

**SEXUAL VIOLENCE AGAINST WOMEN IN CIVIL WARS:  
AN ANALYSIS OF YUGOSLAVIAN CIVIL WAR**

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Approval of the Graduate School of Social Sciences

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## **ABSTRACT**

### **SEXUAL VIOLENCE AGAINST WOMEN IN CIVIL WARS: AN ANALYSIS OF THE YUGOSLAVIAN CIVIL WAR**

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In this thesis, the systematic usage of sexual violence towards women as a weapon during the Yugoslavian Civil War is analyzed. The study attempts to underline the role of gender identities of women during the Civil War as a means for the victimization of women through sexual violence, especially mass rapes. It is argued that with the disintegration of Yugoslavia, as men clashed for power, the portrayal of women as “mothers” and “carriers” of the nation under the nationalistic discourse caused these women to become the primary targets of the war. It is also argued that the primary aim of rape as a weapon of ethnic cleansing during the war was to destroy the harmony and unity of the enemy by dishonoring and violating their women.

Keywords: Sexual violence, rape, Yugoslavia, civil war, ethnic cleansing, gender roles.

## ÖZ

### İÇ SAVAŞLARDA KADINA KARŞI CİNSEL ŞİDDET: YUGOSLAVYA İÇ SAVAŞI ÜZERİNE BİR İNCELEME

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Bu çalışmada, Yugoslavya İç Savaşında kadına karşı sistematik cinsel şiddetin bir silah olarak kullanılması analiz edilmiştir. Bu çalışmada, kadınlara atfedilen toplumsal cinsiyet rollerinin, iç savaş sırasında bu kadınların cinsel şiddete, özellikle toplu tecavüze maruz kalmaları için bir sebep olduğunun altı çizilmiştir. Çalışmada, Yugoslavya'nın dağılmasından sonra öne çıkan milliyetçi akımların kadınları "milletin anneleri" ve "milli kimliğin taşıyıcıları" olarak konumlandırmasının, bu kadınların erkeklerin güç için çarpıştığı iç savaş sırasında hedef haline geldiği savunulmuştur. Sonuç olarak, savaş sırasında bir etnik temizlik silahı olarak kullanılan tecavüzün temel amacının kadınlara şiddet uygulayarak ve onların onurlarını zedeleyerek düşmanın birlikteliğini ve uyumunu bozmak olduğu savunulmuştur.

Anahtar Sözcükler: Cinsel şiddet, tecavüz, Yugoslavya, iç savaş, etnik temizlik, toplumsal cinsiyet rolleri.

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While this thesis was preparing, Slobodan Milošević died in March 11, 2006 from heart attack. He was accused of genocide in Bosnia and war crimes in Croatia and he died after five years in prison with just fifty hours of testimony left before the conclusion of the trial. His death would never erase the bitter memories of thousands of people who suffered in Yugoslavian Civil War. This thesis primarily dedicated to all these women who became victims of sexual violence during the Yugoslavian Civil War.

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## **CHAPTER 1**

### **INTRODUCTION**

#### **1.1. RESEARCH PROBLEM AND THE SIGNIFICANCE OF THE TOPIC**

The sexual violence against women during the Yugoslavian Civil War between 1992 and 1995 caused the international community to accept sexual violence in armed conflict, especially rape, as a crime against humanity. Rape was always seen as a weapon of war, but the Yugoslavian Civil War caused the international community to condemn rape as a crime which can be prosecuted in the International Criminal Court. Even though rape had been seen as an inevitable byproduct of war, its systematic use against women from different ethnic groups during the Yugoslavian Civil War indicated that rape was not simply a violent action, but also a tool of patriarchal ideology used by conflicting parties to sustain gender inequality. During the Yugoslavian Civil War, while women were raped due to their gender roles as “mothers and carriers of the nation”, the patriarchal ideology in their own communities caused them further oppression by the portraying them as defiled. This fact increased the attention of feminist scholarship on rape in war, and feminist scholars focused on the clash of patriarchies during war. It is important that more studies be done on this topic, because even though rape in war is not a new topic, the use of rape in a systematic way -as a weapon of ethnic cleansing- is a relatively new issue being analyzed from

a feminist standpoint. In this sense, this thesis aims to bring together the existing feminist studies on sexual violence towards women during war and to create a review of feminist literature on women and armed conflict. The focus of these feminist studies is oppression of women by sexual violence during war because of their gender roles, which is also the research subject of this thesis.

During the last quarter of the 20th Century, the nature of armed conflicts shifted from interstate wars to intrastate wars. While global conflicts have diminished, armed conflicts are seen within countries in which members of different ethnic, racial, religious or class groups fight against each other for control of power. This shift in the nature of conflict has also changed the actors in the wars. While previously, those engaged in armed conflicts were mostly regular soldiers or irregular soldiers, with the shift in the nature of the conflicts, irregular civilian forces and even children, who are vulnerable to all kinds of ethnic, religious or cultural coercion and persuasion, have engaged in armed conflict. Moreover, with free trade and the availability of electronic communication, access to weaponry has become easier than ever before; especially common usage of small arms and light weapons, which has fueled the violation of human rights during conflicts by non-state actors. Weapons are used not only by the regular army, but also by civilians, who can easily obtain and use them. The towns and cities of the civilian population become the fronts, and the civilian population becomes the target of the warring parties.

Civilian populations during civil war face many atrocities and suffer from many forms of violence, such as torture and killing. Local conflicts also lead to the dislocation of many people, both nationally and internationally. This kind of movement also heralds more insecurity and conflict for those who flee from their countries. Because violence against civilians during civil conflict is aimed not only at persons, but also at their basic needs, such as electricity, water and health facilities, the socio-economic foundation necessary for human survival is also destroyed. During conflict, all kinds of buildings, including factories, dumps, schools and hospitals are damaged, and the nation is faced with economic breakdown. Also, economic sanctions applied by other states, which are meant to affect the military elite of the conflict, primarily affect civilians. When other states try to cut their economic ties with the state in which civil war is taking place, they intend to force the political and military elite to end the war. However, even under sanctions, the warring parties obtain access to weapons through illegal means, and they use every resource of the country for war; moreover, these sanctions increase the civilian population's poverty and helplessness. In an environment in which law and order are shattered, safety becomes impossible, and criminal networks use this catastrophic environment for the trade of drugs, weapons and people.

Women, who constitute most of the civilian population during interstate conflict because men have left for combat, become the primary target of the warring parties during civil war, and they become the major victims of the atrocities mentioned above. Even though both men and women suffer during

civil wars, the war experience of women tends to be different from that of men, in the sense that women are exposed to traumatic sexual violence because of their sex and gendered identities.

The significance for women of armed conflict stems from the fact that conflict always unfolds as a conflict of masculinities, a product of patriarchy, which oppresses women. Women fall prey to patriarchal oppression at the hands of an enemy that attacks the other nation through the patriarchy's dominant norms and areas. As feminist literature puts it, during peacetime, under patriarchal ideology, women are identified as the honor of the family; in wartime, however, this identification is expanded to portray women as the "the honor of the one nation" (Halsell, 1993; Hague, 1997; Korac, 1998; MacKinnon, 2001; Mostov, 1995). In this sense, the warring parties aim to dishonor the other side by using sexual violence against the women of their enemy. This also complies with one other patriarchal norm: describing women as "the property of men". The impact of sexual violence on women is not only physical, but also psychological and social due to the fact that the patriarchal ideologies of their own community often further oppress these female rape victims. Likewise, the economic and traumatic impact of armed conflict increase sexual violence against women in the post-war period. Economic hardship increases prostitution among women who head households; for women whose male relatives return from war, domestic violence stemming from the trauma of war becomes yet another type of sexual violence aimed at them (Kumar, 2001).

This study acknowledges one other effect of interstate conflict, which is a possible positive effect on women. The participation of women as active combatants in conflicts, especially in revolutionary ones in which the aim is to change the current situation of the nation, may change women's gender roles in society. Revolutionary conflict promises change, and this change usually includes changes in women's roles in society. In the post-war period, women use their active participation and newly found confidence to continue their equality in the private and public spheres. As Bouta, et al.(2005: 16) states regarding the civil war in Nepal, Nepalese villagers reported that in areas of the country controlled by the Maoist Army, in which every third guerilla is a woman, domestic violence, polygamy and alcoholic abuse were diminished. Skjelsbæk (2001: 10) gives the additional example of El Salvador, in which female guerillas used the conflict as a means to change gender roles. However, the incidences of this kind of change are few, and acknowledging this probability, this thesis mostly focuses on using gender roles in conflict as a means both to hurt women, and through women, the nation.

This thesis primarily aims to analyze gender-based violence towards Bosnian Muslim women during the Yugoslavian Civil War, largely by focusing on sexual violence (in particular, rape) which was used as a weapon during this war. In this sense, the main research question of this thesis is formed as how were women oppressed due to their gender roles during the Yugoslavian Civil War, in which sexual violence against women was used as a tool of ethnic cleansing? Even though this study primarily analyzes the answer to this main research question, and focuses on the events during the

Yugoslavian Civil War, other related issues also needed to be analyzed to support the main aim. First of all, the redefinition of women's gender roles before the Yugoslavian Civil War is necessary to understand how the nationalistic ideas which led the country into civil strife also affected women's oppression during the Civil War. Also, to create a general understanding of the impact of this Civil War on women's lives, the post-war period is analyzed briefly.

It should be noted that rape in war has always been considered a byproduct of war, a form of spoil of war. However, during the Civil War in Yugoslavia, rape by one of the warring parties took on a special meaning: it was systematically used by the Serbs against women of the other ethnic group as a tactic of war to exhaust the enemy and as a tool of ethnic cleansing.

According to Salzman (1998), ethnic cleansing aims to "render an area ethnically homogenous by removing the members of the [other] group" (cited in Diken and Laustsen, 2005: 118). Concentration camps, torture, mass killings, forced deportations, destruction of private and cultural property, blocking of humanitarian aid and sexual violence are used as tactics of ethnic cleansing. Ethnic cleansing is differentiated from genocide in that genocide, according to the Convention on the Prevention and Punishment of the Crime of Genocide (1948), is defined as acts committed with the intention of destroying in whole or in part, a national, ethnical, racial or religious group, by acts such as killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part,

imposing measures intended to prevent births within the group and forcibly transferring children of the group to another group (CPPCG, 1948: Article 2). In this sense, the Yugoslavian Civil War became a bitter example of ethnic cleansing in Europe in modern times. During the Yugoslavian Civil War, the primary aim of the Serbs was to cleanse the land of the non-Serbian population; they used all the tactics mentioned by Salzman (1998) to achieve their goal. More than the concentration camps, torture and killings, rape was their main strategy, because rape created much more terror than killings and torture. By using rape, the Serbs not only intended physical violence but also to create an environment in which the different ethnic groups in Yugoslavia could not live side by side anymore. In this sense, as both Diken, et. al (2005: 112) and Pelka (1995: 9) mention, not only soldiers but also the civilian population were encouraged to commit sexual violence against women during the Civil War. In this way, survivors would feel unsafe returning to their old towns or villages, knowing that their neighbors, colleagues or even their teachers were the ones who had committed these crimes.

It can be contended that the systematic use of rape and other forms of sexual violence such as harassment, forced impregnation and mutilation of women from ethnicities other than Serbian was based on a redefinition of women's gendered identity under nationalistic discourse. As Walsh (2001: 59) points out, after the disintegration of Yugoslavia, its successor states, especially Serbia, Croatia and Bosnia-Herzegovina redefined the position of women in society as "mothers of the nation" and "carriers of the national identity" under the effect of national ideologies. As Yuval Davis and Anthias (1989) point out,

women's roles were adapted to the nationalistic discourse as biological reproducers of members of the ethnic collectivity; as reproducers of the boundaries of an ethnic/national group; and as central participants in the ideological reproduction of the collectivity and transmitters of its culture. These roles were also traced in the former Yugoslavian states. As Boeschoten (2003: 46) mentions, during the socialist regime, women were portrayed as working Socialist women, and they gained equal access to education and work. However, these rights were mostly available to women in big cities, and the socialist regime never challenged the patriarchy. For women in villages and towns, the patriarchal gender roles continued. These women's place was primarily seen as home- and women-related issues such as domestic violence. Even though the liberation of women had been limited before, the situation of the pre-war former Yugoslavian States got even worse. In fact, the liberation of women, secured by the socialist regime of the former Yugoslavia was rejected by nationalistic ideologies. Women's reproductive capacities were used to define women's roles by stressing the fact that women gave birth to new members of an ethnic group and, by their nurturing role, they raised new generations according to the customs of this ethnic group.

However, the portrayal of women as the "honor" and "mothers of the nation" victimized them when Serbs used rape, sporadically and more importantly, systematically, in rape camps, as a weapon against the nation to which the women belonged. According to the European Commission, 20,000 women were raped during the Civil War, but according to feminist groups the number

was much higher (Fred, 1995; Diken and Laustsen, 2005). Raping women became a form of communication between warring men: one group of men, the Serbs, used rape to proclaim the incapability of the non-Serbs to protect their nation, as they could not protect their women. In an environment in which women were closely identified with their nations' honor, the act of rape became a strong insult and an assault against the "other" nation.

In addition, rape was also a way to pollute the "other" nation. During the Civil War, the Serbs also used rape as a tool of ethnic cleansing by defiling one generation of an ethnic group, because in Yugoslavia's successor states, the nationality of a child was determined by the nationality of the father. Women were raped hundreds of times until they became pregnant with Serb babies. However, unlike the definition of genocide, Serbs did not intend to keep these babies; instead, these women were sent back to their societies to show that the next generations of these groups were defiled. In this way these women were also used as tools to disgrace and stain their nation, and to destroy national morale and unity. This systematic use of sexual violence against women during the Yugoslavian Civil War made this particular civil war a special case to be studied.

Moreover, an additional function of systematic rape during the Yugoslavian Civil War was to destroy the ethnic integration that had occurred during the socialist regime in Yugoslavia. This political impact of rape aimed to break the integration between different ethnic groups and make sure that only single ethnic groups lived together again. In this context, mixed marriages between Serbs and Croats or between Serbs and Bosnians became a

target, and even Serbian women were raped because of their husbands' nationality. Rape also became a propaganda tool for the Serbs. They filmed mass rapes and forced raped women to admit that they had been raped by Croatians or Bosnians (MacKinnon, 1993). The lack of any distinct racial differences between the nations of the former Yugoslavia allowed the Serbs to use these cassettes as a propaganda tool against their enemies.

In this thesis, it is thus demonstrated that women and their bodies were used as a battlefield between warring men in civil conflict, and their identities as human beings were lost under their redefined sexual and gendered identities as primarily belonging to men from the other ethnic group.

## **1.2. RESEARCH PROCEDURE**

Due to the gender inequality in male-dominated societies, women experience social events differently from men; however, the association of women mainly with the private sphere has resulted in the exclusion of their experience from studies concerning public events, including civil wars. With the change in the nature of conflict and women increasingly becoming a target of war, there is a growing focus in the literature on the gender discussions of war. Yet women's experiences constitute an insufficient part of these studies.

This thesis intends to shed a feminist light on women's experiences of conflict, focusing specifically on the Yugoslavian Civil War, which is characterized by the systematic use of rape as a weapon of war by Serbs against Bosnian women.

The feminist perspective to the social sciences aims to introduce women as the core subject of research, and make the unheard voices of women heard. The description of Wise and Stanley (1983) of feminist social research as “on, by and for women” was one of the earliest definitions of the feminist perspective on research in the social sciences (cited in Brunskell, 1998: 39). Maynard (1994) also points out the fact that feminism intends to challenge the subordination, passivity and silencing of women, and to do so, feminism encourages women to speak out about their own conditions and their own experiences (cited in Brunskel, 1998: 39). This definition clearly indicates the fact that research with a feminist perspective focuses on the lives of women.

Social research, in general, emphasizes the public, official and visible role players or situations; on the other hand, what is private, unofficial and invisible goes unnoticed (Millman and Kanter, 1987: 32). Because women are mostly associated with private life, their experiences tend to be excluded from social research. Brunksell (1998: 39) and Carroll and Zerilli (1999: 43) mention that this also creates a challenge to the so-called neutrality of social research, since women’s experiences and their subordinate position are excluded from non-feminist research. In this context, studies and research performed from a feminist standpoint, setting women as the main subjects of research and gender relations as the major unit of analysis has made the experiences of women visible.

Thus, this thesis has a feminist standpoint and does not intend simply to analyze violence against women during the Yugoslavian Civil War as one of the atrocities towards the civilian population. It aims to analyze women’s

subordination within the Civil War on the basis of their gender roles and their sexuality. In this context, this study introduces women and their unique experience during an ethnic conflict as its primary subject.

It should be noted that, as Harding (1987:7) points out very clearly, women come from different identities, classes and nations, and these identities, apart from their sex, also define their position in society and their problems. It is hard to give only one definition for “women” and “women’s experiences”. Not only at a general level, but also at an individual level, the experiences of women may vary according to their other identities. Hence, it is not entirely possible to produce a study that encompasses all women’s experiences during the Yugoslavian Civil War. The experiences of Serbian women during the war may differ from those of Bosnian or Croatian women, and knowing and accepting that, this thesis mostly focuses on the experiences of Bosnian Muslim women, who were the main targets of dramatic forms of systematic sexual violence due to the fact that they belonged to men from different ethnicities and were perceived as the honor of their men in the Bosnian society.

This study is thus a case study, which takes a close look at the Yugoslavian Civil War to analyze the extent, nature, meaning and functions of realized systematic sexual violence against Bosnian women during the war.

The analyses of the Yugoslavian Civil War in this thesis are achieved by reviewing secondary sources that were mostly written with a feminist standpoint, to sort out the connections between patriarchy, masculinity and nationality during conflict in order to understand the gender-based violation of

the women of a specific ethnic identity. Secondary sources written by Bosnian and Serbian female academics were mostly chosen with an aim towards intensely evaluating the case. These local authors' analyses have provided particular insight, and were especially helpful in understanding the case study of this thesis. For a comparison between the Yugoslavian Civil War and others, secondary sources about civil wars in Rwanda, Cambodia, El Salvador and others were also evaluated and used in this study, albeit in a limited way, so as not to weaken the coherence of the study.

World Bank and the United Nations data and ratios concerning deaths, migration, rape and prostitution are used to support the research, and testimonies of female victims of sexual violence during the Yugoslavian Civil War are selected and included in the study to highlight the extent of sexual violence against women during the Civil War.

### **1.3. ORGANIZATION OF THE THESIS**

After the Introduction, Chapter II of this study constitutes the theoretical framework for this thesis to provide a background for analyzing gender-based violence towards women in the Yugoslavian Civil War. The chapter is divided into two sections: the first section primarily focuses on civil war and its consequences on the civilian population. The changing nature of wars from interstate to intrastate is also evaluated in detail in this section. The second section of Chapter II focuses on women in civil war, and, in particular, their experiences on the basis of their gendered identities. Women may experience war as active participants or as passive victims, but in both cases they face sexual harassment and gender-based violence exploiting their

sexuality. As active participants, women can also fight alongside men, especially in revolutionary civil wars. The terms “revolutionary civil wars” and “revolutionary wars” are used by Waldman (2000), Sambanis (2001), Reynal Querol (2002) and Bouata et. al (2005) to describe civil conflicts in which a group starts an armed conflict to erase the social, political and economical inequalities within a country. In this sense, the warring parties are usually the state (and its regular army) and the civilian population. In general it is impossible to distinguish the reasons for civil war under separate titles because many reasons merge with each other during these conflicts. At their core, all civil wars are the result of conflict over distribution of resources, including land. However, the scholars mentioned above distinguish between civil wars based on revolutionary movements and civil wars erupting because of ethnic differences.

During revolutionary movements, women’s equal access to public life is also on the agenda of the revolutionists, so women’s participation in the conflict is also encouraged. Women may sometimes display acts that are usually portrayed as male, such as killing and fighting; and this earns them respect among their male comrades. In addition, this respect increases their self-confidence, and in some cases, such as in El Salvador, women can change their gender roles within the society even after the war ends. However, these cases are few, and the active participation of women during civil wars often follows their gender role of peace times. Women in armies are usually appointed to positions described as female, such as cooking or healing; and

women are also expected to serve male fighters sexually, and they may face sexual harassment.

As the second section of the Chapter II elaborates, women who do not participate in civil war constitute the main part of the civilian population, and they become targets during the war. While cities are burned, bombed and besieged, women whose male relatives leave to fight have to cope with the traumas of war, and they try to survive for their families. Lack of food, electricity and water worsens the conditions and many women have to leave their towns and become refugees. Because the warring parties use all the resources of the country, women who cannot get access to these resources suffer from poverty, both during the war and in the post-war era. The poverty and lack of jobs leads women to work in black-market jobs, including prostitution. The economic breakdown of the country increases sexual harassment towards these women, while criminal groups are trafficking women for purposes of sexual exploitation.

The third chapter of the thesis deals with sexual violence against women during the Yugoslavian Civil War; in particular it analyzes the use of rape during war as a weapon against the enemy.

As already explained, the increase of sexual violence towards women during civil war constitutes a unique aspect of women's experience in war, different from that of men. Even though men may face rape during war, the primary victims of martial rape are women.

While rape is common in nearly every war, the use of rape by Serbs during the Yugoslavian Civil War was not just a "trophy" or "spoil" of war. Serbs

systematically used rape, forced impregnation and other kinds of sexual violence towards women during the Civil War as a weapon against the ethnic group these women belonged to. The portrayal of women as the “honor and mothers of the nation” made rape and impregnation an assault on these women’s nations.

In the fourth chapter, other effects of the Yugoslavian Civil War on women are analyzed, and it is demonstrated that these effects also magnified the impact of gender-based sexual violence towards women. Especially in the post-war era, women were discriminated against in the work place; high-paid jobs were usually reserved for ex-soldiers. Women who lost their male relatives (breadwinners) during the war had to work for survival, but in dire economic conditions, most women, homeless and without relatives, also became prey for sex-traffickers. On the other hand, women whose male relatives returned from the war faced domestic violence. The trauma of war and use of extreme violence during the war caused men to carry the violence into the private sphere.

The concluding chapter wraps up the argument and the main analytic threads of this thesis by putting forward further questions for research about women, violence and civil war from a feminist perspective.

## **CHAPTER 2**

### **WOMEN AND CONFLICT**

As was mentioned earlier, since the last quarter of the 20th Century, the nature of conflict has changed. While global conflicts have been diminishing, local conflicts have replaced them and they have marked this era. The changing nature of conflict from interstate wars to intrastate wars has also changed the tactics and weapons used in conflicts. In the past, the regular armed forces mostly absorbed the damages of armed conflict. However, in current conflicts, civilians have become the primary victims. Incidents of violence against civilians are not simply collateral damage; on the contrary, civilians have become the primary target in today's conflicts. In addition, torture, murder and rape are used as weapons during these conflicts to demoralize the enemy.

The history of humankind consists of war stories, and the main subjects in these stories have always been men (Yeğenoğlu and Çoşar, 2003: 211). They have been the ones who make decisions about conflicts; they have been heroes; they have killed and been killed for their countries. Women, on the other hand, have either been portrayed as those in need of protection, or as means of communication between men.

In times of peace, male-dominated ideology uses women's reproductive capacity as an instrument of power over them. As feminist scholarship has highlighted for decades, the reproductive capacity of women has direct

effects on social existence. Every newborn child continues the lineage and also sustains the identity of the community he or she belongs to. It is this belief that heralds the need in patriarchal societies to control women's bodies. Moreover, in their everyday life women are portrayed as the honor of their husbands, their male relatives and their communities. Hence, domestic violence, honor killing or other forms of sexual violence have always been used to control women's bodies as well as their reproductive capacities (Erturk, 1996: 25,26).

As the literature on women, war and militarism has demonstrated, in times of war, women are not portrayed merely as the honor of the family anymore; now they also symbolize the honor of the nation to which they belong. As mothers of the nation, they should be protected by their male comrades. While their comrades try to protect them from the enemy, the enemy uses the women's bodies as a means for confrontation between the two warring parties. This use of sexual violence against women during war aims not only to hurt women, but also to hurt the whole society. Ertürk (1996: 26) points out that, the rape and impregnation of women is used as a war strategy to dishonor the enemy by violating the women "who belong to other men". As a result, women lose their identities as human beings; they become mere weapons men use to injure each other.

In this context, the civil war between the former Yugoslavian nations stands as a significant and striking case of the use of women's bodies as a war zone to injure the male enemy. As Molinari (1993: 19). points out, sexual violence directed toward women during war, such as rape (in its extreme form)

reached a systematic and traumatic level during the civil war in Yugoslavia. Even though rape has always been used as a spoil of war, in Bosnia, the systematic and planned use of rape by the Serbs as a weapon against “the enemy” transported martial rape to a new level. Women were raped and tortured during the civil war in Rwanda and in other conflict situations, too; but the use of sexual violence against women of the enemy as part of an ethnic cleansing project was much more obvious and striking during the Yugoslavian Civil War. In fact, when the developed countries of Europe and the USA recognized the fact that the conflict within Yugoslavia was not simply fighting, but at the same time a Serbian strategy for clearing the land of other ethnic groups, i.e. ethnic cleansing, mass rape camps had already been established and thousands of women had already been raped and killed (Seawell, 2004:185).

According to the World Bank Policy Research Report (2003) dedicated to civil wars and their economic and social consequences, the war in Bosnia - Herzegovina caused more than 250,000 deaths, created more than 2 million refugees and internally displaced persons, and left 200,000 wounded. The exact number of women raped in mass-rape camps is unknown, but they are many, and a great number of the refugees were women.

Similar to their experience during the war, in the post-war period, women cannot find solitude, because now they have to deal with the poverty and hunger left by war. Unfortunately, the horror of rape and sexual abuse do not leave the land due to prostitution, which is closely linked with poor post-war economic conditions, and sexual harassment by peace-keeping forces

located in the territory. According to Human Rights Watch (2002), in the post-war period, sex trafficking in Bosnia-Herzegovina increased drastically and women who could not get access to regular jobs were forced to participate in prostitution. These women were held in debt bondage; forced to provide sexual services to clients, they were beaten and imprisoned. Moreover, due to the lack of order and regulations within the country during the post-war period, these women could not get help from authorities, either. In addition to this, as both the Human Rights Watch Report (2002: 5) and Vandenberg (2005: 154,155) mention, members of the International Police Task Force and military peacekeepers were also involved in the trafficking of women, as customers or even as their sellers.

As Skjelsbæk (2001) mentioned, though women in many war zones share similar experiences with the women in Bosnia-Herzegovina, women should not only be seen as passive victims of war. For example, in the El Salvador Civil War, women were able to be active participants of the war, not just on-lookers. Women may fight like men, and use the opportunity of war to free themselves from pre-defined gender roles; or as in Vietnam, women may fight but at the same time preserve their gender roles.

## **2.1. CIVIL WAR: REASONS AND CONSEQUENCES**

Even though most wars in the second half of the 20<sup>th</sup> Century were civil wars, and though their number were many and they continued for a long time, studies on civil war are few. Waldmann (2000) introduces his study “The Dynamics and Consequences of Civil Wars” with this fact, and mentions that

even though there are monographs on civil war, there is a dearth of studies concerning the features of this form of war.

Though there is a marked insufficiency, then, in the literature on civil war, it is still possible to trace some of its common features and consequences on the basis of existing literature, such as the use of extreme violence on civilians (Waldmann, 2000; Eckstein, 1964; Kalyvas, 2001; David, 1997; Sambanis, 2001 and Enzensberger, 1993). These common features of civil war are given in detail below within the context of the shift in nature of conflict in the past few decades.

### **2.1.1. The Changing Nature of Conflict**

Women's lives during armed conflict have changed alongside with the change in the nature of conflict that has taken place during the past 30 years. While interstate wars have been diminishing, new areas of conflict based on ethnic, religious and racial differences have created drastic consequences for women because of the need of cultural, religious and nationalist ideologies to control women in order to protect the social norms they seek to establish. Because of this need, these ideologies are gender-biased (Ertürk, 1996:31). In order to delineate a pattern for understanding how women were victimized under the new tensions of patriarchy during the Yugoslavian Civil War, it is necessary to provide a succinct analysis of civil war by comparing it with war in general.

Wars can be divided into two: intrastate and interstate wars. For centuries, all wars were considered interstate wars, which are defined by Carl Von Clausewitz in his most famous book *Vom Kriege* as "nothing more than a

duel on a larger scale....an act of force to compel the enemy to do our will” (cited in Hooker, 2005: 5). The enemies in this duel were states, and by using their regular armies, they tried to force their will upon their enemies. Wars were seen as a fact of the world, an inevitable action. During history many reasons have been given by states to legitimize war, and wars were also used at times as a means to stop inequality in states<sup>1</sup>.

Even though a world without war is the wish of all peoples in all societies, wars have never ended, and that is why laws and rules have been created for an act that is lawless and rule-less in its origin. These rules aim to regulate wars when they become inevitable, and they are based on the fact that wars are between states, and they are fought by trained regular armies.

The last quarter of the 20<sup>th</sup> century witnessed a shift in the nature of war. While interstate conflicts have become fewer, intrastate wars have erupted more and more. In general, intrastate wars are defined as those wars whose warring parties belong to one and the same state, and this state is the scene of the conflict. This means that combatant parties share the same state, were born and raised there, or are even neighbors. When civil conflict erupts, the active combat takes place within the same state the combatants live in; the warring parties do not leave their state in order to fight (Waldmann, 2002: 105). This may be the only point that is clear about civil war. One common

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<sup>1</sup> Krumwiede and Waldman (2000, 106) accepted the fact that it is hard to sketch an outline of the dynamics of civil war. However, they mostly focus on two types of civil war: those based on revolutionary movements and those with an ethnic background. They listed the Colombian Civil War, the civil war in Peru and the Mexican Revolution as revolutionary civil wars. These civil wars erupted to end economic and social inequality within the society, and in this sense, stopping the inequality within the state was the primary legitimization of these wars. However, at their core, these civil wars were also fought for redistribution of resources, an aim shared by all civil wars, whether based on ethnic differences or on revolutionary motives.

thread shared by almost all studies on civil war is the impossibility of creating a formal definition to be applied to all civil wars. Each civil war seems to have its own characteristics, but it is still possible to point out some common patterns about civil war (Waldmann, 2000: 106).

First of all, civil wars are fought with “unusual tenacity and ferocity”. Civil wars are “particularly severe and cruel” (Waldmann, 2000: 18-19). Civil wars of the 20th century, such as in Rwanda, Bosnia-Herzegovina and Lebanon, became bitter examples of how cruel civil wars can be. Even though in their chaotic nature all wars include cruelty, during the course of war the killing of a foreigner, that is, killing an enemy, is legitimized and made to seem natural. In civil war, all the combatants often live in mixed communities before the conflict starts, so they know each other and each other’s traditions; in other words, the combatants are not strangers, and in civil war each party uses the other side’s beliefs and traditions to hurt them more. The fact that ex-neighbors use every kind of psychological weapon to break the other side makes civil war cruel.<sup>2</sup>

Another factor contributing to the severity of civil wars is that they are not classical wars that aim to conquer a land or achieve an increase in power. Civil wars take place within a single land, and even though some civil wars are fought to change the government and provide equal rights for some minorities, in the end all warring parties continue to live next to their former enemies. This increases the cruelty of civil wars, because people have to live

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<sup>2</sup> At this point, it should also be remembered that the use of the other warring parties’ traditions as a weapon of humiliation against them is not unique to civil war these days. The acts of US Soldiers in the invasion of Iraq are an example of how interstate wars also become cruel in that sense.

face-to-face with their torturers, as in the case of the Rwanda Civil War (Newbury and Baldwin, 2001:29).

This brings forth the second characteristic of civil wars: that they are conflicts among citizens. According to Collier et al. (2003), one of the main roles of a state, which has been accepted since the formation of classical Social Contract theories, is that states should protect their citizens from external threats. But in a civil war, the state cannot continue its primary obligation and it loses its power over violence. In civil wars, citizens fight with other citizens, and the distinction between armed forces and civilians becomes blurred. This kind of fight among civilians should be differentiated from skirmishes or guerilla fights, because in civil wars, the state loses its control over its military and even its own citizens.

This heralds the third characteristic of civil wars, which is that civil wars do not follow the rules and laws attributed to war. The experience of war lead states to agree on some rules and regulations concerning war<sup>3</sup>. As Waldman points out (2000), there are some principles that make up the core of the law of war. For example, if war is inevitable then it should be limited to achieving the political goals that started the war and should not include unnecessary destruction. War should be ended as quickly as possible, and people and property that do not contribute to the war should be protected against unnecessary destruction and hardship. Also, protecting both combatants and noncombatants from unnecessary suffering, safeguarding certain

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<sup>3</sup> These rules of war have been formed by many treaties, agreements or conventions, some of which are the Hague Conventions, the Geneva Conventions and the United Nation Charter. Full text of these treaties, agreements or conventions can be found on Yale Law School's official web site (<http://www.yale.edu/lawweb/avalon/lawofwar/lawwar.htm>).

fundamental human rights of persons who fall into the hands of the enemy, such as prisoners of war, wounded and civilians, and facilitating the restoration of peace should be duties of the warring parties to create regularity within war and minimize its evils.

Among other issues, the laws of war address declaration of war, acceptance of surrender and the treatment of prisoners of war; the avoidance of atrocities; the prohibition on deliberately attacking civilians; and the prohibition of certain inhumane weapons. It is a violation of the laws of war to engage in combat without meeting certain requirements, among them the wearing of a distinctive uniform or other easily identifiable badge and the carrying of weapons openly. Impersonating soldiers of the other side by wearing the enemy's uniform and fighting in that uniform is forbidden, and the taking of hostages with that trick is also forbidden.

In civil wars, it is impossible to enforce these rules, especially the one about protection of civilians from war atrocities. The shift in the nature of war has made civilians the primary target. Because many intrastate conflicts do not take place between two regular armies, as interstate wars do, any distinction between front and back is blurred, and civilians are tortured, raped and murdered as a strategy of war. Because of the changing nature of war, the conflicts of this era “consist more of the repression, coercion and exploitation of a defenseless civil society by armed forces who are apparently each other’s enemy but who do one another relatively little damage” (Waldmann, 2000: 17).

Most civil wars remain protracted. Moreover, sometimes not only civilians but also state elites forget about the underlying reasons for the war. The war grows totally chaotic and it is nearly impossible to control things; so the war continues for a long time and civilians are the primary target of every kind of cruelty. According to the laws of war, unnecessary killing of civilians is a war crime, but in Rwanda 2 million civilians were killed in two hundred days, and the criminals of that war are now out of jail and living near the people whose families they killed. In most civil wars, international organizations and other states cannot intervene, and most times they do not even understand the drastic characteristics of the civil war immediately. In Bosnia-Herzegovina, the scope of the cruelty was only understood after the stories of the rape camps became public.

All in all, it can be said that even though it is impossible to trace a general definition of civil war, it is still possible to find some common characteristics that can be attributed to them. Because one of the common characteristics of civil wars is their length and cruelty, they have disastrous effects on nations and their neighbors. These effects caused international actors like the United Nations, the World Bank and other researchers to analyze ways of ending civil wars and, most importantly, preventing them before they start. The regulation of civil wars by international actors and the achievement of post-conflict peace building are the main themes of many of the studies on civil war. In order to regulate civil wars or achieve a stable peace after the conflict, the reasons for a civil war should be understood, and its consequences should be known.

### **2.1.2. Ethnic Civil War**

As the preceding section underlines, civil wars have catastrophic effects on populations and this is the reason why international actors like the United Nations and the World Bank try to prevent them. Many scholars also try to conceptualize the reasons for civil wars to find a way to stop them. In general, civil war erupts because of either economic or ethnic reasons. For this thesis, ethnic civil war has primary importance because of the fact that the civil war in the former Yugoslavia was totally based on ethnic reasons and was striking in terms of its impact on women in the context of the rise of the brutal face of patriarchy during armed conflict between the males of hostile communities.

Some researchers, like Collier and Hoeffler (1999) and Fearon and Laitin (2000, cited in Sambanis, 2001), have focused on the economic reasons for civil war, and according to them there is a rational logic behind civil war. Rebellion forces calculate the gains of the civil war against its losses; from their point of view, civil wars are a kind of economic activity. Their studies on civil wars such as those in Africa show that there is a positive correlation between poverty and civil wars. These researchers have also divided the economic reasons for civil war into two: "Justice-Seeking and Loot-Seeking" (Collier and Hoeffler, 1999: 1). Even though the causes of some civil wars seem just, like the redistribution of economic means equally among all members of society, or the change of a dictatorial administration, Collier and Hoeffler mention that warring parties may also be linked to capture of resources like diamonds in Angola and Sierra Leone, drugs in Colombia and

timber in Cambodia. In Colombia, the revolutionary aim has also blurred with the capture of drug baronies.

It is also obvious that there are civil wars which cannot easily be explained by economic and revolutionary reasons. Waldmann (2000), Sambanis (2001) and Reynal-Querol (2002) accept the fact that mere economic explanations fall short of accounting for civil wars, so they both divides civil war into two groups in their specific studies . These are “revolutionary civil wars” and “ethnic civil wars”. In his article, Sambanis uses the concepts of “ethnic and non-ethnic civil wars”, but in general, these researchers explain that civil wars may be based on revolutionary reasons, such as equal redistribution of economic means: as such primary aim of those civil wars is to erase inequality within the community. In this kind of civil war a group may oppose the administration of the state, and may wish to change this administration for a supposedly better one. The war in El Salvador was an example for this kind of civil war. The story of El Salvador is the story of a struggle between coffee-producing peasants and a powerful land-owning elite. The instability in the coffee market and rapid urbanization increased the gap between the poor and rich, and conflict was waiting in the wings. As Skjelsbæk (2001) points out, the war against poverty and inequality became a motivation for the conflict, and it also legitimized the conflict.

In contrast, civil wars may also be based on ethnic conflict, with the primary reasons being political rather than economic grievances. Reynal-Querol (2002), Sambanis (2001), Elbadawi (1998) and Ellingsen (2000) agree on the fact that ethnically polarized societies have a higher risk of civil conflict (cited

in Reynal-Querol, 2002), and Reynal-Querol especially focuses on religion as a determinant. She points out how religion divides people more sharply than economic differences, and belonging to a religion may be more important than belonging to a nation. Religion is more than a spiritual thing; “the faith and the family, the blood and the beliefs are the aspects with which people identify themselves” (Reynal-Querol, 2002: 5). Different religions affect their believers’ understanding of world and their future, and differing aims may turn into conflicts. As a result, the nations consisting of ethnic groups with different religions may have a greater risk of facing a civil conflict within their borders. Civil conflicts in Sudan and Lebanon are examples of how different religious groups may drag a state into civil war.

One other common characteristic of civil war is that they do not break out overnight, that a civil war is not a surprise. This is also closely linked with ethnic grievances. According to Waldmann (2000: 108), longstanding social tensions are listed as one of the conditions of civil wars. He points out that civil wars generally have a background of social, cultural and economic tensions. The actual fighting, the violent clashes between groups may evoke astonishment and shock among citizens, but this is not an unexpected situation since conditions for conflict among different groups can be detected. It is known that Catholics and Protestants have always been alien to each other, long before the troubles started in Ireland. Tito’s was a fragile peace in Yugoslavia. This kind of ancient strife is “particularly striking in the case of ethnic conflicts” (Waldmann, 2000: 108).

Obviously, it cannot be said that every multiethnic society may face civil war, but studies on cases of civil war show that years of strife and hatred between different ethnic groups may also lead a nation to violence and civil war.

### **2.1.3. Consequences of Civil Wars**

It is mentioned above that the shifting nature of conflict has brought about drastic consequences for the actors of the new civil wars, namely for the civilian population. In fact, the civilian population of the warring parties of a civil war bears the greater risk. The most important consequence of the civil war is its psychological and physical effects on people.

War means killing and being killed. According to the rules of war, killing civilians is forbidden, but this rule is not followed by combatants. Especially in civil wars based on ethnic reasons, "ethnic cleansing" becomes an obligation, and not only soldiers, but also children, women, old and young are slain. Rape and torture are used as a war tactic to humiliate other ethnic groups and their beliefs. Nevertheless, deaths are not seen only during war; according to Guha-Sapir and Van Panhuis (2002, cited in Hoeffler and Raynol-Querol, 2003), Hoeffler and Raynol-Querol (2003) and the study of Ghobarah et al.(2003), deaths continue even after the civil conflict ends.

During war, all public expenditures focus on defense, and all the money found by the combatants is used for military aims. So health facilities stop functioning, and due to the fact that health care centers such as hospitals become a target for enemy bombs, not only buildings, but also technical staff

like nurses and doctors are eliminated. When the conflict ends the rebuilding of hospitals and the re-education of technical staff takes a long time.

Lack of water and water-treatment facilities causes epidemics which also continue after civil conflict and kill many people, especially young children. One other threat is HIV; due to mass rapes in civil wars like in Yugoslavia and Rwanda, the threat of HIV has grown. New generations are also born with HIV virus. Additionally, landmines left in the ground also create a danger for human life after the end of the conflict; in Vietnam, landmines are still one of the greatest threats of war on human life.

One other drastic effect of civil war on people is population displacement. According to Waldmann (2000: 114), during civil war, it becomes impossible for an ethnic group to live in a territory in which they are a minority, and this leads them to change their place of living. According to Azam and Hoeffler (2002: 1) using cruelty as a means to force people to migrate from a land is a tactic of war, because in this way the other side's fighting efficiency will diminish because they cannot have support from the public.

For one reason or another, during civil war, people are forced to leave their homes. According to World Bank statistics (2003), during the 1990s 40 percent of the Afghan population was living in refugee camps. While Colombia has had 720,000 refugees since 1984, from 1992 to 1995, 44,000 people left Bosnia-Herzegovina as refugees. These people do not immediately return to their original homelands after the conflict ends; some continue to live in refugee camps with harsh conditions and this also causes the death of these people from epidemics or hunger.

Those who survive death in civil war also face psychological trauma. Many people lose their loved ones in civil war, and for a long time after the war they cannot continue their lives as they did before the war. They have to live in refugee camps; and they cannot find enough health facilities, including psychological help. According to Collier et al. (2003: 29), this situation leads to psychological trauma in war victims. Depression syndrome has been detected in 14 to 21 percent of Bosnian refugees. The ratio of post-traumatic stress disorder (PTSD) is much higher, and it ranges from 18 percent to 53 percent. In Cambodia, the situation is far worse, with approximately 68 percent of Cambodian refugees displaying symptoms of depression, while the PTSD rate is 37 percent.

Civil war also has economic effects on societies. First of all, due to the fact that all the national resources are used for military purposes, the economic growth of the nation in conflict declines drastically. Food stocks are primarily used by combatants to feed their armies, and cattle and food are taken away from civilians without any payment, or they are simply stolen. Because most vital physical structures are usually destroyed during war, such as roads, bridges, schools, hospitals and public transport systems, this also leads the post-war country into deeper economic disadvantage. Survivors of civil war come face-to-face with extreme poverty during the post-war period. According to the World Bank's report (2003), a seven-year civil war causes a 15 percent decrease in income, and this heralds a 30 percent increase in poverty. This poverty leads survivors to the underground economy with activities such as drug selling and sex-trafficking.

In the next part of the study, women's position during civil conflict will be evaluated. The available feminist studies on women and conflict have a common point: women and children are the primary victims of the horrors of conflict, but it should also not be forgotten that women do have one other role in conflict, as an active participant. Women may join the regular army like in Israel or they may fight with their male comrades in civil wars such as those in East Timor, El Salvador, Guatemala, Namibia, and Colombia. The fact that women may also actually fight during a conflict is also examined in the next chapter with the reality of victimization of women during war.

## **2.2. WOMEN IN CONFLICT**

National and international conflicts are mostly an issue within the discipline of international relations, but the focus of studies is basically states and nations, rather than on individuals and the creation of identities during war. Moreover, the studies of other disciplines regarding conflict do not pay attention to "how states and nations relate to the construction of individual identity" (Skjelsbæk, 2001: 47). As in many related issues, gender identity and gender relations in conflicts do not receive attention in much of the scholarly literature concerning wars. Women's experiences during war and post-war periods cannot be found in these studies. The lack of a gender perspective in these studies, however, does not mean that men deliberately exclude women and their experiences from these studies. These topics are not included simply because war has been seen as a male-centered issue for years, not only by male researchers, but also by female researchers. While conflicts have shifted from interstate wars to intrastate wars, the experiences of women or

the position of women and children during the war and the post-war era have also gained significance in literature, because the civilian populations have become the target in these new wars. In contrast, prior to this time, men were considered to be the only actors of war. They were the actual fighters, and because of this they were also portrayed as the actual victims. As Yeğenoğlu and Çoşar (2003) point out, women were mostly considered weak and passive actors who knew nothing about war.

But women do have their roles and experiences in war, too. Even though the number of studies in this area is small in relation to the general literature on war, these few studies on women's identities in conflict provide an insight into "the other" experience during conflict, namely women's experience.

It should be stressed that in general, women's positions in civil war can be grouped under two titles: women as passive victims and women as active participants. The important point is that these positions are closely linked to women's gender roles. Women have different experiences of war because they are women, and their responses are also related to their femininity (Nikolic-Ristanovic, 2002: 138).

Feminist scholarship has demonstrated that women's identities and their gender roles are socially constructed rather than naturally given. Women and men become what they are through their interactions with their social surroundings; this means that socio-economic changes as well as religion, ethnicity and class will act to determine the implications of gender identity (Skjelsbæk, 2001: 48). While major religions still demand the obedience and service of women not only to their God, but also to their husbands, it helps to

construct the meanings of motherhood, childrearing and “the extent to which all people in a society are valued and respected” (Ramazanoğlu, 1989: 153). In that sense, women’s gender roles as mothers and child bearers are supported by the main major religions. In the same way as religion, nationality and ethnicity also shape women’s gender roles. Under nationalistic discourse, women’s reproductive roles are glorified, and women are portrayed as carriers of the future of the national identity (Özataş, 1997: 3). Women not only give birth to new members of the community, but as the main socializers of the children, they also become the cultural carriers of the nation (Özataş, 1997: 5). Just like nationalism or religion, conflicts are also social phenomena, and they also have significant effects on women’s gender roles, as women’s gender roles are used in conflicts.

### **2.2.1. Women as Dynamic Actors in War**

One of the predefined gender roles attributed to women is that women are related to peace, while, on the other hand, warring is seen as a men’s job. In the public sphere, men are portrayed as dynamic actors, not only in wars; but in peacetime too. Men are shown as subjects or active elements of working life or politics, while women are considered just passive contributors or objects. This belief does not change much when war becomes the issue. The attributed passive/subject role of women also legitimizes the exclusion of women from hot conflict and labels them as “creatures who need to be protected” (Yeğenoğlu and Çoşar, 2003: 211). But as Hilhorst and Frerks (1999, cited in Bouta et al. 2005) point out, like many gender roles, this is also constructed; that is, gender roles are context-specific and determined by

each situation. It is known that women do not always stay passive in conflict, and do have roles during war; they may even fight with males. However, the inclusion of women as active participants in conflict may not always be voluntary; sometimes it may be by force.

According to Mazurana et al. (2005: 2), in addition to becoming professional members of the Canadian or United States army, women have actively joined armed forces in liberation struggles in East Timor, El Salvador, Guatemala, Namibia, Colombia and in many other countries. Based on political and economic motivations, like opposition to unjust and predatory governments or support of their religious or political goals, these women and girls voluntarily prefer to fight actively in those conflicts.

But in some cases women also find themselves forced to participate in war against their wishes. According to de Abreu (1998) and Rehn and Sirleaf (2002), women in Mozambique and Sierra Leone have been forced to join to army to fight, to cook and to be wives of soldiers (cited in Bouta et al., 2005: 15). In this case, these women did not wish to be part of the war, but they were forced to serve in the name of their country. They were not only ordered to kill or to be killed, but also to serve their male comrades. Cooking has always been considered a women's job, and even during conflict, women soldiers were supposed to cook for their male comrades; they were also supposed to have sexual intercourse with them, being "wife" to them.

Another issue often raised and discussed in studies on women in the army is about how the army changes the lives of its female members (Yuval Davis, 2003; Bouta et al., 2005 and Mazurana et al., 2005). On the one hand,

joining the armed forces during a conflict is one way of survival for these women. During conflict, because many resources are diverted to the army, being a member of this army becomes a way to survive the turmoil. On the other hand, women also participate in armies for equal rights. Especially during conflicts based on liberation movements, women tend to join the army to gain equal rights, because many revolutionary movements also support equal rights for women and they give the hope for more women's rights after the revolutionary conflict.

Being in the army also changes the gender roles of women deeply: women receive a military education equal to that of men, and in most cases, they are treated equally to men. Even though they may become more masculine, women participating in the army start to question gender roles in general. For example, female fighters in Nepal's Maoist army have changed traditional gender roles in their villages; due to their understanding of liberation and their self-confidence they have started to question their gender roles. According to Bouta et al. (2005), villagers have reported that in areas controlled by the Maoist Army, in which every third guerilla is a woman, domestic violence, polygamy and alcoholic abuse were diminished. This notion is also supported by Skjelsbæk (2001: 10) with the example of El Salvador, in which female guerillas used the conflict as a means to change their gender roles. During the civil war in El Salvador, the ideology of liberation also included the liberation of women. Women learned new skills and they were given new responsibilities. These women were able to escape segregation between males and females, and they participated in many activities and missions

together with men. This gave these women confidence and self-determination. During these civil wars, then, women not only fought against social inequality but also against inequality between men and women. After the conflict, this self-consciousness continued, and women demanded education and equal opportunities in public life.

However, these examples are usually unique; female members of the army also face sexual abuse, sexual harassment and gender-segregated positions, which will be mentioned later. According to Yuval-Davis (1985: 189) in Israel, a country in which women are systematically taken into the army along with men as a part of a national plan, women troops of the army are called “KHEN”, which means in Hebrew “attractiveness”, and one of the main duties of these women is cheering up male soldiers and taking care of them. Yuval-Davis (2003) also points to sexual abuse and even rape in the professional army of the US as an example of women’s subordination in the army. Mackay and Mazurana also highlighted this issue in their case studies in Northern Uganda, Sierra Leone and Mozambique, and they concluded that “women and girls in the army are subjected to oppression, gender-specific violence and abusive and violent relationships” (cited in Bouta et al., 2005: 16).

It should also be mentioned that even though most revolutionary movements include women’s rights and they aim to change gender roles, in post-war periods, women’s rights gain less attention and women have to face their previous gender roles again. This becomes especially difficult for women who fought actively during conflict. These women become ashamed of

themselves, since according to prevailing gender roles in a patriarchy, women are not supposed to kill; they are not supposed to be fighters. As Bouta et al. (2005), mentioned, female soldiers usually hide themselves after the conflict ends; also, even if women do not wish to hide themselves, female members of the army are considered invisible again after the conflict due to the fact that “traditional gender roles are reintroduced and women are expected to revert to more traditional and less visible roles “(Bouta et al., 2005: 48). For these reasons, they usually prefer not to attend Disarmament, Demobilization and Reintegration Groups (DDR).<sup>4</sup>

This difficulty in adapting to gender roles in the post-war period was also seen after World War II. During the war, women were used as a reserve army of labor, while men were fighting, they occupied jobs that had belonged to men. This gave women some liberation and freedom, but when the war ended, they had to return to their former place, the home, and continue their pre-defined gender roles.

As explained, even though women participate in the army, they are usually confined to gender-segregated positions. With respect to women’s positions in the army, whether they join the army voluntarily or by force, the roles of women as active participants in conflict can be generalized as combatant, supporter and dependent.

The number of combatant women is few compared to female supporting members of armies; even in regular armies, women usually tend to be

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<sup>4</sup> The primary aim of DDR and other post-war rehabilitation programs is to provide adequate assistance for women who participate in regular or irregular armies during conflict.

appointed to positions much more related to their gender roles such as cooking, nursing, secretarial jobs and so on. Many of these women do not fight and do not carry weapons. This is closely linked to the prevailing understanding of masculinity and femininity, in which women are not associated with warfare. On the other hand, on the home front, women are also used as supporters of the combatants; they may broadcast hate speeches and, more importantly, they may instill in the next generation hatred against the enemy or opposing group. The latter kind of support is closely linked with women's role as mothers of a nation. As Özataş (1997: 3) points out, one of the roles attributed to women in the construction of a national identity is as the main socializers of small children; they are the cultural carriers of the ethnic group. This "mother of nation" understanding is also used in conflict as a means to show that mothers are in danger. Women raped in wars are used as examples by their male combatants to show that their nation is in danger.

Women as dependants in war can be male combatants' wives, widows or other family members, and the fate of these male combatants affects them deeply. These women's situation especially gains importance after the war, because these women need special treatment since most of them have lost their male relatives and they may have problems adapting to post-war conditions. When they lose their husbands, fathers or sons, they become the breadwinners of the family, and even though this causes a drastic differentiation in women's gender roles in society; poverty, difficult economic

conditions, lack of resources and unemployment in post-war periods leads these women into illegal jobs like drug carrying or prostitution.

It is obvious that the role of women as active participants in conflict victimize them. Thus, it is usually hard to strictly delineate women's positions and roles in conflict, but some generalizations can be made, and some common points can be described under various headings. In the next section, as another position of women in conflict, the role of women as victims is analyzed, and these intersecting points are also stressed.

### **2.2.2. Women as Victims**

During times of peace women suffer from gender-based discrimination in all aspects of social life. Girls and women of every age group face discrimination in their schools, at their homes, in their jobs, in short, in the public and private spheres. Women are faced with violence, both physical and psychological (Büken and Şahinoğlu, 2006: 1; Renzetti, 2005: 1009; El-Mouelhy, 2004: 289). However, in times of conflict, violence against women, especially sexual violence, rises drastically. Feminist scholarship clearly points out that gender-based violence is a weapon used in war. (Mazurana et al., 2005; Mazurana, 2005; Kumar, 2001; Skjelsbæk, 2001; Bouta et al., 2005; Lentin, 1997; Ringelhein, 1997)

During conflict, women become vulnerable to its devastating effects. When men leave for war, harsh conditions await the women who stay behind. Not only do they become the primary target of the fighting forces and their violent acts, but they also suffer from poverty and difficult economic conditions. The first and primary problem of armed conflict for women is the rising violence

against women. Gender-based violence includes firstly physical, sexual and psychological violence occurring in the family, such as sexual abuse of girls, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence, and violence-related exploitation. Secondly, it includes physical, sexual and psychological violence occurring in the community, such as rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women, and forced prostitution. Lastly, it includes physical, sexual and psychological violence perpetrated and condoned by the state, wherever it occurs (Bouta et al., 2005: 34).

When armed conflict erupts, the first thing to be demolished is security. Especially in intrastate conflicts, in which civilians usually take part in the actual fighting, it becomes easy to obtain weapons. Even young boys and girls learn to fight with weapons and they learn how to use them from an early age. This fact reduces security, because in conflict, when everything has gone mad and people live in constant tension and even hatred, it becomes impossible to know what a heavily armed person can do. In addition to this, women have to stay alone with young children and the elderly when their male relatives go to war. Most of them try to survive without any protection and this makes them more open and vulnerable to sexual crimes and abuses. In the middle of conflict, the terror and agony grows more and more when sexual abuse and rape become a war tactic. According to Kumar (2001: 12), in revolutionary movements and conflicts

such as those in El Salvador and Guatemala, young women who sympathized with the rebels were abused by security forces.

Skjelsbæk (2001), Kumar (2001) and El-Bushra and Mukarubuga (1995) point out that in conflicts based mostly on ethnic reasons, rape is used as a weapon for ethnic cleansing, and women suffer from mass rapes. In ethnic conflict, raping women does not only mean hurting these women physically or mentally; it is also used to demoralize the other side's male fighters. As Ertürk (1996: 25) points out, due to the dominant patriarchal ideology in most societies, women's bodies are associated with the honor and prestige of men. During wartime, the rape of women gains an additional meaning of shattering the pride and honor of the enemy's men. Men are supposed to protect their women, and the patriarchal ideology produces the dilemma of men questioning their ability to protect their nation when they cannot protect their women from sexual violence.

As mentioned above, since the gendering processes in patriarchy and nationalism feed each other, women are associated with "the nation"; they are seen as carriers of ethnic identities and as "mothers of the nation". Because of these constructions, sexual assault on the women of a nation becomes a weapon against that nation. It is seen as raping a nation. Moreover, especially in intrastate conflicts, the fighting parties usually know each others' traditions, their faith, and their honor-codes. Women are seen as carriers of these faiths, traditions and especially honor-codes. Particularly in Muslim societies, the honor of women is accepted as the honor of the family in peacetime. In conflict, the honor of women becomes the honor of the

nation, and combatants use this fact to hurt and demoralize each other (Boeschoten, 2003: 47).

The construction and portrayal of women as carriers of nationality and national identity and the religious and ethnic codes of a society are a direct consequence of the patriarchal gender roles culturally attributed to women. Consequently, women are cruelly victimized on the basis of this role. The exact number of women raped in armed conflicts is not known. There are only estimates, but these estimates also show the drastic nature of the situation. It is estimated that during the 1994 genocide in Rwanda, at least 250,000 women, and perhaps as many as 500,000, were raped (Rehn and Sirleaf, 2002, cited in Bouta et al., 2005: 35).

Another example of the victimization of women during armed conflict via gender-based violence is through women's roles as "wives" and "lovers" of male army members. In many cases, this kind of support is forced upon women. In Sierra Leone, women and young girls were kidnapped and forced into brutal marriages called "jungle marriages" or "bush marriages". Similarly, young women were kidnapped in Rwanda as war booty, and forced to live with male combatants. Sancho (1997: 146) also mentions the "comfort women system", a name given to women kidnapped during World War II by the Japanese army and used as sex slaves for army members. According to Bouto, et al. (2005: 36), the breakdown of law and order, police functions and border controls during conflict increases trafficking of human beings. Criminal groups in the drug and arms trades expand their business to include human trafficking, especially trafficking of women.

The victimizing effects of conflict on women do not only include gender-based violence. Women also suffer many other difficulties. As mentioned before, in conflicts people have to leave their homes and even their countries. Mazurana (2005, 7) mentions that according to the United States Committee for Refugees' World Refugee Survey 2001, there are 14.5 million refugees in need of reintegration assistance and protection monitoring. This report also shows that there are approximately 20 to 24 million internally displaced persons. Women constitute a large part of this group, as in Burundi, Colombia, Ethiopia, Eritrea, Peru, Rwanda and Sri Lanka. The Office of the United Nations High Commissioner for Refugees estimates that women and children constitute 80 percent of the world's refugees and internationally displaced persons (Mazurana, 2005: 7).

Refugee women leave their homes, which are not secure for them and their children or families anymore, to find a better place to continue their lives. But displacement makes women suffer much more. They leave their homes and, in addition to the traumatic effects of war and violence, they have to try to live and survive within a different culture, knowing that they are "outsiders". They live under difficult economic conditions in refugee camps and these economic conditions and poverty make them more vulnerable to sexual abuse. During their flight, women face sexual harassment and violence. They are forced to have sexual relationships with men in return for protection during their flight. Children may be separated from their families during flight, and especially young girls can become targets for women- and child-trafficking gangs.

Civil wars also have negative economic impact on women, too. Conflict consumes all kinds of economic means, as all types of resources are devoted to military forces and weapons. Especially in intrastate conflict, civilian buildings like factories, warehouses, bridges, hospitals, schools and many others are damaged. Agriculture comes to a halt, and also fertile lands are burned. When peace is established, the economic conditions of the country become more than horrible. Poverty and hunger strike the people. Under these devastating conditions, women find themselves as heads of household due to the fact that their male relatives are mainly dead, lost or captured. To illustrate, in Cambodia after the war, households headed by women constituted 25-30 percent of all households. In the Ixcan region of Guatemala, the proportion of households headed by women became 30-50 percent after the war. To feed their families, women leave their traditional roles and their private sphere for work. In some cases, this becomes a liberating condition for women. They break their former gender roles and they gain self-confidence. But in many cases, women suffer from low wages or unemployment.

Kumar (2001: 15) mainly focuses on the economic effects of conflict on women, and states that the post-war conditions of poverty and unemployment subordinate women. In times of peace, there is job segregation between men and women. Women usually occupy low-wage jobs which men are not usually interested in. It is also known that women are often employed in informal jobs like housecleaning. During post-conflict periods, women's participation in informal jobs rises; they usually sell

vegetables, fruit, or homemade garments, or they serve as maids. Even if they do find formal jobs, their wages remain low.

In countries in which women are not given legal rights to own land, they do not take control of lands belonging to their male relatives before the war when these male relatives die. Therefore, one means of economic gain, agriculture, becomes useless for women. In addition, in countries like El Salvador and Guatemala, women who work at jobs with late hours live in constant terror of kidnapping. In these countries, families are also afraid to send their daughters to school because of this continuing danger.

These harsh conditions lead women to the dark side of the economy, and they become couriers for drugs and weapons, and rates of prostitution increase. Women become victims of prostitution due to their economic needs. It is also reported that in post-war zones, women are sexually abused by members of peacekeeping forces. Kumar (2001: 12) points out that in Cambodia, institutionalized prostitution started with the UN Troops for Peace. These women were forced, by others or by their economic conditions, to have relationships with men and young boys.

The increase of sexual harassment, prostitution and rape also increases disease, especially HIV/AIDS. Women's experience with HIV/AIDS is gender-specific for three reasons. First, women are particularly at risk through rape. In addition to the psychological and physical violence, the possibility of HIV infection through rape causes further anxiety among the victims, which is worsened by the stigmata that often accompany women who have been raped. Secondly, women are vulnerable as they form the majority of refugees

and internally displaced persons. In many refugee camps, women have little choice but to trade sex in return for vital needs, thereby increasing their infection risk. Moreover, in times of conflict, family members or spouses may sell women into sexual slavery. Lastly, women can be stigmatized for bearing HIV-positive children, who may have been fathered by “the enemy”, and sometimes because these women are mistakenly identified as being responsible for the spread of AIDS (Bouta et al., 2005: 37). Lack of medical help also worsens the condition of women who live with the danger of HIV/AIDS infection.

All these events are also reasons for traumatic and psychological disorders in women during war and post-war conditions. First, many women suffer from conflict-related depression. During conflicts, hospitals, health facilities and schools are damaged, and survivors cannot receive adequate treatment for their psychological and physical health. Second, the participation of women in disarmament, demobilization and reintegration programs in post-conflict zones is low. Women prefer to stay apart from these programs. In Liberia, women fighters did not attend these programs; though they may have needed them, they were ashamed of having been soldiers during the conflict (Bouta et al., 2005: 18). In other cases, raped women, wives or female partners of fighters and many other women who have suffered from conflict do not participate in these programs. As Bennett (1995) pointed out, it is as if they never existed, even if they are there (cited in Bouta et al., 2005: 18). They prefer to keep their pain and shame within themselves. Unfortunately, this also leads to more traumas.

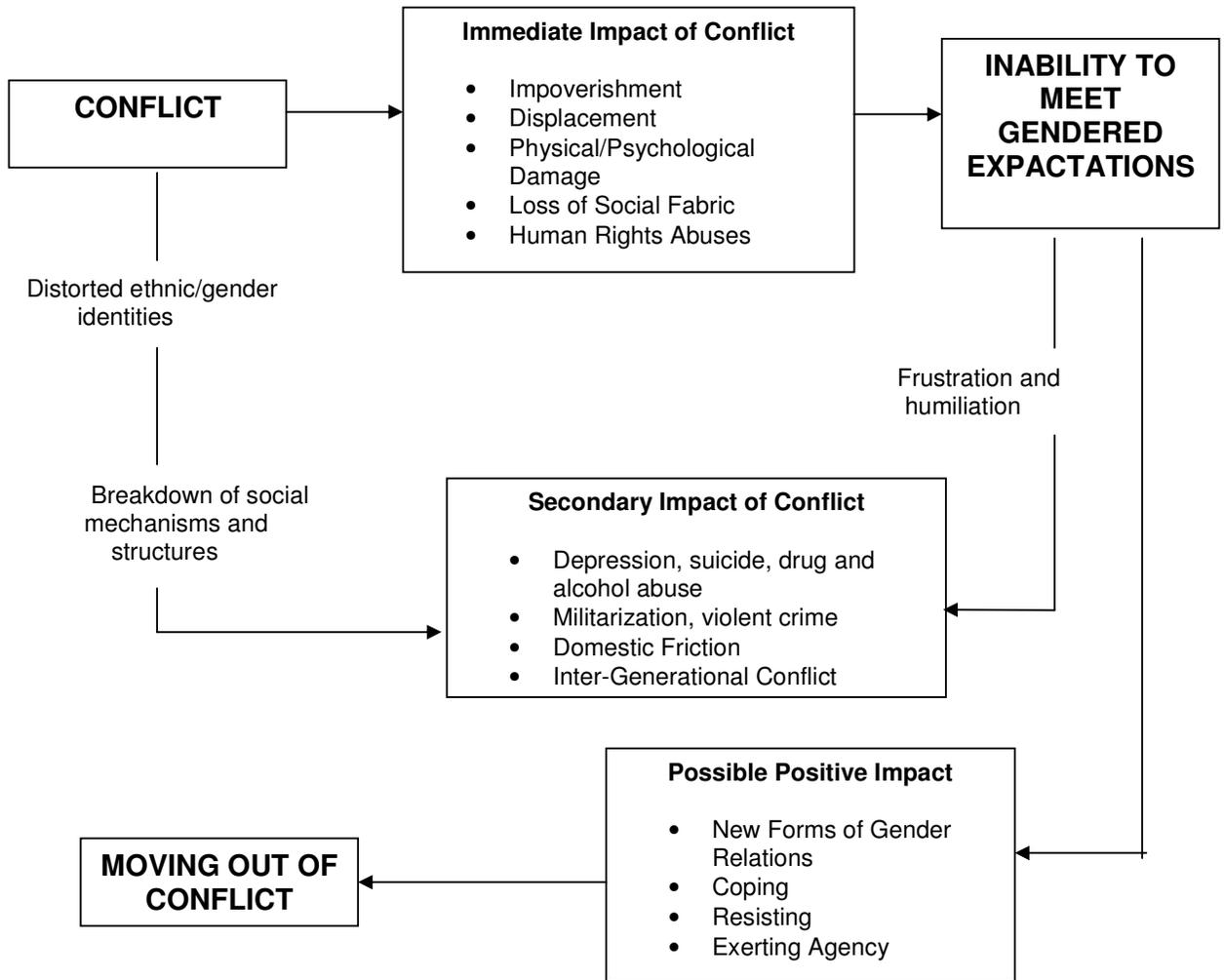
### 2.3. General Overview

Figure 1 is prepared by Judy El-Bushra in her article *Fused in Conflict: Gender Relations and Armed Conflict* (2003), and it shows women's positions and gender relations within war with possible links. El-Bushra based her analyses on the results of a research project conducted by the Agency for Co-operation and Research in Development (ACORD).<sup>5</sup> This research project, carried out in Uganda, Angola, Sudan, Mali and Somalia, states that civil war took place in these countries. The aim of the project was to analyze whether gender relations change through conflict and whether conflict itself might be fuelled by aspects of gender identity. This chart has been prepared as an impact-flow diagram that indicates some of the possible causes and effects the ACORD research team established from their analyses. This diagram was chosen for this chapter because it helps to analyze gender relations during civil conflict in a well-organized way. Bosnia-Herzegovina was not one of the countries the ACORD research team analyzed, but the results gathered from the five countries mentioned above share similarities such as displacement and rape with the Bosnia-Herzegovina case. This diagram, due to this reason, would be an appropriate choice for generalizing women's situation during war before continuing with the specifics of the Bosnia-Herzegovina case.

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<sup>5</sup> ACORD was established in 1976 as a consortium of international agencies headquartered in the Northern United Kingdom to provide its members with the operational capacity to address poverty issues resulting from the drought in sub-Saharan Africa. Gender issues is one of their focuses along with HIV/AIDS, conflict, livelihood and basic rights. ([www.acord.org.uk](http://www.acord.org.uk))

Figure 1.



Source: Gender Identities and Conflict -a tentative model of possible links

(El-Bushra, 2003: 262)

Conflict shatters the social fabric of the country. It not only causes the death of people, but it also changes the life they have become accustomed to. Conflict affects both men and women, but women are more vulnerable to these effects.

The immediate effects of conflict are not only felt when it is occurring. The impact of displacement, rape and human-rights abuses continue long after the conflict ends. Men who are still alive or free turn back to their homes, and pre-war gender roles are expected to continue. This is because after all those years of unruliness and harshness, there occurs a longing for the previous traditional society. Additionally, when war ends men tend to take control again. While women are seen as necessary participants during war, the return to their proper gender roles is seen as mandatory after war. However, women's gender roles change drastically during war. Especially in cases where women actively participate in war, they gain self-confidence and returning to their former gender roles becomes very difficult. In contrast, women who are victimized during the conflict may wish to return to their previous ways in order to achieve solitude, but now they may also suffer humiliation because of the sexual abuse they have faced. Female rape-victims have the risk of unwanted pregnancies or infection with HIV/AIDS, and they may become black sheep in their society. Especially in traditional societies in which honor of the family is linked with the honor of women, the exploitation of women will continue after the war.

This frustration and humiliation may cause women to suffer secondary impact of conflict. One other reason for this impact is also listed as the breakdown of the social mechanism and structures that ensure law and order. Obtaining weapons under these conditions becomes easy, and there is no law against or control over the use of weapons, drugs or other crimes. Men who fight for long periods of time get used to violence, and when they do not receive any psychological help, the violence continues within their households. In every conflict, an increase in domestic violence has been reported in the post-war period. Women become the victims of these domestic crimes.

Conflict itself and its impact traumatize women. Use of alcohol and drugs increases; famine increases because of poverty, lack of water and food; HIV/AIDS becomes a threat. Women cannot receive the necessary health care because of the fact that health care services are destroyed during war.

Although international Non Governmental Organizations (NGOs) support programs to try to help women get over the traumatic effects of war, the number of women joining these programs is small. Moreover, these NGOs usually adopt Western processes, but the culture of these women and their religious beliefs should also be taken into account. It is hard for a woman coming from a culture for which rape is a shame, and in which raped women are humiliated, to cope with rape by seeing it as just a violent assault to her body. It should also be added that even though these women gain some progress with the help of these programs, every day they return home and face domestic violence, poverty and exploitation.

Even though armed conflicts mainly have destructive effects on people, they may also possibly have positive impact. It has been observed that when conflict ends, women tend to return to their routine lives more easily than men. It is hard for men to cope, but women are able to cope with pain and frustration. The possible positive impact of conflict also includes positive changes in gender roles. It has been seen in revolutionary wars that new regulations and governments tend to focus more on gender equality. Fighting together with men during war as comrades gives women a higher rank.

According to Bouta et al. (2005), women gain this higher rank by adopting some gender roles mostly attributed to men, like fighting. In some cases this makes women ashamed of themselves in the post-war period, but in cases like El Salvador and Nepal, women use their new power to change their previous roles and generate more equal terms both in public and private life. Women may also help other women who suffer from conflict; this kind of activity binds women to each other. They learn to cope with all their pain and they can resist violence, poverty and hunger together. So, conflicts may have devastating effects on men, women and children; and women may be more vulnerable to the negative impact of conflict, but they may also use conflict to change their roles in society. In this way they can move out of conflict, and continue their lives.

The next chapter of the thesis turns to the case study of this thesis, the civil war in the former Yugoslavia, by focusing on how patriarchal dynamics during the war subordinated women further by using violence and humiliation. Ertürk (1997) states that patriarchy continues its existence, both

in peacetime and wartime, “through subordination, humiliation and subjugation of women” (Erturk, 1997: 25). The exercise of violence on women entails the exercise of power, so women face violence in everyday life. During war, humiliation and violence reach a peak, because conflict among men based on ethnic and national differences and hostilities makes women its primary target. These men wish to demonstrate their power to other men by exercising violence on the women who are supposed to be protected by the other men. In the next chapter, after demonstrating how gender roles in Yugoslavia were reshaped in line with nationalistic identities, the subjection of women to violence as a war strategy in the Civil War in Yugoslavia is analyzed in detail. The objective is to underline the genuine characteristics of women’s experience in the Yugoslavian Civil War and to highlight and understand the process and dynamics of the use of sexual violence towards women during civil wars.

## **CHAPTER 3**

### **SEXUAL VIOLENCE AGAINST WOMEN DURING THE YUGOSLAVIAN CIVIL WAR**

As explained in detail in the previous chapter of this thesis, the shift in nature of conflict from interstate to intrastate conflict has made civil society the primary target of armed conflict. In interstate wars, the primary actors of the conflict are the regular armies of the warring states, namely men; but in intrastate wars, civil society becomes both the primary actor and target, and women and children bear most of the damage.

According to the Commission on the Status of Women (CSW-Agreed) conclusions on women and armed conflict (1998), even though entire communities feel the consequences of armed conflict, women and girls are especially affected due to their gender identity. During conflict, women of all ages suffer from displacement, loss of home and property, loss or involuntary disappearance of close relatives, poverty, and family separation and disintegration, and they become victims of acts of murder, terrorism, torture, involuntary disappearance, sexual slavery, sexual abuse, forced pregnancy and rape. Rape in wars has been used in conflict since the beginning of the history of war. Rape has been considered a spoil of war in armed conflict, a trophy for troops. It has also been used as a war tactic against the enemy.

The civil war in former Yugoslavia in general, and sexual violence against the women of Bosnia-Herzegovina in particular, shifted the attention of the international community and especially feminists to women's experiences during civil conflict and to violations of women's human rights during conflict. According to Mackinnon (2001: 527), when women have become victims of human rights crimes, such as being a victim of torture or being murdered, these cases have been recorded as violations of human rights, not women's human rights. While women suffer from torture, death or murder just like men, female victims go unregistered "in the record of human atrocity" (Mackinnon, 2001: 527). However, women do suffer from serious human rights abuses because of their gender; the experiences of women in Bosnia-Herzegovina highlighted the fact that during war, women's human rights are violated dramatically. Rape and forced pregnancy are in particular those violations women are exposed to because of their gendered and sexual identities. However, even though some men are also exposed to rape during war, in general men avoid this kind of human rights violation.

The suffering of the women of Bosnia-Herzegovina indeed became a milestone in the sense that in 1993, Bosnia-Herzegovina went to the International Court of Justice and sued Serbia<sup>6</sup> for genocide, including rape. This was followed by women's individual civil suits against Radovan Karadzic<sup>7</sup> to gain an injunction against genocide, rape, torture, forced

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<sup>6</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia [Serbia and Montenegro], 1993 I.C.J. 3 8April 8), reprinted in 32 I.L.M. 888 (1993).

<sup>7</sup> Radovan Karadzic is a former Bosnian Serb Politician who was indicted by the War Crimes Tribunal in the Hague; he has thus far escaped capture and prosecution for genocide and crimes against humanity.

pregnancy, forced prostitution and other sexual and ethnic discrimination. The genocide in Bosnia-Herzegovina is not the first occasion in which women have suffered from violence. However, the conflict in Bosnia-Herzegovina made sexual violence against women visible and public, and turned the attention of international public opinion to violation of women's human rights during conflict.

During those three years prior to the Dayton Agreement in 1995, former Yugoslavia shook with one of the greatest massacres of the 20<sup>th</sup> Century. It started when Bosnia-Herzegovina declared its sovereignty in October 1991; this declaration was followed by a referendum for independence from Yugoslavia in February 1992. This referendum was boycotted by Bosnian-Herzegovinian Serbs, and Serbia and Bosnian Serbs responded shortly thereafter with armed attacks on Bosnian-Herzegovinian Croats and Bosnians, with the objective of partitioning the Republic along ethnic lines and joining together the Serb-held areas. Therefore, the years 1992 and 1993 saw the greatest bloodshed in Europe after 1945.

This was not the first occasion of bloodshed between different ethnic groups in this geographical area. When the history of Bosnia-Herzegovina is reviewed, it can be seen that the peace during the Communist regime was just a period in which the conflicts caused by ethnic and religious differences were frozen under a totalitarian administration. Hence, this chapter starts with an account of the history of ethnic strife in Yugoslavia to provide a background for an understanding of the atrocities committed during the war in that region.

### 3.1. HISTORY OF BOSNIA-HERZEGOVINA

The southward movement of Slavs into the Balkans in the 6<sup>th</sup> and 7<sup>th</sup> centuries AD is accepted as a starting point for history in Bosnia. According to Malcolm (1994), Bosnians are, whatever other titles are given them, by themselves or by others, simply Slavs living in the Bosnian region (cited in Cockburn, 1998: 28). However, religion has become an important aspect in differentiating between these Slavs.

In the Middle Ages, Bosnia was itself a state and was ruled by Bosnian Christian Kings. In 1389 AD, the armies of the Ottoman Empire defeated the Serbs at the battle of Kosovo Polje, and in 1463 they took control of Bosnia. By the early 17<sup>th</sup> century, the majority of the people living in the territory of today's Bosnia-Herzegovina were Muslim. Even though Ottoman Rule did not force people to convert their religion, the high-level careers available to Muslims in the Ottoman Administration made conversion attractive, and a privileged urban class of Muslim Slavs emerged.

The Ottoman governance of the Balkans lasted 400 years. In the mid-nineteenth century, the nationalistic and Christian identities gained importance again, and while in the north and west, Slavs celebrated Croatian identity; in the south and east, Slavs started to identify themselves as a Serb *narod*, or nation. These rising feelings of nationality and Christianity shook Ottoman rule. These groups not only wished to end the Ottoman Empire's control over the territory, but they also aimed to add Bosnia to their domain, together with its people. According to Cockburn (1998: 28), Croats saw the Muslim population as "Turkicized Croats"; on the other hand, Serbs asserted

that they were merely lapsed Orthodox. While others attributed these identities to them, the attitude of the Muslim population hardened in response.

Serbia and Russia launched a war against the Ottoman Empire in the 1870s, and this war led Bosnia to become part of the Austro-Hungarian Empire. During this era, the economy developed quickly, mineral resources were exploited and factories and railways were built (Loughran, 1999: 35). On the other hand, political life became highly ethnicized, partly due to the fact that the political parties of the region claimed to represent distinct Croat, Serb and Muslim interests. By 1912, two small Serbian and Montenegrin states were established and gained their independence, but the rest of the communities who would make up Yugoslavia in the future were still part of either the Ottoman or the Austro-Hungarian Empire. In the Balkan War in 1912, Serbia and Montenegro fought alongside Bulgaria and Greece, and they defeated the Ottoman Empire. Serbia and Montenegro conquered Kosovo, and Serbia gained a large part of Macedonia. For those Serbs living in the Austro-Hungarian Empire, Serbia became a champion due to the fact that as a state it had defeated a hated enemy, the Ottoman Empire, and this united the Serbs. Inspired, and also helped, by Serbia's secret service, a young radical took a pot-shot at the heir to the throne of Austro-Hungary, Franz Ferdinand, who was visiting Bosnia on 28 June, 1914. This led to World War I, in which Russia, France and Britain defeated Germany. The end of World War I also ended the hegemony of the Ottoman and Austro-Hungarian Empires.

After the First World War, Bosnia found itself part of the “Kingdom of Slovenes, Serbs and Croats”, later named “Yugoslavia”. Rivalry continued between Catholic Croats and Orthodox Serbs, but Bosnian Muslims maintained a political balance under the leadership of Mehmed Spaho. The Bosnian population consisted of a considerable ethnic mix; there were Jews, Germans, Hungarians and Roma. Bosnian Orthodox and Bosnian Catholics were among the majority, but the single largest component of the society was Bosnian Muslims, and especially the educated and professional Muslims had grown gradually more secular and more “European” during the 19<sup>th</sup> and early twentieth centuries (Cockburn, 1998: 29).

These mixed groups were indistinguishable in physique. There were small differences in spoken dialect, and religious cultures differentiated them to some extent, but the most prominent distinction occurred due to class differences. Unless provoked by outside forces, these ethnic groups lived in peace. World War II became an example of the outside forces which inflamed the ethnic hatred between these groups. In 1941, Yugoslavia was invaded and defeated by Germany and its allies. A Nazi puppet regime was installed in Croatia and Bosnia, and Croatian Ustaša fascists participated in the extermination of Jews and Roma. They were also remembered for their extreme brutality to Serbs. This led to fierce fighting between the Četniks, monarchist Serb resistance fighters, and the Ustaša. But when the war ended, the successors were not the Četniks but their rivals, the revolutionary anti-fascist Partisan Resistance Movement. This movement was led by Josip Broz “Tito”, and it began mainly as a Serb guerilla army. During the war, their

numbers expanded because they were joined by anti-fascist Croats and Muslims, many from Bosnia. The Partisans also received support from Britain and the Allies. Sarajevo was finally liberated by the Partisans on 6 April, 1945.

During the Second World War, two million Yugoslavs died, the majority of them killed by other Yugoslavs. Bosnians fought on all sides. After the war, no process of healing or reconciliation followed. Stalinist reprisals ensued, agriculture was collectivized, dress modernized and education standardized. But in 1948, Yugoslavia broke its ties with the Soviet Union and developed its own kind of socialism, “a characteristic system of economic self-management” (Cockburn, 1998: 30).<sup>8</sup> Trade with the capitalist world and more individual freedom of movement were allowed than in other communist-bloc countries.

Tito implemented a strict policy of containing nationalist currents; the strongest “nations” of the country were constituted republics within a federal system. The six republics, namely Serbia, Montenegro, Slovenia, Croatia, Macedonia and Bosnia-Herzegovina, preserved more or less their Ottoman Empire boundaries. Nearly one-quarter of all Serbs and Croats lived outside of their nation’s borders. For large minorities within these nations, individual rights were guaranteed. The administrative system of the state was federal,

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<sup>8</sup> After Yugoslavia’s break with Stalin in 1948, Yugoslavs began to create a central planning which “was intended to ensure great reliance on domestic and world markets and worker’s control over enterprise” (Estrin, 1991; 188). Measures included price liberalization, significant exposure to international trade on the basis of multiple exchange-rates with tariffs, and the gradual development of a commercial legal code including rules pertaining to bankruptcy. For more information, see, e.g., Estrin, Saul “Yugoslavia: The Case of Self-Managing Market Socialism” in the *Journal of Economic Perspectives*, Vol. 5, No. 4, Fall 1991, pp. 187-194.

and a quota system was established to ensure equal representation in all important federal bodies.

As far as Bosnia-Herzegovina was concerned, one third of the population was Orthodox and one sixth of the population was Catholic; they were born and bred in Bosnia-Herzegovina, but under Yugoslavian ideology their homelands were seen as Serbia and Croatia, respectively. However, the state could not identify the majority of the population, the Muslims, as coming from anywhere but Bosnia. For Orthodox members of the society, Serbia was seen as their homeland, their nation. Even though they lived within the borders of Bosnia, they were accepted as Serbian. The nation of the Catholic population of Bosnia was seen as Croatia, but the Muslim population was not recognized and accepted. In the post-war Yugoslavian constitution, Muslims were not recognized and were treated as an anomaly; they were given a choice in the census of identifying themselves as Serb, Croat or Yugoslav. Understandably, they choose to be identified as Yugoslav. In the 1961 census a new option emerged, "Muslim in an ethnic sense", but in the 1971 census this official identity developed further and became "Muslim in the sense of Nation". From 1953 to 1971, the number of Bosnians declaring themselves as Yugoslavs diminished; they preferred being identified as "Muslim" (Bringa, 1995: 28).<sup>9</sup>

With the constitutional changes in 1963 and 1974, the federal Yugoslav ideal started to change, and the decentralization process began. As explained in Zagar (2000: 137), the 1963 Constitution of the Socialist Federated Republic

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<sup>9</sup> Demographies which took place in Yugoslavia between 1953 and 1991 can be found in the Appendix A, table 1-5.

of Yugoslavia was based on the ideology of social self-management. A system of “socialist democracy” based on integrative social self-management was introduced, and even though Yugoslavia was defined as a multinational federation, the class component of the federation gained more importance than the ethnic component. According to the federal constitution, six Socialist Republics were defined as “state socialist democratic communities based upon the power of the working people and self-management”. They had their own constitutions which had to comply with the principles of the federal constitution. The Constitution also guaranteed for members of all ethnic groups the right to education in their own languages within the territory of another Republic. National minorities also gained their right to education in their own languages. The term “nationality” was preferred to the term “national (ethnic) minority”, because the new ethnic policy of the federation tried to emphasize the fact that these minorities were seen as equal communities.

The 1974 Constitution included elements that extended decentralization and democratization. This Constitution emphasized ethnic and social pluralism; it was believed that further decentralization of the federation would strengthen the equality of nations and would prevent any ethnic conflict. The Socialist Republics were defined as “states based on the sovereignty of the people and the power of and self management by the working class and working people”. They were defined as states and as “socialist, self-managing communities of the working people and citizens and of nations and nationalities having equal rights” (Zagar, 2000: 139). However, the Yugoslav

Federation remained centralized during the 1970s, regardless of the changes in the Constitution towards further decentralization. The Constitution of 1974 also named Tito as “President for life”.

In 1980, President Tito died, and during the 1980s, economical, political and social crises in Yugoslavia deepened. President Tito’s and the League of Communists of Yugoslavia’s <sup>10</sup>actual role and influence had enabled them to deal with conflicts between the Republics, and with the death of Tito (and the subsequent disintegration of the League of Communists of Yugoslavia in 1990); Yugoslavia lost its actual figures who had managed the conflicts between the Republics. Economic crisis erupted in Yugoslavia; experiments with a “socialist market” economy and price liberalization led to spiraling inflation and a large national debt. The implementation of aid from the International Monetary Fund called for the imposition of austerity measures, including cuts in the country’s extensive public sector. Economic reforms forced the federal government to constrain the republics; the controls over trade, banking, taxation, budgets and investments were tightened, and this led to quarrels between ambitious leaders of rival republics, and between republics and the federal government, over scarce resources.

In this environment, communist ideology lost its importance and Serbian and Croatian nationalism surged back to life again. The leaders of these republics started to use nationalistic rhetoric to keep power in their hands. On June 28, 1989, on the anniversary of the defeat of the Serbs by the Ottoman Empire, Slobodan Milošević, President of the Republic of Serbia, used the occasion

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<sup>10</sup> The Communist Party of Yugoslavia changed its name in Seventh Congress in Ljubljana in 1958 to League of Communists of Yugoslavia.

to whip up Serb sentiment. He turned the fear of Serbs living alongside significant minorities, namely Hungarians in Vojvodina and Albanians in Kosovo, into a source of political power. Not only did the Orthodox Church lend its authority to his project, but some academics in Belgrade also disseminated nationalist tracts. In addition, the media manipulated people's ideas and newspapers and television lost any kind of federal identity and ideology, and were converted into tools of the nationalist movement. During this period, while educated and mainly democratic young people left the country, anti-communist émigrés to the West flooded back into Yugoslavia. This led public opinion in the country to lurch toward right-wing ideas. The old ethic of "class interests" turned into "the national interest" without any difficulties (Cockburn, 1998: 57).

When the first multi-party elections came in 1990, the relatively developed northern republic of Slovenia had already decided to cut its ties with Yugoslavia. Moreover, the nationalist regime of President Franjo Tuđman in Croatia tried to find ways to increase its distance from Serbia. However, Milošević refused all ideas of looser confederal compromise, as his vision was no longer of Yugoslavia, but of a "Greater Serbia". Curtiss (1994: 7) points out that Milošević, who was a Communist strongman, switched to Serbian fascism, which aimed to unite all parts of Yugoslavia that contained any Serbs under "Greater Serbia".

However, Slovenia and Croatia proclaimed their independence in 1991, and they were given international recognition instantly. Slovenia had few Serb inhabitants, so it faced only a token resistance from the Yugoslav Army

(JNA). But Croatia was not as lucky as Slovenia. The JNA and Serbia supported a violent riot by the large Serb minority in Croatia. They proclaimed their own state, the Republic of Serbian Krajina. In 1995, the Croatian Army successfully launched two major offensives to retake the rebel areas by force, leading to a mass exodus of the Serbian population (Cockburn, 2004: 58).

In the 1990 elections, three parties organized along ethnic lines fought for control of the government in Bosnia. In the end, the subsequent government was dominated by the Muslim Party of Democratic Action (SDA), led by Alija Izetbegović. Because of the fact that they were surrounded by the nationalistic strategies of their neighbors, the SDA used two contradictory cards: strengthening the Muslim political representation and emphasizing the multi-national and multi-religious character of Bosnia-Herzegovina. In addition to this, due to the fear of Yugoslavia turning into Milošević's Greater Serbia, Bosnia-Herzegovina declared its independence in April 1992.

After the declaration of independence, some Bosnian Serbs quickly declared some parts of Bosnia-Herzegovina as autonomous Serb regions. Even though Milošević was the leader of a Yugoslavia now only consisting of Serbia and Montenegro, he still possessed the greater part of the JNA's weaponry, most of which was stationed in Bosnia-Herzegovina. Milošević was accused of supporting forces of Bosnian Serbs and bands of irregulars from Serbia. While concealing and denying his support, he backed a military campaign whose aim was to control large areas of Bosnia. The main territory targeted was the north and east of the country, which would also be a bridge

between Serbia and the Serbian population in Croatia. The three ethnic groups intermingled throughout the nation heralded violence. Ethnic cleansing of the selected areas became a political project of the Serbs. Military action, murder, imprisonment, rape, intimidation and propaganda were used as a means to accomplish this aim (Loughran III, 199: 37).

In a very short time, the JNA had gained control over 70 percent of Bosnia-Herzegovina. The Bosnian government quickly developed a defense force, though they lacked weapons, trained men and ammunition. But when, in 1993, the alliance between Bosnian Croats and Bosnian Muslims under the SDA leadership fell apart, the situation got even worse (Cockburn, 1998: 59). Bosnian Croats, with support from Croatia, started a war within the war and seized Muslim-controlled areas in west and central Bosnia and in Herzegovina. They aimed to create a Croatian mini-state, which they named "Herceg-Bosnia". For eighteen months, the propaganda against the Bosnian civilian population continued, and the Croat Defense Council, Croatian Paramilitary Force and Bosnian Serb Army were involved in campaigns involving massacres, rapes and expulsions (Cockburn 1998: 59).

It should be noted that Bosnian Serbs and Bosnian Croats were not involved in all these acts of ethnic cleansing. They stayed loyal to the Bosnian ideal of integration and unity in Bosnia, and they fought in its defense. Unlike the other two parties, the Bosnian government did not use ethnic cleansing as a weapon, but when Sarajevo and central Bosnia were besieged, the Bosnian Armija started to use killing, terrorizing and expelling civilians as ways of

securing territory. These actions were mostly reactionary; as Loughran points out (1999: 36), only Serbs used ethnic cleansing as state policy.

While this massacre continued, international actors such as the United Nations and individual countries such as the United Kingdom and France tried to figure out solutions to end the civil war. However, these solutions were artificial and did not fit the conditions of the country. A proposal of partition between ethnic groups was unachievable for Bosnia without huge population movements; the arms embargo imposed in 1991 had little effect on Serbia, but it prevented the self-defense of the Bosnians. All the efforts of help came to nothing, and hence, the massacre continued.

In autumn 1995, the United States government decided to play a more active role in the war and began air strikes against the Serbs. Eventually, all the parties were brought to a peace conference at Dayton, Ohio. Milošević was cornered by economic sanctions and he tactically distanced himself from the Bosnian Serb leadership. However, the agreement forced upon the three parties at Dayton did not satisfy any of them. Bosnia-Herzegovina would keep its independence and its borders but it was divided into two ethnic regions. Bosnian Serbs received 49 percent of the country's territories and they gained a semi-autonomous entity, the Republika Srpska. A Muslim-Croat Federation would govern the remaining 51 percent of the territory. Even though they shared a common rival, Bosnian Serbs, and even though Croatia had taken in hundreds of thousands of Muslim refugees, Croat separatists did not give up their plan of seizing some of the Federation's territory. The Republika Srpska refused to cooperate with the government of

Bosnia-Herzegovina and failed to hand over its war criminals. The return of refugees to their homes became impossible. In many areas such as in Mostar, Bosnian Croats acted as though there really was a state of Herceg-Bosna and they started to guard checkpoints and refused integration. Even though Herceg-Bosnia ceased to exist in 1994 when it joined the Federation of Bosnia and Herzegovina, most Croat-controlled cities still flew the flags of Herceg-Bosnia (Cockburn, 1998: 61).

During this period of three-and-a-half years, it is probable that more than two hundred thousand people were killed; many more were wounded and at least two million people left their homes and became refugees (The US State Department, 1993: 1). During the civil war, nearly every part of the country lived with constant terror and fear.

The impact of the conflict affected nearly everyone, more so, the women. As Walsh points out, “the way in which men and women experience and deal with the consequences of conflict depends on gender roles and relations prior to the conflict and how they were re-negotiated during wartime” (Walsh, 2001: 58). In the next part of this chapter, the way that female gender roles victimized Bosnian women in the Yugoslavian Civil War is analyzed by focusing on sexual crimes committed towards Bosnian women during the Civil War. As mentioned in Chapter II, both men and women suffer from war crimes such as murder and torture, but women suffer from sexual violence just because they are women. In the case of the Civil War between the states of the former Yugoslavia, women’s bodies were used as battlegrounds while Serbs used rape and other kind of sexual violence to humiliate and hurt the

enemy. The civil war was a gendered one in the sense of using rape in wars as a weapon against the enemy.

### **3.2. WOMEN DURING THE YUGOSLAVIAN CONFLICT**

The impact of war is felt by both men and women, but there are differences between the experiences of women and men during war. Due to the fact that men are portrayed as the primary actors in war, their experiences become more public, and these experiences are important. However, this does not change the fact that women also have particular experiences of war which are mainly a result of their gender. According to Nikolic-Ristanovic (2002: 138), there is a struggle for power during armed conflict; warring parties try to take control over something, such as the government, resources, a territory or all of these. Women, on the other hand, are supposed to be passive actors during this struggle for power. Women are supposed to play their pre-defined roles during war, such as being mothers of soldiers and supporters of warring men (Yeğenoğlu and Çoşar, 2003: 214). Among other things, this support also includes the sexual abuse of women during war as mates of soldiers. While war further enhances the marginalization of women in the society, women become its passive victims rather than “active strategists of survival in war and exile” (Nikolic-Ristanovic, 2002: 138).

The experience of women during the Yugoslavian Civil War constitutes the evidence for the analysis mentioned above. Unlike the women who actively took part in civil wars such as in El Salvador, women in the former Yugoslavian states were further marginalized vis-à-vis men and they suffered from some of the worst war crimes known in human history.

### **3.2.1. Returning to Old Ways: Constitution of Women's Identity within the Nationalistic Discourse in the Former Yugoslavian States**

The lesser representation of women in politics is a problem widely raised and discussed in feminist studies. There are few women in the decision-making organs of a state, and in the pre-war states of former Yugoslavia this fact was not different. All the states participating in the Yugoslavian civil conflict were ruled by men. While the countries of former Yugoslavia shifted from a socialist style of government to a Western style democracy, the low levels of women's presence in administration emerged as a by-product of this transition. Another factor was the resurgence of nationalism. Though it had never been fully implemented, the principles of gender partnership and equality promoted by Socialism turned into "women at home" and "women as mothers" ideologies. With the rising tide of nationalism, the ever-present male domination was further enhanced. Bracewell (1995) explains how the identities of women changed throughout the former Yugoslavia during the war, from the idealized working women of socialist rhetoric to the idealized mothers of the nation (Cited in Walsh, 2001: 59). These nationalistic ideals also favored aggressive and violent masculinity, for nations require women for continuity and men for protection. In all fighting nations, a "father of the entire nation" figure was sought; in fact Tudjman in Croatia, Milošević in Serbia and Izetbegovic in Bosnia became these fathers of their nations.

These facts played a great role while decisions concerning war were being made. There were few women in key political positions in these nations; representation of women in the newly-formed parliaments of former

Yugoslavian states who had declared their independence ranged from 13 percent in Slovenia to 4.5 percent in Croatia, 4 percent in Montenegro, 3.3 percent in Macedonia, 2.9 percent in Bosnia-Herzegovina and 1.6 percent in Serbia. (Papic, 1994; cited in Milojevic, 2003; 28). Nevertheless, patriarchal dominance in decision-making goes beyond the number of women in decision-making organs. The example of Mirjana Markovic<sup>11</sup> at that time showed that in an environment dominated by men, women may also adopt dominant strategies. Mirjana Markovic was an influential political figure in Serbia during that time, and not only she, but also many other women from the successor states of the former Yugoslavia gave their loyalty and support to their war-promoting nationalistic leaders. Those women who supported peace were teased by the public, and they could not receive support from the few women in decision-making organs. *Serbian Women in Black*<sup>12</sup>, who protested the conflict from the beginning in the square, was constantly ridiculed by the mainstream population. In an environment in which hatred of “the others” was provoked by nationalistic ideologies, women as well as men had a tendency to accept their expected roles as members of a nation (Benderly, 1997: 64).

It is also important to mention that nationalistic ideas also affected the feminists of former Yugoslavia. As Benderly (1997) and Stojavljevic (1995) point out, the feminist movement in Yugoslavia was born during the Second World War with the formation of the Anti-Fascist Women’s Front. After the

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<sup>11</sup> Mirjana Markovic was the wife of Serbian leader Slobodan Milosevic; she was considered very powerful and the only person who Milosevic trusted and consulted. Also, as the leader of Yugoslav United Left, she used to have independent political influence.

<sup>12</sup> As a symbol of anti-war feminism during the Civil War, these women stood in Belgrade’s main street every week and kept their silent protest.

war, the Anti-Fascist Women's Front was disbanded based on the notion that women would have equal rights with men under communism, so there was no longer any need for organizing separately. In the 1970s female intellectuals started to discuss women's issues, but these intellectuals did not identify themselves as advocates of women's rights. The 1980s witnessed the organization of feminist activists; these women questioned many issues related to women's rights such as rape, domestic violence, pornography and employment. When the republics started to gain independence and when nationalistic discourse gained importance, feminists in Yugoslavia did not at first pay attention to the resurgence of nationalistic ideologies. Stojsavljevic (1995: 36) points out that in 1987, during the First National Feminist Conference of Yugoslavia, feminists declared that they did not recognize the country boundaries drawn up by men, that they were united in sisterhood. Unfortunately, the nationalist agenda divided the movement, and they lost their power to create an effective and united opposition to war. More importantly, they also could not prevent the use of violence against women as nationalistic propaganda. (Stojsavljevic, 1995: 36).

As a result, nationalist fragments of feminist groups in Croatia and Serbia started to refuse to share platforms with each other. Feminists who refused to embrace nationalistic ideals and patriotism were labeled as enemies of the state by nationalist feminists and the mass media. Only a few years after the National Feminist Conference of 1987, feminists forgot their resolutions about sisterhood, and when any kind of opposition coming from feminists also

eroded, the newly emerged states of former Yugoslavia continued to use women in their nationalist projects.

Morokvasic (1998) points out the fact that the pre-war constitutions of the successor states of former Yugoslavia protected women as mothers and they addressed them as protectors of ethnic purity. This fact displays an important arena of oppression of women by patriarchy, which is the control of their sexuality. For example, Articles 62 and 64 of the Croatian Constitution states that maternity and mothers shall be protected by the State. Nowhere in the Constitution does the word “women” exist; women are referred to simply as mothers. The Serbian Constitution is not different; Article 28 of the Serbian Constitution declares special protection for children and mothers. The word “women” is only used once, in Article 30, which states that pregnant women have right to health care financed by public funds. These Articles also show the importance given to the continuation of reproduction by these states. Demographers at the time had started to calculate how many years it would take for the Serb nation to end if the birth rate did not increase; poets started to write poems glorifying the fertility of their nation’s women. The reproductive rights of women were also threatened by draft bills proposed by legislators; one of the most important reproductive rights threatened was abortion rights. Croatia was not much different from Serbia in controlling the sexuality of its women. In Croatia, posters which read, “each unborn baby is an unborn Croat” were used, and in meetings, brother Croats were urged to go home and make a new Croat. The media also supported these ideas, but the adoption of these regressive bills was prevented by the reaction of the

independent feminists' successful opposition. However, although abortion was legal in Croatia, it became harder for women to obtain abortions in Democratic Croatia than it had been in the previous Socialist Croatia.

Korac (1998: 159) cites the words of a leader of the Christian Orthodox Church as an example of how nationalistic ideologies were intended to assign women the roles of mothers of their nation, and to explain how they should be the carriers of the values of the nation. The leader of the Christian Orthodox Church, Metropolitan Nikolaj, expressed this in an interview with the nationalistic Serbian magazine, *Pogledi*. He mentioned Alija Izetbegovic's statement that Bosnian Muslim women should bear at least five children, and she should prepare two of them for war. As he put it,

*And what we will do? We do not even have enough children to simply reproduce our nation. The satanic ideology of communism has destroyed the Serbian family. The laws of nature have been inverted. Woman has become, in a negative sense, superior to man and this is a big mistake. As Bishop Njegos said, man is the defender of women and children (cited in Korac, 1998: 159).*

The gender roles forced upon women in Yugoslav nations became examples of Yuval-Davis' and Anthias' (1989) theories about women and nationality. According to these authors, there are five ways through which women are integrated into national and ethnic processes and state practices: firstly, as biological reproducers of members of ethnic collectivity; secondly, as reproducers of the boundaries of the ethnic/national group; thirdly, as central participants in the ideological reproduction of collectivity and as transmitters

of its culture; fourthly, as signifiers of ethnic/national differences--as a focus and symbol in ideological discourses used in construction, reproduction, and transformation of ethnic/national categories; and lastly, as participants in national, economic, political and military struggles. While examples in the newly emerged nations of former Yugoslavia supported these five ways of adopting women into the nationalistic discourse, feminist theorists in Zagreb, Belgrade and Ljubljana tried to criticize the pressures on women resulting from the rising forces of nationality and patriarchy.<sup>13</sup> The following argument of Renata Salecl (1993) sheds light on patriarchy and nationalism's roles in women's lives both in pre-war times and during war:

*When the problem of patriarchal domination officially ceased to exist under Socialism, patriarchal domination became officially invisible--this also means that it became much more difficult to recognize its effects. As with nationalism, which officially did not exist, but nevertheless remained at work in a concealed way, patriarchal domination, although officially overcome, remained a surmise of political discourse. Thus, it was not difficult for the post-socialist moral majority to articulate patriarchy in a new way: to present the return to natural sexual roles as an attempt to introduce morality into a previously immoral social regime and to interpret the moral majority ideology in a nationalist way (cited in Benderly, 1997: 62).*

As will be elaborated in the remaining part of this chapter, during the war between the former Yugoslavian states, women did not only become targets of patriarchy within their own nations. As women were seen as carriers of their nation, as the honor of their nation, they also became targets of other

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<sup>13</sup> At the beginning of the 1970s, the first forms of organized and joint activities of women from academic circles started in large urban areas such as Belgrade, Zagreb, Ljubljana and Sarajevo. These women continued their resistance to the re-emerging nationalistic ideals during pre-war and war periods.

warring parties due to this reason. According to Žarana Papić (1993), civil society becomes a victim under the domination of nationalist ideologies, and when civil society is in danger, all human rights, especially women's rights, are also in danger. Political and military strategies of all nationalistic ideologies are constructed and based on "purposefully provoked, dominantly aggressive, openly violent and deadly oriented types of masculinity" (Papić, 1993: cited in Benderly, 1997: 62). The victims of this aggressiveness and violence are not only enemy states but also women. Women become war targets, war reward, war revenge and war pleasure as rape objects. This aggressive war-oriented nationalism is based on a violent patriarchal system and it entails a "strictly gendered order, in which men and women are separated into opposite zones; battlefields and shelter fields" (cited in Benderly, 1997: 62).

The Yugoslavian Civil War became embedded in the memories of people because of its gross brutality and use of violence. Serbia aimed to unite all Serbs living in different territories under Greater Serbia, and the Serbs intended to cleanse the land of other ethnic groups by killing them or forcing them to move out of their lands. However, aside from actual fighting or creating terror, rape was also used as a weapon. Women's bodies became a weapon for warring parties that was able to damage nations more than any other weapon could ever do. According to Seawell (2003: 184), rape in wars has two aims. Firstly, it is used as spoil of war, as a trophy for troops; secondly, rape is used as a weapon against the enemy. In her article, Seawell compares two civil wars, those in Rwanda and in Bosnia. These two

wars share common elements in that they are both ethnic civil wars and ethnic cleansing was used in both of them. However, the case of Bosnia was different from Rwanda in the sense that the use of rape as a weapon was much more obvious in Bosnia. As Milojevic (2003: 32) states, the Civil War in the former Yugoslavia reduced women not only to innocent victims but also to conscious military targets. Rape was used as a tactic of men against other men during the civil war. It is this strategy which we turn to in the next section.

### **3.2.2. Sexual Violence against Bosnian Women: Using Rape as a Weapon in Ethnic Cleansing**

While war between the former nations of Yugoslavia continued, observers reported that atrocities had been committed by all sides; Serbs, Croats and Muslims had all murdered, tortured and raped. But Serbs had won a particular reputation for brutality towards women. As Arcel and Kastrup point out (2004: 44), rape is a weapon of war, because rape spreads the terror and forces families to leave their lands. Rape weakens the morale of the enemy; it is a tool of ethnic cleansing. According to Friedman (1996) and Weine and Laub (1995), ethnic cleansing is a policy aiming to “rid an area of an undesirable national group to create a homogeneous region; it represents a type of genocide that is designed to spread terror” (cited in Snyder et al., 2005: 612). To create “Greater Serbia” and to cleanse the land from non-Serbians, nationalist Serbians used any means to spread terror throughout Bosnia-Herzegovina. Aside from mass killings and torture, Serbs used the tactic of humiliation, too. According to Snyder, et al. (2005: 613) Mosques

were destroyed and Muslim population was forced to clean up the rubble. In concentration camps, male captives were forced to sing Chetnik songs, and they were forced to make the sign of the cross. However, the greatest tool of the Serbs' ethnic cleansing campaign during the Yugoslavian Civil War was sexual violence against women. Rape often damages the reproductive ability of the enemy, because mass rapes often damage the reproductive capacity of women. Rape is a weapon against society; it humiliates women and silences them because many societies refuse and exclude raped women, especially pregnant ones who carry the enemy's child. To cleanse the land from everyone except Serbs, Serbian nationalists used every method of ethnic cleansing, including sexual violence against women.

Like their male relatives, women in Bosnia and Croatia were also killed or murdered. But atrocities towards women during the war were largely in the form of sexual violence; namely rape, sexual mutilation and forced pregnancy. For a time, the infamous rape camps of the Serbian Army were not publicized, but rumors of warfare-by-rape in Bosnia began circulating in early 1992.<sup>14</sup> These camps and their functions demonstrated how women were used and victimized during the conflict in the former Yugoslavia (Benderly, 1997; Skjelsbæk, 2001; Seawell, 2004; Arcel and Kastrup, 2004; Bouta et al., 2005; Walsh, 2001).

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<sup>14</sup> Serbia has always denied the existence of these camps, but testimonies of women point to concentration camps in which male and female prisoners suffered from torture and violence. In their testimonies, women explained that they were taken to these camps and raped there systematically.

### **3.2.2.1. Rape in Wars**

The physical integrity of men and women is violated in many ways all around the world (MacKinnon, 2001: 528). They are murdered, killed or tortured. However, women are violated in ways that men are not, and these violations usually take the form of sexual violence against women. In fact, rape is the most common form of sexual violence, and women are raped both in normal, namely peace times, and in wartime.

Sichtermann (1994: 278) points out that rape is demonstration of power; it is a way of establishing authority and domination. It is a means to assert male dominance by using physical force. Seawell (2004: 180-181), Brownmiller (1975) and Searles, et.al. (1995), analyzed rape in the same way as Sichtermann did. In this analysis, rape is a product of male dominance, the result of patriarchal oppression. The present social order identifies men as dominant, while women are portrayed as subordinate and weak. In this context, the rapist uses his socially designated dominant role and dominates women physically. The male rapist proves his physical dominance and he shows his victim her subordination at the same time. The patriarchal assumption that men own women's bodies is also proved by rape; for the rapist, the woman he rapes is only a vessel to be used. Any power which may belong to the women is denied altogether through the act of rape. The victim is filled with utter powerlessness and terror.

Seawell (2004: 182), in her article about rape in wars, analyzes the meaning of rape both for the victim and the victimizer. For the victimizer, rape means domination and power, and for the victim, it means violence and

subordination. Rape is not accidental; it has intent. Rape is an act of violence which aims to accomplish a certain end.

When rape in wars is analyzed in this context, it is understood that mass rapes occurring in wars are also used as a means to accomplish a goal. The analyses by Seawell (2004) and Arcel and Kastrup (2004), indicate that rape in wartime has two primary functions: as a tool for the demoralization of the enemy through their women, and as a spoil of war. Rape not only demoralizes women, who are the rapists' primary targets; but it also demoralizes enemy troops. Dominant ideology portrays women as belonging to a man; a father or husband. By raping women during war, rapists assault women who belong to men, a society. Seeing or knowing that their women, their honor are raped, the morale of the enemy troops is shattered, and their resistance breaks. Hence, rape becomes a psychological tactic of war by men against men. Rape is used to deliver a specific message from one group of men to another; women's bodies become the instrument for this communication. The message includes the question that if men cannot protect their women from violation, then how can they expect to defend and protect their country? As Seawell stated, "one violation will necessarily give rise to another; one violation will make the other possible" (Seawell, 2004: 184).

Another way of using rape in a war is as a reward. Rape has been seen as one of the spoils of war. When this idea is used to legitimize rape in war, it becomes inevitable. When soldiers need to be rewarded for their courage and sacrifice, having sexual intercourse with women is seen as a reward. On

that occasion, rape is used to raise the morale of the troops. At this point, it is important to mention that while one side of the warring parties uses rape as an instrument of demoralization for their enemies, at the same time it is used to build morale for their own troops. In both ways, women become just instruments and this evidences the ideological construction of women as objects to be used and manipulated by men: their bodies are just vehicles for the pleasure of men. The construction of rape as a reward reiterates the notion that “women necessarily lack agency over their own bodies, because such agency is superceded by male entitlement to sexual access to those bodies” (Seawell, 2004: 184).

Both of these functions of rape in war show that the act of rape has been more than men demonstrating dominance over women; it becomes a way for men to express certain messages to each other. Rape, aside from being an act of violence, also becomes a tool for communication between men, and thus, women become the medium of this communication beyond their control. Arcel and Kastrup (2004: 44), claim that rape and other forms of sexual violence during war are politically and/or militarily constructed. Even if rape is not supported during war, it is at least condoned. Raping women for a reward or using rape as a weapon against enemy proves the fact that the mass rapes of thousands of women cannot take place if the military or political hierarchy considers rape as a serious crime.

All in all, rape during wartime exists; it is known and even accepted. As Brownmiller (1975) writes, neither side of the warring parties ever admit to

the rape, and rape becomes a war crime which is easy to charge but hard to prove (cited in Nikolic-Ristanovic, 2002: 143). The fact that female rape victims mostly do not wish to talk about their horrific experiences also makes rape in war impossible to prove. For a long time, the Civil War in Yugoslavia was seen as a conflict between different ethnicities living in the same territory, but when the first news of mass rapes and other atrocities were publicized with testimonies of women in refugee camps, the mass rapes in Bosnia-Herzegovina were revealed. More importantly, as Arcel (1998) points out, the conceptualization of war rape also changed when the mass rapes in Bosnia became public. Previously, rapes in war were described as a sexually motivated byproduct of war, but today rape in wars is described as a politically motivated act and a violation of human rights.

#### **3.2.2.2. The Systematic Usage of Rape during the Yugoslavian Civil War**

The use of rape by Serbs during the Yugoslavian Civil War involved the two above-mentioned meanings of rape in wars: it was used as a reward for Serbian troops, but more importantly, it was used as a tactic of ethnic cleansing. Korac (1998: 154) points out that when rape in wars becomes systematic and the number of raped women is many; and when rape focuses especially on women of one ethnic group, as in Yugoslavia, then rape becomes a tool of genocide. In this section of the thesis, this function of rape as a tool of ethnic cleansing, as a weapon against a society, will be evaluated with the help of testimonies of female rape victims.

The systematic and organized use of rape during the Yugoslavian Civil War, especially by Serb soldiers, has been acknowledged and documented in

international human rights reports. This evidence about the use of rape in a systematic way is mentioned in the annual report of Amnesty International (1993). The annual human-rights report done by the US State Department<sup>15</sup> also includes rape as a weapon of war. Another report prepared and presented to the European Community's Council of Ministers states that the number of Muslim women raped was at least 20,000, and that the Serbs used rape as a "weapon of war".<sup>16</sup> These reports underlined two facts: that Serbs raped Bosnian women in an organized and systematic way, which means that these rapes had a purpose other than humiliating women or damaging their bodies, and that Serbs used rape as a weapon of war. By raping women in a systematic way, the Serbs achieved another goal; they used it as a weapon against the Bosnian nation.

The sexual violence against women during the Yugoslavian conflict consisted of both functions of rape mentioned above. The Yugoslavian conflict will always be remembered for the use of sexual violence as a tool of ethnic cleansing. Card (1996: 6) points out that there is more than one way to commit ethnic cleansing. One way is mass murder, namely killing individual members of a national, political, or cultural group. The second way to commit genocide is to destroy a group's identity by crushing cultural and social bonds. Rape in wars does both. Many women and girls are killed when rapists are finished with them. If survivors become pregnant or are known to

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<sup>15</sup> The Report on Human Rights Practices in Bosnia-Herzegovina was published by the U.S. Department of State on January 31, 1994.

<sup>16</sup> The Warburton Report, EC Investigative Mission Into the Treatment of Muslim Women in the Former Yugoslavia: Report To EC Foreign Ministers, was published on January 28, 1993.

be rape survivors, cultural, political, and national unity may be thrown into chaos. As Stojšavljević (1995: 39) points out, rape in wars has the aim of destroying the fabric of the family and society. In a social order for which honor is strongly associated with women and their sexual integrity and purity, raped women are seen as unclean, and if they become pregnant as a result of the rape, the marks of violence are carried to next generation. In Bosnia, the nationality of a child is determined by the nationality of the father, and these children are seen by the society as enemy seeds living among them. This is a way of demonstrating power over the enemy, showing that they can be capable of everything and they can do anything.

These are among the apparently intended purposes of the mass rapes of women in Bosnia-Herzegovina. As Halsell (1993: 9) puts it, women's bodies became a battlefield in the war for a Greater Serbia. Serbs used three kinds of attacks on women and children. First, they practiced sexual mutilation by criminally assaulting small girls, and even infants. Physicians for Peace, a worldwide operation, has documented cases of Serbs raping even 3-year-old girls (Halsell, 1993: 9).

Halsell (1993) interviewed Bosnian women and gathered their horrific impressions of war. These testimonies of women dramatically indicate how far sexual crime against women and children went during the war:

*A physician who is a friend of my father came to my father's house one evening extremely distressed--crying, screaming, wailing. He had treated an eight-year-old girl after she had been gang-raped by Serbians. She was torn apart inside. She was bleeding so badly he couldn't stop it. She was in great pain and could not be repaired. He told my father he*

*had injected her and killed her to relieve her suffering (Aida, a Bosnian woman, cited in Halsell, 1993).*

Another man Halsell interviewed in a refugee camp, a Bosnian Muslim, Issa, told him that Serbs had attacked his village. They had shot more than 200 civilian men and rounded up others, including Issa, and carted them off to a concentration camp;

*A doctor from my same town also was a prisoner here. One day the Serbian guards called for this doctor. They wanted him to sew up a 10-year-old girl they had raped. She was torn apart. Seeing the mutilated child, the doctor forgot he was a prisoner that he was in a concentration camp. He cursed the Serbs, telling them, 'You are not human!'*

According to Issa, the guards then left the child bleeding on the table and assaulted the doctor. Issa said that when he again saw the doctor, "he was barely alive." (Cited in Halsell: 1993).

In addition to the mutilation of small girls, the Serbs' second strategy was to keep women separated from their husbands or their potential husbands. They held men in concentration camps or they killed them. At the same time, the Serbs repeatedly sexually assaulted the women they kept in captivity. These women were also forced to become pregnant; in this way they could give birth to little Chetniks, little Serbs.

As another example, a 26-year-old woman who, with other women, was held in a Gracko rape camp, said that Serbs shouted at Muslim women with small children: "Look at how many children you can have. You are going to have our children. You are going to have our little Chetniks." (Cited in Halsell, 1993).

Women's stories showed how rape and political struggle are connected with each other;

*The rapist said to me a few times: 'Would you like to give birth to a Serbian baby?' In the middle of May 1993 he noticed that my stomach was growing and asked me if I was pregnant. I said: 'I think that I am.' Really nice, there will be more little Serbs in the world' he said (Vesna, cited in Skjelsbæk, 2001).*

In another instance, as cited in Halsell (1993: 10), when the Serbs assaulted her village, Nadia, a 20-year-old Bosnian Muslim, and others ran to the hills. Among them were three 12-and 13-year-old boys. The Serbs found the group. "Before my eyes," Nadia says, the Serbs began shooting the boys. "Don't kill them!" Nadia shouted, running to defend them. A Serb knocked her unconscious. When she awakened, she was in a room with one of her arms tied to a bedpost. She was in a rape camp.

*I was kept in that room for three months. It was mostly walls. It had a concrete floor and straw on the concrete. Other women and children were there. None of us were permitted to leave the room" (Halsell, 1993:10).*

"Even on Christmas day," Nadia said, "eight Serbs came, saying 'Now we celebrate.'" All eight gang-raped Nadia that day (cited in Halsell, 1993).

*We had to cook for them, and serve them, naked. They raped and slaughtered some girls right in front of us. Those who resisted had their breasts cut. One night Zeljka's brother helped twelve of us escape. Sometimes I think I will go crazy. Every night in my dreams I see the face of Stojan, the camp guard. He was the most ruthless among them. He even raped ten-year-old girls, as a delicacy. Most of those girls did not survive. They murdered many girls, slaughtered them like cattle. I want to forget*

*everything. I cannot live with these memories. I will go insane.* (Name Unknown, cited in Doubt, 2000).

Lastly, Serbs used women's bodies as battlefields. Rape was not only used to harm and humiliate women, but it was also used as a weapon against a nation. As Jaukovic (2002: 114) explains, during the Yugoslavian Civil War, the fundamental values of humans belonging to a group were destroyed. These values are listed by Jaukovic as values of life, dignity, body, family and family relationships, home and social status. Raping women belonging to another ethnic group in war constitutes violence against all these values; while rape as physical action harms the bodies of the victims, the killing of rape victims also becomes a violation of the integrity of human life. On the other hand, raping women belonging to a specific ethnic group whose honor code is primarily linked with women's honor becomes an assault against a group's dignity and family relationships. Boeschoten (2003: 46) indicates that even though under the Socialist Regime, women of Yugoslavia had equal education and work rights, the women who enjoyed these rights were not many and they mostly lived in big cities. On the other hand, women's position in society did not change much in villages; especially Muslim women were not supposed to act independently; they were supposed to represent the moral unity of the family. In this way, when the moral head of the household was raped publicly, in the public squares of the towns and villages and often in the presence of family members, the destructive effects were not only seen in the household, but in the whole community as well (Boeschoten, 2003: 45). Knowing the moral code of the "enemy" enables the other side to use ways to shatter social fabric, and rape becomes one of these instruments.

Writing about rape in the Greek Civil War<sup>17</sup>, Boeschoten (2003: 44) points out that, the rape of women during the Greek Civil War mostly took in place in village squares, while members of the society were forced to watch these rapes, as in Bosnia-Herzegovina. Partisan women during the Greek Civil War mentioned that they had joined the democratic army not because of ideological conviction, but because of their fear of rape (Boeschoten, 2003: 42). Rape victims in the Greek Civil War were mainly supporters of the Left, and especially in ethnically mixed areas, women belonging to an ethnic minority were chosen as targets.

During the civil war in Rwanda, as Newbury and Baldwin (2001: 31) explain, Tutsi women were mostly targeted for rape to inflict shame on their society; they were forced to serve as sex slaves for Hutu men. For raped women in Rwandan society, the social stigmata were great; therefore, these women were denigrated, and their chances for marriage reduced. Children of rape victims were called “children of bad memories” and “devil’s children”. These children became a symbol of the pain, suffering and humiliation of the Tutsi society, and they became a way for the Hutus to show their power to their enemy.

However, the scale of rapes and number of women raped during the Yugoslavian Civil War differentiated the experiences of women in Yugoslavia from women in Greece or Rwanda. The Rwandan Civil War shared the same decade with the Yugoslavian Civil War; however, it only lasted 100 days, and the acts of rape were not systematic, they were more like a rush of sudden

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<sup>17</sup> The Greek Civil War took place between 1946-1949s the warring parties were the Greek National Army and the left-wing Democratic Army.

hatred towards the women of the enemy. On the other hand, women in Yugoslavia, especially Bosnian women, were chosen systematically, taken to the rape camps and raped in a systematic way (Boeschoten, 2003: 45 and Boose, 2002: 75).

### **3.2.2.3. The Function of the Rape for Nationalist Serbs and Its Contribution to Ethnic Cleansing**

Women have been raped in many wars; as mentioned above; raping women was considered one of the looting practices of war. But what is specific about the rape in the Yugoslavian Civil War was that it was used to achieve other goals, too. The intention of the Nationalist Serbs was to clean the land of non-Serbs. To achieve this goal they used many forms of atrocities; however, the rape of women of other ethnic groups was the most effective weapon Serbs used during the Civil War. In this section of the thesis, the way that rape functioned to serve the purposes of the Nationalistic Serbs is analyzed.

First of all, Serbs used rape as a tool of ethnic cleansing. Aside from the mass killings of members of other ethnic groups, women were raped and they were forced to become pregnant and carry the children of Serbs. The rape camps of the Bosnian war became evidence of the fact that the Serbs' plan of was not only to evacuate all non-Serbs, but also to sever the bonds between mothers and the children, and between spouses. The Serbs also aimed to render a large number of a society's child-bearing women contaminated and unmarriageable.

In this context, rape became part of an abuse for "inducing fear and uncertainty" (Jaukovic, 2002: 113). This abuse was intended to

demoralize and terrorize the people of these nations. As a part of this abuse, raping women also aimed at driving people out of their homes and to demonstrating the power of the invading forces. Rape was a means to demoralize and weaken those who were still alive, men or women. As one of the rape victims put it, "it was planned in advance and arranged in order to destroy the soul of a nation (Sabina, cited in Skjelsbæk, 2001: 48).

According to Doubt (2000), Serbs chose women from the families of supporters of the Kosovo Liberation Army; they used sexual assault towards these women knowing its devastating effects on the fighters and their home communities. Serbs routinely detained female family members of men suspected of separatist activity. Rape, as a war crime, thus became a weapon to destroy a community and cut "the bonds of interdependency within this community based on care and trust" (Doubt, 2000: 65). Doubt (2000) continues by transcribing some testimonies of refugees from Srebrenica. When these refugees reached a UN base at Potocari, they were relieved, and believed that the nightmare was over. However, even though there were Dutch peacekeepers present, Bosnian Serbs came that night and chose a young victim from among the sleeping refugees.

*"Two took her legs and raised them up in the air, while the third began raping her," Ms. Turkovic said. "Four of them were taking turns on her. People were silent, no one moved. She was screaming and yelling and begging them to stop. They put a rag into her mouth and then we were just hearing silent sobs coming from her closed lips". When they finished, the woman was?? left there (cited in Doubt; 2000: 64).*

Doubt (2000) uses this testimony to demonstrate how Serbs used rape as an assault. The timing and place of the rape was utterly obscene and unconscionable; while a community thought they were safe, one of their own women was raped and they could not even help her. This action, which took place in a refugee camp, became an assault to her family and community, and it damaged the bond between her and her community.

Secondly, Serbs used rape as a propaganda tool against the nation of the raped women just by switching the identities of the rapists. In her article, MacKinnon (1993: 27) draws attention to the filming of mass rapes by Serbians, and turning these rapes into pornography. Some of these mass rape tapes were intended for mass consumption as a propaganda tool. According to a Croatian woman who was raped and tortured in the Bucje concentration camp, she was filmed while being raped. The rapists were wearing Croatian uniforms, and the woman was forced to admit that she had been raped by Croatians. Due to the fact that the nations of former Yugoslavia do not have visible ethnic differences that can be detected on the surface (i.e., different skin color), this switching of ethnic labels became easy and was used by warring Serbs to absorb the still-neutral Serbian population into the war. MacKinnon (1993: 28) gives examples of this strategy by mentioning that the rapes of Bosnian and Croatian women were filmed and aired on the evening news in Banja Luka, a Serbian-occupied city in Western Bosnia-Herzegovina. Moreover, the women who had been raped were portrayed as Serbian women, and their rapists were portrayed as Bosnian or Croatian.

Thirdly, rape during the Yugoslavian Civil War had a political purpose for the Serbs: shattering the ethnic integration of former Yugoslavia. Rape camps, as an important part of "ethnic cleansing", were also part of a plan to undermine the ethnic mixing which had been encouraged in Tito's Yugoslavia. During Tito's Yugoslavia, intermarriage had become common and people had seen themselves as Yugoslav, rather than Serb, Macedonian, Croatian or other. Lendvai (1991: 253) describes Yugoslavs as partners or children of mixed marriages, marriages between Croats and Serbs, Slovenians or Macedonians. To create a Yugoslav entity, mixed marriages had been encouraged. Leaders of Socialist Yugoslavia wished to prevent an ethnic conflict as had been seen in World War II, in which many people of Yugoslavia were killed and tortured by each other, especially Serbs by Croats.

During the Civil War, women married to men from another ethnic identity became targets, too. According to Nikolic-Ristanovic (2002: 141), women from mixed families lose their national identity; they become women of men from a different nationality. In this context, the nationality of their husbands became the reason for violence against these women; their own national identity had secondary importance. Women were raped by men belonging to their own nationality; women were raped by their neighbors who were from their own nationality, and these rapes were performed publicly. In this way, rape was used to shatter the integration of nations, because for a long time it became impossible for people to share their lives with those whom they saw as their enemy and torturer.

The Serbian Army forced Bosnian Serbs not only to watch their Bosnian Muslim neighbors being murdered or raped, but also to participate in those brutalities. In this way, it would become impossible for mixed groups to live together peacefully in the future. More importantly, the Serbian Army prevented any Bosnian Serb observer from reporting these war crimes, because they had become a part of them. Rape was thus employed to introduce a traumatic situation in which the bonds that kept people together were damaged and the sense of community collapsed.

However, not all Serbs participated in rape and other sexual violence towards women. Pelka (1995: 9) quotes her interview with a rape victim at Nona, the Zagreb Women's Center. This young woman was 18 when the Serb tanks first arrived at her village in northern Bosnia:

*In the first two days, the Serbs attacked the Muslim part of the town with weapons. People could not leave their houses. They were only allowed to go outside for two hours. Then the Serbs started to enter houses, and they started to do whatever they wanted. She continued by mentioning that Serbs came to her family's apartment four times, looking for her father. They could not find her father because he was overseas. In the end, young woman and her mother were threatened to be taken to a rape camp. Her mother was raped by three of them and then killed. She managed to escape somehow, and she ran downstairs and one of her neighbors, a Serb, delayed the rapists long enough for her to escape by jumping out of a second story window and hide. Two days later, the same Serbian neighbor used his car to smuggle her and her brother to the Bosnian army lines. " It was a very dangerous thing for him to do," she acknowledged. "He had a lot of trouble after he got us out of there. I heard how some Serb wanted to rape his daughter because he had helped us. The town is still a huge concentration camp, because people cannot go out. They can be beaten on the*

*street, they can be killed, they can be everything."*  
(name unknown, cited in Pelka 1995: 9).

On the other hand, for those who did participate in sexual violence against women, rape was legitimized by the Serbian Army as a way to increase the Serb population; however, many women were also killed immediately after they were raped, or when they were thought useless. Serbs did not intend the children of these rapes to be owned by Serbian society; the primary aim was to "damage the honor of Muslim society, and disgrace a nation" (Halsell, 1993: 9).

It should be emphasized here that individual rapists, those who carry out the plan against a nation, may not intend those purposes or be moved by them, just as they may be ignorant of the larger purposes served by the various commands they obey. A soldier may rape because he is ordered to, or because he feels like it. Superior officers, on the other hand, may look the other way because of the martial purposes rape serves. Some rape victims could not believe that men they had known before the war as their neighbors acted with such brutality, so they believed they had been ordered. Whether this was true or not was not known at the time; however, even though these men were not ordered, some strong motives were used on them. According to Morrow (1993), a man who refuses to rape is considered a traitor to his unit and to his Serbian blood. Sometimes men commit rape in order to please their elders, their commanders and to win a sort of father-to-son approval (cited in Diken and Laustsen, 2005: 124). An interviewed rapist, Borislav Herek from Sarajevo, who admits to raping and shooting three unarmed women, said that if he had not done it, his superiors would have sent him "to

the worst front line" or to jail, and that they would have taken away the Muslim's house that they had given him (Stiglmeier, 1993, cited in Card). These confessions did not reduce the weight of the crimes committed during the Civil War, but it shows that not only women but also individual men were used for the plan for greater Serbia.

Thus, patriarchy does not only refer to inequalities between men and women, but also between men and men; men who possess power use it over men, too (Rosaldo, 1993: 81-82). However, for noticing inequalities and subordination, one should accept the subordination; in this context, men's subordination under other men usually goes unnoticed by men. In the Yugoslavian case, the Serbs who possessed power during the Civil War, usually the nationalistic military elite, used this power to invisibly force other men to commit acts that would gain them more power over women, men and other ethnic groups.

While rape in the Yugoslavian Civil War had the implications of destroying a nation's togetherness, a question can be raised. Although many other forms of terrorism and torture, like burning and looting of residences, villages, cities, and destruction of domestic industries, may also achieve this aim, why was rape in particular used to achieve this goal? Of the many forms of martial terrorism, rape has a special role in patriarchal culture because it has the potential to sever bonds between family members, and it also symbolizes the "perpetrator's dominance over future generations" (Card, 1996: 5).

Yet, achievements in medical science and rights to birth control gave women the adequate environment for abortion. Many women and girls raped in

Bosnia rejected having those babies and they chose abortion. So the use of rape for genetic domination may be defeated in today's conditions. Today, women are targeted because of the cross-cultural symbolic meaning of rape among men in a patriarchal culture, which is dominance. In war, this meaning of dominance does not only include dominance over women but it also includes dominance over other men, who are thought to be the protectors of these women and are presumed to take pride in their role as protectors. Rape symbolizes dominance by force, and in patriarchal society women are seen easy victims. Due to the fact that many women were unarmed and untrained, they were kidnapped, murdered and raped and they were used against their nation in a war they did not even participate in. As explained previously, wars are always seen as men's business, and unlike other examples of war, in which women also take a role, in the Yugoslavian Civil War, as Skjelsbæk (2001: 54) points out, women were only victimized in brutal and dramatic ways, as exemplified in the mass and systematic rape against them.

#### **3.2.2.4. Multiple Impact of Rape on the Victims' Lives**

Experiencing rape and other sexual violence such as forced impregnation causes the lives of these women to change drastically. Apart from the physical suffering, rape victims also suffer from psychological trauma and social burdens. In this part of the chapter the social, physical and psychological impact of sexual violence against women during the Yugoslavian Civil War will be evaluated.

The exact number of women raped in the rape camps in the former Yugoslavia is unknown, but it is estimated that more than 50,000 women were raped and another 100,000 women and children were murdered. And as Boose (2002: 72) points out, the rape camps in Bosnia were known for their many atrocities. Throughout 1992 and 1993, trucks loaded with Bosnian Muslim women were taken to the cities of Travnik, Zenica and Visoko, and from there they were taken to hospitals for mass abortions. Women were raped repeatedly till the rapists were bored with them and killed them or sent them to back to their own societies, pregnant with Serb babies.

Physically, as Arcel and Kastrup (2004: 45) point out, rape has drastic consequences on women's health. First and foremost, women undergoing mass rape had the risk of contracting HIV/AIDS. According to World Health Organization data on HIV/AIDS in Bosnia-Herzegovina, the HIV prevalence was low in the country. However, many health facilities were destroyed during the Civil War, and it became impossible to collect reliable data about the HIV/AIDS-infected population. The women carrying the sickness may not have even been aware of it. Secondly, many of the women enduring rape and other kinds of sexual violence were injured so badly that surgery became the only solution. The lack of necessary health facilities, the high prices of operations and drugs during the war, and the shame of women who did not wish to acknowledge the sexual violence, increased these women's suffering further and led to permanent damage that will affect these women's lives forever (Shanks and Schull, 2000: 1153). Mutilation of women's reproductive capacity was also used in the Yugoslavian Civil War as a tactic; this also

caused serious damages for women's health. In addition, the lack of hygienic abortion facilities caused danger for women who chose abortion instead of giving birth to their children.

Aside from the physical impact of rape and other sexual violence against women, the psychological effects were also devastating. Skjelsbæk (2001: 54) states that women who undergo rape are exposed to intense feelings of depression and absolute helplessness. Arcel and Kastrup (2004: 45), supports Skjelsbæk's argument by pointing out the fact that the rape victims in the former Yugoslavia felt fear, betrayal and guilt. Living under the constant terror of rape, torture and killing, these women displayed symptoms of anxiety, depression, irritability, emotional instability, memory and attention problems, personality changes, and behavioral disturbances. The psychological treatment of these symptoms required the participation of victims in treatment; however, as Shanks and Schull (2000: 1153) points out, women who suffered from rape preferred not to talk about the sexual assaults publicly due to the fact that raped women were stigmatized by their society and norms, which saw these women as defiled. The overwhelming feelings of betrayal and guilt and their silence also made the treatment process harder.

On the other hand, the benefits of psychological help for these women who suffered during the Bosnian war are also questionable. Trauma resulting from rape and sexual violence was also magnified with other traumatic events, such as loss of loved ones, loss of home, forced migration, poor economic conditions and social pressure (Shanks and Schull 2000: 1153). As Bosnian

Psychologist Muradis Kulenovic stresses, psychology's understanding of the word rape is insufficient for these Bosnian women. These women experienced rape as a sequence of other traumatic events; as Kulenevic put it, "the victim, prior to the rape, had experienced the massacre of her children and parents, then had to watch the murder of her husband, who had been forced to watch the rape of his wife. Finally, terrified and probably naked, she had to flee under a rain of bullets from her burning village, stumbling on the mangled and charred bodies of her relatives, neighbors and friends." (Cited in Boose, 2002: 72). In this context, rape survivors of the Yugoslavian Civil War required a much more careful and intimate method of therapy. Shanks and Schull (2000: 1154) believed that psychological help for these women should include treatment for all kinds of trauma, and victims' silence should be respected if they do not wish to talk about their experiences. Health personnel should be trained to recognize rape victims and they should concentrate on not only the short-term consequences, but also the long-term consequences, too. Specially trained health personnel are necessary in post-war areas because of the fact that the situation of these women would be lost beside the issues of finding clean water, shelter and food.

It is mentioned above that women preferred not to speak about the sexual assaults they suffered because they were afraid of their society's reaction to them. The fear of exclusion, divorce and even death made these women keep their silence. In fact, the shattering of the social acceptance of women by their community constituted a major impact of rape and sexual violence against women in the Yugoslavian Civil War.

Those women who became victims of mass rape were faced with a double burden: they faced a clash between the patriarchal ideologies of their enemy and their own nation. They were raped and tortured to hurt their nation, and in addition to this, when the nightmare of rape had ended and they returned to their community, this time they faced exclusion. The Serbs got what they hoped to achieve: they tore apart a community. Muslim society does not accept these women back. To give a striking example, according to the patriarchal customs defined by Dukadjini<sup>18</sup>, a woman raped in front of her own family is expected to commit suicide to bring the family shame to an end. If she does not, the shame makes the victim's life miserable: the victim becomes a virtual prisoner in her own home, unmarried girls are normally prevented from ever marrying and even their sisters may not get married because of the humiliation the family endures. Married victims of rape can be forced out of the home, even if they have children.

Boeschoten (2003: 47) mentions that women's silence after the war was related to the cultural codes of their communities, citing cases in which women were ousted from their community, repudiated or even killed by their husbands, and in other cases committed suicide. Women who chose to speak were mostly divorcees or widows. In fact, mass rape was revealed only when medical professionals in the area started to examine the

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<sup>18</sup> Leke Duganjini, aka Kanuni Leke Dukagjinit, was an Albanian Prince. He was known for his code of law. The title "Kanuni" was given to him due to his clan honor codes. His most infamous codes were related to regulating blood feuds. Even though the Socialist regime in Yugoslavia had tried to stop the implementation of these codes, after the fall of Yugoslavia, the codes of Duganjini began to be followed again. These codes are still followed to various degrees in Northern Albania, Kosovo, Montenegro and Macedonia. For an English translation of these codes, see *Kanuni I Leke Dukagjinit: The Code of Leke Dukagjini (1989) ed. by Shtjefen Gjecov, translated by Leonard Fox.*

increasing number of suicides and the increasing demand for late-term abortion.

Honor, chastity and fidelity are an integral part of a women's status in Muslim society, and rape is not seen as an exception to the rule of honor and chastity. Raped women are still seen as defiled and therefore dispossessed of honor, and they lose any respect they would otherwise receive from their society. As Seawell (2004: 189) points out, male Muslims admitted that they might choose divorce if they found out their wives had been raped while they were out fighting. Due to the fact that most victims of mass rape during the war were Bosnian Muslim women, the silence of these women was a result of their religion's and society's codes about honor and fidelity, strictly based on women's honor and fidelity.

Another striking example is Molinari's (1993: 19) interview with the two rape camp survivors she met. They were pregnant by Serbian soldiers, and they spoke through a translator about the unrelenting rape and torture that they had endured. They were allowed to leave the camp when they became pregnant, after being raped about ten times a day until they got that way and were past being able to abort. They were in Zagreb waiting to give birth, waiting to abandon their babies and return to their villages to try to find their families. If their families or any neighbors found out that they had been touched by a Serbian soldier, however, they would be thrown out of the village, ostracized, or even killed, because they had been disgraced. As much as they had been through, they had little to look forward to, and they had to keep their horror to themselves. In the words of Molinari "the whole

time they spoke they betrayed no emotion, no sorrow, no animation at all. Their lives had been destroyed” (Molinari, 1993: 19).

Kuo (2002: 316) states that during trials against the rapists, one of the problems judges faced was the reluctance of these women during their testimonies. Even though many years had passed, the women did not want to talk about it, and many of them did not even remember it. According to Kuo, many of these women also downplayed the things that had happened to them; they just related how their relatives were murdered, how their villages were burned, and then added, “by the way, I was also raped” (Kuo, 2002: 316). Women who did not want to give testimonies explained their reasons as wanting to spare their loved ones from pain. Obviously, the shame of rape not only stained and disgraced the individual woman, but also her family and her society.

Due to the threat of divorce, humiliation and even death, these rape victims were forced to stay silent and they chose not to tell the truth about the rape that had taken place within their societies. Meanwhile, the ratio of abortion increased among victims, as they did not wish to carry or raise the offspring of the enemy. Even if they had wished to bear these babies, the community they lived in would never have allowed it. These children would be children of their enemy, the ones that had killed them, tortured them and raped them. Even though these children were innocent, their mere existence would be a shame for their society. In addition to this, having babies while their spouses were absent was evidence of rape. Women did not wish to speak about what had happened to them, so for their own sakes they chose not to give birth to

these children. In this way, they tried both to forget what had happened to them and to escape humiliation within their society. According to Carpenter (2000: 228), mothers forced into pregnancy may not hate their children, but their families may; and even though the families may support these children, the community may not. In Bosnia-Herzegovina, victims, journalists and legal activists called these children “children of the enemy”. Even though these children’s needs were met, their right to membership in a community was frustrated. Carpenter (2000: 223) mentions that even though the number of children born out of forced impregnation is unknown, according to relief workers running orphanages, many pregnancies from rape resulted in abortions, and those children who were born were “nearly always rejected by their mothers and communities, killed, abandoned or cared for by orphanages, and in some cases, denied citizenship” (Carpenter, 2000: 223).

Overall, then, systematic mass rape constitutes the greatest part of the victimization of women during the Yugoslavian Civil War. The literature on women during the Yugoslavian Civil War mostly focuses on rape in wars because of the fact that using rape in a systematic way as a weapon of ethnic genocide differentiates these women’s experiences from other cases of armed conflict. However, women in Yugoslavia also suffered from other impact of civil war; hence, in the next chapter of this study, the other conditions these women had to deal with during the war and post-war is briefly explained. Even though the main aim of this thesis is to analyze how women suffer due to patriarchal gender roles and identity during armed conflict, a summary of women’s gender roles in the post-war period should

also be evaluated, as women's oppression and humiliation during war affects women's lives enormously in the post-war period.

## **CHAPTER 4**

### **FURTHER SUBORDINATION: OTHER RELATED IMPACT OF THE YUGOSLAVIAN CIVIL WAR ON WOMEN**

The use of systematic rape as a tactic of genocide during the Yugoslavian Civil War became a significant aspect of feminist scholarship to understand how women, due to their gender roles, were used in the political scheme of the Serbs to purify towns from other ethnic groups. As explained in detail in the preceding chapter, rape was used to taint the ethnic purity of women; in a society in which children's nationality was determined by the father, raping the child-bearers of a community also became a weapon to taint the ethnic purity of this same community (Walsh 2001: 58). Rape was also used to frighten people and force them to flee their towns; and this was also suited to the plan of clearing the towns of non-Serbs. Due to these reasons, using rape as a weapon became the topic of many feminist studies focusing on women's situation in the Yugoslavian Civil War. Even though in some cases rape of men during the War was also reported, the primary targets of these mass rapes were women. This was because nationalistic ideologies fueled by patriarchy, which were awakened throughout the country after the fall of communism, portrayed women as the carriers of the national identity, as the honor and the mothers of the nation. In this context, dishonoring women by humiliating them through rape gained a meaning of dishonoring the whole nation.

However, sexual violence was not the only source of suffering for women during the war, though it was the greatest one. In this chapter of the thesis, other impact of the Civil War on Yugoslavian women is briefly reviewed. Nikolic-Ristonovic (2002: 138) points out the fact that women and men experienced war differently. While men struggled to get access to power, women were marginalized further, which increased their feeling of helplessness after the war. The physical and mental attacks toward women also make them dependent on others, and war consolidates the social codes oriented to maintaining or even hardening women's submissive roles vis-à-vis men. Women's position in Yugoslavia, both during the war and in the post-conflict environment, fits with these descriptions of Nikolic-Ristonovic. In other words, the Civil War in Yugoslavia increased women's feelings of helplessness; they became dependent on others, and thus their subordination was enhanced. Therefore, in this chapter, women's experience of other consequences of the Civil War is analyzed. Women experienced these consequences in a different way from men because of their sexuality and their gender roles defined by a patriarchal order which created a clash of masculinities during armed conflict.

The first and foremost destruction of war is the destruction of physical structures, homes and the environments of people. During the War in Yugoslavia, the rate of physical destruction of towns in which civilians lived was very high due to the fact that Serbs wished to evacuate these towns of non-Serbs. People terrorized by siege and bombing were forced to leave their homes and their environment. According to the government of Bosnia-

Herzegovina's statistics in the Information Conference on the Reconstruction Program in Bosnia and Herzegovina (1996), 475 country areas were completely destroyed during the war, 57 towns were occupied or besieged, and 62.2 percent of housing capacity was destroyed or damaged (cited in Mulalic, 1997: 35).

This kind of destruction, apart from psychological destruction resulting from sexual violence, ruined women's lives further. Moreover, women faced dire economic conditions, poverty, and unemployment and even further sexual violence in the form of sex-trafficking and forced prostitution. Women were also confronted with violence and subordination in their households due to the increased spousal violence towards them as a result of war trauma among men. Being head of the house during the war did not change women's status within families when male fighters returned to their homes. Political representation of women also decreased, and due to these reasons many issues directly and indirectly affecting women during the war and in the post-war era were underestimated. In the subsections of this chapter, these issues are analyzed mostly by focusing on how gender roles and sexuality of women shaped their status during the war and in the post-war era.

#### **4.1. Poverty, Economic Conditions and Forced Prostitution**

During the war, and even after the war ended, women's gender roles changed within the family, because the basic bread-winners of the family (men) were killed, missing or wounded. The pre-war portrayal of women as mothers of the nation and carriers of the national identity had shattered the image of the idealized working women of the socialist regime. Women

became idealized at home; they were not supposed to support the family economically. Their basic role had been portrayed as bearers and teachers of the next generations according to nationalistic ideology. However, when the war erupted and the male population left home for the fronts, women had to find ways of survival for themselves and for their families in an environment in which food and other services were scarce. According to the Institute for Health and Care of Bosnia and Herzegovina (1996), only 20.6 percent of the infrastructure, such as water supply, electricity, gas and other sources of energy, was in use during the War (cited in Mulalic, 1997: 35). Cutting energy and water supplies was used as a tactic against citizens in occupied cities, a kind of pressure to force non-Serb citizens to leave the occupied towns. Citizens of these towns, mainly women and children, had to survive without basic needs; the conditions were hard, especially in winter, when there was a lack of heating facilities. In addition to this, there was always the risk of being killed in a queue. Nikolic-Ristonovic (2002: 142) documents how women had to take care of their household and their children and family in the absence of normal living conditions. Morokvasic (1998: 77) quotes a letter by a woman from Sarajevo, in which this nameless woman describes the situation in Sarajevo, where prices are high and food and facilities scarce, "You will not recognize the city" she said, "half-destroyed by grenades, trees in parks cut down for heating; we are living, or rather surviving, hungry. We live on humanitarian aid, which we get every 21 days, a little oil which we use for light instead of electricity, which we have not had since October; we do not have water, and we have to walk two to three

kilometers to get it. We do not know if we will come back wounded or will be shot dead on the way.” But this woman was worried about her son more than she was about herself, because she had to carry her family’s responsibilities on her shoulders. She was responsible for her family’s survival, too. She concluded her letter with a plea for her son, “If he at least could leave this hell” (cited in Morokvasic, 1998: 77).

Morokvasic (1998: 78) continues her article with the experience of her own mother, who lived in Belgrade during the War. Her mother also mentioned the lack of food, electricity, water and health facilities. In addition to this, she, like many other citizens of the former Yugoslavia, lost her savings in a state bank due to the difficult economic conditions, in particular, hyper-inflation. Increased prices of scarce food and other commodities during the War increased the suffering of those women who lacked regular incomes.

The economic hardships for women continued in the post-war period, too. Walsh (2001: 60) points to the fact that the economy constituted the biggest problem for women-headed households in the post-war period. According to the United Nations Development Program Human Development Report: on Bosnia and Herzegovina (1998), women constituted 35.9 percent of the workforce prior to the War: in the post-war environment, women constituted 40 percent of those on waiting lists for employment in the enterprises restarting after the War (cited in Walsh, 2001: 60). These women faced direct or indirect discrimination during their search for jobs in the formal sector. They were given lower levels of employment, and if they were employed, they received lower wages than their male colleagues. Walsh (2001: 61)

indicates that this kind of discrimination was significantly related to the fact that for job opportunities in general, and especially for high-wage jobs, ex-soldiers returning from the war were given priority.

This kind of discrimination against women in the existing job opportunities forced them to find alternative means for income generation. Jaukovic (2002: 113) states in her article that criminal groups, which are organized easily when there is a lack of law and order perform all kinds of illegal acts such as weapons trafficking, narcotics trafficking and more importantly human trafficking. Some women who did not earn enough in the formal sector to support their families became engaged in these kinds of illegal activities. Sex trafficking especially constituted a great danger for these women. Thus, women who lost their families and their shelter during the War became easy victims of forced prostitution.

The Human Rights Watch report on sex trafficking in Bosnia-Herzegovina by (2002) indicates that women and girls who suffered from mass rapes during the war were faced with sexual enslavement due to trafficking of women and forced prostitution<sup>19</sup>. These women were held in debt bondage; forced to provide sexual services to clients, they were beaten and imprisoned. According to the International Police Task Force Human Rights Officer in Bosnia-Herzegovina, prostitution was not allowed there; however it was not discouraged or punished by law (cited in Vanderberg, 2005: 158). The lack laws against prostitution encouraged the traffickers, because trafficking laws did not provide protection for trafficked women. Aside from local women,

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<sup>19</sup> In the Human Rights Watch report, the term girls is used for girls under the age of 18, who are, under the Convention on the Children's Rights, children.

women from other countries such as Moldova, the Russian Federation and Ukraine were also kept imprisoned in brothels throughout Bosnia.

Human Rights Watch (2002: 4) reported from the testimonies of women that due to the corruption in the Bosnian Police Force, sex trafficking was overlooked by police officers. Some members of the police force were identified by trafficked women as clients, or even as traffickers of these women. In addition to the police officers, as mentioned in both the Human Rights Watch Report (2002: 5) and Vandenberg (2005: 154-155), members of the International Police Task Force and Military Peacekeepers were also involved in the trafficking of women; they became clients of these women, and in some occasions they bought women from their traffickers and sold them to brothels or clubs.

The economic conditions during the war and in the post-war environment, such as the lack of job opportunities and reserving available jobs for ex-soldiers, forced many women, especially those women who had lost their male relatives during the war, into illegal jobs. These women also became targets of sex traffickers. Thus, women continued to suffer from sexual exploitation and sexual violence even after the War. These women, who survived mass rapes and sexual enslavement, found themselves again face to face with sexual harassment, and this time this harassment was also conducted by members of the forces who were supposed to protect them. This increased their helplessness and despair, as mentioned in the Human Rights Watch Report (2002), because these women did not know where to seek protection.

On the other hand, women whose male relatives returned from the war had to cope with a double burden; while they had to work due to the fact that one wage was not enough for the survival of the family in dire economic conditions, they continued their household chores at the same time. Also, in the post-war period, as Walsh (2001: 59) points out, women's gender roles within the household were reestablished. In the next section, the status and role of the women in the family and the domestic violence they encountered are analyzed.

#### **4.2. The Status of Women in the Family and Domestic Violence towards Women**

Both Walsh (2001: 60) and Maguire (1998: 65) point to the fact that when the war was over, women did not intend to create a reformation of gender roles within the family. The safe return of their husbands, fathers or other male relatives from the war was the most important thing for them, and both for women and for men, the desire to live a normal life again was paramount. In this context, normal life means household life before the war, in which women were supposed to care for their home and children. As explained in the previous chapter, after the disintegration of Yugoslavia and in the period before the war, women were idealized as mothers due to their reproductive roles. Women were portrayed as bearers and nurturers of next generation of each ethnic group. As Mostov (1995) mentions, in the former Yugoslavian states such as Croatia and Serbia, there was strong propaganda against abortion, and women's place was portrayed as in the home. Even though the socialist regime in Yugoslavia supported women's participation in work life

and in education, mostly women in the cities benefited from these rights. For women in the rural areas, these kinds of changes occurred much more slowly, and when Yugoslavia disintegrated, even though nationalistic ideology may have changed women's status in the urban areas, for rural women, gender roles within the family remained unchanged. This was the women's normal life before the war, and when the war ended, women wished to return to this life without "questioning what their position was or would be" (Walsh, 2001: 60).

According to the Prism Survey<sup>20</sup> conducted in 1997, most women stated that their family was the number one pride in their lives, and their roles within the family were listed as the most important roles in their lives (cited in Walsh: 2001). Being a mother ranked highest for women, and for working women, roles and pride within work came further down the list. Even though working women contributed to the family's income, it was noted that this did not change the financial decision making process within the household. Women stated that they made financial decisions jointly with their spouses.

Nevertheless, while women accepted their roles within the family as primarily mothers and housekeepers, domestic violence towards women was a major problem concerning women's status within the family. As Bouta et al.(2005: 38) point out, gender based sexual violence, such as rape, against women in the public space during the war was replaced by domestic violence in the post-war period. Both Bouta et al. (2005) and Maguire (1998: 65) attributed

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<sup>20</sup> The Prism Survey was sponsored by private foundations and international organizations, and this survey aimed to document the status of women and the economy and perceptions of women about opportunities of change.

the increase in domestic violence to the availability of weapons of war, to the violence that males took part in during the war, and to feelings of trauma and frustration, and to lack of employment, shelter and food. Moreover, men who had been too young to fight during the war lost their male family members in the war, and became the senior male figures of their family after the war. In addition to the trauma of losing all the male figures of their families at once, these men felt the need to prove themselves to their society and family as the head of the house. The senior male figure role was associated with the batterer role by these young men; to prove their authority over their female family members, they used violence against them.

On the other side, especially in Bosnia and Herzegovina, nearly the entire adult male population of the country had been killed, had disappeared or fled. Due to this reason, in some areas women constituted 90 percent of the population. As Maguire underlines (1998: 65), even though this situation should have improved women's position within the family and society, women tended to form their life expectations in accordance with the demands of their male relatives when these men returned home. Women who suffered from many atrocities during war, including fear of rape, hunger, and terror wished to turn back to their lives before war in which they had felt safe under the protection of their male relatives. The joy of seeing loved ones, who were thought to be dead, back at home led women to overlook gender-based violence that occurred within their homes. In the chaotic atmosphere after war, as mentioned in the first part of the Chapter, marriage became, for many women, a way of surviving economic conditions and avoiding forced

prostitution. Women who felt helpless and abandoned sought shelter in marriage, but in an environment in which the population of men was less than that of women, competition also led young women to “tolerate aggressive male behavior that their mothers or older sisters would have considered unconscionable before the war” (Maguire, 1998: 65).

Overall, then, most women who had been exposed to sexual violence during the civil war became victims of gender-based violence when the war was over. Sex trafficking and forced prostitution threatened women who had lost their family members and their homes. On the other hand, women whose male family members returned from the war faced domestic violence, and due to the drastic post-war conditions, they were forced to keep their silence, because life outside of the home frightened them much more than domestic violence did.

#### **4.3. Inadequate Political Representation of Women after the War**

Forced prostitution and domestic violence are mainly women’s problems; victimization of women continued even after the war. However, after war, states do not focus primarily on these issues while they are rebuilding the state after the destruction. This was the case for the former Yugoslavian states, too. Since the representation of women in the policy making units of the states decreased, the chance of female representatives focusing on women’s problems also diminished.

Women in the former Yugoslavia gained full suffrage in 1946, immediately after World War II. Today, both in Bosnia and Herzegovina and in the Republika Srpska, constitutions accord women equal social, political and

economic rights, including the right to vote and to stand for election (Boric, 2004: 1). However, these rights alone do not guarantee fair representation of women in politics.

Both Walsh (2001: 63) and Boric (2004: 1) point to the fact that egalitarian principles of socialist ideology had introduced quotas for women's representation in government. Between 1968 and 1975, women constituted 20 percent of the Communist Party in the Former Socialist Federal Republic of Bosnia-Herzegovina; this ratio increased to 27 percent during the 1980s. Representation of women in other bodies was also high: 50 percent of the members of the Socialist League were women, and women were represented with 35 percent in unions. In 1986, women constituted 24.1 percent of the People's Assembly of the Republic of Bosnia and Herzegovina, and 17.3 percent of local and municipal assemblies (Boric, 2004: 2).

However, high rates of women in the political organs did not mean real political power. Women were not elected on the basis of their commitment to different political issues, such as gender equality; usually they were elected because of their political connections, mainly their connections with male politicians. In this context, male-female relationships in politics resembled the male-female relationship in the family. Women were known and accepted due to their relations with men.

The first multi-party elections in 1992 demonstrated the extent of women's political empowerment, because at that time, quotas were lifted; as a result, the representation of women dropped 2.9 percent in Bosnia-Herzegovina and

1,7 in Serbia (Boric, 2004:2 and Mrsevic, 2004: 2). Between 1990 and 1995 (the war years) women were largely withdrawn from the political arena; ideologically, traditional gender roles were reinforced and while men were idealized as warriors, women were portrayed as mothers. Women were under-represented in political organs when decisions of war were made.

During the post-conflict years, women's under-representation continued; In both the 1996 and 1997 elections, women represented only 2.4 percent and 6.15 percent in Bosnia-Herzegovina, respectively. The situation did not improve for women in Serbia and Montenegro, either. During the rule of Slobodan Milosevic's administration, the highest representation of women reached 5.5 percent (Boric, 2004: 3 and Mrsevic, 2004: 2). The marginalization of women in the decision making organs were highly criticized by women's NGOs, and a joint campaign for the reintroduction of quotas to the electoral law were carried out by women's NGOs. The campaigns led to the emergence of the League of Women Voters, which was founded by thirteen NGOs, and their message was used in the voter's education campaign; "There Are More of Us, Let's Vote" was published in booklets and posters all over the country (Walsh, 2001: 64).

This campaign resulted in the introduction of a 30-percent quota on every party list in the 1998 elections. With this quota and with closed electoral lists, women's representation increased to 30 percent in the House of Representatives of Bosnia-Herzegovina Parliamentary Assembly. In the 1998 elections, 15 percent of the seats in the Federation Parliament were also won by women. On the other hand, in Serbia and Montenegro, a quota for women

was introduced to The Law of Local Elections in 2002 with a 30 percent quota for the under-represented gender in every local election candidates' list. However, while a quota for national elections was introduced as an amendment to the law on parliamentary elections on February 25, 2004, it has not been put into practice (Mrsevic, 2004: 2).

Even though the quota system in general forced parties to nominate at least three women in municipal elections, the rate of women who were ultimately elected was relatively low. In the 2004 Municipal Elections, for the first time there was a chance to elect municipal mayors directly, and out of 860 mayoral candidates, only 30 of them were women. Only one woman was elected, as a mayor of Drvar municipality (Boric, 2004: 4). It is also important to note that three main ethnic/nationalistic parties (the Party of Democratic Action, the Serbian Democratic Party and the Croatian Democratic Union) did not nominate any female candidates. Municipal elections in 2004 also highlighted the fact that even though there were quotas, the representation of women was still low, and there were especially few women in influential political positions.

Quotas were introduced to increase women's participation in political organs, but even though the number of women in parliaments or in municipal organs would increase, political representation of women's interests could not be increased by increasing the number of women. As Mrsevic (2004: 1) points out, elected women held certain positions due to their connectedness with male politicians, or they were members of elite groups; and these women may be unable to represent women's interests and solve their problems.

Representation of women should mean representation of women's issues, such as domestic violence, unemployment of women or forced prostitution, in the political decision making process. According to Mrsevic (2004: 1), to achieve this, the women's movement or local institutions working on gender equality should be strengthened, and in this way they would initiate a dialogue with the political institutions. Otherwise, as the case of post-war Yugoslavia has shown, the mere existence of women in decision making organs would not improve women's position in society.

Finally, women's representation in the judiciary was not brighter. Even though the majority of judges were women in the municipal and district courts; in higher courts, female judges were few. There was only one female judge in the Bosnia-Herzegovina Constitutional Court (Walsh, 2001: 65). Women's presence in the higher courts may be solution for solving the difficulties in bringing and winning cases of gender-based discrimination and prosecuting sex offences. However, as in the political realm, the existence of female judges does not always mean that they are sensitive to women's issues. As an example, a female judge in Zenica refused to give priority to domestic violence cases, despite the urgency of these cases (Walsh, 2001: 66).

As mentioned, when the war ended, the primary aim for all the countries was to rebuild their countries and establish a stable social and political environment for the maintenance of peace. In those times, usually the few who profited from the war or emerged from the war as political leaders tended to control both economic and political resources. Women in the

former Yugoslavian countries, especially in Bosnia-Herzegovina, did not gain any political or economical benefit during the war. On the contrary, due to their identification as mothers and the honor of their nation, they became the target of the enemy who wished to humiliate and hurt non-Serbs. Women were systematically kidnapped, held in mass rape camps, raped, humiliated, killed or sent back to their communities pregnant, an act which heralded further humiliation and discrimination for women in their own community. When war ended in 1995 with the Dayton Agreement, the women who survived were faced with poverty and dire economic conditions. Many women had lost their male relatives and their shelter during the war; while they needed to work for survival, job opportunities were rare and these were mostly taken by ex-soldiers returning from the war. Those women who were in need of work were hired for very low-waged jobs, or illegal jobs. As a result, while prostitution increased, sex trafficking became a great threat and a reality for women.

On the other hand, for women whose male relatives returned from the war, domestic violence formed a pattern of oppression within their households. Men who lived in violence for a long time tended to use this violence on their female relatives when the war ended. The joy of seeing their loved ones alive and the fact that marriage became a shelter for women in the chaotic post-war environment forced women to keep their silence about domestic violence. To make things worse, women's representation was significantly low in political organs, and the existing female politicians did not deal with women's issues and problems in particular.

To sum up, women in the former Yugoslavian states experienced war differently from men, even though many men also suffered from many atrocities. However, the atrocities women encountered during the war and in the post-war era were mostly gender-based. Using rape as a tactic of genocide during war mainly targeted women; also victims of forced prostitution and domestic violence were mainly women during the post-war era. In this sense, the experiences of women analyzed in detail in the previous chapters of this thesis clearly demonstrate that during the Yugoslavian Civil War, women were caught between clashing patriarchies. Gender-based sexual violence towards women was taken up by many women's groups and NGOs to establish psychological and physical help facilities for female rape victims. In the concluding chapter of this thesis, the role of women's groups during the war and post-war is mentioned briefly, as this is an issue which should be analyzed in a separate study.

## **CHAPTER 5**

### **CONCLUSIONS**

In this thesis, women's subordination and victimization during the Yugoslavian Civil War (1992-1995) is evaluated. This thesis analyzes how sexual violence was used by the Serbs against Bosnian women as part of their war strategy to defeat and defuse the enemy. Such a strategy is embedded in gender inequality and the patriarchal definition of women's roles as the "mothers of the nation" and the "carriers of the national identity". Therefore, assault on women is perceived as an assault on the nation. Although rape has historically been used as a weapon of war, the form and magnitude in which it was employed by the Serbs is distinctive.

The Yugoslavian war is also characteristic of the changing nature of conflict, particularly with the ending of the Cold War. This change entailed a shift from interstate to intrastate conflicts, where irregular forces become the main actors. Conflict became a spatial dispute, considerably increasing the risk of aggression for the civilian population.

The increased violence in civil war mostly affects women because of the fact that women constitute a larger portion of the civilian population during civil war, when the male population leaves home to participate in combat. In some civil wars, such as in El Salvador or Cambodia, women also participated in armed conflict. These women, due to their participation in conflict, may gain some emancipation from their gender roles in the community. However,

women who changed their gender roles because of their participation in armed conflict were very rare, like women in Nepal's Maoist Army, or like women during El Salvador's civil war. Women, in many cases, were forced to participate in civil war against their will and their roles were limited to being the cooks or nurses of the army, and at times, being the sex slaves of the male soldiers. Women's roles in the professional army are also defined according to existing gender roles, in which women are usually appointed to gender-specified roles, such as clerical positions. Women in the professional army also become victims of sexual harassment by their colleagues. One example of this is that in Israel, a country in which women have to participate in obligatory military service, women's primary role in the army is defined as cheering up the male soldiers and taking care of them.

Women who participate in war, voluntarily or by force, may face sexual violence and harassment during combat; but for women who do not participate in war as active combatants but stay behind the war scenes, sexual violence becomes a great danger for them. Women in the former Yugoslavia, especially Bosnian Muslim women, became victims of extreme sexual violence towards women. However, for some time this went unnoticed and unrecognized, and was only to be studied later.

After World War II, in Tito's Yugoslavia, women had gained equal rights with men, and women were idealized as Socialist working women. However, the emancipation and liberation of women during the Socialist Regime in Yugoslavia was also limited. While women in urban areas benefited from these rights, for women in rural areas, there was no change in their gender

roles. Women in rural areas could not benefit from educational rights, and especially in Muslim towns, a woman's primary duty was being a mother, a wife and a housekeeper. Moreover, the honor of women had been associated with their community's honor in the moral code of the society.

When Yugoslavia disintegrated at the beginning of the 1990s, the newly emerged states, especially Croatia, Serbia and Bosnia-Herzegovina, adopted nationalistic ideologies which had been frozen under Socialist Regime. Everything belonging to the Socialist Regime was portrayed as evil, including the image of working women. Women's roles within their communities were thus redefined according to the nationalistic discourse, and women were constructed mainly as the mothers of the nation and carriers of the national identity. According to the nationalistic ideology adopted by these newly emerged former Yugoslavian states, women, due to their reproductive capacity, helped maintain the physical continuity of the nation, and also, due to their nurturance, the continuity of the nationalistic ideology to the next generations. The perception of women as the honor of the community, which had been usually seen in rural areas during Yugoslavia, was widened to encompass all women throughout the former Yugoslavian states.

In this study, it is demonstrated that the redefining of women's roles within the society in accordance with the objectives of the nationalistic ideologies in the former Yugoslavian states also made these women victims of brutal sexual violence during the civil war following the disintegration. After Bosnia-Herzegovina's independence, Slobodan Milosevic's plan for a Greater Serbia, which would unite all Serbs scattered in various parts of the former

Yugoslavia, turned into a genocide campaign in which all non-Serbs were targets. Serbs who lived in Bosnia-Herzegovina joined the Serbian forces, and within a very short time, the civilian population there also became a target of the Serbian forces.

While towns were besieged, bombed and evacuated, the civilian population was also terrorized and forced to leave their homes. Civilians were taken to concentration camps, tortured and killed. While these are elements of many wars, the Yugoslavian Civil War attached itself to the memories of people with the horrifying nature of sexual violence towards women as a tactic of war and as a tactic of genocide, which could only be possible during a fierce clash of masculinities defined by both of the warring parties' patriarchal norms, those of the enemy and those of their own nation.

Rape during war is not a new phenomenon. Women in many wars have been raped as a spoil of war, but in the Yugoslavian Civil War, Serbs used rape systematically against women belonging to a non-Serb group, as a weapon against this group. Even though rape has always been used as a war tactic against the enemy in modern times, it was not used as a tactic of ethnic cleansing as it was in the Yugoslavian Civil War. Women were taken to the so-called concentration camps, later renamed as mass rape camps, and they were raped, tortured and sometimes killed. This kind of use of martial rape had another meaning besides hurting and humiliating women who belonged to a different ethnic group. In the Yugoslavian Civil War, raping women meant raping the community these women belonged to. The idealization of women as mothers and the honor of the nation became a war tactic and by

using women's bodies, men carried messages between themselves, such as "how can a country, an ethnic group could think of protecting their ethnic identity if they cannot even protect their women?"

In addition to this, by raping even children, they physically mutilated the child bearers of an ethnic group. Women of childbearing age were impregnated, and because of the fact that nationality of a child was determined according to father's nationality, these children were seen as Serbian. The Serbs did not intend to keep these children; their aim was to send these women back to their communities carrying a Serbian baby. Serbs intended to implant their "seeds" into the non-Serbian community, and at a time when ethnic purity had gained primary importance, raping women also became a way for Serbs to show that they could anything, that they were capable of everything. Women who stayed alive through the sexual violence met the humiliation and disapproval of their societies; the pressure on them was so great that many preferred to stay silent about the sexual violence committed against them.

In this thesis, though briefly, the repercussions and the continuation of sexual violence and harassment towards women in the post-war era is also analyzed. During the war and in the post-war period, women faced dire economic conditions, and many women lost their male relatives, the former breadwinners of the family. Women needed to work for the survival of their families, but in harsh economic conditions employment opportunities for women were diminished. Women were subordinated in the post-war public arena due to the fact that any available job opportunities were mainly reserved for ex-soldiers. Women had to work in illegal jobs, and prostitution

became more common. Aside from this, women who had lost their families and their shelter became easy victims for sex traffickers. While local Bosnian women were forced into prostitution, Bosnia and Herzegovina became a country in which trafficked women were sold due to corruptions. The international military forces who were responsible for Bosnia's and Bosnian's safety in the post-war era also committed sexual harassment towards women. For women whose male relatives returned from the war domestic violence created a great danger. Men, who had used violence during the war carried violence from the public to the private domain. The reconstruction of marriage as a haven against life in the public sphere made victims of domestic violence keep their silence.

On the other hand, the bitter experience of women during the Yugoslavian Civil War increased the attention of International Community and scholars from all over the world toward women and armed conflict. Studies like the ones evaluated in this thesis theorize that the usage of sexual violence during armed conflict is as a weapon, and they accept rape as a crime against humanity. However, the implementation of this theory into practice is extremely important in order to prevent the use of sexual violence against women during war in the future. In this context, the Yugoslavian Civil War also became a milestone. While Bosnia-Herzegovina sued Serbia and Montenegro for crimes against humanity in the International Criminal Court (ICC), rape was also listed as a crime of Serbia and Montenegro. In 1996, ICC found that the application that had been filed by Bosnia-Herzegovina

was admissible<sup>21</sup>. Moreover, Resolution 1325 adopted by UN Security Council also identified sexual violence towards women as a war crime, and declared that all states are responsible for women's security during civil war and for their protection from all kinds of sexual violence.<sup>22</sup>

The use of women's bodies as a battlefield during the Yugoslavian Civil War also received the attention of many women's organizations and NGOs all around the world, and especially within the former Yugoslavian Republics. Feminists in the former Yugoslavian Republics tried to build a civil society in the midst of civil war by helping survivors of mass rape and ethnic cleansing (Banderly, 1997: 63). They provided shelters for women, and created anti-violence hotlines; they documented abuses and evidence of violence for the prosecution of war crimes.

During certain phases of the War, women from Serbia, Croatia and Bosnia coordinated anti-war protests and women, mainly mothers of soldiers, marched to the Parliament and to the army headquarters; demanding their sons' return from military duty. On the first anniversary of the war, feminists in Belgrade marched to the Parliament with ringing alarm clocks and invited the regime to wake up to the truth. One of the symbols of anti-war feminism was a small band of Belgrade feminists, Women in Black, who held silent vigils against the Civil War from the very beginning (Banderly, 1997: 64). These women stood in Belgrade's main street every week, and they kept their silent protests even if by-passers and the local population accused them of treason

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<sup>21</sup> The judgement of ICC on the Case Concerning Application of the Convention of the Prevention and Punishment of the Crime of Genocide (Bosnia Herzegovina vs. Yugoslavia) can be found in Appendix II.

<sup>22</sup> Resolution 1325 can be found in Appendix II.

and called them whores. Their anti-war protest in 1993 in Vojvodina attracted two hundred women from all over the former Yugoslav states and Western Europe.

When the news of rape, forced pregnancies and other forms of violence towards women were publicized, international actors such as the European Community, the United Nations and even the governments of Bosnia and Croatia spent the year 1992 trying to figure out the number of rape victims instead of finding a solution to stop these rapes (Banderly, 1997: 65). Similarly, feminist groups first tried to obtain information about the extent of war crimes against women, just as the International Organizations did. However, they then shifted their focus to creating shelters for those women who became victims of gender-based violence during the Yugoslavian Civil War.

However, these feminists' struggle against gender-based violence towards women was also shaded by nationalistic ideologies. While women from different identities and ethnic backgrounds came together to stand against an act which threatened every women from every nation, feminists from Croatia and Bosnia blamed all Serbs, including Serbian feminists, of genocide. The division between nationalist and non-nationalist feminists also affected these women's anti-war propaganda. This thesis analyzes women's victimization due to their sexual and gender identities during civil war, as patriarchy has demonstrated its other face in the oppression of women during war. So the roles of feminist women's groups during the Yugoslavian Civil War and in the post-war era concerning the violence against women and division among

them due to nationalistic reasons were not analyzed in detail. However, the roles of women's organizations during the war and in the post-war era, of International organizations as peacekeepers in the area and of International Tribunals concerning the human rights crimes occurring in Bosnia-Herzegovina should also be analyzed in detail. Studies related to these issues are also expected in the future.

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## APPENDICES

### APPENDIX – A DEMOGRAPHIES OF FORMER YUGOSLAVIA BETWEEN 1953 AND 1991

**Table 1**

	<b>1953 Census</b>	<b>1961 Census</b>	<b>1971 Census</b>	<b>1981 Census</b>	<b>1991 Census</b>
Serbs	13,864 or 3.3%	14,087 or 2.99%	39,512 or 7.46%	19,407 or 3.32%	57,453 or 9.34%
Montenegrins	363,686 or 86.62%	383,988 or 81.37%	355,632 or 67.15%	400,488 or 68.54%	380,467 or 61.86%
Muslims		30,665 or 6.5%	70,236 or 13.26%	78,080 or 13.36%	89,614 or 14.57%
Croats	9,814 or 2.34%	10,664 or 2.26%	9,192 or 1.74%	6,904 or 1.81%	6,244 or 1.02%
Albanians	23,460 or 5.58%	25,803 or 5.47%	35,671 or 6.74%	37,735 or 6.46%	40,415 or 6.57%
Yugoslavs	6,424 or 1.53%	1,559 or 0.33%	10,943 or 2.07%	33,146 or 5.67%	26,159 or 4.25%
<b>TOTAL</b>	419,873 inhabitans	471,894 inhabitants	529,604 inhabitants	584,310 inhabitants	615,035 inhabitants

Source: Rakovic, A. (2004), "Montenegrin Census from 1909 to 2003", *Princip*, from <http://www.njegos.org/census/index.htm>

**APPENDIX – B:**

**CASE CONCERNING APPLICATION OF THE CONVENTION  
ON THE PREVENTION AND PUNISHMENT  
OF THE CRIME OF GENOCIDE  
(BOSNIA-HERZEGOVINA v. YUGOSLAVIA)**

**PRELIMINARY OBJECTIONS**

Jurisdiction of the Court — Withdrawal of the fourth preliminary objection of Yugoslavia — Article IX of the Genocide Convention:

(a) Jurisdiction *ratione personae* — Intention expressed by Yugoslavia to remain bound by the treaties to which the former Yugoslavia was party — It has not been contested that Yugoslavia was party to the Genocide Convention — Notice of Succession addressed by Bosnia-Herzegovina to the Secretary-General of the United Nations — Accession to independence of Bosnia-Herzegovina and admission to the United Nations — Article XI of the Genocide Convention opens it to "any Member of the United Nations" — Bosnia-Herzegovina could become a party to the Genocide Convention through the mechanism of State succession — Lack of mutual recognition of the Parties at the time of filing of the Application — Article X of the Dayton-Paris Agreement — Principle whereby the Court should not penalize a defect in a procedural act which the applicant could easily remedy.

(b) Jurisdiction *ratione materiae* — Existence of a legal dispute — Dispute falling within the provisions of Article IX of the Genocide Convention — Applicability of the Convention without reference to the circumstances linked to the domestic or international nature of the conflict — The question whether Yugoslavia took part in the conflict at issue belongs to the merits — The obligation each State has to prevent and punish the crime of genocide is not territorially limited by the Convention — Article IX does not exclude any form of State responsibility under the Convention.

(c) Scope *ratione temporis* of the jurisdiction of the Court.

Additional bases of jurisdiction invoked by Bosnia-Herzegovina — Letter of 8 June 1992 from the Presidents of Montenegro and Serbia — Treaty between the Allied and Associated Powers and the Kingdom of the Serbs, Croats and Slovenes of 10 September 1919 — Acquiescence in the jurisdiction of the Court on the basis of Article IX of the Genocide Convention — Forum prorogatum.

Admissibility of the Application — Events that might have taken place in a context of civil war — Head of State presumed to be able to act on behalf of the State in its international relations and recognized as such.

Absence of abuse of the rights of Yugoslavia under Article 36, paragraph 6, of the Statute and Article 79 of the Rules of Court.

## JUDGMENT

Present: President BEDJAOUI; Vice-President SCHWEBEL; Judges ODA, GUILLAUME, SHAHABUDDEEN, WEERAMANTRY, RANJEVA, HERCZEGH, SHI, KOROMA, VERESHCHETIN, FERRARI BRAVO, PARRA-ARANGUREN; Judges ad hoc LAUTERPACHT, KRECA; Registrar VALENCIA-OSPINA.

In the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide,

between

the Republic of Bosnia-Herzegovina,

represented by

H.E. Mr. Muhamed Sacirbey, Ambassador and Permanent Representative of the Republic of Bosnia and Herzegovina to the United Nations,

as Agent;

Mr. Phon van den Biesen, Attorney in Amsterdam,

as Deputy-Agent, Counsel and Advocate;

Mr. Thomas M. Franck, Professor at the School of Law and Director, Center for International Studies, New York University,

Mr. Alain Pellet, Professor, University of Paris X-Nanterre and Institute of Political Studies, Paris,

Ms Brigitte Stern, Professor, University of Paris I (Panthéon, Sorbonne),

as Counsel and Advocates;

Mr. Khawar M. Qureshi, Member of the English Bar, Lecturer in Law, King's College, London,

Mr. Vasvija Vidovic, Minister-Counsellor, Embassy of Bosnia and Herzegovina in the Netherlands, Representative of the Republic of Bosnia and Herzegovina at the International Criminal Tribunal for the former Yugoslavia,

Mr. Marc Weller, Assistant Director of Studies, Centre for International Studies, University of Cambridge, Member of the Faculty of Law of the University of Cambridge,

as Counsel;

Mr. Pierre Bodeau, Research Assistant/Tutor, University of Paris X-Nanterre,

Mr. Michiel Pestman, Attorney in Amsterdam,

Mr. Thierry Vaissière, Research Student, Cedin - Paris I (Panthéon, Sorbonne),

as Counsellors;

Mr. Hervé Ascensio, Research Assistant/Tutor, University of Paris X-Nanterre,

Ms Marieke Drenth,  
Ms Froana Hoff,  
Mr. Michael Kellogg,  
Mr. Harold Kocken,  
Ms Nathalie Lintvelt,  
Mr. Sam Muller,  
Mr. Joop Nijssen,  
Mr. Eelco Szabó,

as Assistants,

and

the Federal Republic of Yugoslavia,

represented by

Mr. Rodoljub Etinski, Chief Legal Adviser, Ministry of Foreign Affairs of the  
Federal Republic of Yugoslavia, Professor of International Law, Novi Sad  
University,

Mr. Djordje Lopicic, Chargé d'Affaires, Embassy of the Federal Republic of  
Yugoslavia in the Netherlands,

as Agents;

Mr. Ian Brownlie, C.B.E., F.B.A., Q.C., Chichele Professor of Public  
International Law, University of Oxford,

Mr. Miodrag Mitic, Assistant Federal Minister for Foreign Affairs of the

Federal Republic of Yugoslavia (Ret.),  
Mr. Eric Suy, Professor, Catholic University of Louvain (K.U. Leuven),  
formerly Under-Secretary-General and Legal Counsel of the United Nations,  
  
as Counsel and Advocates;

Mr. Stevan Djordjevic, Professor of International Law, Belgrade University,  
Mr. Shabtai Rosenne, Ambassador,  
Mr. Gavro Perazic, Professor of International Law, Podgorica University,  
  
as Counsel.

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 20 March 1993, the Government of the Republic of Bosnia-Herzegovina (hereinafter called "Bosnia-Herzegovina") filed in the Registry of the Court an Application instituting proceedings against the Government of the Federal Republic of Yugoslavia (hereinafter called "Yugoslavia") in respect of a dispute concerning alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter called "the Genocide Convention"), adopted by the General Assembly of the United

Nations on 9 December 1948, as well as various matters which Bosnia-Herzegovina claims are connected therewith. The Application invoked Article IX of the Genocide Convention as the basis of the jurisdiction of the Court.

2. Pursuant to Article 40, paragraph 2, of the Statute, the Application was immediately communicated to the Yugoslav Government by the Registrar; pursuant to paragraph 3 of that Article, all States entitled to appear before the Court were notified of the Application.

3. Pursuant to Article 43 of the Rules of Court, the Registrar addressed the notification provided for in Article 63, paragraph 1, of the Statute to all the States which appeared to be parties to the Genocide Convention on the basis of the information supplied by the Secretary-General of the United Nations as depositary; he also addressed to the Secretary-General the notification provided for in Article 34, paragraph 3, of the Statute.

4. On 20 March 1993, immediately after the filing of its Application, Bosnia-Herzegovina submitted a request for the indication of provisional measures under Article 41 of the Statute. On 31 March 1993, the Agent of Bosnia-Herzegovina filed in the Registry, invoking it as an additional basis of the jurisdiction of the Court in the case, the text of a letter dated 8 June 1992, addressed to the President of the Arbitration Commission of the International Conference for Peace in Yugoslavia by the Presidents of the Republics of Montenegro and Serbia.

On 1 April 1993, Yugoslavia submitted written observations on Bosnia-Herzegovina's request for provisional measures, in which, in turn, it recommended the Court to order the application of provisional measures to Bosnia-Herzegovina.

By an Order dated 8 April 1993, the Court, after hearing the Parties, indicated certain provisional measures with a view to the protection of rights under the Genocide Convention.

5. By an Order of 16 April 1993, the President of the Court fixed 15 October 1993 as the time-limit for the filing of the Memorial of Bosnia-Herzegovina and 15 April 1994 as the time-limit for the filing of the Counter-Memorial of Yugoslavia.

6. Since the Court included upon the Bench no judge of the nationality of the Parties, each of them exercised its right under Article 31, paragraph 3, of the Statute of the Court to choose a judge ad hoc to sit in the case: Bosnia-Herzegovina chose Mr. Elihu Lauterpacht, and Yugoslavia chose Mr. Milenko Kreca.

7. On 27 July 1993, Bosnia-Herzegovina submitted a new request for the indication of provisional measures; and, by a series of subsequent communications, it stated that it was amending or supplementing that request, as well as, in some cases, the Application, including the basis of jurisdiction relied on therein. By letters of 6 August and 10 August 1993, the Agent of Bosnia-Herzegovina indicated that his Government was relying, as

additional bases of the jurisdiction of the Court in the case, on, respectively, the Treaty between the Allied and Associated Powers and the Kingdom of the Serbs, Croats and Slovenes on the Protection of Minorities, signed at Saint-Germain-en-Laye on 10 September 1919, and on customary and conventional international laws of war and international humanitarian law; and, by a letter of 13 August 1993, the Agent of Bosnia-Herzegovina confirmed his Government's desire to rely, on the same basis, on the aforementioned letter from the Presidents of Montenegro and Serbia, dated 8 June 1992 (see paragraph 4 above).

On 10 August 1993, Yugoslavia also submitted a request for the indication of provisional measures; and, on 10 August and 23 August 1993, it filed written observations on Bosnia-Herzegovina's new request, as amended or supplemented.

By an Order dated 13 September 1993, the Court, after hearing the Parties, reaffirmed the measures indicated in its Order of 8 April 1993 and declared that those measures should be immediately and effectively implemented.

8. By an Order dated 7 October 1993, the Vice-President of the Court, at the request of Bosnia-Herzegovina, extended to 15 April 1994 the time-limit for the filing of the Memorial; the time-limit for the filing of the Counter-Memorial was extended, by the same Order to 15 April 1995. Bosnia-Herzegovina duly filed its Memorial within the extended time-limit thus fixed.

9. By an Order dated 21 March 1995, the President of the Court, at the request of Yugoslavia, extended to 30 June 1995 the time-limit for the filing of the Counter-Memorial. Within the extended time-limit thus fixed, Yugoslavia, referring to Article 79, paragraph 1, of the Rules of Court, raised preliminary objections concerning, respectively, the admissibility of the Application and the jurisdiction of the Court to entertain the case. Accordingly, by an Order dated 14 July 1995, the President of the Court, noting that, by virtue of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits were suspended, fixed 14 November 1995 as the time-limit within which Bosnia-Herzegovina could present a written statement of its observations and submissions on the preliminary objections raised by Yugoslavia. Bosnia-Herzegovina filed such a statement within the time-limit so fixed, and the case became ready for hearing in respect of the preliminary objections.

10. By a letter dated 2 February 1996, the Agent of Yugoslavia submitted to the Court, "as a document relevant to the case", the text of the General Framework Agreement for Peace in Bosnia and Herzegovina and the annexes thereto (collectively "the peace agreement"), initialled in Dayton, Ohio, on 21 November 1995 and signed in Paris on 14 December 1995 (hereinafter called the "Dayton-Paris Agreement").

11. Pursuant to Article 53, paragraph 2, of the Rules of Court, the Court decided to make the pleadings and documents annexed thereto accessible to the public on the opening of the oral proceedings.

12. Public hearings were held between 29 April and 3 May 1996 at which the Court heard the oral arguments and replies of:

For Yugoslavia:                      Mr. Rodoljub Etinski,  
   Mr. Miodrag Mitic,  
   Mr. Djordje Lopicic,  
   Mr. Eric Suy,  
   Mr. Ian Brownlie,  
   Mr. Gavro Perazic.

For Bosnia-Herzegovina:            H.E. Mr. Muhamed Sacirbey,  
   Mr. Phon van den Biesen,  
   Mr. Alain Pellet,  
   Ms Brigitte Stern,  
   Mr. Thomas M. Franck.

13. In the Application, the following requests were made by Bosnia-Herzegovina:

"Accordingly, while reserving the right to revise, supplement or amend this Application, and subject to the presentation to the Court of the relevant evidence and legal arguments, Bosnia and Herzegovina requests the Court to adjudge and declare as follows:

(a) that Yugoslavia (Serbia and Montenegro) has breached, and is continuing to breach, its legal obligations toward the People and State of Bosnia and Herzegovina under Articles I, II (a), II (b), II (c), II (d), III (a), III (b), III (c), III (d), III (e), IV and V of the Genocide Convention;

(b) that Yugoslavia (Serbia and Montenegro) has violated and is continuing to violate its legal obligations toward the People and State of Bosnia and Herzegovina under the four Geneva Conventions of 1949, their Additional Protocol I of 1977, the customary international laws of war including the Hague Regulations on Land Warfare of 1907, and other fundamental principles of international humanitarian law;

(c) that Yugoslavia (Serbia and Montenegro) has violated and continues to violate Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26 and 28 of the Universal Declaration of Human Rights with respect to the citizens of Bosnia and Herzegovina;

(d) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has killed, murdered, wounded, raped, robbed, tortured, kidnapped, illegally detained, and exterminated the citizens of Bosnia and Herzegovina, and is continuing to do so;

(e) that in its treatment of the citizens of Bosnia and Herzegovina, Yugoslavia (Serbia and Montenegro) has violated, and is continuing to violate, its solemn obligations under Articles 1 (3), 55 and 56 of the United Nations Charter;

(f) that Yugoslavia (Serbia and Montenegro) has used and is continuing to use force and the threat of force against Bosnia and Herzegovina in violation of Articles 2 (1), 2 (2), 2 (3), 2 (4), and 33 (1), of the United Nations Charter;

(g) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has used and is using force and the threat of force against Bosnia and Herzegovina;

(h) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has violated and is violating the sovereignty of Bosnia and Herzegovina by:

- armed attacks against Bosnia and Herzegovina by air and land;
- aerial trespass into Bosnian airspace;
- efforts by direct and indirect means to coerce and intimidate the Government of Bosnia and Herzegovina;

(i) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has intervened and is intervening in the internal affairs of Bosnia and Herzegovina;

(j) that Yugoslavia (Serbia and Montenegro), in recruiting, training, arming, equipping, financing, supplying and otherwise encouraging, supporting, aiding, and directing military and paramilitary actions in and against Bosnia and Herzegovina by means of its agents and surrogates, has violated and is violating its express charter and treaty obligations to Bosnia and Herzegovina and, in particular, its charter and treaty obligations under Article 2 (4) of the

United Nations Charter, as well as its obligations under general and customary international law;

(k) that under the circumstances set forth above, Bosnia and Herzegovina has the sovereign right to defend itself and its people under United Nations Charter Article 51 and customary international law, including by means of immediately obtaining military weapons, equipment, supplies and troops from other States;

(l) that under the circumstances set forth above, Bosnia and Herzegovina has the sovereign right under United Nations Charter Article 51 and customary international law to request the immediate assistance of any State to come to its defence, including by military means (weapons, equipment, supplies, troops, etc.);

(m) that Security Council resolution 713 (1991), imposing a weapons embargo upon the former Yugoslavia, must be construed in a manner that shall not impair the inherent right of individual or collective self-defence of Bosnia and Herzegovina under the terms of United Nations Charter Article 51 and the rules of customary international law;

(n) that all subsequent Security Council resolutions that refer to or reaffirm resolution 713 (1991) must be construed in a manner that shall not impair the inherent right of individual or collective self-defence of Bosnia and Herzegovina under the terms of United Nations Charter Article 51 and the rules of customary international law;

(o) that Security Council resolution 713 (1991) and all subsequent Security Council resolutions referring thereto or reaffirming thereof must not be construed to impose an arms embargo upon Bosnia and Herzegovina, as required by Articles 24 (1) and 51 of the United Nations Charter and in accordance with the customary doctrine of ultra vires;

(p) that pursuant to the right of collective self-defence recognized by United Nations Charter Article 51, all other States parties to the Charter have the right to come to the immediate defence of Bosnia and Herzegovina — at its request including by means of immediately providing it with weapons, military equipment and supplies, and armed forces (soldiers, sailors, airpeople, etc.);

(q) that Yugoslavia (Serbia and Montenegro) and its agents and surrogates are under an obligation to cease and desist immediately from its breaches of the foregoing legal obligations, and is under a particular duty to cease and desist immediately:

- from its systematic practice of so-called 'ethnic cleansing' of the citizens and sovereign territory of Bosnia and Herzegovina;
- from the murder, summary execution, torture, rape, kidnapping, mayhem, wounding, physical and mental abuse, and detention of the citizens of Bosnia and Herzegovina;
- from the wanton devastation of villages, towns, districts, cities, and religious institutions in Bosnia and Herzegovina;

- from the bombardment of civilian population centres in Bosnia and Herzegovina, and especially its capital, Sarajevo;
- from continuing the siege of any civilian population centres in Bosnia and Herzegovina, and especially its capital, Sarajevo;
- from the starvation of the civilian population in Bosnia and Herzegovina;
- from the interruption of, interference with, or harassment of humanitarian relief supplies to the citizens of Bosnia and Herzegovina by the international community;
- from all use of force — whether direct or indirect, overt or covert — against Bosnia and Herzegovina, and from all threats of force against Bosnia and Herzegovina;
- from all violations of the sovereignty, territorial integrity or political independence of Bosnia and Herzegovina, including all intervention, direct or indirect, in the internal affairs of Bosnia and Herzegovina;
- from all support of any kind — including the provision of training, arms, ammunition, finances, supplies, assistance, direction or any other form of support — to any nation, group, organization, movement or individual engaged or planning to engage in military or paramilitary actions in or against Bosnia and Herzegovina;

(r) that Yugoslavia (Serbia and Montenegro) has an obligation to pay Bosnia and Herzegovina, in its own right and as *parens patriae* for its citizens, reparations for damages to persons and property as well as to the Bosnian economy and environment caused by the foregoing violations of international

law in a sum to be determined by the Court. Bosnia and Herzegovina reserves the right to introduce to the Court a precise evaluation of the damages caused by Yugoslavia (Serbia and Montenegro)."

14. In the written proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Bosnia-Herzegovina,

in the Memorial:

"On the basis of the evidence and legal arguments presented in this Memorial, the Republic of Bosnia and Herzegovina,

Requests the International Court of Justice to adjudge and declare,

That the Federal Republic of Yugoslavia (Serbia and Montenegro), directly, or through the use of its surrogates, has violated and is violating the Convention of the Prevention and Punishment of the Crime of Genocide, by destroying in part, and attempting to destroy in whole, national, ethnical or religious groups within the, but not limited to the, territory of the Republic of Bosnia and Herzegovina, including in particular the Muslim population, by

- killing members of the group;
- causing deliberate bodily or mental harm to members of the group;
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

imposing measures intended to prevent births within the group;

2. That the Federal Republic of Yugoslavia (Serbia and Montenegro) has violated and is violating the Convention on the Prevention and Punishment of the Crime of Genocide by conspiring to commit genocide, by complicity in genocide, by attempting to commit genocide and by incitement to commit genocide;

3. That the Federal Republic of Yugoslavia (Serbia and Montenegro) has violated and is violating the Convention on the Prevention and Punishment of the Crime of Genocide by aiding and abetting individuals and groups engaged in acts of genocide;

4. That the Federal Republic of Yugoslavia (Serbia and Montenegro) has violated and is violating the Convention on the Prevention and Punishment of the Crime of Genocide by virtue of having failed to prevent and to punish acts of genocide;

5. That the Federal Republic of Yugoslavia (Serbia and Montenegro) must immediately cease the above conduct and take immediate and effective steps to ensure full compliance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide;

6. That the Federal Republic of Yugoslavia (Serbia and Montenegro) must wipe out the consequences of its international wrongful acts and must restore the situation existing before the violations of the Convention on the Prevention and Punishment of the Crime of Genocide were committed;

7. That, as a result of the international responsibility incurred for the above violations of the Convention on the Prevention and Punishment of the Crime of Genocide, the Federal Republic of Yugoslavia (Serbia and Montenegro) is required to pay, and the Republic of Bosnia and Herzegovina is entitled to receive, in its own right and as *parens patriae* for its citizens, full compensation for the damages and losses caused, in the amount to be determined by the Court in a subsequent phase of the proceedings in this case.

The Republic of Bosnia and Herzegovina reserves its right to supplement or amend its submissions in the light of further pleadings.

The Republic of Bosnia and Herzegovina also respectfully draws the attention of the Court to the fact that it has not reiterated, at this point, several of the requests it made in its Application, on the formal assumption that the Federal Republic of Yugoslavia (Serbia and Montenegro) has accepted the jurisdiction of this Court under the terms of the Convention on the Prevention and Punishment of the Crime of Genocide. If the Respondent were to reconsider its acceptance of the jurisdiction of the Court under the terms of that Convention — which it is, in any event, not entitled to do — the Government of Bosnia and Herzegovina reserves its right to invoke also all or some of the other existing titles of jurisdiction and to revive all or some of its previous submissions and requests."

On behalf of the Government of Yugoslavia,

in the preliminary objections:

"The Federal Republic of Yugoslavia asks the Court to adjudge and declare:

First preliminary objection

A.1. Whereas civil war excludes the existence of an international dispute,  
the Application of the so-called Republic of Bosnia and Herzegovina is not  
admissible.

Second preliminary objection

A.2. Whereas Alija Izetbegovic did not serve as the President of the Republic  
at the time when he granted the authorization to initiate proceedings and  
whereas the decision to initiate proceedings was not taken by the Presidency  
nor the Government as the competent organs, the authorization for the  
initiation and conduct of proceedings was granted in violation of a rule of  
internal law of fundamental significance and, consequently,

the Application by the so-called Republic of Bosnia-Herzegovina is not  
admissible.

Third preliminary objection

B.1. Whereas the so-called Republic of Bosnia-Herzegovina has by its acts  
on independence flagrantly violated the duties stemming from the principle of

equal rights and self-determination of peoples and for that reason the Notification of Succession, dated 29 December 1992, of the Applicant to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide has no legal effect,

Whereas the so-called Republic of Bosnia-Herzegovina has not become a State party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide in accordance with the provisions of the Convention itself,

The so-called Republic of Bosnia and Herzegovina is not a State party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and consequently

the Court has no jurisdiction over this case.

Fourth preliminary objection

B.2. Whereas the so-called Republic of Bosnia-Herzegovina has been recognized in contravention of the rules of international law and that it has never been established in the territory and in the form in which it pretends to exist ever since its illegal declaration of independence, and that there are at present four States in existence in the territory of the former Yugoslav Republic of Bosnia-Herzegovina, the so-called Republic of Bosnia-Herzegovina is not a party to the 1948 Convention on the Prevention and Punishment of the Crime or Genocide, and consequently,

the Court has no jurisdiction over this case.

#### Fifth preliminary objection

C. Whereas the case in point is an internal conflict between four sides in which the FR of Yugoslavia is not taking part and whereas the FR of Yugoslavia did not exercise any jurisdiction over the disputed areas in the period under review,

Whereas the Memorial of the Applicant State is based upon a fundamentally erroneous construction of the 1948 Convention on Prevention and Punishment of the Crime of Genocide and, in consequence the claims contained in the 'Submissions' are based on allegations of State responsibility which fall outside the scope of the Convention and of its compromissory clause,

there is no international dispute under Article IX of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and, consequently, the Court has no jurisdiction over this case.

If the Court does not accept any of the above-mentioned preliminary objections,

#### Sixth preliminary objection

D.1. Without prejudice to the above exposed preliminary objections, whereas the Notification of Succession, dated 29 December 1992, whereby the so-called Republic of Bosnia-Herzegovina expressed the intention to enter into

the 1948 Convention on the Prevention and Punishment of the Crime of Genocide can only produce the effect of accession to the Convention,

the Court has jurisdiction over this case as of 29 March 1993 and, thus, the Applicant's claims pertaining to the alleged acts or facts which occurred prior to that date do not fall within the jurisdiction of the Court.

In case the Court refuses to adopt the preliminary objection under D.1.

Seventh preliminary objection

D.2. Without prejudice to the sixth preliminary objection, if the Applicant State's Notification of Succession, dated 29 December 1992, is construed on the basis that it has the effect that the Applicant State became a party to the 1948 Genocide Convention from 6 March 1992, according to the rule of customary international law, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide would not be operative between the parties prior to 29 December 1992 and, accordingly this would not confer jurisdiction on the Court in respect of events occurring prior to 29 December 1992 and consequently,

the Applicant's claims pertaining to the alleged acts or facts which occurred prior to 29 December 1992 do not fall within the jurisdiction of the Court.

The Federal Republic of Yugoslavia reserves its right to supplement or amend its submissions in the light of further pleadings."

On behalf of the Government of Bosnia-Herzegovina,

In the written statement containing its observations and submissions on the preliminary objections:

"In consideration of the foregoing, the Government of the Republic of Bosnia and Herzegovina requests the Court:

- to reject and dismiss the Preliminary Objections of Yugoslavia (Serbia and Montenegro); and
- to adjudge and declare:

(i) that the Court has jurisdiction in respect of the submissions presented in the Memorial of Bosnia and Herzegovina; and

(ii) that the submissions are admissible."

15. In the oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Yugoslavia,

at the hearing on 2 May 1996:

"The Federal Republic of Yugoslavia asks the Court to adjudge and declare:

First Preliminary Objection

Whereas the events in Bosnia and Herzegovina to which the Application refers constituted a civil war, no international dispute exists within the terms of Article IX of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, consequently,

the Application of Bosnia and Herzegovina is not admissible.

#### Second Preliminary Objection

Whereas Mr. Alija Izetbegovic did not serve as the President of the Republic at the time when he granted the authorization to initiate proceedings and whereas the decision to initiate proceedings was not taken either by the Presidency or the Government as the competent organs, the authorization for the initiation and conduct of proceedings was granted in violation of the rules of internal law of fundamental significance, consequently,

the Application by Bosnia-Herzegovina is not admissible.

#### Third Preliminary Objection

Whereas Bosnia and Herzegovina has not established its independent statehood in conformity with the principle of equal rights and self-determination of peoples and for that reason could not succeed to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide,

Whereas Bosnia-Herzegovina has not become a party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide in accordance with the provisions of the Convention itself,

Bosnia and Herzegovina is not a party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, consequently

the Court lacks the competence over the case.

#### Fifth Preliminary Objection

Whereas the case in point is an internal conflict between three sides in which the FR of Yugoslavia was not taking part and whereas the FR of Yugoslavia did not exercise any jurisdiction within the region of Bosnia and Herzegovina at the material time,

Whereas the Memorial of the Applicant State is based upon a fundamentally erroneous interpretation of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and, in consequence the claims contained in the "Submissions"

are based on allegations of State responsibility which fall outside the scope of the Convention and of its compromissory clause,

There is no international dispute under Article IX of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, consequently,

the Court lacks the competence over the case.

If the Court does not accept any of the above-mentioned Preliminary Objections,

#### Sixth Preliminary Objection

Without prejudice to the above exposed Preliminary Objections, whereas the two Parties recognized each other on 14 December 1995, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide was not operative between them prior to 14 December 1995, consequently, the Court lacks the competence before 14 December 1995 over the case.

Alternatively and without prejudice to the Preliminary Objections formulated above, whereas the Notification of Succession, dated 29 December 1992, whereby Bosnia-Herzegovina expressed the intention to enter into the 1948 Convention on the Prevention and Punishment of the Crime of Genocide can only produce the effect of accession to the Convention,

the Court lacks competence before 29 March 1993 over the case and, thus, the Applicant's claims pertaining to the alleged acts or facts which occurred prior to that date do not fall within the competence of the Court.

In case the Court refuses to adopt the above Preliminary Objections

#### Seventh Preliminary Objection

If the Applicant State's Notification of Succession, dated 29 December 1992, is construed as having an effect of the Applicant State becoming a party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide from 6 March 1992 and whereas the Secretary-General of the United Nations sent to the parties of the said Convention the Note dated 18 March 1993, informing of the said succession, according to the rules of

general international law, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide would not be operative between the Parties prior to 18 March 1993 and, whereas this would not confer the competence on the Court in respect of events occurring prior to the 18 March 1993, consequently,

the Applicant's claims pertaining to the alleged acts or facts which occurred prior to the 18 March 1993 do not fall with the competence of the Court.

As a final alternative,

If the Applicant State's Notification of Succession, dated 29 December 1992, is construed as having the effect of the Applicant State becoming a party to the Convention on the Prevention and Punishment of the Crime of Genocide from 6 March 1992, according to the rules of general international law, the 1948 Convention

on the Prevention and Punishment of the Crime of Genocide would not be operative between the Parties prior to 29 December 1992, and, whereas this would not confer competence on the Court in respect of events occurring prior to 29 December 1992, consequently,

the Applicant's claims pertaining to the alleged acts or facts which occurred prior to 29 December 1992 do not fall within the competence of the Court.

Objections on Alleged Additional Bases of Jurisdiction

In view of the claim of the Applicant to base the jurisdiction of the Court under Articles 11 and 16 of the Treaty between Allied and Associated Powers and the Kingdom of Serbs, Croats and Slovenes, signed at Saint-Germain-en-Laye on 10 September 1919, the Federal Republic of Yugoslavia asks the Court

to reject the said claim,

- because the Treaty between Allied and Associated Powers and the Kingdom of Serbs, Croats and Slovenes signed at Saint-Germain-en-Laye on 10 September 1919 is not in force; and alternatively
- because the Applicant is not entitled to invoke the jurisdiction of the Court according to Articles 11 and 16 of the Treaty.

In view of the claim of the Applicant to establish the jurisdiction of the Court on the basis of the letter of 8 June 1992, sent by the Presidents of the two Yugoslav Republics, Serbia and Montenegro, Mr. Slobodan Milosevic and Mr. Momir Bulatovic, to the President of the Arbitration Commission of the Conference on Yugoslavia, the Federal Republic of Yugoslavia asks the Court

to reject the said claim,

- because the declaration contained in the letter of 8 June 1992 cannot be understood as a declaration of the Federal Republic of Yugoslavia according to the rules of international law; and
- because the declaration was not in force on 31 March 1993 and later.

In view of the claim of the Applicant State to establish the jurisdiction of the Court on the basis of the doctrine of forum prorogatum, the Federal Republic of Yugoslavia asks the Court

to reject the said claim

- because the request for indication of provisional measures of protection does not imply a consent to the jurisdiction of the Court; and
- because the conditions for the application of the doctrine of forum prorogatum are not fulfilled."

On behalf of the Government of Bosnia-Herzegovina,

at the hearing on 3 May 1996:

"Considering what has been stated by Bosnia and Herzegovina in all of its previous written submissions, considering what has been stated by the representatives of Bosnia and Herzegovina in the course of this week's oral proceedings, the Government of Bosnia and Herzegovina respectfully requests the Court,

1. to adjudge and declare that the Federal Republic of Yugoslavia has abused its right to raise preliminary objections as foreseen in Article 36, paragraph 6, of the Statute of the Court and to Article 79 of the Rules of Court;

2. to reject and dismiss the preliminary objections of the Federal Republic of Yugoslavia; and

3. to adjudge and declare:

(i) that the Court has jurisdiction on the various grounds set out in our previous written submissions and as further demonstrated during the present pleadings in respect of the submissions presented in the Memorial of Bosnia and Herzegovina; and

(ii) that the submissions are admissible."

16. Bosnia-Herzegovina has principally relied, as a basis for the jurisdiction of the Court in this case, on Article IX of the Genocide Convention. The Court will initially consider the preliminary objections raised by Yugoslavia on this point. It takes note, first, of the withdrawal by Yugoslavia, during the oral proceedings, of its fourth preliminary objection, which therefore need no longer be dealt with. In its third objection, Yugoslavia, on various grounds, has disputed the contention that the Convention binds the two Parties or that it has entered into force between them; and in its fifth objection, Yugoslavia has objected, for various reasons, to the argument that the dispute submitted by Bosnia-Herzegovina falls within the provisions of Article IX of the Convention. The Court will consider these two alleged grounds of lack of jurisdiction in turn.

17. The proceedings instituted before the Court are between two States whose territories are located within the former Socialist Federal Republic of

Yugoslavia. That Republic signed the Genocide Convention on 11 December 1948 and deposited its instrument of ratification, without reservation, on 29 August 1950. At the time of the proclamation of the Federal Republic of Yugoslavia, on 27 April 1992, a formal declaration was adopted on its behalf to the effect that:

"The Federal Republic of Yugoslavia, continuing the State, international legal and political personality of the Socialist Federal Republic of Yugoslavia, shall strictly abide by all the commitments that the Socialist Federal Republic of Yugoslavia assumed internationally."

This intention thus expressed by Yugoslavia to remain bound by the international treaties to which the former Yugoslavia was party was confirmed in an official Note of 27 April 1992 from the Permanent Mission of Yugoslavia to the United Nations, addressed to the Secretary-General. The Court observes, furthermore, that it has not been contested that Yugoslavia was party to the Genocide Convention. Thus, Yugoslavia was bound by the provisions of the Convention on the date of the filing of the Application in the present case, namely, on 20 March 1993.

18. For its part, on 29 December 1992, Bosnia-Herzegovina transmitted to the Secretary-General of the United Nations, as depositary of the Genocide Convention, a Notice of Succession in the following terms:

"the Government of the Republic of Bosnia and Herzegovina, having considered the Convention on the Prevention and Punishment of the Crime

of Genocide, of December 9, 1948, to which the former Socialist Federal Republic of Yugoslavia was a party, wishes to succeed to the same and undertakes faithfully to perform and carry out all the stipulations therein contained with effect from March 6, 1992, the date on which the Republic of Bosnia and Herzegovina became independent".

On 18 March 1993, the Secretary-General communicated the following Depositary Notification to the parties to the Genocide Convention:

"On 29 December 1992, the notification of succession by the Government of Bosnia and Herzegovina to the above-mentioned Convention was deposited with the Secretary-General, with effect from 6 March 1992, the date on which Bosnia and Herzegovina assumed responsibility for its international relations."

19. Yugoslavia has contested the validity and legal effect of the Notice of 29 December 1992, contending that, by its acts relating to its accession to independence, the Republic of Bosnia-Herzegovina had flagrantly violated the duties stemming from the "principle of equal rights and self-determination of peoples". According to Yugoslavia, Bosnia-Herzegovina was not, for this reason, qualified to become a party to the convention. Yugoslavia subsequently reiterated this objection in the third preliminary objection which it raised in this case.

The Court notes that Bosnia-Herzegovina became a Member of the United Nations following the decisions adopted on 22 May 1992 by the Security

Council and the General Assembly, bodies competent under the Charter. Article XI of the Genocide Convention opens it to "any Member of the United Nations"; from the time of its admission to the Organization, Bosnia-Herzegovina could thus become a party to the Convention. Hence the circumstances of its accession to independence are of little consequence.

20. It is clear from the foregoing that Bosnia-Herzegovina could become a party to the Convention through the mechanism of State succession. Moreover, the Secretary-General of the United Nations considered that this had been the case, and the Court took note of this in its Order of 8 April 1993 (I.C.J. Reports 1993, p. 16, para. 25).

21. The Parties to the dispute differed as to the legal consequences to be drawn from the occurrence of a State succession in the present case. In this context, Bosnia-Herzegovina has, among other things, contended that the Genocide Convention falls within the category of instruments for the protection of human rights, and that consequently, the rule of "automatic succession" necessarily applies. Bosnia-Herzegovina concluded therefrom that it became a party to the Convention with effect from its accession to independence. Yugoslavia disputed any "automatic succession" of Bosnia-Herzegovina to the Genocide Convention on this or any other basis.

22. As regards the nature of the Genocide Convention, the Court would recall what it stated in its Advisory Opinion of 28 May 1951 relating to the Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide:

"In such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d'être* of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties." (I.C.J. Reports 1951, p. 23.)

The Court subsequently noted in that Opinion that:

"The object and purpose of the Genocide Convention imply that it was the intention of the General Assembly and of the States which adopted it that as many States as possible should participate. The complete exclusion from the Convention of one or more States would not only restrict the scope of its application, but would detract from the authority of the moral and humanitarian principles which are its basis." (Ibid., p. 24.)

23. Without prejudice as to whether or not the principle of "automatic succession" applies in the case of certain types of international treaties or conventions, the Court does not consider it necessary, in order to decide on its jurisdiction in this case, to make a determination on the legal issues concerning State succession in respect to treaties which have been raised by the Parties. Whether Bosnia-Herzegovina automatically became party to the Genocide Convention on the date of its accession to independence on 6 March 1992, or whether it became a party as a result — retroactive or not — of its Notice of Succession of 29 December 1992, at all events it was a party

to it on the date of the filing of its Application on 20 March 1993. These matters might, at the most, possess a certain relevance with respect to the determination of the scope *ratione temporis* of the jurisdiction of the Court, a point which the Court will consider later (paragraph 34 below).

24. Yugoslavia has also contended, in its sixth preliminary objection, that, if the Notice given by Bosnia-Herzegovina on 29 December 1992 had to be interpreted as constituting an instrument of accession within the meaning of Article XI of the Genocide Convention, it could only have become effective, pursuant to Article XIII of the Convention, on the 90th day following its deposit, that is, 29 March 1993.

Since the Court has concluded that Bosnia-Herzegovina could become a party to the Genocide Convention as a result of a succession, the question of the application of Articles XI and XIII of the Convention does not arise. However, the Court would recall that, as it noted in its Order of 8 April 1993, even if Bosnia-Herzegovina were to be treated as having acceded to the Genocide Convention, which would mean that the Application could be said to be premature by nine days when filed on 20 March 1993, during the time elapsed since then, Bosnia-Herzegovina could, on its own initiative, have remedied the procedural defect by filing a new Application. It therefore matters little that the Application had been filed some days too early. As will be indicated in the following paragraphs, the Court is not bound to attach the same degree of importance to considerations of form as they might possess in domestic law.

25. However, in the oral proceedings Yugoslavia submitted that, even supposing that Bosnia-Herzegovina had been bound by the Convention in March 1993, it could not, at that time, have entered into force between the Parties, because the two States did not recognize one another and the conditions necessary to found the consensual basis of the Court's jurisdiction were therefore lacking. However, this situation no longer obtains since the signature, and the entry into force on 14 December 1995, of the Dayton-Paris Agreement, Article X of which stipulates that:

"The Federal Republic of Yugoslavia and the Republic of Bosnia and Herzegovina recognize each other as sovereign independent States within their international borders. Further aspects of their mutual recognition will be subject to subsequent discussions."

26. For the purposes of determining its jurisdiction in this case, the Court has no need to settle the question of what the effects of a situation of non-recognition may be on the contractual ties between parties to a multilateral treaty. It need only note that, even if it were to be assumed that the Genocide Convention did not enter into force between the Parties until the signature of the Dayton-Paris Agreement, all the conditions are now fulfilled to found the jurisdiction of the Court *ratione personae*.

It is the case that the jurisdiction of the Court must normally be assessed on the date of the filing of the act instituting proceedings. However, the Court, like its predecessor, the Permanent Court of International Justice, has always had recourse to the principle according to which it should not penalize a

defect in a procedural act which the applicant could easily remedy. Hence, in the case concerning the Mavrommatis Palestine Concessions, the Permanent Court said:

"Even if the grounds on which the institution of proceedings was based were defective for the reason stated, this would not be an adequate reason for the dismissal of the applicant's suit. The Court, whose jurisdiction is international, is not bound to attach to matters of form the same degree of importance which they might possess in municipal law. Even, therefore, if the application were premature because the Treaty of Lausanne had not yet been ratified, this circumstance would now be covered by the subsequent deposit of the necessary ratifications." (P.C.I.J., Series A, No. 2, p. 34.)

The same principle lies at the root of the following dictum of the Permanent Court of International Justice in the case concerning Certain German Interests in Polish Upper Silesia:

"Even if, under Article 23, the existence of a definite dispute were necessary, this condition could at any time be fulfilled by means of unilateral action on the part of the applicant Party. And the Court cannot allow itself to be hampered by a mere defect of form, the removal of which depends solely on the Party concerned." (P.C.I.J., Series A, No. 6, p.14.)

The present Court applied this principle in the case concerning the Northern Cameroons (I.C.J. Reports, 1963, p. 28), as well as Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)

when it stated: "It would make no sense to require Nicaragua now to institute fresh proceedings based on the Treaty, which it would be fully entitled to do." (I.C.J. Reports 1984, pp. 428-429, para. 83.)

In the present case, even if it were established that the Parties, each of which was bound by the Convention when the Application was filed, had only been bound as between themselves with effect from 14 December 1995, the Court could not set aside its jurisdiction on this basis, inasmuch as Bosnia-Herzegovina might at any time file a new application, identical to the present one, which would be unassailable in this respect.

In the light of the foregoing, the Court considers that it must reject Yugoslavia's third preliminary objection.

27. In order to determine whether it has jurisdiction to entertain the case on the basis of Article IX of the Genocide Convention, it remains for the Court to verify whether there is a dispute between the Parties that falls within the scope of that provision. Article IX of the Convention is worded as follows:

"Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute."

It is jurisdiction *ratione materiae*, as so defined, to which Yugoslavia's fifth objection relates.

28. In their final form, the principal requests submitted by Bosnia-Herzegovina are for the Court to adjudge and declare that Yugoslavia has in several ways violated the Genocide Convention; to order Yugoslavia to cease the acts contrary to the obligations stipulated in the Convention; and to declare that Yugoslavia has incurred international responsibility by reason of those violations, for which it must make appropriate reparation. While Yugoslavia has refrained from filing a Counter-Memorial on the merits and has raised preliminary objections, it has nevertheless wholly denied all of Bosnia-Herzegovina's allegations, whether at the stage of proceedings relating to the requests for the indication of provisional measures, or at the stage of the present proceedings relating to those objections.

29. In conformity with well-established jurisprudence, the Court accordingly notes that there persists

"a situation in which the two sides hold clearly opposite views concerning the question of the performance or non-performance of certain treaty obligations" (Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 74)

and that, by reason of the rejection by Yugoslavia of the complaints formulated against it by Bosnia-Herzegovina, "there is a legal dispute" between them (East Timor (Portugal v. Australia), I.C.J. Reports 1995, p. 100, para. 22).

30. To found its jurisdiction, the Court must, however, still ensure that the dispute in question does indeed fall within the provisions of Article IX of the Genocide Convention.

Yugoslavia disputes this. It contests the existence in this case of an "international dispute" within the meaning of the Convention, basing itself on two propositions: first, that the conflict occurring in certain parts of the Applicant's territory was of a domestic nature, Yugoslavia was not party to it and did not exercise jurisdiction over that territory at the time in question; and second, that State responsibility, as referred to in the requests of Bosnia-Herzegovina, was excluded from the scope of application of Article IX.

31. The Court will begin with a consideration of Yugoslavia's first proposition.

In doing so, it will start by recalling the terms of Article I of the Genocide Convention, worded as follows:

"The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish."

The Court sees nothing in this provision which would make the applicability of the Convention subject to the condition that the acts contemplated by it should have been committed within the framework of a particular type of conflict. The contracting parties expressly state therein their willingness to consider genocide as "a crime under international law", which they must prevent and punish independently of the context "of peace" or "of war" in

which it takes place. In the view of the Court, this means that the Convention is applicable, without reference to the circumstances linked to the domestic or international nature of the conflict, provided the acts to which it refers in Articles II and III have been perpetrated. In other words, irrespective of the nature of the conflict forming the background to such acts, the obligations of prevention and punishment which are incumbent upon the States parties to the Convention remain identical.

As regards the question whether Yugoslavia took part — directly or indirectly in the conflict at issue, the Court would merely note that the Parties have radically differing viewpoints in this respect and that it cannot, at this stage in the proceedings, settle this question, which clearly belongs to the merits.

Lastly, as to the territorial problems linked to the application of the Convention, the Court would point out that the only provision relevant to this, Article VI, merely provides for persons accused of one of the acts prohibited by the Convention to "be tried by a competent tribunal of the State in the territory of which the act was committed . . .". It would also recall its understanding of the object and purpose of the Convention, as set out in its Opinion of 28 May 1951, cited above:

"The origins of the Convention show that it was the intention of the United Nations to condemn and punish genocide as 'a crime under international law' involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the

United Nations (Resolution 96 (I) of the General Assembly, December 11th 1946). The first consequence arising from this conception is that the principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation. A second consequence is the universal character both of the condemnation of genocide and of the co-operation required 'in order to liberate mankind from such an odious scourge' (Preamble to the Convention)." (I.C.J. Reports 1951, p. 23.)

It follows that the rights and obligations enshrined by the Convention are rights and obligations erga omnes. The Court notes that the obligation each State thus has to prevent and to punish the crime of genocide is not territorially limited by the Convention.

32. The Court now comes to the second proposition advanced by Yugoslavia, regarding the type of State responsibility envisaged in Article IX of the Convention. According to Yugoslavia, that Article would only cover the responsibility flowing from the failure of a State to fulfil its obligations of prevention and punishment as contemplated by Articles V, VI and VII; on the other hand, the responsibility of a State for an act of genocide perpetrated by the State itself would be excluded from the scope of the Convention.

The Court would observe that the reference in Article IX to "the responsibility of a State for genocide or for any of the other acts enumerated in Article III", does not exclude any form of State responsibility.

Nor is the responsibility of a State for acts of its organs excluded by Article IV of the Convention, which contemplates the commission of an act of genocide by "rulers" or "public officials".

33. In the light of the foregoing, the Court considers that it must reject the fifth preliminary objection of Yugoslavia. It would moreover observe that it is sufficiently apparent from the very terms of that objection that the Parties not only differ with respect to the facts of the case, their imputability and the applicability to them of the provisions of the Genocide Convention, but are moreover in disagreement with respect to the meaning and legal scope of several of those provisions, including Article IX. For the Court, there is accordingly no doubt that there exists a dispute between them relating to "the interpretation, application or fulfilment of the . . . Convention, including . . . the responsibility of a State for genocide . . .", according to the form of words employed by that latter provision (cf. *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, Advisory Opinion, I.C.J. Reports 1988, pp. 27-32).

34. Having reached the conclusion that it has jurisdiction in the present case, both *ratione personae* and *ratione materiae* on the basis of Article IX of the Genocide Convention, it remains for the Court to specify the scope of that jurisdiction *ratione temporis*. In its sixth and seventh preliminary objections, Yugoslavia, basing its contention on the principle of the non-retroactivity of legal acts, has indeed asserted as a subsidiary argument that, even though the Court might have jurisdiction on the basis of the Convention, it could only

deal with events subsequent to the different dates on which the Convention might have become applicable as between the Parties. In this regard, the Court will confine itself to the observation that the Genocide Convention — and in particular Article IX — does not contain any clause the object or effect of which is to limit in such manner the scope of its jurisdiction *ratione temporis*, and nor did the Parties themselves make any reservation to that end, either to the Convention or on the occasion of the signature of the Dayton-Paris Agreement. The Court thus finds that it has jurisdiction in this case to give effect to the Genocide Convention with regard to the relevant facts which have occurred since the beginning of the conflict which took place in Bosnia-Herzegovina. This finding is, moreover, in accordance with the object and purpose of the Convention as defined by the Court in 1951 and referred to above (see paragraph 31 above). As a result, the Court considers that it must reject Yugoslavia's sixth and seventh preliminary objections.

35. After the filing of its Application, Bosnia-Herzegovina invoked various additional bases of jurisdiction of the Court in the present case. Even though, in both the written and oral proceedings, it relied essentially upon Article IX of the Genocide Convention, Bosnia-Herzegovina indicated that it was maintaining its claims in relation to those additional grounds of jurisdiction. In particular, it specified at the hearing that while it was renouncing "all the claims [set forth in its Application] which are not directly linked to the genocide committed or abetted by Yugoslavia", those additional bases could nonetheless

"present a degree of interest, enabling the Court to make findings on some of the means used by Yugoslavia to perpetrate the genocide of which it stands accused, and particularly its recourse to a war of aggression during which it seriously violated the 1949 Geneva Conventions and the 1977 Protocols I and II";

and Bosnia-Herzegovina went on to say that "The Court might proceed in this way on the basis of Article IX alone", explaining that

"The possibility of relying on other bases of jurisdiction . . . would at least . . . avoid futile arguments between the Parties as to whether such conduct is or is not linked 'with sufficient directness' to the Convention."

36. Yugoslavia, for its part, contended during the proceedings that the Court could not take account of such additional grounds as could have been referred to in the Application but to which no reference was in fact made. However, in its final submissions, it did not reiterate that objection and asked the Court, for the reasons there given, to declare that it lacked jurisdiction on those grounds.

37. As the Court has indicated above (see paragraph 4 above), the Agent of Bosnia-Herzegovina filed in the Registry, on 31 March 1993, the text of a letter dated 8 June 1992 that was addressed to the President of the Arbitration Commission of the International Conference for Peace in Yugoslavia by Mr. Momir Bulatovic, President of the Republic of Montenegro, and Mr. Slobodan Milosevic, President of the Republic of Serbia. According

to the English translation of that letter provided by Bosnia-Herzegovina, they expressed the following views, inter alia:

"FR Yugoslavia holds the view that all legal disputes which cannot be settled by agreement between FR Yugoslavia and the former Yugoslav republics should be taken to the International Court of Justice, as the principal judicial organ of the United Nations.

Accordingly, and in view of the fact that all the issues raised in your letter are of a legal nature, FR Yugoslavia proposes that in the event that agreement is not reached among the participants in the Conference, these questions should be adjudicated by the International Court of Justice, in accordance with its Statute."

The Court finds that, given the circumstances in which that letter was written and the declarations that ensued, it could not be taken as expressing an immediate commitment by the two Presidents, binding on Yugoslavia, to accept unconditionally the unilateral submission to the Court of a wide range of legal disputes. It thus confirms the provisional conclusion which it had reached in this regard in its Orders of 8 April (I.C.J. Reports 1993, pp. 16-18, paras. 27-32) and 13 September 1993 (I.C.J. Reports 1993, pp. 340-341, para. 32); besides, no fundamentally new argument has been presented to it on this matter since that time. It follows that the Court cannot find in that letter an additional basis of jurisdiction in the present case.

38. The Court has likewise recalled above (see paragraph 7) that, by a communication dated 6 August 1993, the Agent of Bosnia-Herzegovina indicated that his Government intended likewise to submit, as an additional basis of jurisdiction, the Treaty between the Allied and Associated Powers (the United States of America, the British Empire, France, Italy and Japan) and the Kingdom of the Serbs, Croats and Slovenes, that was signed at Saint-Germain-en-Laye on 10 September 1919 and entered into force on 16 July 1920. Chapter I of that Treaty concerns the protection of minorities and includes an Article 11 according to which:

"The Serb-Croat-Slovene State agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction, or any danger of infraction, of any of these obligations, and that the Council may thereupon take such action and give such directions as it may deem proper and effective in the circumstances.

The Serb-Croat-Slovene State further agrees that any difference of opinion as to questions of law or fact arising out of these Articles between the Serb-Croat-Slovene State and any one of the Principal Allied and Associated Powers or any other Power, a member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Serb-Croat-Slovene State hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The

decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant."

Chapter II, which concerns succession in respect of treaties, trade, the treatment of foreign vessels and freedom of transit, includes an Article 16 which provides, *inter alia*, that "All rights and privileges accorded by the foregoing Articles to the Allied and Associated Powers shall be accorded equally to all States Members of the League of Nations."

Bosnia-Herzegovina substantially contends that, by the effect of those two provisions, any Member of the League of Nations could refer to the Permanent Court a dispute to which Article 11 applied; that the General Assembly of the United Nations has taken the place of the Council of the League of Nations in respect of such matters; and that Bosnia-Herzegovina, as a Member of the United Nations, may now, by operation of Article 37 of the Statute, seize the present Court of its dispute with Yugoslavia, on the basis of the 1919 Treaty.

The Court considers that, in so far as Yugoslavia is now bound by the 1919 Treaty as successor to the Kingdom of the Serbs, Croats and Slovenes, its obligations under that Treaty would be limited to its present territory; it notes that Bosnia-Herzegovina has put forward no claim in its Application concerning the treatment of minorities in Yugoslavia. In these circumstances, the Court is unable to uphold the 1919 Treaty as a basis on which its jurisdiction in this case could be founded. On this point as well, the Court thus confirms the provisional conclusion reached in its Order of 13

September 1993 (I.C.J. Reports 1993, pp. 339-340, paras. 29-31); besides, no fundamentally new argument has been presented on this matter either, since that time.

39. As the Court has also recalled above (see paragraph 7), Bosnia-Herzegovina, by a letter from its Agent dated 10 August 1993, further invoked as an additional basis of jurisdiction in the present case

"the Customary and Conventional International Laws of War and International Humanitarian Law, including but not limited to the Four Geneva Conventions of 1949, their First Additional Protocol of 1977, the Hague Regulations on Land Warfare of 1907, and the Nuremberg Charter, Judgment, and Principles".

As it has already pointed out in its Order of 13 September 1993 (I.C.J. Reports 1993, p. 341, para. 33), the Court can find no provision relevant to its jurisdiction in any of the above-mentioned instruments. It notes, in addition, that the Applicant has made no further reference to this basis of jurisdiction as such.

40. Lastly, at a later stage of the proceedings, Bosnia-Herzegovina advanced two related arguments aimed at basing the Court's jurisdiction in this case on still other grounds.

According to the first of those arguments, Yugoslavia, by various aspects of its conduct in the course of the incidental proceedings set in motion by the requests for the indication of provisional measures, had acquiesced in the

jurisdiction of the Court on the basis of Article IX of the Genocide Convention. As the Court has already reached the conclusion that it has jurisdiction on the basis of that provision, it need no longer consider that question.

According to the second argument, as Yugoslavia, on 1 April 1993, itself called for the indication of provisional measures some of which were aimed at the preservation of rights not covered by the Genocide Convention, it was said, in accordance with the doctrine of *forum prorogatum* (*stricto sensu*), to have given its consent to the exercise by the Court, in the present case, of a wider jurisdiction than that provided for in Article IX of the Convention. Given the nature of both the provisional measures subsequently requested by Yugoslavia on 9 August 1993 — which were aimed exclusively at the preservation of rights conferred by the Genocide Convention — and the unequivocal declarations whereby Yugoslavia consistently contended during the subsequent proceedings that the Court lacked jurisdiction — whether on the basis of the Genocide Convention or on any other basis — the Court finds that it must confirm the provisional conclusion that it reached on that subject in its Order of 13 September 1993 (I.C.J. Reports 1993, pp. 341-342, para. 34). The Court does not find that the Respondent has given in this case a "voluntary and indisputable" consent (see *Corfu Channel*, Preliminary Objection, Judgment, I.C.J. Reports 1947-1948, p. 27) which would confer upon it a jurisdiction exceeding that which it has already acknowledged to have been conferred upon it by Article IX of the Genocide Convention.

41. It follows from the foregoing that the Court is unable to uphold any of the additional bases of jurisdiction invoked by the Applicant and that its only jurisdiction to entertain the case is on the basis of Article IX of the Genocide Convention.

42. Having ruled on the objections raised by Yugoslavia with respect to its jurisdiction, the Court will now proceed to consider the objections of Yugoslavia that relate to the admissibility of the Application.

43. According to the first preliminary objection of Yugoslavia, the Application is said to be inadmissible on the ground that it refers to events that took place within the framework of a civil war, and there is consequently no international dispute upon which the Court could make a finding.

This objection is very close to the fifth objection which the Court has already considered (paragraphs 27-33). In responding to the latter objection, the Court has in fact also answered this. Having noted that there does indeed exist between the Parties a dispute falling within the provisions of Article IX of the Genocide Convention — that is to say an international dispute —, the Court cannot find that the Application is inadmissible on the sole ground that, in order to decide the dispute, it would be impelled to take account of events that may have occurred in a context of civil war. It follows that the first objection of Yugoslavia must be rejected.

44. According to the second objection of Yugoslavia, the Application is inadmissible because, as Mr. Alija Izetbegovic was not serving as President

of the Republic — but only as President of the Presidency — at the time at which he granted the authorization to initiate proceedings, that authorization was granted in violation of certain rules of domestic law of fundamental significance. Yugoslavia likewise contended that Mr. Izetbegovic — was not even acting legally at that time as President of the Presidency.

The Court does not, in order to rule on that objection, have to consider the provisions of domestic law which were invoked in the course of the proceedings either in support of or in opposition to that objection. According to international law, there is no doubt that every Head of State is presumed to be able to act on behalf of the State in its international relations (see for example the Vienna Convention on the Law of Treaties, Art. 7, para. 2 (a)). As the Court found in its Order of 8 April 1993 (I.C.J. Reports 1993, p. 11, para. 13), at the time of the filing of the Application, Mr. Izetbegovic was recognized, in particular by the United Nations, as the Head of State of Bosnia-Herzegovina. Moreover, his status as Head of State continued subsequently to be recognized in many international bodies and several international agreements — including the Dayton-Paris Agreement — bear his signature. It follows that the second preliminary objection of Yugoslavia must also be rejected.

45. The Court concludes from the foregoing that the Application filed by Bosnia-Herzegovina on 20 March 1993 is admissible.

46. The Court has taken note of the withdrawal of the fourth preliminary objection of Yugoslavia and has rejected the other preliminary objections. In

conclusion, the Court emphasizes that in so doing it does not consider that Yugoslavia has, in presenting those objections, abused its rights to do so under Article 36, paragraph 6, of the Statute of the Court and Article 79 of the Rules of Court. The Court rejects the request made to that end by Bosnia-Herzegovina in its final submissions. The Court must, in each case submitted to it, verify whether it has jurisdiction to deal with the case, and, if necessary, whether the Application is admissible, and such objections as are raised by the Respondent may be useful to clarify the legal situation. As matters now stand, the preliminary objections presented by Yugoslavia have served that purpose. Having established its jurisdiction under Article IX of the Genocide Convention, and having concluded that the Application is admissible, the Court may now proceed to consider the merits of the case on that basis.

47. For these reasons,

THE COURT,

(1) Having taken note of the withdrawal of the fourth preliminary objection raised by the Federal Republic of Yugoslavia,

Rejects

(a) by fourteen votes to one,

the first, second and third preliminary objections;

IN FAVOUR:

President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Koroma, Vereshchetin, Ferrari Bravo, Parra-Aranguren; Judge ad hoc Lauterpacht;

AGAINST:

Judge ad hoc Kreca;

(b) by eleven votes to four,

the fifth preliminary objection;

IN FAVOUR:

President Bedjaoui; Vice-President Schwebel; Judges Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Koroma, Ferrari Bravo, Parra-Aranguren; Judge ad hoc Lauterpacht;

AGAINST:

Judges Oda, Shi, Vereshchetin; Judge ad hoc Kreca;

(c) by fourteen votes to one,

the sixth and seventh preliminary objections;

IN FAVOUR:

President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Koroma, Vereshchetin, Ferrari Bravo, Parra-Aranguren; Judge ad hoc Lauterpacht;

AGAINST:

Judge ad hoc Kreca;

(2)

(a) by thirteen votes to two,

Finds that, on the basis of Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, it has jurisdiction to adjudicate upon the dispute;

IN FAVOUR:

President Bedjaoui; Vice-President Schwebel; Judges Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Koroma, Vereshchetin, Ferrari Bravo, Parra-Aranguren; Judge ad hoc Lauterpacht;

AGAINST:

Judge Oda; Judge ad hoc Kreca;

(b) By fourteen votes to one,

Dismisses the additional bases of jurisdiction invoked by the Republic of Bosnia-Herzegovina;

IN FAVOUR:

President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Koroma, Vereshchetin, Ferrari Bravo, Parra-Aranguren; Judge ad hoc Kreca;

AGAINST:

Judge ad hoc Lauterpacht;

(3) By thirteen votes to two,

Finds that the Application filed by the Republic of Bosnia-Herzegovina on 20 March 1993 is admissible.

IN FAVOUR:

President Bedjaoui; Vice-President Schwebel; Judges Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Koroma, Vereshchetin, Ferrari Bravo, Parra-Aranguren; Judge ad hoc Lauterpacht;

AGAINST:

Judge Oda; Judge ad hoc Kreca.

Done in French and in English, the French text being authoritative, at the

Peace Palace, The Hague, this eleventh day of July, one thousand nine hundred and ninety-six, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Bosnia-Herzegovina and the Government of the Federal Republic of Yugoslavia, respectively.

(Signed) Mohammed BEDJAOUI,  
President.

(Signed) Eduardo VALENCIA-OSPINA,  
Registrar.

Judge ODA appends a declaration to the Judgment of the Court; Judges SHI and VERESHCHETIN append a joint declaration to the Judgment of the Court; Judge ad hoc LAUTERPACHT appends a declaration to the Judgment of the Court.

Judges SHAHABUDEEN, WEERAMANTRY and PARRA-ARANGUREN append separate opinions to the Judgment of the Court.

Judge ad hoc KRECA appends a dissenting opinion to the Judgment of the Court.

(Initialed) M.B.

(Initialed) E.V.O.

**UNITED NATIONS SECURITY COUNCIL RESOLUTION 1325 ON  
WOMEN, PEACE AND SECURITY**

The Security Council,

Recalling its resolutions 1261 (1999) of 25 August 1999, 1265 (1999) of 17 September 1999, 1296 (2000) of 19 April 2000 and 1314 (2000) of 11 August 2000, as well as relevant statements of its President and recalling also the statement of its President, to the press on the occasion of the United Nations Day for Women's Rights and International Peace of 8 March 2000 (SC/6816),

Recalling also the commitments of the Beijing Declaration and Platform for Action (A/52/231) as well as those contained in the outcome document of the twenty-third Special Session of the United Nations General Assembly entitled "Women 2000: Gender Equality, Development and Peace for the twenty-first century" (A/S-23/10/Rev.1), in particular those concerning women and armed conflict,

Bearing in mind the purposes and principles of the Charter of the United Nations and the primary responsibility of the Security Council under the Charter for the maintenance of international peace and security,

Expressing concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons, and increasingly are targeted

by combatants and armed elements, and recognizing the consequent impact this has on durable peace and reconciliation,

Reaffirming the important role of women in the prevention and resolution of conflicts and in peace-building, and stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution,

Reaffirming also the need to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts,

Emphasizing the need for all parties to ensure that mine clearance and mine awareness programmes take into account the special needs of women and girls,

Recognizing the urgent need to mainstream a gender perspective into peacekeeping operations, and in this regard noting the Windhoek Declaration and the Namibia Plan of Action on Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations (S/2000/693),

Recognizing also the importance of the recommendation contained in the statement of its President to the press of 8 March 2000 for specialized training for all peacekeeping personnel on the protection, special needs and human rights of women and children in conflict situations,

Recognizing that an understanding of the impact of armed conflict on women and girls, effective institutional arrangements to guarantee their protection and full participation in the peace process can significantly contribute to the maintenance and promotion of international peace and security,

Noting the need to consolidate data on the impact of armed conflict on women and girls,

1. Urges Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict;

2. Encourages the Secretary-General to implement his strategic plan of action (A/49/587) calling for an increase in the participation of women at decision-making levels in conflict resolution and peace processes;

3. Urges the Secretary-General to appoint more women as special representatives and envoys to pursue good offices on his behalf, and in this regard calls on Member States to provide candidates to the Secretary-General, for inclusion in a regularly updated centralized roster;

4. Further urges the Secretary-General to seek to expand the role and contribution of women in United Nations field-based operations, and especially among military observers, civilian police, human rights and humanitarian personnel;

5. Expresses its willingness to incorporate a gender perspective into peacekeeping operations and urges the Secretary-General to ensure that, where appropriate, field operations include a gender component;

6. Requests the Secretary-General to provide to Member States training guidelines and materials on the protection, rights and the particular needs of women, as well as on the importance of involving women in all peacekeeping and peace-building measures, invites Member States to incorporate these elements as well as HIV/AIDS awareness training into their national training programmes for military and civilian police personnel in preparation for deployment and further requests the Secretary-General to ensure that civilian personnel of peacekeeping operations receive similar training;

7. Urges Member States to increase their voluntary financial, technical and logistical support for gender-sensitive training efforts, including those undertaken by relevant funds and programmes, inter alia, the United Nations Fund for Women and United Nations Children's Fund, and by the United Nations High Commissioner for Refugees and other relevant bodies;

8. Calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia: (a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction; (b) Measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements; (c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary;

9. Calls upon all parties to armed conflict to respect fully international law applicable to the rights and protection of women and girls as civilians, in particular the obligations applicable to them under the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, the Refugee Convention of 1951 and the Protocol thereto of 1967, the Convention Security Council - 5 - Press Release SC/6942 4213th Meeting (PM) 31 October 2000 on the Elimination of All Forms of Discrimination against Women of 1979 and the Optional Protocol thereto of 1999 and the United Nations Convention on the Rights of the Child of 1989 and the two Optional Protocols thereto of 25 May 2000, and to bear in mind the relevant provisions of the Rome Statute of the International Criminal Court;

10. Calls on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict;

11. Emphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes including those relating to sexual violence against women and girls, and in this regard, stresses the need to exclude these crimes, where feasible from amnesty provisions;

12. Calls upon all parties to armed conflict to respect the civilian and humanitarian character of refugee camps and settlements, and to take into

account the particular needs of women and girls, including in their design, and recalls its resolution 1208 (1998) of 19 November 1998;

13. Encourages all those involved in the planning for disarmament, demobilization and reintegration to consider the different needs of female and male ex-combatants and to take into account the needs of their dependants;

14. Reaffirms its readiness, whenever measures are adopted under Article 41 of the Charter of the United Nations, to give consideration to their potential impact on the civilian population, bearing in mind the special needs of women and girls, in order to consider appropriate humanitarian exemptions;

15. Expresses its willingness to ensure that Security Council missions take into account gender considerations and the rights of women, including through consultation with local and international women's groups;

16. Invites the Secretary-General to carry out a study on the impact of armed conflict on women and girls, the role of women in peace-building and the gender dimensions of peace processes and conflict resolution, and further invites him to submit a report to the Security Council on the results of this study and to make this available to all Member States of the United Nations;

17. Requests the Secretary-General, where appropriate, to include in his reporting to the Security Council, progress on gender mainstreaming throughout peacekeeping missions and all other aspects relating to women and girls;

18. Decides to remain actively seized of the matter."