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Panel 1: War Crimes and Other Human Rights Abuses in the Former Yugoslavia

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PANEL I: WAR CRIMES AND OTHER HUMAN RIGHTS ABUSES IN THE FORMER YUGOSLAVIA*

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I. INTRODUCTION

MR. FARRELL: This is a time of great confusion for people in the United States and for people across the world. That confusion is only exacerbated by situations such as the ones that have been allowed to develop in the former Yugoslavia, Rwanda, Haiti, and a number of other areas of concern to those involved in the human rights movement. It is an eye-opening experience to speak to people who have left the camps in the former Yugoslavia, those who have been in the prisons of El Salvador and to those from the refugee camps of Nicaragua, Chile, and Argentina, as well as the Middle East and Africa.

It is a particularly brutal situation in Bosnia and it is very difficult, even for the people themselves in the region, to articulate. There is a great sense amongst the community that this is not happening and that it cannot happen. The community which particularly felt this way were families that were intermarried. One couple, for example, where the man of the family was of Serbian ancestry, and the woman was a Muslim, were simply aghast at what was happening in their country and could not believe that it was going to continue. Yet this was well over a year and a half ago and has still continued.

Rather than get into a numbers game, it is important to realize that there are certain behaviors that are simply not acceptable. There has to be certain standards of behavior in the world. There must also be some recognized authority to go to in order to apply those standards and to see to it that people are not allowed to simply run amuck in violation of these agreed-upon international standards.

In a camp in Croatia, there were people who had come from the most horrific detention and concentration camps in the former Yugoslavia. One of the camp’s names was Prijedor. The group of people were embarrassed and in a kind of shock from what they have suffered, which made it difficult for them to speak. Among the crimes against their persons were the rapes, the brutality, and the murders. One particular image that is very haunting is of a man who describes being teth-
ered along with a group of other men in a circle by a wire through his tongue and the tongues of each of the men in the circle. They were held together in this particularly painful and excruciatingly dehumanizing manner. The image of a man who described this situation, the humiliation and the embarrassment will obviously never leave him. Also, there is something about a human being having been subjected to such degradation that leaves one suffering with a number of things, not only memories of pain and humiliation, but also the question of: "Why did I survive?", as opposed to which that happened to so many of my colleagues.

In Los Angeles, there was a panel put together by a number of different groups, where representatives of different organizations and people who had experience in the region spoke. The public was also invited to this very emotional evening. These discussions were very volatile. There were representatives of the Serbian-Americans, Croatian-Americans and the Bosnian or Muslim-Americans. All of whom, at various times during the program, were standing, shouting and screaming at each other. The tensions rose to a point where it became absolutely horrific. One particular statement or a recalling of a statement was made by a representative of the United Nations. The representative was a doctor, a woman who had treated rape victims, particularly Bosnian Muslim rape victims. The topic dealt with how they were to deal with the issue of their pregnancies that resulted from the rapes and the children that were to issue from those pregnancies, if they chose to have them. The doctor said she would ask the pregnant lady, "What is your intention? Will the children be born? If they are born, will they be adopted out? How does one deal with this?" The woman's response was, "No. We intend to bear them and raise them and teach them to find the man who sired them and kill him."

A significant number of the people in the audience roared in applause, in approval. The ongoing cycle of horror and violence that we, as a human population, are subject to is unbelievable, especially when these kinds of ugly, inhuman, unacceptable criminal behaviors are allowed to continue and are not being addressed. It seems to be the job of the international community, the civilized international community, to meet the needs of these people. Thus, there would not be this need and desire to carry on this cycle of violence and to revisit again and again and again the other victims the pain that has been given them.

The war crimes in the former Yugoslavia are a continuing demonstration of the failure of the international community. The fact that the situation in the former Yugoslavia has been allowed to continue unad-
dressed in any significant way is a dismal failure, which seems will shames us now and will shame us into the future.

An encouraging development is the appointment of Judge Goldstone of South Africa to be the head of the International War Crimes Tribunal. Finally after a year of negotiations, pressure and counter-pressure on the part of the community that is making up this tribunal, there have been no charges brought, although a tremendous amount of evidence has been amassed. It can only be hoped that in the near future the Tribunal will begin to do its work.

Another recent development with regard to the region is the resolution of what they call the “contact group” to negotiate an end to the war in Bosnia-Herzegovina. Again, the political issues, charges and counter-charges, which are certainly relevant to the discussions, have resulted in the community not responding in a meaningful way to the problems, has finally come to a place of resolution, so that the contact group has drawn up a form of a document which they are hoping will result in the end of the hostilities and provides some basis for resolution of the problem.

A letter dated July 7, 1994, to President Clinton from Human Rights Watch, signed by Ken Roth, the Executive Director of Human Rights Watch, which speaks of this negotiation, this resolution on the part of the contact group and speaks specifically to some of the failures in this resolution:

Dear President Clinton,

The contact that was formed to negotiate an end to the war in Bosnia-Herzegovina, of which the United States is part, has finalized this proposal for a peace settlement in Bosnia. The proposal, which aims to divide Bosnia between the Muslim-Croat federation and Bosnian-Serb forces will be presented to and is expected to be approved by the group of seven that is meeting in Naples on July 8th. Human Rights Watch believes that the contact group’s proposed peace plan fails to provide adequate protection for the human rights of minority groups and for the right of refugees and displaced persons to return to their homes, nor does the plan insure accountability for war crimes and crimes against humanity. Devastating as these deficiencies will be for the rights of Bosnians, they also undermine the prospects for a lasting peace. Before the United States approves the contact group’s proposed plan at the July 7th meeting, the Hu-

1. Letter from Ken Roth, Executive Director, Human Rights Watch, to President Bill Clinton (July 7, 1994) (on file with author).
man Rights Watch urges you to insure that the following guarantees are included:

One, protection of human rights. The contact group is basing its hopes for peace in Bosnia on the division of territory. However, the carving up of Bosnia will do nothing to end the murder, rape, and forced expulsion that continues throughout the country. Indeed the most savage and institutionalized ‘ethnic cleansing’ is now taking place in areas where there is no active fighting, particularly where Bosnian Serb forces have secured absolute military control and would maintain that control under the proposed territorial settlements. As far as is known, the proposed peace accord provides no human rights protection for civilians living in the areas dominated by the force of another ethnic group. We urge you to insure the addition of human rights guarantees for all residents of Bosnia, particularly those in Serbian controlled areas in Bosnia, the right of all residents to remain free from violence and persecution both in current war zones and in areas where no armed conflict is taking place must be guaranteed.

Two, the right to repatriation, particularly Serbian forces, but also Croatian forces and the predominantly Muslim forces in Bosnian government who have consolidated military control in parts of Bosnia by exterminating or expelling persons who do not share their nationality. The international community has largely ignored the fate of nearly two million displaced. This disregard for the right of refugees and the displaced to return to their homes has the effect of the legitimizing ‘ethnic cleansing.’ We urge you to rectify this unjust provision by guaranteeing the right of all Bosnians to return to their homes.

Three, accountability for war crimes. The contact group’s proposed peace plan reportedly includes a series of, ‘inducements and punishments’ designed to coerce Serbian, Croatian, and Bosnian forces to agree to the proposed territorial settlement. One proposed inducement for Serbian acquiescence to the plan and a possible penalty for Bosnia or Croatian rejection is a gradual lifting of U.N.-imposed economic and trade sanctions against Serbia and Montenegro. This proposal breaches your administration’s commitment publicly and repeatedly announced by U.N. Ambassador Madeleine Albright to oppose the lifting of sanctions against Serbia, unless the authorities of Serbian-held areas of Bosnia and Croatia and the governments of Serbia and Montenegro to cooperate with the International War Crimes Tribunal by freely permitting investigation of war crimes and crimes against humanity and by extraditing those indicted for these offenses. This commitment was historic and visionary because it recognized that unless those responsible for such
terrible abuses are held accountable for their crimes, the victims’ rage and desire for revenge will lead to a continuing cycle of violent retribution.

Because Serbian authorities continue to block international efforts to investigate alleged Serbian atrocities, such as the massacre in Vukovar where a U.N. Commission of Panel Experts were prevented by Serbian authorities from exhuming a mass grave. The U.S. government should oppose any loosening of sanctions against Serbia, because accountability for acts of genocide, war crimes, and crimes against humanity is important both for reasons of justice and for the consolidation of peace, A, should not be given to, nor should sanctions be lifted against states that refuse to cooperate fully with the tribunal.

Sincerely,

Ken Roth, Executive Director, Human Rights Watch.

The issues that the international community is crying out to see addressed seriously, and the issues that resulted in a catastrophic failure on the part of the international community, need to be addressed in a way that can resound throughout the world. People need a place to stand.

We must, as civilized people throughout the world, come to an understanding that there are certain behaviors that are simply not acceptable, that there are standards of law, behavior, practice that can be met, and must be met by the international community. Furthermore, it is our job, those of us who are concerned with this, to insist upon the exclusion of political consideration from this discussion and the inclusion of humanitarian considerations.

II. POLITICAL IDENTITY V. PERSONAL IDENTITY: EFFECTS OF RAPE AND GENDER-BASED VIOLENCE IN THE FORMER YUGOSLAVIA

Ms. Fletcher: A year later not much has changed. There is the cease-fire in effect. It was reported this morning that a prosecutor for the War Crimes Tribunal has been named, but the prospects for achieving a lasting peace in the region and justice for those who have suffered the ravages of war seem to be elusive as ever. The most significant development has been that the U.N. has created a War Crimes Tribunal for investigating and prosecuting the crimes in the region. It should begin, now that we have a prosecutor named, to start with the

2. Roth, supra note 1.
substance of the work of bringing those responsible for war crimes to answer for their behavior.

The following is a discussion about the effects of prosecution for rape and gender-based violence by the War Crimes Tribunal on women in the region and international feminism. The world came to learn of the violence directed against the women victims of the Serbian policy of “ethnic cleansing” through the courage of women survivors of such attacks who spoke about their experience. What we paid less attention to is the way in which the stories of these women have been told by advocates for women of former Yugoslavia as well as feminists abroad. It is the political implication of these narratives that should be explored.

The Bosnian Serb forces have been carrying out a policy in terms of all non-Serb citizens of areas to which they lay historic claim to as constituting a part of the greater Serbia. This has been referred to as “ethnic cleansing.” From evidence collected by the Commission of Experts, fact-finding missions carried out by the European community and international human rights groups, like Helsinki Watch and Amnesty International, rape has been an integral part and instrument of this policy. Bosnian Muslim women have been targeted for rape. They have been raped in their homes, in detention centers, captured and taken to rape camps. The rapes have been carried out in public and designed to humiliate the victims to instill fear in their communities and therefore cause people to leave the area for fear of suffering the same fate.

Now, Bosnian women are certainly not the only targets of “ethnic cleansing.” Serb forces have also discharged Muslims from their jobs and replaced them with Serbs. They have murdered men, women, and children, burned homes of non-Serbs, destroyed cultural and historical monuments, in an effort to displace the non-Serb population.

However, we need to pay attention that the form of attack on Bosnia’s women has been gender specific and has particular consequences for the women survivors of these attacks. Since women in the war in Bosnia have been raped because they are Muslim, because of their ethnicity, because they are Croatian or because they are Serbian and because they are women, there occurs an intersection of ethnicity and personal identity.

For many women who have been raped in the conflict, the experience was a painful, personal sense of loss: loss of integrity, dignity, and a sense of personal security. Most of the rape survivors have not come forward to speak about their ordeal. They wish to forget their rapes. Those who have spoken often speak of the shame and humilia-
tion and stigma that they experience by coming forward and speaking about their rapes.

As one Muslim woman who was impregnated as a result of multiple gang rapes in the Serbian camp recounted, "I was too ashamed to tell my father or my brother" of the fact of her pregnancy. "I used to be afraid and cry nearly all the time. These days, I do not feel anything. I will stay here"—this is in Sarajevo—"for the time being and try to forget. I hope no other woman has to go through anything like that. And I hope I will survive this war."

For other women, they understand that they were attacked because of their ethnicity and that assumes a primary importance. The experience of being raped has galvanized their sense of community as a Bosnian Muslim and strengthen their support for the Bosnian government. Some women who were raped later join the Bosnian army, in order to fight for the return of their homes. Thereby reclaiming their physical space and capturing part of themselves that have been destroyed by the rapes. One such woman who was raped in a camp in the Prijedor region speaks of her experience "They did it to humiliate us. They were showing us their power. They stuck their guns in our mouths. They tore our clothes. They showed the 'Turkish woman' they were superior." Then this woman was released from the camp and was able to go to the neighboring country of Slovenia. However, she decided to return to Bosnia to join the army. She explains, "I could not stand it. Even though I could have gotten citizenship and a job (in Slovenia), I had to go back and prove to them that we cannot be driven off so easily."

These examples illustrate two different kinds of narratives of those who have been raped and have told about their experiences. These narratives have been adopted and constructed into specific political claims by women's groups in the former Yugoslavia and abroad. The first woman who described her sense of wanting to forget, of her sense of linking her experience, hoping that other women would not experience the same thing, did not mention ethnicity in her personal experience of her rape. That will be called the personal narrative. That narrative has been transformed for the international community to recognize the ways in which all women are targets of violence because of their gender. This narrative of rape in the former Yugoslavia as a crime against women: Muslim, Croatian, and Serbian. By linking the individual experiences of rape survivors through the element of their gender and an effort to preserve a common identity as, "women of the former Yugoslavia." This narrative also serves to preserve the idea of a multi-
ethnic state and undermines the war propaganda that attempts to
demonize the other parties of the conflict and to exacerbate ethnic
hatred.

Other women's groups have adopted an ethnic narrative, which
locates the rapes of Muslim women as a tool in the Serb policy of
"ethnic cleansing." This has permitted the political narrator to draw
boundaries between Bosnian-Serb aggressors on the one hand and Mus-
lim victims on the other. This black-and-white picture of rape victims
and aggressors eliminates Serbian women who have been raped, as
well as Croatian. Further, it coincides and reinforces the national narra-
tive of the Bosnian government which tells its stories of being of Serb
aggression.

This is not being disputed. Furthermore, it is being suggested that
the Bosnia-Serbs are aggressors in the conflict. Nor that the Bosnia-
Serbs, by all accounts, have been the perpetrators of the massive pro-
portions of war crimes and crimes against humanity. Rather, what is
being put forth is the way in which that narrative has been imposed
upon the experience of women who have been raped in the conflict.
The political manifestations of this narrative of Bosnian wom-
en—Muslim women who have been raped has particular manifesta-
tions, and those have included charging—organizations who recognize
that women of all ethnicities have been raped. Charging those women
with a equivocating condemnation of Bosnian-Serbs. A reinforcement
of a national policy, and as a result there is this overlap between femi-
nism and nationalism. Therefore, the conflict between the personal
narrative and the ethnic narrative of rape have created a clash which
asks women to choose between allegiance to their gender or an alle-
giance to their ethnic community.

Women in groups who understand mass and systematic rapes in
terms of ethnicity are accounts of rape as personal attacks who support
the policies of Serb aggression. Additionally, those who had politicized
the personal narrative of rape charge those to—the cause of women
victims of "ethnic cleansing," which ethnic animosity is destroying any
chance of peaceful co-existence of the people of former Yugoslavia.
This conflict which has not been discussed in the press has now been
brought to our attention. Any prosecutions of rape before the War
Crimes Tribunal undoubtedly will have consequences for women's
groups in the former Yugoslavia and international feminists because of
this conflict and narration that is occurring now.

The War Crimes Tribunal has been empowered to prosecute viola-
tions against individual-based crimes. These are called Grave Breaches
or War Crimes provisions as well as group harms, which would be understood as crimes against humanity or genocide. The way in which the prosecutor will eventually file charges, indictments, and any eventual prosecutions is going to then reflect either of these narratives. In turn that will have consequences for women’s groups in the former Yugoslavia as well as a reflection for the women’s survivors themselves of what their experience of rape means to the international community, how that harm is being translated.

Therefore, because the prosecutor is able to charge a variety of crimes, he should charge all applicable substantive provisions in order to capture both the personal and the community-based harm of rape of women in the former Yugoslavia. Since each narration reflects and captures how some rape survivors understand their experience, the danger is that the politicalization of each narration threatens to create an either-or choice for prosecutors as well as feminists.

We need to recognize all the various injuries that all the women of the former Yugoslavia have suffered as a result of being targets of violence. Some women experience their rape as primarily a loss of personal identity. Others may focus on the fact that they were targeted because they were Muslim, Croatian or Serbian. Both the personal and the ethnic narrative are reflected in the nature of the crime of rape, the survivor’s experience of their attack. Furthermore, through the legal framework, we have to hold the perpetrators of these crimes accountable, which allows us to capture both aspects of this experience.

As a result, a feminist response to the gender-based violence in the former Yugoslavia requires that we call for the international community to recognize as many narratives of the rape survivors as possible when we punish the perpetrators of the crimes. This way we can honor the courage of the women who have come forward to tell us of their horror, of the abuses that they have suffered, so that we might struggle to insure that it never happens again.

In conclusion, the international community is presented here with some of the most graphic examples of the multiple violations of the mass of systematic rape by women. If we ignore the community-based harm of those injuries, we are ignoring the social fabric which gives context and meaning to women who define themselves as part of the Bosnian Muslim community. If we ignore the wrong that is being perpetrated, we are permitting women to enter into the dialogue of accountability only by way of their community, and we are relegating their loss of dignity to the private sphere. In order to protect women’s
human rights fully, we must condemn all the violations which occur when women are caught in a cross-fire of armed conflict.

III. RELIGION: THE ROOT OF CONFLICT AND THE GYPSY MINORITY IN BOSNIA

MR. FISHER: Since the cold war's end, a new global picture has emerged, of course not of greater global peace, but of new wars. More atrocities and the increased potential for violence often hang along cataclysmic religious fault lines. Strikingly, after two world wars and communism's rise and fall, this century ends exactly where it began, with fighting over the same issues in precisely the same place: Bosnia, where World War I ignited.

Bosnia is just one of a dozen of regional and national conflicts that threaten international peace and violate the human rights of women, children, and powerless minorities, like Bosnia's gypsies, who are the most frequent victims. In so many of these conflicts, religion is both a root historical cause and a latter-day tool of manipulation by the fighting factions. The stakes are very high. If this phenomenon is not well understood, or its rapid, unstable fundamental changes are ignoring the power of religion which will spawn too many disastrous strategies.

The new world situation has seen the rapid growth of the militant or fundamentalist religious movement, which was the reaction to claim domination by so-called western or northern hemisphere values. These movements are frequently associated with human rights violations as defined by what they term western institution, known as the International Human Rights Community.

Last summer in Vienna, the U.S. held its second conference on human rights. In Vienna, as at other gatherings, including in Paris, a certain standard of behavior is applicable to all nations. The so-called universality of human rights has been powerfully challenged in the name of particular culture and religious values of sorts. At the same time religion has been an immense support of human rights with its core teachings in human dignity. The universality of human rights is itself an idea with a profound religious dimension and as such provides great energy for efforts of human rights, even when this dimension is not recognized.

Religion frees the spirit, but it also can crush it. Nowhere is this paradox confronted more directly than in Bosnia in enumerable ways. Centuries ago, each power using tools of subjugation and control
through religion and cultural conversions so that the population would identify with the invaders. History is crucial to understand Bosnia. Also important and reflecting on the relationship between ethnicity, nation and homeland, and other terms by which groups of people identify their commonality, which of course can be very complex, such as language. The principal difference is the Serbs use of the orthodox church. The Serbs chose different characteristics so as to keep a distance between people. Religion is also intrinsically a part of the sense of people-hood. Many Serbs do not consider others true Serbs unless they are orthodox. Although a matter of nationality, many Serbs are members of other religious minorities: Muslims, Jews. There are questions as to what degree religion forms of the basis of competition. Pale to religious symbols in competing for power. For their countries’ men, these peoples are more powerful because the economic distress of high inflation and unemployment creates a sense of desperation to which groups respond.

The conclusion is perhaps that religion is as much a tool to be used by those seeking political security as it is a root of conflict. Questions you might want to consider today in the course of considering the current situation in, for example, the Balkans that may apply to many religion-driven conflicts in the world, the Sri Lanka civil wars, Buddhists, Hindu and Hindu-Islam conflict, the wars in the Middle East, to mention just a few, that have such a strong religious component.

Finally, before turning to a little history and an attempt to address religious violence in the long run, conflicts are likely to be the very conflicts of the future. Yielding to oppression, fundamental violence escalation, and the very same disputes get fought over and over again, and not just what is happening in Bosnia as history tells us.

Since at least the beginning of this millennium, Balkans have been at a crossroads and bloody battlefield. Roman Catholic, Orthodox Christians, and Muslims sought to expand into central and eastern Europe and into the Balkans. From the earliest times, the Catholic church was eager to extend religious and political control over the Balkans. By the 10th century, it had converted Slovenia and Croatia. Military campaigns continued pushing east and south into orthodox Christian Serbia and Bulgaria.

In the mid-1200s, the Hungarian aggression was checked by invasions and by Serbian and Bulgarian forces from the east. In 1389, a very powerful Muslim-Turkish invasion from the south pushing towards central and eastern Europe resulted in a devastatingly bitter defeat. That invasion is, to this day a rally cry of the Serbians. Muslim-
Turks had moved into Bosnia, and they stayed through the end of the 19th century. Their empire moved in quickly to control Bosnia. The Bosnian’s then aligned with orthodox Serbians to roll back the Catholic inter-roads. During the approximately 500 years of the Muslim control, many Bosnians obtained economic and political opportunity and advantage. A great class arose in Bosnia to save their lands and to unite their religious beliefs. They were a Christian sect that had been a target of the Catholic crusades, converted to Islam as an entire class.

In all, a large section of the population became Muslim, and Bosnia became at one point the northern most land. This occurred because Bosnia was sandwiched between Hungary, Hungary-controlled Catholic Croatia in the north and the rising power of Serbia on the south and the east. For that reason Bosnia developed a national identity of its own.

It was not until the 12th century that it Bosnia had a ruler of its own. The land there, however, continued to be used as a pathway for Roman Catholic and Muslim crusades passing. During the 16th and 17th centuries, Bosnia was an important Turkish outpost in the constant warfare of that century. Hungary was reclaimed from the church. The Catholic Hungarian forces proceeded down as far as Bosnia, and became the northern most Turkish empire in the 18th century. Then, towards the end of the 1800s, the Austria-Hungarian kept the land until the archduke was assassinated, igniting World War I.

During the World War I, normal political life in the Balkans ceased. After the war, the Yugoslav national council was created. The Croatians and Serbians united and the fate of Bosnia was bound up by the new country. Many vital problems, including the difficult border questions for Bosnia which the Austria-Hungarians and the Turks had never solved, were left undisputed between the Croatians and the Serbs. The Balkans then were ruled by King Alexander I. In 1929, King Alexander gave the country a new name: “Yugoslavia.” Croatians and Serbs settled Bosnia’s problem to their satisfaction by giving Bosnia new borders.

During World War II, Nazi-allied Croatia was abetted by the Croatia Catholic church and took Bosnia-Herzegovina, which it had long had designs on. An armed resistance to the Nazi occupation of all of Yugoslavia began in Bosnia when the Croat fascists massacred the Serbs, Jews, and gypsies. Even in the context of this most brutal war, these massacres were an act of such extreme savagery, similar only to the Nazi actions against the Jews in Southeast Poland. At the end of World War II, Tito took control and opposed peace among the Balkan
ethnic groups by building a force in recognition of divergent status of nationality of Bosnian Muslims. The differences then were limited from the Balkans.

Given the history of Catholic countries campaigning Slovenia and Croatia from early times, it is not surprising that with the end of communism and the faltering of Yugoslavia, the Austria-Hungarians and the Vatican jumped to recognize independence. Slovenia and Croatia, propelled the other former Yugoslavia republics in further chaos. Having been connected over the centuries to Bosnia’s war, those countries have, perhaps not surprisingly, failed to rise above the narrow concepts of self-interest and have not pressed their followers for solutions. Bosnia’s ties to Islam were tenuous, until the Serbia rebellion that began a few years ago. That rebellion threw the former Yugoslavia republics into social and economic upheaval.

Today two million Bosnian Muslims, or Bosnians which they prefer to be called, are under attack from all sides. They lost when Slavs converted, by force or otherwise, to Islam and its culture. In order to justify the rebellion to the outer world, these Croats and Serbs have warned of fundamental Islamists establishing a foothold in Europe. This is, of course, precisely the same cry that was heard in the 14th century- the battle of the gates of Vienna and Hungary and early centuries.

The Bosnian government and social leaders insisted that they could never become an officially Islamic state. Islam to the west played into the hands of propagandists in Belgrade. War horrors, indictments, and western indifference to human rights violations committed against them have given Muslims to conservative fundamentalists. The success of the fundamentalists was enhanced by the presentation of some Islam warriors who came from afar to defend the faith.

Additionally, in the midst of all this conflict and history are the Shripsies. There is little hard and accurate information available about the Shripsies. The term Shripsy is a widely-used misnomer for members of a distinct ethnic and racial group. The term is derived from an erroneous notion that the Shripsies’ ancestors came from Egypt. Their origins have actually been traced to northern India. Somewhere between the six and nine A.D., while they were split off into different groups, the Shripsy’s became refugees from famine or war. Many of the Shripsies went to Persia. There are still large Rumanian population in Persia today.

A large number were in parts of Rumania, where Shripsies were legally held in slavery into the 1860s. A large part also went to Russia.
They are recorded instances of Shripsies in the 10th century in Persia. By the mid-1300s, there are records showing Rumania—Croatian. Throughout history, the Shripsies have been victims of prejudice, repression, genocide and slavery. Half a million were killed as part of the Nazi final solution. In Yugoslavia, particularly Bosnia-Herzegovina, the largest number of Rumanians perished at the hands of Nazis and allied Croats. Fascist Croatian satisfied long-held designs by incorporating Bosnia as part of Croatia. A few Shripsies came to power by inaugurating a forced conversion and mass-murder campaign against all others. The primary targets were the Jews, the Rumanians, and orthodox of the region.

Rumanian organizations claim to have a population from seven to twelve million throughout the world, with a million in the United States, and five to eight million in Europe, a majority of which are in eastern Europe. Yugoslavia had an estimated 250,000 Rumanians at the beginning of the war and approximately 80,000 Rumanians lived in Rowar, Bosnia. Few in number, alien in culture, apolitical and often pacifistic in nature, Shripsies are Bosnia’s odd man out. Contrary to their reputation for ruthlessness, many had strong ties to their fortunes and homes and enjoy steady jobs. Muslims, Serbs and Croats all have barter value in the war’s market, but there is absolutely no market in Rumania.

As observed there recently by the Muslim and Rumanian villages, the area near some of the Serbian national strongholds have in recent months contacted refugees requesting complete evacuation. Bosnia is a village of several hundred Rumanians. Bosnia is just one of the village. The Rumanians were living in all the towns discussed in this paper.

In addition to the rapes and killings, there are reports in a number of places, that Rumanians are being forced to cross mine fields to test them for explosives. Some Rumanians are physically stopped from entering refugee camps where they might find safety. There are reports, even from London, that the front line battle trenches used as force labor were ethnically cleansed. There were reports of Croatian military police dumping Rumanians back into the battle trenches. Of course, unlike the Bosnians, Serbians, and Croats, the Rumanians have no regional ethnic territory and are not able to organize their self-preservation. They are easy targets.

Historically, they were caught in the cross fire. They were often constricted and made to fight against their brother Rumanians on opposite sides of the borders by the Croatian defense counselor and the Serb forces alike. The war in the Balkans has resulted in large numbers of
fleeing Serbians hoping to avoid war and constriction. They are on both sides of the border.

Last year it was reported that for the first time in their history, Yugoslavia’s often poverty-stricken Rumania were only embarrassed by peace activists and from militant Serbian nationalists, such as those turned parliamentarian. The political courtship lasted only a short time, and conditions are worsening throughout the states. Meanwhile refugee camps and Rumanian communists outside of Bosnia were growing. Macedonia’s population of some 40,000 has grown markedly, due to Bosnian and Rumanian refugees. The refugee communities in Germany and elsewhere have also grown dramatically. It is a bleak picture for the Rumanians, as for everyone else that is affected by the Bosnian war. Rumania is trying to take an initiative which is notable. The international society called for a world Congress of peace to be held in Sarajevo, Bosnia May 15, 1993. They called all human rights organizations and countries to attend. They made a major call out from their offices throughout Eastern Europe.

IV. THE IMPLICATIONS OF THE VENDETTA WORLDVIEW FOR THE FORMER YUGOSLAVIA

A. INTRODUCTION

DR. RENTELN: The crisis in the former Yugoslavia has shocked the world. There have been reports of massive numbers of murders and rapes3 among the atrocities committed as part of the notorious policy of “ethnic cleansing.” This program of systematically removing members of one ethnic group to “purify” a geographical area has involved tactics “reminiscent of the Nazi war crimes of World War II.”4 It is difficult to understand this intense ethnic hatred.5

I would like to explore the possible root causes of the conflict. There are, of course, many explanations, and there are most likely multiple causes. In the literature the crisis has been attributed to the decision by the Yugoslav republics of Slovenia and Croatia to change from communist to non-communist governments and their subsequent decision to secede.\(^6\) Another analysis argues that the conflict following the dissolution of Yugoslavia was due to "... the attempt to transform Yugoslavia into a Serbian nation-state."\(^7\) Indeed, most studies of the disintegration of Yugoslavia treat the problem as stemming from politics and therefore ignore cultural considerations.\(^8\) I contend that the conflict is more accurately interpreted as a conflict over ethnic identity and that the political struggles are based on ethnic differences.\(^9\) It is my hypothesis that the vendetta worldview known to exist in the former Yugoslavia partly explains the fierce ethnic conflict there. In order to find solutions to the devastating situation, it is essential that we understand the indigenous perspective on conflict.

**B. VENDETTA**

1. **Main features of the Vendetta**

Although legal scholars tend not to be acquainted with works in the field of legal anthropology concerning the vendetta or feud, most people in the United States are familiar with the famous feud between

\(^{6}\) Wing & Merchon, supra note 3, at 7; see also Hurst Hannum, *Self-Determination, Yugoslavia, and Europe: Old Wine in New Bottles?*, 3 TRANSNAT'L L. & CONTEMP. PROBS. 57-69 (1993).


the Hatfields and the McCoys. Feuding behavior has been documented all over the world.

In the scholarly literature on feuding there is a debate about whether or not the feud is a "legal" mechanism. While some deny that it is "legal," others view it as a "faulty jural mechanism." Though a legal positivist will not consider the feud as legal, since law must be tied to a state apparatus, those who take the approach characterized as being in the Historical School of Jurisprudence have no difficulty in interpreting the feud as legal.

There are several key attributes to the feud. The feud must involve more than two hostile acts and is generally characterized as continuing and intermittent violence. It is based on the concept of group responsibility. When a person in Group A harms a person in Group B, then traditionally every adult male in Group A can be killed in response. Any adult male in Group B can avenge the death, though the person is normally a close relative. Because of the existence of group responsibility, there is an incentive for the group to monitor closely the conduct of its members. A killing by a member makes everyone in the group subject to a retaliatory killing.

There are elaborate rules governing feuds. The vendetta is a highly controlled, socially regulated method of settling disputes. For example, sometimes, there is a rule that the revenge must be taken within a specified time period. In addition, certain members of the group cannot participate either as avengers or as victims, including women and

10. For sources on the Hatfield-McCoy feud, see ALISON DUNDES RENTELN, INTERNATIONAL HUMAN RIGHTS: UNIVERSALISM VERSUS RELATIVISM 119 (1990); see also ALTINA L. WALLER, FEUD: HATFIELDS, MCCOYS, AND SOCIAL CHANGE IN APPALACHIA 1860-1900 (1988).
11. RENTELN, supra note 10, at 120.
12. RENTELN, supra note 10.
Perhaps the most important aspect of the feud is the requisite scorekeeping by the parties.¹⁷

Scholars do not agree as to whether the feud is “interminable.” Christopher Boehm, in his classic study Blood Revenge rejects the notion of interminability. He states that while the feud is potentially interminable, there are cultural mechanisms that ensure that it ends.¹⁸

Another important feature of the vendetta is that it occurs within the group. Conflict between groups is considered warfare, and warfare is not subject to the same limits as the feud.¹⁹

Finally, it is interesting that most feuding begins with an insult to the honor of the group and then a retaliatory homicide.²⁰ Often the vendetta begins with rape.²¹ The deliberate use of rape as a way of provoking inter-group conflict seems to be relevant to the current crisis.²²

2. Vendetta in the former Yugoslavia

Many groups in the former Yugoslavia have traditionally engaged in feuding. This has been documented by scholars. For instance, Margaret Hasluck’s study of the Albanian blood feud²³ proves that the practice is central to the Albanian way-of-life. In fact, Albanians have continued feuding behavior in the former Yugoslavia.²⁴ Christopher Boehm’s work on Montenegrins demonstrates the importance of the

¹⁶. For a more detailed discussion of rules limiting the operation of feuds, see RENTELN, supra note 10, at 128-30.
¹⁷. Boehm, supra note 13, at 220. (“In short, the indigenous conception of feuding is one of measured and pacifiable alternating retaliatory homicide, with scorekeeping.”)
¹⁹. Boehm, supra note 13, at 221.
²⁰. Boehm, supra note 13, at 103.
²². Mike Farrell in the opening remarks to this conference noted that the women who were raped sought retaliation. See supra part I, ¶ 5. When asked if they would keep their babies, pregnant rape victims replied: “We intend to bear them and raise them and teach them to find the man who sired them and kill him.” See supra part I, ¶ 5. This statement is a poignant example of the vendetta worldview.
²³. Hasluck, supra note 15, at 381-408.
²⁴. Christopher Boehm, personal communication, July 8, 1994. By the end of the 1980s the 2.5 million Albanians in the former Yugoslavia represented the country’s third largest ethnic group. ELEZ BIBERAJ, YUGOSLAVIA: A CONTINUING CRISIS (1989).
vendetta to this group. Historically the Bosnian Serbs had the feud as well.

In his analysis "Symbols in Customary Law," the Serbian legal scholar Durica Krstic discusses some of the legal symbols associated with the vendetta:

[P]lacing arms over the grave of an assassinated, as a sign for a need of vendetta in the Albanian unwritten law, or placing a blood-stained shirt on a conspicuous spot in the house, as well as burying it to mark the same intention.

When Yugoslavia became a nation, the feud was officially abolished. Of course, there was also a major effort to outlaw ethnic identity to forge a new national identity. The question is whether the law succeeded in eradicating the vendetta worldview along with ethnic identities. If the law was unsuccessful in its attempt to alter the worldview of citizens, then there may be a connection between the vendetta worldview and the current problems associated with national disintegration.

C. NATIONAL DISINTEGRATION IN THE 1990s

It is probable that the crisis began with declarations of independence by various republics. What is unclear, however, is why these developments have unleashed such tremendous ethnic hatred. The fact that Yugoslavia was extremely pluralistic may have created the conditions for conflict, but that fact, in itself, cannot account for what has transpired. It is also true that the national boundaries of the new states do not correspond to ethnic identities, but again that alone cannot explain the massive human rights violations that have occurred.

It seems plausible that individuals who have been socialized to believe in the necessity of retaliation to protect the honor of the group


28. The effort to promote national identification seems to have had limited success. See Ivan Simonovic, Socialism, Federalism, and Ethnic Identity, in RUSINOW, supra note 9, at 41-57. Kresock also notes that: "... the Communists' threats and intimidation could not eliminate the ethnic prejudice that had survived over 500 years of Ottoman oppression. Kresock, supra note 2, at 218-19.
may be inclined to act on these feelings. Because of their enculturation, some individuals in the former Yugoslavia may be prone to engage in retaliatory behavior.29

By no means am I suggesting that people in this troubled region are unique in having feelings of ethnic hatred. But it may be that socialization makes acting on these feelings more acceptable. In the former Yugoslavia the vendetta worldview legitimizes the idea that one may avenge a wrong perpetrated against a member of one's own group.

D. TOWARD A SOLUTION

If there is a connection between the vendetta worldview and the inter-ethnic violence occurring in the former Yugoslavia, what are the practical implications for policymakers? One lesson is that the application of international law by Western nations will be ineffectual because the indigenous customary law has not been taken into account. If a workable solution is to be found, the cultural context of the ethnic strife must be evaluated.

For decades Yugoslavia tried to suppress feuding. One of the results of this may be the social need for a mechanism to restore the honor of particular groups. The War Crimes Tribunal might provide a forum for doing this.30 The difficulty, however, is that with warfare there is no longer any tally of killings, so that it will be virtually impossible to determine which groups were at fault. Despite this, it is possible that the tribunal might find some ingenious way of restoring the honor of different groups by finding all of them responsible for human rights violations.

One intriguing suggestion has been the proposal that the legal system consider "spirit injury."31 The idea is that there are group harms as well as individual harms. So, for example, not only has the individual woman been harmed by rape, but, in addition, the crime also affects the group.32 If psychic damage to ethnic groups is considered

29. The warfare and atrocities do not constitute feuding, but these actions may be linked to a distinctive worldview which holds that retaliation is legitimate.


32. The 1993 Inter-American Court of Human Rights case Aloeboetoe et al. Case in-
by the War Crimes Tribunal and compensation paid, then there might be a better chance of restoring inter-ethnic harmony.

The existence of the vendetta worldview also has implications for peace-keeping operations. The likelihood is that violence will recur. This suggests that long-term peace will require an extraordinarily well financed and effective policing operation.

The situation in the former Yugoslavia is extremely complex, and it will be difficult to craft a plan to solve the manifold problems there. But if we simply impose the legal rules of the “modern” world without considering the worldview of the people, then any proposal will be doomed to fail. Ultimately a solution may necessitate the imposition of an external morality, but a legal transplant\(^3\) will be more likely to take root if the cultural context has received serious attention.

V. QUESTIONS AND ANSWERS

QUESTION: Ms. Fletcher, from May 1992 to November 1992, there were 800 depositions taken of the Serbian women who were raped. Therefore, from May to November, there were 26 articles or stories that no one picked up in the media to print. There are allegations that raped women in such territories do not come forward with rape because their husbands will reject them and possibly kill them.

Nonetheless, 800 Serbian women gave those depositions in the international community. However, human rights people have ignored those documents and instead have used the documents against the raped women. In fact, De Paul University in every newspaper article in the last year claims they have the names of 800 rape victims, but do not tell the story that those 800 women are Serbian. Therefore, first, are we going to have equal justice? Second, why are human rights organizations, a person like you, who is dedicated to this cause, not have ever spoken out on the rape against the Serbian women. Maybe this vendetta that she speaks about was thrown into action because of the silence.

MS. FLETCHER: First, there are a couple of issues that have arisen with the publication of accounts of rape of Serbian women. Because

\(^3\) The term “legal transplant” comes from Alan Watson’s classic book, LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW (2d ed. 1993).

volves the notion of harm to a group. After the Suriname government admitted that it was responsible for the massacre of Indians, the dispute focussed on damages. At issue was whether damages for “injured parties” should be calculated based on the trauma to the nuclear family or to the group. Aloeboetoe Case, Inter-Am. C.H.R. (1993).
they have occurred in the context of a conflict in which the international community has universally condemned Serbian aggression, the Serbs have not been the media favorite. The media was behind in terms of getting attention paid to the atrocities that Serbs have suffered. That has also been documented. Human rights abuses have been victims of war crimes perpetrated by Croats and Muslims, though not to the degree that Serb forces have perpetrated those crimes.

That has particular implications for the women survivors themselves. When we went to Serbia and spoke with human rights groups there, as well as government officials who were documenting, there was no question that there is documentation of rapes of Serbia woman.

One of the problems has been that the Serbian government wants to publicize the facts that they too have suffered. One Serbian woman rape victim at a hospital was visited by a human rights worker who asked, “Do you need anything? Can I bring you something?” She said, “Actually, if you could just bring me some cigarettes and underwear.” Basic needs, that although despite a string of visitors, had not been met, because people were more interested in her story than in her condition. That has been problematic.

One hopes that there will be justice for all women who have suffered rapes. That is an effect of the “ethnic narration” of rape in the conflict, that has been because of the large numbers of publication of Bosnian women rape survivors, that it has taken on the political effect as saying: If one talks about the fact that Serbian women have been raped, one is then calling into question the political view of the conflict that says Muslims are the victims and Serbs are the aggressors. If you complicate that by showing that Serbian women too are being raped, somehow that is equivocating who are the parties responsible for the conflict, and therefore we need to decouple the political forces and the perpetrators of the crimes from those who are suffering the effects of the conflict.

Further, part of a long-lasting peace, part of resolving the vendetta of the world view, actually requires us to do that. If we do not hold all perpetrators accountable for their crimes, that the community-based harm will not be recognized, and the community honor will not be restored. The community understanding is that when a woman is raped, it is not just an individual harm; this is a reflection on the community, and it requires a community response. If we want to see a long-lasting peace, that is why we need the War Crime Tribunal. The parties are expecting and requiring that institution to act as a body, which will call
forth and hold accountable all sides for the crimes that they have committed.

QUESTION: There are many Serbian men who are pacifists and who do not wish to participate in war crimes in the former Yugoslavia. Several of them are living in Los Angeles. The United States media continues this division, if you will, projection of the Serbian monsters, which is not really a correct statement. We have been able to win political asylum for a young Serbian musician, to his blanket statement in his interview that he did not want to kill people. He did not want to rape women. This person was very lucky that his case did not move to the courts. However, had he found himself in a court hearing in Los Angeles, the kindest judge in the world would have had to deny his case for political asylum.

Please address the implications in the United States, because people from other parts of Yugoslavia are granted temporary protective status automatically if they meet certain requirements. However, Serbians, even those who totally refuse to participate in war crimes, are excluded from this. Some speakers, especially Mr. Fisher, overplayed ethnic and religious conflicts.

When Serbs rebel against the government of Croatian in 1990, the government of Croatian tolerated that rebellion for nine months and did not shoot a single shot at any of the rebels. As a matter of fact, even they gave up after a while. If you travel through that area, the trains were going, the people were commuting. It was not until the government in Belgrade realized that it did not go through, that it ordered the Yugoslav army to start the real war against Croatian. Thus, we cannot speak about the conflict in that area.

After the war in Croatian, as Carol Williams in Los Angeles nicely reported, there was no desire for any conflicts in Bosnia-Herzegovina. Warren Zimmerman also reported several times that this is an area where peace should be preserved. There was no war until Belgrade again realized that she had to send her army over the river to start warring Bosnia-Herzegovina. Therefore, the final origin of these conflicts definitely lies in the government and the power establishment in Belgrade.

The objection which I have to Mr. Fisher is that he did not mention the states of Bosnia. From the 13th to the 15th century, Bosnia was a European recognized state. The Croatians signed some kind of arrangement with Hungary in the 1200—12 or 24—Bosnia was a free territory. The very situation which we have now in Bosnia stems from intermarriage with the most distinguished families in Germany and
France. The only civilized force from the 11th century, the only one which continues building culture is Catholic church. Not that the Catholic church does not have its policies.

Finally, I would like to mention the so-called Croatian involvement in World War II. There was not a single state in the territory of former Yugoslavia which does not have it all.

DR. RENTELN: The idea that ethnic identity plays no part in this whole debate seems not to be true at all. In fact, all the comments seem to be focussed on the honor of individual groups.

MR. FISHER: The gentleman’s comments perhaps reflect a Catholic perspective of a different perspective than some of the comments that I have made, but perhaps some sense of the controversy in the area. He speaks with conviction, and there is a lot of passion behind these convictions too. They can also be explosive. They are deeply held in these different communities. The War Crimes Tribunal will look at something as of a certain date and certain events and will be the last of the vendettas and retaliatory acts. It will be the last act.

QUESTION: I cannot agree that this is not an ethnic conflict. Has Dr. Renteln considered the fact that because of this ethnic division, the Serbians feel that this is now their time to use the opportunity to get back at the Croatians because they did not suffer as the Serbs did in World War II, in particular in Belgrade?

The Serbs feel we can get back at them now, and we can show them what war is like. I find in my visits to Montenegro and Serbia that the Serbs have this mentality, and that they want to get back to show the Croatians that this is what war was like. The mentality is when we are finished we will be even. They want to get it out of their system.

In regards to individual responsibility, bearing in mind that at Nuremberg we did not give any credence to punish for the crimes that occurred. I am wondering if a cultural defense-based vendetta would be a defense or mitigation?

DR. RENTELN: My work is on cultural defense, but I have not considered whether recognizing the vendetta worldview could be part of a cultural defense. But if you want the people to stop having this need for retaliation, you must look at it at the group level. This conflict is about group responsibility and harms to groups and maintaining group honor, and so the way the War Crimes Tribunal operates should take that into account. I am not suggesting any kind of defense based on culture necessarily, but I think a solution will have to take the idea of honor into account—that is if there is going to be any long-term
solution to peace in this area. The cultural defense could be an excuse, or a mitigating factor, but neither may be warranted in this situation.

**QUESTION:** *My concerns are with the War Crimes Tribunal. I really like the idea, because I think it needs to address individual responsibility. My concern is that the Tribunal will not be able to reach and will not be able to deal with those guys who got caught up in it are defending their little tiny area. In addition, the big leaders who are making all the big decisions will sit there and say: “Well, they are not going to touch us. We are going to go to Paris.”*

**DR. RENTELN:** I certainly agree with contention that individuals be held responsible for committing war crimes, and it would be better if more people are held responsible, particularly those higher up. I recognize that prosecuting war criminals is important, but our primary concern should be conflict resolution. My hope is that there will be peace in that region.

**QUESTION:** *The fact that this is the former Yugoslavia, we must remember that the first real shots in this conflict happened in Slovenia. Ethnic animosity had to do with those first rifle shots and the real dissolution of Yugoslavia.*

The Serbian American Voters have 14,000 members across the country. I just participated in the book that is up on the shelf, “Suppress Serbian Voice.” One concern I have that I would like to address is how can anybody think that we are going to have a legitimate War Crimes Tribunal when tens of thousands of criminals in World War II were never prosecuted? We know some of them by name. We know their location. If we are going to have a War Crimes Tribunal, with the hideous crimes that have been commitment, we are going to have a lynch mob, where the Serbians are already condemned as being guilty. They will not even have a right under the law in the War Crimes Tribunal to have an appeal.

I want talk to you a little bit about your work. Since populations have been targeted not only for their ethnicity but for their gender, what role is the international feminist community playing. It seems like this whole conflict does not have a lot of advocacy to shed some light on not only the different opinions and how people have intercepted help and interpreting what is going on now. Who is advocating for women being raped? Who is making sure that justice may somehow result from her experience?

**MS. FLETCHER:** It is complicated for a lot of reasons, some of which have been touched upon here. One has to start with the fact that women who have been raped, generally feel humiliated and shamed.
and somewhat feel they are responsible for what happened to them. Units galvanized women world wide to speak out and to be outraged about what has happened in the former Yugoslavia.

The particular cultural consequences for rape of Bosnian Muslim women, as well as Croatian and Serbian, they feel that shame as well. I think that related to this is the relationship between the cultural vendetta as was illustrated earlier. Often time it starts with the rape. That is seen as a community-based harm, that needing to be avenged so that women are caught in this intersection between an individual violation and then standing in for the honor of the community. That has made women reticent to talk about their experiences. In fact, women have been beaten by their husbands who have talked about the fact that they have been raped. Women who have spoken about their rapes, one has committed suicide, others have suffered nervous break downs after speaking about it because of the reaction from the community or becoming overwhelmed with the sense of shame and loss for having done that. That has meant that there have been very few women who have spoken about their experiences, and I think that probably the panel this afternoon can talk about the evidence of the Commission's report is fairly extensive, and they talk about the fact that the numbers of women who have come forward are relatively small compared to the total number of women raped. One who was raped but was held in captivity who I saw also being raped.

Thus, the women who were raped have gotten out of the region, and are not in other European countries. They are in Germany, in Holland, scattered, and so to advocate for them you have to be very careful that we really need to pay attention to where they are in the process of recovering from their experience. They may not be ready to talk and come forward and testify. However, that does not mean for their long-term recovery that the perpetrators still need to be held accountable, and that psychologists have spoken about psychological therapeutic effects for women who have been raped, if not their perpetrator, the forces responsible for their rapes are held accountable, and that can relieve some of the sense of burden when the public names the aggressor and condemns his actions.

That is a result, as well, so I think that while individual therapy may not be appropriate at this time, because woman were not able to come forward and talk about their experiences by calling for prosecution of rape before the International War Crimes Tribunal. For those women who have come forward, I think that will have a reverberating
effect for the many numbers of woman who may never be able to come forward and speak publicly about their experience.

DR. RENTELN: The rape itself is only one aspect of "ethnic cleansing". The children born as a consequence of the rape are considered to have the identity of the father, and, therefore, do not belong to the mother’s group. Furthermore, the raped women are then rejected by their own men. So the rapes must be understood to be part of the overall scheme.