

The Genocidal Rape of Bosnian Muslim Women during the War in Bosnia and  
Herzegovina

Research dissertation presented in partial fulfilment of the requirements for the degree  
of LLM in International Human Rights Law

QQI (Quality and Qualifications Ireland)

Law School, Griffith College Dublin

Aida Šabanadžović

2016

## Acknowledgments

First of all, I am incredibly grateful to my supervisor, Susan Power, for being the best supervisor I could ever ask for. Her guidance and encouragement were truly a huge help.

I would also like to thank Dr. Fiona Broughton for being a great Programme Director and helping me whenever I needed it.

Finally, I would like to express gratitude to my family who supported me all the way from Sarajevo and particularly my brother, who made my days less lonely. Thank you.

## Table of Contents

<b>Title Page</b> .....	i
<b>Candidate Declaration</b> .....	ii
<b>Acknowledgments</b> .....	iii
<b>Abstract</b> .....	vi
<b>Introduction</b> .....	1
Background to the Thesis.....	1
Structure of the Thesis.....	2
Methodology Used in the Thesis.....	3
Importance of the Thesis.....	4
Research Questions and Following Questions.....	5
<b>Chapter 1: A World War, Stalin and Tito: Yugoslavia’s Emergence as a Prominent European Nation</b> .....	7
1.1 Resistance Movements Within Yugoslavia during the Second World War... 7	
1.2 Bosnia’s Role in the Fighting and Tito’s Final Win.....	10
1.3 The Stalin-Tito Split.....	13
1.4 Nationalism and Separatism Rising within Yugoslavia.....	14
1.5 The End of Tito’s Yugoslavia.....	18
<b>Chapter 2: Political Musical Chairs, New Nations and Bosnia’s Bloody Birth</b> .....	20
2.1 Serbia’s Nationalism and Delusions of Grandeur.....	20
2.2 Slobodan Milošević’s Cunning Rise.....	23
2.3 Croatia and Slovenia’s Secession and Bosnia Becomes an Issue.....	26
2.4 The War Booms in Bosnia and Herzegovina.....	28
2.5 The Fall of Srebrenica.....	32
<b>Chapter 3: The Bosnian Serb Campaign of Genocidal Rape</b> .....	36
4.1 The Creation of the ICTY.....	36

4.2 Sexual Violence during the Bosnian War.....	38
4.3 Rape as a Tool of Genocide.....	40
4.4 Rape Through the <i>Furundžija</i> Case.....	42
4.5 Rape Through the <i>Kunarac</i> Case.....	45
4.6 Genocidal Rape Still Just a Hypothesis.....	47
<b>Conclusion</b> .....	53
Contributions to Existing Research.....	53
Recommendations.....	55
<b>Bibliography</b> .....	57

## **Abstract**

In this dissertation, it was shown that rape was used in the Bosnian war as a genocidal tool by Serb forces against Bosnian Muslim women. A historical narrative was chosen in order to show exactly what led to the war, going back to the Second World War and Yugoslavia's peak. Nationalism, particularly Serb nationalism, was paid attention to as it resurfaced once Yugoslavia started to decline and it became stronger during the war leading to it playing a part in the usage of rape against Bosnian Muslim women. Socio-legal methodology was also used, and there was a focus on the work of the ICTY, particularly its cases involving sexual violence. This study was able to come to a conclusion that the rapes conducted by Serb forces against Bosnian Muslim women could be characterized as genocidal rapes. However, there were no prosecutions for that specific crime and this dissertation highlighted that despite the fact that no court has specifically stated that rape was used as a tool of genocide there were still compelling arguments for framing the rapes committed as a genocidal weapon of war. This dissertation was written in order to provide a new outlook to the crimes committed during the Bosnian war, and to reinforce the statement that the genocide recognized at Srebrenica is not the only genocide that occurred during the war. The aim of this dissertation was to show that the rapes conducted during the war went beyond sexual relief for the perpetrators, and instead were part of a larger campaign that could have been classified as genocide. This dissertation was written in order to highlight the complexity of the Bosnian war, which was illustrated by the historical narrative taken, and how women's rights were violated during the war. The dissertation showed that simply by looking at the definition of genocide commonly accepted by international law, the rapes committed against Bosnian Muslim women could be classified as genocide and should have been prosecuted as such.

## **Introduction**

International law is an area of law that is not yet fully conceptualized. Instead, it is more of a work in progress, and it is constantly defined by international events that trigger its involvement. One of those was the bloody wars that followed the demise of Yugoslavia, particularly the war in the newly formed Bosnia and Herzegovina. It was a complex war, full of intricacies that perhaps may not be fully understandable to an outsider trying to look into the situation. The war lasted for three years, and it led to the creation of an *ad hoc* tribunal, the International Criminal Tribunal for the Former Yugoslavia (ICTY), whose work gave rise to developments in international law. Perhaps it is most infamously known for the Srebrenica genocide, whose classification as genocide is still a source of debate, but there are more layers to the war than what is shown by the media, or by the ICTY. In particular, this thesis argues that genocidal rape, which was not examined by the ICTY, was an act of the genocide committed by Serbs against Bosnian Muslims in the former Yugoslavia. In doing so, the thesis draws on a broad historical narrative to frame the genocidal debate.

## **Background to the Thesis**

Women's rights can often go ignored during wartime. Sexual violence, and more commonly wartime rape is a facet of war that is considered inevitable. It is said that rape in war is a "familiar act with a familiar excuse".<sup>1</sup> The gender politics of this statement, deeply entrenched with toxic masculinity and inequality between the sexes, is a whole other story that would need full attention and may not have legal roots. However, the truth is that the Bosnian war was not an exception to this practice. Instead, women, as well as men, were vastly raped while the war was waging on. There was a specific intent and goal when it came to the rape of a particular ethnicity of women, the Bosnian Muslim women. While it cannot be said that the war was a black and white situation that can be easily explained, this thesis will attempt to form a picture of what led to the persecution of Bosnian Muslim women by the Bosnian Serb forces, with rape being the main tool used. Ultimately this thesis concludes that there was a specific campaign of rape launched by the Bosnian Serb forces with Bosnian Muslim women

---

<sup>1</sup> Krishna R. Patel, 'Recognizing the Rape of Bosnian Women as Gender-Based Persecution' 60 Brooklyn Law Review (1994-1995) 929.

being the victims of it. Furthermore, the final goal achieved is not simply ethnic cleansing, as one might be led to believe having precursory knowledge of the conflict. Instead, it was a tool in the larger campaign of genocide, leading to the rape that was promulgated by the offenders being renamed as “genocidal rape”.

The concept of genocidal rape is not fully realized in international law, despite the fact that it can be most clearly found in the *Akayesu* case at the International Criminal Tribunal for Rwanda (ICTR).<sup>2</sup> In that case, the ICTR concluded that rape was used as an important part of the genocide that was perpetuated against the Tutsi group in Rwanda.<sup>3</sup> While the term “genocidal rape” was never used, it can be deduced from the judgment of the *Akayesu* case. However, this cannot be applied to the Bosnian conflict, as there has not been a judgment by the ICTY where rape has been stated to be a part of a larger campaign of genocide. Notwithstanding the fact that the ICTY was reluctant to openly state that there was genocide in the Bosnian war, the most serious rape charges in the many cases at the ICTY was a conviction of rape as a crime against humanity.<sup>4</sup> That in itself is not a bad thing, as any confirmation that rape in wartime can constitute a serious crime, and a *jus cogens* crime for that matter, is a good precedent. But this thesis argues that the act of rape that was prominent during the Bosnian war was part of a larger genocidal campaign, and thus can be called genocidal rape.

### **Structure of the Thesis**

The thesis is divided into three chapters, all important to create the base for the argument of genocidal rape in the Bosnian war and to establish it. The first two chapters should be viewed through a historical lens, which is necessary to establish the context of genocide. The first chapter examines the creation of Yugoslavia, starting from Second World War and exploring its status under Josip Broz Tito’s leadership. Tito was an important figure whose biggest relevance in this thesis lies in his ability to suppress the nationalism that was present, but silent, in the republics underneath Yugoslavia. The first chapter concludes with Tito’s death, as this can be considered the beginning of the

---

<sup>2</sup> Sandra Fabijanić Gagro, 'The Crime of Rape in the ICTY's and the ICTR's case-law' 60 (2010) Zbornik 1309.

<sup>3</sup> *The Prosecutor v Jean-Paul Akayesu* (Judgment) ICTR-96-4-T (2 September 1998).

<sup>4</sup> *Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković* (Judgment) ICTY-96-23-T & ICTY-96-23/1-T (22 February 2001).

downfall of Yugoslavia. The second chapter gives background to the rise in Serb nationalism, and start of the independence movements of the Yugoslav republics resulting with the Balkan wars. Finally, it covers the Bosnian war in detail from beginning to the end, with attention being paid to the ethnic cleansing that took place throughout it and the Srebrenica genocide. The third chapter introduces the concept of genocidal rape and strives to form an argument around it. The ICTY is introduced and there is a focus on the *Furundžija* and *Kunarac* cases. Eventually, the third chapter illustrates how the mass rape propagated against Bosnian Muslim women was part of a larger genocidal campaign, and it can be characterized as genocidal rape.

### **Methodology Used in the Thesis**

In order to do that, two methodologies have been used: socio-legal and historical. Socio-legal methodology was important for the final act of the thesis, where the arguments for genocidal rape are presented. The ICTY's handling of two specific cases, the *Furundžija* and *Kunarac* cases, are particularly relevant in terms of how they set out the definitions of rape that were used by the ICTY and, more importantly, are applicable to international law itself as rape had not been defined in international law prior to that. These approaches by the ICTY may have well influenced the creation of the International Criminal Court (ICC) and its approach towards cases including rape. By doing so, the question then arises on whether these specific definitions of rape can go beyond their legal status and find footing in society as well. This is particularly relevant to the issue at hand, the one of genocidal rape at the hand of Bosnian Serb forces. The sociological aspect of rape in Bosnian Muslim communities was exploited by the Bosnian Serb forces, and thus it created the idea that rape could be used for a larger cause.

However, the main aspect of the thesis is the historical narrative it has taken to analyse the issue at hand. By devoting much of its body to the creation of Yugoslavia and the war in Bosnia itself, the thesis tried to form a background to the conflict and what led to rape being used as a tool in a genocidal scheme. It was important to understand why the argument for genocidal rape is proposed, instead of rape as a war crime or a crime against humanity. To do so, it was necessary to delve into the mind-set of the offenders, which was primarily based on nationalism. That is where the historical

methodology comes in hand. Social constructionism is also a lens through which the thesis can be looked at, as the way rape was understood by the Bosnian Muslim community, largely influenced by patriarchy, has also shaped the way it was understood, and exploited, by the Bosnian Serb forces. However, social constructionism is in itself a social construct, and thus research based on it may have no ability to change things as there is nothing against the findings would be judged against.<sup>5</sup> Thus, although social constructionism may have a place in this thesis, it is not a methodology that was used as there are findings that are hoping to be presented here and there is a valid reason why the argument at hand was proposed. Instead it was more of a tool used by the author, who has Bosnian Muslim heritage and prior knowledge of the region, to present the thesis, preferably without any kind of bias.

### **Importance of the Thesis**

Women's rights during wartime are often violated, and there is a lack of attention given to them even after a ceasefire has been declared and the war officially ends. The Bosnian war is not an exception to this. Disregarding domestic laws or the situation in Bosnia and Herzegovina itself, the ICTY has not put victims of sexual violence at the foreground of the investigations. That is not to say that there have not been convictions in cases involving sexual violence and rape. Beside the already mentioned *Furundžija* and *Kunarac* cases, there have been several others, like the *Kvočka* case or the *Delalić* case. The *Tadić* case, which is more known for helping classify an international armed conflict for the sake of international humanitarian law, was the first-ever trial involving charges of sexual violence against men.<sup>6</sup> The *Tadić* case was also the first international war crimes trial involving charges of sexual violence.<sup>7</sup> The cases that are mentioned above and are analysed in the body of the thesis, that is the *Furundžija* and *Kunarac* cases, are also considered to be landmark cases.

Notably, the ICTY did not ignore victims of sexual violence, and it is commendable how much protection and guidance was given to witnesses, particularly

---

<sup>5</sup> Tom Andrews, 'What is Social Constructionism?' 11 (1) *Grounded Theory Review* (2012) < <http://groundedtheoryreview.com/2012/06/01/what-is-social-constructionism/> > accessed 1 August 2016.

<sup>6</sup> 'Landmark Cases' (ICTY) < <http://www.icty.org/en/in-focus/crimes-sexual-violence/landmark-cases> > accessed 1 August 2016.

<sup>7</sup> *ibid.*

female witnesses. But if there is one facet of the Tribunal that can be criticized is its reluctance to look at the sexual aspect of the genocide committed in Bosnia. Perhaps this is because the ICTY has only declared that genocide occurred in Srebrenica, based on the *Krstić* case. However, the ICTY does not need to be blamed for that, as the truth is that it is easier to recognize that genocide happened in Srebrenica, but not throughout the entire territory of Bosnia. The evidence that came out of the Srebrenica genocide made it easier to establish the intent to destroy, in whole or in part, the protected group made out of Bosnian Muslims. However, this thesis argues that the genocide was orchestrated on a larger scale than Srebrenica. Its goal is to show that the sexual violence, and most importantly the mass rapes committed against Bosnian Muslim women, was part of a larger campaign that went ignored. While it is not uncommon for women's rights to go ignored during and after war, what happened in Bosnia is particularly heinous and needs to be at least identified, if not properly addressed.

### **Research Question and Following Questions**

Thus, the research question that this thesis poses is the following: Was there a genocidal aspect to the mass rapes conducted by the Bosnian Serb forces towards Bosnian Muslim women? This is the crux of the thesis, to try and explain whether these rapes were not just an inevitable consequence of war; but rather, a tool that was used explicitly by the Bosnian Serb forces to help exterminate the Bosnian Muslim community. From this question several other questions can be derived. First, how can nationalism, and particularly Serb nationalism, be traced back to the beginnings of Yugoslavia? This is where the historical narrative is important, as the history of Yugoslavia helped create the hostilities within these different nationalities that used to live together under one republic. Second, in what ways can the rapes fit within the definition of genocide given by the Genocide Convention or the ICTY Statute? Although genocide is often equated with systematic killing, the acts that comprise genocide are not limited only to murder. The rapes done by the Bosnian Serb soldiers can fit a couple of the acts listed to be part of genocide. Third, did the ICTY approach sexual violence in the Bosnian war from a genocidal angle, and if not, from which angle did it choose to approach these crimes? It has already been established that the ICTY has done some significant progress in terms of international law and rape, much like the

ICTR. However, it remains to be seen if its approach can be fit within the research question this thesis tries to answer.

The thesis in itself will primarily rely on academic articles, particularly for the last chapter which goes into depth of the research question. There will be references to feminist discourse as well, while the first two chapters that are primarily focused with the historical narrative will use more books, rather than articles. The tone of the thesis should be clear and unbiased, or at least an attempt will be made to keep any bias out of the issue. Finally, this thesis hopes to propose a new outlook in regards to the Bosnian war, one that goes hand in hand with international law's view of women's rights and modern feminism within a patriarchal society. By the end of the thesis, the argument, that the rapes endured by Bosnian Muslim women during the war can be characterized as genocidal rape, should be persuasive and compelling.

## Chapter 1

### **A World War, Stalin and Tito: Yugoslavia's Emergence as a Prominent European Nation**

To accurately understand what brought on the Balkan wars of the 90s, one must go back to the beginning, to the existence of Yugoslavia. This chapter will show the creation of Yugoslavia, with focus on the period during Second World War, where the two contrasting groups of Partisans and Chetniks, as well as the nationalist and brutal forces of the Ustashe were fighting against each other, as well as for the freedom of Yugoslavia. This chapter will also introduce the figure of Josip Broz Tito, who is still revered in the nations that used to form Yugoslavia. The chapter will mention the Soviet and Stalin influence on Yugoslavia and Tito, but will primarily focus on Tito himself and his reign over Yugoslavia. The chapter will also refer to the movements of nationalism from Serb and Croat sides that Tito managed to suppress, as well as the establishment of Bosnian Muslims as a nationality, particularly relevant to Bosnia and Herzegovina. Finally, this chapter will make a quick note of Tito's death, as that is when Yugoslavia started to crumble and the consequences of that will be shown in the following chapter.

#### **1.1 Resistance Movements Within Yugoslavia during the Second World War**

Yugoslavia itself can be divided into two periods: the first, from 1918 to 1941, and the second one from 1945 to 1991.<sup>8</sup> The first Yugoslavia is thought of to have been unstable, with a sense of Serb superiority to it<sup>9</sup>. This division between the Serbs and the other nationalities living under Yugoslavia would prove to be significant during the Second World War. Hitler and his forces invaded Yugoslavia in April 1941, effectively putting in complete disarray: he gave southern Slovenia and Dalmatia to Italy, Hungary got Vojvodina, Bulgaria got Macedonia, Kosovo went to Albania and Germany got northern Slovenia.<sup>10</sup> The rising Croatian fascist group, called Ustashe, set up an independent Croatian state in the centre of the country, while what was left of

---

<sup>8</sup> Sabrina P. Ramet, 'Yugoslavia' in Sabrina P. Ramet (ed), *Eastern Europe: Politics, Culture, and Society since 1939* (Indiana University Press 1998).

<sup>9</sup> Vesna Pesić, 'Serbian Nationalism and the Origins of the Yugoslav Crisis' (1996) United States Institute of Peace 1

<sup>10</sup> Ramet (n 8).

Yugoslavia turned into a Serbian puppet state under the administration of Germany.<sup>11</sup> The terror found in Nazi Germany was also palpable in the broken state of Yugoslavia. Immediately lists of Jews and Roma people were drawn up, and anyone sympathizing with the Serb cause was tortured and killed. To counter this, armed resistance organizations were established and Serbs were a focus of that resistance movement.<sup>12</sup>

There were several fighting forces in the broken Yugoslavia. Beside the already mentioned Ustashe, Partisans were also formed, who were a group set up by the Yugoslav Communist Party opposed to the brutality of the Ustashe.<sup>13</sup> The Chetniks also rose, a Royalist Serbian force who joined forces with the Nazis against the Partisans.<sup>14</sup> It could be said that the Partisans were the most important group, as they would come into play in Yugoslavia's resurgence during the second period. Nevertheless the Ustashe and the Chetniks were not to be underestimated either. The Ustashe and their terror driven handling of Serbian villages in Croatia and Bosnia and Herzegovina led Serbs to join the Chetniks or the Partisans.<sup>15</sup> The Ustashe and their behaviour during the Second World War, especially towards the Serbs, were appalling. The concentration camp of Jasenovac is now infamous among the Croats, for its use a torture camp for Serbs, Jews, Roma people and anyone who opposed the fascist Croatian rule.<sup>16</sup> Ethnic Serbs were also expelled from the Croatian state, and the anti-Serb sentiment within the Ustashe was more evident as time went by.

The brutal campaign launched by the Ustashe created issues with the Nazi authorities situated in Germany, as it led to Serbs fleeing anywhere they could, whether that was in Montenegro or in Bosnia, and they took up arms there.<sup>17</sup> This led to the Partisans and Chetniks quickly mobilising and growing to fight the Ustashe forces. The Partisans, who were under the leadership of Josip Broz Tito, a prominent character who would prove to be a central figure in the growth of Yugoslavia, established their headquarters in Užice, situated in western Serbia.<sup>18</sup> Their strength was in keeping up the morale within the soldiers, and they used propaganda to do that. The Užice Republic, as

---

<sup>11</sup> Ramet (n 8).

<sup>12</sup> Misha Glenny, *The Balkans 1804-1999: Nationalism, War and the Great Powers* (2nd ed, Granta Books 2000).

<sup>13</sup> *ibid.*

<sup>14</sup> Ramet (n 8).

<sup>15</sup> Glenny (n 12).

<sup>16</sup> *ibid.*

<sup>17</sup> *ibid.*

<sup>18</sup> *ibid.*

the first Partisan base was known,<sup>19</sup> functioned very well, with a set up postal system, cinemas, dance halls, a founded newspaper aptly called *The Struggle (Borba)* etc.

The Chetniks worked as a contrast to the Partisans, although there was no animosity between the two groups. In general, the Partisans were a stronger military force than the Chetniks simply because they had better tactics.<sup>20</sup> Wherever Tito wanted the Partisans to go, they would go. On the other hand, Chetnik forces were tied to specific villages in Serbia. They mainly used defensive tactics, and they were not particularly organized.<sup>21</sup> The biggest contrast between the two forces was that there was a clear devotion within the Partisan forces to Tito, which can definitely be attributed in some way to the propaganda and sense of camaraderie that was enforced within the Partisans. Tito's greatest decision was to thoroughly organize the Partisans and unite them all under a certain ideology.<sup>22</sup>

The Chetniks, on the other hand, were completely disorganized. There was no sense of unity, as they there were all kinds of people within the Chetniks, some anti-German, some collaborating with the Germans etc. The Chetniks did boast a stronger support from Serbian peasants, perhaps due to the intense pro-Serb feel in the movement. The Chetniks, led by Dragoljub Mihailović, worked for the 'biological survival' of Serbs and the notion to create a homogenous Greater Serbia. The Chetniks worked on the belief that they were fighting for the survival of the Serb race. Considering the atrocities committed by the Ustashe on the Serbian population, it might have not been an exaggeration after all as the Ustashe were effectively terrorizing Serbs throughout Yugoslavia. In terms of war tactics, the Partisans were not that extreme. They welcomed Croats and Muslims joining them, which was impossible with the Chetniks. The whole "us v them" way of thinking within the Chetniks led to events where whenever Chetniks would encounter Croats or Muslims, one side would usually end up destroyed.<sup>23</sup> The difference between the ideologies of these two groups would prove to be a turning point in the relation between them as the war went on.

By the end of October 1941, any hope of the Chetniks and the Partisans working together was long gone. Any agreements that were established before became fruitless

---

<sup>19</sup> Glenny (n 12).

<sup>20</sup> *ibid.*

<sup>21</sup> *ibid.*

<sup>22</sup> Louis Sell, *Slobodan Milosevic and the Destruction of Yugoslavia* (Duke University Press 2002).

<sup>23</sup> *ibid.*

and attempts to negotiate or to find a common ground ended in arguments.<sup>24</sup> It was then that it became clear that the Partisans were still dedicated to fighting back against the Germans and the Serbian puppet regime, while the Chetniks had become unstable and were looking for a way to give up the fight against the Germans and instead focusing their forces against the Partisans.<sup>25</sup> The tensions were so intense that Hitler issued an order that “one hundred Serbs would be killed for the death of a single German and fifty if a German was wounded”.<sup>26</sup> However, the Germans characterized the tensions as a single Serbian uprising, without seeing the technicalities of the relationship between the Chetniks and the Partisans. Any calls by Tito for combined action against the Germans were unfruitful. Mihailović felt that it was the Chetniks that accurately portrayed the Serbian fight for survival. However, that is not to say that Mihailović underestimated the Partisans. Both parties were looking to the future; the Chetniks, with support from the United Kingdom, were convinced the Allies would get the ultimate victory, and thus the Chetniks did not mind being under a feeble regime until that victory came. On the other hand, there was a fear that the Communist-led Partisans would become so strong that, with the support of Soviet Russia, they might end up controlling Yugoslav politics after the war.<sup>27</sup> By December 1941 the Partisans had moved from Užice to south-eastern Bosnia, while the Chetniks had gone back to their villages, and Mihailović retreated to eastern Bosnia.<sup>28</sup>

## 1.2 Bosnia's Role in the Fighting and Tito's Final Win

The strenuous relationship between the two forces did not help the overall picture of Yugoslavia at that time. Bosnia had become part of the Independent State of Croatia, which was led by a Croat nationalist who considered the Bosnian Muslims as “Croats of the Muslim faith”,<sup>29</sup> thus denying them of any kind of national identity that the Bosnian Muslims might feel connected to. The Ustashe, with some Muslims working with them, were always on the lookout to assassinate Serbs. The Bosnian Serbs eventually joined the Chetniks and in August 1942, fuelled by a need for revenge,

---

<sup>24</sup> Jozo Tomasevich, *War and Revolution in Yugoslavia, 1941-1945: The Chetniks* (Stanford University Press 1975).

<sup>25</sup> *ibid.*

<sup>26</sup> Glenny (n 12).

<sup>27</sup> *ibid.*

<sup>28</sup> *ibid.*

<sup>29</sup> *ibid.*

stormed the city of Foča whose population was primarily Muslim.<sup>30</sup> In Foča alone between two and three thousand Muslims were killed, including children and women, who were raped before they were murdered.<sup>31</sup> Violence in Yugoslavia was at an all-time high, with many attacks coming from a cycle of Serb massacre conducted by Ustashe followed by a Chetnik counterattack. However, the Foča attack was what spurred the creation of a movement for the protection of Bosnian Muslims. The National Salvation, an umbrella organisation with several representatives of the various Muslim societies in Bosnia and Herzegovina, was created.<sup>32</sup> Its main goal was “the joint cooperation of the entire population of Bosnia and Herzegovina (sic) and the complete unity of Muslims, Orthodox and Catholics”.<sup>33</sup> The autonomous character of this movement was not accepted by the other parties involved in Yugoslavia, and the Ustashe in particular were hostile against them. This reluctance to join the autonomous movement may have been spurred by the nationalist thought that the Bosnian Muslims were actually Croats.

The Ustashe were right in categorizing the movement as having autonomous thoughts, as the National Salvation also fought for an autonomous Muslim military force. On 1 November 1942 there was even a direct plea to Hitler himself for Bosnian autonomy.<sup>34</sup> The Memorandum presented to the Führer seemed to mainly blame the Ustashe and its leader, Ante Pavelić, for the civil war that was brewing in Yugoslavia. Ultimately, the Memorandum sought independence for Bosnia and the Bosnian Muslims, especially after the German victory. This movement was supported by Heinrich Himmler, who viewed the Islamic world as an ally against the British Empire, and thus, in February 1943, Hitler allowed for an SS division to be made up of Bosnian Muslims.<sup>35</sup> However, not even this support managed to protect the Bosnian Muslims from the terror propagated by the Ustashe.

Ante Pavelić, the leader of the Ustashe, acted against anyone who was not a Croat, or not seen as a Croat in any way, with genocidal intent.<sup>36</sup> The Jasenovac concentration camp, which was categorized as a “work camp” by a government-

---

<sup>30</sup> Glenny (n 12).

<sup>31</sup> *ibid.*

<sup>32</sup> Marko Attila Hoare, *The Bosnian Muslims in the Second World War: A History* (Oxford University Press 2013).

<sup>33</sup> *ibid.*

<sup>34</sup> *ibid.*

<sup>35</sup> *ibid.*

<sup>36</sup> Glenny (n 12).

controlled newspaper, was anything but.<sup>37</sup> The basic goal of Jasenovac was to work for Croatia and for the Croats, which was deemed to be an extraordinary task for the Jews and Roma people whose social status was seen to be below the Croats. Anyone seen as a traitor by the Ustashe was sent to Jasenovac where they worked day and night by building “the great industrial complex” on the Sava river, situated 97 kilometres south-east of Zagreb.<sup>38</sup> Jasenovac played a big part in the overall plan of exterminating one and a half million Balkan Jews, although it had a definite focus on Serbs as well. Pavelić was set on resolving the Serb issue, and his plan was that a third of the two million Serbs in the puppet regime would be expelled, a third would go through a process of assimilation by converting from Orthodox Christianity to Catholicism, and a third would be killed.<sup>39</sup> That is not to say that Bosnian Muslims or other Croats were spared from the horror of Jasenovac. Anyone deemed a traitor was sent to the camp. In January 1942, several People’s Liberation Movement (NOP) activists from Brčko, mostly Muslims and Serbs, were sent to Jasenovac without trial.<sup>40</sup>

Ultimately, Pavelić’s extermination project was directed towards the Serbs and it can be traced back to the Legal Decree for the Defence of the People and State, published on 17 April 1941.<sup>41</sup> This decree was essentially a form of protection of the interests of the Croat nation, as well as allowing for retroactive prosecution and making it possible non-Croats to be accused of high treason for the smallest of offences. The target of these high treason cases included Serbs who were stigmatized on the grounds of culture and confession.<sup>42</sup> Due to the focus on Serbs from the Ustashe, some Yugoslav Jews were able to escape death. Still tens of thousands of Jews living within Croatia and Bosnia and Herzegovina perished. The exact figure is not known. In 1945 Marshal Tito claimed that 1,700,000 people died in the war,<sup>43</sup> with some reporting that one million of those died in Jasenovac alone. Considering that it is known that the majority of the Jasenovac victims were Serbs, this figure did not help in diminishing the tension between Serbs and Croats, and would pop up in the years to come.

---

<sup>37</sup> Glenn (n 12).

<sup>38</sup> *ibid.*

<sup>39</sup> *ibid.*

<sup>40</sup> Hoare (n 32).

<sup>41</sup> Glenn (n 12).

<sup>42</sup> *ibid.*

<sup>43</sup> *ibid.*

The liberation of Belgrade by the Partisan forces in October 1944 is what gave Tito the leverage against the Chetniks.<sup>44</sup> Meanwhile, Pavelić's idea of the Independent State of Croatia died on 7 May 1945, when Ustashe forces were surrounded by British and Partisan troops on the Austrian border.<sup>45</sup> In Serbia Mihailović, the leader of the Chetniks, was eventually executed in 1946. The rest of the Chetniks became fugitives. The concentration camps used by the Nazi and the Ustashe were given to the communists which led to mass interments and mass executions. This led to an economic downturn due to many young men being imprisoned.<sup>46</sup> During that period the communists were thriving due to the fact that they were the only national Yugoslav party.<sup>47</sup> Propaganda was effectively used, with anti-communists subjected to vilification by the media and opposition newspapers facing strong censorship, radio was also used as a tool to expose critics of the government as supposed traitors or war criminals.<sup>48</sup> A sum of all these factors led to the KPJ winning the elections of November 1945, receiving 90 per cent of the vote with a turnout of 90 per cent in the region.<sup>49</sup> A constituent assembly convened which, on 31 January 1946, was transformed into the peoples' assembly of the Federative Republic of Yugoslavia (FRY).<sup>50</sup> It would comprise of six republics: Bosnia and Herzegovina, Croatia, Serbia, Slovenia, Macedonia and Montenegro. They would all be equal in status. Belgrade was named the capital, although there were thoughts of making Sarajevo the capital, due to its multi-ethnic appeal, but ultimately Belgrade was chosen as a way to appease the Serbs who still felt resentment after the Second World War.<sup>51</sup>

### 1.3 The Stalin-Tito Split

However, one cannot talk about post-war Yugoslavia without mentioning the Soviet influence over the creation of the state, as well as the relationship between Stalin and Tito. This cooperation would come to an end by 1948. Some claim that the split was inevitable as Yugoslavia led by Tito was too independent to be controlled by

---

<sup>44</sup> Glenny (n 12).

<sup>45</sup> *ibid.*

<sup>46</sup> *ibid.*

<sup>47</sup> R. J. Crampton, *The Balkans Since the Second World War* (Routledge 2014).

<sup>48</sup> *ibid.*

<sup>49</sup> *ibid.*

<sup>50</sup> *ibid.*

<sup>51</sup> *ibid.*

Moscow, although it has been pointed out that this notion, and other supposed causes of the split, may have simply been fabricated by Belgrade.<sup>52</sup> Ultimately while Tito always tried to cooperate with Stalin and connect Yugoslavia's policies to the Soviet Union's, he was still actively pursuing his own agenda.<sup>53</sup> Stalin did not approve of Tito's passion. It is this clash of two egos that led to the downfall of the Yugoslav-Soviet alliance.

The definite split between the Soviet Union and Yugoslavia happened on June 28, 1948, when Yugoslavia was expelled from the Communist Information Bureau (Cominform), the communist answer to the Marshall plan.<sup>54</sup> It cannot be said that that precise date was not chosen on purpose, as it is one of Yugoslavia's national days (nowadays Serbian) called Vidovdan, or St. Vitus Day.<sup>55</sup> Not only that, but that date also signifies the anniversary of battle of Kosovo in 1389 against the Ottomans, the assassination of Archduke Franz Ferdinand in Sarajevo and the creation of Yugoslavia's modern constitution.<sup>56</sup> This Battle of Kosovo was a sensitive subject to the most ardent Serb nationalists as well, as that is when the medieval Serbian kingdom lost to the Ottoman Turks.<sup>57</sup> This resentment against the Ottomans would later show up in the handling of Bosnian Muslims, as due to their religion Serb nationalists see them as Turks as well.<sup>58</sup> After the break-up Tito adopted Stalin's methods of denunciation and political persecution, and anyone who was believed to be Stalinist or showed any kind of anti-Tito feelings were either arrested or worse: were sent to the concentration camp known as *Goli otok*, situated in an infamous island in the Adriatic Sea.<sup>59</sup>

#### **1.4 Nationalism and Separatism Rising within Yugoslavia**

Once the Soviet Union was out of the picture, Yugoslavia stood on its own as an independent European nation. Tito managed to preserve the country's independence and still fought for Soviet recognition of Yugoslavia as an independent and socialist

---

<sup>52</sup> Vojin Majstorović, 'The Rise and Fall of the Yugoslav-Soviet Alliance, 1945-1948' (2010) 16 University of Toronto, 132.

<sup>53</sup> *ibid.*

<sup>54</sup> *ibid.*

<sup>55</sup> *ibid.*

<sup>56</sup> Glenny (n 12).

<sup>57</sup> Pesić (n 9).

<sup>58</sup> *ibid.*

<sup>59</sup> Glenny (n 12).

country.<sup>60</sup> Tito also managed to create a new form of socialism, one that was completely distinct from the Soviet Union's idea of it. Freedom of expression was introduced to some extent, as there were still people being sent away to *Goli otok*, but due process was introduced, although its standards would not be up to par to the due process seen in democratic nations today.<sup>61</sup> Popular representation was also allowed at the level of factory and commune, and the political dominance of the Yugoslav Communist Party, eventually renamed the League of Communists, was diminished, although not completely removed.<sup>62</sup> Perhaps one of Tito's biggest accomplishments was founding the movement of nonalignment, wherein he put Yugoslavia's place between the East and the West, without having it aligned with either one, but maintaining contact with both.<sup>63</sup> Nonalignment made Yugoslavia's profile even bigger, and it allowed for its living standards to rise in comparison to its neighbours, particularly other communist countries. Yugoslavia was respected throughout the world, and Tito was seen as a great leader to an admirable country.

However, some problems still remained. In the 1960s there was a visible Serb-Croat discord within the League of Communists, as there were accusations of Serbs altering the boundaries of the republics.<sup>64</sup> Serbs and Croats had been fighting for a while now, with issues like the language coming up. These inner tensions would last for years, and would lead to separatist movements within the respective republics, with a rising movement in the seventies in Croatia considering the prospect of a 'sovereign national state of Croatia'.<sup>65</sup> Tensions escalated in November 1971 when there was a strike at Zagreb University over the Republic's will to retain foreign currency. By that point Tito had had enough. On 2 December 1971 he accused the Croatian leaders of pandering to nationalism and separatism.<sup>66</sup> The following year Tito set in motion constitutional changes that would make Vojvodina and Kosovo autonomous regions within the Republic of Serbia.<sup>67</sup>

Although this could have been seen as one of Tito's crises, there was a feeling of separation going on within the nationalities in Yugoslavia. Slovenia and Croatia being

---

<sup>60</sup> John C. Campbell, 'Tito: The Achievement and the Legacy' (1979-1980) 58 *Foreign Aff.*, 1045.

<sup>61</sup> *ibid.*

<sup>62</sup> *ibid.*

<sup>63</sup> *ibid.*

<sup>64</sup> Richard West, *Tito and the Rise and Fall of Yugoslavia* (Faber and Faber 1994).

<sup>65</sup> *ibid.*

<sup>66</sup> *ibid.*

<sup>67</sup> *ibid.*

neighbours with Austria and Italy provided them with more tourists, but also gave them an inflated sense of superiority compared to, say, Macedonia or Bosnia and Herzegovina. Most of it came from the Westernization of Croatia and Slovenia, as Yugoslavs from the south and the east were seen as primitive.<sup>68</sup> The Slovenes and Croats would feed into this superiority complex and eventually they argued that they were being forced into maintaining the poorer parts of the country.<sup>69</sup>

Even in Bosnia and Herzegovina there was a rise in nationalism, particularly within Bosnian Muslims who were often ignored by Serbs and Croats. In 1963 the Muslims were officially recognized by as a separate nation by Yugoslavia in the new constitution,<sup>70</sup> but the biggest achievement happened five years later when the Bosnian League of Communists recognized the Muslims as a constituent nation of Yugoslavia.<sup>71</sup> Finally the Bosnian Muslims had a way to differentiate themselves from the Serbs and Croats. This was particularly important because the Bosnian Muslims were often seen differently compared to Serbs and Croats, in a more unfavourable way. Even Tito was aware of the differences between Bosnian Muslims and other nationalities within Yugoslavia, before Yugoslavia was officially formed. In an underground meeting in October 1940 he did not contradict Miroslav Djilas' rejection of the idea that Bosnian Muslims were an "ethnic group", which was proposed by a Muslim Communist.<sup>72</sup> During that period Muslims were not defined by any kind of ethnicity, but were still seen as a community with equal rights to Serbs and Croats. In a parliamentary speech in January 1946 a Serb Communist from Bosnia declared that the "Muslims of Bosnia-Herzegovina, as a separate—but, for the most part, still nationally undeclared—Slavic ethnic group, [were] equal to Serbs and Croats".<sup>73</sup>

Tito was largely able to rely on the Bosnian Muslim religious organization, the Islamic Community in Yugoslavia, as it was managed by leaders who were recruited from Partisans who believed in Titoist brotherhood and unity.<sup>74</sup> However, this kind of

---

<sup>68</sup> West (n 64).

<sup>69</sup> *ibid.*

<sup>70</sup> Glenny (n 12).

<sup>71</sup> *ibid.*

<sup>72</sup> Mark Pinson, 'The Muslims of Bosnia-Herzegovina Under Austro-Hungarian Rule, 1878-1918' in Mark Pinson (ed), *The Muslims of Bosnia-Herzegovina: Their Historic Development From the Middle Ages to the Dissolution of Yugoslavia* (2nd ed, Harvard University Press 1996).

<sup>73</sup> *ibid.*

<sup>74</sup> Vjekoslav Perica, *Balkan Idols: Religion and Nationalism in Yugoslav States* (Oxford University Press 2002).

patriotic and pro-Yugoslav leadership faced a challenge in the late sixties and early seventies, in the form of the Bosnian League of Communists mentioned before, as well as the outlawed, and controversial, “Young Muslims” organization.<sup>75</sup> Before 1968 Bosnian Muslims, or rather Yugoslav Muslims, were not seen as a nationality unlike the other constituent nations in Yugoslavia. Meanwhile, Catholic churches all over Yugoslavia preached that the lands of Bosnia and Herzegovina were undoubtedly Christian, making Muslims aliens in their own lands.<sup>76</sup> Finally, in February 1968 the Central Committee of the League of Communists of Bosnia and Herzegovina declared that Bosnian Muslims be granted the status of a nationality as recognized by the federal constitution.<sup>77</sup> This new ethnic nation was called “Muslims”, meaning that their religion defined their nationality as well. Now, Bosnia and Herzegovina was seen as a state of Croats, Serbs and “Muslims by nationality”.<sup>78</sup> Although this was embraced by the majority of Muslims, some criticized the fact that there was no separation of religion and nationality.<sup>79</sup> Despite that, the growing nationalism in Bosnia and Herzegovina was appeased with this declaration of the status of nationality for Muslims. The Muslims in Bosnia would also go through a cultural renaissance, while the Bosnian Croats got rid of the stigma of having collaborated with the Ustashe.<sup>80</sup> On the other hand, the presence of Bosnian Serbs dwindled down giving rise to Bosnian Serb nationalism that would be reignited two decades later.<sup>81</sup>

Thus, separatism was on its rise, but Tito somehow managed to handle it. One of his greatest achievements was managing to unify the country after a tumultuous war and keeping it united for thirty-five years. However, when his tactics towards the reconciliation of the Croat and Serb nationalist movements are properly examined, it can be said that he did not act in the wisest of manners. Zagreb and Belgrade were often played off against each other, with the ultimate goal not being to try to find common ground, but for Tito’s authority to be further established. With his hard grip on these

---

<sup>75</sup> Perica (n 74).

<sup>76</sup> *ibid.*

<sup>77</sup> *ibid.*

<sup>78</sup> *ibid.*

<sup>79</sup> *ibid.*

<sup>80</sup> Hoare (n 32).

<sup>81</sup> *ibid.*

two movements, he sent them underground and when they would emerge later after Tito's death, they would have lost most of its liberal characteristics.<sup>82</sup>

### 1.5 The End of Tito's Yugoslavia

Tito clearly enjoyed being the face and the leader of Yugoslavia, and he at some point it verged into pure megalomania.<sup>83</sup> Tito enjoyed all kinds of luxurious and costly things, he had no qualms accepting gifts from all over Yugoslavia and above, and he had a gorgeous villa on the Adriatic island of Brioni, where he even had his own zoo.<sup>84</sup> His authority was upheld in the constitution, wherein it was said that no elective office could be held for longer than two terms, with 'comrade' Tito being the only exception, and that it was done against his will.<sup>85</sup> While making a show that this absolute power being granted for life was also a burden for him, Tito made of himself somewhat of a mystical figure for all of Yugoslavia.<sup>86</sup> The more he was sure of his power, the more he found himself enjoying solitude and finding solace in his numerous properties scattered all over Yugoslavia. Finally, after some time spent in hospital, on 4 May 1980, Tito passed away in Ljubljana.<sup>87</sup> His funeral sent the whole country in mourning and attracted political leaders all over the world. Questions of Yugoslavia's economy, political stability and Tito's political legacy were immediately brought up at his funeral.<sup>88</sup> Yugoslavia was on the brink of a new era, one that would bring it to its knees.

Thus, it can be seen throughout this Chapter that nationalism was always a presence even from the creation of Yugoslavia. The idea of a homogenous Greater Serbia can be traced back to the Second World War. Croats and Serbs clashing is not a new concept, and the cause of Muslims from Bosnia only gained visibility in the late sixties. Tito was a charismatic ruler, whose influence on Yugoslavia was immeasurable. His greatest feat was suppressing the separatist notions that arose in the seventies. But Tito was not immortal, and as soon as he passed away the cogs in the machine that was Yugoslavia were on the brink of falling out. Nationalism was always present, even

---

<sup>82</sup> Glenny (n 12).

<sup>83</sup> Campbell (n 60).

<sup>84</sup> Glenny (n 12).

<sup>85</sup> *ibid.*

<sup>86</sup> *ibid.*

<sup>87</sup> Campbell (n 60).

<sup>88</sup> Glenny (n 12).

when Yugoslavia was striving. The Bosnian Muslims had to fight to get recognition, and still fell behind the Croats and the Serbs. The idea of a Greater Serbia has been present since the Second World War and the idea that Bosnia should be partitioned between Croatia and Serbia, or that it does not exist as a nation, was known as well. Thus, the notion of superiority over Bosnian Muslims, particularly by Serbs, has always existed.

## Chapter 2

### **Political Musical Chairs, New Nations and Bosnia's Bloody Birth**

Only a decade after Tito's death would Yugoslavia see its demise with bloody wars, particularly in Croatia and Bosnia and Herzegovina. This chapter will focus on nationalism, with specific attention given to Serbia and its handling of the situation in Kosovo. The chapter will introduce the figure of Slobodan Milošević, who would prove to be a fatality for Yugoslavia, and his rise to power. The chapter will also mention the movements for independence found in Croatia and Slovenia. It will also show the conflicts within the leaders of the three nationalities residing in Bosnia and Herzegovina. With one quick stop to the short Slovenian war, and the longer Croatian one, the chapter will delve into the Bosnian war, which almost ruined the newly formed country. The chapter will show that there was a campaign of ethnic cleansing propagated by the Bosnian Serbs against Bosnian Muslims, and, finally, the chapter will reveal the ultimate devastating act of the war, the Srebrenica genocide. It is in this chapter that the actions that led to the crux of this thesis are introduced. This chapter reveals the events that led to the mass rapes of Bosnian Muslim women, whose characterization as an act of genocide will be seen in the following chapter.

#### **2.1 Serbia's Nationalism and Delusions of Grandeur**

Nationalism, a topic that would be at everyone's mouth in the nineties, commenced a series of events all over Yugoslavia after Tito's death. In Kosovo the situation escalated in March 1981, not even a full year after Tito's death. Albanian students in Priština rioted due to poor food served to them in university canteens, but the protests soon took a political turn.<sup>89</sup> The Kosovo Albanians wanted equality with the other nationalities in Yugoslavia, and they demanded that the Socialist Autonomous Province of Kosovo was granted the status of a republic.<sup>90</sup> The protests were soon suppressed, but they had a lingering effect in Kosovo. This request for Kosovo to become a republic was not received well within Serbia and Macedonia. Serbia was completely against it, as it would mean Kosovo would technically secede from Serbia,

---

<sup>89</sup> Glenny (n 12).

<sup>90</sup> *ibid.*

and it was thought that Kosovo gaining any kind of republican status would create a backlash of Serbian nationalism.<sup>91</sup> On the other hand, Macedonia also had a large Albanian minority and thus there were fears that a domino effect might be created due to the uprising of Kosovo Albanians. The federal authorities prevented any kind of contacts between Kosovo Albanians and Albania itself.<sup>92</sup> However, it did not give in to Serbia's request for more control from Belgrade, and instead put pressure on the Kosovo party to suppress any kind of Albanian nationalism.<sup>93</sup> While a minority in Serbia, with help from the Serbian media, tried to paint a picture of Serbs being prosecuted by Albanians in Kosovo, this was not true.<sup>94</sup> In reality, the situation in Kosovo was relatively peaceful, without any kind of nationalist violence.

The situation in Serbia, however, was wildly different. Nationalism was on the rise, and it reached a peak on 24 September 1986.<sup>95</sup> On that day Serbian academics from the Serbian Academy of Sciences (SANU) published excerpts of the Memorandum, as it became known, in *Večernje Novosti*, a newspaper from Belgrade that was widely circulated.<sup>96</sup> In these excerpts the academics lamented the position of Serbia and Serbs after the Second World War and maintained that their existence itself was endangered. They were not only speaking for Serbs from Serbia, but also Serbs in Kosovo and Croatia who, they claimed, were being prosecuted simply for their nationality. It also said that were being economically and politically discriminated by Croats and Slovenes,<sup>97</sup> which ties back to the distance between the western parts of Yugoslavia and the eastern. The Memorandum even alleged that Serbs in Kosovo were facing the threat of genocide, and that there was the threat of Serbia's greatest defeat since 1804, the year when the Serbs liberated themselves from the Ottoman Empire.<sup>98</sup> While this seemed to be simple concern for fellow Serbs, some have interpreted it as a blueprint for the idea of a Greater Serbia.<sup>99</sup> The Memorandum was set against Yugoslavia, claiming that the country was collapsing and that forty percent of Serbs had been left "languishing beyond the frontiers of the motherland".<sup>100</sup> The Memorandum claimed that Tito was the

---

<sup>91</sup> Glenny (n 12).

<sup>92</sup> *ibid.*

<sup>93</sup> *ibid.*

<sup>94</sup> *ibid.*

<sup>95</sup> Laura Silber and Allan Little, *The Death of Yugoslavia* (2nd ed, Penguin Books and BBC Books 1996).

<sup>96</sup> *ibid.*

<sup>97</sup> *ibid.*

<sup>98</sup> Silber and Little (n 95).

<sup>99</sup> Stojan Cerović, 'The Rise of Serbian Nationalism' (1993-1994) 26 NYU Int'l L & Pol 527.

<sup>100</sup> Silber and Little (n 95).

leader of a campaign of conspiracy by Slovenia and Croatia. It would be easy to dismiss this piece of text, but the truth is that SANU was very influential as it existed apart from the Communist Party.<sup>101</sup> It did not help that the Memorandum was defended by Dobrica Ćosić, a writer who was seen as the father of the Serb nation.<sup>102</sup> It is true that communists preferred to ignore these kinds of national problems, hoping they would simply go away, and Tito was guilty of that kind of attitude as well.<sup>103</sup> Still, it cannot be entirely said that the Memorandum created nationalism in Serbia; instead, it promoted conspiracy theories that were whispered among Serbs, helped foster an air of hostility against Yugoslavia in Serbia and gave more fodder to the notion of victimization of Serbs.

The Memorandum was not received positively by the majority in Serbia.<sup>104</sup> Ivan Stambolić, the President of the Presidency of Serbia, was reportedly shocked, despite the fact that he had heard reports by the secret police that SANU was involved in some kind of secret project. He had assumed that that project would be of an economic nature. Stambolić was highly critical of the Memorandum calling it “Yugoslavia’s obituary”,<sup>105</sup> and he was not entirely wrong, as the Memorandum can be seen as the beginning of the end for the pro-Yugoslavian attitude within Serbia. Stambolić was very much in favour of Yugoslavia and of Serbia staying within Yugoslavia and he warned SANU that “without Yugoslavia, the Serb nation is condemned to dismemberment”.<sup>106</sup> Still, Stambolić was in a tenuous situation himself. He was seen as a Serbian nationalist by the other Yugoslav republics, particularly Croatia and Slovenia, while in Serbia he was seen as harmless and inoffensive.<sup>107</sup> It did not help that the Memorandum itself criticized his leadership. The Memorandum was highly criticized by Serbian media, as well as throughout the federation. Communists universally condemned the document, including within the Serbian League of Communists, because nationalism was not seen as having any role within communism. However, there was one notorious figure that did not condemn the document publicly, and whose silence was definitely felt. That was

---

<sup>101</sup> Silber and Little (n 95).

<sup>102</sup> *ibid.*

<sup>103</sup> *ibid.*

<sup>104</sup> *ibid.*

<sup>105</sup> Glenny (n 12).

<sup>106</sup> *ibid.*

<sup>107</sup> Silber and Little (n 95).

Slobodan Milošević, who had been the President of the Serbian League of Communists since May 1986.<sup>108</sup>

## 2.2 Slobodan Milošević's Cunning Rise

Milošević would prove to be a central figure in the Balkan wars flaring up in the nineties. In doing so he used Serbian nationalism as his biggest tool. Thus it is not surprising that he did not outright condemn the Memorandum. In fact, he was being cautious during that period as he was preparing a strategy that would overthrow Stambolić which came “from a position of strict adherence to socialist orthodoxy on the surface combined with a powerful, subliminal appeal to Serbian nationalism”.<sup>109</sup> This culminated with the Eighth Session of the Serbian League of Communists. But before that, Milošević used Kosovo and its perilous situation with Serbia as a tool to achieve his goal while maximizing his nationalist stance. On April 24, 1987 Milošević visited Kosovo Polje instead of Stambolić. Milošević witnessed a protest and as he watched the Kosovar Serb protesters he yelled at them: “No one should dare to beat you”, a sentence that would go on to become a Serb rallying call.<sup>110</sup> Milošević helped the conflict between Kosovo Serbs and Kosovo Albanians become even stronger, and he became a mythical figure for Kosovo Serbs. They had chosen him over Stambolić, and Milošević’s message would soon be broadcasted all over Serbia and his image as a potential leader of Serbia started to take root. It all escalated in the fall of 1987, starting with the killing of a Serb soldier by an ethnic Albanian. Although he was not the only victim, his death turned him into a martyr and it was seen as an act of Albanian separatism against Serbia and Serbs.<sup>111</sup> Anti-Albanian feelings were on the rise, and Milošević was quick to take advantage of them. He conspired to get a member of the Serbian Party kicked out, named Dragiša Pavlović, who was close to Stambolić. But it was at the Eighth Session that Stambolić was dealt with the final blow.

The Eighth Session of the Serbian League of Communists had a fresh twist to it: it was completely televised and held in public, something Milošević took advantage

---

<sup>108</sup> Glenny (n 12).

<sup>109</sup> Sell (n 22).

<sup>110</sup> Silber and Little (n 95).

<sup>111</sup> *ibid.*

of.<sup>112</sup> As the session went on, one of the main Serbian channels, Television Belgrade, even began cutting speeches, painting a controlled picture of how the session was going. In his opening speech, Milošević attacked anyone who dared use the image of Tito for their own goals, and anyone who criticized Tito himself, while praising Tito as someone who fostered unity. While Milošević did not name names, this was seen as a dig towards Stambolić, someone who was deeply into communism and would never even dream of criticizing Tito.<sup>113</sup> In the next two days many speakers came up and accused Stambolić and Pavlović of everything except of the one thing they were actually guilty of: trying to put a stop to Milošević's use of Kosovo and the problems of Kosovo Serbs as a way to make Serb nationalism grow, get supreme power and the leadership in Serbia.<sup>114</sup> Finally Pavlović was kicked out of the Party, and it was clear that Stambolić's days as the leader of Serbia were numbered. The Eighth Session was essentially a show of humiliation for Stambolić.

Outside of Serbia, leaders in the other Yugoslav republic welcomed Milošević's tribute. They did not see him as a nationalist, but as someone fighting for the prosperity of Yugoslavia. It showed that Milošević was able to keep his true goals hidden as nobody was able to clearly see that his rise to power would extend beyond Serbia and in a deadly manner. On December 14, 1987, Stambolić was officially dismissed and Milošević began his reign.<sup>115</sup> He adopted a Stalin-like attitude in terms of control as he purged of anyone who might be against him, whether in the Belgrade media or in the Serbian government villa.<sup>116</sup> Under his leadership, nationalism was at its highest peak with the media acting as a fodder for its growth. Eventually he even surpassed Tito's revered image within the Serbs, and a cult of personality began to grow around him. By 1988 Milošević had also taken control of Vojvodina and Montenegro. Kosovo soon followed, with Milošević emphasizing that Kosovo is Serbia. The fact that now Milošević had control of four out of eight votes in the Federal Presidency, while the others only had one, did not go unnoticed.<sup>117</sup> Milan Kučan, the Party Chief of Slovenia, called it a "Serbo-slavia".<sup>118</sup> The situation in Slovenia was growing hostile against the Serbs, despite the fact that they had a relatively peaceful relationship before. In 1989 a

---

<sup>112</sup> Vidosav Stevanović, *Milosevic: The People's Tyrant* (I.B. Tauris, 2004).

<sup>113</sup> Sell (n 22).

<sup>114</sup> *ibid.*

<sup>115</sup> Silber and Little (n 95).

<sup>116</sup> *ibid.*

<sup>117</sup> *ibid.*

<sup>118</sup> *ibid.*

rally by Slovenes against the Serb repression in Kosovo was broadcasted on Serbian television, and it created an outcry of rage against the Slovenes. The Slovenes had begun identifying with the Albanians, as they were also fearful of a cultural extinction and political domination by Serbia.<sup>119</sup> Milošević did not appreciate Slovenia's stance on the Kosovo issue, and he initiated an economic blockade against Slovene products in 1989.<sup>120</sup> This was the beginning of the end for the Serbian-Slovene relationship. In May 1989, Slovene intellectuals had published a declaration where they called for the sovereignty of Slovenia and for democracy to be established. Slovenia was well on its way towards self-determination.

On the other side, Croatia was mainly silent. The nationalism that was brewing during Tito's time was swiftly dealt with, but after Tito's death, it was replaced by a sense of Croatian superiority. Croatia did not want to be under Serbian control, and thus as Milošević was rising, so were the voices urging the Croatian leaders to get out of Yugoslavia. This was taken advantage of by Franjo Tuđman, a former JNA general, who emerged as a prominent figure vying for the elections in 1989. Tuđman was a communist turned ultranationalist who spoke in disdain of Serbs and showed disdain for Bosnia and Herzegovina, calling it a "national state of the Croatian nation".<sup>121</sup> He was concerned with what he saw as the "historic and natural" boundaries of Croatia<sup>122</sup> and he saw Bosnian Muslims as Islamicized Croats, and claimed Bosnia should be divided between Serbia and Croatia. In 1990 at a congress of the Croatian Democratic Union (HDZ), there was loud talk of Croatia's right to secession. This was precisely what Tuđman was campaigning for. In the upcoming elections the HDZ's campaign was centred on nationalism, and some felt that its tone recalled the one used by Ustashe in the Second World War.<sup>123</sup> On May 30, 1990 Tuđman became the President of Croatia<sup>124</sup>. The following year would prove to be fatal for Yugoslavia.

---

<sup>119</sup> Carole Rogel, *The Breakup of Yugoslavia and Its Aftermath* (Greenwood Press 2004).

<sup>120</sup> *ibid.*

<sup>121</sup> Silber and Little (n 95).

<sup>122</sup> Rogel (n 119).

<sup>123</sup> *ibid.*

<sup>124</sup> Silber and Little (n 95).

### 2.3 Croatia and Slovenia's Secession and Bosnia Becomes an Issue

Slovenia and Croatia officially seceded from Yugoslavia in June and May of 1991, respectively. Before that, in March 1991, the Serbs living in the Krajina area of western Croatia seceded from it and declared the land they were living in to be an autonomous region.<sup>125</sup> This was done with encouragement by Milošević, and when the Croatian police tried to stop them and violence broke out, the Yugoslav People's Army (JNA) intervened to help the Serbs. This was done by Milošević's orders, even though the JNA was supposed to be the army of Yugoslavia, by that period it had become a puppet army for Milošević's Serbia. Milošević was able to take control over the federal presidency of Yugoslavia, effectively blocking Stjepan Mesić, a Croat, from becoming the president.<sup>126</sup> That was the final straw for Croatia. On May 19, 1991 Croats voted for sovereignty in a referendum (one which the Serbs from Krajina boycotted), and on May 29 the vote for independence was followed by the establishment of the Croatian national guard.<sup>127</sup> On June 25, 1991, Slovenia declared itself independent with an almost unanimous vote by the Parliament.<sup>128</sup> Croatia officially declared itself independent on the same day. Two days later the JNA began operations on Slovenian ground that were seen as infringement of their fresh independence. The Slovenian war – if it can even be characterized as a war – lasted for ten days, and it ended in the island of Brioni, where Slovenia's secession was formalized.<sup>129</sup> Croatia's was not, and thus it was now time for Croatia to fight for their independence. The war in Croatia was much different than the war in Slovenia, in that it was longer and bloodier. Eastern Croatia, with its mixed population and it being neighbours with Serbia, suffered the most. The town of Vukovar was completely levelled and only a fourth of its inhabitants managed to survive.<sup>130</sup> The war was officially over in 1995 with 22,000 casualties from both sides.<sup>131</sup> On the other hand, the situation in Bosnia and Herzegovina would prove to be much more difficult and with deadlier consequences.

Bosnia and Herzegovina was always seen as a bit of the red-headed stepchild of Yugoslavia. It did not seem to have a defined identity, and it was mainly known for its

---

<sup>125</sup> Rogel (n 119).

<sup>126</sup> *ibid.*

<sup>127</sup> *ibid.*

<sup>128</sup> Silber and Little (n 95).

<sup>129</sup> *ibid.*

<sup>130</sup> Rogel (n 119).

<sup>131</sup> Mile Bjelajac and Ozren Žunec, 'The War in Croatia, 1991-1995' in Charles Ingrao and Thomas A. Emmert (eds), *Confronting the Yugoslav Controversies* (Purdue University Press 2009).

multiculturalism, with Sarajevo, the capital city, was often called Europe's Jerusalem. Bosnia and Herzegovina has never been an independent nation before and there is not a particular cultural or ethnic distinction when it comes to Bosnians.<sup>132</sup> Bosnia was characterized by its ethnic groups living together, and none of them was dominant. In the early nineties Bosnia's population was of 44%-49% Muslims, 31%-35% Serbs and around 17% Croats.<sup>133</sup> Thus, its situation was not as easy to draw conclusions from, unlike Slovenia, which was homogenous, and Croatia, which was mainly populated by Croats with a significant Serb minority. However, Bosnia followed the example set by Slovenia and Croatia, and declared independence in 1992. In 1991 Bosnia's Parliament had elected its President in the form of Alija Izetbegović, a Muslim. Izetbegović was not gunning immediately for independence, and nationalism was not at the front of his campaign. He was eager for a more moderate course, and even attempted to create the idea of some kind of confederation for Yugoslavia.<sup>134</sup> However, this was not what Slovenia and Croatia wanted, although Bosnia and Macedonia were on the same page. On the other hand, Izetbegović had the leaders of the Bosnian Serbs – Biljana Plavšić and Radovan Karadžić – to contend with. While the Krajina Serbs were still fighting for their so-called independence, Plavšić and Karadžić reassured the leader of the Krajina Serbs that there was no way the Serb territories of Bosnia would ever leave Yugoslavia<sup>135</sup>. Instead, if Bosnia were to declare independence, there would be a war in Bosnia as well for the redrawing of Bosnia's borders. The final objective was for the Serb territories in Bosnia to join Serbia and for the greater Serbian state to be born.<sup>136</sup> This stance was particularly seen in a parliamentary meeting on February 27, 1991 wherein Karadžić stated the following: "if Yugoslavia is to be dissolved, we [Bosnian Serbs] authorize Slobodan Milošević to act on our behalf".<sup>137</sup> In that same meeting, the Serb deputies refused to discuss any kind of prospect of a declaration of Bosnia's sovereignty, as proposed by the Muslim and Croat sides.<sup>138</sup> Izetbegović declared: "I would sacrifice peace for a sovereign Bosnia-Herzegovina. I would not sacrifice a

---

<sup>132</sup> William A. Schroeder, 'Nationalism, Boundaries, and the Bosnian War: Another Perspective' (1994-1995) 19 Southern Illinois University Journal 153.

<sup>133</sup> *ibid.*

<sup>134</sup> Rogel (n 119).

<sup>135</sup> Silber and Little (n 95).

<sup>136</sup> *ibid.*

<sup>137</sup> Nevan Andjelić, *Bosnia-Herzegovina: The End of a Legacy* (Frank Cass Publishers 2003).

<sup>138</sup> Silber and Little (n 95).

sovereign Bosnia-Herzegovina for peace".<sup>139</sup> This would prove to be quite ominous for the future of an independent Bosnia and Herzegovina.

The Muslim and Serb sides seemed to be constantly fighting at the time. Karadžić expressed worry that Izetbegović wanted to turn Bosnia and Herzegovina into an Islamic republic, a worry that did not have much evidence to it. On the other hand, Muslim and Croats enjoyed some kind of resemblance of an alliance, although that was not perfect by any means. Tudjman's declarations from Zagreb that Bosnia should be partitioned in two ways between Croatia and Serbia were met with costernation in Bosnia.<sup>140</sup> By late 1991 Serbs in Bosnia started declaring Serbian autonomous regions, a pattern that was starting to resemble the outbreak of war in Croatia, as seen by the Krajina situation. Things were escalating fast. Izetbegović felt the threat of JNA and was sure that Bosnia had no other choice but to declare independence, as the other alternative was to become part of Greater Serbia. For Izetbegović, Yugoslavia was dead.<sup>141</sup> Meanwhile, Karadžić and Milošević had begun their plans to transform the JNA into an army for the Bosnian Serbs. The announced referendum was looming over the Bosnian Serbs' heads, and on January 9, 1992 the Serbian Republic of Bosnia-Herzegovina (more commonly known as Republika Srpska) was created.<sup>142</sup> An independence referendum was held between February 29, and March 1, 1992. The referendum was boycotted by Bosnian Serbs, but Bosnian Muslims and Bosnian Croats voted for Bosnia to leave Yugoslavia. The day after the referendum, barricades were set up in Sarajevo. Thus, Bosnia had followed the pattern set by Croatia and war was set to break out.

## 2.4 The War Booms in Bosnia and Herzegovina

The war in Bosnia officially started in April 1992. On April 2 and 3 a confrontation occurred between the Muslim Patriotic League and local Serb territorial units in Bijeljina.<sup>143</sup> The fighting escalated into the shooting of civilians, which turned into a massacre of Muslims when the Serb forces were aided by a paramilitary Serbian

---

<sup>139</sup> Andjelić (n 137).

<sup>140</sup> Silber and Little (n 95).

<sup>141</sup> *ibid.*

<sup>142</sup> *ibid.*

<sup>143</sup> Steven L. Burg and Paul S. Shoup, *The War in Bosnia-Herzegovina: Ethnic Conflict and International Intervention* (M. E. Sharpe, Inc. 1999).

unit under the leadership of Željko Ražnatović (more commonly known as Arkan), a name that would become infamous during the war.<sup>144</sup> This unit was called the Serb Volunteer Guard, but was more known as Arkan's Tigers. Just three days after that, on April 6, the European Community recognized Bosnia and Herzegovina as an independent nation.<sup>145</sup> On that same day Karadžić declared Republika Srpska an independent nation, with Sarajevo as its capital city, and Karadžić as the head of the state. Four days after that Zvornik, a town comprising of sixty percent Muslims, fell to Arkan's forces.<sup>146</sup> Thousands had fled, and the process of ethnic cleansing had officially begun. These two cities were vital to the Bosnian Serb campaign, as they were situated in Eastern Bosnia, and thus they were on the border with Serbia. Meanwhile, on April 4 Izetbegović, after seeing the tragedy that happened in Bijeljina, ordered a general mobilization of the Bosnian territorial defence.<sup>147</sup> Karadžić interpreted this as a declaration of war.

On April 5, Sarajevo's citizens marched through the city, as a way to show that Serbs, Muslims and Croats were still able to live together as they had been for years. Unbeknownst to them, they were walking right over where the Serb paramilitaries were situated. Many consider Suada Dilberović, a medical student from Dubrovnik, to be the first victim of the war.<sup>148</sup> That same day the bombardment of Sarajevo had begun. On that day it was obvious to anyone that the war had broken out in Bosnia and the Sarajevo was to be under siege by Serb paramilitaries.

The tactic that was primarily used by the Bosnian Serb forces was ethnic cleansing. This was not a new tactic, as it had been used in Croatia the year before. In Croatia the ethnic cleansing came in the form of "Serbianizing certain Croatian territories by ridding them of non-Serb inhabitants".<sup>149</sup> In Bosnia, the primary targets of the campaign of ethnic cleansing propagated by the Bosnian Serb forces were Bosnian Muslims, the first victims being the Muslims from Bijeljina. The objective was to change the demographic of the town, whether by killing or by deporting the Muslims that made up the majority of the population. Hence, the cleansing was not only done by

---

<sup>144</sup> Burg and Shoup (n 143).

<sup>145</sup> John Webb, 'Genocide Treaty – Ethnic Cleansing – Substantive and Procedural Hurdles in the Application of the Genocide Convention to Alleged Crimes in the Former Yugoslavia' (1993) 23 Georgia Journal of Int'l and Comparative Law 377.

<sup>146</sup> Silber and Little (n 95).

<sup>147</sup> *ibid.*

<sup>148</sup> *ibid.*

<sup>149</sup> Rogel (n 119).

the Bosnian Serb forces, but also by Serbs from Serbia, as the expulsion of Muslims from Bijeljina was done by Arkan's Tigers. The gist of this tactic was first to harass Muslim citizens who would be then forced to flee their homes; if that did not work, or often that was not even the first step, the next step would be more forceful, with torture, rape and murder being used as ways to achieve the final goal of eliminating the Muslim presence.<sup>150</sup> Often the cleansing was done in a subtler way, with a systematic elimination of community leaders. Intellectuals and anyone in a position of authority would be driven away which would lead to a destruction of the community from the top down.<sup>151</sup> Between April and August 1992 around seventy percent of the expulsions had occurred, with areas having a completely different ethnic structure compared to just a few months before.<sup>152</sup> In May 1992 Kozarac, Sanski Most and Ključ were encircled and shelled while the Bosnian Serb forces separated the male population of military age comprising of Muslims and Croats and interned them in camps, mainly in Omarska, Keraterm and Manjača.<sup>153</sup> The concentration camp in Omarska would become infamous with a report by *The Guardian* in 1992. The West had become aware that something terrible was going on in Bosnia.

Meanwhile, the fragile Muslim-Croat alliance that was built around the narrative of "the enemy of my enemy is my friend" had begun showing the cracks in its structure. The city of Mostar is best seen as a representation of this alliance. Situated at the Neretva River, it was a city that hosted a beautiful bridge built during the time when Bosnia was under the Ottoman Empire. The bridge survived two World Wars, but it would meet its end on November 6, 1993.<sup>154</sup> Not by Bosnian Serb forces, as one would assume, but by Bosnian Croat forces. By that point Muslims and Croats were no longer fighting on the same side. Tensions were already present as early as May 1992, with fights over control of munitions production facilities in joint Muslim-Croat held territory.<sup>155</sup> On April 8, 1992 the Croatian Community of Herceg-Bosna was formed in western Herzegovina, where one-third of the Bosnian Croats lived.<sup>156</sup> This was somewhat of a mirror of Republika Srpska, except the Muslims and Croats were still

---

<sup>150</sup> Rogel (n 119).

<sup>151</sup> Silber and Little (n 95).

<sup>152</sup> Marie-Janine Calic, 'Ethnic Cleansing and War Crimes, 1991-1995' in Charles Ingrao and Thomas A. Emmert (eds), *Confronting the Yugoslav Controversies* (Purdue University Press 2009).

<sup>153</sup> *ibid.*

<sup>154</sup> Silber and Little (n 95).

<sup>155</sup> Calic (n 151).

<sup>156</sup> Silber and Little (n 95).

formally in an alliance. However, it did not help that Tudjman kept presenting his idea that Bosnia was an artificial state. Herceg-Bosna had a defence body called the Croatian Defence Council (HVO), while on the other hand the Muslims were defended by the Army of Bosnia-Herzegovina (ABiH). The conflict reached its outbreak in late October 1992, primarily from the central town of Prozor.<sup>157</sup> By the end of the following year Mostar was destroyed and it had become a divided city, with Muslims on one side and Croats on the other. The Muslim-Croat breakup would only serve to benefit the Serbs, as Ratko Mladić, the Commander of the Bosnian Serb Army, said: "I will watch them destroy each other and then I will push them both into the sea".<sup>158</sup>

Peace seemed like a mirage for Bosnians by 1994. On February 5, a mortar exploded in the middle of the most popular and most frequented outdoor market in Sarajevo, Markale, leaving sixty-eight people dead and over two hundred wounded.<sup>159</sup> The Markale bombing was seen as a turning point for the West and its reaction to the Bosnian war. What was before seen as a mere humanitarian crisis had now changed into something more serious. NATO was brought in to finally deal with the conflict, although not without its consequences. The Russians opposed an intervention by NATO and some felt that an independent NATO action would lead the Russians to come to the Serbian side.<sup>160</sup> There were fears that a new Cold War might start again due to the differing point of views between the West and Russia regarding the Bosnian war. NATO was eventually brought in mainly to put some kind of fear in the Bosnian Serb troops surrounding Sarajevo. NATO shot down four Serbian planes near Banja Luka, but NATO's primary goal was not to aid the Bosnian Muslim forces, but rather to defend the UN personnel that were situated in Bosnia.<sup>161</sup> The difference between the strength of the Bosnian Muslim forces and Bosnian Serb forces was still glaring, particularly because the Bosnian Serb forces had inherited much of its military arsenal from the JNA, while the Bosnian Muslim and Bosnian Croat forces lacked the same quality in military equipment.<sup>162</sup> However, the most prominent event that happened during that year was the Washington Agreement that was signed in March 1994. That agreement would put a stop to the fighting between Bosnian Muslims and Bosnian

---

<sup>157</sup> Silber and Little (n 95).

<sup>158</sup> *ibid.*

<sup>159</sup> Glenny (n 12).

<sup>160</sup> Silber and Little (n 95).

<sup>161</sup> Rogel (n 119).

<sup>162</sup> *ibid.*

Croats. The agreement was an idea of the United States and its goal was to establish a joint Muslim-Croat federation.<sup>163</sup> Zagreb was being pressured by the United States, and finally, on 18 March 1994, Izetbegović and Tudjman signed the agreement which would also create cantons within the federation.<sup>164</sup> This led to a stop to the fighting within the Croats and Muslims, although things were not rosy either. The creation of the Bosnian-Croat Federation came around the same time with a new plan put forward by the West. Bosnia would be divided into two entities, the Federation and Republika Srpska, an entity for the Serbs. The Federation would control fifty-one percent of the territory, while the rest would go to Republika Srpska.<sup>165</sup> Naturally, the Serbs did not agree to this.

## 2.5 The Fall of Srebrenica

Meanwhile, the Bosnian Serb forces continued committing tremendous violations of international humanitarian law. UN troops were abducted, Western journalists were abducted, and in April 1994 they shot down a British plane that was transporting Muslim war victims to the Red Cross.<sup>166</sup> There seemed to be an air of arrogance surrounding the Bosnian Serb troops, not surprisingly considering they controlled two-thirds of Bosnia by that point.<sup>167</sup> In November fighting broke out again in Sarajevo and UN hostages were taken again.<sup>168</sup> Mladić was leading the forces with a ruthless strength. Perhaps the biggest hit in 1994 by the Bosnian Serb forces was the capture of Goražde, one of the UN safe areas of Bosnia. It was not exactly certain what was meant by a safe area. Goražde, along with Sarajevo, Tuzla, Žepa, Bihać and Srebrenica, was declared a UN safe area with the UN Security Council Resolution 824 from May 1993. In it the Security Council declared “that the threatened towns and their surroundings should be treated as safe areas, free from armed attacks and from any other hostile acts which endanger the well-being and the safety of their inhabitants”.<sup>169</sup> Nobody was entirely sure what to do with this information, as it was not like the United Nations would make them safe in the strictest of meanings, as it still had to maintain its neutrality. The UN Protection Forces (UNPROFOR), peacekeeper troops, were situated

---

<sup>163</sup> Silber and Little (n 95).

<sup>164</sup> *ibid.*

<sup>165</sup> Glenny (n 12).

<sup>166</sup> Rogel (n 119).

<sup>167</sup> *ibid.*

<sup>168</sup> *ibid.*

<sup>169</sup> UNSC Res 824 (6 May 1993) UN Doc S/RES/824

in these safe areas, but in very small numbers. The futility of these safe areas was seen in the battle of Goražde in April 1994. Goražde was seen by the Serbs very strategically important. They wanted to drive the UNPROFOR troops out and ethnically cleanse the city as they had done with the nearby cities of Višegrad and Foča. They managed to put Goražde under siege in early April, until on April 22 NATO gave the Serbs an ultimatum. Unless they withdrew from the city and stopped the shelling, NATO would bomb the Serb assets.<sup>170</sup> The Serbs agreed and Goražde was liberated, although it would not fully happen until December 1995.<sup>171</sup> However, the worst case of a failure in the establishment of a UN safe area, one that is still a dark stain in UN's history, is the Srebrenica genocide.

What happened in Srebrenica is perhaps the thing that is most often associated with the Bosnian war. The fall of Srebrenica signifies a horrible and shameful ending to a war that pointed out many things wrong with the international intervention in Bosnia. Although it was designated a safe area by the UN Security Council, with UNPROFOR troops within the city, that did nothing to stop the killing of 8,000 Muslim men. Srebrenica was situated in Eastern Bosnia, and it was seen as crucial to Serbia as it was fifteen kilometres from the Bosnian-Serbian border.<sup>172</sup> Milošević wanted it, and after everything was done he still showed his approval to what happened there. Now, the Bosnian Serb forces began shelling Srebrenica on July 6, 1995, led by General Mladić.<sup>173</sup> There was no way for the Muslim soldiers to fight back earnestly, or the Dutch peacekeepers that were stationed in the city. NATO airstrikes were expected, but they came too late, on July 11. By that point civilians and the Dutch peacekeepers had retreated to Potočari, the main camp. The following day Mladić reached Potočari, and the separation of men from women and children had begun. The aim was for them to reach the Muslim controlled territories, like Tuzla. But only women and children would reach that destination. The Muslim men, or rather those who were not immediately killed, tried hiding in the nearby forest. A death march that did nothing to stop Serb soldiers from hunting them down. By the end of the massacre, as much as 8,000 Muslim men had been killed,<sup>174</sup> in what can be called genocide. Mladić was not content yet;

---

<sup>170</sup> Paul R. Batrop and Steven Leonard Jacobs (eds), *Modern Genocide: The Definitive Resource and Document Collection*, vol 1 (ABC CLIO 2015).

<sup>171</sup> *ibid.*

<sup>172</sup> Silber and Little (n 95).

<sup>173</sup> *ibid.*

<sup>174</sup> *ibid.*

days later he conquered Žepa as well, yet another UN safe area.<sup>175</sup> The fall of Srebrenica would prove to be the final straw for the international community, although it was too little, too late. It was time to put an end to the atrocities being committed in Bosnia.

In August another mortar bomb fell in Markale, and NATO retaliated with airstrikes against Bosnian Serb command and control centre in Banja Luka.<sup>176</sup> This led to the Serb defences in Western Bosnia to collapse. Milošević already knew this was going to happen, as he had agreed to closing a deal with Izetbegović and Tudjman prior to the bombing. This deal resulted in the Dayton Agreement which was signed on 21 November 1995.<sup>177</sup> The Dayton Agreement was essentially the same as the one proposed back in 1994, with Bosnia being divided into two entities that gave fifty-one percent of the territory to the Federation of Bosnia and Herzegovina (the official name of the Bosnian-Croat Federation) and forty-nine to Republika Srpska.<sup>178</sup> Back then the Bosnian Serbs had rejected the deal, but now it became reality. With the Dayton Agreement the fighting came to a stop. The war was finally over. But the war had consequences and, besides having the worse massacre since the Second World War, it left many scars on the young country of Bosnia and Herzegovina. There were many victims, but perhaps the most overlooked ones were the women of Bosnia and Herzegovina who were not just subjected to murder, but to the cruelty and humiliation of sexual violence.<sup>179</sup>

The contention of Bosnia after Yugoslavia started falling apart, particularly between the Bosnian Muslim leaders and the Bosnian Serb ones, shows that the relationship between these two sides has always been strained. The Bosnian Serbs felt more attached to Serbia, and the resentment that ultranationalist Serbs felt towards Bosnian Muslims, due to their perceived attachment to the Ottoman Turks, came to light during the war. The nationalism that was kept under wraps while Tito was in charge could no longer be contained after his death. Thus, once the war began the tactics that were taken by the Serb forces had the intent of destroying the Bosnian Muslim

---

<sup>175</sup> Glenny (n 12).

<sup>176</sup> *ibid.*

<sup>177</sup> *ibid.*

<sup>178</sup> Silber and Little (n 95).

<sup>179</sup> Grant H. Carlton, 'Equalized Tragedy: Prosecuting Rape in the Bosnian Conflict Under the International Tribunal to Adjudicate War Crimes Committed in the former Yugoslavia' (1997) 6 *Journal of Int'l Law and Practice* 93.

community. The superiority complex that Serbia and Serbs have historically felt towards Bosnia and its Muslim citizens has culminated in a bloody campaign that had a genocidal element to it.

Perhaps it can be said that the war in Bosnia was inevitable. Bosnia had always prided itself in being multicultural and living with several nationalities in peace. But once Tito was gone and nationalism had begun to rise, there was a question as to whether peaceful co-habitation was possible. The war showed that it was not, and thus Bosnia was reduced into a bloody mess by 1995. The worst massacre since the Second World War happened on its soil, and it remains to be seen whether proper justice can be achieved for the numerous victims of the war, a number that has been estimated to be around 102,622.<sup>180</sup> However, if there is one category of victims whose presence has gone ignored, it is that of the female victims of the war.

---

<sup>180</sup> Calic (n 151).

## **Chapter 3**

### **The Bosnian Serb Campaign of Genocidal Rape**

In the previous chapters the deadly effect of nationalism, particularly Serb nationalism, was illustrated, as well as the consequences it brought to Bosnia and Herzegovina. This chapter will concern itself with what came after the war and particularly the use of rape on Bosnian Muslim women, which is the central topic of this dissertation. It will introduce the International Criminal Tribunal for the former Yugoslavia, which is one of the most important structures of international law that were created in the nineties. Most importantly, this chapter will present the concept of genocidal rape and how it relates to the Bosnian war. It will go in depth with the analysis of the relevant cases coming from the court, and it will try to show that there was a specific dimension to the sexual violence that was committed towards Bosnian Muslim women during the war.

#### **3.1 The Creation of the ICTY**

The International Criminal Tribunal for the former Yugoslavia (ICTY) was created in order to bring retribution to the war criminals the Yugoslav wars gave birth to. It was officially established in May 1993 by the United Nations Security Council, with its seat being in The Hague, Netherlands.<sup>181</sup> The ICTY's goal was to preside over cases coming from the wars in Croatia and Bosnia and Herzegovina. More precisely, it was created for the purpose of "prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace",<sup>182</sup> as declared by the United Nations Security Council Resolution 827. That same resolution also set out a Statute for the tribunal. The ICTY was the first international war crimes tribunal established since the Tokyo and Nuremberg tribunals, confirming the gravity of the crimes committed within the territory of the former

---

<sup>181</sup> 'About the ICTY' (*ICTY*) < <http://www.icty.org/en/about> > accessed 11 July 2016.

<sup>182</sup> UNSC Res 827 (25 May 1993) UN Doc S/RES/827.

Yugoslavia.<sup>183</sup> The ICTY was also an ad-hoc court and it had primacy over national courts. It can be considered a predecessor to the International Criminal Court (ICC).

The ICTY has listened to many cases since 1993, and it had set a three-phase plan which would bring the tribunal to its closure by 2010.<sup>184</sup> However, due to late arrests of some remaining fugitives, the closure of the tribunal has been set for until the two trials that are currently ongoing will be done. Those are the trials of Goran Hadžić, whose crimes were primarily committed in Croatia, and Ratko Mladić, the infamous Bosnian Serb general. Thus, it is estimated that the tribunal will not be closed until at least 2017.<sup>185</sup> Despite that, the ICTY has definitely been busy since 1993. In total there have been 161 individuals indicted, with 83 of those finishing in sentencing.<sup>186</sup> Between all those trials the ICTY has listened to a staggering amount of 4,650 witnesses, all within 10,800 trial days.<sup>187</sup> Now, the Statute of the ICTY, which had been amended several times, the last time being on 7 July 2009 with the UNSC Resolution 1877,<sup>188</sup> set out the provisions of the tribunal, and listed crimes that the tribunal had jurisdiction over, which were primarily situated in customary international law. Those were: grave breaches of the Geneva Conventions of 1949, violations of the laws or customs of war, genocide and crimes against humanity.<sup>189</sup> This is similar to the work of the International Criminal Tribunal for Rwanda (ICTR), which was established a year later. Both tribunals have faced criticism but have also contributed massively to the development of international law. Accountability was given more weight, especially when it came to leaders. They were both precedents for the establishment of the ICC as well as the courts in Sierra Leone, Kosovo and Timor,<sup>190</sup> showing that international criminal justice can be achieved to some extent. The ICTY's contribution to the jurisprudence of international humanitarian law is also admirable.<sup>191</sup> More than anything, the ICTY has also showed a progressive outlook towards crime of a sexual nature.

---

<sup>183</sup> 'About the ICTY' (ICTY) < <http://www.icty.org/en/about> > accessed 11 July 2016.

<sup>184</sup> 'Completion Strategy' (ICTY) < <http://www.icty.org/en/about/tribunal/completion-strategy> > accessed 11 July 2016.

<sup>185</sup> 'The Cases' (ICTY) < <http://www.icty.org/en/action/cases/4> > accessed 11 July 2016.

<sup>186</sup> 'Infographic: ICTY Facts & Figures' (ICTY) < <http://www.icty.org/en/content/infographic-icty-facts-figures> > accessed 11 July 2016.

<sup>187</sup> *ibid.*

<sup>188</sup> Statute of the International Criminal Tribunal for the former Yugoslavia 2009.

<sup>189</sup> *ibid.*

<sup>190</sup> Gabrielle Kirk McDonald, 'Problems, Obstacles and Achievements of the ICTY' (2004) 2 *Journal of Int'l Criminal Justice* 558.

<sup>191</sup> McDonald (n 190).

### 3.2 Sexual Violence during the Bosnian War

The war in Bosnia and Herzegovina has seen its fair share of rape and sexual violence towards Bosnian women. It cannot be truly said that any of the three ethnicities residing in Bosnia was spared from these kinds of crimes. Thus, it was no question that the ICTY would have to pay attention to them as well. Rape is specifically included in Article 5(g) of the ICTY Statute, which refers to crimes against humanity.<sup>192</sup> It can also be said that the act of “imposing measures intended to prevent births within the group”<sup>193</sup> as a part of genocide as found in Article 4(d) is also an act of sexual violence. Hence it can be seen that the ICTY has shown its intention to prosecute crimes of a sexual nature committed during the Yugoslav wars. The ICTY, along with the ICTR, helped define crimes of a sexual nature like rape and sexual enslavement in customary international law.<sup>194</sup> Perhaps most importantly the ICTY was the first international criminal tribunal to have convictions of rape as a form of torture and sexual enslavement as crime against humanity.<sup>195</sup> The ICTY followed the ICTR’s example in passing convictions for rape as a crime against humanity, the first instance of it in Europe.<sup>196</sup> There were 78 individuals that had charges of sexual violence in their indictments, and out of those 30 were convicted.<sup>197</sup> In conclusion, it can be said that the ICTY has paid attention to the crimes of sexual nature that were committed during the Bosnian war.

The ICTY’s focus on sexual violence during the Bosnian war is particularly important in the light of the numerous victims that came out of it. Mass rape was used by the Serbs within their ethnic cleansing campaign, which reduced it to a weapon of war. They would not be the first ones to use it as a tactic, as it has been used many times in the past, with the Korean “comfort women” being known as victims of sexual slavery by the Japanese during Second World War. The rape in Nanking, also committed by the

---

<sup>192</sup> Statute of the International Criminal Tribunal for the former Yugoslavia 2009.

<sup>193</sup> *ibid.*

<sup>194</sup> 'Crimes of Sexual Violence' (*ICTY*) < <http://www.icty.org/en/in-focus/crimes-sexual-violence> > accessed 12 July 2016.

<sup>195</sup> *ibid.*

<sup>196</sup> *ibid.*

<sup>197</sup> 'In Numbers' (*ICTY*) < <http://www.icty.org/en/in-focus/crimes-sexual-violence/in-numbers> > accessed 12 July 2016.

Japanese, is infamous for having approximately 20,000 cases of rape.<sup>198</sup> In the majority of cases, these crimes go unpunished. Thus, it is no wonder that war criminals continue to perpetuate rape and use it as a war tactic. Often it is also used in order to humiliate its victims, and it goes beyond the scope of getting sexual pleasure from the act. While it may be used to humiliate the victims, and by extensions their families too, it is also used as “an assault on social values, family structures, and ethnic identity”.<sup>199</sup> Considering ethnicity was a large component of the Bosnian war, it is no wonder that there were reports of rapes committed for the sole purpose of impregnating Muslim women and holding them captive until they would give birth to Serbian babies.<sup>200</sup>

It is estimated that Serb soldiers have raped 20,000 to 50,000 Bosnian Muslim women,<sup>201</sup> often repeatedly raping them in order for them to get pregnant and keeping them captive so a safe abortion was not possible.<sup>202</sup> Thus, it can be seen that in wartime rape goes beyond pure sexual pleasure. It gives perpetrators satisfaction through the degradation and humiliation of the victims, and by extension their families and the communities they belong to.<sup>203</sup> The act of rape gives the perpetrators a sense of power and dominance over their victims, while dehumanizing the victims. Women are seen as responsible for the biological progress of their communities, as well as the cultural preservation of the ethnic community they belong to.<sup>204</sup> This is particularly evident in patriarchal and conservative societies, and Yugoslavia was definitely one of them. Thus, it is no wonder that Serb soldiers used rape as another way to establish Serb supremacy over Bosnian Muslim and Croat women who they saw as an extension of their communities. This is particularly telling for Bosnian Muslim women as there is a definite impact of rape in Muslim culture.<sup>205</sup> Both Muslims and Serbs trace ethnicity paternally, meaning that if a Serb or someone not Muslim impregnates a Muslim woman, the Muslim’s paternal line is destroyed.<sup>206</sup> This leads to the so-called value of the Muslim victim to be lowered, as she may not be seen as marriageable anymore in

---

<sup>198</sup> Danise Aydelott, 'Mass Rape During War: Prosecuting Bosnian Rapists Under International Law' (1993) 7 *Emory Int'l Law Rev.* 585.

<sup>199</sup> Calic (n 151).

<sup>200</sup> Aydelott (n 198).

<sup>201</sup> Elizabeth A. Kohn, 'Rape as a Weapon of War: Women's Human Rights During the Dissolution of Yugoslavia' (2010) 24 *Golden Gate University Law Review* 199.

<sup>202</sup> *ibid.*

<sup>203</sup> Calic (n 151).

<sup>204</sup> *ibid.*

<sup>205</sup> Carlton (n 179).

<sup>206</sup> *ibid.*

the society she lives in. Of course, this is part of a larger issue, but this was the reality in Yugoslavia and a tool that was used by rapists. Victims were told that there was a policy of rape and that their rapists were ordered to impregnate the women.<sup>207</sup> A U.S. State Department human rights report from 1992, the year the Bosnian war started, said that “in Serb-run camps, many prisoners were subjected to the most brutal forms of torture and murder their captors could devise” which included rape as well.<sup>208</sup>

### 3.3 Rape as a Tool of Genocide

For the Bosnian Serb forces, rape was a tool of war meant to push their agency of cleansing Bosnia from the Bosnian Muslims and, to a lesser extent, Bosnian Croats. Now, the question arises whether rape was used as a tool for a specific war crime. It has already been shown that rape was used within the Bosnian Serbs’ campaign of ethnic cleansing, but there have been arguments that it was also used as a genocidal tool. Genocidal rape is not a concept that can only be linked within the Bosnian war, but it was also seen in the Rwandan genocide and it was mentioned by the ICTR in the charges against Pauline Nyiramashuko for genocide.<sup>209</sup> To be more precise, genocidal rape can be defined as “ethnic rape as an official policy of war in a genocidal campaign for political control”.<sup>210</sup> Genocide is already seen as the crime of all crimes, which leads to genocidal rape being an even worse version of the usual kind of rape, as it sets its victims, whether men or women, in the background of a bigger genocidal campaign. As mentioned before, one intended effect of the genocidal rapes carried out in Bosnia was to impregnate the victims and the child born out of that rape would belong to the rapist’s ethnicity. Another intended effect was that the victim would be ostracized and thus removed as a procreator of her own ethnic group,<sup>211</sup> meaning that the possibility of new members of that ethnic group being created would decrease. Consequently one can conclude that these acts of rape in order to ostracize the victims are part of a bigger plan to prevent births within that ethnic group, as the victim would be seen as no longer desirable. Hence it can be assumed that these acts of mass rape fit within the definition

---

<sup>207</sup> Siobhan K. Fisher, 'Occupation of the Womb: Forced Impregnation as Genocide' 46 (1996) *Duke Law Journal* 91.

<sup>208</sup> Aydelott (n 198).

<sup>209</sup> Sherrie L. Russell-Brown, 'Rape as an Act of Genocide' 21 (2003) *Berkeley Journal Int'l Law* 350.

<sup>210</sup> *ibid.*

<sup>211</sup> *ibid.*

of genocide found in Article 4 of the ICTY Statute, where it is stated that “genocide means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (...) imposing measures intended to prevent births within the group”.<sup>212</sup> All in all, there are elements to be considered when one claims the mass rapes that were happened in a huge scale in Bosnia were a part of a genocidal campaign.

As a matter of fact, Bosnia and Herzegovina did bring up rape in the context of genocide when the case against Serbia and Montenegro was brought to the International Crime of Justice (ICJ).<sup>213</sup> The argument was that the mass rapes committed during the Bosnian war towards Bosnian Muslim women were being done with the intent to destroy, in whole or in part, the Bosnian Muslims.<sup>214</sup> This would be the *mens rea* of the genocide that was supposedly committed during the war, while the *actus reus* would be what was mentioned above, the act of raping with the intent of ostracizing the victims. Given these points, one can see the argument for including rape within the genocidal campaign that was ongoing during the Bosnian war. This is what was proposed by the Bosnian side at the ICJ as they claimed that the systematic rapes of Muslim women were part of the genocide against the Bosnian Muslims.<sup>215</sup> The Serbian side did not contest that the rapes could be seen as an act of genocide; however, they maintained that the acts of sexual violence perpetrated throughout the war were done so by both sides of the conflict, and without any specific intent.<sup>216</sup> However, the Court concluded that it was not fully established that the acts of rape against the Bosnian Muslim women were done so with the specific intent to destroy them, in whole or in part.<sup>217</sup> The Court reached this conclusion based on the evidence presented at the trial. However, one could presume that the systematic aspect of the rapes were part of a larger genocidal campaign. The Bosnian Serb forces displayed specific targeting towards Bosnian Muslim women, knowing the patriarchal nature of the Muslim community which would lead to the women being ostracized if they were raped by a non-Muslim. The Serb soldiers raped the Muslim women in order to get them pregnant, going as far as ignoring the pregnant

---

<sup>212</sup> Statute of the International Criminal Tribunal for the former Yugoslavia 2009.

<sup>213</sup> Dorean Marguerite Koenig, 'Women and Rape in Ethnic Conflict and War' 5 (1994) Hastings Women's Law Journal 129.

<sup>214</sup> *ibid.*

<sup>215</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Judgment) (2007) ICJ Rep 43

<sup>216</sup> *ibid.*

<sup>217</sup> *ibid.*

women as they were not able to get pregnant by the soldiers themselves.<sup>218</sup> This was done deliberately to affect the Muslim community, and it was done with full knowledge of what these rapes, or pregnancies, could diminish the Bosnian Muslim community. Specific intent to destroy the community is clear. The ICJ failed to look at the rapes through a cultural lens and instead used a narrower outlook when deciding whether the rapes were an act of genocide or not.

The Bosnian Muslim women abused by the Serb forces were ultimately seen as “vessels through which the dilution, disappearance, and destruction of their own ethnic group occurred”.<sup>219</sup> However, it is important to keep in mind that these women should exist *outside* their ethnicity, meaning that they also exist as just women, not simply as an extension of their communities. It is true that these women were also targeted because of their gender, considering the patriarchal society of the former Yugoslavia and the fact that women were, or may still be, seen as the gentler sex who were in the need of protection from a man. Still, it cannot be denied that there is an intersection of ethnicity and gender when it comes to the mass rape that was propagated during the Bosnian war. That is not to take the individuality away from these women, but simply to point out that the rape that was carried out by the Serb forces in Bosnia had a larger aspect to it. This was rape that could be compared to the rapes that went on during the Second World War by the Nazis; this is rape used as a policy of “ethnic uniformity and ethnic conquest, of annexation and expansion, of acquisition by one nation of other nations”.<sup>220</sup> It is hard not to see the argument for characterizing it as genocidal rape.

### 3.4 Rape Through the *Furundžija* Case

Moreover, there have been cases where rape has been included in charges of crimes against humanity at the ICTY, as well as having it linked to torture and ethnic cleansing. The case that had the largest focus on rape was the *Prosecutor v Anto Furundžija* case (1998), despite the accused being a Bosnian Croat, not a Serb. He was

---

<sup>218</sup> Robert Fisk, 'Bosnia War Crimes: 'The rapes went on day and night': Robert Fisk, in Mostar, gathers detailed evidence of the systematic sexual assaults on Muslim women by Serbian 'White Eagle' gunmen' *The Independent* (London, 8 February 1993) < <http://www.independent.co.uk/news/world/europe/bosnia-war-crimes-the-rapes-went-on-day-and-night-robert-fisk-in-mostar-gathers-detailed-evidence-of-1471656.html> > accessed 29 July 2016.

<sup>219</sup> Russell-Brown (n 209).

<sup>220</sup> Catharine A. MacKinnon, 'Rape, Genocide and Women's Human Rights' 17 (1994) *Harvard Women's Law Journal* 5.

a commander of the “Jokers”, a unit belonging to the Croatian Defence Council (HVO).<sup>221</sup> Of relevance to this case were his activities in May 1993, particularly in Vitez, when he arrested a Muslim woman. The woman was then brought to a nearby hotel where she was interrogated by Furundžija, while another soldier was threatening her with a knife.<sup>222</sup> Shortly after that the woman was raped and Furundžija did nothing to prevent the rape.<sup>223</sup> So, the issue in this case relates to the individual criminal responsibility that Furundžija may have had to bear as he did nothing to stop the inhumane treatment of the victim, and most importantly did not stop the rape. The prosecution submitted that Furundžija was individually criminally responsible for what happened to the victim under Article 7(1) of the ICTY Statute which states that “a person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime (...) shall be individually responsible for the crime”.<sup>224</sup> The prosecution also submitted that Furundžija was individually criminally responsible for the rape under Article 4(2)(e) which prohibits “outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault”.<sup>225</sup> The Trial Chamber was able to link the offences committed by Furundžija to the armed conflict that was ongoing between the HVO (the Croatian Defence Council; essentially the Bosnian Croat forces) and ABiH (Army of the Republic of Bosnia and Herzegovina; the army of Bosnia and Herzegovina founded after its independence in 1992).<sup>226</sup> The Trial Chamber took the victim’s posttraumatic stress disorder in consideration when evaluating her reliability, and concluded that her testimony was still reliable despite her disorder.<sup>227</sup> The Trial Chamber also recognized that the prohibition of torture has acquired the status of *jus cogens* in international law.

Now, the *Furundžija* case is especially important because of its scrutiny of rape in international law. It confirmed that rape and other kinds of sexual assaults lead to criminal liability in time of war.<sup>228</sup> However, the Trial Chamber paid particular attention

---

<sup>221</sup> *Prosecutor v Anto Furundžija* (Judgment) ICTY-95-17/1-T (10 December 1998).

<sup>222</sup> *ibid.*

<sup>223</sup> *ibid.*

<sup>224</sup> Statute of the International Criminal Tribunal for the former Yugoslavia 2009.

<sup>225</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609 art 4.

<sup>226</sup> *Furundžija Case* (n 221).

<sup>227</sup> *ibid.*

<sup>228</sup> *ibid.*

to actually defining rape, as it stated that there was no definition of rape in international law.<sup>229</sup> So, the Trial Chamber looked to treaties, principles from legal systems all over the world as well as the *Akayesu* case from the ICTR in order to draw out a definition of rape.<sup>230</sup> The Trial Chamber came to the conclusion that the objective elements of rape are:

(i) the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; (ii) by coercion or force or threat of force against the victim or a third person.<sup>231</sup>

Hence, the ICTY was able to come up with its own definition of rape for the first time. The Trial Chamber applied this definition to the case and found that while Furundžija did not actually rape the victim, and thus could not be considered a co-perpetrator to the rape, he still “substantially contributed” to the act.<sup>232</sup> Thus he was found guilty of aiding and abetting acts that provoked outrages on personal dignity including rape.<sup>233</sup> Now, the focus here is not on Furundžija being charged with individual criminal responsibility. Instead what is of note is the Trial Chamber’s outlook on sexual assault and rape, especially as it made a point out of penetration not being the focal point of the conversation around sexual assault. The Trial Chamber pointed out that it should not be said that greater stigma is applied to vaginal and anal penetration compared to oral penetration, as it may still be just as humiliating for the victim.<sup>234</sup> It reminded that the prohibition on sexual assault found in international criminal rules “embraces all serious abuses of a sexual nature inflicted upon the physical and moral integrity of a person by means of coercion, threat of force or intimidation in a way that is degrading and humiliating for the victim’s dignity”.<sup>235</sup> Although the *Furundžija* case does not entirely fit within the concept of genocidal rape mentioned above, as Furundžija was a Croat, not a Serb, it is still important to be reminded of how the ICTY came to its first definition of rape. This is relevant because the definition was altered by the *Kunarac et al* case that followed Furundžija’s.

---

<sup>229</sup> *Furundžija Case* (n 221).

<sup>230</sup> *ibid.*

<sup>231</sup> *ibid.*

<sup>232</sup> *ibid.*

<sup>233</sup> *ibid.*

<sup>234</sup> *ibid.*

<sup>235</sup> *ibid.*

### 3.5 Rape Through the *Kunarac* Case

The *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković* case, or more commonly known as the *Kunarac et al* case (2001) is especially important as it brought up rape and sexual enslavement in the context of crimes against humanity as seen in the ICTY statute. The *Kunarac et al* case involves three Serb men, with particular focus on Kunarac who was the commander of a special reconnaissance unit of the Bosnian Serb forces situated in Foča, from June 1992 until February 1993.<sup>236</sup> After Foča was taken over, the Bosnian Muslim women were separated from the men, and detained in several buildings where conditions were poor. These women would go on to suffer rapes almost every day, sometimes multiple times per day by several men. While this was ongoing in Foča, which before the war had a population of over fifty per cent Muslims, had all traces of its Muslim population wiped out.<sup>237</sup> Now, the *Kunarac et al* case had several witnesses that testified that they were raped by Kunarac, as well as the other two accused, Kovač and Vuković.<sup>238</sup> Hence the charge, among others, of rape as a crime against humanity under Article 5(g) of the ICTY Statute which states that “the International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population: (...) rape”.<sup>239</sup> Kunarac was also charged with enslavement, as a crime against humanity, under Article 5(c) of the ICTY Statute.<sup>240</sup> Now, when looking at the definition of rape provided by the *Furundžija* case, the Trial Chamber concluded that it was narrower than it is required by international law.<sup>241</sup>

The Trial Chamber in the *Kunarac* case was concerned with the consent part of the definition of rape found in the *Furundžija* case. As mentioned above, the *Furundžija* case included in its definition of rape that it is sexual penetration “by coercion or force or threat of force against the victim or a third person”.<sup>242</sup> The Trial Chamber in the *Kunarac* case objected to this part of the definition, even though it agreed that it was consistent with the circumstances of the *Furundžija* case, as there was no mention of

---

<sup>236</sup> *Kunarac Case* (n 4).

<sup>237</sup> *ibid.*

<sup>238</sup> *ibid.*

<sup>239</sup> Statute of the International Criminal Tribunal for the former Yugoslavia 2009.

<sup>240</sup> *Kunarac Case* (n 4).

<sup>241</sup> *ibid.*

<sup>242</sup> *Furundžija Case* (n 221).

other factors that may reduce an act of sexual penetration non-consensual on the part of the victim,<sup>243</sup> meaning that there are situations where the issue of consent may become complicated. Much like in the *Furundžija* case, the Trial Chamber in the *Kunarac* case took a look at various domestic legal systems, as well as the *Akayesu* case, in order to clarify the consent part of rape. The Trial Chamber paid much attention to factors that lead to vulnerability or deception of the victim as well as what brings absence of consent when it comes to rape, and it came to the conclusion that sexual autonomy, or rather the violation of it, is an important facet of rape.<sup>244</sup> So, the Trial Chamber decided to add on to the *Furundžija* definition of rape that “consent (...) must be given voluntarily, as a result of the victim’s free will, assessed in the context of the surrounding circumstances”.<sup>245</sup> This was an important conclusion, not just for the Tribunal itself, but in general, as consent in rape cases is often a cause of debate. Thus, the aspect of sexual autonomy was added in the definition of rape as concluded by the ICTY and it was further confirmed by the *Prosecutor v Miroslav Kvočka, Milojica Kos, Mlađo Radić, Zoran Žigić and Dragoljub Prcać* case (2001) where it was again stressed that rape is defined as “a violation of sexual autonomy”.<sup>246</sup> In the *Prosecutor v Zejnil Delalić, Hazim Delić and Esad Landžo* case (2001) it was confirmed that “coercive conditions are inherent in situations of armed conflict”.<sup>247</sup> Therefore it can be seen that the ICTY paid attention to rape cases during the Bosnian war, although it can be argued those few cases were not enough considering the mass scale of rape victims during the war. However, the Tribunal did put forward the idea of rape as an act of crime against humanity, as well as genocide.

The ICTY was hailed as revolutionary in instances like the *Kunarac* case, where, for the first time ever, rape was established as both a crime against humanity and as a war crime.<sup>248</sup> The ICTY had already acknowledged that rape can fall under the definition of a crime against humanity based on Article 5(g) of the Statute, but it was at the *Kunarac* trial that the accused was actually found guilty of that crime in terms of rape. Not only was rape included in the charges of crimes against humanity, but sex

---

<sup>243</sup> *Kunarac Case* (n 4).

<sup>244</sup> *ibid.*

<sup>245</sup> *ibid.*

<sup>246</sup> *Fabijanić Gagro* (n 2).

<sup>247</sup> *ibid.*

<sup>248</sup> James McHenry, 'Justice for Foca: The International Criminal Tribunal for Yugoslavia's Prosecution of Rape and Enslavement as Crimes Against Humanity' 10 *Tulsa Journal of Comparative & Int'l Law* (2002-2003) 183.

slavery was also included in the definition of slavery as a crime against humanity, as prior to that slavery was primarily thought of in the context of forced labour.<sup>249</sup> The significance of the *Kunarac* conviction is not insignificant, whether it is seen from a moral or legal viewpoint. It can be used as a precedent for future cases involving rape, as rape is inevitably a consequence of war, and it should be seriously dealt with. The *Kunarac* decision shows that there are legal justifications for rape to be included within crimes against humanity, and it was a landmark case, not just in the ICTY, but in international law as well. Morally, one cannot help but be outraged at the numerous counts of mass rape found during the Bosnian war, the number of which has been estimated to be around 25, 000, although the exact number will never be known due to instances of unreported cases.<sup>250</sup> Thus justice is something that is actively asked for even just looking at the issue from a feminist viewpoint. The *Kunarac* case provides some degree of satisfaction as it shows that the ICTY was serious when considering this particular instance of rape.

### 3.6 Genocidal Rape Still Just a Hypothesis

There has not been an actual conviction of rape within the crime of genocide at the ICTY, but that does not mean it is not impossible to be done. The ICTR, which perhaps may be seen as the sister tribunal of the ICTY due to them being established around the same time, confirmed that rape and sexual violence were an integral part of the genocide campaign towards the Tutsi group in the *Prosecutor v Jean-Paul Akayesu* case (1998).<sup>251</sup> More specifically in that case the Trial Chamber came to the conclusion that “rape and sexual violence (...) constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such”.<sup>252</sup> The Trial Chamber confirmed the view that rape and sexual violence may be a part of the serious bodily and mental harm section of the definition of genocide, and in its opinion it found that it is one of the worst ways of inflicting harm to a victim as he or she suffers both mental and physical harm.<sup>253</sup> The Trial Chamber then went on to describe some of the atrocities that were committed

---

<sup>249</sup> McHenry (n 248).

<sup>250</sup> Calic (n 151).

<sup>251</sup> Fabijanić Gagro (n 2).

<sup>252</sup> *Akayesu Case* (n 3).

<sup>253</sup> *ibid.*

specifically towards Tutsi women because they belonged to the Tutsi ethnicity and it stated that “sexual violence as a step in the process of destruction of the Tutsi group - destruction of the spirit, of the will to live and of life itself”.<sup>254</sup> It would not be wrong to see the similarities between the conclusion of the Trial Chamber in the *Akayesu* case and the treatment of Bosnian Muslim women during the Bosnian war, particularly at the hand of Serb soldiers.

Even if one were to look just at the events surrounding the *Kunarac* trial, a compelling argument for rape being used as a tool of genocide can be made. The events at Foča were cruel beyond belief, with the women being forced to perform sexual services for Bosnian Serb soldiers gaining a deeper understanding of these actions. A witness, who was a teenager at the time of her rape, said that the men who raped her all said the same things: “You Muslim women, you Bule, we’ll show you”.<sup>255</sup> Bula is a derogatory term towards Bosnian Muslim women, while *balija* is the masculine equivalent, both of which could be heard shouted by the Bosnian Serb soldiers. Another soldier told the same witness the following: “You will see, you Muslim. I am going to draw a cross on your back. I’m going to baptise all of you. You’re now going to be Serbs”.<sup>256</sup> These recollections show that there was a target put on Muslim women throughout the Foča ordeal. However, it may not be enough to prove that these rapes were enacted as a tool of the campaign of genocide towards Bosnian Muslims. But Foča’s demographic makeup did change after the events surrounding the *Kunarac* trial, and considering the role Bosnian Muslim women have within the structure of a family, and the stigma that would be on them after their rape, perhaps it may be said that it was an involuntary effect. Emira, a Muslim woman who was at the Kalinovik camp, recalled Serb soldiers yelling: “Look at how many children you can have. Now you are going to have our children. You are going to have our little Chetniks”.<sup>257</sup> This is where the biological aspects of these rapes come to light. It is a shame that there was not any approach in including rape within the crime of genocide by the ICTY in any of its cases involving sexual violence. Nowhere in *Kunarac* did the Trial Chamber show that genocide was “a circumstance attending the crime, qualifying the crime, or motivating

---

<sup>254</sup> *Akayesu Case* (n 3).

<sup>255</sup> ‘Witness 50’ (*ICTY*) < <http://www.icty.org/en/sid/188> > accessed 29 July 2016.

<sup>256</sup> *ibid.*

<sup>257</sup> Fisk (n 224).

the defendants' behaviour".<sup>258</sup> However, it can be understood why the ICTY did not explicitly charge anyone with rape as genocide, as the circumstances cannot be compared to *Akayesu*. Akayesu himself recognized that there was genocide in Rwanda in 1994, while there are still, bafflingly, debates over whether genocide occurred in the Bosnian war.<sup>259</sup> Hence, it was easier for the Trial Chamber in the *Kunarac* case to frame the mass rapes that went along for days in Foča as crimes against humanity.

Nonetheless, strong arguments can be made to define the mass rapes committed by the Bosnian Serb forces towards Bosnian Muslim women as acts of genocide. The definition of genocide by the ICTY is practically the same as the one found in the Genocide Convention. The crux of it is that there is intent to destroy, in whole or in part, a national, ethnical, racial or religious group.<sup>260</sup> The acts mentioned by the Convention to be a part of genocide do not explicitly mention rape, but one can infer it from some of the acts. Beside the already mentioned act of "imposing measures intended to prevent births within the group",<sup>261</sup> the act of "causing serious bodily or mental harm to members of the group"<sup>262</sup> can be associated to rape and sexual violence in general. Rape is not only painful physically, but also mentally as it can traumatize its victims for the rest of their lives. Witness 50 from the *Kunarac* trial declared: "There are no words in this world that could describe my feelings. It is the worst thing that was happening to me".<sup>263</sup> Survivors from Tuzla reported serious psychological problems that they still suffer from to this day, including post-traumatic stress disorder, anxiety, sexually transmitted diseases, hypertension and insomnia.<sup>264</sup> Serious bodily and physical harm was inflicted towards Bosnian Muslim women, purely because of their ethnicity. This does seem to fit within the definition of genocide. Mass impregnations, an act that was explained in depth earlier, resulted in thousands of babies being born and then given for adoption. As if that was not enough, the victims and their families feel tainted and

---

<sup>258</sup> Caleb J. Fountain, 'Sexual Violence, the *Ad Hoc* Tribunals and the International Criminal Court: Reconciling *Akayesu* and *Kunarac*' 19 ILSA Journal of Int'l & Comparative Law (2012-2013) 251.

<sup>259</sup> Fountain (n 258).

<sup>260</sup> Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277 art 2.

<sup>261</sup> *ibid.*

<sup>262</sup> *ibid.*

<sup>263</sup> 'Witness 50' (ICTY) < <http://www.icty.org/en/sid/188> > accessed 29 July 2016.

<sup>264</sup> -- --, 'Still No Justice for Women Survivors of Wartime Rape in Bosnia and Herzegovina' *Amnesty International* (29 March 2012) < <https://www.amnesty.org/en/latest/news/2012/03/still-no-justice-women-survivors-wartime-rape-bosnia-and-herzegovina/> > accessed 29 July 2016.

survivors may not feel ready to resume or start the creation of new families for some time.<sup>265</sup> A Muslim doctor who treated the rape victims from the Kalinovik camp said:

This was done systematically. It is a plan. Firstly, the rapes are to keep the women out of their villages, to prevent them ever coming back. These are Muslim women and the rapists were trying to kill their personality by forcing them to have children. It is not just a physical crime against a woman. It is also a psychological crime.<sup>266</sup>

Based on all of this, it would not be a stretch to see that the acts of mass rapes, resulting in mass impregnations, done by the Bosnian Serb forces towards Bosnian Muslim women were acts of genocide.

The notion that the rapes committed during the war can be classified as an act of genocide, or that it was at least used as a weapon of war, has already been brought up by the United Nations. In 1993, when the war was at its peak, the General Assembly noted that there were reports of systematic use of rape against Bosnian Muslim women by Serb soldiers.<sup>267</sup> The General Assembly also noted that this could be characterized as a weapon of war helping the process of ethnic cleansing that was being conducted by Serb soldiers, and that ethnic cleansing could be seen as a form of genocide.<sup>268</sup> The General Assembly expressly condemned the use of rape as a tool to carry out the ethnic cleansing of Bosnian Muslims. Four years later the General Assembly confirmed its view that rape was used within the campaign of ethnic cleansing, calling it systematic and deliberate, and mentions that within certain circumstances it could constitute an act of genocide.<sup>269</sup> Thus, it can be seen that there is a conscious impression within legal circles that the systematic rapes that were conducted against Bosnian Muslim women could have been framed as acts of genocide. Hence, it is a shame that there was never an actual conviction of rape within the crime of genocide. There might have been legal grounds for charges of rape as genocide to stand on, but no prosecutor has actually taken on the challenge of charging anyone with that particular crime.

---

<sup>265</sup> Kohn (n 201).

<sup>266</sup> Robert Fisk, 'Bosnia War Crimes: Doctor describes nightmare of victims: Robert Fisk, in Mostar, gathers detailed evidence of the systematic sexual assaults on Muslim women by Serbian 'White Eagle' gunmen' *The Independent* (London, 8 February 1993) <<http://www.independent.co.uk/news/world/europe/bosnia-war-crimes-doctor-describes-nightmare-of-victims-robert-fisk-in-mostar-gathers-detailed-1471658.html>> accessed 29 July 2016.

<sup>267</sup> UNGA Res 48/143 (20 December 1993) UN Doc A/RES/48/143

<sup>268</sup> *ibid.*

<sup>269</sup> UNGA Res 51/115 (7 March 1997) UN Doc A/RES/51/115

Historically, there has been a sense of superiority from Serbia, as well as Croatia and Slovenia looking back at Yugoslavia, compared to Bosnia and Herzegovina. The Bosnian Muslims had to fight to get recognized as a nationality, which did not happen until the late sixties. Bosnia was always seen as a source of contention between Serbia and Croatia, and it lacked its own independent identity outside of Yugoslavia. The ultranationalist Serbs saw Bosnian Muslims as an extension of the Ottoman Turks who defeated Serbia in the fourteenth century. This is what was taken advantage during Yugoslavia's downfall, and it is the fervent nationalism, specifically the one displayed by Serbia, that brought on the campaign of ethnic cleansing during the Bosnian war. However, ethnic cleansing soon turned into a graver crime, the one of genocide. The Serb forces have displayed intent to destroy a specific part of the Bosnian Muslim community in Srebrenica, which has been recognized as genocide worldwide. However, the genocidal campaign was not limited only to Srebrenica. The acts of rape deliberately inflicted towards Bosnian Muslim women, with full knowledge of the effect it would leave on them and the community they belonged to can be seen as "causing serious bodily or mental harm to the members of the group",<sup>270</sup> and the forced impregnations can fit with the act of "imposing measures intended to prevent births within the group" found in the Genocide Convention.<sup>271</sup> Thus, the suppression of the Bosnian Muslim identity that had been present since the beginnings of Yugoslavia culminated in the attempt to destroy it, and the rapes committed by the Serb forces were one way to expand the genocide throughout the entire territory of Bosnia and Herzegovina, not just Srebrenica.

While it cannot be said that there was a specific framing of rape within the concept of genocide during the Bosnian war, there are compelling arguments that show that there may be grounds to reach that conclusion. The mass rapes as well as the mass impregnations may fit within the definition of genocide, whether it is the one by the Genocide Convention or the one found in the ICTY Statute. The *Furundžija* and *Kunarac* cases showed that, while the ICTY was ready to go further than it has ever been seen in international law when it comes to defining the crime of rape, there were still hesitations of putting the acts of mass rapes within the larger scale of genocide, primarily due to lack of evidence pointing out the intent to destroy in part or in whole

---

<sup>270</sup> Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277 art 2.

<sup>271</sup> *ibid.*

the Bosnian Muslim community. However, it is the opinion of the author that there was a genocidal intent with the mass rapes conducted towards Bosnian Muslim women, one that proved to be fruitful. Although it does not appear as if that will ever be formally accepted by the international law community, it is still important to realize that this argument is not entirely groundless.

## Conclusion

The notion that the mass rapes that went on during the Bosnian war can be characterized as a tool of genocide is not a new one. Catherine MacKinnon has already proposed this, among others. However, it cannot be said that it is a theory that is set in stone. Much of the reluctance that comes with labelling it as genocide is due to genocide itself, which is notoriously known as the worst of crimes. Because of the gravity of that crime, any allegations that refer to it are handled with care. It does not help that there has not been an actual conviction of genocide for the overall war campaign of the Bosnian Serb forces. The Srebrenica genocide has been recognized, particularly in the *Karadžić* case. But any other kind of genocide that might have happened has been ignored. That is not to say that this comes off as a shock, as to prove that a genocide of a larger scale compared to the Srebrenica one would be very hard and complicated to do even for the best prosecutor. Despite credible proof, there are still deniers of the Srebrenica genocide. Thus, it is not understandable that there were not any movements for a recognition of the larger scale of genocide that happened during the Bosnian war, including the one done to Bosnian Muslim women. However, the biggest point that one would take from this thesis is that there the mass rapes conducted towards Bosnian Muslim women can, and should be, recognized as a tool of genocide.

## Contributions to Existing Research

The main aim of this thesis was to show how, through Yugoslavia's history, Serb nationalism led to the ethnic cleansing, and in the same vein to the genocide, done to the Bosnian Muslims. The historical narrative taken in this thesis might have seemed out of the ordinary, but it was important to show that the nations involved in the Balkan conflicts of the nineties used to live peacefully together. The nationalism, particularly the Serb nationalism, that can be traced back to the Second World War is what affected the Bosnian war itself. The notion of a Greater Serbia is what spurred on the ethnic cleansing that was propagated throughout the territory of Bosnia and Herzegovina. Towns that used to have a primarily Muslim population have had their demographics changed and today they are situated in Republika Srpska and have a majority Serb

population. It is a quite twisted irony that Srebrenica, where the genocide has been officially recognized, is now made up of primarily Bosnian Serbs.

The objective of this thesis was to show that the mass rapes that were conducted towards Bosnian Muslim women were done so with an ulterior motive. There are records of Serb soldiers proudly declaring that they wanted to impregnate these poor women, and put a Chetnik inside of them. This is pure biological and sexual warfare. One cannot ignore the gender aspect to these atrocities, as well as its lasting effect. These women would be forced to live with the shame of being raped, or even having to give birth to a Serb baby, and might even be rejected by their own Muslim community. By consequence this leads to women not being able to procreate again as they might be shunned by Muslim men, who might find them tainted and not fit to bear Muslim children. While this is problematic in itself, the notion that a raped woman is a tainted woman, or that their sexual agency is practically taken away from them, this is the reality of a patriarchal society which can be found throughout the ex-Yugoslavia, not just within the Bosnian Muslim community. This is what the Serb soldiers were very aware of, and chose to take advantage of.

What this thesis was able to do was to show that these rapes were conducted with a bigger aim than simple sexual gratification. While this is not uncommon for rapes in general, as usually there is power play involved, in this case this bigger aim was connected to the communities and/or ethnicities these women belonged to. This was an important facet of these women that the Serb soldiers managed to exploit for their own cause. In a larger sense this managed to undermine these women themselves, as they lost their identity as women and instead were downgraded to their biological structure as well as property belonging to the men in their lives. International law was not able to fix this, or even recognize it. That is primarily because only the Srebrenica genocide was officially recognized, but also because women's rights are still not fully developed within international law.

What this thesis hoped to do was to present a case of sexual exploitation of Bosnian Muslim women, and it did so by tracing the history of Bosnia and Herzegovina, mainly with its existence within Yugoslavia. Perhaps entirely new grounds have not been covered, but this is still a relevant issue not just because the ICTY is closing down, but because these victims are still marginalized in Bosnia and Herzegovina. Despite the

fact that it has been over twenty years since the war, its effects are still felt and that is very much the truth with these women who have not seen justice for these horrible crimes. In a larger scale, this hypothesis, that the mass rapes that have occurred during the Bosnian war were part of a genocidal campaign, is important for international law and women's rights as well. The notion that rape is an inevitable circumstance of war needs to stop. Rapes always have power dynamics within them, and often they are laced with hyper masculinity and directed towards women whose existence is devalued. There is a need for a stronger campaign within international law to recognize that rapes in wars need to be punished more firmly.

### **Recommendations**

The ICTY has only two cases left until it closes down. Neither of these cases have charges that are relevant to the issue at hand. Thus, it is doubtful that the international law community will recognize that there was a genocidal aspect to the mass rapes committed during the Bosnian war. However, the more people talk about it and the more this idea is put out in academic circles, the more it will gain traction. Justice for the victims is something that cannot be truly achieved, but by having it recognized that there was a deeper evil within these heinous acts can the pain be slightly alleviated. From a feminist standpoint a deeper discussion can be done as to whether women are seen as more than their reproductive system. It is important to have these kinds of discussions as the Bosnian war is not the first or the last war where these kinds of attacks on women's sexual autonomy have happened. Sadly, rape is seen as something very common during wartime. Women are reduced to having only to provide their sexual appearance to the enemy. It is doubtful that this will change anytime soon. But the more it is talked about, the more it is brought to attention.

In terms of international law, there is a need for a stronger attitude towards cases of sexual violence during wartime. The ICTY has approached several cases involving sexual violence with a progressive mind, and it cannot be denied that it has made some progress when it comes to the establishment of a definition of rape in international law. Despite this admirable mind-set, it has not resulted in many convictions. Somehow rape or sexual violence in general is still not treated seriously enough. One cannot fault the prosecutors at the ICTY for not looking at rape within the context of genocide as this

thesis proposes, because that would have been very difficult to prove. But the ICTY could have done more when it comes to the sexual violence that was largely propagated during the Bosnian war. There just does not seem to be a stronger attitude when it comes to approaching these kinds of cases.

The *Akayesu* case from the ICTR was a step in the right direction. However, it cannot be entirely applied to the situation during the Bosnian war. Still, it should be seen as a precedent for charges of rape as a tool of a genocidal campaign. It can be prosecuted and it can actually be recognized as a war tactic by an international court. The fact that it has not happened in regards to the Bosnian war should not limit further discussion. Comparisons between the ICTR and the ICTY's handling of cases involving sexual violence and mass rapes should be made, with special outlook to what the ICTY could have done differently, if anything else was possible. A stronger position in the international law community towards these kinds of cases would help. Any future work or research should be able to see that the rapes conducted during the Bosnian war were part of a larger genocidal campaign, and thus should be classified as genocidal rapes. The bigger the discussion around this issue is, the more it can grow to be accepted and change can be made for future cases, as history has shown that this kind of war tactic will be used again.

## Bibliography

### Table of Cases

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) (Judgment) (2007) ICJ Rep 43

Prosecutor v Anto Furundžija (Judgment) ICTY-95-17/1-T (10 December 1998).

Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković (Judgment) ICTY-96-23-T & ICTY-96-23/1-T (22 February 2001).

The Prosecutor v Jean-Paul Akayesu (Judgment) ICTR-96-4-T (2 September 1998).

### Table of Legislation

Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277 art 2.

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609 art 4.

Statute of the International Criminal Tribunal for the former Yugoslavia 2009.

### United Nations Documents

UNGA Res 48/143 (20 December 1993) UN Doc A/RES/48/143

UNGA Res 51/115 (7 March 1997) UN Doc A/RES/51/115

UNSC Res 824 (6 May 1993) UN Doc S/RES/824

UNSC Res 827 (25 May 1993) UN Doc S/RES/827.

### Books

Andjelić N, *Bosnia-Herzegovina: The End of a Legacy* (Frank Cass Publishers 2003).

Batrop PR, and Jacobs SL (eds), *Modern Genocide: The Definitive Resource and Document Collection*, vol 1 (ABC CLIO 2015).

Bjelajac M, and Žunec O, 'The War in Croatia, 1991-1995' in C Ingrao and TA Emmert (eds), *Confronting the Yugoslav Controversies* (Purdue University Press 2009).

Burg SL, and Shoup PS, *The War in Bosnia-Herzegovina: Ethnic Conflict and International Intervention* (M. E. Sharpe, Inc. 1999).

Calic MJ, 'Ethnic Cleansing and War Crimes, 1991-1995' in C Ingrao and TA Emmert (eds), *Confronting the Yugoslav Controversies* (Purdue University Press 2009).

Crampton RJ, *The Balkans Since the Second World War* (Routledge 2014).

Glenny M, *The Balkans 1804-1999: Nationalism, War and the Great Powers* (2nd ed, Granta Books 2000).

Hoare MA, *The Bosnian Muslims in the Second World War: A History* (Oxford University Press 2013).

Perica V, *Balkan Idols: Religion and Nationalism in Yugoslav States* (Oxford University Press 2002).

Pinson M, 'The Muslims of Bosnia-Herzegovina Under Austro-Hungarian Rule, 1878-1918' in M Pinson (ed), *The Muslims of Bosnia-Herzegovina: Their Historic Development From the Middle Ages to the Dissolution of Yugoslavia* (2nd ed, Harvard University Press 1996).

Ramet SP, 'Yugoslavia' in SP Ramet (ed), *Eastern Europe: Politics, Culture, and Society since 1939* (Indiana University Press 1998).

Rogel C, *The Breakup of Yugoslavia and Its Aftermath* (Greenwood Press 2004).

Sell L, *Slobodan Milosevic and the Destruction of Yugoslavia* (Duke University Press 2002).

Silber L, and Little A, *The Death of Yugoslavia* (2nd ed, Penguin Books and BBC Books 1996).

Tomasevich J, *War and Revolution in Yugoslavia, 1941-1945: The Chetniks* (Stanford University Press 1975).

Stevanović V, *Milosevic: The People's Tyrant* (I.B. Tauris, 2004).

West R, *Tito and the Rise and Fall of Yugoslavia* (Faber and Faber 1994).

### **Journal Articles**

Aydelott D, 'Mass Rape During War: Prosecuting Bosnian Rapists Under International Law' (1993) 7 Emory Int'l Law Rev.

Campbell JC, 'Tito: The Achievement and the Legacy' (1979-1980) 58 Foreign Aff.

Carlton GH, 'Equalized Tragedy: Prosecuting Rape in the Bosnian Conflict Under the International Tribunal to Adjudicate War Crimes Committed in the former Yugoslavia' (1997) 6 Journal of Int'l Law and Practice.

Cerović S, 'The Rise of Serbian Nationalism' (1993-1994) 26 NYU Int'l L & Pol.

Fabijanić Gagro S, 'The Crime of Rape in the ICTY's and the ICTR's case-law' 60 (2010) Zbornik.

Fisher SK, 'Occupation of the Womb: Forced Impregnation as Genocide' 46 (1996) Duke Law Journal.

Fountain CJ, 'Sexual Violence, the *Ad Hoc* Tribunals and the International Criminal Court: Reconciling *Akayesu* and *Kunarac*' 19 ILSA Journal of Int'l & Comparative Law (2012-2013).

Koenig DM, 'Women and Rape in Ethnic Conflict and War' 5 (1994) Hastings Women's Law Journal.

Kohn EA, 'Rape as a Weapon of War: Women's Human Rights During the Dissolution of Yugoslavia' (2010) 24 Golden Gate University Law Review.

MacKinnon CA, 'Rape, Genocide and Women's Human Rights' 17 (1994) Harvard Women's Law Journal.

Majstorović V, 'The Rise and Fall of the Yugoslav-Soviet Alliance, 1945-1948' (2010) 16 University of Toronto.

McDonald GK, 'Problems, Obstacles and Achievements of the ICTY' (2004) 2 Journal of Int'l Criminal Justice.

McHenry J, 'Justice for Foca: The International Criminal Tribunal for Yugoslavia's Prosecution of Rape and Enslavement as Crimes Against Humanity' 10 Tulsa Journal of Comparative & Int'l Law (2002-2003).

Patel KR, 'Recognizing the Rape of Bosnian Women as Gender-Based Persecution' 60 Brooklyn Law Review (1994-1995).

Pesić V, 'Serbian Nationalism and the Origins of the Yugoslav Crisis' (1996) United States Institute of Peace.

Russell-Brown SL, 'Rape as an Act of Genocide' 21 (2003) Berkeley Journal Int'l Law.

Schroeder WA, 'Nationalism, Boundaries, and the Bosnian War: Another Perspective' (1994-1995) 19 Southern Illinois University Journal.

Webb J, 'Genocide Treaty – Ethnic Cleansing – Substantive and Procedural Hurdles in the Application of the Genocide Convention to Alleged Crimes in the Former Yugoslavia' (1993) 23 Georgia Journal of Int'l and Comparative Law.

### **Online Articles**

Andrews T, 'What is Social Constructionism?' 11 (1) Grounded Theory Review (2012) < <http://groundedtheoryreview.com/2012/06/01/what-is-social-constructionism/> > accessed 1 August 2016.

Fisk R, 'Bosnia War Crimes: Doctor describes nightmare of victims: Robert Fisk, in Mostar, gathers detailed evidence of the systematic sexual assaults on Muslim women by Serbian 'White Eagle' gunmen' The Independent (London, 8 February 1993) <

<http://www.independent.co.uk/news/world/europe/bosnia-war-crimes-doctor-describes-nightmare-of-victims-robert-fisk-in-mostar-gathers-detailed-1471658.html> > accessed 29 July 2016.

Fisk R, 'Bosnia War Crimes: 'The rapes went on day and night': Robert Fisk, in Mostar, gathers detailed evidence of the systematic sexual assaults on Muslim women by Serbian 'White Eagle' gunmen' *The Independent* (London, 8 February 1993) < <http://www.independent.co.uk/news/world/europe/bosnia-war-crimes-the-rapes-went-on-day-and-night-robert-fisk-in-mostar-gathers-detailed-evidence-of-1471656.html> > accessed 29 July 2016.

-- --, 'Still No Justice for Women Survivors of Wartime Rape in Bosnia and Herzegovina' *Amnesty International* (29 March 2012) < <https://www.amnesty.org/en/latest/news/2012/03/still-no-justice-women-survivors-wartime-rape-bosnia-and-herzegovina/> > accessed 29 July 2016.

### **Web Pages**

'About the ICTY' (*ICTY*) < <http://www.icty.org/en/about> > accessed 11 July 2016.

'Completion Strategy' (*ICTY*) < <http://www.icty.org/en/about/tribunal/completion-strategy> > accessed 11 July 2016.

'Crimes of Sexual Violence' (*ICTY*) < <http://www.icty.org/en/in-focus/crimes-sexual-violence> > accessed 12 July 2016.

'In Numbers' (*ICTY*) < <http://www.icty.org/en/in-focus/crimes-sexual-violence/in-numbers> > accessed 12 July 2016.

'Infographic: ICTY Facts & Figures' (*ICTY*) < <http://www.icty.org/en/content/infographic-icty-facts-figures> > accessed 11 July 2016.

'Landmark Cases' (*ICTY*) < <http://www.icty.org/en/in-focus/crimes-sexual-violence/landmark-cases> > accessed 1 August 2016.

'The Cases' (*ICTY*) < <http://www.icty.org/en/action/cases/4> > accessed 11 July 2016.

'Witness 50' (*ICTY*) < <http://www.icty.org/en/sid/188> > accessed 29 July 2016.