

# Victimization by War Rape

## *The International Criminal*

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*Cet article est basé sur une étude portant sur les viols de guerre en ex-Yougoslavie et la façon dont ils ont été rapportés pendant la guerre dans les médias et les travaux de recherche. L'auteure analyse les lacunes dans les solutions émises par la loi internationale qui n'ont pas facilité le reportage et la preuve des viols en temps de guerre.*

During the war in the former Yugoslavia many efforts were made to stress the seriousness of the victimization of women by rape. During 1993, mass media coverage drew the attention of the world—at least for some time—to the suffering of women.

The violation of women's human rights was brought to the forefront and concerted efforts were made to assist women who survived the war violence. The attention drawn to violence against women during the war also contributed to improving the legal mechanisms for the protection of women's human rights. However, despite the positive effects of the media campaign to expose rape as a war crime, the violations against women were presented in a sensationalistic and biased manner and manipulated to meet daily political needs.

A serious consequence may be the fact that the majority of academic work in this area is influenced by the media's representation of the image of the woman raped in war. This academic work contributes to the development of inappropriate legal strategies resulting in a further victimization of the women (McKinnon; Copelon; Styglmayer).

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It is clear that oversimplified images of victims and aggressors and women's suffering during the war, shaped by the media, are a powerful political tool which affects the establishment of international mechanisms for the legal protection of women's human rights. I would like to suggest that the media campaign and the subsequent increased interest of academics in rape as a crime of war contributed more to the use of war rape as a propaganda tool than to assisting in the development of support programs and protection for victimized women.

Although the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) should be considered a positive step forward in terms of the protection of women's human rights, it is necessary to point out that it neither treats war rape as a gender-specific crime nor provides victims/witnesses of war rape with comprehensive and feasible protection before, during, and after a trial.

My intention in this article is to analyze the provisions of the Statute and Rules of Procedure and Evidence as well as the practice of ICTY. I will stress the shortcomings of international law solutions and how these shortcomings make reporting and proving war rape difficult. Special attention will be paid to the lack of protection provided to war rape victims as witnesses, and its consequences. I will argue that these shortcomings are logical consequences of the image of the victim of war rape (Zarkov), created during the war itself, when victims of rapes which were not committed as a strategy for ethnic cleansing, as well as victims of non-Muslim ethnic origin, were excluded from consideration.

### **Rape as a war crime**

Although it is often emphasized that the Statute of the International Tribunal for the former Yugoslavia represents an important step forward within international human rights law, a more detailed analysis shows that rape is explicitly treated only as a crime against humanity (Art. 5 of the Statute) and, as such, only when it is widespread and systematic, i.e., when it is committed as a strategy for ethnic cleansing. It is evident that women's interests do not come first. Rape is regarded primarily as a crime against an ethnic group, against a woman as a man's property, and not as a crime against a woman as an individual, nor as a crime against her body.

Nevertheless, rape and sexual violations are acknowledged as violations of the laws or customs of war (Art. 3), and as genocide (Art. 4). The Statute does not, however, mention rape as a "grave breach" of the Geneva Conventions. After re-interpretations of this clause by feminist lawyers, the Tribunal finally classified rape within the category of grave breaches as "inhumane treatment" and "wilfully causing great suffering or serious injury to body or health" (Art. 2). Furthermore, the International Committee of the Red Cross and the U.S. State Department

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have declared that rape *is* a grave breach of law and it has been subsequently prosecuted as such. The indictment of Celebici and Tadic are examples of this<sup>1</sup> (see, also, Copelan; Smiljanic). However, as Niarchos suggests, changes in the interpretation of the Statute are not enough and an amendment is needed to explicitly acknowledge rape as a grave breach of law. Rape as a war crime must also be recognized as gender-specific violence.

The perception that rape is only a crime against humanity and the linkage of prosecutions primarily with cases of mass rapes and/or genocidal rapes has provoked the concern of some commentators and victims, primarily Serbian victims. As Smiljanic points out, commentators are concerned that acknowledging rape on the basis of a particular program and with reference only to mass figures obscures the real number of rapes which took place as well as those which do not fit these parameters. For example, raped women of Serbian nationality are worried both that their cases will not be prosecuted as war rapes since they were not committed as part of a strategy of ethnic cleansing, and that it will be more difficult for them to prove the existence of such a strategy than in the cases of raped Muslim women (Jovanovic).

## Protection of war rape victims

Article 20 of the Statute of International Criminal Tribunal provides in paragraph (1) that the Trial Chamber shall ensure that a trial is fair and expeditious, in accordance with procedure and evidence rules, with full respect of the rights of the accused and “due regard for the protection of victims and witnesses.” This general obligation for the protection of victims is of significance for the interpretation of other provisions of both the Statute and Rules. Moreover, this provision is important because it is unique within international law: Neither Article 14 of the International Convention of Civil and Political Rights nor Article 6 of the European Convention of Human Rights—which concerns the right to a fair trial—list the protection of victims and witnesses as one of their primary considerations.<sup>2</sup> However, the uniqueness of this provision is not surprising, keeping in mind that the Tribunal is dealing with extremely violent and organized crimes so that the,

question of witness protection is one of an urgency

and immediacy, which national courts would usually know only from prosecution of terrorist offenses or organised crimes. (Cassese 349)

More precisely, Article 22 of the Statute reads:

The International Tribunal shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of *in camera* proceedings and the protection of the victim’s identity.

As is stressed by Cassese, the protection of victims is the very “raison d’etre” of the ICTY, which was established to halt and redress the crimes being committed against defenceless persons (Cassese 332).

Article 34 also provides for the creation of a Victims and Witnesses Unit. The responsibility of this Unit is to recommend protection measures for victims and witnesses in accordance with the Statute and to provide counselling and support for victims and witnesses, with consideration given to the appointment of qualified women. As is well noted by Niarchos,

although no specific provision is made, the same considerations prompting the creation of the Victims and Witnesses Unit suggest that the prosecutor should also create a special unit, to be staffed primarily by women, for the prosecution of cases of rape and sexual assaults. (688-689)

The Rules of Procedure and Evidence also contain provisions on the protection of victims and witnesses. The Measures for the Protection of Victims and Witnesses, provides that,

a Judge or a Chamber may, *proprio motu* or at the request of either party, or of the Victim and Witnesses Unit, order appropriate measures for the privacy and protection of victims and witnesses,

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Rape is regarded primarily as a crime against an ethnic group, against a women as a man’s property, and not as a crime against a woman as an individual.

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provided that the measures are consistent with the rights of the accused.

Several protective measures are intended to protect privacy, i.e., to prevent disclosure to the public or to the media of the identity and other details about the victim, a witness, or persons related to her/him. These measures include the following: removing names and identifying information from the Chamber's public record; non-disclosure to the public of any records identifying the victim; giving of testimony through image or voice-altering devices or closed circuit television; the assignment of a pseudonym; closed sessions during all of the trial or during some part of it; and appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television. In all cases the protection of privacy is related to the non-disclosure of information about the victim and witnesses. This protection is not afforded to the accused.

The possibility of ordering measures which guarantee full anonymity (including non-disclosure of information to the accused) of the victim or witnesses before the trial is provided for in Rule 69. This measure is used only under exceptional circumstances, for example, if the victim or the witness is in danger during the period before the trial. If this is the case, the identity of the victim or witness will be released to the defence with enough time before the trial to allow the defence to prepare its case. This is the only measure which protects victims before a trial. However, the decision in the Celebici case of November 29, 1996, based on an interpretation of Rule 75, also ordered the protection of the privacy (not including anonymity to the accused) of potential witnesses before the trial. This means that in the pre-trial stage, it is possible (albeit as an exception) to conceal the identity of the victims and witnesses from the public and the media as well as from the accused.

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The protective measures listed above may be arranged in three categories: measures intended to protect the privacy of victims and witnesses (confidentiality); measures for the protection of victims and witnesses from secondary victimization related to confrontation with the defendant/s; and measures which guarantee victims and witnesses non-disclosure of their identity to the defendant/s (anonymity). Measures which are intended to protect the privacy of victims and witnesses as well as those which guarantee their anonymity in relation to the accused are of major importance for alleviating victims' and witnesses' fear of revenge and, consequently, for in-

creasing their willingness to testify. It is especially important to enforce these measures in the period before the trial. This is particularly significant when victims and witnesses still live in the territory of the former Yugoslavia (or have relatives who live there) as they are more vulnerable to the threat of reprisals.

Measures for the protection of victims and witnesses are important also because the very act of testifying about the rape, especially in public, is extremely traumatic. Testimony given by a rape victim may lead to stigmatization and, consequently, to the rejection of the victim by her husband, family, and community.

The protection of the victim from meeting the accused during the trial is also important, since any new confrontation with the rapist is a potential source of re-traumatization. Rule 75 (C) also provides that the Chamber shall, whenever necessary, control the manner of questioning to avoid any harassment, intimidation, or any secondary victimization as a consequence of inappropriate questioning. Rule 96 is, in fact, intended to specifically protect women victims of sexual offenses from inappropriate questioning by the defence.<sup>3</sup> Rule 96 also provides that corroboration of the victim's testimony is not required and consent is not allowed as a defence if the victim was subjected to physical or psychological constraints. Furthermore, the victim's prior sexual conduct is inadmissible.

As a unique international body, the Tribunal has few precedents to guide it (the international tribunals at Nuremberg and Tokyo had only rudimentary rules of procedure). The International Tribunal is unique also because it relies on an innovative amalgam of common law and civil law systems. In other words, the Tribunal relies in significant measure on its own practice as a source of law. This is especially evident where the protection of victim and witnesses is in question, bearing in mind that other international bodies lack such provisions. As such, the International Tribunal must determine where the balance lies between the accused's right to a fair and public trial and the protection of victims and witnesses within its legal framework.<sup>4</sup> This is not easy, although many contemporary national legislatures have established detailed measures and programs for the protection of victims and witnesses, some of which were used as models for the creation of these provisions in the Statute and Rules.

Unfortunately, protective measures provided for in national laws are limited as models for the creation of measures for protection of war crime victims since, with rare exceptions, they are implemented only during the trial. Before, and especially, after the trial, victims and witnesses are not guaranteed any protection.<sup>5</sup> The lack of long-term programs for victim/witness protection is justified by the fact that the Tribunal has neither its own police force nor the funds for the creation and realization of such programs. As a consequence, persons who decide to testify are placed in a difficult situation especially if, after leaving the Tribunal, they must return to the former

Yugoslavia and risk meeting the family and acquaintances of the accused. This is intensified by the basic weakness inherent in the concept of protection of victims before the Tribunal: even if the strongest protective measures are adopted, the identity of the witness will be known to the defendant (Niarchos).

### The protection of witnesses

While it might appear that, at least in the period before the trial, the protection of victims and witnesses of war rape is satisfactory, in reality, victims of war rape who decide to testify before the Tribunal are confronted with a number of problems. For a better understanding of the delicate situation of rape victims, it is important to note that five years after a mass media campaign and the alleged general interest in the destiny of rape victims, these same victims, with only rare exceptions, were deprived of any substantial support and/or help. They were forgotten and left at the mercy of the authorities of receiving countries (if they are refugees) or of their rapists (if they stayed behind and decided to or were forced to return to places where they had lived before). Insecure refugee status and, consequently, unsolved existential problems, prevents victims from psychological and physical recovery and, as a rule, traumatizes them even further. The slow and difficult procedures for obtaining refugee status, as well as the uncertainty of their residency in asylum countries, prolongs their own feelings of uncertainty and decreases the readiness of women to testify. Schiestl, in fact, suggests that because of oppressive asylum policies, most European countries “are in effect culpable of suppressing evidence, especially evidence from women” (136).

Women who have spoken out about their trauma during asylum proceedings and even repeated their statements in front of investigators of the Tribunal still fail to receive a response to their asylum applications or are even denied asylum. In spite of the fact that they are witnesses of the Tribunal, they may be deported to their home countries, i.e., to the site of the crime. In this way, as Schiestl states, “they are officially delivered over to the perpetrators” (136). The most important form of victim protection—secure immigrant status and defence against deportation into the hands of perpetrators—does not exist.

Moreover, the special position of rape victims as well as other refugees who have settled in the territory of the Federal Republic of Yugoslavia (FRY) is ignored (see Stevanovic). Rape victims, as refugees in FRY, are faced with a lack of acceptance on the part of the local people as well as with a complete lack of organized and comprehensive support from both government and non-government organizations (NGOs). NGOs, in particular, including some women’s groups, were greatly influenced by the creation of the image of “the rape victim,” a category reserved almost exclusively for raped Muslim women, and used for

political and military aims. This means that sometimes they were less concerned about the problems of Serbian women, as opposed to those of non-Serbian women, who stayed behind—as refugees—in Serbia. The worse off are those victims of war rape who returned to the place where they were originally victimized. They are faced not only with general political and economic insecurity, but also with real fear that, if they should decide to testify at the Tribunal, they would expose themselves to threats and reprisals by either the perpetrators themselves and/or persons close to them. As noted by Schiestl, it will take a lot of time before the majority of victims are,

[in a] physical, emotional and material position that would enable them to speak. If the Tribunal does not become a permanent one, then many human rights violations, particularly against women and children, will never come to light and the peace-securing aspects of its mandate will never be realized. (137)

Furthermore, appropriate support for raped women is lacking when they arrive at the Hague as witnesses before the Tribunal (Schiestl). Although adequate preparation for the trial is crucial in order to avoid re-traumatizing the witness, the Victim and Witnesses Unit is comprised of five persons who are mainly responsible for organizational and administrative tasks. The women do not know what they can expect from the Unit, nor how it operates. The Unit’s staff itself has not been trained nor sensitized to the cultural, gender, educational, and class differences of the women testifying, as well as to the specific mentality of victims from the former Yugoslavia (Schiestl). As the Unit’s staff do not establish contact with victims before they come to the Tribunal, they meet the victim/witness for the first time at the Tribunal. As a result, it is not possible for those responsible for the care of these victims to establish a trusting relationship. Furthermore, the Rules of Procedure and Evidence do not guarantee the confidentiality of the information obtained by Victim and Witnesses Unit.

Schiestl, points out that, although a doctor is available in case of illness as well as to provide tranquilizers for anxiety, sleep, and psychosomatic disorders, there are no therapists or other experts trained in psychology continually present to assist victims/witnesses for the prosecution. The waiting period for giving testimony may last hours and sometimes as long as two days, which puts an immense psychological burden on the witnesses since “their present fears mix uncontrollably with fears from

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Erika Simon Gottlieb, "Recollections: Farewell," oil on board, 10" x 14", 1959.

the past" (Zepter 139). Fortunately, the intense and admirable commitment of the female caregivers, as well as the affection and strength that the witnesses give to one another, ensures this unsatisfactory situation is at least alleviated (Zepter).

Giving testimony before the Tribunal itself is traumatic for victims/witnesses for many reasons. The position of the witness is delicate since she/he is usually afraid of not being able to tell all the important details, as well as the concern that she/he will not speak clearly or in a systematic manner. When testifying before the Tribunal is in question, this feeling is intensified by the fact that the testimony is given through an interpreter so there is an additional fear of being misinterpreted. Moreover, the victim of war rape is often afraid of being rejected by persons close to her, feels intense shame and anxiety about how people who know her will react when they learn about her rape, and is traumatized by seeing the rapist again and reliving the horrifying details of the rape. Victims of war rape are also handicapped by the complete uncertainty of their status as well as by other traumas they experienced during the war.<sup>6</sup> For many women, the distinction between the United Nations Commission of

Experts and the Tribunal is unclear so they do not understand why they have to give their statements a second time (Schiestl). Furthermore, the fact that they have already spoken about their rape experience to journalists and activists of different fact-finding organizations, without having their situation improved and without being spared repeating their statements before the Tribunal, makes them more vulnerable. It is not, therefore, surprising that to date only a few war rape victims have testified before the Tribunal.

This analysis of the Statute and Rules shows that on a normative level significant efforts have been made to enable the protection of victims/witnesses. Paradoxically, however, war rape victims rarely use the protection measures provided by the Tribunal, as the support structures necessary for their protection, support, and access to information have not been put in place.

Suada Ramic, a Muslim woman and a victim of war rape in the Serbian camp Omarska, for instance, testified in the Tadic case using her full name and in an open session.<sup>7</sup> Fortunately, Suada was accompanied by Maria Zepter, a therapist who provided her with psycho-social counselling during her stay as a refugee in Germany as well as in the Hague. Moreover, the prosecution's representative, an American, Brenda Hollis, led her through the proceedings with great sensitivity and without insisting on the details of her victimization. Also, the defence did not ask to cross-examine her. However, even under these conditions, the testimony was a very stressful experience for Suada and the fact that she gave her statement publicly added the fear of its consequences to the trauma of the testimony itself. Zepter describes Suada after testifying:

I repeat her name, Suada, Suada... Now, at last she has heard me. Slowly her crying changes. Relief mixes with the sobs. Her body relaxes. "Where are we, Suada?" I ask the old familiar question. "Here!" she says, nods, gazes briefly into my eyes and then buries her head on my shoulder. After some minutes comes the second wave of fear, which again possesses her whole body. She holds her hands in front of her face as if she wants to hide and squeezes her body together. "What will my people say now they've heard that I've been raped?" (143)

Another example of war rape victims testifying without protecting their identity is the case of two victims of Serbian nationality, Grozdana Cecez and Milojka Antic, who testified in the Celebici case. What is of note, however, is that these two victims/witnesses refused protective measures and testified publicly using their real names. Their decision was influenced by what they perceived to be a mistrust of raped Serbian women, a consequence of the image of the war rape victim—almost exclusively reserved for non-Serbian women—perpetuated during the war by both media and academics (Nikolic-Ristanovic).

During their examination, the prosecution insisted on details of the victimization although this was not necessary. Furthermore, during the defence's cross-examination, the provisions of Rule 96 concerning the inadmissibility of interrogation about victim's prior sexual conduct were violated as follows: during the cross-examination of Grozdana Cecez, the defence lawyer of accused Hasim Delic, Thomas Moran, insisted on irrelevant details concerning her use of contraceptive pills before and during the war and the abortion she had had performed. Moran, in particular, emphasized the statement of her doctor who revealed details from Cecez's medical files as well as the fact that he had suggested she not use contraceptive pills because of her age; this was why she got pregnant and had an abortion performed.<sup>8</sup> Although the prosecution objected, Judge Karibi Whyte did not prevent cross-examination on that topic. On the other hand, in the case of the examination of Milojka Antic, a brutal cross-examination about her previous sexual activity provoked the reaction of the Judge Whyte, who warned the defence that with such an examination they had raped the witness a second time (Jovanovic).

These examples demonstrate that protective measures are not always effective in guaranteeing the safety of war rape victims, although it is widely acknowledged that they belong to the most vulnerable category of victims/witnesses. It is also evident the implementation of protective measures should be assured in more appropriate ways. Perhaps a penalty for breaching protection measures would ensure the implementation of protection measures orders.<sup>9</sup>

## Conclusion

Partial and biased coverage of the problem of rape during the war in the former Yugoslavia resulted in rape being regarded as a war strategy or as a crime against man's honour, property, and territories. Even feminists did not emphasize the interests of women *per se*, but responded instead by emphasizing the interests of women belonging to men whose side was judged to be "right," according to the dominant political (male) estimates of the war. In this way, feminists have subordinated gender to ethnicity and female interests to male interests (MacKinnon; Stygl-mayer).

Consequently, it is not surprising that the act of rape, which is not committed as part of a strategy for ethnic-cleansing, was *not mentioned* at the outset of the war crime Tribunal until feminist lawyers argued that these rapes should also be acknowledged as grave breach of the Geneva Convention (Smiljanic). As a result, rapes committed as a part of strategy of ethnic cleansing are called by their right name while other rapes, after being acknowledged as grave breach, are called "inhumane treatment," "torture," and "intentional infliction of great suffering or serious injuries of body or health." The value of this

"reconceptualization," as noted by Smiljanic, can be questioned as it moves toward acknowledging the universal male standard—the male Being—rather than acknowledging the female body specifically. This is a situation where law is compensating for its inadequacies, rape is not mentioned explicitly, but other norms can be used to make up for the "gaps." (56)

As I have shown, subsequent interpretations of the Statute did improve earlier, completely unacceptable, interpretations of women's suffering in the war. This increases the possibility that more victims will decide to testify before the Tribunal and that the truth about rape will be established. It is important to note that it remains far too difficult to prove a rape committed as a part of a strategy for ethnic-cleansing. Thus, it may never be possible to prove that many of the rapes were committed as part of a systematic and widespread policy.<sup>10</sup> To address this issue, it remains imperative that war rape be recognized as a gender-specific crime, and punished as such.

Furthermore, to prove the number of rapes that were committed, it is necessary to be clearer about how such figures are manipulated and/or arrived at. As British journalist Linda Grant puts it:

What tells us the number of raped women if one woman is raped hundred times? If one woman is raped a hundred times, is it one or a hundred rapes? (11)

It is not surprising that forced impregnation which, according to my research, represents the most traumatic experience for women, is neither explicitly nor implicitly regarded as a crime in addition to a war strategy (like ethnic cleansing and genocide). Copelan, for example, notes that,

[analyses of] the crime of forced impregnation—central as it is to genocidal rape—also miss the gender component. When examined through a feminist lens, forced pregnancy appears as an assault on the reproductive self-determination of women. It expresses the desire to mark the rape and rapist upon the woman's body and upon the woman's life. (203)

However, Copelan has some reservations about the claim that forced impregnation is the crucial point of genocidal rape, noting that the taunt that Muslim women will bear Serbian babies is not only intended as an ethnic slur, particularly in light of the prevalence of ethnically-mixed families in the FRY. Copelan's analysis also remains contradictory because, while supporting the recognition of forced impregnation as a crime against women, she only refers to crimes committed against Muslim women. My

research, as well as that of Amnesty International, demonstrates that the Serbian women were also victims of forced impregnation a fact has been insufficiently acknowledged so far (Copelan).

If the international community really wants the truth about war crimes to be established as well as ensuring that the perpetrators are adequately punished, it is imperative that victims/witnesses of the Tribunal are in the first place guaranteed secure immigrant status<sup>11</sup> and defended against deportation to their country of origin. Also, in the meantime, until a permanent International Criminal Court is established, it is necessary to provide sufficient financial resources for the daily, effective functioning of all the Tribunal's services, ensuring guarantees for the consistent implementation of the Rules of Procedure and Evidence, which are relevant for the protection of victims of rape.

One of the most important elements of that implementation is almost certainly the reorganization of the Victim's and Witnesses Unit that would guarantee psychological support as well as provide victims/witnesses with a sense of security and confidence. As stated by de Sampayo Garrido-Nijgh, the Registrar of ICTY, in her address to the Preparatory Committee on the Establishment of an International Criminal Court,

the responsibility of the international community to protect witnesses delegated to the Victim and Witness Unit, requires impartiality and independence. In its protection activities, it is imperative that the Witness Unit have constant access to adequate financial and human resources, allowing it to operate in a self-reliant fashion, on the bases of balanced and transparent policies. For protection measures for which the court requires outside support, the cooperation of States should be available at all times, ensuring that a variety of protection programs is available. In this sense, witness protection falls within the exclusive responsibility of governments, to be initiated and coordinated by the Victim and Witness Unit.

Under these terms, cooperation with governmental and non-governmental organizations located in all countries in which potential witnesses are settled as well as directing funds toward those organizations who are ready to offer support to victims/potential witnesses, should be imperative. As stressed by de Sampayo Garrido-Nijgh, cooperation with non-governmental organizations is especially important in assisting to witnesses since they can cover activities such as accompanying and counselling the witness before, during, and after the trial. Special attention should be paid to non-governmental organizations in FRY<sup>12</sup> who are willing to cooperate with the Tribunal, bearing in mind the invisibility of the problems of raped Serbian women. On the other hand, cooperation with governments should be crucial where the protection of

witnesses is at issue. It may well be less realistic to achieve, particularly when dealing with victims who continue to live in the states of the former Yugoslavia; governments may be less willing to cooperate if the victims/witnesses are of an ethnic origin which is not dominant in their particular state. It is, nevertheless, the International Tribunal's duty to establish a balance between the interests of the defendant to establish facts and the interests of witness. Unfortunately, as is well noted by de Sampayo Garrido-Nijgh.

more often than not, the interest of a witness in his or her personal security and safety will not coincide with the interests of either party in protecting the witness. The interest of the latter will usually be limited to a witness's role in "winning" the case.

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<sup>11</sup>Decision on the prosecutor's motion requesting protective measures for victims and witnesses in the Tadic case, p. 10. Celebici and Tadic indictment can be found on <http://un.org/icty>.

<sup>12</sup>Decision on the prosecutor's motion requesting protective measures for victims and witnesses in the Tadic case, p.10.

<sup>13</sup>Decision on the prosecutor's motion requesting protective measures for victims and witnesses in the Tadic case, p.11

<sup>14</sup>One of important exceptions and potential models which may be applied to witnesses of the Tribunal is the model of the protection of victims of trafficking who decided to testify. For example, in 1995 in Belgium, a safe house for victims of trafficking in women was established. The safe house provide social, medical, legal and psychological support and help victims to get permanent residency ("Trafficking Women from the Former Soviet Union").

<sup>15</sup>Decision on the prosecutor's motion requesting protective measures for victims and witnesses in the Tadic case, p.19

<sup>16</sup>Many women lost their loved ones in the war, have invalidated husbands or children, and lost their homes. These horrible experiences, however, remain hidden so that this side of the victimization of women in the war, although sometimes more traumatic than rape itself, has been overshadowed by the systematically created image of

the war rape victim.

<sup>7</sup>Although the representatives of the prosecution asked for protective measures to be ordered and their request was accepted by the Chamber, Suada testified without protection from disclosure to the public. Although I did not manage to find out the reason, I can only assume that this may be due to the defence's concern about the violations of the rights of the accused.

<sup>8</sup>See transcript from the trial in the Celebici case, ICTY website on the Internet.

<sup>9</sup>For an example of such a solution see Law Commission Report 42 "Evidence Law: Witness Anonymity," 1997, Wellington, New Zealand.

<sup>10</sup>In his address to the Preparatory Committee on the Establishment of an International Criminal Court, the representative of the International Center for Human Rights and Democratic Development questioned a statement that it is necessary, in laying the charge of crimes against humanity, that they are both systematic and widespread. It was also his view that it is sufficient under international law to recognize that crimes against humanity be either systematic or widespread; to impose both criteria, he said, not only pushes international law backward by 50 years, but would be extremely prejudicial to the prosecution of crimes of sexual violence.

<sup>11</sup>In that sense, the recent offer of Canada to guarantee immigrant status to witnesses of the Tribunal, may be considered as an important step forward.

<sup>12</sup>One of such organizations is the Victimology Society of Serbia.

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