

43. CATHARINE A. MACKINNON

Catharine A. MacKinnon (1946-) is Elizabeth A. Long Professor of Law at the University of Michigan, Ann Arbor. Professor MacKinnon received a J.D. from Yale Law School in 1977 and a Ph.D. in Political Science from Yale University in 1987. Well-known for her work in feminist jurisprudence and political theory, MacKinnon is the author of numerous articles and books, including *Feminism Unmodified* (1984), *Toward a Feminist Theory of the State* (1989), and *Only Words* (1993). In this essay, MacKinnon contends that traditional human rights theory and practice have excluded women by failing to recognize that the pervasive occurrence of sexual and reproductive violence in women's lives are violations of human rights. Drawing upon reports of mass atrocities committed against Muslim and Croatian women during Serbian campaigns of ethnic cleansing in the former Yugoslavia, MacKinnon demonstrates how gendered aggression against women became an instrument of war and genocide: Muslim and Croatian women were raped both because of their gender and their ethnic or religious identity. MacKinnon goes on to argue that international human rights law has been unable or, worse, unwilling to acknowledge genocidal rape because such atrocities fall outside human rights standards established and enforced predominantly by men. Accountability for genocidal rape as a violation of women's human rights must, then, assume the priority it deserves within human rights law.

Text—Rape, Genocide, and Women's Human Rights

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Human rights have not been women's rights—not in theory or in reality, not legally or socially, not domestically or internation-

ally. Rights that human beings have by virtue of being human have not been rights to which women have had access, nor have violations of women as such been part of the definition of the violation of the human as such on which human rights law has traditionally been predicated.

This is not because women's human rights have not been violated. The eliding of women in the human rights setting happens in two ways. When women are violated like men who are otherwise like them—when women's arms and legs are cut and bleed like the arms and legs of men; when women, with men, are shot in pits and gassed in vans; when women's bodies are hidden with men's at the bottom of abandoned mines; when women's and men's skulls are sent from Auschwitz to Strasbourg for experiments—these atrocities are not marked in the history of violations of women's human rights. The women are counted as Argentinean or Honduran or Jewish—which, of course, they are. When what happens to women also happens to men, like being beaten and disappearing and being tortured to death, the fact that those it happened to are *women* is not registered in the record of human atrocity.

The other way violations of women are obscured is this: When no war has been declared, and life goes on in a state of everyday hostilities, women are beaten by men to whom we are close. Wives disappear from supermarket parking lots. Prostitutes float up in rivers or turn up under piles of rags in abandoned buildings. These atrocities are not counted as human rights violations, their victims as the *desaparecidos* of everyday life. In the record of human rights violations they are overlooked entirely, because the victims are women and what was done to them smells of sex. When a woman is tortured in an Argentine prison cell, even as it is forgotten that she is a woman, it is seen that her human rights are violated because what is done to her is also done to men. Her suffering has the dignity, and her death the honor, of a crime against humanity. But when a woman is tortured by her husband in her home, humanity is not violated. Here she is a woman—but *only* a woman. Her violation outrages the conscience of few beyond her friends.

What is done to women is either too specific to women to be seen as human or too generic to human beings to be seen as specific to women. Atrocities committed against women are either too human to fit the notion of female or too female to fit the notion of human. “Human” and “female” are mutually exclusive by definition; you cannot be a woman and a human being at the same time.

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.

Women are violated sexually and reproductively every day in every country in the world. The notion that these acts violate women’s human rights has been created by women, not by states or governments. Women have created the idea that women have human rights out of a refusal to believe that the reality of violation we live with is what it means for us to be human—as our governments seem largely to believe.

Women have created the idea of women’s human rights by refusing to abandon ourselves and each other, out of attachment to a principle of our own humanity—one defined against nearly everything around us, against nearly everything we have lived through, certainly not by transcending the reality of our violations, but by refusing to deny their reality as violations. In this project, women have learned that one day of real experience is worth volumes of all of their theories. If we believed existing approaches to human rights, we would not believe we had any. We have learned to look at the reality of women’s lives first and to hold human rights law accountable to what we need, rather than to look at human rights law to see how much of what happens to women can be fit into it, as we are taught to do as lawyers.

In pursuit of this reality-based approach, consider one situation of the mass violation of women’s human rights now occurring in the heart of Europe. In this campaign of extermination, which began with the Serbian invasion of Croatia in 1991 and exploded in the Serbian aggression against Bosnia and Herzegovina in 1992, evidence documents that women are be-

ing sexually and reproductively violated on a mass scale, as a matter of conscious policy, in pursuit of a genocide through war.

In October 1992 I received a communication from an American researcher of Croatian and Bosnian descent working with refugees and gathering information on this war. She said that Serbian forces had exterminated Croats and Muslims in the hundreds of thousands “in an operation they’ve coined ‘ethnic cleansing’”; 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, of which “about twenty are solely rape/death camps for Muslim and Croatian women and children.”¹ She had received reports of the making and use of pornography as part of the genocide. “One Croatian woman described being tortured by electric shocks and gang-raped in a camp by Serbian men dressed in Croatian uniforms who filmed the rapes and forced her to ‘confess’ on film that Croats had raped her.”² She also reported that some United Nations troops were targeting women:

In the streets of Zagreb, UN troops often ask local women how much they cost. There are reports of refugee women being forced to sexually service the UN troops to receive aid. Tomorrow I talk to two survivors of mass rape—thirty men per day for over three months. We’ve heard the UN passed a resolution to collect evidence as the first step for a war crime trial, but it is said here that there is no precedent for trying sexual atrocities.³

Whether or not these practices are formally illegal—and it is easy to say with complacency that rape, prostitution, pornography, and sexual murder are illegal—they are widely permitted under both domestic and international law. They are allowed, whether understood, one man to another, as an excess of passion in peace or the spoils of victory in war, or as the liberties, civil or otherwise, of their perpetrators. They are legally rationalized, officially winked at, and in some instances formally condoned. Whether or not they are regarded as crimes, in no country in the world are they recognized as violations of the human rights of their victims.

This war exemplifies how existing approaches to violations

of women's human rights can serve to confuse who is doing what to whom and thus can cover up and work to condone atrocities. These atrocities also give an urgency, if any was needed, to the project of reenvisioning human rights so that violations of humanity include what happens to women.

The war against Croatia and Bosnia-Herzegovina, and their partial occupation, is being carried out by Serbian forces in collaboration with the Serbian regime in Belgrade, governing what remains of Yugoslavia. This is an international war. All the state parties have adopted relevant laws of nations that prohibit these acts; they are covered in any case by customary international law and *jus cogens*.⁴ Yet so far nothing has been invoked to stop these abuses or to hold their perpetrators accountable. The excuses offered for this lack of action are illuminating.

In this war, the fact of Serbian aggression is beyond question, just as the fact of male aggression against women is beyond question, both here and in everyday life. "Ethnic cleansing" is a euphemism for genocide. It is a policy of ethnic extermination of non-Serbs with the aim of "all Serbs in one nation," a clearly announced goal of "Greater Serbia," of territorial conquest and aggrandizement. That this is a war against non-Serbian civilians, not between advancing and retreating armies, is also beyond question. Yet this war of aggression—once admitted to exist at all—has repeatedly been construed as bilateral, as a civil war or an ethnic conflict, to the accompaniment of much international head scratching about why people cannot seem to get along and a lot of pious clucking about the human rights violations of "all sides" as if they were comparable. This three-pronged maneuver is familiar to those who work with the issue of rape: blame women for getting ourselves raped by men we know, chastise us for not liking them very well afterward, and then criticize our lack of neutrality in not considering rapes of men to be a comparable emergency.

One result of this approach is that the rapes in this war are not grasped as either a strategy in genocide or a practice of misogyny, far less both at once. They are not understood as continuous both with this particular ethnic war of aggression and

with the gendered war of aggression of everyday life. Genocide does not come from nowhere, nor does rape as a ready and convenient tool of it. Nor is a continuity an equation. These rapes are to everyday rape what the Holocaust was to everyday anti-Semitism. Without everyday anti-Semitism a Holocaust is impossible, but anyone who has lived through a pogrom knows the difference.

What is happening here is first a genocide, in which ethnicity is a tool for political hegemony; the war is an instrument of the genocide; the rapes are an instrument of the war. The Bosnian Serbs under the command of Radovan Karadzic do not control the state; their war is against the people and the democratically elected government of Bosnia-Herzegovina. If you control the state and want to commit genocide, as the Nazis did under the Third Reich, you do not need a war. You do it with the state mechanisms at hand. This is being done now, quietly, to Hungarians and Croats in occupied eastern Croatia and in Vojvodina, formerly an autonomous region now annexed to Serbia.⁵ This is virtually invisible to the world.

Now consider the situation of the Albanians in Kosova. They are surrounded; they are within a state. When Serbia moves on them militarily, going beyond the segregation and oppression they suffer now, it may not look like a war to anyone else. It will not cross international borders, the way much international law wants to see before it feels violated. But it will be another facet of the campaign to eliminate non-Serbs from areas targeted for "cleansing," a genocide.

To call such campaigns to exterminate non-Serbs "civil war" is like calling the Holocaust a civil war between German Aryans and German Jews. If and when the reality in Vojvodina comes out, or Albanians are "cleansed," perhaps that too will be packaged for Western consumption as ancient ethnic hatreds, a bog like Vietnam, or some other formulation to justify doing nothing about it.

In this genocide through war, mass rape is a tool, a tactic, a policy, a plan, a strategy, as well as a practice. Muslim and Croatian women and girls are raped, then often killed, by Serbian military

men, regulars and irregulars in a variety of formations, in their homes, on hillsides, in camps—camps that used to be factories, schools, farms, mines, sports arenas, post offices, restaurants, hotels, or houses of prostitution. The camps can be outdoor enclosures of barbed wire or buildings where people are held, beaten, and killed and where women, and sometimes men, are raped. Sometimes the women are also raped after they are killed. Some of these camps are rape/death camps exclusively for women, organized like the brothels of what is called peacetime, sometimes in locations that were brothels before the war.

In the West, the sexual atrocities have been discussed largely as rape *or* as genocide, not as what they are, which is rape as genocide, rape directed toward women because they are Muslim or Croatian. It is as if people cannot think more than one thought at once. The mass rape is either part of a campaign by Serbia against non-Serbia, or an onslaught by combatants against civilians, or an attack by men against women, but never all at the same time. Or—this is the feminist version of the whitewash—these atrocities are presented as just another instance of aggression by all men against all women all the time. If this were the opening volley in a counteroffensive against rape as a war against all women, it would be one thing. But the way it works here is the opposite: to make sure that no one who cares about rape takes a side in *this* war against *these* particular rapes. It does not so much galvanize opposition to rape whenever and wherever it occurs, but rather obscures the fact that these rapes are being done by *some* men against *certain* women for specific reasons, here and now. The point seems to be to obscure, by any means available, exactly who is doing what to whom and why.

The result is that these rapes are grasped in either their ethnic or religious particularity, as attacks on a culture, meaning men, or in their sex specificity, meaning as attacks on women. But not as both at once. Attacks on women, it seems, cannot define attacks on a people. If they are gendered attacks, they are not ethnic; if they are ethnic attacks, they are not gendered. One cancels the other. But when rape is a genocidal act, as it is here, it is an act to destroy a people. What is done to women defines that distinc-

tion. Also, aren't women a people?

These rapes have also been widely treated as an inevitable by-product of armed conflict. Every time there is a war, there is rape. Of course rape does occur in all wars, both within and between all sides. As to rape on one's own side, aggression elsewhere is always sustained by corresponding levels of suppression and manipulation at home. Then, when the army comes back, it visits on the women at home the escalated level of assault the men were taught and practiced on women in the war zone. The United States knows this well from the war in Vietnam. Men's domestic violence against women of the same ethnicity escalated—including their skill at inflicting torture without leaving visible marks. But sexual aggression against Asian women through prostitution and pornography exploded in the United States: American men got a particular taste for violating them over there. This must be happening to Serbian women now.

Rape is a daily act by men against women; it is always an act of domination by men over women. But the role of these rapes in this genocidal war of aggression is a matter of fact, not of ideological spin. It means that Muslim and Croatian women are facing two layers of men on top of them rather than one, one layer engaged in exterminating the other, and two layers of justification—"just war" and "just life." Add the representation of this war as a civil war among equal aggressors, and these women are facing three times the usual number of reasons for the world to do nothing about it.

All the cover-ups ignore the fact that this is a genocide. The "civil war" cover-up obscures the role of Belgrade in invading first Croatia, then Bosnia-Herzegovina, and now in occupying parts of both. A civil war is not an invasion by another country. If this is a civil war, neither Croatia nor Bosnia-Herzegovina is a nation, but they are both recognized as such. In a civil war, aggression is mutual. This is not a reciprocal genocide. Muslims and Croats are not advancing and retreating into and out of Serbia. They are not carrying out genocide against Serbs on their own territories. There are no concentration camps for Serbs in Sarajevo or Zagreb. The term "civil war" translates, in all lan-

guages, as “not my problem.” In construing this situation as a civil war at bottom, the international community has defined it in terms of what it has been willing to do about it.

It is not that there are no elements of common culture here, at least as imposed through decades of Communist rule, meaning Serbian hegemony. It is not that there are no conflicts between or within sides, or shifting of sides in complex ways. It is not that the men on one side rape and the men on the other side do not. It is, rather, that none of these factors defines this emergency, none of them created it, none of them is driving it, and none of them explains it. Defining it in these terms is a smoke screen, a propaganda tool, whether sincere or cynical, behind which Serbia continues to expand its territory by exterminating people and raping women en masse.

The feminist version of the cover-up is particularly useful to the perpetrators because it seems to acknowledge the atrocities—which are hard to deny (although they do that too)—and appears to occupy the ground on which women have effectively aroused outrage against them. But its function is to exonerate the rapists and to deflect intervention. If all men do this all the time, especially in war, how can one pick a side in this one? And since all men do this all the time, war or no war, why do anything special about this now? This war becomes just a form of business as usual.⁶ But genocide is not business as usual—not even for men.

This is often accompanied by a blanket critique of “nationalism,” as if identification with the will to exterminate can be equated with identification with the will to survive extermination; as if an ethnic concept of nation (like the Serbian fascist one) is the same as a multiethnic concept of nation (like the Bosnian one); and as if those who are being killed because of the nation they belong to should find some loftier justification for staying alive than national survival.

Like all rape, genocidal rape is particular as well as part of the generic, and its particularity matters. This is ethnic rape as an official policy of war in a genocidal campaign for political control. That means not only a policy of the pleasure of male power

unleashed, which happens all the time in so-called peace; not only a policy to defile, torture, humiliate, degrade, and demoralize the other side, which happens all the time in war; and not only a policy of men posturing to gain advantage and ground over other men. It is specifically rape under orders. This is not rape out of control. It is rape under control. It is also rape unto death, rape as massacre, rape to kill and to make the victims wish they were dead. It is rape as an instrument of forced exile, rape to make you leave your home and never want to go back. It is rape to be seen and heard and watched and told to others: rape as spectacle. It is rape to drive a wedge through a community, to shatter a society, to destroy a people. It is rape as genocide.

It is also rape made sexy for the perpetrators by the power of the rapist, which is absolute, to select the victims at will. They walk into rooms of captive women and point, “you, you, and you,” and take you out. Many never return. It is rape made more arousing by the ethnic hostility against the designated “enemy,” made to feel justified by the notion that it is “for Serbia,” which they say as they thrust into the women and make them sing patriotic songs.⁷ It is rape made to seem right by decades of lies about the supposed behavior of that enemy—years and years of propaganda campaigns, including in schools, full of historical lies and falsified data. In this effort, rapes and murders carried out by Serbs against non-Serbs are presented to the Serbian population on television as rapes and murders of Serbs by Muslims and Croats. The way in which pornography is believed in the men’s bodies as well as in their minds gives this war propaganda a special potency.

This is also rape made especially exciting for the perpetrators by knowing that there are no limits on what they can do, by knowing that these women can and will be raped to death. Although the orders provide motivation enough, the rapes are made sexually enjoyable, irresistible even, by the fact that the women are about to be sacrificed, by the powerlessness of the women and children in the face of their imminent murder at the hands of their rapists. This is murder as the ultimate sexual act.

It will not help to say that this is violence, not sex, for the men involved. When the men are told to take the women away

and not bring them back, first they rape them, then they kill them, and then sometimes rape them again and cut off their breasts and tear out their wombs.⁸ One woman was allowed to live only as long as she kept her Serbian captor hard all night orally, night after night after night, from midnight to 5:00 A.M. What he got was sex for him. The aggression was the sex.

This is rape as torture as well as rape as extermination. In the camps, it is at once mass rape and serial rape in a way that is indistinguishable from prostitution. Prostitution is that part of everyday non-war life that is closest to what we see done to women in this war. The daily life of prostituted women consists of serial rape, war or no war. The brothel-like arrangement of the rape/death camps parallels the brothels of so called peacetime: captive women impounded to be passed from man to man in order to be raped.

This is also rape as a policy of ethnic uniformity and ethnic conquest, of annexation and expansion, of acquisition by one nation of other nations. It is rape because a Serb wants your apartment. Most distinctively, this is rape as ethnic expansion through forced reproduction. African American women were forcibly impregnated through rape under slavery. The Nazis required Eastern European women to get special permission for abortions if impregnated by German men. In genocide, it is more usual for the babies on the other side to be killed. Croatian and Muslim women are being raped, and then denied abortions, to help make a Serbian state by making Serbian babies.¹⁰

If this were racial rape, as Americans are familiar with it, the children would be regarded as polluted, dirty, and contaminated, even as they are sometimes given comparative privileges based on “white” blood. But because this is ethnic rape, lacking racial markers, the children are regarded by the aggressors as somehow clean and purified, as “cleansed” ethnically. The babies made with Muslim and Croatian women are regarded as Serbian babies. The idea seems to be to create a fifth column within Muslim and Croatian society of children—all sons?—who will rise up and join their fathers. Much Serbian fascist ideology simply adopts and adapts Nazi views. This one is the ultimate achievement of

the Nazi ideology that culture is genetic.

The spectacle of the United Nations troops violating those they are there to protect adds a touch of the perverse. My correspondent added that some United Nations troops are participating in raping Muslim and Croatian women taken from Serb-run rape/death camps. She reports that “the UN presence has apparently increased the trafficking in women and girls through the opening of brothels, brothel-massage parlors, peep shows, and the local production of pornographic films.”¹¹ There are also reports that a former United Nations Protection Force (UNPROFOR) commander accepted offers from a Serbian commander to bring him Muslim girls for sexual use.¹² All this is an example of the male bond across official lines. It pointedly poses a problem women have always had with male protection: who is going to watch the men who are watching the men who are supposedly watching out for us? Each layer of male protection adds a layer to violence against women. Perhaps intervention by a force of armed women should be considered.

Now, the use of media technology is highly developed. Before, the Nazis took pictures of women in camps, forced women into brothels in camps, and took pictures of naked women running to their deaths. They also created events that did not happen through media manipulation. In this war the aggressors have at hand the new cheap, mobile, accessible, and self-contained moving-picture technology. The saturation of what was Yugoslavia with pornography upon the dissolution of communism—pornography that was largely controlled by Serbs, who had the power—has created a population of men prepared to experience sexual pleasure in torturing and killing women. It also paved the way for the use on television of footage of actual rapes, with the ethnicity of the victims and perpetrators switched, to inflame Serbs against Muslims and Croats.¹³ In the conscious and open use of pornography, in making pornography of atrocities, in the sophisticated use of pornography as war propaganda, this is perhaps the first truly modern war.

Although these acts flagrantly violate provision after provision of international law, virtually nothing has been done about

them for well over two years. Now the international machinery seems finally to be lumbering into action, even as more men, women, and children are being liquidated daily. To explain this slow response, it is important to consider that most human rights instruments empower states to act against states, not individuals or groups to act for themselves. This is particularly odd given that international human rights law recognizes only violations of human rights by state actors. In other words, only entities like those who do the harm are empowered to act to stop them. It would have seemed clear after 1945 that states often violate the rights of those who are not states and who have no state to act for them. The existing structure of international law was substantially created in response to this. Yet its architects could not bring themselves to empower individuals and groups to act against individuals, groups, or states when their human rights were violated.¹⁴

This problem is particularly severe for women's human rights because women are typically raped not by governments but by what are called individual men. The government just does nothing about it. This may be tantamount to being raped by the state, but it is legally seen as "private," therefore as not a human rights violation. In an international world order in which only states can violate human rights, most rape is left out. The role of the state in permitting women to be raped with impunity can be exposed, but the structural problem in addressing it remains.

There is a convergence here between ways of thinking about women and ways of thinking about international law and politics. The more a conflict can be framed as within a state—as a civil war, as domestic, as private—the less effective the human rights model becomes. The closer a fight comes to home, the more "feminized" the victims become, no matter what their gender, and the less likely it is that international human rights will be found violated, no matter what was done.¹⁵ Croatia and Bosnia-Herzegovina are being treated like women,¹⁶ women gang-raped on a mass scale. This is not an analogy; far less is it a suggestion that this rape is wrong only because the women belong to a man's state. It identifies the treatment of a whole polity by the treatment of the women there.¹⁷

In the structure of international human rights, based as it is on the interest of states in their sovereignty as such, no state has an incentive to break rank by going after another state for how it treats women—thus setting a standard of human rights treatment for women that no state is prepared to meet within its own borders or is willing to be held to internationally. When men sit in rooms, being states, they are largely being men. They protect each other; they identify with each other; they try not to limit each other in ways they themselves do not want to be limited. In other words, they do not represent women. There is no state we can point to and say, "This state effectively guarantees women's human rights. There we are free and equal."

In this statist structure, each state's lack of protection of women's human rights is internationally protected, and that is called protecting state sovereignty. A similar structure of insulation between women and accountability for their violations exists domestically. Raped women are compelled to go to the state; men make the laws and decide if they will enforce them. When women are discriminated against, they have to go to a human rights commission and try to get it to move. This is called protecting the community. It is the same with international human rights, only more so: only the state can hurt you, but to redress it you have to get the state to act for you. In international law there are a few exceptions to this, but in the current emergency in Bosnia-Herzegovina and Croatia they are of no use. Each state finds its reasons to do nothing, which can be read as not wanting to set a higher standard of accountability for atrocities to women than those they are prepared to be held to themselves.

Formally, wartime is an exception to the part of this picture that exempts most rape, because atrocities by soldiers against civilians are always considered state acts. The trouble has been that men do in war what they do in peace, only more so, so when it comes to women, the complacency that surrounds peacetime extends to wartime, no matter what the law says. Every country in this world has a legal obligation to stop the Serbian aggressors from doing what they are doing, but until Bosnia-Herzegovina went to the International Court of Justice and sued Serbia for

genocide, including rape, no one did a thing.¹⁸ In so doing, Bosnia-Herzegovina is standing up for women in a way that no state ever has. The survivors I work with also filed their own civil suit in New York against Karadzic for an injunction against genocide, rape, torture, forced pregnancy, forced prostitution, and other sex and ethnic discrimination that violates women's international human rights.¹⁹

A war crimes tribunal to enforce accountability for mass genocidal rape is being prepared by the United Nations.²⁰ There are precedents in the Tokyo trials after World War II for command responsibility for mass rape. Beyond precedent, the voices of the victims have been heard in the structuring of the new tribunal. To my knowledge, no one asked Jewish survivors how the trials at Nuremberg should be conducted, nor do I think the women raped in Nanking were asked what they needed in order to be able to testify about their rapes. The issue of accountability to victims has been raised here formally for the first time: How can we create a war crimes tribunal that is accessible to victims of mass sexual atrocity? What will make it possible for victims of genocidal rape to speak about their violations?

The genocidal rapes of this war present the world with an historic opportunity: that this becomes the time and place, and these the women, when the world recognizes that violence against women violates human rights. That when a woman is raped, the humanity of a human being is recognized to be violated. When the world says never again—not in war, not in peace—and this time means it.

Notes

*This lecture also appears in *Mass Rape: The War Against Women in Bosnia-Herzegovina* (Alexandra Stiglmeier, ed., 1994), published by the University of Nebraska Press. Earlier versions of this material were delivered at the United Nations World Conference on Human Rights, Vienna, on June 17, 1993, and at the Zagreb University Law School, Zagreb, on June 25, 1993. The intellectual and research collaboration of Natalie Nenadic and Asja Armanda, all the women of Kareta Feminist Group, and the survivors made this work possible.

1. Letter from Natalie Nenadic to the author from Zagreb, Croatia, Oct. 13, 1992 (on file with the *Harvard Women's Law Journal*).

2. Ibid.

3. Ibid.

4. See Theodor Meron, "Rape as a Crime under International Humanitarian Law," 87 *Am. J. Int'l Law* 424, 424-28 (1993) (rape as a crime against humanity under international law); "Letter from Jordan Paust," 88 *Am. J. Int'l Law* 88 (1994) (rape as genocide and other crimes under customary international law).

5. All otherwise unreferenced information on this war is taken directly from first-person accounts by survivors with whom I have worked, other than the information on Hungarians in Vojvodina, which comes from observations by other survivors.

6. See, e.g., Susan Brownmiller, "Making Female Bodies the Battlefield," in *Mass Rape: The War Against Women in Bosnia-Herzegovina* 180 (Alexandra Stiglmeier, ed., 1994).

7. Similar experiences are reported in Roy Gutman, *A Witness to Genocide*, 64-76, 164-67 (1993).

8. See S. Dzombic, "Go and Give Birth to Chetniks," *Vecernji List*, Nov. 25, 1992.

9. See *Cora McRae v. Joseph Califano*, 491 F. Supp. 630, 759 (E.D.N.Y.), *rev'd on other grounds sub nom. Patricia Harris v. Cora McRae*, 448 US 297 (1980).

10. See Dzombic, *supra* note 8.

11. Nenadic, *supra* note 1.

12. See Investigation Against General McKenzie, *Vecernji List*, Nov. 25, 1992.

13. See Catharine A. MacKinnon, "Turning Rape into Pornography: Postmodern Genocide," *Ms.*, July-Aug. 1993, at 24-30.

14. See generally Louis B. Sohn, "The New International Law: Protection of the Right of Individuals Rather than States," 32 *Am. U.L. Rev.* 1, 9-17 (1982) (outlining the evolution of human rights law after World War II); M. Tardu, *1 Human Rights: The International Petition System* 45 (1985) ("The potential of [divisive postwar] UN debates for conflict escalation was so obvious that all governments became fiercely determined to keep the process under their own control through rejecting individual complaint systems").

15. This insight was first expressed to me by Asja Armanda of Kareta Feminist Group.

16. For an analysis that "in 1991/1992, Croatia is a woman," see Katja Gattin, Kareta Feminist Group, *Where have all the feminists gone?* (1992) (unpublished paper, Zagreb) (on file with the *Harvard Women's Law Journal*).

17. On August 30, 1993, His Excellency Muhamed Sacirbey, ambassador and permanent representative of Bosnia and Herzegovina to the United Nations, brilliantly argued before the United Nations Security Council that Bosnia and Herzegovina is being gang-raped, forced into submission through the use of violence and aggression, including rape, deprived of means of self-defense, and

then treated as if it had been seduced—forced to embrace the consequences and denied legal relief. His Excellency Muhamed Sacirbey, Address at the United Nations Security Council (Aug. 30, 1993) (on file with the *Harvard Women's Law Journal*).

18. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia [Serbia and Montenegro]), 1993 I.C.J. 3 (April 8), reprinted in 32 I.L.M. 888 (1993) (order of provisional measures).

19. *K. v. Radovan Karadzic* 93 Civ. 1163 (S.D.N.Y. 1993).

20. See S.C. Res. 827, UN SCOR, 3217th mtg., UN Dec. S/RES/827 (May 25, 1993); S.C. Res. 808, UN SCOR, 3175th mtg., UN Doc. S/RES/808 (Feb. 22, 1993).

QUESTIONS FOR REFLECTION

1. According to MacKinnon, how does gender-based violence constitute a distinct human rights problem? What factors can you think of that account for why women are at continuing risk for exploitation and abuse?

2. MacKinnon argues that the concept of human rights has been shaped too much by tradition and male power. How would you assess international attempts to enforce accountability for violations of women's human rights? In what ways do you think that human rights law can be changed to more effectively promote and protect the human worth and dignity of women?

3. In what ways is MacKinnon's analysis of genocidal rape similar to, or different from, James Nickel's critique of ethnic cleansing?

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