would suggest approximately 3,500,000 rapes were committed (Littlewood, 1997). However, if the intent of the rape was to impregnate, the rapes to resulting pregnancies ratio would presumably be lower than the specified rapes to resulting pregnancies ratio.

The rapes committed during this conflict fall into five patterns: rapes committed before fighting broke out in a region; rapes in conjunction with invasion and capture of towns and villages; rapes while women were being held in detention; rapes in large and well organized “rape camps”; and rape brothels where women were forced to sexually entertain soldiers (Niarchos, 1995). Of the five patterns, eighty percent of the rapes are said to have occurred in detention camps, where women were arrested, imprisoned, and systematically raped for extended periods of time (Engle, 2005). Within these camps women were raped as a form of torture or for the purpose of forced impregnation.

Civilian police units under the authority of military officials participated actively in the establishment and operation of these camps, illegal arrests and killings, rapes, and numerous other atrocities (Naarden, 2003). The rape camps established during the Bosnian conflict were used as a systematically planned Serb instrument of genocide designed to render large numbers of Muslim women contaminated and thus unmarriageable (Boose, 2002).

Regardless of the setting, most rapes were gang rapes and involved an element of spectacle by occurring in front of the victim's family, the local population, or other victims (Niarchos, 1995). A substantial number of women, especially in detention camps, were held after being raped until it was too late to legally or safely procure an abortion. The commonalities and structure with which the rapes were executed point to a systematic, planned policy that used rape and forced impregnation as a tool of ethnic cleansing and genocide (Salzman, 1998). Testimony from soldiers like Borislav Herak, who admitted to raping and shooting three unarmed women out of fear "his superiors would have sent him to the worst front line or to jail" if he did not commit such acts, also illustrate the intentional policy Bosnian Serbs had in place to brutalize Muslims and forcibly sever their ties with Bosnia (Card, 1996).

Prosecuting these heinous crimes under international law initially presented challenges since legal discourse on rape is limited to the national sphere. Some theorize that little attention has been paid to rape in the international arena because it had never been used as a tool of genocide before (Stojsavljevic, 1995). The literature suggests the more "offensive the occurrence, the greater the pressure for adjustment" and the practice of rape in Bosnia was undeniably massive and egregious (Meron, 1993a). Former ICTY

President Theodor Meron stated in 1993 that the “Indescribable abuse of thousands of women in the territory of former Yugoslavia shock[ed] the international community into rethinking the prohibition of rape as a crime under the laws of war” (Engle, 2005).

Although Article 27 of The Geneva Convention Relative to the Protection of Civilian Persons in Time of War categorically prohibits rape by declaring, “Women shall be especially protected from any attack upon their honour, in particular against rape,” it does not list rape among the breaches subject to universal jurisdiction (Saha, 2009 and Meron, 1993a). However the international community felt that both the Geneva Convention and customary international law provided a sufficient legal basis for criminalizing rape (Engle, 2005). The International Committee of the Red Cross (ICRC) declared Article 147 of the fourth Geneva Convention, “willfully causing great suffering or serious injury to the body or health,” to cover rape (Meron, 1993a). Furthermore, the U.S. Department of State confirmed, “rape already was a war crime or a grave breach under customary international law and the Geneva Conventions and could be prosecuted as such” (Meron, 1993a).

The international community became convinced that the systematic practice of rape as an instrument of “ethnic cleansing” qualified as a crime against humanity, however because crimes against humanity, unlike war crimes, require proof of systematic governmental planning, they are extremely difficult to prove in court (Meron, 1993a). Nevertheless, the ICTY broke ground concluding for the first time that rape was a violation of sufficient gravity to be considered a “crime against humanity” under international law when including it in the ICTY Statute (Boose, 2002). Specifically, the ICTY rules of evidence “limited the extent to which consent could be presented as a

defense, did not permit evidence of the victim's past sexual conduct, and did not require that a sexual assault victim's testimony be corroborated” (Engle, 2005).

Proving their commitment to prosecute rape, twenty percent of all charges brought before the ICTY have involved allegations of sexual assault, and three cases (Celebici, Furundzija, and Kunarac) have focused specifically on rape (Engle, 2005). The first ICTY judgment involving rape was against Hazim Delic, in the case referred to as Celebici after the name of the prison camp where the acts took place (Saha, 2009). Delic, a Bosnia Muslim, was found guilty of torture for raping a Serbian woman. Similarly, the second successful rape prosecuted was in the Anto Furundzija case, where all men convicted were Bosnian Croats. Through these prosecutions, the ICTY proved rapes were committed on all sides of the conflict however the ICTY's Office of the Prosecutor concentrated on cases that viewed rape as systematically aimed at Bosnian Muslims (Engle, 2005).

It was not until the Kunarac case involving a rape camp in the Foca High School that Serbian men were convicted of raping Bosnian Muslim women (Engle, 2005). In the Kunarac indictment, Dragoljub Kunarac, Radomir Kovac, and Zoran Vukovic, were all accused of crimes against humanity and violations of the laws and customs of war in grave breach of Article 3 of the Geneva Conventions (Saha, 2009). Specifically, Kunarac was charged with rape, enslavement and torture, and committing outrages upon personal dignity; Kovac was charged with rape, enslavement and committing outrages upon personal dignity; and Vukovic was charged with torture and rape (Saha, 2009). Immediately after the indictments were issued, the *New York Times* quoted a court spokesman who stated, “There is no precedent for this. It is of major legal significance

because it illustrates the court's strategy to focus on gender-related crimes and give them their proper place in the prosecution of war crimes” (Engle, 2005).

In 2001 Dragoljub Kunarac, Radomir Kovac, and Zoran Vukovic were found guilty of committing war crimes and crimes against humanity, acts the judge described as “a nightmarish scheme of sexual exploitation” (Saha, 2009). Kunarac was sentenced to 28 years, Kovac 20 years, and Vukovic 12 years (Saha, 2009). The successful prosecution of these cases proved the systematic use of rape in this conflict, which the Tribunal referred to when concluding, “There was a systematic attack by the Bosnian Serb Army and paramilitary groups on the Muslim civilian population of the municipalities of Foca, Gacko and Kalinovik” (Engle, 2005). Additionally, high-level members of the Serb leadership, including the Prijedor chief of police, have been indicted for crimes related to the operation of concentration camps, often used for raping women (Narnden, 2003).

All three rape related cases (Celebici, Furundzija, and Kunarac) have contributed to the development of prosecuting sexual violence in international law; however thousands of men who bear criminal liability will never be indicted or prosecuted by the ICTY for their crimes (Saha, 2009). The ICTY indictments that were handed down of civilian, police, and military authorities reveal the systematic use of rape as a tool of war (Narnden, 2003). Although all the men responsible for committing this horrendous human rights violation will not be successfully prosecuted or prosecuted at all, including rape as a crime against humanity in the ICTY Statute is an important step in the right direction for protection against rape under international law. Including rape as a crime against humanity creates a legal precedent for future conflicts to use when drafting

statutes and sends a very clear message to potential perpetrators that rape will no longer go unpunished. Using the foundation laid by the ICTY, the International Criminal Court (ICC) lists rape as a crime against humanity when committed as part of a widespread or systematic attack on a civilian population, and goes further to list “committing rape, sexual slavery, enforced prostitution, forced pregnancy, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions” as a war crime (Saha, 2009 and UN, 1999).

Although rape has forever been considered an inevitable byproduct of conflict and war, the systematic practice of rape used as a tool of genocide originated in the Bosnia conflict (Salzman, 1998). The rapes of Muslim and Croat women by Serb men were all conducted in such a common manner that a systematic, planned policy using rape and forced impregnation as a tool of ethnic cleansing and genocide is undeniable. The Bosnia conflict also marks the first time the international community reacted so vigorously to rape being used as a tool of war, demanding the perpetrators be punished. Including rape as a crime against humanity not only punished a small percentage of those who committed this crime, but it also provided the legal precedent to prosecute similar crimes in the future.

Chapter Four: “Ethnic Cleansing”

The term “ethnic conflict” originated in the Bosnia conflict from the balance the international community struck between articulating the gravity of the situation and avoiding the use of the term genocide, which would invoke legal responsibilities via the Genocide Convention. “Ethnic conflict” became to be defined as the expulsion of an undesirable population from a given territory in order to create a more secure, ethnically homogeneous state. The Serbs practiced “ethnic cleansing” of Muslims and Croats from Bosnia through forced relocation, forced detention, genocidal rapes, and genocidal massacres, with forced relocation as the primary practice.

In August 1992, the Security Council requested States and international humanitarian organizations submit “substantiated information” concerning war crimes taking place in Bosnia (Power, 2002). Two months later the UN Human Rights Commission’s Special Rapporteur for the former Yugoslavia, Tadeusz Mazowiecki, called for a commission of experts to be assembled to assess the information gathered in Security Council Resolution 780 (UN Security Council, 1992d). In February 1993 the commission presented an interim report to the United Nations Secretary defining the term “ethnic cleansing” for the first time as, “rendering an area wholly homogenous by using force or intimidation to remove persons of given groups,” carried out “by means of murder, torture, arbitrary arrest and detention, extra-judicial executions, rape and sexual assault, confinement of civilians in ghetto areas, forcible removal, displacement or deportations of civilians, deliberate military attacks or threats of attacks on civilians and civilian areas, and wanton destruction of property” (Power, 2002).

Reminiscent of the Nazi's "cleansing" of the Jews, "ethnic cleansing" represented the Serb practice of targeting civilians and ridding their territory of non-Serbs (Power, 2002). As the conflict progressed, the definition of "ethnic cleansing" evolved to "the expulsion of an 'undesirable' population from a given territory due to religious or ethnic discrimination, political, strategic or ideological considerations, or a combination of these" (Bell-Fialkoff, 1993). Similar to the Holocaust, initially the cleansing started with removal of the unwanted population, Muslims, from government posts, the firing of civil servants, demands to surrender any privately owned firearms, a ban on assembly, and prohibitions on the use of language or religious practices that created physical segregation (Mirkovic, 1996). Eventually, the spectrum of ethnic cleansing expanded to forced relocation, forced detention, genocidal rapes, and genocidal massacres (Mirkovic, 1996).

In the November 1992 report from the Special Rapporteur on the former Yugoslavia, Mazowiecki stated, "ethnic cleansing did not appear to be the consequence of war, but rather its goal" (UN General Assembly, 1992). UN General Assembly Resolution 47/121 expressed grave concern for the "pursuit of the abhorrent policy of 'ethnic cleansing'" in the form of "aggressive acts by the Serbian and Montenegrin forces to acquire more territories by force, characterized by a consistent pattern of gross and systematic violations of human rights, a burgeoning refugee population resulting from mass expulsions of defenseless civilians from their homes, and the existence in Serbian and Montenegrin controlled areas of concentration camps and detention centres" (UN General Assembly, 1992). However, the most prominent "ethnic cleansing" practice was

the forced departure of Muslims and Croats (often times with no warning at all) from Bosnia (Power, 2002).

Table One: Refugees and Internally Displaced Persons (IDPs) from Bosnia and Herzegovina according to UNHCR estimates (Tabeau and Bijak, 2005).

Country of Destination	Nov-92 06.11.92	Apr-96 01.04.96	Dec-97 01.12.97
Bosnia (IDPs)	810,000	1,000,000	816,000
Croatia	714,000	170,000	255,839
Serbia, Montenegro	495,000	330,000	253,387
Slovenia	52,000	19,000	33,429
Macedonia	19,000	6,300	4,989
Outside the former Yugoslavia	536,840	686,533	776,900
Total Refugees	1,816,840	1,211,833	1,324,544
Total IDPs and Refugees	2,626,840	2,211,833	2,140,544

As Table One demonstrates, migration movements are considered the most significant demographic consequence of the Bosnian conflict (Tabeau and Bijak, 2005). Although the creation of refugees is often an inevitable byproduct of war, the removal of non-Serbs from Bosnia was the primary aim of the Serbian practice of “ethnic cleansing” during this time, working to eliminate a population in order to create a more secure, ethnically homogeneous state (Bell-Fialkoff, 1993). In one specific example, Serb guerrillas encircled the village of Turalici and went door to door throwing out everyone they could find before burning the village to the ground (Bell-Fialkoff, 1993). This example is considered to be a “gentle” cleansing because no one was known to be killed or raped while being expelled from their homes (Bell-Fialkoff, 1993).

The goal of removing Muslims and Croats from Bosnia ran deeper than just creating temporary homogeneity in Bosnia; the Serbs set out to create enduring ethnic purity by permanently severing the bond between citizens and their land through degradation and destruction (Power, 2002). The Serb policy of degradation included killing campaigns, humiliating rape often resulting in impregnation, and forced mutilations, including forcing fathers to castrate their sons or molest their daughters (Power, 2002). Boutros Boutros-Ghali's letter to the President of the Security Council outlined "acts of violence are carried out with extreme brutality and savagery in order to cause [citizens] to flee and never to return" (Boutros-Ghali, 1994). These acts were also highly publicized by the perpetrators in order to inspire terror in others, causing them to flee as well (Boutros-Ghali, 1994). Table Two illustrates the extent to which these practices affected the Bosnian population.

Table Two: Estimates of the killed and wounded population from Bosnia and Herzegovina, as of August 1993 (Tabeau and Bijak, 2005).

Population	Serbian	Croat*	Muslim*	Others	Total
As of April 6, 1992	1,442,560	829,472	1,780,660	455,308	4,508,000
Mobilized	150,000	124,429	130,000	~	404,429
In active fights	90,000	50,000	70,000	~	210,000
Soldiers killed	10,000	5,100	28,000	~	43,100
Soldiers wounded	33,000	40,000	32,000	~	105,000
Civilians killed	20,000	6,000	100,000	~	180,000
Civilians wounded	5,000	12,000	163,000	~	180,000
Refugees and IDPs	100,000	250,000	800,000	~	1,150,000

* Data was obtained from independent study and therefore it cannot be determined if Muslims and Croats are mutually exclusive categories

In the first Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution 780, the Commission stated “‘Ethnic cleansing’ is a purposeful policy designed by one ethnic group to remove by violent and terror-inspiring means the civilian population of another ethnic group from certain geographic areas” (Boutros-Ghali, 1994). Specifically, the Commission listed actions, such as “mass murder, torture, rape and other forms of sexual assault; severe physical injury to civilians; mistreatment of civilian prisoners and prisoners of war; use of civilians as human shields; destruction of personal, public and cultural property; looting, theft and robbery of personal property; forced expropriation of real property; forceful displacement of civilian population; and attacks on hospitals, medical personnel and locations marked with the Red Cross/Red Crescent emblem” (Boutros-Ghali, 1994). All of these practices targeted at Muslims and Croats in Bosnia created an enormous disparity between death ratios separated by ethnicity, as illustrated in Table Three.

Table Three: Minimum war-related death ratios by ethnicity (Tabeau and Bijak, 2005).

Ethnicity	Serbs	Muslims*	Croats*	Others	Total
Total Pop. 1991	1,361,814	1,896,009	758,585	352,106	4,368,514
Killed	12,642	45,980	5,629	3,279	67,530
<i>Percentage</i>	<i>0.91</i>	<i>2.43</i>	<i>0.74</i>	<i>0.93</i>	<i>1.55</i>
Civilians	2,130	22,225	986	1,241	26,582
<i>Percentage</i>	<i>0.16</i>	<i>1.17</i>	<i>0.13</i>	<i>0.35</i>	<i>0.61</i>
Soldiers	10,512	23,755	4,643	2,038	40,948
<i>Percentage</i>	<i>0.77</i>	<i>1.25</i>	<i>0.61</i>	<i>0.58</i>	<i>0.94</i>

* Data was obtained from independent study and therefore it cannot be determined if Muslims and Croats are mutually exclusive categories

The Serb practices of expulsion, forced relocation, forced detention, genocidal rapes, and genocidal massacres all combine to comprise what the international community now refers to as “ethnic cleansing.” Based on the Serb’s aim to remove all non-Serbs from Bosnia, “ethnic cleansing” is easily defined as the expulsion of an undesirable population from a given territory in order to create a more secure, ethnically homogeneous state. Notably, the Bosnia conflict was the first time the term “ethnic cleansing” was used in an effort to describe the horrific acts taking place, while at the same time avoiding using the term genocide, which has legal obligations.

Chapter Five: Genocide

The debate over whether the Bosnian conflict amounted to genocide has been the most wide-ranging and divisive debate ever considering whether the term genocide applies to a conflict (Power, 2002). Some believe that the Serbian policy towards Muslims did not meet the definition of genocide because it was focused on expelling the Muslims, and the “intention was to get rid to the Muslims, not to exterminate them” (Slazman, 1998). However, evidence of criminal acts, UN Documents, and the prosecution of those responsible all prove the Bosnian Serb campaign against the Bosnian Muslims did culminate into genocide.

What is commonly agreed upon and supported in the literature is the fact that the Serbs set out to destroy the Bosnian Muslim population and were doing everything they could to ensure the Muslims would never recover by systematically killing and expelling Muslim civilians from Bosnia (Power, 2002). The evidence detailing the murders and expulsion of Bosnian Muslims conclusively indicates the acts committed by the Serbian military constitute genocide. Specifically, “killing members of another group on the basis of their religion, physical and mental torture, using measures whose aim is to prevent births within the group, and forcibly transferring children from one group to another” are all acts committed by the Serbs in violation of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Salzman, 1998).

States party to the Genocide Convention however had reason to avoid using the term genocide, since admitting there was a genocide taking place would trigger legal obligations enumerated in Genocide Convention, including a U.S. military response (Power, 2002). Confirming the genocide would also have been an admission of guilt for

failing to prevent the genocide from occurring in the first place. The Bush administration stoutly avoided identifying the conflict as genocide, with President Bush maintaining, “We know there is horror in these detention camps. But in all honesty, I can’t confirm to you some of the claims that there is indeed a genocidal process going on there” (Power, 2002). A U.S. poll taken during this time reveals that a baseline of 54 percent of Americans favored military intervention in Bosnia, a figure that rose to 80 percent when participants were told an independent commission found genocide to be underway (Power, 2002). This poll indicates that ardent public pressure to intervene would have compounded the legal obligation to intervene if the government admitted a genocide was unfolding in Bosnia. Summarized succinctly by United States National Security Advisor Brent Scowcroft, “There is something of a national interest in preventing genocide because the United States needs to appear to be upholding international law” while ethnic cleansing did not warrant such a response (Power, 2002).

The United Nations, on the other hand, established to “strength[en and] maintain international peace and security” was working hard to prove genocide was taking place in Bosnia (UN, 1945a). UN General Assembly Resolution 47/121, which was signed by the United States, confirmed the Bosnian conflict amounted to genocide when holding Serbian forces responsible for aggression and for “the abhorrent policy of ‘ethnic cleansing,’ which is a form of genocide” (UN General Assembly, 1992). One year later the United Nations Security Council warned the “Government of the Federal Republic of Yugoslavia should immediately, in pursuance of its undertaking in the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948, take all

measures within its power to prevent the commission of the crime of genocide” (UN Security Council, 1993b).

Through UN Resolution 827, the UN also formally established the International Criminal Tribunal for the Former Yugoslavia (ICTY), in an effort to punish those who committed genocide, among other crimes. In the first ICTY case to go to trial, Dusko Tadic was arrested in Germany where national courts proceeded against him for torture, murder, causing grievous bodily harm, and aiding and abetting genocide (Schabas, 2001). However, in a formal hearing to request Germany defer to the competence of the Tribunal, ICTY prosecutors limited their indictment to war crimes and crimes against humanity, neglecting the charge of genocide (Schabas, 2001). One year later in November 1995 the Trial Chamber confirmed their first genocide indictment against Bosnian Serb leaders Radovan Karadzic and Ratko Mladic, asserting “The uniform methods used in committing the said crimes, their pattern, their pervasiveness throughout all of the Bosnian Serb-held territory, the movements of prisoners between the various camps, and the tenor of some of the accused’s statements are strong indications tending to show that Radovan Karadzic and Ratko Mladic planned, ordered, or otherwise aided and abetted in the planning, preparation or execution of the genocide perpetrated in the detention facilities” (Schabas, 2001). The Trial Chamber went further when inviting the Prosecutor “to consider broadening the scope of the characterization of genocide to include criminal acts listed in the first indictment other than those committed in the detention camps” because they believed there to be “evidence [that] revealed a pattern of genocidal acts targeting the national Bosnian, Bosnian Croat and especially, Bosnian Muslim national groups” (Schabas, 2001).

In contradiction to this promising affirmation by the Trial Chamber, by 1999 it became clear ICTY prosecutors were focusing on war crimes and crimes against humanity, rather than genocide, since only eight of the more than seventy indictments included charges of genocide (Schabas, 2001). Specifically, Yugoslav president Slobodan Milosevic was charged with crimes against humanity, but not genocide, to the surprise of many (Schabas, 2001). The first judgment of the ICTY in a genocide case was issued on October 1999, acquitting Goran Jelusic of the charge of genocide in a summary judgment (Schabas, 2001). Two years later in August 2001, General Radislav Krstic was handed a different fate, being convicted of genocide for the massacre of more than 7,000 male Bosnian Muslims in Srebrenica in July 1995 (Schabas, 2001). *Krstic* was the first accused of genocide to be successfully convicted and this case was the first to legally confirm a genocide had taken place in Bosnia (Schabas, 2001).

There were several key differences between the Bosnian conflict and the classic genocides of the twentieth century, those of European Jews during the Holocaust and the concurrently occurring Rwandan Tutsis in Rwanda, which made prosecuting genocide before the ICTY more difficult. Although in previous genocides women and children were killed specifically to ensure the group was effectively destroyed, Muslim men and boys were targeted in the Bosnian conflict (especially in Srebrenica). This key difference prevented the Trial Chamber in *Jelusic* from “conclud[ing] beyond all reasonable doubt that the choice of victims arose from a precise logic to destroy the most representative figures of the Muslim community to the point of threatening the survival of that community” (Schabas, 2001). However, the Trial Chamber eventually accepted the

Prosecutor's argument that "the intent in killing the men and boys of military age was to eliminate the community as a whole" in *Krstic* (Schabas, 2001).

Additionally, in the Bosnian conflict for the first time ever, mass rapes were systematically used as a tool of genocide. Specifically Serbs were ordered to impregnate Muslim women, resulting in ethnically Serbian offspring, and therefore destroying the women's Muslim bloodline. Because rape had never been systematically used in this way, it was unclear if mass rapes would legally fall within the definition of genocidal acts, meant to destroy a group "in whole or in part" (United Nations, 2009). While the ICTY has yet to classify the mass rapes as genocidal acts, the ICTY has advanced the development of international justice in the realm of gender crimes progressively through certain cases, culminating in a case that implies rape as a genocidal act (see Chapter Three).

The first ever war crimes trial involving charges of sexual violence was against Duško Tadić, who was found guilty of cruel treatment (violation of the laws and customs of war) and inhumane acts (crime against humanity) (ICTY, 2011b). In the trial of Zdravko Mucić, Hazim Delić, and Esad Landžo, rape was qualified as a form of torture for the first time ever by an international criminal tribunal (ICTY, 2011b). In 2003 the Trial Chamber found Dragoljub Kunarac guilty of rape as a crime against humanity and defined rape as a tool of war in its judgment (ICTY, 2011b). Finally the case of Radislav Krstić established a link between rape and ethnic cleansing, which the Trial Chamber considered "closely associated with genocide" (ICTY, 2011b). The Trial Chamber also asserted the rapes for which Krstić was legally responsible were "natural and foreseeable consequences of the ethnic cleansing campaign" and that there were "obvious similarities

between a genocidal policy and the policy commonly known as ‘ethnic cleansing’” (ICTY, 2011b).

Although the ICTY has yet to confirm the mass rapes committed against Bosnian Muslim women by Bosnian Serb men as a genocidal tool, the genocide itself has been thoroughly confirmed. The systematic and pre-planned policy to create a Greater-Serbia, and therefore get rid of all non-Serbs (Muslims in particular), culminated in the first European genocide since World War II. Although many States within the international community had a vested interest in redefining the conflict into an “ethnic cleansing,” the intent to “destroy a group, in whole or in part” was present, and is therefore consistent with the legal definition of genocide (ICTY, 2009).

Final Recommendations/Conclusions

The Bosnian conflict will forever stand out as the conflict that changed the face of war in a post-United Nations world. Although genocide had taken place since its formation, the United Nations reacted to the Bosnian conflict by forming the first international criminal tribunal since the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East. As the first European genocide to test the United Nations, the Security Council responded by creating the International Criminal Tribunal for the Former Yugoslavia (ICTY), which set the stage for future tribunals and was the impetus for finishing a statute for the International Criminal Court (ICC). Looking back, the ICTY has had both successes and setbacks, but on the whole was successful in adequately prosecuting crimes committed in the former Yugoslavia during the Bosnian conflict within its inherent restraints as a tribunal.

Because the Bosnia conflict involved the systematic use of rape on a scale never previously seen, the ICTY had a moral and ethical responsibility to prosecute and punish this crime on a proportional scale. So far approximately seventy individuals have been charged with crimes of sexual violence and almost thirty of those have been convicted. However, since only 161 indictments have been issued, the percentage of cases involving sexual violence crimes is high (See Table Four). Also, considering the inherent limitations of a tribunal, only a small percentage of crimes committed during the conflict will be able to be prosecuted, due to funding, time, support, and mandate constraints.

Table Four: Outcomes of the International Criminal Tribunal for the Former Yugoslavia

Indictments Issued	161
Persons Acquitted	13
Persons Sentenced*	81
Average Length of Sentences**	16 years
Persons Received Life Sentences	5
Persons Referred to National Jurisdiction	13
Persons Currently at Trial/Pre-Trial	18
Indictments Withdrawn	20
Persons died before Conclusion of Trial	16

* Includes cases before Appeals Chamber

** Includes Trial Chamber and Appeal Chamber's judgments

While the ICTY has nowhere near prosecuted all those guilty of committing rape, or even a majority of those guilty of this crime, they have taken important steps to further the prosecution of sexual crimes under international law, and opened the door for further prosecutions. For example, the ICTY was the first international criminal tribunal to successfully prosecute rape as a form of torture and sexual enslavement as a crime against humanity. The ICTY was also the first European international tribunal to successfully prosecute rape as a crime against humanity, following a previous case adjudicated by the International Criminal Tribunal for Rwanda (ICTR). Creating this legal precedent will open the door for future prosecutions of these crimes now that the

legal groundwork has been laid, and will hopefully deter both individuals and States from committing such crimes in the future.

The Bosnian conflict and subsequent ICTY were also instrumental in gathering support for the ICC, which had been discussed and worked on in previous decades, but had yet to gather enough support to become a reality. An international criminal court was first mentioned in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which stated persons charged with genocide or any other acts enumerated in the Convention should be “tried by a competent tribunal of the State or in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction” (UN, 1948). However, it wasn’t until after the Bosnian and Rwanda genocide that the international community became frustrated with setting up *ad hoc* tribunals that were limited to prosecuting crimes within a specific geographical area and time frame. The international community realized after the Bosnian conflict that an independent and permanent court was needed to prosecute atrocious human rights violations, instead of practicing selective justice by inconsistently establishing *ad hoc* tribunals to seek post-conflict justice whenever they chose. Upon request from the General Assembly, the International Law Commission resumed its work on establishing an international criminal court and submitted its draft of the ICC statute in 1994 (UN, 1999).

One drawback of the ICTY is its massive budget that has risen every year since its inception in 1993 until 2010. With a staff of 869, the ICTY has cost a total of \$1,887,384,922 since its formation (ICTY, 2012). In a post-conflict situation when a

war-torn country is trying to recover, the price of justice should be counted and balanced against programs and efforts to rebuild. Although punishing the responsible and guilty individuals who participated in the Bosnian conflict is a top priority, a sensitive balance needs to be struck in every post-conflict situation that punishes the guilty while also helping the victims recover and move on.

While the ICTY has been successful at prosecuting crimes within its mandate, part of the reason it was formed is to prevent this type of atrocity from ever occurring again. Tragically, one year after the ICTY was established genocide in Rwanda broke out, resulting in 800,000 people being killed in approximately 100 days. More recently U.N. special coordinator for the Middle East peace process Robert Serry stated that over 9,000 citizens in Syria have lost their lives in crackdowns issued by their government (Reuters, 2012). While the situation in Syria has yet to constitute genocide, Secretary of State Hillary Clinton recently asserted, "President Bashar al-Assad could be categorized as a war criminal" (Larotonda, 2012). Since its formation in 2002, fifteen cases in seven situations have been brought before the ICC, indicating war crimes and crimes against humanity have not slowed since the Bosnian conflict. With an increasingly globally connected world, it is crucial to look back at previous conflicts and learn from them. The Bosnian conflict should never have been allowed to develop into a genocide that resulted in the death of 200,000 people, and preventing a similar atrocity should be an absolute priority among those dealing with human rights violations worldwide.

Appendix A

Map of the Socialist Federal Republic of Yugoslavia



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