

Mobilizing the Will to Prosecute: Crimes of Rape at the Yugoslav and Rwandan Tribunals

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Abstract Widespread and systematic rape pervaded both the genocides in Bosnia–Herzegovina in 1992 and in Rwanda in 1994. In response to these conflicts, the Yugoslav Tribunal (ICTY) and the Rwandan Tribunal (ICTR) were created and charged with meting justice for crimes committed, including rape. Nevertheless, the two tribunals differ in their relative success in administering justice for crimes of rape. Addressing rape has been a consistent element of the ICTY prosecution strategy, which resulted in gender-sensitive investigative procedures, higher frequencies of rape indictments, and more successful prosecutions. In contrast, rape has not been a central focus of the ICTR prosecution strategy, which resulted in a sporadic approach to gender-sensitive investigative procedures, inconsistent rape indictments, and few successful prosecutions. What accounts for this disparity in rape prosecutions between the Rwandan and Yugoslav tribunals? Building off the existing literature that discusses factors such as legal instruments and resource capacity of the tribunal, this article argues that transnational advocacy helped generate the necessary political will to adopt and implement legal norms regarding crimes of sexual violence at the ICTY and the ICTR. Following the importance of transnational advocacy as agents of norm change, this paper also explores the antecedent conditions of advocacy mobilization that conditioned different levels of mobilization vis-à-vis the ICTY and the ICTR, including media attention and framing, connections and interest match with local groups, and geopolitical context.

Keywords Transnational advocacy · War crimes · International law · International criminal tribunals · Wartime rape

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Introduction

Widespread and systematic sexual violence pervaded both the genocides in Bosnia–Herzegovina in 1992 and Rwanda in 1994 (Amnesty International 1993a). In Bosnia–Herzegovina, over 20,000 women were raped in the conflict, including particularly sadistic rape intended to humiliate the victim, her family and community, rape with the intention of forced impregnation, and rape as sexual slavery (Ministry of Foreign Affairs Copenhagen 1993). In Rwanda, an estimated 250,000 women were raped, oftentimes with accompanying sexual mutilation, sexual slavery, and forced impregnation (Balthazar 2006; UN Commission on Human Rights 1996). In response to these conflicts, the UN Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) in May 1993 and the International Criminal Tribunal for Rwanda (ICTR) in November 1994. The ICTY and the ICTR were both charged with prosecuting *inter alia* violations of international humanitarian law, including crimes of sexual violence and rape.

While the ICTY and the ICTR were both given the legal instruments to prosecute systematic rape abuses, their effectiveness in addressing the crime of rape are varied. Rape prosecution was a consistent element of the ICTY prosecution strategy, which resulted in consistent levels of rape indictment charges, convictions, and the adoption and implementation of gender-sensitive procedures. Since the inception of the ICTY, the tribunal has convicted 23 individuals of rape and/or sexual assault, many of them in the *Foca* case, which was the first international case to exclusively prosecute sexual violence. In contrast, rape was not a central focus of the ICTR prosecution strategy, which resulted in inconsistent levels of rape indictments, five successful convictions that were not overturned on appeal, 13 unsuccessful rape cases, and a sporadic approach to the adoption of gender-sensitive procedures. A sexual assault subunit of the investigative team was not created until 3 years after the establishment of the tribunal, which was subsequently disbanded 4 years later in 2000, and then reinstated in 2003. The ICTR also took 3 years to issue its first rape indictment. While the *Akayesu* case—the first case to successfully prosecute rape as genocide and expand the definition of rape—represents a historical achievement of the ICTR, the fact that the original indictment did not include rape and was only amended under public pressure 5 months into the trial demonstrates the lack of prioritization and focus on rape prosecution at the ICTR.

What accounts for this disparity in rape prosecution? Much of the literature that informs this question focuses on two areas: appropriate legal instruments to prosecute crimes of sexual violence and sufficient tribunal resources and adequate administration (Askin 1997; Goldstone 2001; de Brouwer 2005). While both of these factors are integral for rape prosecutions, they are not determinative of outcomes and overlook the agency of actors fostering and implementing new laws surrounding justice for crimes of sexual violence. Because the issue of conflict rape and sexual violence has historically been marginalized and conflict rape and precedential norms of judicial procedure and implementation did not exist prior to the ICTY, substantial political will was needed to enact changes surrounding prosecution of conflict rape. In the cases of the ICTY and the ICTR, transnational advocacy coalitions, such as the Coalition for Women’s Human Rights in Conflict

Situations, helped mobilize and generate the political will to act on the issue of sexual violence through informational politics, expertise, and direct pressure.

Following the importance of transnational advocacy in generating political will for rape prosecutions, this article articulates why transnational advocacy groups did not mobilize around the issue of conflict rape evenly, as seen by different levels of mobilization against the ICTY and the ICTR. Three antecedent conditions affected the mobilization of transnational advocacy campaigns for rape prosecution: prior connections and matched interests with local women's and human rights groups, geopolitical factors, and media attention and symbolic framing. Together, these three antecedent variables conditioned the mobilization of transnational advocacy, and therefore affected the pressure and leverage transnational advocacy coalitions exerted upon the ICTY and the ICTR to address conflict rape.

History of Conflict Rape Prosecution

Conflict rape pervades a diversity of types of conflicts—from international wars, to revolutions, civil wars, pogroms, ethnic cleansing campaigns, and genocides—and occurs regardless of the ideological justifications for war (Chinkin 1994). Conflict rape occurred in World War II in the form of the Japanese “comfort women” and the systematic rape of thousands of women during the siege of Nanking (Chang 1997). In the 1990 Gulf War, an estimated 5,000 Kuwaiti women were raped by Iraqi soldiers, and during the noninternational conflict in Peru, women reported being raped by government soldiers and members of the Shining Path (Chinkin 1994).

While the history of conflict rape is brutal and extensive, conflict rape has historically been an invisible crime largely absent from international and domestic criminal prosecution. This is not to say that rape has been absent from the historical rules of warfare or modern international criminal law. Rules prohibiting wartime rape date back to the Articles of War written by Richard II of England in 1385 and span into the seventeenth century writings of Hugo Grotius (Brownmiller 1975). Nevertheless, the historical prosecution of sexual assault under international criminal law has not occurred, as represented by the silence about rape at the Nuremberg and Tokyo Trials, even though cases of sexual assault were thoroughly documented (Askin 1997).

The absence of post-conflict rape prosecution mutually reinforces the ambiguity of the international criminal law about sexual assault. Sexual crimes are not clearly and explicitly demarcated in international criminal law, but are divided between different categories of abuses and crimes, such as crimes against humanity, violations of the Geneva Conventions, and most recently as a component of genocide. Prior to the ICTY, the ICTR, and the International Criminal Court (ICC), there were no internationally accepted definitions of sex crimes—which include rape, enforced prostitution, enforced sterilization, enforced impregnation, enforced maternity, sexual mutilation, and genocidal rape (Askin 1997).

A common historical explanation for this lack of attention to conflict rape views rape as an unchangeable externality of war or a bonus for soldiers on all sides (Brownmiller 1975; Chinkin 1994; Farwell 2004). In this argument, sexual assault is essentialized as a natural component of war and war strategy (Askin 1997). Others

see conflict rape as a lesser crime than systematic murder—in the cases where the woman was not raped but killed—and that criminal tribunals should focus on the killings, not sexual assaults. Another argument posits that sentencing guidelines, which offer greater punishments for crimes of murder, combined with the difficulty of investigating sexual crimes and getting the victim to testify, create institutional incentives not to prosecute rape and sexual violence (Arbour 2003). Feminist theory also contributes to the discussion about the historical silence surrounding conflict rape by connecting conflict rape with the larger issues of violence against women and the gendered societal power structure. Feminist theory argues that violence against women has often been viewed as falling on the private side of the public/private dichotomy, which shields it from public investigation, scrutiny, and prosecution (Bunch 1990; Copelon 1994).¹

When discussing the silence surrounding the issue of conflict rape, it is important to note that international criminal tribunals are but one mechanism of justice within the larger framework of transitional justice that includes truth commissions or local courts, such as the Rwandan *Gacaca* system. International criminal tribunals represent important venues for public trial of the most egregious crimes committed; however, by focusing on the major players, many individual crimes are never tried and many victims never receive justice. In addition, the international criminal tribunals may not be the preferred justice mechanism for the communities that experienced the conflict or the survivors of sexual assault. This article focuses on international criminal tribunals because the ICTY and the ICTR are the pivotal judicial bodies that broke the historical silence and ambiguity surrounding rape prosecution and from which precedents and norms about the processes and outcomes of rape prosecution emerged. Even though both tribunals are historic in their prosecution of the crime of rape, the outcomes of rape prosecution at the ICTY and the ICTR dramatically differ. Through case study analysis of the ICTY and the ICTR, the factors that contribute to this divergence in successful rape prosecutions can be better understood, which can shed light on unevenness of norm change and the dialectic between legal instruments and implementation.

Methodology

The research design adopted is an in-depth, narrative case study comparison of the ICTY and the ICTR. The ICTY and the ICTR represent relevant cases due to their unique historical positions as the first international criminal tribunals since Nuremberg and the first international judicial bodies to prosecute the crime of rape. Additionally, they are comparable cases due their many similarities, such as their ad hoc establishment by UN Security Council resolutions, the proximity of their creation—the ICTY was formed in May 1993 and the ICTR was formed in

¹ Within feminist theory, debates exist over the normative goal and unintended consequences of prosecuting crimes of sexual violence through international tribunals, particularly rape as a form of genocide. Some feminists argue that prosecuting international crimes of sexual violence can reinforce the problematic concept of vulnerable “women and children” (Engle 2005; Buss 1998, 2002), obscure the rights and recognition of war-rape orphans (Carpenter 2000), and overshadow post-conflict agendas and priorities of local women (Nesiah 2006).

November 1994—their identical rules of evidence, procedure, and appellate jurisdiction as well as sharing the same appeals court and prosecutor (Barria and Roper 2005).²

The comparative case study of the ICTY and ICTR is composed of two parts. First, the respective differences in rape prosecution outcomes are outlined and various explanations for the differences are evaluated, including the effects of transnational advocacy. Second, the question of why levels of transnational mobilization differed between the ICTY and the ICTR is explored. The evidence to inform the construction of the case studies includes nongovernmental and governmental reports, written speeches, archival documents of the Women's Action Coalition and Amnesty International, newspaper articles, tribunal case documents, and personal interviews with leaders within transnational advocacy coalitions advocating on the issue of justice for wartime sexual violence.³ While the available evidence is limited to public tribunal documents and does not include interviews with tribunal personnel, the method of using multiple sources of evidence enabled me to crosscheck major pieces of evidence. Whenever possible, claims by transnational advocates of their influence on the ICTY and the ICTR were corroborated by other sources such as tribunal documents, government reports, or public statements by tribunal personnel. Even with the limitations in evidence and cautions of interpretation, these case studies confirm the plausibility of the impact of transnational advocacy on the rape prosecution outcomes at the ICTY and the ICTR.

Conflict Rape in Bosnia–Herzegovina and Rwanda

In Bosnia–Herzegovina, rape was mostly—but not exclusively—inflicted upon Muslim women by Serbian paramilitaries as one element of a systematic campaign to form an ethnically homogeneous territory between Serbia and the Serbian areas of occupied Bosnia–Herzegovina and Croatia (Ministry of Foreign Affairs Copenhagen 1993; de Brouwer 2005). The European Commission investigation found that rape was not just a byproduct of conflict, but was intentionally and systematically used to demoralize and terrorize communities as well as remove populations from their homes (Ministry of Foreign Affairs Copenhagen 1993). An estimated 20,000 women and girls were raped in Bosnia–Herzegovina during the conflict, and oftentimes in particularly sadistic and humiliating ways that included mutilation, gang rape, and public rape. Rape, sexual enslavement, and forced impregnation and maternity were combined in the form of “rape camps,” where women and girls were forcibly enslaved in abandoned schools, sports centers, and cafes to be continually raped,

² The ICTY and the ICTR shared the same prosecutor until 2003 when the Tribunals retained separate prosecutors. At that time, Carla del Ponte remained the prosecutor of the ICTY and Hassan Jallow became the prosecutor of the ICTR.

³ Interviews were requested with eight prominent leaders from various organizations actively involved in the campaign for the international criminal prosecution of wartime rape in the 1990s. From these eight requests, I conducted interviews on September 12, 2008 with two leaders from different organizations. The personal identity and organizational affiliation of the interviewees were kept anonymous, as the interviewees had professional relationships with ICTY/ICTR personnel and worked within a small professional community where organizational affiliation would reveal their personal identity.

sometimes impregnated, and if impregnated, forcibly detained until labor to prevent abortion and deliver “Serb children” (Ministry of Foreign Affairs Copenhagen 1993). The abuses committed in these rape camps not only included rape, but many women and young girls also died as a result of sexual injuries or mutilation, attempted suicide, murder, or disappearance (Stiglmeier 1994).

In Rwanda, widespread and systematic rape was committed almost exclusively against Tutsi women and girls—although some Hutu women married to Tutsi men were targeted—as a component of the genocidal acts to exterminate the Tutsi population. The perpetrators of rapes were the Hutu militia, the *Interahamwe*, as well as military soldiers of the Rwandan Armed Forces and civilians (de Brouwer 2005). Rape was an instrument to strip the humanity from the larger ethnic and community groups to which women belonged (Nowrojee 1996). An estimated 250,000 women and girls were raped in the Rwandan genocide, often in particularly sadistic and brutal ways (UN Commission on Human Rights 1996).⁴ Women were gang raped, raped in public, held in sexual slavery, sexually mutilated, and raped with sharpened objects such as sticks and rifles (Balthazar 2006). Forced impregnation was also a result of the rapes and an estimated 2,000 to 5,000 children were born of rape (UN Commission on Human Rights 1996).

Rape Prosecution at the ICTY

Although prosecuting rape was not an initial priority of the ICTY,⁵ in short time it became an integral part of the overall prosecution strategy, which is reflected in the tribunal’s gender-sensitive policies and procedures, sustained level of rape indictments, and successful prosecution of rape. In terms of adoption of gender-sensitive policies at the ICTY, the initial chief prosecutor, Richard Goldstone, appointed Patricia Viseur Sellers as “Legal Advisor for Gender-related Crimes” to the Office of the Prosecution to formulate a prosecution approach to rape and other sex crimes at both the ICTY and the ICTR (Copelon 2000; Engle 2005). While technically this position was to inform both the prosecution strategies of the ICTY and the ICTR, the position was located at The Hague, the location of the ICTY, and Sellers’s influence on the ICTR was limited.

[S]he could only do so much and she did what she could...because she was not based in Rwanda, she was not able to really get a constant and present role in Rwanda or in the ICTR...ultimately I think it was recognized that the job was too big for one person and...she was made the Gender Advisor for the Yugoslav Tribunal and Rwanda was left without a Gender Advisor.⁶

⁴ It is impossible to know the exact number of rapes committed during and immediately following the Rwandan genocide. This estimation of the number of rapes derives from expert calculations based upon the number of children born of rape.

⁵ Campbell (2007) states that the ICTY did not initially undertake legal proceedings for the crime of rape because of logistical difficulties (i.e., monitoring, amending indictments, and the necessity of having closed sessions) and the changing prosecutorial strategies of the Office of the Prosecutor.

⁶ Anonymous leader within women’s human rights movement, Interview with author, September 12, 2008.

In terms of investigation procedures, the ICTY immediately established a Victims and Witness Protection Unit as specified by the tribunal procedures to provide counseling and support in cases of sexual assault. The ICTY also established Rule 96 of the Rules of Procedure and Evidence, an extremely progressive set of procedures specifically for cases of sexual assault. Rule 96 states that corroboration of victim's testimony is not necessary, consent does not apply as a defense if the victim was threatened or under duress, consent as a defense must be prescreened by the judge for validity and credibility prior to being heard in open court, and that the prior sexual history of the victim is not admissible (ICTY Rules and Procedures).

At the ICTY, there have been sustained levels of rape indictments and substantial numbers of rape prosecutions resulting in convictions that withstood appeal. Approximately 20% of all indictment charges included allegations of sexual assault (Campbell 2007). As of 2008, the ICTY convicted 23 people of rape or sexual assault as a crime against humanity or violations of the Geneva Conventions. These convictions have also withstood appeal, which speaks to their solid evidentiary and legal foundations. In all, only two cases out of 75 indictments and 25 completed cases for rape and/or sexual assault at the ICTY have not resulted in convictions.

The ICTY, for the first time in history, prosecuted a case focused exclusively on sexual assault. The *Foca* case, otherwise known as the "the rape case," is a case with three defendants (Kunarac, Kovac, Vukovic) that the Office of the Prosecution intentionally constructed to focus exclusively on sexual crimes committed against women in one location, Foca, in order to break new legal ground on rape prosecution (Barkan 2002). The *Foca* case charged eight Bosnian Serb police and military officers—the tribunal was only able to detain three—with detaining and enslaving women and girls and subjecting them to constant rape, sexual assault, and torture. All three *Foca* defendants were found guilty—combined their convictions, which include rape as a form of torture, a war crime, means of persecution, crime against humanity, and enslavement as a crime against humanity (*Prosecutor v. Kunarac, Kovac, & Vukovic* 1996).

Rape Prosecution at the ICTR

Rape prosecution has not been an integral part of the prosecution strategy at the ICTR, which resulted in intermittent adoption of gender-sensitive policies, inconsistent levels of rape indictments, and few rape convictions. Rape prosecution has not been completely absent from the ICTR; the *Akayesu* case is a landmark case that expanded the definition of rape and successfully prosecuted rape as genocide. Nevertheless, this case represents an anomaly within the larger pattern of neglect and silence about issues of sexual violence and rape.

At the ICTR, gender-sensitive policies have been intermittent in adoption and implementation. Not until 1996, 2 years after the ICTR's establishment and at the end of the tenure of the first chief prosecutor Richard Goldstone, was a sexual assault unit of the investigative team of the Office of the Prosecutor created. The sexual assault unit consisted of three officers, one psychologist, one nurse, two

lawyers, two policewomen, and one policeman and was charged with preparing victims for testimony, working with NGOs, and providing safe travel for witnesses (UN Commission on Human Rights 1998). In 2000, the third chief prosecutor, Carla Del Ponte, dismantled the sexual assault unit. However, at the end of her term in 2003, when she was seeking a second term and was under pressure from women's groups, the sexual assault unit was reinstated. Apart from the sexual assault unit, investigators at the ICTR received no training in interviewing rape victims, most of the investigators were male, and many investigators espoused the belief that rape is not worthy of investigation (Nowrojee 2005).

As with the ICTY, the ICTR Rules of Prosecution and Evidence provides for creation of a Victims and Witness Protection Unit; however, a witness protection program was not created until 1997–1998, almost 4 years after the tribunal's inception (MADRE 1997; UN Commission on Human Rights 1998). Investigators at the ICTR also misrepresented privacy protection to women in order to facilitate getting testimony at trial by not telling the victim that her name would be given to the defense team. Besides the betrayal of institutional trust that this creates, women are often at risk for reprisals for testifying or encounter hostility by her family or community, who may not know that she was raped. One rape victim, who testified on the basis of confidentiality, had her testimony leaked, and she was subsequently left by her fiancée after returning from Arusha because of the stigma of her rape (Coalition for Women's Human Rights in Conflict Situations 2002; Nowrojee 2005). In the *Butare* case, sensitivity to sexual crimes was also lacking. During one defendant's trial, a victim of rape was asked 1,194 questions by the defense, with many of the questions repeating detailed aspects of the rape. In addition, rape victims were asked offensive questions such as if the victim had bathed—implying that she could not have been raped if she smelled (Nowrojee 2005).

At the ICTR, levels of rape indictments have been inconsistent, and rape convictions have been few and have almost overwhelmingly been overturned on appeal or dropped in plea agreements. Overall, rape indictments of the ICTR represent approximately 30% of the total number of indictments, slightly higher than that of the ICTY (Balthazar 2006; Nowrojee 2005). When disaggregated and examined closer, the comparison loses strength. During the first 3 years of the tribunal during the tenure of chief prosecutor Richard Goldstone, no rape indictments occurred and rape was not included in the general prosecutorial strategy of the tribunal.

Richard Goldstone... gave a lot of lip service to the idea of prosecuting rape, but actually under his watch not a single indictment included sexual violence... he didn't set up his investigative team in such a way that they examined this issue. I think that they set the tone for very sloppy work that ultimately followed.⁷

The first rape indictment of the ICTR did not occur until 1997, 3 years after the establishment of the tribunal and only after significant pressure to amend the indictment (UN Commission on Human Rights 1998; Breton-Le Goff 2002). During

⁷ Anonymous leader within women's human rights movement, Interview with author, September 12, 2008.

the tenure of chief prosecutor Louise Arbour, almost all new indictments included charges of sexual assault or rape (Balthazar 2006; Nowrojee 2005). This figure is misleading because rape charges were added to indictments in identical language, which essentially blanketed indictments with rape charges that could not be successfully prosecuted without amendment and extensive investigation.

Under her [Prosecutor Arbour] watch there's a sexual assault team, there are efforts to begin to collect rape victim's testimony...there are amendments to many indictments to add rape charges but without proper investigation...but the work hasn't properly been done to ensure the adequate evidence is there.⁸

The next chief prosecutor, Carla Del Ponte, reversed any gains made by Prosecutor Arbour, and sexual violence was once again marginalized.

Del Ponte... makes it very clear that sexual violence isn't high on her priority list. And you find that by the end of Carla Del Ponte's time in office, zero percent of the new indictments contain rape... she basically dismantles the sexual violence team till it basically does nothing.⁹

In terms of rape indictments, Hasson Jallow, the last chief prosecutor, has followed the general pattern of marginalization of the issue of sexual violence.

Jallow is closing up shop... and doing a salvage job. And so there is very little commitment to do, and the ability at this late point in these trials, to begin to dramatically change the legacy, the negative legacy of sexual violence prosecution for the ICTR.¹⁰

In terms of rape convictions, a total of five rape convictions as a crime against humanity, as a form of genocide (*Akayesu*), and as a violation of the Geneva Conventions have survived appeal. When viewed in comparative terms, 25% of completed rape cases resulted in successful convictions at the ICTR and 92% of completed rape cases resulted in successful convictions at the ICTY (see Table 1). While this contrast is markedly different, the disparity of rape convictions is even more exaggerated when rape conviction statistics are discussed relative to the number of rapes that occurred in the conflicts. There were more than 20 times as many rapes during the genocide in Rwanda than occurred in Bosnia: approximately 20,000 women were raped in the genocide in Bosnia and approximately 250,000 women were raped in the Rwandan genocide. In addition to the lower number of the successful prosecutions at the ICTR, the most troubling trend is the rate of unsuccessful rape convictions, which arise either by a not guilty verdict, being overturned on appeal or by dropping the rape charges in a plea arrangement. This speaks of the lack of prosecutorial political will and

⁸ Anonymous leader within women's human rights movement, Interview with author, September 12, 2008.

⁹ Anonymous leader within women's human rights movement, Interview with author, September 12, 2008.

¹⁰ Anonymous leader within women's human rights movement, Interview with author, September 12, 2008.

Table 1 Comparison of the ICTY and the ICTR in indictments and convictions of rape/sexual assault as “Rape as a Crime Against Humanity” or “Torture as a Crime Against Humanity,” “Other Inhumane Acts, Persecutions on Political, Racial or Religious Grounds,” or “Grave Breaches of the Geneva Conventions of 1949” or “Rape as Genocide”

	ICTY	ICTR
Total indictments	75	42
Awaiting judgment	50 (67%)	22 (52%)
Cases completed	25 (33%)	20 (48%)
Convictions (not overturned on appeal)	23 (92%)	5 (25%)
Unsuccessful (not guilty verdict, pleaded out to charges other than rape, and convictions overturned on appeal)	2 (8%)	13 (65%)
Other (transfer to federal courts)		2 (1%)

Sources: International Criminal Tribunal for the Former Yugoslavia (www.un.org/icty) and the International Criminal Tribunal for Rwanda (<http://69.94.11.53>). Descriptive statistics are current as of July 2008.

investigative procedures to back up the indictments with solid legal and evidentiary foundations.

The most notable and precedential case of the five successful cases prosecuted by the ICTR is the *Akayesu* case. The *Akayesu* case is widely lauded for its historical precedent in successfully prosecuting rape as an instrument of genocide and providing an expansive and precedential definition of rape that expands it beyond penetration and takes into account the coercive circumstances of armed conflict (Askin 1999). Nevertheless, the circumstances leading to this historical conclusion reflect the inattention to rape of the ICTR’s prosecution strategy. The original 12 indictments of the *Akayesu* case did not include rape or sexual violence. The rape and sexual violence indictments were not added until 5 months into the trial (*Prosecutor v. Akayesu* 1996).

Even after the historic success of the *Akayesu* case, the ICTR failed to adequately incorporate rape into its prosecution strategy. In the *Kajelijeli* case, the defendant was convicted of genocide, but acquitted of rape. Because there was a dissenting opinion on the rape charge, the chances for successful appeal on the rape charge were high, but the prosecutor failed to file the paperwork on time, and subsequently relinquished the right to appeal (Nowrojee 2005; *Prosecutor v. Kajelijeli* 1998). As the ICTR reaches its final phase—the trials are slated to end in 2008 and the tribunal is to shut down in 2010—rape charges may be the first thing dropped in plea agreements as demonstrated by the *Bisengimana* case (*Prosecutor v. Bisengimana* 2000).

Legal Instruments

Much of the literature discussing conflict rape prosecution focuses on the legal instrumental mechanisms under which rape can be prosecuted (Askin 1997; de Brouwer 2005). These legal instruments—including crimes against humanity, grave breaches of the Geneva Conventions, and genocide—represent legal regimes or

umbrellas under which rape can be prosecuted (Askin 1997). These legal regimes are not mutually exclusive, but embody different authorities of prosecution and standards of evidence, which can apply to the different contexts and circumstances of sexual crimes.

In terms of legal instruments articulated in the statutes of the ICTY and the ICTR, the instruments are nearly identical. The ICTY statute allows for rape prosecution under grave breaches of the Geneva Conventions of 1949, violations of the laws or customs of war, genocide, and crimes against humanity. However, only under crimes against humanity is rape specifically listed (UN Secretary-General 1993). The ICTR statute allows for rape prosecution under violations of the Geneva Conventions of 1949 and Additional Protocol, genocide, and crimes against humanity. Rape is explicitly listed under two regimes—crimes against humanity and violations of the Geneva Conventions (ICTR 1994). Although legal capacities to prosecute are necessary for rape prosecutions, the legal mechanisms articulated within the ICTY and the ICTR do not vary significantly enough to warrant the divergence in the resultant rape prosecutions of each Tribunal.

Funding/Tribunal Administration

Two areas in which the ICTY and the ICTR significantly varied were their relative funding from the United Nations and the level of functionality of their administration. In the first few years of operation, the ICTY received almost double the funding of the ICTR—the ICTY spent about \$75 million and the ICTR spent about \$42 million (Neuffer 1996). In addition to receiving fewer monetary resources, the ICTR was also plagued with gross administration failures and mismanagement. An audit report of the United Nations Office of Internal Oversight Services detailed large shortcomings in all areas of the Tribunal, especially with the Registry and Office of the Prosecutor. These shortcomings included incomplete and unreliable financial records, payroll problems, underqualified staff and staff vacancies, inadequate security and witness protection, and lack of leadership (UN Office of Internal Oversight Services 1997).

There is obviously a direct linkage between a structured, functioning tribunal administration with adequate resources and the prosecutorial outcomes of said tribunal, including rape prosecutions. Nevertheless, limited or scarce resources are not determinative of all prosecutorial outcomes evenly. The process of choosing how to allocate limited resources can be very political as well as pragmatic. Because of the lack of rape prosecution precedents and procedures coupled with the difficulty in investigating rape, crimes of sexual violence may be overlooked in prosecutorial strategies. At the ICTR, the resources and administrative inadequacies conditioned the overall level and quality of rape prosecutions, yet a resource-driven explanation does not tell the whole story: the *Akayesu* case, a great success of the ICTR in prosecuting rape as genocide, occurred in spite of great administrative failings and limited resources. In a resource-scarce environment, the political will to prosecute sexual crimes must be even greater in order to overcome the pragmatic reasoning and historical precedent that can relegate sexual crimes invisible.

Transnational Advocacy Networks and Coalitions

If legal instruments and resources are necessary but not determinative of justice for crimes of sexual violence, then what generates the spark of change that alters the norms of invisibility? How is the necessary political will generated to adopt and implement new norms? In the case of the ICTY and the ICTR, sustained mobilization of transnational advocacy groups helped generate the political will necessary for implementation of legal instruments and gender-sensitive procedures. The tactics employed to generate this political will included informational politics, symbolic politics and framing, demonstrations, direct legal intervention through amicus briefs, and working with receptive actors within the tribunals.

Transnational advocacy networks are “actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services” (Keck and Sikkink 1999, 1). These networks may include NGOs, international NGOs, advocacy groups, foundations, the media, and local social movements and are “characterized by voluntary, reciprocal, and horizontal patterns of communication and exchange” (Keck and Sikkink 1998, 8). Transnational advocacy networks utilize informational politics, symbolic politics and framing, leverage, and accountability politics in order to promote norm adoption, implementation, and policy change (Keck and Sikkink 1998).

In the case of the advocacy pressure against the ICTY and the ICTR, transnational advocacy coalitions of women’s and human rights organizations joined together to alter the prevailing norm of conflict rape as an invisible crime. This cooperative effort occurred during the early 1990s, a period when women’s issues—particularly violence against women—began to be considered within a human rights frame (Keck and Sikkink 1998; Thompson 2002). This shift is exemplified by human rights organizations, such as Human Rights Watch, establishing divisions and projects that focused on women’s rights (Thompson 2002). The conflicts in the former Yugoslavia and Rwanda and the creation of the ICTY and the ICTR coincided with the movement of women’s rights as human rights and a burgeoning coalition of transnational advocacy of women’s and human rights networks, which provided the opportunity, connections, and resources to break the historical silence surrounding conflict rape.

Transnational Advocacy and the ICTY

Transnational advocacy networks working on behalf of rape victims pressured the ICTY throughout the entire process, from the formation of the tribunal to individual rape prosecution cases. As the UN Security Council decided to create the ICTY, women’s groups and human rights groups began to mobilize to ensure that sexual crimes were adequately addressed at the tribunal. Concerned women’s and human rights groups formed the Ad Hoc Women’s Coalition Against War Crimes in the former Yugoslavia—which included Equality Now, Amnesty International, the Fund for Feminist Majority, Women’s Action Coalition, the Center for Women’s Global Leadership, and the Center for Reproductive Policy and Law—to pressure the international legal system to act in response to the rape crimes committed (Lewin 1993). On March 8, 1993, International Women’s Day, the Women’s Action

Coalition, and the Women's Coalition against Ethnic Cleansing organized a march in Los Angeles in protest of the widespread rapes of Bosnian Muslim women (Moon 2008). The Women's Action Coalition also held weekly vigils outside the United Nations in order to demonstrate solidarity with the Women in Black Against the War, a women's group protesting the war in Belgrade (Women's Action Coalition). In spring of 1993, MADRE organized the "Mother Courage II: Emergency Response to the Crisis in the Former Yugoslavia," a national tour where Yugoslav women discussed their experiences in the conflict in the former Yugoslavia (MADRE 1993).

In addition to demonstrations, women's advocacy groups organized massive letter writing campaigns and raised funds to aid rape survivors in Bosnia. The Women's Action Coalition, in conjunction with rape crisis centers in the U.S. and the Bosnian Red Cross, raised funds and sent rape crisis volunteers to Bosnia to conduct trainings (Women's Action Coalition 1993). Pamphlets by the Women's Action Coalition included lists of contact information of prominent UN officials and U.S. congresspeople, senators, and the president along with pleas to contact them and advocate on behalf of rape victims. Also enclosed in one pamphlet was a red, metallic sticker with "RAPE" in white block letters to be adhered to STOP signs (Women's Action Coalition). It is difficult to know with certainty whether letters from this campaign directly contributed to changes in policy or awareness about the rapes in Bosnia; nevertheless a letter from Senator Daniel P. Moynihan of New York to Ms. Janet Wright dated May 27, 1993 discusses his decision to endorse Senate Resolution 35, which condemned the ethnic cleansing and rapes in Bosnia-Herzegovina.

Knowing of your interest regarding Senate Resolution 35 concerning systematic rape in the former Yugoslavia, I am providing you with a legislative update. This past November I traveled to Croatia and Bosnia. What is going on there is virtual genocide. And among the most heinous of the war crimes being committed daily is the rape of Bosnian women. A report by the European Community investigative team estimates over 20,000 women have been raped since the violence began in the former Yugoslavia. [paragraph] Let us be clear. This is a moral outrage, but it is more. It is a crime. In order to emphasize how strongly I feel about this shocking conduct, I joined my colleagues as a co-sponsor of Senate Resolution 35, a condemnation of the Serbian aggression and systematic rape in particular. Be assured that I will continue to speak out against these grave violations of international law and to encourage the Administration to take strong action to bring these crimes to an end (Moynihan 1993).

In addition to drawing awareness and attention to the issue of conflict rape, the advocacy campaign also directly shaped the ways in which the burgeoning tribunal addressed sexual violence. In 1993, an international call for "Gender Justice," written by the International Women's Human Rights Clinic of CUNY Law School, was sent to the Secretary-General of the UN, the UN Commission of Experts, the UN Security Council, and the UN Office of Legal Counsel (Green et al. 1994). This memorandum argued that the creation of the ICTY presented an opportunity to go beyond recognizing sexual violence as a violation of international criminal law and to successfully prosecute rape and sexual violence.

In 1993—after the ICTY was established—women’s and human rights groups also lobbied the tribunal to adopt rules and procedures that would enable successful rape prosecutions. An open process of rule making allowed states and NGOs to help formulate the rules and procedures of the ICTY (Copelon 2000). A subgroup of the Task Force for Accountability for War Crimes in the Balkans led by the International Women’s Human Rights Law Clinic of CUNY Law School and staff and students at the Harvard Law School Human Rights Program drafted a submission of rules and procedures to the ICTY relating to crimes of sexual assault. The rules that were adopted included those pertaining to the protection of victims and witnesses, specifically the creation of a victim and witnesses unit and the rules on evidence in cases of sexual assault (Green et al. 1994). More specifically, the progressive Rule 96 of the ICTY regarding evidentiary rules for crimes of sexual violence appears derived from the proposed rules—four of the five proposed rules are included in Rule 96 (Green et al. 1994; ICTY 2010). Feminist groups also organized around the election of the two female nominees, Gabrielle Kirk McDonald and Elizabeth Odio-Benito, for tribunal judgeships—both nominees were subsequently approved (Green et al. 1994).

Once the tribunal began operation, women’s and human rights groups engaged in letter writing campaigns, media work, protests, and conferences to pressure the ICTY to address sexual crimes (Barkan 2002; Green et al. 1994). In an assessment written by Richard Goldstone, the first chief prosecutor of the ICTY and the ICTR, he writes of the immediate pressure placed upon him by advocacy groups to address the crimes of rape and sexual violence.

From my very first week in office, from the middle of August, 1994 onwards, I began to be besieged with petitions and letters, mainly from women’s groups, but also from human rights groups generally, from many European countries, the United States and Canada, and also from non-governmental organizations in the former Yugoslavia. Letters and petitions expressing concern and begging for attention, adequate attention, to be given to gender related crimes, especially systematic rape as a war crime. Certainly if any campaign worked, this one worked in my case, because it definitely made me much more sensitive, concerned and determined that something should be done about the proper investigation of allegations of mass rape in the former Yugoslavia and Rwanda (Goldstone 1996, 234).

Sustained pressure on the ICTY by women’s and human rights organizations also included more direct intervention in tribunal cases through the submission of *amicus curiae* or “friend of the court” briefs. These briefs are filed with the court but can be written by public, nonaffiliated entities and can act as a form of public pressure to address rape and sexual crimes. The first two *amicus* briefs were submitted by the Blaustein Institute, the Women’s International Human Rights Clinic, and the Harvard University Human Rights Program in response to the first papers that chief prosecutor Goldstone filed with the ICTY, which downplayed the rape of female prisoners in an Omarska prison and focused more on beatings of male prisoners (Barkan 2002; Copelon 2000). In response to the *amicus* briefs and with the support of Judge Odio-Benito, a motion that addressed the rapes of female prisoners was granted (Copelon 2000). Two *amicus* briefs were also filed by women’s and human

rights groups in the *Tadic* case to support witness protection measures and two more were filed in the *Furundzija* case to counter the defense lawyer's claim that the rape victim's condition of post-traumatic stress disorder limited the credibility of her testimony (Copelon 2000).

Transnational Advocacy and the ICTR

Transnational advocacy networks pressuring for rape prosecution did not mobilize around the ICTR to the extent that they mobilized around the ICTY. Transnational advocacy networks did not actively pressure the ICTR until 2 years after the establishment of the tribunal. This is not to say that transnational advocacy was absent, but it was slow to mobilize and never generated the broad-base mobilization that surrounded the issue of rape in Bosnia. Because of this, the campaign was never able to generate the sustained advocacy to force the ICTR to produce the political will to shift the default strategy from marginalization and devaluation of sexual violence prosecution.

Initially, human rights groups assumed that the gains made within the ICTY about sexual violence would travel to the ICTR, especially since the two tribunals shared the same prosecutor.

So you had the prosecutor for the ICTY also being the prosecutor for the ICTR, Richard Goldstone. You had him making very strong statements about the fact that rape could constitute a war crime and that they were committed to doing so. So, it was a very exciting time from the perspective of gender justice... The Yugoslav tribunal was really the first time that mass rape and crimes against women were going to be recognized as international crimes. And we just assumed that these gains would carry over to the Rwanda tribunal. [W]e started watching the Rwanda tribunal and it was becoming clear that they were not paying attention to this issue, and that it was not being included in the investigation work that was underway.¹¹

In 1996, following the recognition that the attention and prioritization of sexual assault at the ICTY would not carry over to the ICTR, transnational advocacy networks engaged in two ways. First, the Coalition for Women's Human Rights in Conflict Situations, a group of sixty organizations, organically formed following an unsuccessful letter writing campaign of disparate groups to pressure the ICTR to enact gender-sensitive policies (Coalition for Women's Human Rights in Conflict Situations 2009). In addition, Human Rights Watch sent a team of individuals to Rwanda to obtain documentation regarding systematic sexual assault during the genocide since little information existed at that time. This documentation of sexual assault was subsequently transmitted to the ICTR, but did not result in any policy changes at the tribunal (Nowrojee 1996).

In 1997, external advocacy and internal advocacy within the tribunal converged to prompt an amendment to the *Akayesu* indictment to include charges of sexual assault. In terms of internal advocacy, Judge Pillay—the only female judge hearing

¹¹ Anonymous leader within women's human rights movement, Interview with author, September 12, 2008.

the case—asked that the trial be postponed for the prosecutor’s office to investigate rape after inquiring about rape from a witness during the trial (Copelon 2000; Buss 2002). Following this questioning by Judge Pillay, external advocacy led by the International Centre for Human Rights and Democratic Development submitted an amicus brief to the ICTR pressuring the tribunal to amend the indictment of Jean-Paul Akayesu to include rape and to ensure the prosecution of sexual violence (International Centre for Human Rights and Democratic Development 1997). In response to this advocacy, a rape charge was added to the indictment of Akayesu, and the evidence of sexual violence and rape proved some of the strongest in helping convict Akayesu of genocide, including rape as genocide (Copelon 2000).

Following the amicus brief in the *Akayesu* case, transnational advocacy groups were never again able to recreate the convergence of advocacy and political will that would lead to comprehensive changes in addressing sexual violence at the ICTR. Yet, transnational advocacy coalitions continued to mobilize vis-à-vis the ICTR on the issue of sexual violence. In 2001, another amicus brief was submitted by the Coalition for Women’s Human Rights in Armed Conflict Situations in the *Cyangugu* case to amend the indictment to include rape (Coalition for Women's Human Rights in Conflict Situations 2010). This case represented a very similar case to the *Akayesu* case in terms of having the support of women’s groups and witnesses willing to testify to sexual violence.¹² Chief prosecutor Carla del Ponte filed a response to the amicus brief asking the court to deny it, which it subsequently did. A leader within the advocacy movement stated in response to the lack of political will to prosecute sexual violence after the *Akayesu* case:

[M]aybe there wasn’t a perceived need on the side of the tribunal to do this again... because they could have done it in the case of Cyangugu... Akayesu was the first one... maybe one sexual violence conviction like the Akayesu case is considered to be sufficient and so there’s no need to go and seek others.¹³

Transnational Advocacy Mobilization: The Media, Geopolitical Location, and Local Movements

If transnational advocacy mobilization has the potential to spark the will to adopt and implement laws relating to crimes of sexual violence, then understanding the derivative causes of differing levels of transnational mobilization vis-à-vis each Tribunal can further explain the divergence in rape prosecutions. Building off existing literature, this article argues that three antecedent variables create the conditions for transnational advocacy: media and advocacy groups engaging in information politics, the framing of the issue of rape to utilize or overcome geopolitical location, and interest alignment coupled with connections with local organizations and movements.

¹² Anonymous leader within women’s human rights movement, Interview with author, September 12, 2008.

¹³ Anonymous 2 leader within women’s human rights movement, Interview with author, September 12, 2008.

The Media and Informational Politics

For most movements—including transnational advocacy campaigns—mobilization hinges on their reaching out to preexisting and potential supporters through public discourse (Gamson and Wolfsfeld 1993). The media represents an integral part of the creation of public discourse. The relationship between the media and movements is not solely unidirectional, where the media acts only as a conduit for information dissemination, but it can also be two-way (Ron et al. 2005). Informational politics, or these exchanges and interpretations of information, is integral for mobilization of transnational advocacy campaigns by providing facts and testimony that denote blame and symbolically frame the issue (Keck and Sikkink 1998). The media's role in information politics contributes to the crafting of the narrative of the problem, including the facts on the ground, who is to blame, and what should be done about it. When successful, the widespread dissemination of this narrative—through the codirectional channel of the media and advocacy organizations—creates awareness and stimulates debate, mobilization, and action.

In the case of Bosnia, the media actively engaged in informational politics by gathering and disseminating information and constructing a narrative about the widespread rapes and rape camps. The initial media reports on rape in Bosnia (in the summer of 1992) were largely ignored, but the continuous reports eventually sparked further governmental investigations, public debate, and mobilization by women's and human rights groups on the issue (Stanley 1999). In the 18-month period between April 1992 (when the mass rapes began) and September 1993 (6 months after the creation of the ICTY), 139 media stories ran in major world publications with "rape" in Bosnia in the headline of the story.¹⁴ The media reports ran continuously from July 1992 through the entire 18-month period covered in the analysis and ranged in types of stories from editorials about intervention to stop the rapes, an op-ed piece by Geraldine Ferraro, harrowing testimonials by survivors of rape camps, discussions about rape as a weapon of war, Vatican pronouncements about the use of birth control for nuns living in the former Yugoslavia, and international adoption policies for the children born of rape. During this time, *Ms. Magazine* featured the testimonials of three Bosnian rape survivors, which were later reprinted in the op-ed section of the *New York Times* and were mirrored in many other publications including *Newsweek* and the *Philadelphia Inquirer Magazine*. Public documents released by Amnesty International about Bosnia during 1993–1994 parallel the media's coverage of the Bosnian rapes. During this time, Amnesty International released 20 public documents about Bosnia—including country dossiers, newsletter articles, press releases, and reports—of which eight mentioned rape and four solely focused on rape (Amnesty International 1993b). Viewed in percentage terms, 60% of all public documents released by Amnesty International about Bosnia–Herzegovina during this time discussed the mass rapes. This mirrored relationship between Amnesty and the media speaks to the codirectionality and mutually reinforcing exchanges of information within the transnational advocacy

¹⁴ The source of this information is from LexisNexis and the classification of "Major World Publication" is taken directly from LexisNexis. See: http://www.lexisone.com/legalresearch/lnbcc/contentlistings/newspople_c.html for a comprehensive list of all publications included in this classification.

network. It also suggests an informational momentum that contributed to sustained awareness and subsequent demands for action and mobilization.

In contrast to the profusion of media attention to the rapes in Bosnia, only eight media stories with headlines of “rape” about the Rwandan genocide appeared in major world publications in the 18-month period between April 1994 (the beginning of the conflict) and September 1995 (11 months after the creation of the ICTR). All of these eight media stories discussed the widespread rapes during the genocide through the subject of the thousands of children born of rape. In addition, all stories were reported between February and August of 1995, which is about 9 months after the genocidal period and coincides with the birth of the children born of the rapes. During 1994–1995, Amnesty International’s public document releases also reflect the silence of the rapes during the Rwanda genocide. None of the 32 documents regarding Rwanda mention rape (Amnesty International 1994). The media attention about the widespread rapes in Rwanda was almost negligible, occurred markedly after the fact, and only through the discussion of children of rape, and thus never garnered the sustained momentum to create widespread awareness and the demand for action that pulsed through the media campaign about the rapes in Bosnia.

Geopolitical Location and Information Politics

The media not only draws attention to the conflict and disseminates information, but also interprets events and constructs narratives of the conflict, often drawing on existing frames or narratives. Frames generalize grievances into broader claims as well as construct shared identities (Tarrow 1998). Through utilization of frames, the conflict event derives meaning from the larger narrative it becomes embedded within (Gamson and Wolfsfeld 1993). These frames may be cocreated with transnational advocacy networks or transnational advocacy networks may work within frames created by the media because the frames resonate with political allies and facilitate mobilization (Carpenter 2005).

One frame that the rapes in Bosnia were embedded within is the larger analogy of the genocide in Bosnia to the Holocaust and the Nazi concentration camps. Out of the 139 media articles that discuss the rapes in Bosnia, 20 of them directly reference the Nazis, the Holocaust, or death camps. This analogy not only pertains to the mass killings in Bosnia but also extends to the rape camps and their similarity to the Nazi “joy division” of female concentration-camp inmates where mass rapes occurred (Branson 1993). In another newspaper article, the efforts of feminist advocates in the former Yugoslavia to stop the genocide and widespread rapes are likened to courageous anti-Nazi resistors who fought against the destructive aspects of unchecked nationalism (Landsberg 1993).

While the analogy between the Holocaust and the genocide in Bosnia may be apt in many ways, using this analogy, or framing the conflict as akin to the Holocaust, attaches meaning to the conflict in Bosnia beyond merely reporting information. When embedded within this Holocaust narrative, the Bosnian conflict evokes the guilt and historical memory of the horrific consequences of delayed world action and the promises of “never again” occurring again *in Europe*. In essence, using this analogy frames the killings and mass rapes in Bosnia as an issue that demands and requires world attention and action.

In examining how the Holocaust analogy frame was successfully utilized and perpetuated in the media surrounding the Bosnian conflict, the geopolitical location of Bosnia cannot be overlooked. Informational politics does not emerge evenly across issues or within issues but takes place within value-laden contexts of national interest, national historical relationships, and implicit and explicit racism. While it is important to recognize the positive aspects of informational politics on mobilization described by Keck and Sikkink (1998, 1999), geopolitical factors, and values can underlie the lopsided attention and mobilization given to similar causes. In the most extreme depiction of this lopsidedness, Bob (2002) likens global civil society to a dog-eat-dog, Darwinian marketplace, where groups fight for attention, money, and sympathy. In this competitive marketplace, many groups are overlooked and never gain access to key media centers in order to garner the necessary attention to muster mobilization and action Bob (2002).

In the case of the drastically uneven nature of the media attention and subsequent advocacy mobilization around the issue of conflict rape in Bosnia and Rwanda, global media access was not the problem. Rather, the conflict in Rwanda was not in the sphere of interest of the mainstream media. During the height of the genocide, information was gathered and disseminated about the killings and rapes by advocacy groups such as Human Rights Watch, UN peacekeepers, and newspaper journalists (Power 2003). The lack of prioritization of the conflict in Rwanda by the media reflected the larger apathy by the world community and the U.S. government to prioritize Rwanda as part of the national interest. In the spring of 1994, an officer of the U.S. Defense Department's African Affairs Bureau was told by his boss, "Look, if something happens in Rwanda-Burundi, we don't care. Take it off the list. U.S. national interest is not involved and we can't put all these silly humanitarian issues on lists... Just make it go away" (Power 2003, 342). In addition to viewing Rwanda as outside of the national interest, implicit racism fueled by deep prejudices and misconceptions about long-standing bloody ethnic wars in Africa, also altered people's values and expectations about the comparative worth of human life and suffering. In response to the shooting down of Rwandan President Habyarimana's plane that first triggered the genocide, Canadian Major General Romeo Dallaire, the commander of the United Nations peacekeeping forces in Rwanda stated:

Burundi had just blown up, and 50,000 had been killed in a few days... So when the plane went down, we actually expected around 50,000 plus dead. Can you imagine having that expectation in Europe? Racism slips in so it changes our expectations (Power 2003, 350).

Local Network Connections

While geopolitical location and the media affect the levels of transnational advocacy mobilization, the relationship and interest alignment of local women's and human rights groups with transnational advocacy coalitions has the greatest influence upon levels of mobilization. Keck and Sikkink (1998) argue that strong connections with local movements are necessary for successful transnational mobilization. In addition to prior connections with local movements, interest alignment between local and transnational groups on the prioritization and definition of human rights abuses must

also occur. Hertel (2006) argues that discord between the priorities of transnational advocacy coalitions and local movements can result in blocked campaigns and reprioritization of rights issues, particularly the inclusion of economic and social rights. In terms of the cases studied in this article, issue alignment means that local groups and transnational groups are in agreement that sexual violence is a priority and should be addressed through the transitional justice mechanism of the international criminal tribunal.

In the former Yugoslavia, relationships between local movements and transnational organizations were strong and had long established ties with women's and feminist movements in Europe (Benderly 1997). In 1991, local and transnational feminist and peace organizations mobilized against the Yugoslavian conflict and the ethnic cleansing by staging marches, antiwar protests, as well as providing social services to affected women through shelters and hotlines (Benderly 1997). In addition, local women's groups quickly embraced the international criminal tribunal; during the conflict, these groups actively documented abuses and gathered evidence to be used at the ICTY (Benderly 1997). Connections between Yugoslav feminists, NGO workers, and prominent U.S. feminists such as feminist attorney Catherine MacKinnon also helped establish notable relationships within the transnational advocacy network that sparked increased attention to a broad base of U.S. feminists. In October 1992, MacKinnon recounted receiving information from an American researcher of Croatian and Bosnian descent working with refugees about the scale of the ethnic cleansing and the widespread rapes (MacKinnon 1994). Four women's groups in Bosnia and Croatia subsequently retained MacKinnon as their counsel and filed a civil lawsuit in U.S. District Court against Bosnian national Radovan Karadzic under the Alien Tort Claims Act (Benderly 1997; Posner 1996). The lawsuit was successful, resulting in an award of \$745 million in damages to the plaintiffs for genocide, war crimes, and violations of international law (Posner 1996).

In Rwanda, local women's organizations did not have the same depth of connections with transnational organizations as the Yugoslav groups and did not have issue alignment over the prioritization of sexual violence justice through the mechanism of the international criminal tribunal. Rape was not an issue that Rwandan women's groups initially mobilized around. After the genocide, AVEGA, the largest women's organization in Rwanda, mobilized around the issue of widowhood and chose not to focus on sexual violence (Rombouts 2006). In 1996, when women's and human rights advocacy organizations began to document the sexual violence that occurred during the genocide, women's groups were not interested in the issue of rape, but in social and economic issues such as healthcare and reparations.

[T]he Rwandan women's groups made it very clear that they were absolutely not interested in the issue of international justice for rape victims. And their rationale for this was that they were basically... trying to rebuild their lives. There were so many other pressing priorities that they wanted dealt with. And so they said, "...these women are living in poverty, they have no houses, they've got children of their own and orphans they're trying to put through school. They are in dire need... they have lost their husbands... some of them

are unable to support themselves. If you want to do something useful... give them things that they can use... housing, schooling, healthcare.”¹⁵

At this time, the major human rights organizations were bifurcated between civil and political rights and economic and social rights.¹⁶ Therefore, transnational advocacy groups had to reshape their prioritization of issues and listen to the needs of Rwandan women, which meant shifting their focus away from retributive justice.

While most Rwandan women’s organizations did not mobilize around the issue of rape, not all groups dismissed the issue of criminal justice for sexual violence. Connections with one social worker from Taba named Godelieve Mukasarasi proved instrumental in the successful prosecution of rape in the *Akayesu* case (Neuffer 2002). In 1996, when transnational advocacy groups first traveled to Rwanda to document the genocidal rapes and most women’s groups did not want to discuss rape, Godelieve aided the investigators by linking them to rape survivors within her community of Taba.¹⁷ These interviews and documentation of rape in Taba later constituted the evidence of rape committed in Taba used in the amicus brief submitted in the *Akayesu* case (International Centre for Human Rights and Democratic Development 1997). Once the *Akayesu* indictment was amended to include rape charges, Godelieve served as a liaison between the ICTR investigators and rape survivors in Taba, who later testified at the *Akayesu* trial and provided some of the strongest evidence of his complicity in genocide.¹⁸

Conclusion

When international criminal judicial outcomes are examined, oftentimes the focus centers on the available instruments of law or specific characteristics of the tribunal or court. This article suggests that political will, and the processes by which it is generated, are also important aspects of the story of legal implementation of judicial rules. While political will is necessary for *all* legal implementation, it is particularly crucial for new legal rules and/or legal rules that have historically been absent from prosecution, such as the crime of wartime rape. In explaining the variation in rape prosecution at the ICTY and the ICTR, these case studies highlight how crucial transnational advocacy was to generating the political will to prosecute. Nevertheless, the cases of the ICTY and the ICTR also suggest that transnational advocacy is no guarantee of successful outcomes and that mobilization is contextually constrained. Geopolitical location of the conflict, media attention and framing, and connections with local movements all condition the mobilization and influence of transnational activist groups.

¹⁵ Anonymous leader within women’s human rights movement, Interview with author, September 12, 2008.

¹⁶ Anonymous leader within women’s human rights movement, Interview with author, September 12, 2008.

¹⁷ Anonymous leader within women’s human rights movement, Interview with author, September 12, 2008.

¹⁸ Anonymous leader within women’s human rights movement, Interview with author, September 12, 2008.

More research should be conducted on the politics behind legal implementation by examining other factors that condition the generation of political will, by expanding the focus on the effects of transnational advocacy to other areas beyond crimes of sexual violence, and by producing more precise measures. Based upon the large involvement of transnational advocacy groups both in the creation and increasingly in the function of the ICC (Spees 2003; Broomhall 2003; Schiff 2008), it is virtually certain that advocacy groups will continue to mobilize around international criminal judicial bodies. Understanding the dynamics of their mobilization and their effects on international criminal tribunals and courts is crucial to understanding prosecutorial outcomes and patterns of legal norm change.

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References

- Amnesty International. 1993a. "Bosnia-Herzegovina: Rape and Sexual Abuse by Armed Forces." Available at: <http://www.amnesty.org/en/library/info/EUR63/001/1993> [Accessed July 16, 2009].
- Amnesty International. 1993b. "Country Dossiers for Bosnia-Herzegovina."
- Amnesty International. 1994. "Country Dossiers for Rwanda."
- Arbour, Louise 2003. "Speech at the Stefan A. Riesenfeld Award Lecture-Crimes Against Women under International Law." *Berkeley J. of Int. Law* 21:196
- Askin, Kelly Dawn. 1997. *War Crimes Against Women*. Martinus Nijhoff Publishers.
- Askin, Kelly D. 1999. "Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status." *The Am. J. of Int. Law* 93(1): 97–123.
- Balthazar, Sita. 2006. "Gender Crimes and the International Criminal Tribunals." *Gonzaga J. of Int. Law* 10(1): 43–48.
- Barkan, Joanne. 2002. "As Old as War Itself: Rape in Foča." *Dissent Magazine* Winter. Available at: <http://dissentmagazine.org/article/?article=633> [Accessed July 18, 2009].
- Barria, Lilian, and Steven Roper. 2005. "How Effective Are International Criminal Tribunals? An analysis of the ICTY and the ICTR." *The Int. J. of Hum. Rights* 9(3): 349–368.
- Benderly, Jill. 1997. "Rape, Feminism, and Nationalism in the War in Yugoslav Successor States." In *Feminist Nationalism*, ed. Lois A. West. Routledge, p. 59–74.
- Bob, Clifford. 2002. "Merchants of Morality." *Foreign Policy* (129): 36–45.
- Branson, Louise. 1993. "A Generation of Children of Hate." *Toronto Star*, January 29.
- Breton-Le Goff G (2002) *Analysis of Trends in Sexual Violence Prosecutions in Indictments by the International Criminal Tribunal for Rwanda (ICTR)*. Montreal: NGO Coalition for Women's Human Rights in Conflict Situations. Available at: http://www.womensrightscoalition.org/site/advocacyDossiers/rwanda/rapeVictimssDeniedJustice/analysisoftrends_en.php [Accessed July 18, 2009]
- Broomhall, Bruce. 2003. *International Justice and the International Criminal Court*. Oxford University Press.
- Brownmiller, Susan. 1975. *Against Our Will*. Fawcett Columbine.
- Bunch, Charlotte. 1990. "Women's Rights as Human Rights: Toward a Re-Vision of Human Rights." *Hum. Rights Q.* 12: 486.
- Buss, Doris. 1998. "Women at the Borders: Rape and Nationalism in International Law." *Feminist Leg. Studies* 6: 171–203.
- Buss, Doris. 2002. "Prosecuting Mass Rape: Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic." *Feminist Leg. Stud.* 10(1): 91–99.

- Campbell, Kirsten. 2007. "The Gender of Transitional Justice: Law, Sexual Violence and the International Criminal Tribunal for the Former Yugoslavia." *Int. J. of Transit. Justice* 1(3): 411–432.
- Carpenter, R. Charli. 2000. "Surfacing Children: Limitations of Genocidal Rape Discourse." *Hum. Rights Q.* 22(2): 428–477.
- Carpenter, R. Charli. 2005. "'Women, Children and Other Vulnerable Groups': Gender, Strategic Frames and the Protection of Civilians as a Transnational Issue." *Int. Stud. Q.* 49(2): 295–334.
- Chang, Iris. 1997. *The Rape of Nanking*. Public Affairs.
- Chinkin, Christine. 1994. "Rape and Sexual Abuse of Women in International Law." *Eur. J. of Int. Law* 5: 326–41.
- Coalition for Women's Human Rights in Conflict Situations. 2002. "Letter to Prosecutor Carla Del Ponte." Available at: http://www.womensrightscoalition.org/site/advocacyDossiers/rwanda/rapeVictimssDeniedJustice/lettertoprosecutor_en.php [Accessed January 19, 2010].
- Coalition for Women's Human Rights in Conflict Situations. "About the Coalition - Background." Available at: http://www.womensrightscoalition.org/site/about/background_en.php [Accessed July 20, 2009].
- Coalition for Women's Human Rights in Conflict Situations. "Failure to Charge Sexual Violence in the Cyanguu Case." Available at: http://www.womensrightscoalition.org/site/advocacyDossiers/rwanda/index_en.php - 3 [Accessed January 19, 2010].
- Copelon, Rhonda. 1994. "Surfacing Gender: Reconceptualizing Crimes Against Women in Time of War." In eds. Alexandra Stiglmayer, Marion Faber, and Roy Gutman. University of Nebraska Press, p. 197–218.
- Copelon, Rhonda. 2000. "Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law." *McGill Law J.* 46: 217.
- de Brouwer, Anne-Marie. 2005. *Supranational Criminal Prosecution of Sexual Violence*. Intersentia.
- Engle, Karen. 2005. "Feminism and Its (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovina." *The Am. J. of Int. Law* 99(4): 778–816.
- Farwell, Nancy. 2004. "War Rape: New Conceptualizations and Responses." *Affilia* 19(4): 389–403.
- Gamson, William A., and Gadi Wolfsfeld. 1993. "Movements and Media as Interacting Systems." *Ann. of the Am. Academy of Political and Soc. Science* 528: 114–125.
- Goldstone, Richard J. 2001. "Role of the United Nations in the Prosecution of International War Criminals, The." *Washington University J. of Law & Policy* 5: 119.
- Goldstone, Richard. 1996. "United Nations' War Crimes Tribunals: An Assessment." *Connecticut J. of Int. Law* 12.
- Green, Jennifer, et al. 1994. "Affecting the Rules for the Prosecution of Rape and Other Gender-Based Violence before the International Criminal Tribunal for the Former Yugoslavia: A Feminist Proposal and Critique." *Hastings Women's Law J.* 5: 171–242.
- Hertel, Shareen. 2006. *Unexpected Power*. Cornell University Press.
- ICTR. 1994. "ICTR - Statute of the Tribunal." Available at: <http://www.un.org/ict/statute.html> [Accessed July 18, 2009].
- ICTY. "Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia." Available at: <http://www.icty.org/sid/136>. [Accessed January 19, 2010].
- International Centre for Human Rights and Democratic Development. 1997. "Amicus Brief Submitted to the International Criminal Tribunal For Rwanda; RE: The Prosecutor of the Tribunal against Jean-Paul Akayesu." Available at: <http://www.dd-rd.ca/site/publications/index.php?lang=en&subsection=catalogue&id=1315> [Accessed July 20, 2009].
- Keck, Margaret E., and Kathryn Sikkink. 1998. *Activists Beyond Borders*. Cornell University Press.
- Keck, Margaret E., and Kathryn Sikkink. 1999. "Transnational advocacy networks in international and regional politics." *Int. Soc. Science J.* 51(159): 89–101.
- Landsberg, Michelle. 1993. "Feminist Fight to End Genocide, Mass Rape." *Toronto Star*, February 12.
- Lewin, Tamar. 1993. "The Balkans Rapes: A Legal Test for the Outraged." *New York Times*, January 15.
- MacKinnon, Catharine A. 1994. "Rape, Genocide, and Women's Human Rights." In *Mass Rape*, ed. Alexandra Stiglmayer. University of Nebraska Press, p. 183–196.
- MADRE. 1993. "MADRE Mother Courage II." New York Public Library Inventory of the Women's Action Coalition Records 1992–7.
- MADRE. 1997. "Demanding Justice: Rape and Reconciliation in Rwanda." *MADRE Newsletter*. Available at: <http://www.madre.org/articles/afi/rapereconciliation.html> [Accessed June 15, 2008].
- Ministry of Foreign Affairs Copenhagen. 1993. "Warburton Mission II Report: EC Investigative Mission Into the Treatment of Muslim Women in the Former Yugoslavia: Report to EC Foreign Ministers." Available at: <http://www.womenaid.org/press/info/humanrights/warburtonfull.htm> [Accessed July 16, 2009].

- Moon, Terry. 2008. "Congo: women's obliteration." *News & Letters*. Available at: http://www.newsandletters.org/Issues/2008/Feb-March/WAR_Feb-Mar_08.htm [Accessed July 18, 2009].
- Moynihan, Sen. Daniel P. 1993. "Letter from Sen. Daniel P. Moynihan to Ms. Janet Wright." New York Public Library Inventory of the Women's Action Coalition Records 1992–7.
- Nesiah, Vasuki. 2006. "Discussion Lines on Gender and Transitional Justice: An Introductory Essay Reflecting on the ICTJ Bellagio Workshop on Gender and Transitional Justice." *Columbia J. of Gen. and Law* 15: 799.
- Neuffer, Elizabeth. 1996. "Mismanagement and Red Tape Impede Tribunal." *The Boston Globe*, December 11.
- Neuffer, Elizabeth. 2002. *The Key To My Neighbor's House*. Macmillan.
- Nowrojee, Binaifer. 1996. "Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath." Available at: <http://www.hrw.org/en/reports/1996/09/24/shattered-lives> [Accessed July 16, 2009].
- Nowrojee, Binaifer. 2005. *Your Justice is Too Slow": Will the ICTR Fail Rwanda's Rape Victims?* UN Research Institute for Social Development. Available at: <http://www.unrisd.org/80256B3C005BCCF9/%28httpPublications%29/56FE32D5C0F6DCE9C125710F0045D89F?OpenDocument> [Accessed July 18, 2009].
- Posner, Theodore R. 1996. "Kadic v. Karadzic. 70 F.3d 232." *The Am. J. of Int. Law* 90(4): 658–663.
- Power, Samantha. 2003. *A Problem from Hell*. HarperCollins.
- Prosecutor v. Akayesu*. 1996. ICTR-96-4-1.
- Prosecutor v. Bisengimana*. 2000. ICTR-00-60.
- Prosecutor v. Kajelijeli*. 1998. ICTR-98-44A-T.
- Prosecutor v. Kunarac, Kovac, & Vukovic*. 1996. ICTY T-96-23 and 23/2.
- Rombouts, Heidy. 2006. "Women and Reparations in Rwanda: A Long Path to Travel." In *What Happened to the Women? Gender and Reparations for Human Rights Violations*, ed. Ruth Rubio-Marín. SSRN, p. 194–245.
- Ron, James, Howard Ramos, and Kathleen Rodgers. 2005. "Transnational Information Politics: NGO Human Rights Reporting." *Int. Stud. Q.* 49(3): 557–588.
- Schiff, Benjamin N. 2008. *Building the International Criminal Court*. Cambridge University Press.
- Spees, Pam. 2003. "Women's Advocacy in the Creation of the International Criminal Court: Changing the Landscapes of Justice and Power." *Signs* 28(4): 1233–1254.
- Stanley, Penny. 1999. "Reporting of Mass Rape in the Balkans: Plus ça change, plus c'est la même chose? From Bosnia to Kosovo." *Civil Wars* 2(2): 74–110.
- Stiglmeier, Alexandra, ed. 1994. *Mass Rape*. University of Nebraska Press.
- Tarrow, Sidney G. 1998. *Power in Movement*. Cambridge University Press.
- Thompson, Karen Brown. 2002. "Women's Rights as Human Rights." In *Restructuring World Politics*, eds. Sanjeev Khagram, James V. Riker, and Kathryn Sikkink. U of Minnesota Press, p. 96–122.
- UN Commission on Human Rights. 1996. *Report on the Situation of Human Rights in Rwanda Submitted by Mr. Rene Degni-Segui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/1 of 25 May 1994*. Available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G96/104/66/PDF/G9610466.pdf?OpenElement> [Accessed September 1, 2009].
- UN Secretary-General. 1993. *Statute of the Tribunal: Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993)*. Available at: <http://www.un.org/icty/legaldoc-e/index.htm> [Accessed July 18, 2009].
- UN Office of Internal Oversight Services. 1997. *Report of the Office of Internal Oversight Services on the Audit and Investigation of the International Criminal Tribunal for Rwanda*. Available at: <http://daccessdds.un.org/doc/UNDOC/GEN/N97/035/13/PDF/N9703513.pdf?OpenElement> [Accessed September 10, 2009].
- UN Commission on Human Rights. 1998. *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Ms. Rahika Coomaraswamy: Addendum to Report of the mission to Rwanda on the Issue of Violence against Women in Situations of Armed Conflict*. UN Commission on Human Rights. Available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G98/103/85/PDF/G9810385.pdf?OpenElement> [Accessed July 18, 2009].
- Women's Action Coalition. 1993. "July 1993 Fact Sheet." New York Public Library Inventory of the Women's Action Coalition Records 1992–7.
- Women's Action Coalition. "Women in Black." New York Public Library Inventory of the Women's Action Coalition Records 1992–7.