

Abstract

The establishment of the International Criminal Tribunal for the former Yugoslavia reflects the human rights idea that there can be no justice without truth and that notions of justice must inform the process of extracting some truth from the many stories, myths and lies that have been told about "ethnic cleansing." This article uses a three-pronged approach to combine the normative framework of human rights with the practical, quantitative methods of public health. This approach provides powerful mechanisms for establishing truth and accountability for ethnic cleansing. First, clinical and forensic evidence is critical in documenting when and whether ethnic cleansing actually occurred. Second, public health methodology can be brought to bear to define both the nature of the legally cognizable crimes committed and the nature of the harms ensuing from those crimes. Third, public health tools can help reinforce conceptions of individual responsibility and identity formation that refute the premises of ethnic cleansing and which are essential to the future of the Tribunal and to international human rights law in general.

La création du Tribunal International pour l'ex-Yougoslavie illustre le principe humanitaire fondé sur l'idée qu'il ne peut y avoir de justice sans vérité et que les notions de justice doivent être à la base de la recherche de la vérité dans le dédale de récits, de mythes et de mensonges qui ont circulé à propos du "nettoyage ethnique." Cet article applique une démarche en trois volets à l'analyse de l'association entre l'approche normative des droits de l'homme et celle, pratique et quantitative, de la santé publique. Cette démarche apporte des mécanismes puissants dans la recherche de la vérité et de la responsabilité du nettoyage ethnique. Premièrement, les données cliniques et anatomopathologiques apportent des éléments essentiels pour déterminer si un nettoyage ethnique a eu lieu, et si tel est le cas, à quel moment. Deuxièmement, la méthodologie de la santé publique permet de déterminer la nature des crimes punis par la loi ainsi que celle des maux qui en découlent. Troisièmement, les outils utilisés en santé publique peuvent aider à créer et à renforcer les concepts de la responsabilité individuelle et de la formation identitaire qui récusent les bases idéologiques du nettoyage ethnique, constituant ainsi une base essentielle pour l'avenir du Tribunal et de la loi internationale sur les droits de l'homme en général.

El establecimiento del Tribunal Criminal Internacional para la antigua Yugoslavia refleja la idea emanando de los derechos humanos según la cual no puede haber justicia sin verdad y las nociones de justicia deben influenciar el proceso de extraer alguna verdad de la cantidad de relatos, mitos y mentiras que se han circulado acerca de la "purificación étnica." Este artículo emplea un enfoque tripartito para combinar el marco normativo de los derechos humanos con los métodos prácticos cuantitativos de la salud pública. Este enfoque provee mecanismos poderosos para establecer la verdad de y la responsabilidad por la purificación étnica. Primero, la evidencia clínica y forense es crítica en documentar cuando y si es que la purificación étnica actualmente ocurrió. Segundo, la metodología de la salud pública puede usarse para definir la naturaleza de los crímenes legalmente reconocidos igual que la naturaleza del daño causado por esos crímenes. Tercero, las técnicas de la salud pública pueden ayudar a reforzar las concepciones de la responsabilidad individual y la formación de identidad que rechazan las premisas de la purificación étnica y las cuales son esenciales para el futuro del Tribunal Criminal Internacional y los derechos humanos internacionales en general.

ETHNIC CLEANSING AND OTHER LIES: Combining Health and Human Rights in the Search for Truth and Justice in the Former Yugoslavia

Alicia Ely Yamin, JD, MPH

I refuse to accept the idea that mankind is so tragically bound to the starless midnight of racism and war that the bright daybreak of peace and brotherhood can never become a reality.... I believe that even amid today's mortar bursts and whining bullets, there is still hope for a brighter tomorrow. I believe that wounded justice, lying prostrate on the blood-flowing streets of our nations can be lifted from this dust of shame to reign supreme among the children of man.

Martin Luther King, Jr., Nobel Peace Prize
Acceptance Address, December 1964

In embracing the idea that human beings possess inalienable rights by virtue of their unique capacities of reason and conscience, international human rights instruments reflect a rationalist and fundamentally modernist philosophy.¹ Indeed, human rights may be the last modernist social movement in an increasingly post-modern world in which post-Cold War promises of a New World Order have too often become phantasmagoric refractions of nightmarish disorder and mass dystopias. Part, if not the core, of the modernist underpinnings of human rights is an unwavering belief in the existence of an ascertainable truth that cannot be decoupled from justice.

Even though the world has been hearing and seeing images of the practice of "ethnic cleansing" for nearly five years, nowhere more than the former Yugoslavia is there a greater

Alicia Ely Yamin is Professor of Clinical Public Health at the Columbia University School of Public Health. Please address correspondence to Alicia Ely Yamin, Columbia University School of Public Health, 60 Haven Avenue, B-2, New York, NY 10032, USA.

challenge to the possibility for uncovering or constructing a just truth, let alone one that can coexist with peace.² Along with ground combat, a war of words and information has been and continues to be waged in the that region, through which stories, histories and myths have been conflated, intertwined and fragmented. This has left many analysts and observers to wonder whether the world is caught in a dialectic of enlightenment and denial—a labyrinth of mirrors—in which the revelation of enlightenment itself becomes myth.³

Establishment of the International Criminal Tribunal (the “International Tribunal” or “Tribunal”) for the former Yugoslavia reflects the human rights movement’s commitment to the idea that not only can there not be justice without truth, but also that notions of justice must inform the process of extracting truth from the many stories, myths, and lies that have been told about ethnic cleansing. The way in which the Tribunal conducts its work will be critical not only to revealing that truth—or, more accurately, the many truths—but also to legitimating the premises upon which international humanitarian and human rights law rest.

As a field emerging from its own social movement, public health shares the human rights movement’s faith in the possibility of progressive improvement of the human condition. As a field drawing together various medical and scientific disciplines, public health brings to bear pragmatic strategies for identification and characterization of truth. This article argues that infusing the normative analysis of human rights with the practical, quantitative methods of public health can potentially provide the most powerful mechanism for establishing truth and concomitant accountability for ethnic cleansing. But just as claims to truth asserted by human rights principles remain in the realm of empty rumor without the substantive evidence that public health can provide, the methods of public health require the framework of human rights (in which the premises of ethnic cleansing are construed as pathological) in order to fulfill their underlying promise.

In the context of the Tribunal’s work, this article suggests that there are three dimensions to the relation between public health and human rights in the construction of truth. First, most attention has been paid to the use of clinical and

forensic evidence in documenting abuses, in showing *whether* something—something awful labeled ethnic cleansing and now being denied and covered up—actually occurred. Second, public health has a larger role to play in the Tribunal’s work, in that its methodology can show us what happened and *what* ethnic cleansing means. Specifically, epidemiology—with its strategies for systematic collection, consolidation, and evaluation of relevant data—can help define a given violation as a crime cognizable under international humanitarian law, as well as the nature and scope of the harm ensuing from that crime. Third, using the normative understanding of the human condition provided by human rights, public health methods can be used to answer the largest question of all: *how* could the ethnic cleansing have occurred? In so doing, the combination of human rights concepts and public health tools may point us toward comprehending the premises of ethnic cleansing in the former Yugoslavia and ethnic strife in general.

I. Discovering Truths

For the first time since the Nuremberg and Far East trials following World War II, in February 1993 the United Nations Security Council (the “Security Council”) agreed to establish an international tribunal to investigate and prosecute war crimes committed in the former Yugoslavia; the Tribunal’s statute was adopted in May of that year.⁴ Significantly, the Tribunal was established not pursuant to a separate convention but directly under Chapter VII of the United Nations Charter (the “UN Charter” or “Charter”), which is also used to authorize peacekeeping missions. Consequently, the Tribunal’s creation was not a question of voluntary accession to jurisdiction but rather part of Charter-based law. Further, the connection between accountability and justice, on one hand, and peace and international stability, on the other, was established from the outset. In fact, the Secretary General’s report, adopted by the Security Council together with the Tribunal’s statute, announced as its purpose, to “contribute to the restoration and maintenance of peace.”⁵ By characterizing the Tribunal in this way, the Security Council explicitly rejected the view that attempting to hold violators of international humanitarian law individually accountable

might intensify the fighting of warring factions. Indeed, the Secretary General's report implicitly accepts the notion that accountability may act as a deterrent even in ongoing conflict.⁶

That two-fold purpose—the retributive justice notion of accountability and punishment, together with the deterrence of future international outlaws—has been keenly reflected in the documentation work that public health professionals have already contributed to the work of the Tribunal. Physicians and forensic professionals have been devoted largely to gathering evidence of human rights violations and in pointing out the differences between international human rights and humanitarian law, as codified in international human rights instruments and the 1949 Geneva Conventions respectively, and the practice of ethnic cleansing, as evidenced by battered bodies and broken corpses. In short, health professionals have been summoned to the former Yugoslavia to provide the basis—both through forensic and clinical examinations—upon which to choose between two competing truths: either to confirm or to deny the claims of ethnic cleansing. The forensic or clinical evidence is either found or is not. The focus is always on the study of concrete, *observable* evidence and irrefutable facts.

A. Forensic Evidence

To this day, thousands of people remain missing or unaccounted for around the former UN “safe haven” of Srebrenica in Eastern Bosnia, overtaken by Bosnian Serb forces in July 1995, as well as in other parts of Bosnia-Herzegovina. Indeed, the practice of ethnic cleansing in the former Yugoslavia has, according to conservative estimates, resulted in several thousand disappeared people.⁷ Forced disappearance is perhaps the ultimate eradication of truth, in that it simultaneously negates both the life and death of a human being, thereby denying relatives and friends of the disappeared even the possibility for grief.⁸ In the face of this phenomenon, forensics has proven one of the most effective means of recuperating the truths eradicated by disappearances. As a forensic anthropologist noted: “When we put the bones together, it’s a person with a story to tell, no longer a jumble of bones...Our mission is to get the truth.”⁹ Indeed, excavation

of mass graves by international teams of forensic anthropologists and pathologists, who meticulously reconstruct shattered bones and skulls and record marks left by massacres, has already provided invaluable evidence for the Tribunal.¹⁰

Investigation of mass graves usually involves fastidious removal of small and fragile items such as teeth, bullets, and scraps of cloth from the bodies. When excavations are done properly these clues can identify the types of victims: elderly, women, children, or infants. This evidence can also determine the cause of death, or at least indicate whether the victims died in combat, which is often the allegation of accused perpetrators.¹¹ Careful documentation of execution-style bullet wounds and bodies lined up in mass graves provides evidence of systematic murder that is impossible to refute. Analyzing the remains of plants and insects found in the graves then helps to establish a time of death.

Other forensic work must be performed in a laboratory, where the skeleton is examined and any dental and medical x-rays taken before death can be compared with those taken after death. DNA is then placed under a microscope for more precise personal identification. Discussing this innovative work, pathologist Dr. Robert Kirschner, who has lead teams of pathologists in Rwanda and the former Yugoslavia on behalf of the Boston-based nongovernmental organization Physicians for Human Rights (PHR), explains that until forensic work was introduced, virtually all human rights work “involved witness statement and testimony [which] while powerful, are subject to another person saying ‘it didn’t happen that way’ or ‘this person isn’t telling the truth.’ What we showed...is that you could provide physical, irrefutable evidence of what has happened to someone.”¹²

In practice what happens is that witnesses identify the site of a potential mass grave and pathologists, archaeologists and anthropologists proceed to exhume bodies. For example, Kirschner and Kari Hannibal of PHR recount the story of the Vukovar excavation in Croatia:

When Vukovar was under siege by Serbian forces, it was agreed that some 420 Croatian patients at the hospital would be evacuated to Croatian-held territory.... Witnesses saw the patients being taken away from the hospital by Serbian soldiers and transported to a garage in Ovcara where

they were beaten. They also saw vans loaded with about 20 patients each being driven away from the garage and returning 15 to 20 minutes later empty. Investigators of the fate of patients at this hospital had a list of 180 Croatian patients and 30 staff members who were in the hospital at the time and who were unaccounted for.¹³

Kirschner and Hannibal go on to detail how a preliminary investigation of the grave site in December 1992 determined that a mass execution had taken place, with up to 200 bodies buried there: "The pattern of spent metal casings of machine gun bullets and the location of the bodies revealed how the executions had been carried out."¹⁴ Over the course of the next three years, PHR sent (and will continue to send) teams of forensic scientists to the Croatian site to excavate the grave and to identify the victims as patients from the Vukovar Hospital.

A great risk to forensic work in particular is the destruction of the evidence. For example, as in many conflicts, after the existence of a particular concentration camp or mass grave became known to international investigators, those responsible have attempted to destroy the evidence. The Vukovar grave site was first discovered in October 1992; the site was first guarded by Russian soldiers attached to the United Nations Protection Forces, and subsequently by soldiers from the Implementation Forces.¹⁵ Kirschner recalls an unfortunate incident in Bosnia in 1993: "After much touch-and-go negotiation between the warring factions, the UN had received approval for the exhumation...which is in UN-controlled territory but surrounded by Serbian strongholds. The digging never began. At the last minute, the Serbian government pulled back on the agreement and threatened physical force if we continued...so we couldn't do that exhumation."¹⁶ The converse of that danger, however, is that this truth-finding is indeed the most objective work that health professionals can perform because "the truth" is literally evidenced by bones and bodies. That is, once access has been provided, forensic documentation can provide *per se* evidence of an abuse or atrocity.

B. Clinical Documentation

Not all medical documentation done on behalf of the Tribunal, or independently by NGOs, has been forensic. Indeed, the ability of medical professionals to provide virtually irrefutable indicia of violations that have resulted from ethnic cleansing has been widely espoused in the former Yugoslavia. For example, Jeffrey Sonis and Thomas Crane argue that physicians are “uniquely capable of collecting physical evidence of abuse through physical examination, laboratory testing, and collection of specimens for pathological examination. Physical evidence of abuse is much harder to refute than even the best verbal testimony.”¹⁷ Again, there is the sense that clinical documentation provides *objective* truth in the midst of the difficult and controversial situations in which abuses of human rights occur.

A prominent example of the use of clinical documentation in conflict in the former Yugoslavia exists in the important recognition of rape as a crime of war. An enormous amount of energy has been devoted to documentation of rape in the Bosnian Serb concentration camps. Swiss and Giller have noted that, in conjunction with this effort, health professionals are in a “unique position to recognize and document individual incidents of rape in war [and it is] important for health workers to be aware of common physical findings following rape, such as signs of violence to the genitalia...bruising on the arms and chest, and other evidence of the use of force....”¹⁸ Thus, physicians and health professionals more broadly can bring to bear their experience in diagnosis to provide evidence that is more compelling than anecdotal accounts traditionally used by human rights fact-finders attesting that abuses, such as rape, occurred.

With respect to rape in particular, Swiss and Giller argue that methods developed in criminal prosecutions in the United States can be used to provide the same sort of irrefutable evidence of violations as the forensic work provides of murder:

In countries at war, for women who are able to seek gynecologic help within a day or two of being raped (although most do not or are not able to), sperm collected from the genital tract could be dried on a microscope slide and stored for later analysis. For those women who become

pregnant as a result of rape, placental tissue (following abortions or delivery) could be frozen and preserved for future testing.... Matching of DNA or human lymphocyte antigen protein markers from such specimens can help determine paternity even many years later, using blood samples or hair follicles from the alleged perpetrator.¹⁹

While perhaps somewhat utopian in their assessment of the resources and abilities of health workers to operate in times and zones of conflict, Swiss and Giller make it clear that medical documentation of the immediate physical sequelae of rape can be an important part of documenting one form of violation that has constituted the practice of ethnic cleansing in the former Yugoslavia.

In sum, the focus of the health work done in the conflict and immediate post-conflict of the former Yugoslavia has been devoted to the question of whether alleged abuses such as murder and rape actually occurred and in practice, to substantiate the instances in which they did occur. Inherently *ex post facto*, this documentation work has the dual aim of providing a basis for accountability and justice, and of deterring others who believe that such atrocities can go undetected. Indeed, the theory behind much forensic work is that even when physicians or health professionals cannot heal, they must maintain respect for the dead in order to have respect for the living. In both the documentation of deaths through forensic evidence and the documentation of clinical sequelae of aspects of ethnic cleansing, finding "the truth" has been constructed as a matter of choosing between dichotomous realities.

II. Defining Truths

As critical as the forensic and clinical documentation of abuses are to the work of the Tribunal, documentation cannot tell the whole story of what happened in the former Yugoslavia or of the policy known euphemistically as ethnic cleansing. That is, in addition to uncovering the manifestations of the abuses, there is a need to interpret the meaning of that physical evidence. A Bosnian friend of mine who worked as an emergency medicine doctor with the Institute of Public Health in Sarajevo while it was under siege asks me often, "why do they call it ethnic cleansing? What Karadzic,

Mladic, Milosevic did—that was genocide....”²⁰ Language is the medium through which reality is created. Far from being a semantic matter, what an act or event is called determines *what it is*. The corollary of that insight is that one who has the power to name what an act or event is has the power to define it. Thus, there is a need to define both the nature of the injury manifested most immediately in certain physical sequelae, and to define the crime within the framework of international human rights and humanitarian law.

The practice of ethnic cleansing, while ill-defined by the media and in general discourse, has generally been deemed by scholars and commentators to include harassment, discrimination, beatings, torture, summary executions, expulsion, forced crossing of the lines between combatants, intimidation, destruction of secular and religious property, mass and systematic rape, arbitrary arrests and executions, deliberate military attacks on civilians and civilian property, uses of siege, and cutting off essential supplies destined for civilian populations.²¹ But ethnic cleansing is not a cognizable act or event under international law. Theodor Meron writes, “Many of these methods [of ethnic cleansing] considered in isolation, constitute a war crime or a grave breach. Considered as a cluster of violations, these practices also constitute crimes against humanity and perhaps also crimes under the Genocide Convention.”²²

Although clearly a less neutral role for public health professionals than the recording of sequelae of abuses, I argue that the way violations of human dignity are prosecuted through the intricate maze of international norms and procedures makes it imperative that public health tools be summoned to define certain critical factors: first, the crime with which the perpetrators are charged, and second, the nature of the violation of human dignity that underlies the crime. That is, viewing the health consequences of ethnic cleansing as pathology permits the use of epidemiology to quantify the occurrence of that pathology in a systematic fashion, a method less subject to political manipulation than anecdotal argument.²³ Moreover, the ability of public health strategies—as opposed to pure clinical practice—to take into account the psycho-social and explicitly societal dimensions of the pa-

thologies induced by ethnic cleansing, are indispensable to an understanding of the nature of the injury, as well as to facilitate healing.

A. Defining the Crime

The Tribunal's jurisdiction includes war crimes, crimes against humanity, and genocide (which is often construed as a particular form of crime against humanity). The importance of how a crime is defined cannot be overestimated because of the constraints on situations in which perpetrators can be held accountable, where jurisdiction can be established and the precedential value of a culpability finding.²⁴ In the first instance, war crimes, which are governed by humanitarian law, apply principally to international wars. For example, the 1907 Fourth Hague Convention, which provided the basis for the post-World War II prosecutions, the "grave breaches" provisions of the Geneva Conventions and of Protocol I apply only to international conflicts between sovereign states.²⁵ By enumerating the offenses of grave breaches of the Geneva Conventions and the violations of the laws or customs of war, in Articles II and III of the Tribunal's statute, the Security Council implicitly characterized at least part of the conflict in the former Yugoslavia as international.

Although the morality and even the health consequences of the actions may be the same, it is nevertheless critical from a legal standpoint to understand the significance of the distinction.²⁶ Grave breaches and crimes against humanity give rise to so-called "universal jurisdiction," which permits any state to prosecute a suspect.²⁷ Moreover, violations committed before or after the full-scale conflict are not subject to the "grave breaches" provisions or to international humanitarian law at all and would have to be prosecuted as crimes against humanity in order to give rise to universal jurisdiction. Given the impossibility of apprehending and prosecuting all of the perpetrators of ethnic cleansing, it is clearly desirable to characterize the charges as those giving rise to universal jurisdiction.²⁸

Furthermore, assuming that facts support such prosecution, there is tremendous precedential as well as symbolic value to demonstrating that acts implicated in ethnic cleans-

ing constitute “crimes against humanity”—and as such, affront and threaten human dignity everywhere, as opposed to being just isolated abuses or breaches of the laws and customs of war. Indeed, in consideration of their special significance, crimes against humanity are considered *jus cogens*, or peremptory norms, of international law.²⁹ “Crimes against humanity” were first defined in Article VI of the Nuremberg Charter as: “murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during war, or persecution on political, racial or religious grounds...whether or not in violation of the domestic law of the country where perpetrated.”³⁰ Article V of the Tribunal’s statute explicitly adds imprisonment, torture and rape. The Nuremberg jurisprudence suggests that war crimes if committed in a widespread, systematic manner on political, racial, or religious grounds may also amount to crimes against humanity.³¹ Conversely however, proof of systematic governmental planning of alleged acts has been deemed a necessary element of crimes against humanity, which therefore makes them more difficult to establish than war crimes.³² Meron observes, “The acquisition of facts supporting policy planning, mass character and command responsibility may present evidentiary hurdles to possible prosecutions [for crimes against humanity].”³³

Thus, returning to the example of rape, the second dimension of the truth-seeking collaboration between public health and human rights involves a determination of whether the rapes were carried out as individual acts, war crimes, or even as part of a systematic policy of ethnic cleansing that would give rise to culpability for crimes against humanity. Rape was neither mentioned in the Nuremberg Charter nor was it prosecuted in Nuremberg as a war crime under customary international law.³⁴ Nevertheless, rape was prosecuted in Tokyo as a war crime and, even more to the point, the International Committee of the Red Cross has specifically declared that the grave breach of “willfully causing great suffering or serious injury to body or health” under Article 147 of the Fourth Geneva Convention covers rape.³⁵ Meron suggests that in addition to evidence of rape as a war crime, rape could be prosecuted as a crime against humanity: “That the

practice of rape has been deliberate, massive and egregious, particularly in Bosnia-Herzegovina, is amply demonstrated.... The Special Rapporteur appointed by the UN Commission on Human Rights, Tadeusz Mazowiecki, noted the role of rape as a method of ethnic cleansing 'intended to humiliate, shame, degrade and terrify the entire ethnic group'.³⁶

Yet, precisely because evidence of the systematic use of rape as a method of ethnic cleansing has been widely disputed, it is essential for the legitimacy of the prosecutions to use the methods of epidemiology to establish the true dimensions of the practice. Swiss and Giller note that "when the media first focused attention on the rapes in Bosnia, published estimates of the number of rape survivors fluctuated widely from 10,000 to 60,000. In most instances there appeared to be no method for arriving at the stated figures.... Unsubstantiated claims risk creating questions about the credibility of the numbers themselves and the scale of human rights violations against women in general."³⁷ It is essential for the legitimacy of the Tribunal's prosecutions as well as for the development of a body of internal criminal law that the truth—meaning valid numbers—be ascertained from amidst the propaganda for which rape statistics have been used in the former Yugoslavia.³⁸

The use of epidemiologic methods to document the distribution of disease and identify clusters of unusual data are uniquely useful in establishing the extent and scale of rape—or any other abuse that is part of ethnic cleansing—as either a series of individual events or as a crime against humanity. Swiss and Giller argue that "Using a public health approach, medical personnel can help provide evidence of the scale of these abuses."³⁹ For example, based on the use of epidemiologic methods and statistical modeling, Swiss and Giller estimated that "Based on the assumption that one percent of acts of unprotected intercourse result in pregnancy, the identification of 119 pregnancies, therefore, represents some 11,900 rapes."⁴⁰ As opposed to human rights workers who are unaccustomed to (and even uncomfortable with) quantifying violations, public health professionals are uniquely attuned to the need to consider bias in reporting, selection, and diagnostic criteria and to keep in mind strict

definitional standards in order to establish valid statistical conclusions.⁴¹ For example, Swiss and Giller detected a general problem of under-reporting coupled with potential over-reporting by women who had suffered multiple rapes.⁴² They clarify that “the goal is not to come up with an exact number, which is impossible, but rather to use medical data to suggest a scale of violations that cannot be determined from individual testimonies alone.”⁴³ That is, evidence of a systematic pattern—which is the critical factor in determining whether rape constituted part of a crime against humanity—is revealed more by the magnitude and extent of violations than by precise figures.

Genocide is even more difficult to prove than the general category of crimes against humanity because it involves the intent to destroy in whole or in part a national, ethnic, racial, or religious group *as such*.⁴⁴ That is, even the mass scale of violations is insufficient to demonstrate genocide; the calculated intent to destroy an ethnic or religious group *as such* must be proven. The Genocide Convention, which is incorporated into and expanded upon in Article IV of the Tribunal’s statute, defines this to include “killing members of the group...causing serious bodily or mental harm to members of the group,” and “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.”⁴⁵ Meron argues that “The violence in the former Yugoslavia targeted against religious or ethnic groups, especially in cases of mass killing or ethnic cleansing, gives rise to a strong case for genocide.”⁴⁶ Nevertheless, given the unparalleled gravity of the charge of genocide, it becomes even more essential for the legitimacy of the Tribunal’s process as well as the substantive human rights law of the Genocide Convention that allegations of genocide be substantiated as credibly and thoroughly as possible.

Again, it is the tools of epidemiology that can be used to interpret the numbers and the distribution of killings based upon the forensic evidence and witness testimonies in order to demonstrate the calculated attempt to destroy an ethnic group *as such*. Indeed, as “the study of the distribution and determinants of disease frequency in human populations,” epidemiology is based on the premise that human pathology

does not occur at random, and that pathologies have both causal and preventative factors that are discernible through systematic investigation of different populations or subpopulations in different places or at different times.⁴⁷ Thus, public health methodology can be used to place a framework of interpretation around the evidence provided by witness testimonies and forensic work, which only offer evidence that the killings had indeed occurred.

B. Defining the Harm

If public health methods can be used to ascertain and document the scale of atrocities involved in ethnic cleansing in order to demonstrate a systematic aspect of their commission, the same skills can be used to probe more deeply into the nature of the harm. In this view, both the immediate physical sequelae of ethnic cleansing and its long-term health consequences constitute violations of dignity and rights. As opposed to clinical recording of sequelae, a public health perspective can bring to bear an understanding of the impact of the cluster of violations known as “ethnic cleansing” on the individual over the long term as well as on communities.

The population-based effects of war crimes, and ethnic cleansing in particular, have received little attention by either the human rights or the medical communities. For example, with respect to rape, Swiss and Giller note, “Despite the fact that rape has always been part of war, little is known about its scale, the circumstances that provoke or aggravate it, or how to prevent it. We know even less about how women heal after the trauma of rape in war and how rape affects the communities in which they live.”⁴⁸ Clearly, much of the analysis needs to be contextual and sensitive to the relation between perpetrators and victims. For instance, Swiss and Giller have documented how in the former Yugoslavia, “dozens of testimonies have revealed that many women knew the names of and often knew personally, the men who raped them.”⁴⁹ But once again, the methods of public health are ideally suited to attempt to systematically consider and compare across situations how rape in war disrupts—and indeed is used in ethnic cleansing to disrupt—not only individual but also social and community bonds.⁵⁰ Thus, the harm done by rape goes far beyond the bruising, lacerations, and other

physical sequelae—the victim’s entire affective universe can be destroyed. Public health studies in combination with the framework of human rights might be used to redefine the nature of victimization in terms of the family and community, which in turn can create new, non-biomedical paradigms for treatment and healing.⁵¹

Such an analysis is equally applicable to the psychiatric health consequences of ethnic cleansing. For example, Weine *et al*, argue that “The psychiatric sequelae of ethnic cleansing include not only traumatic stress symptoms but also responses to the mutilation of identity and core relationships.”⁵² Mollica and Yael Caspi-Yavin are even more explicit:

The outer and inner worlds of many of these survivors of genocidal trauma have been shattered. Mass destruction of a community that historically took pride in being a good example of coexistence and tolerance of ethnic and religious differences—a multiethnic community—leaves the individual bereft of a sense of identity and belonging.⁵³

It is significant that the terms Mollica and Caspi-Yavin employ suggest that the full nature of the health effects of ethnic cleansing are not easily translated into the biomedical lexicon.

An immediate implication of this insight is that while public health professionals, through use of longitudinal and community-based studies as well as empirical evaluations of torture and rape, can potentially improve understanding of how ethnic cleansing assaults the physical, mental, and social well-being of the individual and the community, that understanding must be mediated through a conceptual framework external to the methods of medicine and perhaps to conventional public health.⁵⁴ The normative understanding of human dignity that infuses human rights calls for justice and truth as part of any healing process and would preclude, for example, any strategy that reduces the trauma to affected individuals to biochemical imbalances treatable simply with medication. Indeed, part of the collaboration of public health and human rights in identifying and characterizing the nature of the harm and encoding potential modes of treatment must include examination of the impotence of each to grapple with the meaning of the implications of ethnic cleansing in isolation from the other.

In sum, as Meron argues, "the character and systematic nature of some of the atrocities [in the former Yugoslavia], especially mass murder and ethnic cleansing, make it imperative that appropriate prosecution be based on crimes against humanity and that a precedent be established."⁵⁵ As crucial as the clinical and forensic documentation of events or actions is to building cases, it can only begin to tell the story of what happened. But in combination with testimonies and circumstantial evidence, public health expertise in quantification of information can provide invaluable support in proving the scale and systematic nature of certain abuses, such as rape, and thereby defining the nature of the crime that occurred for the international community, as well as for the Tribunal. Moreover, the delineation of immediate health consequences diagnosed by forensic and clinical examinations is just the beginning of determining the nature of the underlying injury to human dignity. Public health methods, designed and implemented through the lens of the core principles of human rights, can and must be used not only to determine truth in the dichotomous sense of *whether* an event or crime occurred, but also to define the extent of the harm caused from a legal as well as bio-psycho-social standpoint.

III. Constructing Truths

Even if all of the perpetrators of crimes against humanity and genocide were miraculously indicted, tried and convicted, the larger question about how the ethnic cleansing could have occurred would remain unanswered. Indeed, the single most enduring and damaging myth that needs to be shattered by the Tribunal's prosecutions is that the ethnic cleansing was an inevitable result of ancient hatreds. There are two pieces to this myth: first, there are qualities inherent to Serbs, Muslims, and Croats that made the ethnic nationalisms inevitable; and second, because of these essential qualities, that there is a collective guilt on the part of entire ethnic groups. By contrast, in positing that all individuals are endowed with faculties of reason and conscience, human rights norms reflect a definition of humanity that rejects this collective essentialism and demands individual accountability for the exercise or non-exercise of those faculties.

Thus, if the second dimension of truth-seeking involves defining the nature of the harm in order to place it within a legal framework of human rights and humanitarian law, the third dimension is about defining the nature of identity. Here, instead of a legal framework into which acts of ethnic cleansing can be placed, human rights norms provide an even more fundamental, philosophical framework that determines questions about the very nature of accountability and identity. Once again, epidemiology can be used to systematize risk factors for ethnic conflict in a far more powerful way than simply debating sociological or historical theories. Moreover, public health perspectives more generally can change the paradigm of the inevitable misfortune of ethnic cleansing as a simple population exchange gone awry, by thematizing issues of identity formation and the premises used to construct a regime of truth. This is, however, the most politicized and difficult of roles for public health professionals to play in conjunction with the Tribunal's work—precisely because of the invisibility of this truth, the creation of which is indistinguishable from the formation of identity itself. Indeed, far from the micro-level focus on objective data, public health tools would be engaged in the transformation of consciousness, in constructing a truth that conforms to human rights principles of dignity.

A. Individualizing Guilt and Examining Dehumanization

As Justice Jackson stated at the Nuremberg Tribunal 50 years ago, "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced."⁵⁶ By prosecuting individuals in the former Yugoslavia, the Tribunal can once again convey the message that individuals must be held accountable for their actions. To a régime of liberal justice, the importance of establishing individual accountability for actions cannot be overstated. Hannah Arendt reminds us that "where all are guilty, no one is."⁵⁷ While Arendt was writing about racism, the same reasoning applies even more strongly to ethnicity in the former Yugoslavia: "The real rift between black and white is not healed by being translated into an even less reconcilable conflict between collective innocence and collec-

tive guilt."⁵⁸ The converse of the understanding that individuals are capable of rational choice and consciousness is the recognition that "ethnic groups" do not possess agency and "ethnic groups" do not commit war crimes or genocide.

Merely the act of prosecuting individuals encodes the understanding that not every Serb was a camp commander as not every Croat was a member of the Ustashe. As David Rieff says, "Wars are no simpler than individuals.... Many Serbs behaved loyally and honorably toward their Muslim and Croat friends."⁵⁹ Moreover, individual prosecution of the leaders and orchestrators focuses attention not only on the crimes committed—for example, on that portion of the violence committed by Bosnian Serbs against Muslims—but also on the rights of the Serbs themselves. Article 7 of the *Universal Declaration of Human Rights* states: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination [emphasis added]."⁶⁰ The orders issued by Bosnian Serb commanders to the Serbs leaving Sarajevo suburbs to burn and loot as they go is an ongoing violation of this right, in turn reflecting a persistent attempt to undermine the possibility for a human rights consciousness in the former Yugoslavia.

If individuals commit acts of barbarism and not peoples, public health can help document the ways in which elite orchestrators coerce the participation of individuals in the violence of ethnic cleansing. For example, Alain Destexhe, former Secretary General of Médecins Sans Frontières, used public health methodology implicitly to analyze the genocide in Rwanda. In the context of Rwanda, Destexhe argued persuasively that "A prerequisite of genocide is effective organization."⁶¹ The same applies to ethnic cleansing in general. Rieff carefully explains how the ethnic cleansing was orchestrated and conducted in Bosnia:

One common method used was for a group of Serb fighters to enter a village, go to a Serb house, and order the man living there to come to the house of his Muslim neighbor. As the other villagers watched he was marched over and the Muslim brought out. Then the Serb would be handed a Kalashnikov assault rifle or a knife—knives were

better—and ordered to kill the Muslim. If he did so, he had taken that step across the line the Chetniks had been aiming for. But if he refused as many did, the solution was simple. You shot him on the spot. Then you repeated the process with the next Serb householder.⁶²

Rieff observes that it rarely took more than three households before a Serb who had witnessed the previous interactions agreed to participate.

Once an individual crossed that line—performing the irrevocable act of killing another human being and renouncing aspiration to membership in civilized society—inhibition against the next killing was diminished. Thus, loss of the perpetrator's individual identity is dialectically connected to the capacity to dehumanize the victim.⁶⁴ Indeed, the sociologist Herbert Kelman defines dehumanization as the denial of identity and community, "To accord a person identity is to perceive him as an individual, independent and distinguishable from others, capable of making choices. To accord a person community is to perceive him—along with with one's self—as part of an interconnected network of individuals, who recognize each other's individuality and respect each other's rights."⁶⁵ The mechanisms of this process of dehumanization remain little understood and largely relegated to the work of social scientists.

While some work has been done by the medical profession on the psychological dimensions of torture, public health has largely eschewed serious investigation of the mechanisms and modes of collective violence.⁶⁶ Despite the fact that dehumanization has clear health consequences and occurs at societal levels, the implicit notions of dignity and identity that underlie theories of dehumanization have not been easily incorporated into the traditional concepts or the largely biomedical vocabulary of mainstream public health. It is therefore essential to combine public health with the tools and framework of human rights in order to harness the power of systematic investigation that public health methods bring to bear to the question of how ethnic cleansing could occur.

B. Identity Formation

Individualizing the guilt for atrocities of ethnic cleansing and demonstrating that the crimes were not committed spontaneously, constitute the first steps toward attacking the

myth of the inevitability of ethnic cleansing. In the context of the truth-seeking roles of both human rights and public health, the study of dehumanization—or the destruction of identity—must be coupled with study of the formation of identity in order to fully grasp the interaction between structures of thought and action, between human consciousness and human agency. The argument that has been and continues to be widely circulated is "...that Yugoslavia had been an impossible idea from the beginning, that Croats [and Muslims] were so different from Serbs that the two peoples had never had any business living together in the same country in the first place."⁶⁷ Given this understanding of reality, ethnic cleansing—which by its very definition encodes a model of multiethnicity as somehow dirty and corrupted—becomes understandable as a distorted and violent manifestation of a population exchange that could not, and indeed perhaps ought not, be prevented. However, public health methods combined with human rights principles can change the truth paradigm from one of historic inevitability to one of societal pathology.

Rieff argues that establishing the conflict as an inexorable truth was itself an integral part of the strategy of Radovan Karadzic, the Bosnian Serb leader:

In Karadzic's formulation, Serbian-ness, Croatian-ness, and Muslim-ness, were essences—unchanging and immutable.... The savagery of the war he had unleashed made what otherwise might have appeared to be his mad ideas convincing to people; and more than that, made them appear to have been confirmed by their experience. The fact that they had had these experiences because of plans conceived of by Karadzic, Milosevic, and their colleagues did not alter the fact that people were now likely to feel in their guts that they had been true all along....⁶⁸

Thus, at the time Karadzic first started spouting hate propaganda, it was widely perceived as a complete lie, but five years later it had in a sense become "the truth." Rieff argues persuasively that "Ethnic nationalism was no more inevitable in the former Yugoslavia than Hitlerism had been inevitable in Germany in the 1930s. It was one possibility—inevitable only in the sense that everything that happens is inevitable in hindsight."⁶⁹ Vlado Koprivica, a Serb who decided to stay in Vogosca after its return to Bosnian authority,

anecdotally confirms Rieff's analysis, observing to Western journalists that, "We could have lived together for a thousand years. There was never a problem. My neighbors across the hall was a Muslim, and both my neighbors upstairs were Muslim. We were like a family."⁷⁰ Thus, the establishment of the truth of ethnic cleansing manifested the Bosnian Serbs' power far more than any military victory possibly could.

But if the so-called "truths" of ethnic essentialism have been used to prop up fascist ideologies, an alternative human rights-based truth can be used to question those social and moral judgments and to unmask those power structures. The tribalism argument presents a threat to the most fundamental tenets of human rights.⁷¹ Human rights principles teach us that we not only are determined by a multiplicity of different social and cultural factors, but also possess autonomous reason that allows us to be free, self-defining subjects, whose essence is drawn from a universal capacity for reason and not from any ethnic—or racial or religious—mask we may wear.⁷² Indeed, freedom, rationality, and autonomy constitute our basic meta- and infra-political understandings of what it means to be human in a human rights framework, which then allows us to define permissible understandings of human society and politics.

If, given this human rights premise, ethnic conflict and strife is re-imagined as societal pathology and authentic multiculturalism is viewed as a condition of societal health, the tools of epidemiology can be brought to bear to identify risk factors that might predispose (but not predetermine) ethnic nationalisms. Descriptive epidemiology, concerned with the study of which populations develop a pathology and how frequency of such a pathology varies over time, could be critically useful in diagnosing risk factors for ethnic conflict. Information about different characteristics of populations can be used to formulate epidemiological hypotheses about the causal and preventative factors of ethnic violence, that concur with existing knowledge about its occurrence, developed through the social sciences.

In *Epidemiology in Medicine*, Charles Hennekens and Julie Buring indicate that, "For any public health problem, the first step in the search for possible solutions is to formulate a reasonable and testable hypothesis."⁷³ The commonly

used methods of hypothesis formulation about disease etiology could usefully systematize the outbreaks of ethnic violence in a way social science tools alone are not equipped to do. Moreover, public health professionals are far more familiar with developing the kind of multifactoral and longitudinal analysis of problems required for an etiology of ethnic cleansing than are traditional human rights professionals. A multilevel analysis that considers global, national, institutional, as well as communal and individual factors would be essential to deciphering the different and contextualized roles of, for example: economic collapse, rising nationalisms, control and use of media to disseminate propaganda messages, public espousal of nostalgic or distorted views of the past, and grossly uneven development (e.g., urban vs. rural, as well as amongst different regions). The goal is not to perform a regression of these sorts of variables, but to begin to seriously investigate how they interact to produce different outcomes. The existence of “preexisting cleavages” or a “plural society” has too often been the end instead of the beginning of an analysis of social and structural factors in the causation of ethnic conflict.⁷⁴

While this third aspect of truth construction in particular potentially subjects the use of public health methods to some of the same vulnerabilities and abuses as the “softer” social sciences or traditional modes of human rights, it is a misreading of the nature both of truth and of power to expect public health professionals simply to act as neutral, objective truth finders in evaluating the meaning or underlying causes of ethnic cleansing. The construction of the truth of “ethnic cleansing’s inevitability” is closely associated with the construction (and destruction) of identity, and is itself an exercise of power that is being implicitly challenged by the Tribunal’s individual prosecutions and the fundamental principles underlying the régime of international human rights law. Human rights norms are as prescriptive as they are descriptive and suggest that certain claims to truth are simply incompatible with the notion that human beings are born free and equal in dignity and rights.

Conclusions

To use the term ethnic cleansing to describe what has happened over the past five years in the former Yugoslavia obfuscates more truth than it reveals. In its ambiguity, ethnic cleansing does not indicate whether the practice involved merely population movement or violent atrocities and human rights abuses. In its vagueness, the term does not clarify the nature and implications of the human rights or humanitarian law violations involved. Finally, in its usage and premises, it implies a view of society in which multiethnicity is conceived of as impure—literally uncleansed—and in so doing challenges the most fundamental tenets of human rights. In this essay, I have argued for a multivalent collaboration between public health and human rights professionals to begin to unravel the underlying truths of the ethnic cleansing in the former Yugoslavia.

I have suggested that in addition to the crucial work of forensic and clinical experts reporting evidence of sequelae of conflict and abuses, health professionals have a role to play in interpretation of that evidence as well. That is, in addition to the truths that can be discovered by unearthing mass graves and recording physical consequences, there are truths to be defined and constructed. Public health methodology can be brought to bear to define both the nature of the crimes committed and the nature of the harms ensuing from those crimes. Moreover, public health tools can help create and reinforce conceptions of individual responsibility and identity formation that refute the premises of ethnic cleansing, and that are essential to the future of the Tribunal and to international human rights law in general.

This three-pronged approach to the role of public health methods—diagnosing whether there is a problem, evaluating and interpreting what constitutes the problem, and deciphering the etiology of how the problem could have occurred—is critical to the success of the Tribunal's work in establishing a just truth. Public health deals with facts and attempts to build theories around them, while human rights announces general, universal principles and attempts to apply them to facts. The two are indispensable to one another in the search for truth and justice in the former Yugoslavia. If the Tribunal

fails in its mission, it will be a failure for the prospects of peace in the former Yugoslavia and for an international order based on notions of justice and individual rights.

Clearly, this essay constitutes only the beginning of a provisional framework of how human rights and public health can be combined in the work of the Tribunal and, more generally, in the quest for truth in the midst of catastrophic human rights and public health atrocities. With more considered examination, some critical understanding—and, dare I say, even prevention—of the gross human rights violations involved in ethnic cleansing campaigns might become possible. It is worth remembering that a final disillusioning truth brought to light by the war in the former Yugoslavia is the shattering of the self-excusing myth about the Holocaust: that if the world had seen what went on in the Nazi death camps, we would have intervened. In the former Yugoslavia, the world looked on as hundreds and thousands of people died often anguished deaths and did nothing. Establishment of the Tribunal should not, indeed must not, constitute a cover-up for the truth about and accountability for the international community's past and current role in the former Yugoslavia.⁷⁵

This article received the 1996 François-Xavier Bagnoud Student Essay Award given annually at the Harvard School of Public Health.

References

1. For example, Article 1 of the Universal Declaration of Human Rights states: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." *Universal Declaration of Human Rights*, Article 1, G.A. Res. 217A (III), U.N. GAOR Res.71, U.N. Doc. A/810 (1948). [emphasis added] [hereinafter "Universal Declaration"].
2. See note 20 and accompanying text for the definition of ethnic cleansing.
3. For example, the journalist P. Maass recently wrote: "Since leaving Bosnia, I have often been asked the same questions: Did you visit those camps? Were they really so bad? I still find it hard to believe that Americans and Western Europeans are confused about Bosnia and, in particular, about the camps. Yes, I visited them, and yes, they were as bad as you could imagine. Didn't you see the images on television? Don't you believe what you saw? Do you give any credence to the word of Radovan Karadzic, the indicted Bosnian Serb leader, who said the news photographs were fakes?" P. Maass, "Bosnia's Ground Zero," *Vanity Fair*, March 1996, p.199. For a spectrum of different views on the difficulty of establishing truth in this conflict, see, e.g.: D. Binder, "Anatomy of a massacre," *For-*

eign Policy, Winter 1994-95, p. 97 (discussing inability to establish responsibility of either Serb or Muslims for mortar shell bombing of Sarajevo market on February 5, 1994); N. Belloff, Memorandum on Goldstone Tribunal, America On-Line, Feb. 6, 1996 [arguing illegitimacy and bias of Tribunal]; and see generally D. Rieff, *Slaughterhouse: Bosnia and the Failure of the West* (1995).

4. Security Council Resolution 808, UN Doc. S/25704, 3 May 1993. Note that the International Criminal Tribunal for Rwanda was established pursuant to a Security Council resolution in November 1994 and began work on June 26, 1995. Security Council Resolution 955, 3453rd meeting, UN Doc. S/Res/955, 8 November, 1994.

5. Report of the Secretary General Pursuant to Paragraph 2 of Security Council Resolution 808, UN Doc. S/25704, 3 May 1993 [hereinafter "Report of the Secretary General"].

6. "Dispensing international justice: the Yugoslav and Rwandan Criminal Tribunals," *Interights Bulletin* 39 (Summer 1995).

7. M. O'Connor, "Harvesting evidence in Bosnia's killing fields," *New York Times*, April 7, 1996, Section 4, p. 1. The estimates are between 3,000-8,000 men were executed at sites surrounding Srebrenica.

8. For an excellent discussion of documenting forced disappearances as human rights violations, see J. Mendez and J.M. Vivanco, "Disappearances and the Inter-American Court of Human Rights: Reflections on a litigation experience," *Hamline Law Review*, 13 (1990):507.

9. E. Kaban, "PHR CM," America Online: Reuters, Aug. 11, 1995. For similar aspects of the Rwandan experience, see also "Hundreds of bodies are unearthed at Rwandan site," *Boston Globe*, Feb. 17, 1996, p. 6; J. McKinley, "From a grave in Rwanda, hundreds of dead tell their tale," *New York Times*, Feb. 16, 1996, p. A3.

10. In fact, evidence of the mass graves at Vukovar in Croatia, which was presented to the War Crimes Commission by Physicians for Human Rights in 1993, probably played a significant role in the vote by the Security Council to create the Tribunal. See notes 13-15, and accompanying text.

11. The Rwandan situation provides perhaps even more vivid examples of how this evidence can be used to refute allegations of combat. For example, a lack of machete wounds on the upper extremities and hands indicated to Rwandan and international investigators that there had been no self defense initiated or possible. Also, the cutting of victims' Achilles heels indicates a pattern of hobbling victims so that they could not escape before they were hacked to death. See, e.g. Kaban, note 9.

12. See R. Kirschner and K. Hannibal, "The application of forensic sciences to human rights investigations," *International Journal of Medicine and Law*, 13 (1994):451, 455; "Grim Remains," *University of Chicago Magazine*, Feb. 1994, p. 14.

13. Kirschner and Hannibal, see note 12, pp. 458-9.

14. *Ibid.*

15. Similarly, a more recent *New York Times* article from 1995 states: Near Pudin Han [in Bosnia] is a site outside a cave that has human bones poking up out of a large circular depression. Another site, known as Crvena Zemlja, or red earth, has already given up bones and clothing. Here in Prhovo, now a vacant ruin perched on a hillside...a man who witnessed a

mass killing led [Bosnian Government] authorities to a spot where officials believe dozens of victims of the massacre lie buried... 'In Prhovo we have a list of 53 people we believe are buried in the plot of land at the entrance of the village,' said the officer in charge of locating the mass graves, who asked to remain unidentified. C. Hedges, "Bosnia begins the grim search for Muslim victims of the war," *New York Times*, Sept. 26, 1995, p. A1.

16. "Grim Remains," see note 12, p. 1.

17. J. Sonis and T. Crane, "Family physicians and human rights: a case example from former Yugoslavia," *Family Medicine* 27 (1995):242, 246.

18. S. Swiss and J. Giller, "Rape as a crime of war: a medical perspective," *Journal of the American Medical Association* 270 (1993):612-13.

19. See note 18, pp. 613-614.

20. Conversations with Nedim Jaganjac, MPH Candidate, Harvard School of Public Health (Oct. 1995-Mar. 1996).

21. T. Meron, "The case for war crimes trials in the former Yugoslavia," *Foreign Affairs*, Summer 1993, p. 132. See also generally T. Meron, *Human Rights and Humanitarian Norms as Customary Law*, (New York, Clarendon Press/Oxford University Press, 1989), pp. 41-76.

22. T. Meron, "The Case for War Crimes Trials" see note 21, p. 132. "War crimes" are governed by international humanitarian law as codified principally in the four 1949 Geneva Conventions (collectively, the "Geneva Conventions") and the two Additional Protocols of 1977, which over 150 and 100 States, respectively (including the former Yugoslavia in both instances) have ratified. "Grave breaches" refer to breaches of certain fundamental guarantees of respect for the person. Article 147 of the Fourth Geneva Convention lists the following among acts considered to be "grave breaches": willful killing, torture or inhuman treatment, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer, unlawful confinement, depriving a protected person of the right of a fair and regular trial, the taking of hostages, and extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly. See also "grave breaches" provisions in Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts and Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, opened for signature Dec. 12 1977, 1125 UNTS 609, reprinted in 16 ILM at 1442 [hereinafter "Protocol I" and "Protocol II," respectively]. The "Genocide Convention" refers to the United Nations Convention on the Prevention and Punishment of Genocide, which is a human rights convention governing the actions of States during both peace and wartime. UNGA Res., 260A (III) 9 December 1948, entered into force 12 January 1951 [hereinafter the "Genocide Convention"].

23. See C. Hennekens and J. Buring, *Epidemiology in Medicine*, (Boston, Little Brown and Co., 1987), p. 54 ["A prerequisite for any epidemiologic investigation is the ability to quantify the occurrence of disease."]

24. Meron argues: "There is a distinct advantage in being able to prosecute offenders for the crime of genocide or other crimes against humanity, or even both.... Some killings and other violations might fall outside

the specific offenses of the crime of genocide and crimes against humanity because of either definitional difficulties or a failure to satisfy the burden of proof." Theodore Meron, "International criminalization of internal atrocities," *American Journal of International Law*, 89 (1995):554, 558.

25. UN Doc. S/25704 Annex (1993); see also J. O'Brien, "The international tribunal for violations of international humanitarian law in the former Yugoslavia," *American Journal of International Law*, 87 (1993):639, 647.

26. Universal jurisdiction means that any country has jurisdiction to arrest and prosecute suspected perpetrators. See discussion in T. Meron, "The Case for War Crimes Trials," see note 21, pp. 127-128. Thus, for example, the perpetrators of even the grossest atrocities in Rwanda cannot be prosecuted for grave breaches or war crimes, but only for the crime of genocide, which is much more difficult to establish, and for crimes against humanity. See notes 44-46, and accompanying text.

27. In contrast, violations of common Article III and Additional Protocol II the Geneva Conventions, which apply to internal conflicts, are subject to universal jurisdiction. See *Restatement Third of the Foreign Relations Law of the United States*, section 402, 404 (1987); T. Meron, *International Criminalization of Internal Atrocities*, see note 24, pp. 568-569.

28. Note that Article V of the Tribunal's statute may imply that crimes against humanity can be committed during peace as well as during armed conflicts. However, the Tribunal's only statute has jurisdiction over such crimes only when committed in international or internal armed conflicts. Report of the Secretary General, see note 2, paragraph 47.

29. In international law, *jus cogens* refers to a norm "accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." Article 53, *Vienna Convention on the Law of Treaties*, 1155 UNTS 331, UN Doc. A/Conf. 39/27 (1969).

30. Agreement for the Prosecution and Punishment of the Major War Criminals of European Axis, Charter of the International Military Tribunal, Article VI (c), Aug 8, 1945, Stat. 1544, 82 UNTS 279, reprinted in *American Journal of International Law* 39 (1945):257 [hereinafter "Nuremberg Charter"].

31. See T. Meron, "The case for war crimes trials in the former Yugoslavia" note 21, p. 130.

32. *Ibid.*, p. 130.

33. *Ibid.*, p. 130.

34. Importantly, at the end of World War II, the Allies' Control Council Law No. 10 expanded the formulation of crimes against humanity by including rape among the prohibitions listed in Article II (1)(c) and did away with the jurisdictional distinction between war crimes and crimes against peace. See T. Meron, "War crimes in Yugoslavia and the development of international law," *American Journal of International Law*, 88 (1994):78.

35. International Committee of the Red Cross, Aide-Memoir (Dec. 3, 1992); T. Meron, "Rape as a crime under international humanitarian law," *American Journal of International Law*, 87 (1993):424, 426 [hereinafter "Rape"].

36. T. Mazowiecki, Report on the Situation of Human Rights in the

Territory of the Former Yugoslavia, UN Doc. A/48/92-S/25341, Annex, at 20, 57 (1993) T. Meron, "Rape," see note 35, p. 425.

37. S. Swiss and J. Giller, see note 18, p. 613.

38. S. Swiss and J. Giller write: "Because the use of rape statistics for propaganda purposes is common during war, documenting rape—already difficult during peacetime—is even more challenging in the midst of war." S. Swiss and J. Giller, see note 18, p. 613.

39. *Ibid.*, p. 613.

40. *Ibid.*, p. 613.

41. For example, does a gang rape constitute a single rape or multiple rapes?

42. S. Swiss and J. Giller, see note 18, p. 613.

43. *Ibid.*

44. The crime of genocide is not based on a link to war and is thus equally applicable in times of peace.

45. Genocide Convention, see note 22; report of the Secretary General, see note 2, paragraph 46.

46. T. Meron, "The case for war crimes trials," see note 21, p. 130.

47. C. Hennekens and J. Buring, see note 23, p. 3.

48. S. Swiss and J. Giller, see note 18, p. 612.

49. *Ibid.*, p. 613.

50. *Ibid.*, p. 614.

51. S. Swiss and J. Giller argue that: "Community-based interventions that are sensitive to the local context and methods of healing may be the best approach to treating the wounds of rape in many situations." S. Swiss and J. Giller, see note 18, p. 614.

52. S. Weine, D. Becker, T. McGlashan, et al., "Psychiatric consequences of ethnic cleansing: clinical assessments and trauma testimonies of newly resettled Bosnian refugees," *American Journal of Psychology* 152:536, 543.

53. *Ibid.*, p. 536.

54. See, e.g. R. Mollica and Y. Caspi-Yavin, "Measuring torture-and torture related symptoms," *Psychological Assessment: Journal of Consulting and Clinical Psychology*, 3 (1991):581.

55. T. Meron, "The case for war crimes trials," see note 21, p. 130.

56. Trial of the Major War Criminals Before the International Military Tribunal, Nuremberg, 14 November 1945-1 October 1946, 1 Official Documents 223 (1947) cited in T. Meron, "International Criminalization of Internal Atrocities," note 27, p. 562.

57. H. Arendt, *On Violence* (London, Hardcourt Brace and Co., 1969).

58. *Ibid.*

59. D. Rieff, see note 3, p. 90.

60. "Universal Declaration," see note 1, Article 7.

61. A. Destexhe details how in the case of Rwanda: "True to form, the Rwandan genocide was thoroughly planned in advance. Ethnic identity cards introduced by the Belgians in the 1930s allowed the militias to select their victims easily. They quickly set up roadblocks and checked everyone who passed. In addition, the militia leaders in every area organized the systematic elimination of the Tutsis by assigning them to groups of ten families and allocating a militia member to each group. Lists of people to be killed were already in circulation before [then President]

Habyarimana's death." A. Destexhe, "The third genocide," *Foreign Policy*, Winter 1994-95, p. 8. (EDITOR'S NOTE: See A. Destexhe, this issue).

62. D. Rieff, see note 3, p. 111.

63. *Ibid.*, p. 110.

64. See, e.g. discussion in H. Arendt, see note 57, p. 67.

65. H. Kelman, "Violence without moral restraint: reflections on the dehumanization of victims and victimizers," *Journal of Social Issues*, 29 (48-9) (1973), cited in L. Kuper, *Genocide* (New Haven/London, Yale University Press, 1981) p. 87.

66. A notable exception is A. Zwi and A. Ugalde's "Toward an epidemiology of political violence in the third world," *Social Science and Medicine*, 28:633. Nevertheless, even this example is more suggestive than substantive.

67. D. Rieff, see note 3, pp. 62-63.

68. *Ibid.*, p. 73.

69. *Ibid.*, p. 111.

70. "Vogosca stories," Bosnet Report, *Bosnet Digest*, Applicom, Feb. 29, 1996.

71. Analogies may be drawn to Rwanda, where the tribalism myth is perhaps even more entrenched. A. Destexhe notes how: "The ethnic problems (between Hutu and Tutsi) date only from the days of colonization. Indeed, it could be said that it is a purely artificial problem, dreamed up by the Germans who first colonized Rwanda, and reinforced by the Belgians who succeeded them." Destexhe documents how Tutsi cattle owners and Hutu farmers had been interdependent and intermingled throughout the area, "where they spoke the same language, practiced the same religion, and shared the same culture and mythology. Thus, Hutus and Tutsis are not ethnically distinct groups and the physical stereotypes do not always hold true. Under certain circumstances, a Hutu could even become a Tutsi.... As for the children of Rwanda's intermarriages, they have always inherited their "ethnic identities from their fathers." A. Destexhe, see note 61, pp. 5-6.

72. See Universal Declaration, note 1, Article 1.

73. For example, three commonly used methods are: the "method of difference," which involves looking at different disease frequencies in different sets of circumstances; the "method of agreement," which involves identifying a single factor that is common to a number of situations in which a given disease occurs with high frequency; and the "method of concomitant variation," which involves looking at circumstances in which the frequency of a factor varies in proportion to the frequency of disease. C. Hennekens and J. Buring, see note 23, p. 112.

74. See, e.g. A. Destexhe, note 61; compare L. Kuper, note 65, p. 57.

75. See D. Rieff, "The institution that saw no evil," *New Republic*, Feb. 12, 1996, p. 19; see also generally D. Rieff, note 3.