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PLENARY 10: SEXUAL ASSAULT

*Social Movements and the Development of Sexual Violence Jurisprudence  
within International Criminal Law*

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At the time when the Rome Treaty entered into force on July 1, 2002, a significant body of jurisprudence had developed within international criminal law addressing sexual violence. The creation of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) and the International Criminal Tribunal for Rwanda (“ICTR”) represented a significant break from the past in which international criminal acts were treated with impunity.<sup>1</sup> Individuals and organizations interested in the prosecution of sexual violence in armed conflict saw the creation of the ICTY and the ICTR as an opportunity to not only end impunity for genocide, war crimes, and crimes against humanity, but to also end impunity for acts of sexual violence that constitute genocide, war crimes, and crimes against humanity.<sup>2</sup> Individuals and organizations mobilized to have these tribunals investigate and prosecute acts of sexual violence. Today I am going to discuss the role that these advocates had in the development of the sexual violence jurisprudence at the ad hoc tribunals and the International Criminal Court (“ICC”).

It is my contention that the significant attention that sexual violence crimes received at the ICTY and the ICTR can be connected to the rise of governance feminism, which has come about as a result of the mobilization efforts of gender justice advocates. Janet Halley, a law professor at Harvard Law School, coined the term governance feminism to refer to the “installation of feminist and feminist ideas in actual legal-

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<sup>1</sup> See, e.g., Edward Wise, *The International Criminal Court: A Budget of Paradoxes*, 8 TUL. J. INT’L & COMP. L. 261, 281 n.96 (noting that “murderers who kill one or two victims are likely to go to prison, those who kill dozens are likely to be sent to an insane asylum, while those who kill thousands are likely to be invited to Geneva for peace negotiations”).

<sup>2</sup> Joanne Barkan, *As Old as War Itself: Rape in Foca*, DISSENT 60 (Winter 2002).

institutional power.”<sup>3</sup> Since the beginning of the ad hoc tribunals’ existence women have been involved in a variety of positions that have been useful in successfully prosecuting sexual violence. These positions include judges, investigators, prosecutors, and translators.<sup>4</sup> Gender justice advocates have actively supported female judicial candidates and prosecutors who had professional experiences addressing sexual violence.

The success of these advocates can be seen by looking at the jurisprudence of the ad hoc tribunals. Genocide is defined as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;

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<sup>3</sup> Janet Halley, *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J.L. & GENDER 335, 337 (2006).

<sup>4</sup> *Id.* at 339. Since the beginning of the ICTY and the ICTR twelve women have served as judges of these tribunals, and Gabrielle Kirk McDonald served as the President of the ICTY from 1997 until 1999. Int’l Criminal Tribunal for Rwanda, Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violation of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizen’s Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States Between 1 January and 31 December 1994, ¶7-8, U.N. Doc. A/51/399-S/1996/778 (Sept. 24, 1996) [hereinafter ICTR Report]; ICTR Report, ¶5, U.N. Doc. A/52/582-S/1997/868 (Nov. 13, 1997); ICTR Report, ¶9-12, U.N. Doc. A/53/429-S/1998/857 (Sept. 23, 1998); ICTR Report, ¶5-8, U.N. Doc. A/54/315-S/1999/943 (Sept. 7, 1999); ICTY Report, ¶7-19, U.N. Doc. A/55/435-S/2000/927 (Oct. 2, 2000); ICTR Report, ¶8-12, U.N. Doc. A/56/351-S/2001/863 (Sept. 14, 2001); ICTR Report, ¶26-27, U.N. Doc. A/57/163-S/2002/733 (July 2, 2002); ICTR Report, ¶16-18, U.N. Doc. A/58/140-S/2003/707 (July 11, 2003); ICTR Report, ¶4-5, U.N. Doc. A/59/183-S/2004/601 (July 27, 2004); ICTR Report, ¶8-9, U.N. Doc. A/60/229-S/2005/534 (Aug. 15, 2005); ICTR Report, ¶5-7, U.N. Doc. A/61/265-S/2006/658 (Aug. 16, 2006); ICTR Report, ¶ 10-14, U.N. Doc. A/62/284-S/2007/502 (Aug. 21, 2007); Int’l Criminal Tribunal for the Former Yugo., Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991, Annex, U.N. Doc. A/49/342 - S/1994/1007 (Aug. 29, 1994) available at <http://www.un.org/icty/rappannu-e/1994/index.htm> [hereinafter ICTY Report]; ICTY Report, ¶ 3-6, U.N. Doc. A/50/365 - S/1995/728 (Aug. 23, 1995); ICTY Report, ¶6, U.N. Doc. A/51/292 - S/1996/665 (Aug. 16, 1996); ICTY Report, ¶8, U.N. Doc. A/52/375 - S/1997/729 (Sept. 18, 1997); ICTY Report, ¶ 7-10, U.N. Doc. A/53/219 - S/1998/737 (Aug. 10, 1998); ICTY Report, ¶8-10, U.N. Doc. A/54/187 - S/1999/846 (Aug. 25, 1999); ICTY Report, ¶13, U.N. Doc. A/55/273 - S/2000/777 (Aug. 7, 2000); ICTY Report, ¶ 63-67, U.N. Doc. A/56/352 - S/2001/865 (Sept. 17, 2001); ICTY Report, ¶47-54, U.N. Doc. A/57/150 (Aug. 4, 2002); ICTY Report, ¶37-44, U.N. Doc.; ICTY Report, ¶40-46, U.N. Doc. (Aug. 13, 2004); ICTY Report, ¶33-39, U.N. Doc. (Aug. 15, 2005); ICTY Report, ¶ 31-37, U.N. Doc. A/61/271-S/2006/666 (Aug. 21, 2006); ICTY Report, ¶31-37, U.N. Doc. A/62/172-S/2007/469 (Aug. 1, 2007). Two women have served as chief prosecutor of the ICTY and ICTRY, Louise Arbour from 1996 to 1999 and Carla Del Ponte from 1999 to 2003. Carla Del Ponte also served as the chief prosecutor of the ICTY from 1999 until 2007. See United Nations, *Press Release: President Gabrielle Kirk McDonald Welcomes the Appointment by the Security Council of Carla Del Ponte as Prosecutor*, U.N. Doc. JL/P.I.S./429-E (Aug. 12, 1999) available at <http://www.un.org/icty/pressreal/p429-e.htm>; and *New Rwandan Prosecutor Named*, BBC, Aug. 29, 2003, available at <http://www.globalpolicy.org/intljustice/tribunals/rwanda/2003/0829jallow.htm>; Harvard International Law Journal Digest, *Secretary General Nominates New ICTY Prosecutor*, ILJ DIGEST, Nov. 15, 2007, available at <http://www.harvardilj.org/digest/archives/293>.

- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.<sup>5</sup>

In 1998 the ICTR held that rape can constitute the *actus reus* for genocide because it causes “serious bodily or mental harm to members of the group.”<sup>6</sup> In this case, Prosecutor v. Akayesu, the Trial Chamber stated that rape and sexual violence are some “of the worst ways [to] inflict harm on the victims as he or she suffers both bodily and mental harm.”<sup>7</sup> Based on testimony received, the Trial Chamber concluded that an integral aspect of the attempt to destroy the Tutsi population was sexual violence.<sup>8</sup> The Trial Chamber stated that “Tutsi women were subjected to sexual violence because they were Tutsi. Sexual violence was a step in the process of destruction of the tutsi [*sic*] group – destruction of the spirit, of the will to live, and of life itself.”<sup>9</sup> While the ICTY has yet to convict an accused of genocide based on rape or other acts of sexual violence, rapes have been the basis for convictions for crimes against humanity and war crimes.

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<sup>5</sup> Rome Statute, art. 6.

<sup>6</sup> Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment at para. 731 (Sept. 2, 1998) [hereinafter *Akayesu* Trial Judgment].

<sup>7</sup> *Id.* at para. 731

<sup>8</sup> *Sexual Violence and International Criminal Law: An Analysis of the Ad Hoc Tribunal’s Jurisprudence & the International Criminal Court’s Elements of Crimes* 8 (Women’s Initiatives for Gender Justice 2005) (authored by Angela M. Banks) [hereinafter *Sexual Violence and International Criminal Law*].

<sup>9</sup> *Akayesu* Trial Judgment, *supra* note 6, at para. 731, 732. The ability of rape and other acts of sexual violence to satisfy the serious bodily and mental harm element of genocide has been upheld in *Kayishema, Musema, Krstić, Kamuhanda, Stakic, Kajelijeli, and Gacumbitsi*. Prosecutor v. Kayishema & Ruzindana, Case No. ICTR-95-1-T, Judgment & Sentence at para. 108 (May 21, 1999) [hereinafter *Kayishema* Trial Judgment]; Prosecutor v. Musema, Case No. ICTR-96-13, Judgment & Sentence at para. 156 (Jan. 27, 2000) [hereinafter *Musema* Trial Judgment] (“the Chamber understands the words ‘serious bodily or mental harm’ to include, but not limited to, acts of bodily or mental torture, inhumane or degrading treatment, rape, sexual violence, and persecution. The Chamber is of the opinion that ‘serious harm’ need not entail permanent or irremediable harm.”); Prosecutor v. Krstić, Case No. IT-98-33, Judgment at paras. 509, 513 (Aug. 2, 2001) [hereinafter *Krstić* Trial Judgment] (In subscribing to the above case-law, the Chamber holds that inhuman treatment, torture, rape, sexual abuse and deportation are among the acts which may cause serious bodily or mental injury.”); Prosecutor v. Kamuhanda, Case No. ICTR-97-23-S, Judgment & Sentence at para. 634 (Sept. 4, 1998) [hereinafter *Kamuhanda* Trial Judgment]; Prosecutor v. Stakic, Case No. IT-97-24, Judgment at 516 (July 31, 2003) [hereinafter *Stakic* Trial Judgment]; Prosecutor v. Kajelijeli, Case No. ICTR-98-44A-T, Judgment & Sentence at para. 815 (Dec. 1, 2003) [hereinafter *Kajelijeli* Trial Judgment] (noting the Trial Chambers of the ICTR have held that serious bodily harm includes the nonmortal acts of sexual violence, rape, and mutilation); Prosecutor v. Gacumbitsi, Case No. ICTR-2001-64-T, Judgment at para. 291 (June 17, 2004) [hereinafter *Gacumbitsi* Trial Judgment] (“Serious bodily harm means any form of physical harm or act that causes serious bodily injury to the victim, such as torture and sexual violence. Serious bodily harm does not necessarily mean that the harm is irremediable.”).

You will recall that crimes against humanity are specific acts that are “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”<sup>10</sup> Enslavement with distinct sexual overtones, rape as a form of torture, rape (specifically enumerated in the ICTY and ICTR Statutes and the Rome Statute), sexual assaults as persecution, and rape as cruel and inhuman treatment for persecution are examples of sexual violence being prosecuted as crimes against humanity. War crimes on the other hand, are grave violations of the laws or customs of war. This covers both grave breaches of the Geneva Conventions and violations of Common Article 3 of the Geneva Conventions, which separately cover international and non-international armed conflicts. Examples of acts of sexual violence being prosecuted as war crimes include rape as torture, cruel treatment (tying an electric cord around the genitals of prisoners, forcing prisoners to perform fellatio on one another<sup>11</sup>; kicking four individuals in the genitals, repeatedly pulling down the pants of one individual while beating him and threatening to cut off his penis<sup>12</sup>), outrages upon personal dignity (holding four young women in an apartment and forcing them to dance naked on a table while one of the accused watched, selling women, handing one woman over to two men,<sup>13</sup> forcing two Muslim men to perform fellatio on one another,<sup>14</sup>) willfully causing great suffering or serious injury to body or health (burning fuse cord around the genitals of two individuals<sup>15</sup>), and inhuman treatment (forcing two Muslim brothers to perform fellatio on one another for two to three minutes in full view of other detainees<sup>16</sup>).

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<sup>10</sup> Rome Statute at art. 7. The ICTY Statute, like the Rome Statute follows the customary international law approach to crimes against humanity. See S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg. at 28, U.N. Doc S/RES/827 at art. 5 (1993) [hereinafter ICTY Statute] (enumerating nine crimes that are crimes against humanity if committed as part of a widespread or systematic attack against any civilian population). The ICTR’s jurisdiction over crimes against humanity is narrower than that provided by customary international law because the ICTR is limited to adjudicating acts that took place as part of a discriminatory attack, an attack on national, political, ethnical, racial, or religious grounds. S.C. Res. 955, U.N. SCOR, 49th Sess., 3453d mtg. at 15, U.N. Doc. S/RES/955 & Annex at art. 3 (1994) [hereinafter ICTR Statute].

<sup>11</sup> Prosecutor v. Delalic, et al., Case No. IT-96-21, Judgment at para. 24, & Part IV (Nov. 16, 1998) [hereinafter *Čelebići* Trial Judgment].

<sup>12</sup> Prosecutor v. Simic, Case No. IT-95-9/2, Sentencing Judgment at para. 11 (Oct. 17, 2002) [hereinafter *Simic* Sentencing Judgment].

<sup>13</sup> Prosecutor v. Kunarac, Kovac, Vukovic, Case No. IT-96-23&23/1, Judgment at paras. 16-17 (June 12, 2002) [hereinafter *Foca* Appeals Judgment].

<sup>14</sup> Prosecutor v. Cesic, Case No. IT-95-10/1, Sentencing Judgment at para. 13 (Mar. 11, 2004) [hereinafter *Cesic* Sentencing Judgment].

<sup>15</sup> *Čelebići* Trial Judgment, *supra* note 11, at para. 1019.

<sup>16</sup> *Id.* at para. 1065.

Despite definitions of genocide, crimes against humanity, and war crimes that could accommodate acts of sexual violence, the ad hoc tribunals were slow to prosecute acts of sexual violence. Not only is sexual violence during armed conflict as old as armed conflict, but acts, such as rape, have been considered violations of international law for centuries.<sup>17</sup> In addition to the legal availability of prosecuting acts of sexual violence, there had been considerable media attention given to the massive scale of the sexual assaults that took place in both the former Yugoslavia and Rwanda. The media in the early 1990s covered the massive rapes in Bosnia, and non-governmental organizations (“NGOs”) NGOs like Africa Human Rights Watch and Human Rights Watch published detailed reports about acts of sexual violence in Rwanda.<sup>18</sup> Yet, despite the existence of applicable law and public awareness regarding sexual assault in the former Yugoslavia and Rwanda, gender justice advocates argued that the ad hoc tribunals were not investigating and prosecuting sexual violence sufficiently.<sup>19</sup> For example, in the groundbreaking case, *Akayesu*, acts of sexual violence were not included in the initial indictment. It was only after the trial began that the Prosecutor amended the indictment to include three charges relating to acts of sexual violence: rape as a crime against humanity, outrages upon personal dignity, and degrading and humiliating treatment and indecent assault.<sup>20</sup> To rectify these types of omissions gender justice advocates became active in gathering evidence for use at the ad hoc tribunals, submitting amicus curiae briefs to the tribunals, and working to influence the development of the legal rules at the ICC to facilitate the investigation and prosecution of sexual violence.

Through my previous work on social movements and legal reform I have identified three key factors for the success of gender advocates. In past work focusing on the constitution-making process in Rwanda I argued that the success of gender equity advocates in achieving constitutional reform was connected to the advocates’

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<sup>17</sup> Karen Engle, *Feminism and Its (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovina*, 99 AM. J. INT’L L. 778, 778 (2005).

<sup>18</sup> See Helen Durham, *Women and Civil Society: NGOS and International Criminal Law*, in WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW 833 (Kelly D. Askin & Dorean M. Koenig, eds. 2001); Africa/Human Rights Watch, SHATTERED LIVES: SEXUAL VIOLENCE DURING THE RWANDAN GENOCIDE AND ITS AFTERMATH (1996).

<sup>19</sup> Rhonda Copelon, *Gender Crimes as War Crimes: Integrating Crimes Against Women Into International Criminal Law*, 46 MCGILL L.J. 217, 219, 229 (2000).

<sup>20</sup> Durham, *supra* note 18, at 839.

relationships with influential allies, the ability to frame goals in ways that resonate with decision makers and the broader public, and mobilizing public support.<sup>21</sup> Today I want to focus on the role of framing and influential allies in the development of sexual violence jurisprudence within international criminal law.<sup>22</sup>

Within the sociological literature on social movements, frames are “central organizing ideas that provide coherence to a designated set of idea elements.”<sup>23</sup> “Frames affect what participants identify as problematic, who they blame for such problems, and how they believe the problems should be resolved.”<sup>24</sup> Strategic framing is a process by which advocates “attempt to align their definition of a problem and proposed solutions with the interpretive framework of other members of the society. This requires enabling individuals to see that some set of their interests values, and beliefs are congruent and complementary with the organization’s activities, goals, and ideology.”<sup>25</sup> Gender justice advocates have sought to have acts of sexual violence committed during armed conflict treated as serious indictable offenses. To do so they have framed the prosecution of sexual assault as necessary for the same reasons as other wartime atrocities—to promote justice, to end impunity, and to protect fundamental human rights.<sup>26</sup>

The development of these frames can be seen by examining some of the work that was undertaken by gender justice advocates to have sexual violence investigated and prosecuted at the ad hoc tribunals. One key activity was direct advocacy at the ad hoc

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<sup>21</sup> Angela M. Banks, *Challenging Political Boundaries in Post-Conflict States*, 29 U. PENN. J. INT’L L. 105, 145-66 (2007).

<sup>22</sup> Joanne Barkan identifies the goals of gender justice advocates as follows: getting rape and sexual slavery specified as crimes in the ICTY statute, more women as judges and prosecutors, a senior official in the prosecutor’s office experienced in prosecuting sexual offenses, nondiscriminatory wording in ICTY documents, women on evidence-gathering teams in the field, funding for a victims unit to protect women and all traumatized witnesses during trials, and, of course, aggressive prosecution of sexual offenses.

Joanne Barkan, *As Old as War Itself: Rape in Foca*, DISSENT 60, 65 (Winter 2002).

<sup>23</sup> MYRA MARX FERREE ET AL., SHAPING ABORTION DISCOURSE: DEMOCRACY AND THE PUBLIC SPHERE IN GERMANY AND THE UNITED STATES 105 (2002).

<sup>24</sup> Banks, *supra* note 21, at 153.

<sup>25</sup> *Id.* at 153-54.

<sup>26</sup> Throughout their work gender justice advocates have argued that international tribunals have the authority and the duty to investigate and prosecute wartime crimes of sexual violence, that internal investigative methodology and procedures need to be amended to facilitate investigation and prosecution, and that a failure to prosecute these crimes is a fundamental miscarriage of justice. Durham, *supra* note 18, at 840 (noting that “such failures deny Rwandan women who have survived sexual violence equal justice, recognition, and vindication of their suffering”).

tribunals through meetings with tribunal officials, submitting letters, and submitting amicus curiae briefs. Gender justice advocates utilized amicus briefs as a means of persuading the judges and the prosecutors to indict for acts of sexual violence and to indict in particular ways. For example, in the first case heard by the ICTY, *Tadic*, the first document that was filed by the Office of the Prosecutor treated the rapes that took place at Omarska prison as a background matter.<sup>27</sup> In response, Rhonda Copelon with the Women’s International Human Rights Clinic at the City University of New York, Jennie Green of the Harvard Human Rights Program, and Felice Goer, director of the Jacob Blaustein Institute filed an amicus brief addressing the Prosecutor’s failure to treat rape as an indictable offense.<sup>28</sup> The use of an amicus brief was also critical in the groundbreaking results that were achieved in *Akayesu*. As I noted earlier, this was the first case to convict an individual of genocide with one of the underlying acts being rape. None of the charges in the initial indictment related to sexual violence. During the trial there was testimony from two witnesses regarding rape. One witness testified that she had been raped and witnessed the rape of other women who had sought refuge in the Bureau Communal, which was under the control of the accused.<sup>29</sup> Another witness testified that she had witnessed the rape of her six-year old daughter, which occurred when three Hutu men came to kill her father.<sup>30</sup> This direct testimony combined with an NGO report on the massive scale of sexual violence in Rwanda motivated gender justice advocates to request that the court prosecute Akayesu for crimes relating to these acts of sexual violence. In 1997, a group of NGOs and women’s human rights legal scholars submitted an amicus brief to the ICTR calling “upon the Tribunal to examine the failure of the Prosecutor to thoroughly investigate sexual violence and accordingly indict Akayesu . . . with rape crimes.”<sup>31</sup> The prosecutor subsequently amended the indictment

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<sup>27</sup> Copelon, *supra* note 19, at 229.

<sup>28</sup> *Id.* at 229; Barkan, *supra* note 2, at 65. This issue was also raised by Judge Elisabeth Odio-Benito from the bench. Copelon, *supra* note 19, at 229.

<sup>29</sup> Durham, *supra* note 18, at 839.

<sup>30</sup> *Id.* at 839.

<sup>31</sup> *Id.* at 837. The NGOs that submitted the brief included the Centre for Constitutional Rights, Centre for Women’s Global Leadership, International Centre for Human Rights and Democratic Development, International Women’s Human Rights Law Clinic for the City University of New York School of Law, the Jacob Blaustein Institute for the Advancement of Human Rights, the Latin American and Caribbean Women’s Health Network, the Lawyer’s International Forum for Women’s Human Rights, *Rassemblement Algerien Des Femmes Democratiques*, the United Methodist Office for the United Nations, Women Living

to include general allegations of sexual violence.<sup>32</sup> The direct impact of the amicus brief is unclear. The prosecutor stated that his motivation for amending the indictment was the testimony linking Akayesu to the rapes, which prompted further investigation.<sup>33</sup>

Additionally, the trial judgment notes that “the amendment of the Indictment resulted from the spontaneous testimony of sexual violence by Witness J and Witness H during the course of this trial and the subsequent investigation of the Prosecution, rather than from public pressure.”<sup>34</sup>

Within these briefs, the gender justice advocates invoked justice and equality frames. The need to investigate and prosecute allegations of sexual violence was presented as necessary to bring about justice and ensure gender equality in the process. These crimes, like murder or torture, were significant events that devastated and destroyed communities. The international community’s broader interest in ending impunity for genocide, crimes against humanity, and war crimes, and requiring that perpetrators be brought to justice had to be applied to wartime acts of sexual violence. Gender justice advocates contended that it would be unacceptable to exclude “sex-specific crimes against women from the justice process.”<sup>35</sup>

Similar frames were used by the Women’s Caucus for Gender Justice in the International Criminal Court (“Women’s Caucus”) during the negotiations of the Rome Treaty. The Women’s Caucus was created in February 1997 to incorporate “a gender perspective in the proposed International Criminal Court.”<sup>36</sup> This organization was a broad network of NGOs and international law experts that participated in the Preparatory Committee on the Establishment of an International Criminal Court meetings (“PrepCom”) and the Summer 1998 United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (“Conference”). The PrepCom “was directed to review the major substantive and administrative issues arising from the Draft Statute and to draft texts with a view toward preparing a widely

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Under Muslim Laws, Women Refugees Project, the Cambridge-Somerville Legal Services, and the Working Group on Engendering the Rwanda Tribunal. *Id.* at n.69.

<sup>32</sup> Copelon, *supra* note 19, at 226.

<sup>33</sup> *Id.* at 225-26.

<sup>34</sup> *Akayesu* Trial Judgment, *supra* note 6, at para. 417.

<sup>35</sup> Copelon, *supra* note 19, at 226.

<sup>36</sup> Durham, *supra* note 18, at 827.

accepted consolidated text.”<sup>37</sup> The Conference was attended by state delegates and NGOs that had been accredited by the PrepCom, and it was at this conference that the Rome Statute was adopted the ICC was created.<sup>38</sup>

Within these various forums, the Women’s Caucus framed its requests regarding the investigation and prosecution of sexual violence in ways that focused on justice and equality. Specifically that impunity for genocide, crimes against humanity, and war crimes could not end if wartime acts of sexual violence were not systematically investigated and prosecuted. Recommendations regarding rules and procedures were made to facilitate the investigation and prosecution of these crimes. The emphasis on justice and equality were useful because they tied into larger themes and frames that were being utilized by other advocates for international justice, including institutional actors within the ad hoc tribunals and those drafting the Rome Treaty. Gender justice advocates’ claims resonated with decision makers. While they have not always been successful in their quests for institutional reforms, they have achieved significant results.<sup>39</sup> For example, in 1999 Richard Goldstone, Prosecutor for the ICTY and ICTR created a Legal Advisor on Gender-related Crimes.<sup>40</sup> Patricia Viseur Sellers was appointed to the position and has had an immeasurable effect on the approach that the Office of the Prosecutor has taken with regard to sexual violence.<sup>41</sup>

The move toward feminism as expertise created a mechanism by which gender justice advocates were able to have relationships with influential allies. The creation of a position within the Office of the Prosecutor focusing exclusively on gender-related crimes gave gender justice advocates a direct connection with key actors within the ad hoc tribunals. Advocates also worked with the Office of the Prosecutor by gathering evidence that could be useful for investigations and trials. Gathering evidence was an activity that gender justice advocates undertook during the preparatory stages of the

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<sup>37</sup> *Id.* at 827.

<sup>38</sup> During the final week of the Conference, when the Women’s Caucus was unhappy with the direction that the negotiations were taking on particular important issues, the organization stated that “if these minimal criteria are not present in the final Statute, the Women’s Caucus will not support the resulting weak court and will consider actively lobbying their governments against ratification.” *Id.* at 829 (citing *No More Compromises: Bring The Issues of Justice to a Vote* (Women’s Caucus for Gender Justice in the International Criminal Court, Rome, 1998)).

<sup>39</sup> *See id.* at 828-29.

<sup>40</sup> Halley, *supra* note 3, at 342.

<sup>41</sup> Copelon, *supra* note 19, at 229.

ICTY. These advocates assisted the Commission of Experts by gathering evidence regarding sexual violence in the former Yugoslavia. The Commission of Experts was established by the Secretary-General of the United Nations to examine and analyze information and determine whether or not grave breaches of the Geneva Conventions were occurring in the former Yugoslavia, in addition to other violations of international humanitarian law.<sup>42</sup> Providing evidence was an activity that advocates continued after the ad hoc tribunals were created. As part of a vast and wide network, the NGOs that the advocates worked through had access to information and individuals that government officials did not. For example, the American Serbian Women's Caucus ("ASWC") was created to investigate crimes committed against Bosnian Serbs during the war. This organization was actively involved in identifying and contacting witnesses. The ASWC was able to assist the ICTY by preparing witness statements.<sup>43</sup> Similarly the Australian Committee of Investigation Into War Crimes ("ACIWC") identified rape survivors from the Yugoslav conflict living in Australia. The ACIWC's work became a source for witnesses that the ICTY Office of the Prosecutor utilized. At one point a Senior Legal Advisor was sent to Australia to interview witnesses that had been identified by the ACIWC.<sup>44</sup> The Sexual Assault Unit at the ICTY has noted that it would have had limited evidence of sexual assault had it not benefited from NGO cooperation.<sup>45</sup> These opportunities enabled gender justice advocates to develop relationships with the Office of the Prosecutor, which could be useful when submitting letters, seeking meetings, or submitting amicus briefs, because the advocates would be known reliable resources.

The emergence of jurisprudence addressing sexual violence within international criminal law is largely attributable to the advocacy work under taken by gender justice advocates. I have highlighted the manner in which they framed their requests for the serious investigation and prosecution of sexual violence and the importance of

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<sup>42</sup> Commission of Experts, Final Report, FULL CITE, at section I(A) . The Commission of Experts was established in October 1992 and was chaired by Cherif Bassiouni beginning in October 1993. *Id.* at I(A), I(B).

<sup>43</sup> Durham, *supra* note 18, at 836.

<sup>44</sup> *Id.* at 834-36; *see also* Georgina McEnroe, *Small Conversations Can Lead to Big Changes*, in LISTENING TO THE SILENCES: WOMEN AND WAR 165 (Helen Durham & Tracey Gurd eds., 2005) (detailing author's work with the ACIWC).

<sup>45</sup> Durham, *supra* note 18, at 833-34.

developing relationships with influential actors. As a result of this advocacy the ICC is beginning its work with a rich body of case law addressing wartime sexual violence.