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**DOROTHY MCCLELLAN**

Texas A&M University-Corpus Christi, United States

## **PROSECUTING GENOCIDE, RAPE, AND SEXUAL ENSLAVEMENT IN TIME OF WAR: SOUTHEASTERN EUROPE 1991-1995**

### **Abstract:**

As the 25th anniversary of the Balkan War approaches, people around the globe recall a terrible war of aggression that shocked the conscience of the modern world by its deliberate carnage, primitivism, and countless atrocities targeting civilian populations. This project addresses the experiences and concerns of tens of thousands of women who were raped in that war and are still awaiting prosecution of their victimizers, many still seeking official status as victims of war crimes entitled to moral, spiritual, and financial assistance. The widespread, systematic use of rape as an instrument of war by the Serbian military has been documented by the U.N., and the International Tribunal for the Former Yugoslavia (ICTY). The U.N. estimates that between 20,000 and 50,000 women were raped by the Serbian military. Yet, to date, there have been few successful prosecutions of the war crimes of genocide, rape, and sexual enslavement. The Security Council, in forming the Tribunal sought a political mechanism for fulfilling two distinct purposes: 1) To meet the Security Council's obligations "to stop crimes against the peace and reestablish peace and security," and 2) To meet the Tribunal's single obligation to try individuals responsible for serious violations of international humanitarian law which delineates the legitimacy of the level of violence in an armed conflict. It failed to make the essential distinction between the aggressor, a war criminal committing a jus cogens crime (a crime that violates a fundamental principle of international law from which no derogation is permitted) and the defendant-victim of the crime lawfully engaged in self-defense. This presentation examines how the Tribunal's controversial stance of moral equivalency, a formulation that replaces the concept of aggression with that of joint criminal enterprise, politicized the judicial process and contributed to victims being left alone in their suffering. The criminals live freely among them.

### **Keywords:**

women victims, war violence, rape, war crimes, genocide, former Yugoslavia

**JEL Classification:** K14