

Fall 2009

Creating a Culture of Accountability: The Prosecution of Gender Crimes in the ICTY

Alice Hansen
SIT Study Abroad

Follow this and additional works at: https://digitalcollections.sit.edu/isp_collection

 Part of the [Criminology and Criminal Justice Commons](#), and the [Social Control, Law, Crime, and Deviance Commons](#)

Recommended Citation

Hansen, Alice, "Creating a Culture of Accountability: The Prosecution of Gender Crimes in the ICTY" (2009). *Independent Study Project (ISP) Collection*. 783.

https://digitalcollections.sit.edu/isp_collection/783

This Unpublished Paper is brought to you for free and open access by the SIT Study Abroad at SIT Digital Collections. It has been accepted for inclusion in Independent Study Project (ISP) Collection by an authorized administrator of SIT Digital Collections. For more information, please contact digitalcollections@sit.edu.

**Creating a Culture of Accountability:
The Prosecution of Gender Crimes in the ICTY**

Author: Hansen, Alice
Academic Director: Connors, Kevin
Advisor: Novakova, Kumjana

University of Colorado
Bachelor of Arts in World Music and Musicology

Europe, Netherlands, Amsterdam
Submitted in partial fulfilment of the requirements for
The Netherlands: International perspectives on sexuality & gender,
SIT Study Abroad, Fall 2009

World Learning SIT Study Abroad



Consent to Use of Independent Study Project (ISP)

(To be included with the electronic version of the paper and in the file of any World Learning/SIT Study Abroad archive.)

Student Name: Alice Hansen

Title of ISP: Creating A Culture of Accountability: The Prosecution of Gender Crime in the ICTY

Program and Term: Netherlands: International perspectives on sexuality & gender. Fall 2009

1. When you submit your ISP to your Academic Director, World Learning/SIT Study Abroad would like to include and archive it in the permanent library collection at the SIT Study Abroad program office in the country where you studied and/or at any World Learning office. Please indicate below whether you grant us the permission to do so.

2. In some cases, individuals, organizations, or libraries in the host country may request a copy of the ISP for inclusion in their own national, regional, or local collections for enrichment and use of host country nationals and other library patrons. Please indicate below whether SIT/World Learning may release your ISP to host country individuals, organizations, or libraries for educational purposes as determined by SIT.

3. In addition, World Learning/SIT Study Abroad seeks to include your ISP paper in our digital online collection housed on World Learning's public website. Granting World Learning/SIT Study Abroad the permission to publish your ISP on its website, and to reproduce and/or transmit your ISP electronically will enable us to share your ISP with interested members of the World Learning community and the broader public who will be able to access it through ordinary Internet searches. Please sign the permission form below in order to grant us the permission to digitize and publish your ISP on our website and publicly available digital collection.

Please indicate your permission by checking the corresponding boxes below:

<input type="checkbox"/>	I HEREBY GRANT PERMISSION FOR WORLD LEARNING TO INCLUDE MY ISP IN ITS PERMANENT LIBRARY COLLECTION.
<input type="checkbox"/>	I HEREBY GRANT PERMISSION FOR WORLD LEARNING TO RELEASE MY ISP IN ANY FORMAT TO INDIVIDUALS, ORGANIZATIONS, OR LIBRARIES IN THE HOST COUNTRY FOR EDUCATIONAL PURPOSES AS DETERMINED BY SIT.
<input type="checkbox"/>	I HEREBY GRANT PERMISSION FOR WORLD LEARNING TO PUBLISH MY ISP ON ITS WEBSITES AND IN ANY OF ITS DIGITAL/ELECTRONIC COLLECTIONS, AND TO REPRODUCE AND TRANSMIT MY ISP ELECTRONICALLY. I UNDERSTAND THAT WORLD LEARNING'S WEBSITES AND DIGITAL COLLECTIONS ARE PUBLICLY AVAILABLE VIA THE INTERNET. I AGREE THAT WORLD LEARNING IS NOT RESPONSIBLE FOR ANY UNAUTHORIZED USE OF MY ISP BY ANY THIRD PARTY WHO MIGHT ACCESS IT ON THE INTERNET OR OTHERWISE.

Student Signature: _____ Date: _____

NOTE: PDF of signed *consent to use* form is at end of document.

Abstract:

This study investigates if the International Criminal Tribunal for the Former Yugoslavia (ICTY) successfully creates a culture of accountability through its prosecution of gender crime. It first frames the concepts of sexual violence in war as well as accountability theoretically, and describes the historical context of the war in the former Yugoslavia. The ideas of ethnic identity, gender roles, and rape as a war crime are placed against a historical and cultural background. Next, it uses twelve Statements of Guilt issued by the ICTY as a means to discuss the definition and creation of a culture of accountability within the courts. The areas of self-identification, confession of criminality, expression of remorse, recognition of victims, and establishment of fact are defined as necessary to creating accountability and analyzed within these statements. The recurring theme of loss of control is then discussed as a possible contradiction to a culture of accountability. Four interviews with people involved with the ICTY are then used to clarify and question themes which appear in the Statements of Guilt. They discuss the issues of cross-disciplinary communication surrounding the ICTY, the flexibility of accountability, the importance of prosecution, and the benefits and challenges of the ICTY in the past and future. The conclusions of this paper revolve around the need for an open discussion of terms like accountability and gender crime in a cross-cultural and cross-disciplinary setting, and suggest further research into these areas as well.

Key Words: International Criminal Tribunal for the Former Yugoslavia (ICTY), gender crime, war crime, mass rape, genocide, accountability

Acknowledgements:

I would first like to thank my research advisor Kumjana Novakova for her open ears, intellectual insight, and constructive criticism. Thank you to my wonderful interviewees as well who were kind enough to give me their time and inspire me with their words. I would like to give thanks to Kevin and Hannie for answering countless “Can I’s?” and encouraging me to pursue a topic so outside of my comfort zone. Also, I would like to give a heartfelt thank you to my host mom Irina, for guiding me throughout my entire experience in Amsterdam. She gave me a safe space to come home to, as well as excellent conversation and relentless reassurance. Last but not least, I would like to thank the twelve members of SIT Amsterdam Fall 2009 for being my editors, confidants, support system, academic inspiration, best friends and more.

Table of Contents

I. Introduction.....	6
II. Methodology	7
III. Literature Review.....	10
IV. Theoretical Framework.....	16
V. Background Information.....	21
VI. Analysis of Statements of Guilt.....	30
a. Self Identification.....	33
b. Confession of Criminality.....	35
c. Expression of Remorse.....	38
d. Acknowledging the Victims.....	40
e. Establishing Fact.....	42
f. Loss of Control and “Contradictions”.....	45
VII. Interviews and Discussion.....	48
VIII. Conclusion.....	58
IX. Works Cited.....	60
X. Works Referenced.....	62
XI. Appendix	
a. Interview Questions.....	63

Introduction

The International Criminal Tribunal for the Former Yugoslavia (ICTY), located in The Hague, The Netherlands, was established in May of 1993 following the recognition of serious violations of international humanitarian law that occurred in this area starting in 1991. Ever since its creation the ICTY has begun setting a new standard in the prosecution of individuals most responsible for appalling acts such as murder, torture, rape, enslavement, destruction of property and other crimes. One of the most rapidly changing areas of war crime in the ICTY is that of sexual violence. This is the first time in history that rape and sexual violence have been prosecuted as war crimes and crimes against humanity, as well as of part methods of ethnic cleansing and genocide.

This prosecution represents what could become a much larger shift in the way that gender crimes in war are not only prosecuted, but perceived by society as a whole. Part of this is due to the way that the ICTY holds perpetrators accountable throughout the prosecution of gender crime. The ICTY “strives to leave a lasting legacy and to ensure a permanent shift from impunity to a culture of accountability.” This essay will examine the Statements of Guilt released by perpetrators of war crimes to attempt to answer the question: Does the ICTY successfully create a culture of accountability through its prosecution of gender crimes? The following will analyze Statements of Guilt released by the ICTY and interviews from individuals involved with the ICTY to begin a discussion about this question.

Methodology

Statements of Guilt:

My primary means of data collection for this research project is the analysis of Statements of Guilt. These statements are issued by the accused accompanying guilty pleas. The accused were or are all part of trials going on within the International Criminal Tribunal for the Former Yugoslavia, and therefore all involved in some way with the Yugoslav Wars. The Statements of Guilt are publicly available on the ICTY's website under the heading "Outreach." Their representation here made me curious for several reasons. First, these statements are released publicly and with the intent that people are able access them easily. The "outreach effort" as defined by the website serves "to make justice rendered in the Tribunal's courtrooms seen in its natural constituency - the former Yugoslavia." This implies that the desired readers of these statements are people who have lived or are living in the Former Yugoslavia. Because of this, I feel that the Statements of Guilt are meant to be representative of the accomplishments of the ICTY. Being a person who is not from Yugoslavia, and does not have any direct connection with the ICTY, I thought it was important to analyze something that the ICTY has itself chosen as representative. The public nature of these statements assures that there is no breach of security, privacy, or copyright upon their examination.

The Statements of Guilt are located directly next to a section of Outreach entitled "Voices of the Victims." While these are moving recollections of war by the people who endured it, I chose instead to pay attention to the voices of the perpetrators for several reasons. Looking at statements by the accused themselves offers the unique opportunity to view individual accounts of why and how many horrific crimes happened. When looking at victims' statements, although

they are extremely valuable in determining facts, it becomes easy to villainize and de-humanize perpetrators. This makes the acts incomprehensible, and then the reasons they were committed and the people who committed them can be forgotten, particularly when something like rape is being discussed. The accused are subject to many hours of intense questioning in the courts. A major reason for this, aside from the further gathering of facts, is to help ease the required amount of testimony by those who were victims of war crime. By examining the statements of the guilty parties, I hope to at least symbolically ease the responsibility of the victims, by not having to again repeat their stories.

The amount of bias within statements of guilt is at once problematic and productive. These statements, in accompanying a guilty plea, are often made to reduce sentence length. Because of this, these statements are somewhat formulaic in the way that they seek to tell the court what it wants to hear. This means many statements have similar qualities, including feelings of remorse, illustrious “thank yous” to the court, and emotional appeals regarding one’s desire to return to one’s family. While this is the case, and while these are very political statements, this also adds to the value. What exactly is it that the court is putting out to the public? What does it want to the public to know about the accused? How do the accused consider themselves accountable? Perhaps even more important is the question, how do they deny accountability, despite the dire situation of a guilty plea? My analysis seeks to answer these questions by deconstructing what are very public and political statements by people accused of some of the most heinous human rights violations.

Interviews:

A second source of information and analysis that I utilize is that of interviews with professionals who are connected to the International Criminal Tribunal for the Former Yugoslavia. I interviewed four people with different job titles and relationships to the Tribunal. I decided not to focus only on interviewees who were in one field so I could get a more practical and critical view of what they thought was going on. However, the selection of my interviewees remains biased for several reasons. It is difficult as an American to come into a different society and try to make contacts. When the element was added that I have no previous background in law this became increasingly difficult. My contacts are all connected in some way to friends or advisors. The sampling could not be as random as I would have liked given my short time here and the difficulty of contacting those in a law field about such a sensitive topic.

Research Limitations:

The nature of issues pertaining to human rights law is that they are immensely complex. Throughout this project I have attempted to further and further narrow down the scope of what I wanted to accomplish. Despite this, defining something accountability and describing rape in war is an impossible accomplish in such a short time, or perhaps ever. The concepts I decided to deal with are purposefully broad and abstract. I have presented them as an attempt to begin to make them comprehensible. When terms like “war rape” and “accountability” are thrown around in much different ways without discussion, they become stagnant and largely unknown to the users. My paper does not attempt to successfully or completely define or even describe these two areas. Instead, I hope to present what is a critical contribution to the dialogue surrounding the issues facing the ICTY and international human rights law.

Another limitation to my research was my lack of experience in the area. I have a background education in music and musicology, meaning law itself is a new area of interest. This complicated my research in several ways. First, I believe it made obtaining interviews more difficult as I had no apparent association with legal studies. Understanding legal jargon was a continuous challenge as well. I also feel that a more involved analysis of international and human rights law that I was incapable of could be an asset in a paper like this. Despite these challenges, I think the fact that I approached this from an outsider's perspective also proved beneficial. My assumptions about the results of this study were largely non-existent. I also think for this reason that my study, or studies like it, could be important in creating cross-disciplinary dialogue.

Literature Review

It is clear that it is of the utmost importance to consider gender dynamics before, during, and after the war in the former Yugoslavia within a historical context. The article "Gendered War, Gendered Peace: Violent conflicts in the Balkans and Their Consequences" by Dubravka Zarkov(et. al) explores gendered policy and dynamics during the socialist era of the Balkans including an analysis of the constitution of the former Yugoslavia. Furthermore, gender dynamics are discussed during the rise of nationalism, while focusing on its links with disintegration, and how women's rights became directly affected by the loss of any sort of political control during the time. This makes it possible to relate power loss to something more than war, and sets a comprehensive background against which gendered war crimes take place. Feminist movements during this time are also discussed as responses to the loss of rights. It discusses the use of rape during this period as a form of ethnic cleansing.

For the purpose of this research, the post-war assessment is the most useful. In this section, ethnic instability is explored as the foundation for the continued issues women are facing such as loss of loved ones, refugee status, and loss of jobs. The final pages relate current gender expectations to the war in Yugoslavia. This article is helpful as it provides a way to connect actions of war with gender life after. My project will link gendered crime to progress in international law in a similar way. This article very effectively does this with a clear and thorough research strategy.

A criticism of different areas of study, and how they relate is important to consider when approaching a subject like mine, in which so many fields of research exist. Zarkov for example studies how the identities of rape victims are represented in academic studies (“War Rapes in Bosnia: On Masculinity, Femininity and Power of the rape Victim Identity”). She claims that the studies of war rape in Bosnia have gone largely un-criticized. While this may be due to the recent nature of this area of study, Zarkov critiques the narrowness of the studies so far. The “Rape Victim Identity” has been constructed to only represent Muslim women. The creation of this identity has in a sense, narrowed perceptions of violence to include only acts against these women committed by Serb men. Zarkov is careful to state that in talking about “representations” she is in no way aiming to ignore the reality of rape in the Yugoslav War, in which this power dynamic was the most present.

This article is particularly helpful because it addresses the importance of academic research in the current political reconstruction and in peace-keeping efforts. I agree with Zarkov that as the ICTY searches to redefine human rights and interpret war crimes, academic papers are becoming a vital source for judges, juries, and lawyers. It is important that the articles coming

out are critically examined in order to give the court the most unbiased presentation of facts. Zarkov also references the importance of the courts and media in influencing a public understanding of war crime and human rights. Her research seeks to recognize the connection between these areas, and carefully considers public ramifications of research in this topic.

In my paper, the relationship between academia, legal institutions, and activist organizations cannot be ignored. The goals and claims of each area will reflect different interpretations of events. What constitutes progress in the Office of the Prosecutor does not necessarily represent a theoretical definition of accountability, which does not necessarily translate into what victims of war in a Bosnian refugee house view as justice. The need for communication between these parties is obvious. While there is an obvious disadvantage that my previous involvement lies outside these areas altogether, it has also given me the opportunity to engage with people from and write in a way that does not only reflect one area.

Throughout many legal publications on human rights law and the ICTY, the importance of accountability is mentioned but not explored. The very notion of prosecution is based upon the establishment of individuality. Lisa Price's "Finding the Man in the Soldier Rapist: Some Reflections on Comprehension and Accountability" searches for the motives of men who perpetrated sex crimes. Price manages to show these motives as "comprehensible." However, by doing this she does not sympathize with the perpetrators. Instead, the article explains that these actions were committed by choice further explaining the need for prosecution. This method and approach is one that I found very useful in studying and analysing Statements of Guilt.

For the purpose of this research, this article explains some very important issues in war crime. One of the most important is her negation of the link between sexual violence and war

that is often times seen as unavoidable. While there is a historical connection of rape and war by investigating the choices made by the individual Price makes clear the distinction between rape as a personal and political method. Individuals choose to allow rape through institutions, and individuals follow those orders and commit rape. This study is deeply connected with the purpose of the ICTY. When you are able to prosecute the individual involved in harming a person and a community, you are able to at least begin to give them a sense of justice. This sense of justice is vital to the process of peace-building. Also, the prosecution of gender criminals makes a statement that gender crime is inexcusable, and will no longer pass as an inevitable part of war.

In Beverly Allen's book *Rape Warfare*, she guides the reader through her own personal exploration into the subject of genocidal rape in Bosnia-Herzegovina. This book contains many innovative forms of organization. Allen studies the importance of ethnic and gender identities throughout the Balkans through the personal accounts of victims of war there. She also examines the relationship of those who help them, which is something often overlooked in more academic-style articles or journals. She approaches the whole issue by asking how she can add to the body of knowledge surrounding the rapes without causing further pain to the victims. She discusses the ethics involved in representing something as traumatizing as genocidal rape as an outsider.

Although the factual information within this book can easily be found in more concise, first-hand resources elsewhere, the aspect that is important and rare in this book is its self-awareness. Many scholars seem to feel, or at least write, in a way that suggests their entitlement to the information and research they are doing. This is perhaps even more tangible when looking

at issues regarding law. Although perhaps many of the individuals involved with that ICTY question what their role is, and activist institutions are constantly criticizing it as well, the court itself remains much more institutionally distant. When I began to conduct research for this project, I found it important to clarify that I was an outsider entering a field where the people who are involved were often directly involved in the war or were legal experts with many years of experience. However, in a similar way as Allen, I found that it was still important that I be involved in some capacity, by writing this paper and meeting with these people. The very concept of studying something so personal and so traumatizing is in some ways both vital and impossible. That public awareness needs to be raised about rape seems obvious in a time when definitions are changing so rapidly. However, the possibility that an outsider without actual involvement in the war and culture could truly comprehend the dynamics that existed in the former Yugoslavia seems impossible. Despite this, Allen, myself, and countless others who have written on the subject seem to feel the drive to in some way bridge the gap between the war and what it means today.

Andrea Stiglmayer has done extensive collection of the testimonies of victims of war rape in the former Yugoslavia. She is widely regarded as the leading expert on the subject. In the article “The War in the Former Yugoslavia” she gives an extensive and useful history of the Former Yugoslavia. This history extends back over one thousand years to give the reader an accurate idea of the complex elements that make up ethnic identities in this area.

It is important to recognize the time period in which this was written. 1993 was the year in which the ICTY was being created. In her article, Stiglmayer describes the international involvement before the creation of this tribunal. Her article is critical towards the lack of

international response at the time. Although the ICTY is now viewed as making progress, it is important to recognize the lack of support the former Yugoslavia was receiving at the time. This is particularly disturbing within the treatment of gender crimes at the time. The mass rape that took place was not yet being identified, as the UN thought that describing it as part of genocide, or even describing the war itself as genocidal was too biased. This article shows us just how much the opinion of the UN and the international community as a whole has changed in just the past 16 years. My research uses this article as a major contribution to the formation of a comprehensive history of the region.

In “The Rapes in Bosnia-Herzegovina” Stigmayer collects and analyzes the interviews she conducted with those involved in the rapes that occurred in Bosnia-Herzegovina. Many of the stories explained here are quite horrifying, explaining in some detail the brutality afflicted upon women during the war. These stories are important for several reasons. First, they draw attention to the different forms that sexual violence took and the different methods of rape. These include group rape, rape camps, sexual enslavement, rape during invasions, and forced impregnation. Stigmayer also includes rapes of Serbians by people of other ethnic identities, a subject that is rarely addressed.

She also includes interviews with the perpetrators of war crimes. This is quite extraordinary considering that this is before the ICTY was prosecuting some of these same people. These interviews reflect the motivations or lack of agency felt first-hand by some of the soldiers. Their stories are quite interesting when compared to those found in the Statements of Guilt. A comparison of the two responses would be very helpful in trying to analyze the effects of the court and politics on confession and accountability.

Theoretical Framework

In order to approach the topic of gendered violence in war, the word “gender” first needs to be defined. Because this analysis of gendered work is done within an international institution, it is important that it follows the definitions on the basis of which these institutions actually work. According to the Rome Statute of the International Criminal Court, “It is understood that the term ‘gender’ refers to the two sexes, male and female, within the context of society. The term ‘gender’ does not indicate any meaning different from the above.” For this analysis, this definition means something quite important. My paper does not seek to criticize and deconstruct this notion of gender, but to examine how this definition operates.

The “gendered crimes” this paper and the ICTY examine are further defined in the Rome Statute in Article 7, as both Crimes against Humanity and War Crimes. Under both definitions, the categories prosecuted are “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.” These acts are what constitute gendered crime. In this case, because of the particular institutional use of the word gender these crimes as they are being tried are, by a vast majority, crimes against women. Theories surrounding rape in society and during war therefore focus on rape as it applies to women.

Susan Brownmiller, in “Making Female Bodies the Battlefield,” provides a history of rape within war that is useful when examining the situation in the former Yugoslavia. “This is all about identity,” she states, referencing both ethnic/national identity and female identity that have been intertwined throughout the most recent cases of wartime rape (Brownmiller 180). In World War II sexual violence primarily consisted of the rapes of Russian and Jewish women.

When the Soviet army began their advance, the rapes became focused toward women of German nationality. During the Japanese Occupation in Nanking, also known as the “Rape of Nanking,” Chinese women were the target (Copelon 197). The fact that these acts were targeted towards not just women in particular, but a certain ethnic group or nationality is important when recognizing how and why rape is used in war as a weapon of war.

Why has the invisibility of rape used in war existed? MacKinnon’s article “Rape, Genocide, and Women’s Human Rights” is helpful in answering this. “When no war has been declared,” she states, “and life goes on in a state of everyday hostilities, women are beaten by men with whom we are close” (183). She is discussing the prevalence of rape against women of every nationality even when no war has been declared. Although these crimes are often acknowledged as horrific, they “are not counted as human rights violations” (MacKinnon 184). MacKinnon is making a point here that women are not recognized as a group whose human rights can be violated. This is despite the fact that “women are violated in many ways in which men are violated. But women are also violated in ways men are not, or that are exceptional for men. Many of these sex-specific violations are sexual and reproductive” (Ibid). While there are unifying characteristics that women have within their gender, the acts of violence that are sexually and reproductively committed against them are seen as individual. Because governments have historically relegated the concept of rape into the private sphere, institutions have been slow or non-responsive in confronting it. The idea that rape constitutes a violation of human rights has been created by women who have also been historically confined to this domestic domain. So what is it that women have done in order to redefine human rights? “We have learned to look at the reality of women’s lives first, and to hold human rights accountable to what we need” says MacKinnon (185).

The international vision that the war in the Former Yugoslavia is an “ethnic conflict” has also helped shape a practice of non-involvement from actors such as the UN. The idea that no particular group should be held accountable has been further fostered by this, despite the fact that “in this genocide thousands of Muslim and Croatian girls and women were raped and made forcibly pregnant in settings including Serbian-run concentration camps”(Ibid). When we are talking about rape in this area at this time, the victims here are the groups of Muslim and Croatian women. The assault is Serbian. By identifying an aggressor and invader in the form of a country the war becomes international, the human rights violations demanding international attention. Croatia and Bosnia-Herzegovina have been recognized as independent states, and yet the fact that they are being invaded is being ignored and the situation is being described as a civil war. The war has also been seen as bilateral, or an “ethnic conflict.” Defining this as a “civil war” instead of an “international war” allows genocide and therefore genocidal rape to remain invisible. It also allows the international community to remain uninvolved. It also allows mass rapes to continue while the public remains uninformed about the violations of human rights.

Another important aspect of rape within the former Yugoslavia is its use within genocide and ethnic cleansing and as a war crime or crime against humanity. The rapes that have occurred in this war are “not grasped as either a strategy in genocide or a practice of misogyny, far less both at once” (MacKinnon 186). The strategy defined exists when rape is a tool of genocide which is a tool of war. The mass rape has been targeted towards Muslim and Croatian women because of their ethnic background in order to instil fear, drive apart communities, ethnically cleanse using forced impregnation, disperse peoples from their homelands, and also as a method of murder. This is rape under control, being executed by people under orders. These are all defining aspects of genocide. The fact that this rape constitutes genocide can also help to

identify the importance of why it is so vital that the international community become involved now. If rape is perpetual, and a constant expression of male domination over women, then it would be hard to decipher what might elicit international action in this particular case. The fact that this mass rape is genocide as well should spark the ability to react.

While it is important that rape becomes an institutionally recognized human rights violation, it is also important that it is not overlooked as an action against the individual by the individual. As MacKinnon states, “these rapes are being done by some men against certain women for specific reasons” (MacKinnon 188). When this fact is ignored it is commonly accepted that rape is just an “inevitable by-product of armed conflict” (Ibid). The individual man and soldier is both placing orders and carrying them out. Often times with crimes as horrific as rape, the perpetrator becomes completely incomprehensible (Price 211). When the individual is not only identified but prosecuted, rape is removed from being permanently tied with the action of war. It is also presented to the public as understandable (but not acceptable) and therefore preventable. Identifying the individual also serves to prevent further ethnic hatreds within already war-torn communities, giving it a vital role in the peace-building process.

The identifying of the individual is part of a larger concept of accountability. Accountability relies on the ability of an individual to choose his or her own actions which further relies on their ability to reason (Price 223). This is why people who are deemed insane, or incapable of making their own decision, are not held accountable in a court of law. They were either unable to understand consequences of their act or unable to “driven to act as they did and had no power to resist” (Ibid). These two ideas are vital in addressing the nature of gender crimes in the former Yugoslavia.

The interaction of war time and accountability is central in processes of prosecution and peace-building. It is also extremely complicated and often problematic. International tribunals such as the ICTY while working on a specific case, have as well an overarching goal to expand the application of human rights which extend across boundaries of state government and war. Acts have always been allowed in war are not allowed in peace-time. An entirely new culture and standard of life is created in a time of war as evidenced by this. A central problem in addressing issues of guilt within the ICTY is questioning “to what extent they (the prosecuted) acted out of choice” (Ibid).

One of the arguments made is that the soldiers who became rapists in the war were conditioned to not know any alternative treatment of women. MacKinnon believes that this is due to the “message of pornography” where boys and young men only knew sex to be degrading and violent towards women. While this sort of conditioning is by all means harmful, the argument can be made that with access to “a mother, a sister, an aunt, a girlfriend or a female teacher” then he had access to an alternative perception of women (Price 224). Also, if he was exposed to religion of any kind, he was exposed to an alternative perception of sexuality. “To the extent that he chose to heed one message and not another, he is responsible and should be held accountable“(Ibid).

A similar position on the possibility of choice exists when the argument is made that people who committed war crimes were being directed in such a forceful way that they had no agency to deny commands or choose not to do something. This claim can be negated by exploring cases where soldiers did in fact reject orders made, by refusing to commit acts of sexual violence or by protecting victims. These men were often identically situated compared to

those who did commit those acts by following orders. The threat of physical violence and other means of control cannot be ignored in these situations, yet it remains obvious that the choice still existed for men in this time of war.

The ICTY seeks to create a “culture of accountability” through both its prosecution and outreach into the former Yugoslavia (Outreach). This concept, which presents itself throughout many public documents released by the ICTY, is not fully explained on its website, nor is it easily definable. It is often presented as an alternative to the status quo, often defined as a “shift from impunity” (Ibid). The following analysis will examine the Statements of Guilt released by the ICTY as a way to define a “culture of accountability” as well as to question whether it can be or has been successfully created.

Background Information

History:

As a person from the United States approaching an issue relevant to a different part of the world, I felt it was important to understand a history of the area that became Yugoslavia, and how it became that way. There is often an international perception that the Yugoslav war was senseless, a war “of madmen who delight in slaughtering one another” (Stiglmyer 1). Views such as this not only misrepresent the people involved in the conflict, but make a resolution impossible as those involved are viewed as incapable of peace and international aid is refused. Instead, I tried to answer the question “why here?” within a historical and cultural context.

Since the 6th century this area has experienced complex migration patterns and changes in governance. During the “great migrations,” Slavic people came from what is today Ukraine and Belarus into the Balkan region (Stiglmyer 2). Soon after this migration, they formed tribes that

became known as Slovenian, Croatian, and Serbian. The Slovenes and Croats lived in the north while the Serbs occupied the south. Through the next several centuries, the Serbs became influenced by the eastern Roman church, and orthodox Christianity, also adopting the Cyrillic alphabet (Ibid). In the north, the Slovenes and Croats were exposed to western Roman Christianity, and used the Latin alphabet. The Slovenes then fell under German rule, while in 925 Croatia became an independent kingdom. Croatia's claims to Bosnia-Herzegovina and desire for independence were first realized at this time although it would become ruled by Hungary and the Austro-Hungarian Empire until 1918 (Stiglmayer 2). In the twelfth century, Serbia also temporarily gained independence, with its capital in what is today Kosovo. Thriving for just a brief period, the Serbian empire fell in 1389, when the army was defeated by the Ottoman Empire. This famous battle on "the Field of the Blackbirds" also took place in modern-day Kosovo adding to the cultural and historical significance of this area to Serbs (Death of Yugoslavia). The story of this battle has become legendary in Serbian history, and has made the act of "restoring Serbia's former greatness" of the utmost importance (Stiglmayer 3).

Under Ottoman rule, the Christian Serbian population found themselves facing social and religious oppression. However, the Serbian Orthodox Church managed to retain some of its previous independence, and as a result, became a stronghold of Serbian culture and history (Ibid). On the other hand, the Slovenes and Croats had more liberties under Austro-Hungarian rule, and their countries developed in a much more similar way to Western Europe (Zarkov 268). Because of these differences over a great period of time, the northern and southern people became divided. Because of the harsh living situations under Ottoman rule, many Serbs fled to both Croatia and northwest to Vojvodina, in what was then Turkey and is now Serbia

(Stiglmayer 4). This forced displacement from what was considered holy land became greatly important to many Serbs.

At around the same time the Montenegrins, a group of people from a mountainous region of Serbia, united tribes and became an autonomous state, although many still considered themselves of Serbian identity (Ibid). The Bosnians, who also descended from early Slav settlers, began to make an appearance in the central Balkans. When this area fell to Ottoman rule the result was a large number of conversions to Islam. The Bosnian Muslims seemed to be taking part in the lengthy and oppressive Ottoman rule (Stiglmayer 5). The Serbian reaction to this was, perhaps understandably, one of embitterment and fear towards Islam.

Throughout the 1800s many countries in Europe began to experience nationalist movements and, particularly in the Balkans, the desire for political independence (Zarkov 270). This desire led to political revolts as well as a call for unification of Serbians into a “Greater Serbia” (Stiglmayer 6). The fact that not all people who considered themselves Serbian were inside the politically drawn boundaries made the situation tedious. With demands for autonomy from Croatia, and changes in rule over Macedonia and Bosnia and Herzegovina the situation proved to be volatile at the outbreak of World War I when armies from Montenegro entered what was Ottoman territory (Ibid). Countries from the area joined in the conflict and on the 525th anniversary of the battle of “the Field of Blackbirds” a Serb Nationalist assassinated Austria-Hungary’s Archduke Franz Ferdinand (Stiglmayer 7).

Once Austria-Hungary was defeated, new boundaries were drawn and the “Kingdom of Serbs, Croats, and Slovenes” was formed (Stiglmayer 8). The area which would soon become Yugoslavia was quickly in conflict over the new style of government which would be instated.

Serbians, who had the closest thing to a political majority, temporarily succeeded in producing a constitutional monarchy as they hoped to maintain the central power they had long been waiting for (Death of Yugoslavia). Huge gaps in wealth, resources, religion, and historical divisions of the north and the south further destabilized the new government. Violent disputes occurred as other ethnic groups revolted against the idea of Serbian superiority and the backlash by Serbs became equally violent. Following an assassination of a popular Croatian political leader by Serbian police and then a new Yugoslav dictator by Croatian and Macedonian terrorist organizations, it seemed that civil war was imminent (Stiglmeier 10). However, in the next few years, the situation began to stabilize and a peace treaty was in the works before the breakout of World War II.

World War II created even more hostility and turmoil in the already fragile situation in Yugoslavia. After a military coup in Belgrade against Nazi forces, a full attack began on the Yugoslav army. The government was quickly forced to surrender. Croatia was merged with Bosnia-Herzegovina was turned into a “puppet state” by the axis powers, and a widespread persecution of Serbs began, with death tolls estimated at up to 700,000 people killed (Stiglmeier 11). Serbian resistance movements, initially intended to target the invading German forces, instead began to seek revenge on the Muslims and Croats that were held responsible for the mass murders of these Serbians.

However, when Josip Broz Tito took control of the Yugoslav Resistance movement on a campaign of “Brotherhood and Unity” he gained Croatian and Serbian support (Ibid). In 1945, he set up a Communist federation of “six nominally equal republics” (BBC). These were Croatia, Slovenia, Serbia, Montenegro, Bosnia-Herzegovina and Macedonia. The areas of Vojvodina and

Kosovo were added as autonomous provinces, to the dismay of many Serbians (Ibid). Anything resembling a nationalist movement was strictly forbidden, however Serbia still managed to maintain a dominant role, with many Serbians placed in powerful positions within the Croatian and Kosovan governments (Stiglmayer 12). The political system was often renegotiated as non-Serbs declared more independence and political power. Despite Tito's best efforts to create stability, upon his death in May of 1980, Yugoslavia stood on the verge of economic collapse and national tensions were extremely high (Stiglmayer 14).

The year after Tito's death, sparks flew between Kosovo Albanians and Serbians. Reports began to spread that the Albanians were raping Serb women and planning genocide on the Serbians in and around Kosovo (Ibid). Responding to what were primarily hugely exaggerated rumors a Serbian politician names Slobodan Milosevic became leader of the Serbian National Party, and then Serbia's president (Death of Yugoslavia). The Serbian people, who were in a state of economic depression, were highly moved and supportive by Milosevic's calls for a resurrection of "Greater Serbia." Wild propaganda was used against not only Albanians, but Croats and Slovenes as well as Milosevic successfully presented them as separatist and power-hungry (Ibid). Croatian nationalists adopted insignia used to persecute the Serbs during World War II, further instigating Serbian forces (Stiglmayer 15). When both Slovenia and Croatia declared independence from Yugoslavia in 1991, the Yugoslav army, under Milosevic's control, attacked. Meanwhile, Bosnia-Herzegovina, a country with an Islamic majority was forced to declare its independence after Milosevic demanded that most of the republic's area be placed under Serbian rule. Soon after, the Serbian army attacked. It was at this point that the wars in the Former Yugoslavia began (Death of Yugoslavia).

Ethnic Identities:

Understanding a history of the Balkans provides a foundation which allows comprehension of the intensity of conflicts between different cultural groups. Addressing the issue of national or “ethnic” identities is vital to understanding the reasons for outbreaks of violence in the former Yugoslavia. Many people from these countries believe firmly in unity and multiculturalism that existed before the war and that nationality was not an issue in forming relationships with fellow Yugoslav citizens. However, when conflict broke out and the rise of nationalism began, these identities often became life or death titles. The names “Muslims,” “Bosnians,” “Croats” and “Serbs,” were adopted. Although these identities were not necessarily distinguishable by looks; language, names, and religion all gave away signs of ethnicity. Also, it is important to be aware that many people of different ethnic backgrounds had until this time been living side-by-side under Tito’s “united” Yugoslavia, although common claims that the former Yugoslavia existed in a blissful multicultural utopia are likely fantastical, given the long and complicated history of different groups.

Acknowledging complexity and nuance in a time of war is vital. In a conflict such as this it is easy to villainize and victimize particular nations. However, by truly trying to grasp the historical context in which this war took place it becomes impossible, or at the very least unproductive to categorize in black and white, or good and bad. Knowing past of this area also helps future generations to learn from it, and not repeat mistakes. It makes the war itself understandable, a series of unfortunate but preventable events, much like the horrific acts of gender violence which were to follow.

Gender Identities:

Gender identities are another important facet of how the war in the Former Yugoslavia would unfold. The gender of a person was not separate from, but interacted with their ethnicity. It is important to navigate this area in terms of masculinity and femininity, and what those mean in this cultural context (Zarkov 142). Basic parts of the construction of masculinity are important in understanding rape. Masculinity is often defined in terms of violence and aggression. As this is part of masculinity, it is often considered an inherent part of male sexuality (Ibid). Also important is the masculine ideal of power. Rape, when combined with ethnicity, often was a way in which power was exchanged for men. Although men were sexually assaulted during the war in the former Yugoslavia, is virtually never discussed making the rape victim identity one that is created as entirely feminine. While there is danger in creating an identity of all rape victims as the same, in this particular instance, most rapes were committed by Serbian men against Muslim or Croatian women. The purpose of rape in this context is both an expression of power and victory, and to terrorize and drive out these populations.

In the former Yugoslavia, women were granted constitutional equality to men, as well as somewhat progressive family laws and equal pay laws meant to equalize their status with that of men (Djuric 267). However, the economic situation made most women financial dependant, employed at low skill jobs, or unemployed (Djuric 268). This resulted in an unequal society between men and women, where many traditional gender roles were still enforced. The woman's place remained "in the home" and the family became a place of "social reproduction" (Ibid). Femininity was therefore largely connected to reproduction. Even when women worked, they often raised children as well so even though women were "liberated" by socialism, they

were subject to many more duties. The women of Kosovo had the highest unemployment rates, the most uneducated, and had the most children (Djuric 269). This image was dispersed by the Serbian media during the rise of nationalism, partially justifying the use of police force in this “un-modernized” area.

Ethnic Cleansing:

With the uprising of violence and search for power, Serbian forces extended their vision beyond winning land. They searched to drive out all “non-Serbs” from the entire area of the Balkans which they wished to control. This desire became a political and military strategy known as “ethnic cleansing” (Stiglmayer 17). Having only Serbian people involved in the political process would allow leaders to pass measures that would be impossible otherwise (Stiglmayer 20). The Serbian media covered up acts of politically lead violence against different ethnicities, blaming it instead on other extremist minority groups. The systematic acts of violence committed include the murder, imprisonment, terrorizing, deportation, destruction of property, torture and rape. All of these acts are meant to exterminate the “unwanted” ethnicities of Muslims and Croats in particular (Stiglmayer 20). After the reported brutalities against Serbs at the hands of these people, many Serbs felt as though they were finally reclaiming what was rightfully theirs.

Ethnic Cleansing, Genocide and Gender Violence:

In the war of the former Yugoslavia, sexual violence took many different forms. The number of women who were raped, exposed to acts of sexual torture, or enslaved is estimated to be between 14,000 and 50,000 (Geneva 117). Rapes are reported to have begun in April of 1992,

when violence broke out between Serbs and Muslims in Bosnia and Herzegovina (Ibid).

Sometimes these acts were committed in private homes and spaces, but more and more the act became public. Rape was a systematic strategy involved in the process of ethnic cleansing, or as a way to terrorize and displace particular ethnic groups. The act of taking women and girls into “rape camps” was recorded for one of the first times. Here, they were raped repeatedly and held in a position of sexual slavery. The purpose of which was often to impregnate the woman with a child of an opposing ethnic groups, and often times women were held until that child was delivered. This was to ensure the “Serb identity” of future generations (Stiglmeier 117). Women and girls were also sexually assaulted in front of their families. Sexual Violence against men and boys was recorded for one of the first times as well, particularly within internment camps (Geneva 117). In 2001, the ICTY found three men guilty of “rape, sexual torture and enslavement” (Ibid). This was the first time that sexual violence alone had been prosecuted as a war crime.

Analysis

In order to assess if a “culture of accountability” is being created within the ICTY, one would assume that there are many conditions which need to be met. However, the ICTY does not establish what these conditions are. A concept such as accountability remains empty and incapable of being fulfilled without a definition. This analysis includes self-created conditions which need to be filled in order for accountability to be achieved. These are self identification, confession of criminality, expression of remorse, acknowledgment of victims, and establishment of fact. Obviously, the concept of accountability could be reliant on many other factors. The goal of this assessment is only to begin to pull apart what it is about the Statements of Guilt that do or do not create this culture. Since the ICTY does not directly define what it means by a “culture of accountability,” much of this work is based upon what are basic steps in how we create an individual, and how they can appropriately address why and how they committed acts which the ICTY and international and human rights law deem punishable. After the analysis of these five areas, another group of findings will be discussed. This area is that of the influence of war. Despite how the earlier components are established, a seemingly contradictory theme exists within the statements of guilt. There is often a point where the individual describes a loss of control, and then disassociates themselves with actions they either committed personally or were involved in. Although this separation does seem to detract from the expressed accountability of the individual, its common appearance and legal recognition makes it much more abstract and complicated.

These categories and their descriptions below were set up before the analysis of Statements of Guilt took place. Different reasons for the importance of these categories and

more ambiguous boundaries were revealed through the actual analysis. The following is included as a standard for which the concept of a “Culture of Accountability” can only begin to be discussed.

The self-identification in these statements is vital in the creation of a culture of accountability. It refers to the use of “I.” When the accused uses “I” then it is apparent that they themselves are issuing these statements and that they are assuming personal responsibility and involvement in what is being said. These statements are also issued by the prosecuted themselves, not by a lawyer, translator, or other mediating source. The use of “I” and the creation of the individual is the necessary first step in creating a culture of accountability. As will be shown later, this individuality is often more implied through the use of “I” and the position of the speakers themselves.

The purpose of the confession of criminality is central to the issuing of a Statement of Guilt. In fact this is somewhat synonymous with the issuing of a statement of guilt, although the Statements themselves contain much more. Because of the extra information provided in them, it is important that the actual confession is removed and examined individually. These confessions vary greatly throughout statements, but their importance remains great. The confession of criminality uses the self identification of self to declare direct responsibility or involvement for particular war crimes that were committed. This step is vital in establishing accountability, as it is the point when the accused confronts their personal guilt.

In establishing a culture of accountability, particularly in such a sensitive situation as in the former Yugoslavia where issues like gender crime are so prevalent and victims are often witnesses to the issuing of statements of guilt, expressing remorse is important. Aside from the

emotional implications toward the victims, this remorse also serves to further progress the notion of accountability. It does this by further individualizing the statements through the personal nature of remorse as well as the expression as a means of apology. Further, the idea that these crimes justify an emotion as heavily weighted as remorse serves as a message to other perpetrators, other countries involved in war, and society that these actions are reprehensible on a personal level as well as a political one.

Ways in which the accused acknowledge the victims of war are also important in creating accountability. The prosecuted often make reference to the victims in the forms of apologies. This is a way in which the crimes are represented as individual, a person who committed a specific act against another person. The forms in which the victims are acknowledged take many forms which reveal different aspects of how the individuals responsible feel accountable, yet the recognition of one by the other makes them all productive.

Another main goal of the ICTY is the establishment of historical fact. During their Statements of Guilt, many of the accused make reference to their desire to or their compliance in adding to this body of knowledge. This is an important step in creating a culture of accountability for several reasons. It creates a way for the prosecuted to add constructively to the ICTY and the future of their countries by excluding the possibility of falsification of historical fact and denial of the reality of conflict. By determining some semblance of what many of the accused consider “truth,” perpetrators have to opportunity to change the future for the better. Although serving time is symbolically vital in achieving justice, the addition of knowledge is a way for the prosecuted to be re-conceptualized as people who wish to do better.

There is a commonly occurring theme within the statements of guilt which causes one to question the success of the creation of a “culture of accountability.” This is the common disassociation of the accused from the crimes that they committed. This presents itself in several different ways. Although these parts of the statements often decline the accused’s agency, present actions as though they were committed by a third person, or place blame on the mechanism of war, they also serve as a reminder of the complexities of war. While they do not necessarily the success of the ICTY’s aims as seems most obvious, they serve as a good basis for discussing what accountability can mean in a time of war, and the flexibility of the very idea of a “culture of accountability.”

Forming Self-Identity:

The formation of self-identity is both implicit and explicit within the Statements of Guilt. The purpose of the Statements is to issue an individual and personal additions to what are otherwise legal documents and issued statements. The statements are written in first person, reportedly by the accused themselves. In reality this can be quite a bit more complicated. There is obviously political purpose behind these statements, directed at both the courts and the public, as these statements may be used to reduce the length of sentencing.

Of the 12 Statements of Guilt I examined, 11 used “I” in the first sentence. The twelfth used “me.” This alone represents the individuality of these statements. Although it would make sense that “I” is used in an individual report such as this, it is important to identify its purpose in this case, which is to acknowledge the individual’s agency in making this statement and their direct relationship to the material within it. Several other first sentences use other ways of identifying. S11 begins with “My name is.” This is another way in which the speaker

establishes personal responsibility and identity. S12 begins with “I come before this Tribunal.” The self-identification as “the prosecuted” is evident in this statement, where the speaker is seen as approaching the much larger presence of the Tribunal.

Another way in which the guilty parties create a sense of self is through giving bits of personal information at the beginning of their Statements. In S3 for example, the accused states that “I hope you will not mind my reading, because it will be very hard for me to say what I have to say otherwise.” This person is discussing the fact that instead of using a native language, the translation of English is being made. By acknowledging this technicality, the accused starts to become an accused person with -strengths and weaknesses. However, this may also have the effect of de-personalizing the Statement as it is being read from a paper, directing us to the different ways in which many parts of these Statements can be interpreted.

In S4, the guilty party says to the Tribunal and audience “Thank you for giving me the opportunity to say a few words about myself and the war in which I took part.” The childhood of the individual is then reflected upon. This quote serves several constructive purposes. It describes speaking in front of this audience as an “opportunity,” making the Statement itself seem more sincere. Also, it puts the accused into context. This person discusses not only his/her childhood, but also his/her place within local and national culture.

An important role of self-identification is the way it denies or should deny outside influence. Only in one of the statements was this explicitly stated. S6 says “I arrived at this decision on my own, without any kind of pressure, threat or persuasion.” It is hard to say what meaning this has in relation to accountability. The fact that only one statement blatantly contains this seems somewhat surprising. It is not necessarily the case that the other Statements were

issued with force applied, but that the other speakers didn't feel it beneficial to their cause, whether that is one of expressing remorse or shortening their sentence, to mention this fact to the court.

In the first sentence of S10, the words "I wish to express" appear. This takes the idea of individual expression even farther, to the point where the prosecuted actually desires to talk to the Tribunal and public. Several reasons for that are expressed in following categories.

Some of the accused issue this identification more explicitly. Statement (S) 2 asserts that "here I am today standing before you, before public opinion, and before God." This further reveals the directly personal nature of these Statements. The individual is not only presenting ideas to the Tribunal, but toward an audience. This gives an even greater sense of independence to the Statements, as the accused knows the extent to which their statements will be heard. Also, it exposes the reader or listener to what is the isolated nature of being in this position.

Confession of Criminality:

Although the Statements of Guilt are titled as such, many of the accused clarify and reiterate their confessions, or what they feel they did wrong. Despite the similarities in what these accomplish, the ways in which confessions are phrased and how explicitly varies.

Many of the respondents seem to believe heavily in the idea of personal responsibility, making this the purpose behind their confession. S8 contains the assertion "For all my mistakes, I bear responsibility." The theme of responsibility is restated in S9. "A crime has been committed against these people and I am prepared to take my part of the responsibility for this crime." When S5 states that "My testimony and admission of guilt will also remove blame from

my nation because it is individual guilt, the guilt of a man” he is providing a reason why it is important for blame to be assumed by the perpetrators of war crimes. The theme of accepting a sentence is often used in addition to or as representative of a confession of criminality. For example, S1 asserts “I am prepared to bear all the consequences of that (crime).” By accepting a punishment, the accused is stating that involvement indeed existed in a war crime to the extent that jail time is necessary. This is also stated in S4 when the accused declares “I understand that by taking responsibility for my role in these events I have to be punished.” S4 uses “my role” to explicate that they were an individual acting in a larger sphere, but the decision was still made on that personal level. S4 states that “I will accept your sentence bravely and courageously,” linking a sense of honor with confession and acceptance.

In S1, the accused conveys “I have confessed,” and “I admitted my guilt.” The admittance here is in past tense. Although this is true, that the Statement of Guilt is part of a larger guilty plea that is already taking place, it would seem more appropriate that the present forms would be used to signify ongoing guilt. The speaker in S7 also speaks in past tense about his/her guilty status by saying “I pleaded guilty.” S10 also uses the past tense in reminding the Tribunal that “I pleaded guilty.” S11 is the only accused examined who explicitly used the words “I am guilty.” Comparing this side-by-side to the other respondents, it is easier to see the power that using present tense has. The accused seems much more accountable, but also much more guilty. Also, we can see that because all of the prosecuted issued these statements at the same point within their trials, the use of past tense is a conscious choice, not a legality.

Differing from this is a technique that was possibly used to deflect some of the guilt from the individual is that of admitting to being part of a group action. In S3 the guilty party orates

that “Unfortunately, I contributed to the destruction of these lives.” This suggests that this individual was part of a larger group acting together, not that he/she made the decision to commit a crime. In S4, the crime the speaker is being prosecuted for “was affected by individuals and groups to which I was superior. So that is why I am held accountable.”

The ways in which involvement in crimes is described differs greatly throughout the Statements of Guilt as well. Most of the accused are not as direct as to say “I confess,” “I am guilty” or “I committed.” For example, S2 describes self-involvement as “erroneous decisions” as well as “erroneous acts.” These are described in the first person, as in “I committed erroneous acts.” Furthermore, the accused alleges that “At the time I didn’t have sufficient courage” to stop criminal behavior being done. Another way that guilt is expressed is in S5 where it is disclosed that “I am to blame for everything I did at that time. I am also to blame for what I did not do, for not trying to protect those prisoners.” The prospect of guilt being tied to inaction as well as action is tied to the fluidity of criminality itself. In S9 as well, the notion of what constitutes an action of crime is again expanded. “I am guilty because I agreed to be in Keraterm,” S9 reports. The very fact that the person was positioned in a particular location and chose not to deny these orders is means for them to perceive themselves as guilty. This means that the expectation they placed on themselves is to be able to deny orders. As this is a political statement as well meant to appeal to the court, it is symbolic of the court wanting to set this precedent as well. Following orders is no longer a way to avoid accountability. Also, in S12, the act of committing a war crime is represented by the accused saying “I kept silent. Even worse, I continued in my office, and I became personally responsible for the inhumane treatment of innocent people.” This combines both inaction and complacency as unacceptable in war time.

Expression of Remorse:

One of the ways in which the Statements of Guilt represent accountability is in expressions of remorse and regret. This emotional aspect often appears after a confession of criminality. Unlike the many ways in which criminality is expressed however, many of remorse are very similar throughout the Statements. The words and emotions “remorse” and “regret” are used by all but two of the accused, who refer to “shame” and “disgrace.” The expression of these feelings of remorse seems to be one of the most important parts of the Statements of Guilt in the eyes of the accused. In S5 the affirmation “I am here before Your Honours because I wish to express my remorse” suggests that this is the primary purpose of this testimony. That it is put in such high esteem is symbolically important to those reading the Statements, particularly if they are victims or were involved in crimes themselves. An emphasis on public reaction is evident in statements like “I sincerely wish before this Chamber and before the public, especially the Bosniak public, to express my deep and sincere remorse and regret” (S6). This very human and emotional appeal is very effective in making tangible the severity of the war crimes committed. Phrases such as “all the lives that have been lost and all the lives that were damaged” further appeal to the emotions (S3).

Another theme which appears when one of the accused is expressing remorse is that of forgiveness. In S2, the speaker says, “I pray to God every day for forgiveness for my sins.” S3 states that “I truly hope that I will be forgiven, although I do understand that some will find it very difficult.” The religious themes as well help bring the crimes committed down to the level of the individual. Much of this area is highly religious, and part of the divide within this war was that of religion (see History). References to religion are highly emotional and personal. S7

declares that “I genuinely repent. I am not saying this pro forma, this repentance and contrition comes from deep inside me.” The mention of religion here further enforces the idea that at least this part of the statement is not just political jargon, that there are real people apologizing for real mistakes.

Several of the accused discuss why they feel remorse or regret. In S1, the individual states “I feel sorry for all the victims who were victimized by anything that I did, and this is why I express from this forum my deepest remorse and regret.” The theme of apology appears more often later when the Statements acknowledge the victims. Even here though, the reasons for sadness revolve around the concept of the victim, and how the guilty parties are remorseful to have played a part in their “victimization.”

The reasons for expressing (versus feeling) remorse are explained in S8, when the accused says “My remorse will not remove the scars of a painful past, but I sincerely hope that it will help heal the wounds,” the reason for publicly exposing this emotion in the first place is addressed. In S10, the accused voices “I will do anything to bring back the past and not to do what I have done. Since this is not possible, all that is left for me is to feel the deepest remorse.” In this case the purpose of expressing emotion is to at some level provide compensation to the victims. S12 states that “I hope that the remorse I expressed will make it easier for the others to bear the pain and suffering.” This tells quite plainly that the purpose of the Statements is the benefit of the victim.

Acknowledging the Victims:

“For the Victims” is a perhaps the most prominent theme throughout the Statements of Guilt. Each of the prosecuted mentions the victims of war at some point. Sometimes this is done by the accused simply expressing the desire that the victims have access to these Statements. In S1, the accused states “I hope the victims of this senseless war will hear my words too.” Another time the victims are referenced is when the accused is explaining why they are standing before trial. S1 states that “In order to protect the victims from being reminded yet again of their suffering, I admitted my guilt.” The focus on the victims as a reason for expressing guilt is a very direct way of individualizing the crimes committed.

When victims are mentioned in the Statements of Guilt, sometimes the question of “Who is a Victim?” is raised. In S2 the accused describes how “Frequent deaths, the wounding of soldiers, civilians, and children occurred. Attending the funerals of my relatives, friends, and acquaintances was frequent.” Describing the effects of war in this way gives an idea of the amount of human suffering that occurred. Despite the fact that the reader of the statement is standing before the Tribunal as the prosecuted, they and “their side” suffered as well.

Another way in which the identities of the victims are questioned is when the accused describes their relationships with them. In S3, says “I fully understand that these events had destructive consequences and that they still affect Muslims today, some of whom were my friends.” The victims in this case were people that the accused cared for. S9 states “The people who are imprisoned were my fellow townspeople.” Although it sometimes becomes easy to draw a distinct line between the victims and the guilty, the simple fact that they lived in the same town and coexisted suggests some sort of commonality. The statement from “I want everybody

to hear my words, especially my neighbors, who were imprisoned because they were not Serbs” (S9) expresses the complexity of the relationship between the guilty and the victim. The juxtaposition of “neighbor,” “imprisoned,” and “not Serb” represents how ethnic identity and war time interplayed to turn communities upside-down. The war took place “among those people who, until yesterday, had lived almost as family members together” (S5).

However, the victims of war mentioned are often far from the homes of the accused. One of the Statements directs its remorse at “those who were never at the (internment camp) and who are now scattered all over the world as a result of that conflict and the expulsions which made it impossible for them to return home” (S7). This acknowledges the victims who are refugees, a category which is often invisible. A similar group of victims that the accused call attention to is that of the families. S4 says “I should like to apologize to the families of the people who have suffered, expressing my full sympathies for having lost their... nearest and dearest.” Apologies are a common way for the accused to give attention to the victim’s families, appealing to what is considered a very common “human” concern. Aside from an apology, statements are directed to families to “spare them having to testify again and thus relive the horrors and the pain during their testimony” (S5).

One of the most interesting statements, which contains many of these different aspects regarding the victims, is in S7. The accused states that “there were women there (the internment camp) aged the same as my mother, there were children there, there were people who used to be friends of mine, whom I used to see over the years in cafes, on sports fields, and playgrounds.” This statement is the only one which directly comments upon the gender of some of the perpetrator’s victims. The idea of relating yourself to your victim is especially useful and

poignant when the victim contains characteristics of a family member. This excerpt also expands upon the theoretical reasons why the accused should be held accountable. This person had an alternative role model in the form of a mother. The idea that women were only known as sexual objects, that the accused “didn’t know any better” is untrue. However, now the question must be asked, “What then, did drive this person to commit acts of sexual violence?” The accused is being held accountable by the law and by individual confession, but what is the purpose of the crime itself?

Establishment of Fact/Search for Truth:

In the Statements of Guilt, the accused often discuss how they feel that the “truth” is an important contribution they can give. The concept of truth is very abstract and complex, but in the statements of guilt it becomes a concrete aspect of accountability. While many of the processes undergone are symbolic and passive, such as imprisonment, the testimony the accused gives is more realistically and actively helpful as the courts seek to record a factually sound history of the war. The purpose of truth and fact is also explored in the Statements of Guilt. The concept of truth is intertwined with that of justice.

The concept of truth is one that the accused pay great attention to. For many of the accused, the reason for this directly relates again to the benefit of the victims. As S4 reads, “All those victims deserve the truth and justice, and my cooperation with the Prosecution is a contribution to the establishment of the truth.” In S3, the goals of this establishment are described. S# hopes “that what happened to me will contribute to the faster return of Muslims to their homes and to the faster and more efficient reconciliation of all peoples.” Now it is understandable that the accused want truth and justice delivered to victims as it will aid in

reconciliation. “Only truth can help future generations,” states S4, “and I will tell the truth.” It is reiterated that the purpose of this is the victim. When S6 explains that “By my guilty plea, I wanted to help the Tribunal and the Prosecutors to arrive at the complete and full truth and the victims, their brothers, mothers, and sisters should—I wanted to avoid their being subjected to additional suffering and not to remind them of this terrible tragedy.” What the accused is referring here to is the questioning that must be endured by the victims and their families when the prosecuted do not take on the responsibility of testifying. S11 expands upon this purpose, stating “I truly hope all sides will cooperate in search for the truth and by doing so they will shorten the agony of many families.” The request for others to come forward and do as he did is a very important purpose in the Statements of Guilt, as the ICTY continues to search for guilty parties.

The establishment of truth is a good thing is described by several of the Statements. When S2 states that “I am ready to testify, to cooperate, and to say everything I know in the interests of truth and justice,” they are using “truth and justice” as their ultimate goal. The accused therefore, believe in the ability of the courts to accomplish this through their own prosecution. Although it is not explained why, in S1, the accused says that “the truth is not to be feared because it is the only thing that will help all.” This alludes to the denial of truth that several of the accused mention as a negative occurrence. For example, S4 asserts “I am convinced that this grain of truth will be recognized and separated from the sea of lies which for years in Bosnia and Herzegovina and the Republic of Croatia have been put about“in reference to his own testimony. In S11, the accused claims “The Tribunal has had to deal with a lot of lies. I do believe that the only way forward is for the truth to be told and for the denial to stop. I don’t think I lied, but I was one of the biggest deniers- particularly to myself.” Writing an honest

documentation is an important part of the rebuilding process as well. As S11 states later on, “There must be an end to the cover up of crimes. Families should grieve knowing the truth.” In order for anyone affected by the war to begin recovering it is important that they know what they are recovering from. It is important even to the individuals who were perpetrators of these crimes.

In S4, the prosecuted says “thank you for giving me the opportunity in this encounter with the truth to say a few words.” After this, the speaker provides the court with a lengthy self-history including childhood and life before the war. The idea of an “encounter with the truth” expresses some of the frustrations of the accused. It is rare if ever that the accused parties have the opportunity to give a personal historical context in which the war took place for them. The idea of narrative is not as important with the prosecuted as with the victims. For the accused, this personal background itself is the truth for him. It may not be the truth of his orders, or official papers filed, but it is the war as it applied to him. The war’s application to the individual is extremely important throughout the Statements of Guilt. How the individual perpetrator is viewed by the victims, the public, other criminals, and the international community can vary greatly depending on statements like these. In S10, the accused asserts “I did my best to help the Office of the Prosecutor and the Tribunal to bring to light a small part of the overall truth, the part that refers to my actions.” This brings to light the fact that a war exists as a connection of these individual acts. Only by examining the individual at this level, and allowing them to contribute to the body of existing knowledge can we truly begin to understand what makes a war, and what makes a criminal.

Loss of Control and “Contradictions” to Accountability:

Amidst the aspects of the Statements of Guilt that seem to meet the quotients for creating a culture of accountability, there are some that seem contradictory. These are remarks which seem to disassociate the accused from the crime they committed. Many Statements of Guilt describe events that took place as happening *to* them instead of *by* them. In S2, the accused states that having “to go and work in Keraterm was the worst thing that could have happened to me.” Here, he is avoiding having any responsibility for the job that he maintained. The statement assumes that there was no choice in the matter that it was out of his control. In S4, the accused describes that “This is how I came to be a member of the worst war which ever took place in that area.” The phrase “I came to be” again gives the idea that this person’s actions are out of their control.

Sometimes the reason for this is because some sort of higher force is involved, such as fate of destiny. In S2, the accused remembers that “Never in my life did I want to be the chief of police, but perhaps destiny or a set of unfortunate circumstances put me in that position, and at the worst possible time, the time of war.” The speaker believes that the reason he was the chief of police was not because of his own initiative or action, but because it was part of “destiny.” The accused themselves strive to deny any agency.

In S4, the accused explains life before the war, and how war changed perceptions of the Yugoslav people, referencing fate and the uncontrollable nature of war.

At the time it seems that nothing could be better or happier. However, different times came, times when people started splitting along religious or ethnic lines, times that did not allow one a lot of choice. The war broke out with lightning speed and forced me to accept the call given by my friends and neighbors to assist

in the defense of our people. To remain with one's nation in difficult times was always considered an honorable choice. Although I had some different plans for myself, this unfortunate development of events determined my fate (S3).

The transition from an idealized peace to war is one that took the accused by surprise. This person felt the responsibility to defend, and act honorably. This meant taking up arms against people that were once friends. War is seen as the reason why these friends became enemies.

The allusion to war as the ultimate culprit of these crimes is also apparent. "War is hell" states S2. The period of "wartime" is one where many things change, according to the Statements, which show the extent to which a wartime culture effected their actions. Statement 5 reads "We didn't even notice we were drawn into the vortex of inter-ethnic hatred and how neighbors were no longer able to live beside each other, how death moved into the vicinity, and we didn't even notice that we had got used to it. Death became out reality." This idea is expanded upon in S2 with the accused remembering that "Attending the funerals of my relatives, friends, and acquaintances was frequent." As a result of this, "at times, it was very difficult to act wisely" (S2). This represents the idea that war itself is out of control that it is not caused by the individuals who acted in it. "We lost ourselves in hatred and brutality" says S5; it was a "vortex of terrible misfortune." Some of the other aspects which contributed to this confusion were "A great deal of fear, panic, fatigue, stress, and at times alcohol, too" (S2). These are viewed as the side effects of war, as the perpetrators actions are as well. S9 recalls "I was young, thoughtless, I had lost a son, that I was caught in the chaos of war and death in which I found it difficult to find my bearings." This alludes to the grief that many of the soldiers committing war crimes felt themselves in a war with a long and destructive history for those on all sides. S10 asserts that "Now I would never do the things I did then, the things that took place in a time of euphoria, a

time when all human dignity was abolished.” Here, the accused again calls to the exceptional quality of wartime.

One of the aspects of war which is often spoke of as the reason for the crimes committed is that the accused were following orders, or that they weren’t allowed to choose. This is shown in S3, “When the war broke out, we had to go where we were told to go. We didn’t have much choice.” This was often because of the demands of superiors. S2 describes his commanding officers, saying “I was still afraid of them.” Later on, when he does attempt to break command, [he and his fellow soldier] “were arrested...for dissent” (S2). As S5 explains, “There was no choice. You could be either a soldier or a traitor.”

From the position of one of the accused who was in a commanding position, the feeling of loss of control is the same. S4 “knew that a large number of people that were under my command had suffered a personal loss, a loss of their family members or homes. I knew that there were people with their human faults. However, it was impossible for me to predict how each of them was going to react under war circumstances.” The grief and suffering of people, who are after all “only human”, lead the accused to feel unable to stop actions that he himself did not feel personally responsible for. Later, S4 states, “I never ordered a crime to be committed. I only ordered the implementation of what was necessary in terms of our operation.” Here, the accused becomes simply a tool of war, trying to do what is necessary in order to maintain it. Also, the crimes committed become acts of the lower ranking soldiers instead of those who commanded the attacks, making them seem out of anyone’s control.

One of the most interesting arguments which seems to avoid individual responsibility from the point of the accused is in S5. The speaker begins his Statement with:

On the territory of the country in which I was born, shooting from firearms was usual when celebrating the birth of a male child. These shots tell you everything, what a new male member of the family means and what is expected of him- strength, protection; he should be a warrior, a soldier, the head of the family, as they say in our parts. Unfortunately, when other kind of shooting started in the Former Yugoslavia, shooting in war, it was normal for every man, every male child, to put on a uniform, take up a weapon and go to protect his homeland, his nation, and ultimately his family. This was expected of him. This was his role, a sacred role (S5).

This Statement implies not only that these acts were due to the nature of war, but to the nature of a war-focused culture for men.

Interviews and Discussion

I present the interviews after the Statements of Guilt as a way to bring in points of view of people who are involved in the prosecution of war crimes without representing the prosecuted themselves. The interviews I conducted were from individuals and professionals with greatly varying positions and perspectives. Despite this, there were several unified themes that the interviewees commented upon. Although many questions I raised to these individuals were directly related to my project, (i.e. defining accountability, theoretical foundations of rape) the information I received applied much more directly to the field of international law. Far from being problematic, these interviews help place these more abstract ideas into the larger context of practice. The categories by which these interviews are analyzed below are largely superficial as all of them are so plainly interconnected.

Interviewees:

Emina works with the University of Political Science in Zagreb. She is also President of the Croatian Youth Network and member the Center for Peace Studies there. She grew up Sisak, a small town close to the border of Bosnia and Herzegovina. Growing up, she felt “connected with the war” and lived near a strategic military target. Her family took in war refugees, and was

subject to threats during the war. She felt that expressing these things was important in understanding her view of how the war happened.

Iva received her BA in political science and an MA in Human Rights Law. She worked as analyst and a researcher at the “special war department” in Sarajevo and also worked as a journalist covering Tribunal cases. Currently she is working in the archives of the Office of the Prosecutor for the ICTY.

Vedrana works as an Associate Victims’ Expert in the Office of the Prosecutor in the International Criminal Court. Her jobs include working to secure victims’ rights, establishing precedence in questioning victims and crisis intervention. She formerly worked with the Victims and Witnesses section at the ICTY.

Monique completed her Bachelor’s in law and recently finished her MA in International Criminal Law. She recently finished a study of the treatment of sexual violence within international criminal tribunals, as well as a study on the finishing strategy of the ICTY.

Differing Interests:

One of the themes that were presented throughout interviews was the problem of interaction between different groups with interest in the ICTY. These groups were generally described as legal (the courts and prosecution), academic (theoretical scholars), activist groups, and the people living in the former Yugoslavia. Emina’s involvement is in peace-building activism and takes place in the former Yugoslavia. She didn’t remark upon any particular conflict between groups, but she discusses how changes being seen abroad are not necessarily seen at home. These differences are talked about below, in the section describing the ICTY. Iva,

on the other hand, who works with the ICTY in the archives of the Office of the Prosecutor, feels that there is a lack of understanding between the different groups.

I think we have to be aware that people who work in courts who make up these institutions are people with normally a background of maybe twenty or thirty years in professional legal work. Often enough they don't think in the same concepts as the academia thinks. There have been instances where various academics, scholars, activists have been saying you know the court has not been defining gender crimes in the way it should. You know the court has a very, very limited mandate: to prosecute certain defendant if he did or she did this or that. Can we prove this beyond reasonable doubt? It's focusing on the defendant, and it does not care about, or it does not care much about theoretical concepts or the impact that it has on this or that group (Iva).

This quote characterizes some of the differences between groups of people interested in the ICTY as opposed to the ICTY itself. The theme that the legal perspective is centered on prosecution was agreed upon by Monique who says "I think the purpose of the law in every country is the same. To prosecute people who violate law, which is created to regulate." The process of prosecution and therefore regulation differs greatly from the objectives of other groups. Vedrana, Associate Victim's Expert in Office of the Prosecutor of the International Criminal Court, stated that "there is pressure from different parties to hear different things. Working for the Office of the Prosecutor means that you are supposed to get people to say things they don't want to say. The prosecutor wants to get something that is as powerful as possible."

The divide between the theoretical and the practice of law is particularly noticeable when discussing accountability. When Emina was asked what accountability meant to her, she responded "I believe everyone who committed crime should be prosecuted and sanctioned. Despite military hierarchy and strict orders, each and every one of us should obey according to ones morality and ethics." This directly links the ideas of prosecution and accountability, although other interviewees found the idea of accountability much more complicated. When

asked if the ICTY creates a culture that holds people accountable, Iva responded “I think it does support the creation of a culture of accountability but I’m pretty sure it cannot be accomplished only by the court itself. I think it’s a much broader thing that needs to be something that the entire society and the various actors work on.” She implies here that a culture of accountability needs to be something worked upon within each particular society. She adds that, in reference to the court’s influence upon its creation, “I think we should have some kind of reservation as to you know, how far that can go.”

Accountability:

The theme of accountability itself was problematic for Iva. There is a “problem more of definition. You know what I consider this culture [of accountability] to be, it might be something different for you. Also I think for the court it’s going to be very difficult to move in any direction if the society it’s supposed to serve does not have this consciousness.” In this response she remarks upon the ambiguity of a term like accountability, adding that emphasizing its importance is not useful if it is not something recognized by the society who is supposed to uphold it. “And I’m not sure,” she adds, “the society that is being dealt with by the ICTY is a society that has... articulated what this means. “

To Monique, the creation of accountability is wider than jurisprudence. “I think it goes beyond prosecution.” She states, “I think it’s not only prosecuting people and holding them accountable, I think it’s also how communities and people who live there. If people are not accountable they can’t really forget, not that you can forget about war, about the acts in a way they should be punished but it does not always have to include sentencing.” She suggests here that accountability can exist outside of a courtroom. Referencing her own study of local courts

in Rwanda, she adds that accountability can be achieved “when people just apologize, it’s not just about spending time in the court and being prosecuted.” The reason for this is she believes “that interaction with the victims is what makes it important. It shows support of the victims and the communities. Well I think it helps them deal with whatever happened to them.”

Gender Violence

Another area where theoretical and practical applications of terms and knowledge were brought up is in the way gender violence is discussed and defined. When asked what a gender crime is, Emina responded that “I remember from the war time, many more rapes of women happened then, in comparison with the rapes happening before the war. What is more, unlike earlier, many men were raped or molested in sexually degrading way, and many families were pushed to commit incestuous actions in front of violators.” Her description of what gender crime constitutes is directly influenced by the fact that she was in Bosnia, viewing the war from a first-hand perspective. When asked “Is it important to prosecute crimes involving sexual violence as gendered?” Emina responded “Strong YES.”

Some of the other respondents involved in the legal aspect of the ICTY explained the changing nature of gender crime. When Iva was asked to define a gender crime, she responded that it is “something happens to you because you are a woman or because you are a man.” When asked about the importance, she answered

I do believe that the prosecution of rape as a war crime... when I use rape I kind of use it in a broader... it’s not necessarily the act of penetrating but all acts of sexual violence that is perpetrated against someone, I believe that that is an exceptionally important thing to prosecute because it’s kind of a relatively new development. Because before the 1990s I guess when we thought about war crimes, we thought about like the Holocaust but now I think it’s more and more the case that we think about what happened to the women in

these regions. It's more and more and more in the public space. It's clearly by now established as war crime. And it's clearly established as a tool, let's say in Bosnia, to scare the population, to ethnically cleanse the territory, to humiliate a certain population, because in very, kind of, rural traditional societies I guess when a woman is raped, especially in the cases where she was pregnant, it seems as kind of a path to the destruction of a certain population... for example Bosnian Muslim women.... I think it's important because it's clearly a tool that is primarily aimed at women but also the wider community (Iva).

The basic concept here is that although gender crime can be easily defined within the courts as something that happens because you are a man or woman, the shape it is taking today is much broader and more complex. Vedrana remarks that "Things regarding gender crime are developing quickly." She, as a person directly involved with the victims remarked upon some of the cultural problems in getting information about war rape. There is a "need for explicitness" she said, in which women have a hard time describing what happened to them. The Tribunals, she explained, need very accurate and explicit descriptions of sexual violence that some women are culturally or personally unable to share. The use of rape can also carry different effects in other cultures. Essentially, by being raped, Vedrana explains "they got killed." This refers to the heavy social stigmatization that can occur as a result of gender crime as well. This stigma is known to the perpetrators, and could also be considered an aspect of gender crime.

When describing her interest in gender crime, Monique said that "you don't really hear a lot about it. In every war there is a lot of sexual violence going on and it's really destroying a lot of communities." She also commented on its complexity, adding "maybe it's weird for some people to see rape as a war crime or a crime against humanity because we think it's just a by-product, or just a side effect of war, but it's actually used as a method of war." The method she refers to is rape's use "to destroy communities or you know they try to make women pregnant to change the ethnicity of people." When asked to define a gender crime, Monique was careful

about the idea putting a label on it. “The court’s definition is maybe too simple,” she said, adding “I think you never can really define what a gender crime is.” She remarked further upon its complexity, stating gender crime “becomes more complicated when they tried to force impregnancy as well. You know they kill the men, but they rape the women just to change ethnicity, which is also an act of sexual violence and more as well. It really needs to just be explained as more than one thing. There are many examples. It’s just broader than one thing. “This complexity, she feels, has led to some problems within the prosecution of gender crime. “I think that especially in the first years of the tribunals, the decisions especially with sexual crimes was done for enslavement.” She remarks, “It wasn’t that sexual crimes were rape. So the attention was driven away from sexual violence to enslavement. Of course, there are some similarities but I think it’s better to just use the word sexual crimes that’s why it’s still a bit in the background.” The inclusion of rape and sexual violence into other categories such as “enslavement” is one that causes great controversy among legal and academic scholars alike. Monique continues that “Now I think in the decision, it’s not the main part of the decision... I think they should pay more attention to sexual crimes as well, and they don’t do it yet.” She is referencing the fact that sexual crimes themselves are Crimes of War, and that they should more often stand alone. Right now and in the recent past she believes “they’re prosecuting people, which is good but it could have been better... just, I don’t think the perpetrators will be scared of not doing it, of doing it again because of the prosecution. I don’t think they’re scared.” When one of the purposes of prosecution is to prevent anything similar from happening again, this is a very insightful criticism of the courts progress today.

Prosecution:

The belief in the importance of prosecution is widely seen across interviews. Emina states that “I believe everyone who committed crime should be prosecuted and sanctioned. Despite military hierarchy and strict orders, each and every one of us should obey according to ones morality and ethics.” She describes that “Human suffering during this war, like any other, was great. In addition to losing close relatives or siblings and places to live, with lot of refugee experience, gender based violence was done at every step. Therefore, victims deserve as many levelled reparation as they survived multilevel suffer[ing].” She links the importance of prosecution and recognition of gender crime here, by reminding us that each crime deserves to be equally recognized. This is expanded upon when she says “Society needs facts and appreciation for emotional losses, human losses. Society deserves reparation and minimum what society can get are: facts, functional legal system and insurance of safety.” The benefit for society in general, is “Healing and insurance war would not repeat.”

Iva also feels strongly about the need for prosecution. “I see it a first step towards establishing something that could be considered as a normal state,” she says “I see it as the first step towards sustainable peace, for various reasons and I think this probably goes for various countries and various contexts.” One of its strongest benefits, she emphasizes is that “it removes people who are guilty of the most horrendous crimes from public space.” Additionally, she asserts that “it establishes a start of a historic record. It’s established in a court, it’s been appealed it is been questioned from various sides.” Here she is referring to the establishment of facts that occurs alongside official trials such as these. As for the future, and benefits to society in general, prosecution could “potentially to send out the message that this is something that

society, civilized society does not um, does not tolerate. And if one tries this kind of thing again somewhere else, they're going to be prosecuted." This is particularly poignant when referring to the current public discussion of gender violence. Iva continues that "it brings some kind of dignity back to the victims that the dignity that has been taken from them in cases of torture or in cases of rape." The focus is brought back to the victims here, who have throughout this analysis been a focus of the Tribunals and accountability. On the victim's personal level as well, Iva adds that from what she has heard "people want the person who beat them who raped them who burned their house and killed their husband father brother son to be prosecuted." She adds that it "brings a little bit of satisfaction to the people who went through what they went through." Again referring to the victims she adds,

And if the prosecution can bring at least that or if the court can bring at least that, that's great. Then through various actors the government can maybe do something, the education can do something, the larger community can do something, and altogether maybe they can restore as much as possible the victim to kind of a state which is less frustrating and less difficult to live in. It brings the message that although my community was harmed, but someone was held accountable for it. Therefore my community is not worthless my community is not ignored. You know, my community means something to someone (Iva).

This statement brings our attention of the court to the victims and the communities the Tribunals were made to assist. Vedrana adds that the victims often appreciate the opportunity to be involved in the process of prosecution. "Lots of them appreciate having the chance to be heard," she says, or they feel that they have a duty to their country, children, or other women in testifying.

ICTY:

While the benefit and purpose of prosecution seems clear to the interviewees, the question remains whether or not the ICTY is properly contributing to this effort. “I believe ICTY was a very constructive step for transitional justice in Croatia and broader region.” Emina says “Many things would not be investigated and researched, and prosecuted if no independent displaced international court.” This echoes the reasons why prosecution itself is important.

When asked what the results have been in Croatia, where Emina currently lives, she replies

I see there are minor positive effects in Croatian judicial system on local level. More and more judges are getting braver in prosecuting war criminals. I see changes in society; more people are ready to share their war experience and to support initiative for truth commission. Regarding government, I see ignorance on dealing with the past and lack of political will in many cases: passing on nationalistic (emphasis on homeland war experience) declarations; lacking policy and practice in bringing back Serbian and other refugees, no support to truth commission, MPs who committed war crimes etc (Emina).

What this suggests is that although the ICTY may be making progress within itself, there is a lack of communication or empowerment of the local judicial systems, although some progress may exist. Emina suggests that improvements could be made in the areas of “Protection of war victims, Incentives and protection of judges, Stronger political will, Learning historical facts, Awareness rising on dealing with the past.” She further describes the necessity of outreach, saying that “Reports on progress are not regularly transmitted since ICTY does not have general support in Croatia due to many Croatians being prosecuted. Unlike minor number of Serbs. Mostly I find out about the progress from media and Documenta- Center for Dealing with the Past in Croatia.” What she describes here may be the court’s inability to address and properly communicate its intentions with a community who feels unfairly targeted by the Tribunal.

Iva's take on the ICTY is one often agreed upon by other legal experts. "We read so many critiques... I think just the fact that it exists is a major accomplishment" she states. Vedrana adds that its legacy and the fact that people have faith in it are important as well. "They [people in countries who have experience war] believe in the cause" and that the "court can really make a difference." Monique adds her perspective on the importance of Tribunals. "I think it's a way for dealing with the fact that some of these countries didn't have the means to prosecute... People that commit crimes need to be prosecuted... When it's bigger than just a crime. Like genocide...It's bigger than just the crime itself." She adds similar sentiments to those of Iva, saying "I think people living in those countries think it's good that they were created but now they want to do it on their own. I think it's good that they were created."

Conclusion

The most important conclusions of this research is the necessity to clearly define and discuss what is meant by many of these terms themselves. "Accountability" needs to be deconstructed as something that can have many implications. The requirements and definitions I created and analyzed were largely experimental. The fact that approaching this situation I had to form my own opinions and questions about these terms is a conclusion in itself. If this information is being presented as "Outreach," I feel that its theoretical framework should be more easily accessible. Accountability can occur on a legal level without occurring on a cultural level, which I think may be the case here. The Statements of Guilt fulfill requirements of a culture of accountability within the courts. However, these voices do not seem to be effectively reaching other members of the international community. I agree with the concept presented by the interviewees that the court can only do so much in terms of political and cultural change.

That is why I feel it is vital that activist groups, and to a certain extent academia, have constant communication with the ICTY and other facilitators of international and human rights law.

Creating a “culture of accountability” must be (at least) a three part process. Accountability must be defined theoretically, prosecuted legally, and enacted within cultures through activism and outreach

Terms like “gender crime” also remain difficult to define. I think this is related to their still taboo quality within most cultures. This is another area where the court must cooperate with outside organizations and academics. The court can greatly contribute to progress in this area by prosecuting sexual violence alone as a war crime. This issue is also made much more complicated by the desire to protect and keep private the suffering of the victims. I think however, that by cross-disciplinary communication that legal prosecution can lead to academic reports of gender inclusion in international law, which can lead to de-stigmatization by activism. Of course, this is a very idealistic situation, but I also agree that the existence of the courts themselves is a positive step, and that change can happen with these institutions if we choose to make it. I hope my paper and more extensive papers following it contribute to the dialogue that should begin about the necessity of prosecuting gender crimes, but more importantly the necessity of creating a culture where rape is no longer viewed as inevitable and women and men everywhere can expect sexual safety from their human rights.

Works Cited

- Allen, Beverly. *Rape Warfare: The Hidden Genocide in Bosnia-Herzegovina and Croatia*. Minneapolis: University of Minnesota, 1996.
- Brownmiller, Susan. "Making Female Bodies the Battlefield." In Stiglmayer, Alexandra (ed.). *Mass Rape: The War Against Women in the Former Yugoslavia* (1993): 180-82.
- Buzinkic, Emina. Interview Questionnaire. 29 Nov. 2009.
- Copelon, Rhonda. "Surfacing Gender: Reconceptualizing Crimes Against Women in Time of War." In Stiglmayer, Alexandra (ed.). *Mass Rape: The War Against Women in Bosnia-Herzegovina* (1993):197-218.
- Death of Yugoslavia*. Prod. Norma Percy. BBC, 1995. DVD.
- Djuric-Kuzmanovic, Tanja, Rada Drezgic, and Dubravka Zarkov. "Gendered War, Gendered Peace: Violent Conflicts in the Balkans and Their Consequences." *Gendered Peace: Women's Struggle for Post-War Justice and Reconciliation* (2008): 265-91.
- Geneva Centre for the Democratic Control of Armed Forces. *Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector*. By Megan Bastick, Karin Grimm, and Rahel Kunz. Geneva, 2007. Print.
- MacKinnon, Catherine A. "Rape, Genocide, and Women's Human Rights." In Stiglmayer, Alexandra (ed.). *Mass Rape: The War Against Women in Bosnia-Herzegovina* (1993): 183-96.
- Mladina, Vedrana. Personal interview. 18 Nov. 2009.

Monique, Oudt. Personal interview. 6 Dec. 2009.

"Outreach." *International Criminal Tribunal for the Former Yugoslavia*. United Nations. Web. Fall 2009. <<http://www.icty.org>>.

Price, Lisa S. "Finding the Man in the Soldier-Rapist: Some Reflections on Comprehension and Accountability." *Women's Studies International Forum* 24.2 (2001): 211-27.

Stiglmeier, Alexandra. "The War in the Former Yugoslavia." In Stiglmeier, Alexandra (ed.). *Mass Rape: The War Against Women in Bosnia-Herzegovina* (1993): 1-34.

Stiglmeier, Alexandra. "The Rapes in Bosnia-Herzegovina." In Stiglmeier, Alexandra (ed.). *Mass Rape: The War Against Women in Bosnia-Herzegovina* (1993): 82-169.

Vukusic, Iva. Personal interview. 30 Nov. 2009.

Zarkov, Dubravka. "War Rapes in Bosnia: On Masculinity, Femininity and Power of the Rape Victim Identity." *Tijdschrift voor Criminologie* 39.2 (1997): 140-51.

Works Consulted

Bogert, Carroll, and Corinne Dufka. "Health and Human Rights: Women and Sexual Violence."

The Lancet 357 (2001): 302-04.(2008): 265-91.

Gutman, Roy. "Foreword." In Stiglmeier, Alexandra (Ed.). In Stiglmeier, Alexandra (ed.).

Mass Rape: The War Against Women in Bosnia-Herzegovina (1993): ix-xiv.

Hansen, Lene. "Gender, Nation, Rape: Bosnia and the Construction of Security." *International*

Feminist Journal of Politics 3.1 (2001): 55-75.

Kunovich, Robert M., and Catherine Deitelbaum. "Ethnic Conflict, Group Polarization, and

Gender Attitudes in Croatia." *Journal of Marriage and Family* 66 (2004): 1089-107.

Pimlott-Kubiak, Sheryl, and Lilia M. Cortina. "Gender, Victimization, and Outcomes:

Reconceptualizing Risk." *Journal of Consulting and Clinical Psychology* 71.3 (2003):
528-39.

Seifert, Ruth. "War and Rape: A Preliminary Analysis." In Stiglmeier, Alexandra (ed.). *Mass*

Rape: The War Against Women in Bosnia-Herzegovina (1993):54-72.

Shalhoub-Kevorkian, Nadera. "Towards a Cultural Definition of Rape: Dilemmas in Dealing

with Rape Victims in Palestinian Society." *Women's Studies International Forum* 22.2
(1999): 157-73.

Swiss, Shana, and Joan E. Giller. "Rape As A Crime of War: A Medical Perspective." *Journal of*

the American Medical Association 270.5 (1993): 612-15.

Appendix

Interview Guide:

What are your views on the actions of the International Criminal Tribunal for the Former Yugoslavia?

Do you feel that the prosecution of individuals involved in the war is important? Why?

What do you feel like are some of the biggest challenges of prosecuting war crimes?

How would you define a gender crime?

Is it important to prosecute crimes involving sexual violence as gendered?

What benefit (if any) does it have for the victims?

What benefit (if any) does it do for the society in which the conflict took place?

What is the benefit (if any) for society in general?

How would you define accountability?

Do you think the ICTY creates a culture of accountability? Why?

World Learning
SIT Study Abroad



Consent to Use of Independent Study Project (ISP)

(To be included with the electronic version of the paper and in the file of any World Learning/SIT Study Abroad archive.)

Student Name: Alice Hansen

Title of ISP: Creating A Culture of Accountability: The Prosecution of Gender Crime in the ICTY

Program and Term: Netherlands: International perspectives on sexuality & gender, Fall 2009

1. When you submit your ISP to your Academic Director, World Learning/SIT Study Abroad would like to include and archive it in the permanent library collection at the SIT Study Abroad program office in the country where you studied and/or at any World Learning office. Please indicate below whether you grant us the permission to do so.
2. In some cases, individuals, organizations, or libraries in the host country may request a copy of the ISP for inclusion in their own national, regional, or local collections for enrichment and use of host country nationals and other library patrons. Please indicate below whether SIT/World Learning may release your ISP to host country individuals, organizations, or libraries for educational purposes as determined by SIT.
3. In addition, World Learning/SIT Study Abroad seeks to include your ISP paper in our digital online collection housed on World Learning's public website. Granting World Learning/SIT Study Abroad the permission to publish your ISP on its website, and to reproduce and/or transmit your ISP electronically will enable us to share your ISP with interested members of the World Learning community and the broader public who will be able to access it through ordinary Internet searches. Please sign the permission form below in order to grant us the permission to digitize and publish your ISP on our website and publicly available digital collection.

Please indicate your permission by checking the corresponding boxes below:

<input checked="" type="checkbox"/>	I HEREBY GRANT PERMISSION FOR WORLD LEARNING TO INCLUDE MY ISP IN ITS PERMANENT LIBRARY COLLECTION.
<input checked="" type="checkbox"/>	I HEREBY GRANT PERMISSION FOR WORLD LEARNING TO RELEASE MY ISP IN ANY FORMAT TO INDIVIDUALS, ORGANIZATIONS, OR LIBRARIES IN THE HOST COUNTRY FOR EDUCATIONAL PURPOSES AS DETERMINED BY SIT.
<input checked="" type="checkbox"/>	I HEREBY GRANT PERMISSION FOR WORLD LEARNING TO PUBLISH MY ISP ON ITS WEBSITES AND IN ANY OF ITS DIGITAL/ELECTRONIC COLLECTIONS, AND TO REPRODUCE AND TRANSMIT MY ISP ELECTRONICALLY. I UNDERSTAND THAT WORLD LEARNING'S WEBSITES AND DIGITAL COLLECTIONS ARE PUBLICLY AVAILABLE VIA THE INTERNET. I AGREE THAT WORLD LEARNING IS NOT RESPONSIBLE FOR ANY UNAUTHORIZED USE OF MY ISP BY ANY THIRD PARTY WHO MIGHT ACCESS IT ON THE INTERNET OR OTHERWISE.

Student Signature: *Alice Hansen* Date: 10/12/09

