

## Original Research Reports

# The Military Perpetrator: A Narrative Analysis of Sentencing Judgments on Sexual Violence Offenders at the International Criminal Tribunal for the Former Yugoslavia (ICTY)

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### Abstract

This article examines the ways in which principal perpetrators of sexual violence crimes are situated in an international criminal court. It is based on a narrative psychological analysis of the sentencing judgments of the International Criminal Tribunal for the former Yugoslavia (ICTY). Specifically, the article argues that at least three narratives can be distinguished within the relevant legal texts: those of the chivalrous, the opportunistic and the remorseful perpetrator, each with a distinct plot structure: that of being a normal person responding adequately to a situation that is seen as normal; an abnormal person responding to what is seen as an abnormal (or extreme) situation; and a normal person responding inadequately to what is seen as an abnormal (or extreme) situation. The ways in which these plots come out depend on how the various voices in the courtroom position the perpetrator within the stories. Ultimately, these narratives represent different stories of how militarism and masculinity intersect to create different understandings of the soldier and military behavior. The mere analysis of this material, i.e. how sexual violence crimes are discussed in theatre in an international criminal court, is a scholarly contribution to the understanding of how sexual violence perpetrators can be situated in a war setting, and after. The findings suggest new perspectives on military perpetrators and changes in what is considered normal and abnormal behavior in military settings.

**Keywords:** perpetrator, sexual violence, military identity, ICTY, Bosnia and Herzegovina

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In her essays on the International War Crimes Tribunal for the former Yugoslavia (ICTY) the esteemed fictional and journalistic writer Slavenka Drakulić asks “can we in fact understand war criminals? More importantly, should we even try?” (Drakulić, 2004, p. 1987). Through observations in the court and elaborations in her essays on the theme she concludes that “As frightening as this idea is [that ‘ordinary’ men become perpetrators of evil so quickly], it is precisely the reason we should learn more about extraordinary situations and ordinary people’s reactions to them” (p. 191).

How, then, can it be helpful to understand mass sexual atrocities through individual court cases against the (far too) few who are brought to justice? There are several studies of the legal discussions pertaining to sexual violence crimes in armed conflicts (de Brouwer, Ku, Römkens, & van den Herik, 2013; Fineman & Zinsstag, 2013; Henry, 2011; Houge, 2008), but few, if any, studies of these court cases are written from a social science perspective, and even fewer from a narrative psychological perspective. Yet, psychological assessment in both a popular as well as clinical sense is omnipresent in the legal proceedings. Through the legal dialogue in the international court room, and assessment of the criminal actions, a picture of the accused emerges based on a bifocal view of the person and the crimes, and discussions of normality and abnormality linked to the person and the situation underpin the court transcripts. My aim is to better understand how narratives of the perpetration of sexual violence crimes situate the notion of normal and abnormal behavior and to discuss what this might entail for our understanding of the sexual violence military perpetrator.

The basis for this analysis is sexual violence perpetrators brought to justice in the International Criminal Tribunal for the former Yugoslavia (ICTY). This article presents a narrative analysis of the sentencing judgments against nine individuals in the ICTY against principal sexual violence perpetrators and asks what the cases against them tell us about military perpetrators of sexual violence crimes. Ultimately, the article explores the extent to which sexual violence in war is seen as normal military behavior or not, in the eyes of the court.

## Setting the Stage for a Narrative Psychological Analysis of ICTY Sentencing Judgments

While the Nuremberg and Tokyo trials did prosecute major war criminals after World War II, crimes of sexual violence were not prosecuted, nor were they documented to any significant extent. This lack of engagement with crimes of sexual violence in war seems puzzling. Both de Brouwer (2005) and Henry (2011) have argued that there was ample legislative leverage within the law at both tribunals to prosecute crimes of sexual violence, yet the courts failed to do so. There are many possible reasons for this: lack of evidence,<sup>1</sup> lack of legal will, or lack of female lawyers and judges. These reasons may all apply, but another possible explanation for why these types of crimes were not prosecuted may be found in Neitzel and Welzer's (2012, p. 13) extraordinary analysis of conversations between German soldiers, which reveal that acts of extreme brutality such as rape, killings and bombings were commonplace elements within the daily conversations of these soldiers. Acts of rape and sexual violence were the *modus operandi* in war and were accordingly seen as not worth paying particular attention to: such activities were nothing special and the trials were set up to prosecute extraordinary crimes, not "normal" ones. Accordingly, stories of sexual violence failed to become part of the collective memory of World War II through these trials, even if these actions were an integral part of a behavioral repertoire of German, Axis and Allied soldiers alike (Lily, 2007).

Attitudes against sexual criminal behavior in war have since changed dramatically, accompanied by significant changes in how legal institutions, policymakers and scholars seek to understand how victims, communities and perpetrators are affected by these types of crimes (Skjelsbæk, 2012), and not least seek to bring perpetrators to justice. Both supranational and national criminal prosecutions of crimes of sexual violence are now taking place in several courts around the world, though it was the ICTY that was the first to systematically prosecute crimes of sexual violence committed during armed conflict. The central principle of the ICTY trials is the same as that of

the proceedings in Nuremberg and Tokyo: to hold individuals, as opposed to states, responsible for crimes committed in times of war. However, with the ICTY's added focus on crimes of sexual violence, understandings of what crimes individuals may be held accountable for has changed. Work that has been carried out since the establishment of the ICTY has altered the perceptions of crimes of sexual violence in ways that were unimaginable some decades ago.<sup>ii</sup>

The ICTY was established in 1993, while the Bosnian War was still raging, as an attempt to ensure that major perpetrators of all crimes committed during the wars in the former Yugoslavia would be held responsible for their actions. The many years of dedicated work that followed have resulted in a wealth of documents in the form of indictments, court transcripts and judgments. With respect to crimes of sexual violence, these documents provide unique insight into the complexity of such offences: the types of victims affected the perpetrators, and the legal implications of the actions themselves. Since its establishment, the court has indicted 161 individuals, and has concluded court hearings in the case of 141 of these.<sup>iii</sup> Since the start of the Tribunal's activities, 78 individuals – or 48% of the 161 accused – have had charges of sexual violence included in their indictments. The work of the ICTY will come to an end when all of the above cases have completed proper trial procedures. After that point, further cases will be prosecuted in national courts in Bosnia and Herzegovina. This process began in 2003, when a completion strategy for the termination of the ICTY was finalized. No new indictments were formulated after that time. As of mid-2011, 13 of the ICTY cases have been referred to national jurisdiction in Bosnia. These cases primarily involved individuals of lower rank.

As part of its work, the ICTY has needed to define and conceptualize various issues: What constitutes a war or an armed conflict? What constitutes a crime and of which kind? Which responsibilities did the accused have and what was his/her involvement in the criminal acts? All of these considerations come together in the Tribunal's judgments (which include both trial and appeal decisions), which therefore comprise the most comprehensive texts available for gaining insights into the reasoning, *in theatre*, of the Tribunal within the parameters in which it operates. Of the various types of crimes with which the court has had to deal, crimes of sexual violence appear to have been among the most difficult to address. This is primarily because of challenges related to the question of how to establish that sexual violence formed part of a pattern of violence (Aranburu, 2010, p. 609);<sup>iv</sup> how to ensure that victim witnesses dare testify and have a language with which to discuss the crimes they have experienced;<sup>v</sup> the lack of sufficient numbers of trained court staff and professionals (Bergsmo & Skre, 2012, p. 3); and general inexperience with the prosecution of such crimes within an international legal framework.

## Status of Research on Sexual Violence Perpetrators

There is an emerging literature on perpetrators of sexual violence crimes in war (Baaz & Stern, 2013; Cohen, Hoover Green, & Wood, 2013; Leiby, 2009; Nordås, 2013). While the early scholarly literature on sexual violence in war was primarily focused on the impact this particular violence has on its victims (Skjelsbæk, 2001), there is now a shift in the empirical focus in the direction of the perpetrator. This shift can be seen as a response to a general lack of empirical knowledge on perpetrators, increased attention by the United Nations Security Council on how to prosecute and prevent perpetrators, and lack of conceptualization of the sexual violence perpetrator as opposed to other crimes committed by soldiers in war time. So far, the literature on perpetrators draws on a set of quantitative and qualitative studies which have different conceptual aims.

One example of the quantitative approach can be found in Cohen et al. (2013), who list a set of misconceptions regarding sexual violence in war, a sub-set of which relate to sexual violence perpetrators. These misconceptions

include the notion that the perpetrators are always men; that sexual violence is more common among rebel groups than state militaries; that given an opportunity, men will rape; and that sexual violence is always perpetrated by combatants. The ways in which these claimed misconceptions are addressed is by discussing definitional and measurement challenges which need to be “more systematically addressed if we are to continue our progress toward a full understanding of wartime sexual violence” (Cohen et al., 2013, p. 11).

The authors make an important point in showing that there is a great degree of variation in the perpetration of sexual violence: that not all perpetrators are men, that state actors are no less involved in these crimes than other military groups, that not all men will rape if the opportunity arises and that not all perpetrators in armed conflicts are combatants. Their scholarly aim, however, appears to be to come to a “full understanding” of sexual violence crimes, which would entail closing identified research gaps such as exploring “how and why groups do not use sexual violence [...], which types of formal and informal armed group institutions promote sexual violence as a practice; the conditions under which commanders (at lower as well as high levels) adopt rape as a strategy; and why many commanders believe the cost of prohibiting sexual violence is high” (Cohen et al., 2013, p. 13). A full understanding is a laudable goal, but as the authors state in their conclusion, “direct on the ground engagement and service provision rightly take precedence” (p. 13), suggesting that this as a goal is, perhaps, unattainable.

Another way of generating knowledge about sexual violence perpetrators, therefore, can be as Baaz and Stern (2009, 2013) have done; by extensive field work and qualitative interviews on the ground, in their case in the DRC. Based on a discourse analysis of interviews with 193 people in 43 group interviews, Baaz and Stern (2009) were able to detect discourses of different forms of rape: lust rapes (which were seen as more “normal”, i.e. not linked to the conflict pattern) and evil rapes (which happened in conjunction with other forms of war violence in the armed conflict). Their aim was not to reach a full understanding of the phenomenon of sexual violence perpetration, but rather to illuminate how “perpetrators, themselves, understand their violent crimes” (Baaz & Stern, 2009, p. 496) and “how the soldier’s testimonies must be seen as a product of the particular context of the DRC – a warscape which has its local particularities, but which must also be seen as a reflection of the warsapes in diverse contexts which are crafted out of the increasingly globalized context of militarization and attendant notions of ‘normal’ heterosexual masculinity” (p. 515). Leiby (2009) provides yet another approach by combining methods and comparing cases: sexual violence in Guatemala and Peru. The basis for her work is a quantitative coding of the published reports from the truth and reconciliation commissions in both countries, supplemented by field work. Her focus is on the state as perpetrator, and more specifically on how the “state either explicitly encouraged, condoned, or at the very least had knowledge of the crimes being committed” (Leiby, 2009, p. 456). In concluding her work she asks whether there are differences “in rebel groups – such as their size, their proximity to civilian populations, their resource base or their politico-military strategy – that make some more likely to commit these kinds of human rights abuses? Do these factors in turn make the state more likely to use sexual violence?” (p. 466). As both of the latter studies show, their findings are local, but their aims are global in that they situate their findings within different conceptual aims for understanding sexual violence perpetration; in Baaz and Stern’s (2009) case by linking their findings to globalized understandings of militarization and heterosexual masculinity and in Leiby’s (2009) case by focusing on the mechanisms which enables sexual violence perpetration and its instrumental gain.

As can be seen from these examples from the emerging literature on sexual violence perpetrators, methods, analyses and scholarly aims vary, but together they bring new empirical insights and debates to the conceptualization of the military sexual violence perpetrator. Following Leiby’s (2009) example, however, it is clear that there is an ever growing data material which lends itself to substantive new analyses of the sexual violence perpetrator

in armed conflicts: truth commissions as well as indictments, court transcripts and judgments from various criminal courts provide a wealth of material which can, and should, be analyzed. [Leiby \(2009\)](#) has done exactly this by a quantitative coding of the transcripts from the truth commissions, which was important in order to get an overview of “the type of sexual violence and the context under which it occurred” ([Leiby, 2009](#), p. 453), in order to be able to answer her research question about state involvement. However, it can be argued that official texts from truth commissions and criminal courts also can be subject to a different kind of analysis, more along the lines of [Baaz and Stern \(2009\)](#): by asking qualitative questions about how the narratives of sexual violence perpetrators in armed conflicts situate their actions, behavior and ultimately identities in such texts. In doing so, we gain insight not only into the ways in which they are situated through testimonies but also how the reactions from the court/truth commission/other are to them.

While much of the social science research on sexual violence perpetrators in armed conflict has been dominated by political science and international relations scholars, it is clear that the field of psychology has something unique to offer in order to further this field of knowledge. The conceptualization of the individual in a socio-political context is at the core of social and political psychological scholarship, and a narrative gaze at how non-psychological scholars use psychological language in their assessments of sexual violence perpetrators in armed conflicts helps us better understand how these perpetrators can be placed along a normal to abnormal behavioral continuum.

### Status of Research on Perpetrators of International Crimes

There is also an established and rich scholarly literature which analyzes international crimes, mass atrocities and genocidal behavior in armed conflict. This literature stems in large part from holocaust studies which have been supplemented and expanded by the literature on the many armed conflicts in Latin America during the 1970s and 1980s. Within these studies there are different ways of categorizing the perpetrators, such as [Hilberg \(1992\)](#) who discusses perpetrators in relation to victims and bystanders; [Baum \(2008\)](#) who adds to this by suggesting that some see themselves as rescuers; [Kelman \(1995\)](#) who argues that certain perpetrators are simply obedient; and finally [Smeulers \(2008\)](#) who gives perhaps the most comprehensive overview and typology. Conceptually, [Smeulers \(2008](#), p. 241) argues, a distinction can be drawn between the organizers, the specialists, the executors, the criminal mastermind, the fanatic, the criminal sadist, the profiteer, the careerist, the devoted warrior, followers and conformists, the compromised perpetrator and, finally, the professional. All of these play different roles in a perpetrator scheme. What unites most of the leading scholars in this field is an overall analysis along an axis of normal versus abnormal behavior. [Waller \(2007\)](#), a leading expert on genocide behavior, sums this distinction up by stating that the:

[...] social construction of cruelty—buttressed by professional socialization, group identification, and binding factors of the group—envelops perpetrators in a social context that encourages and rewards extraordinary evil. It reminds us that the normal reaction to an abnormal situation is abnormal behavior; indeed, normal behavior would be an abnormal reaction to an abnormal situation. We must borrow the perspective of the perpetrators and view their evil not as the work of “lunatics” but as actions with a clear and justified purpose—so defined by a context of cruelty. (p. 271)

[Smeulers \(2008\)](#), again, adds to this understanding by arguing that “within a malignant governmental system, military organizations or police units, it is those who do not break the rules but those who *abide* by the rules who become perpetrators” (pp. 236–237). [Arendt's \(1963/2006\)](#) infamous elaborations of the Eichmann case fit into this assertion; Eichmann acted and saw himself as a bureaucrat. That he was a bureaucrat of genocide is part of

Arendt's conceptualization of the banality of evil; it becomes an everyday practice. How this transformation takes place is what several scholars attempt to understand from a vast array of different data material. Payne (2008), for instance, has gone through confessions of state violence in various court and truth commissions from Argentina, Chile, Brazil and South Africa. These confessions do not, the author points out, disclose the truth but are "merely accounts, explanations and justification for deviant behavior, or personal versions of a past" (p. 2). Crelinsten (1995) also makes this point by stating that "the language of torture is one that replaces the world of cruelty with euphemisms" (p. 39), and through this we can conclude that the truth about the reasoning of the individual perpetrator at the moment of action cannot be uncovered. We can only come close to an understanding by examining narrative construction in hindsight. What this literature has in common is a focus on international crimes and torture, but not on sexual violence crimes exclusively. My aim, therefore, is to attempt to add to this literature by examining the narratives on sexual crimes (and the criminals), in the context of mass atrocities.

## The Narrative Methodological Approach

The narrative turn in psychology has opened up for a vast array of analyses which focus on the content and form of how life histories form social constructions of selves. Sarbin (1986) has argued that "in giving accounts of ourselves or of others, we are guided by narrative plots [...] whether for formal biographies or autobiographies, for psychotherapy, for self-disclosure, or for entertainment, we do much more than catalog a series of events. Rather, we render the events into a story" (p. 23). The ways in which narrative data are gathered and analyzed varies and the approach taken in this study is somewhat different from what is most often recognized as narrative research in psychology; studies where the researcher and the research subject create a storied account of people and events through transactional methodology. In this study, the stories are told without the interaction of the researcher with the research subjects. The data analyzed should therefore be considered as secondary data. The researcher has undertaken a thematic analysis of the elements of the court cases which pertain to sexual violence offenders in war, and has attempted to untangle how the themes raised in relation to the sexual violence offender create a narrative account which situates the perpetrator along a normal to abnormal continuum. The narratives analyzed are organized by themes, or thematic clusters, which have, in turn, been related to a narrative plot structure.

The international criminal proceedings in this study lend themselves exceptionally well to this thematic narrative approach because the proceeding can, and ought to be, seen as narrative constructions of people and events for legal purposes.<sup>vi</sup> In the ICTY's assessments of individuals and their crimes, the court is obliged to consider the "appropriate punishment in relation to the individual as well as the crime".<sup>vii</sup> The process of sentencing, thereby, does more than simply punish perpetrators: it also involves an assessment of the individuals concerned – or, narratives of the individuals concerned – in relation to the law. Skilbrei (2010) argues that the application of law is an inscription of norms when she says that "[t]he law is not only the result of cultural norms; it is also a political and formal process whereby public concern and international obligations are translated into law" (p. 42). The ICTY is the manifestation of a normative shift by the international community to end the impunity surrounding crimes of sexual violence in armed conflict, in other words to give these criminal acts a different meaning. Further, while the rationale behind criminal law sanctions includes such aims as just punishment, deterrence, incapacitation of the dangerous and rehabilitation, the ICTY Trial Chamber accepts that the "modern philosophy of penology [is] that the punishment should fit the offender and not merely the crime".<sup>viii</sup> In the Trial Chamber's judgments, such

concerns are discussed at great length, especially in the sentencing section of the judgments, where aggravating and mitigating circumstances are spelled out.

According to Ricoeur, “every narrative combines two dimensions in various proportions, one chronological and one non-chronological. The first may be called the episodic dimension, which characterizes the story made out of events. The second is the configurational dimension, according to which the plot construes significant wholes out of scattered events” (cited in White, 1987, p. 51). The narratives to be presented have been coded according to the following story line, or chronological order (see Table 1): beginning (accounts of pre-war life and personalities), middle part (accounts of war rapes), and end (accounts of post-conflict life).

Table 1

*Overview of Narrative Chronological Coding*

Coding Format	Coding Themes
Beginning	Accounts of pre-war life and personalities. Descriptions of how the perpetrators were seen to be (as family members, civil citizens, and military actors) before the sexual violence crimes took place.
Middle	Accounts of war rapes. These are the factual discussions in the court transcripts: where the events took place, who the victims were, the physical settings of the crimes, and the involvement of the perpetrators.
End	Accounts of post-conflict life. These are stories about how the perpetrators were taken to the ICTY, their collaboration with the court and their behavior in the detention setting.

Having organized statements and descriptions along these narrative dimensions, three different plot structures emerged – namely, that of being a *normal* person responding adequately to a situation that is seen as normal; being an *abnormal* person who is responding to what is seen as an abnormal (or extreme) situation; and finally being a *normal* person responding inadequately to what is seen as an abnormal (or extreme) situation. The ways in which these plots come out depend on how the various voices in the courtroom position the perpetrator within their stories. Furthermore, as Murray (2003, p. 116) argues, narrative accounts are not told in a vacuum, but are shaped and encouraged by specific contexts. In other words, there is a layer outside the story – that is, the sociopolitical *context* in which it is told – which influences what, how and why elements within the story are seen as important and relevant. In a court room the legal as well as normative framework clearly shapes the way in which the narratives emerge.

Twenty-eight individuals have been convicted of crimes of sexual violence in the ICTY, but only nine have been convicted as principal perpetrators. For the purpose of the narrative analysis it was the sentencing judgments of principal perpetrators who were the most informative to study. The reason for this choice was pragmatic; it was in these judgments that acts of sexual violence were discussed at the greatest length and where the richest material about these crimes and the perpetrators could be found.<sup>ix</sup> After this selection had been made, the sentencing judgments were carefully analyzed by means of coding the descriptions of the sexual violence crimes within a narrative structure as described above. This non-chronological coding devoted special attention to episodic elements such as the ways in which the *settings* in which sexual violence occurred was described (see Table 2). In this process it was primarily the voices of the victims, perpetrators and others who were called as witnesses that were coded. The coding was done by looking at how the violence was carried out: by types of detention facilities, in connection with other kinds of war violence or in a “recreational” setting, and the political categorization of the victims (e.g., prisoners or not). It was primarily the victim witness accounts that served as the basis for this part

of the analysis. Further, the *role of the perpetrator* was essential to map out and in this effort it was primarily the discussions between the defense council, the prosecutor and to some extent the perpetrators' themselves whose voices were coded according to: if the crimes were carried out by one or several perpetrators, comments made by the perpetrators to victims/others at the moment of the criminal action, role of perpetrator in the military setting, and how the crimes were carried out. Finally, the *assessment of the judges* was coded according to the ways in which aggravating and mitigating circumstances were discussed (explicitly or indirectly) in each case. Aggravating circumstances considered by the court included: the role of the accused, whether the victims were particularly young, the duration of the crimes, whether more than one victim was involved, whether more than one perpetrator was involved, the vulnerability of the victims, and whether there had been widespread and systematic persecution that involved sexual violence in inhumane conditions.<sup>x</sup> Mitigating circumstances that were discussed were: providing a guilty plea, expressing remorse, voluntary surrender, and cooperation with the Office of the Prosecutor.

Table 2

*Overview of Narrative Non-Chronological Coding*

Coding Themes	Primary Voices Coded
Settings of crimes	Primarily victim witness accounts (but also some perpetrators)
Role of the perpetrator	Defense council, prosecutor and perpetrator
Sentencing	Judges discussions

Through the different chronological as well as episodic coding of statements, the elements of the three different narrative plot structures emerged. By presenting multiple voices from the court room within a narrative format the following analyses should be read as motifs (and not typologies of perpetrators) for violence that coexist and which perpetrators, their defense councils, judges and prosecutors draw on selectively and discuss in the context of the court proceedings. Through these conceptualizations of motifs a psychological conceptualization of the perpetrators comes to light which in turn helps us better understand dominant discourses around sexual violence perpetration.

## Military Perpetrators of Sexual Violence Crimes

The nine convicted principal perpetrators examined below were found guilty of crimes of sexual violence against 32 identified women and 5 identified men (see Table 3). In addition, one of the individuals was convicted of raping and sexually assaulting an unidentified number of women and girls in a classroom in Foča. For these and other crimes, the perpetrators received prison sentences ranging from 5 years (Milan Simić) to 28 years (Dragoljub Kunarac). Three of the men in the group pleaded guilty to crimes of sexual violence (Miroslav Bralo, Milan Simić and Dragan Zelenović).

Table 3

*Overview of Principal Perpetrators of Crimes of Sexual Violence*

Name of the Accused	Case information	Acts of sexual violence
Miroslav Bralo	<a href="http://www.icty.org/cases/party/671/4">http://www.icty.org/cases/party/671/4</a>	He brutally raped and tortured a Bosnian Muslim woman, Witness "A", and imprisoned her for approximately two months to be further violated at the whim of her captors.
Hazim Delić	<a href="http://www.icty.org/cases/party/676/4">http://www.icty.org/cases/party/676/4</a>	He violently raped two female detainees during interrogations inside the Čelebići prison camp. One of the rapes was conducted in the presence of other guards.
Radomir Kovač	<a href="http://www.icty.org/cases/party/713/4">http://www.icty.org/cases/party/713/4</a>	He raped two victims along with other soldiers. He raped another two victims along with other soldiers during a period in which they were kept in his apartment. He assisted other soldiers in the rape of three victims.
Drgaoljub Kunarac	<a href="http://www.icty.org/cases/party/712/4">http://www.icty.org/cases/party/712/4</a>	He raped three victims at his headquarters in Foča. He and two other soldiers raped and threatened to kill a witness and also threatened to kill her son. He also aided and abetted the gang-rape of four victims by several of his soldiers.
Esad Landžo	<a href="http://www.icty.org/cases/party/677/4">http://www.icty.org/cases/party/677/4</a>	He placed a burning fuse cord against the genitals of a male detainee.
Mlado Radić	<a href="http://www.icty.org/cases/party/677/4">http://www.icty.org/cases/party/677/4</a>	He raped one detainee and attempted to rape another. He participated in sexual intimidation, harassment and assaults against three other detainees in Omarska.
Milan Simić	<a href="http://www.icty.org/cases/party/751/4">http://www.icty.org/cases/party/751/4</a>	Together with other men, he personally beat four detainees at the Bosanski Šamac primary school. He also kicked the men in their genitals and, during the beatings, fired gunshots over their heads. One victim was forced to pull down his pants, and one of the men threatened to cut off the victim's penis.
Zoran Vuković	<a href="http://www.icty.org/cases/party/714/4">http://www.icty.org/cases/party/714/4</a>	Along with another soldier, he took a victim from the Partizan Sports Hall, Foča, to a nearby apartment and raped her, knowing that she was only 15 years old.
Dragan Zelenović	<a href="http://www.icty.org/cases/party/794/4">http://www.icty.org/cases/party/794/4</a>	He raped, participated in the gang-rape of, and tortured a number of the women and girls held in classrooms at Foča High School, which was used as a short-term detention facility. He and three other men gang-raped one woman held at the Partizan Sports Hall, a detention facility in Foča. He and two other perpetrators raped four female detainees from the premises known as Karaman's house.

This group contains two particularly historic judgments in relation to the criminal prosecution of crimes of sexual violence. The first comprises the judgments against Hazim Delić and Esad Landžo, who were prosecuted together in what is referred to as the Mucić *et al.* case, where rape was recognized as torture, a grave breach of the Geneva Conventions, and a violation of the laws and customs of war. In addition, the case against Kovač, known as the Kunarac *et al.* case, was the first case in which sexual enslavement was classified as a crime against humanity.

Beyond the legal categorizations, which psychological conceptualization underpins the legal discussions of the individual perpetrators in the sentencing judgments? In what follows, I will argue that at least three different military perpetrator narratives can be detected in the sentencing judgments, which lend themselves to different conceptualizations of the military perpetrator.

## Narratives of Chivalry – Normal Reactions to Normal Situations?

The notions of chivalry and militaristic identities are strongly interlinked (Young, 2007) and the masculine protector can be seen as the archetypical soldier (Elshtain, 1987; Enloe, 1989). But can a chivalrous narrative be evoked vis-à-vis sexual violence perpetrators? Can sexual activities in a forceful setting be considered as something other than crimes and involuntary acts for the victims? Or, is this conceptualization part of a military normality?

### Role of the Perpetrators: Protectors

Consider the following passage from the Kunarac *et al.* case before this conceptualization is discussed further. It is Kunarac himself whose voice is heard:

[T]hen she started beseeching me that I do not ask her. Then she was sitting next to me. She fell on me. She put her head on my chest and begged me not to ask her anything. This gesture on her part did surprise me. I tried to pacify her, to convince her that there was no reason for her to be frightened, that nothing would happen to her, that she would be protected. At that point, she started kissing me and begging me not to ask her a thing. At that moment, I was totally confused. I absolutely did not understand what she was doing. I tried to refuse this behavior of hers and to tell her again that I had to find out who these men were, because I do not want my name to be mentioned in such contexts. I don't want this journalist<sup>xi</sup> to write such articles that I had nothing to do with. Then she started kissing me on the mouth, on the body. She started unbuttoning me. I remained totally confused. After this, even when I wanted to say something, she would either put her hand on my mouth or she would start kissing me on the mouth. She did not allow me to say anything. After that, I accepted this behavior of hers and we had full sexual vaginal intercourse, although I did nothing to give her a reason or pretext for this. And I did not refuse her in any way; I accepted her behavior.

JUDGE MUMBA: Is it your position, accused, that DB seduced you?

At any rate, at that point in time when this was happening, not a single moment did I give any reason – I did not give her a pretext for having sexual intercourse. I didn't say I wanted it at that moment; I had sexual intercourse with her against my will. I mean, without having a desire for sex. I will explain this later. She did this quite consciously for other reasons that I was not aware of at that moment.

Q. I shall remind you, Mr. Kunarac, of the following: During her statement, during her testimony, this witness, Witness DB, said that she was not sure that there would have been sexual intercourse if she had not taken an active role. What can you say as far as this claim is concerned?

I assert that had she not started doing all of this, I would have not – I would not have done a thing. I did not have any ideas about doing anything to her or sexually abusing her. I said that this behavior of hers really took me by surprise. I cannot say that I was raped. She did not use any kind of force, but she did everything. The way she acted was that she did not give me any manoeuvring space. As a man, I accepted her behavior and I did not refuse her as a woman. I did have sexual intercourse with her. (Kunarac *et al.* transcript, 6 July 2000, pp. 4541–4542)

Bearing in mind that Kunarac has been given the most severe (crimes against humanity) and longest (28 years) sentence for sexual violence crimes to date, reading this passage is chilling. He admits having had sexual intercourse with the victim, but does in no way see himself as a perpetrator.

Similar arguments and reasoning can be found elsewhere in the sentencing judgment, which encompassed two other co-accused. Kovač was one of them and in his case attempts were made to argue that one of the women Kovač was convicted of raping (FWS-87<sup>xii</sup>, aged 15) had claimed to have been in love with Kovač. This particular witness, together with another young victim of multiple rapes (Witness A.S., aged 19, who had not been raped by Kovač), had been kept locked up in an apartment in Foča for at least two months, where they were both raped on multiple occasions and subjected to other forms of degrading sexual treatment, such as being forced to dance naked in front of groups of men. After their time in the apartment, they were sent to Montenegro in exchange for money. Kovač's defence lawyers claimed that FWS-87 had in fact been in love with him and that they had had a relationship, thereby portraying this as a voluntary relationship in which the girl(s) were protected, presumably against other potential perpetrators, by Kovač. Further, the transfer to Montenegro was presented as an attempt to further protect the two girls and get them out of Bosnia. The defence lawyers called several witnesses who claimed that there must have existed a relationship between Kovač and FWS-87 because the latter had sent Kovač "a letter with a heart drawn on it" (Kunarac *et al.* sentencing judgment, 22 February 2001, para. 142, p. 62), because she was seen as being in a "good mood" at a party (Kunarac *et al.* sentencing judgment, 22 February 2001, para. 148, p. 64), and because "she was allegedly dancing" at a café on the night of Orthodox New Year's Eve, 13 January 1993 (Kunarac *et al.* sentencing judgment, 22 February 2001, para. 149, p. 64). All these observations relate to the alleged actions of FWS-87 as these were perceived and presented by the witnesses for the defence, and are based on assumptions on observed and alleged behavior by this young girl.<sup>xiii</sup>

Similarly, Vuković, who was also convicted at the same trial of raping a girl the same age as his own daughter (FWS-50, aged 16 at the time), is said to have told the victim that "she was lucky in that she was the same age as his daughter, otherwise he would have done much worse things to her and that she was lucky about this conscience" (Kunarac *et al.* sentencing judgment, 22 February 2001, para. 814, p. 255). In other words, he is portrayed as cautious, or "protective", by being less violent than he could have been. The defence argued further that his acts had been committed out of "sexual urge, not out of hatred" (Kunarac *et al.* sentencing judgment, 22 February 2001, para. 816, p. 256), thereby suggesting that the acts were disconnected from the war, somewhat in contrast to the perpetrator's own accounts of various forms of protection in the war situation.

Returning now to Kunarac – who was the *de facto* commander of the other two accused men (Kovač and Vuković) in the case – claimed to have been seduced by victim DB (who was 19 years old when the relevant events took place), and that he had sex against his will, or to be nice and "not refuse her as a woman" (as stated in the quote above). Listening to DB, however, a very different story is told. After she had been first raped by several soldiers, DB was told by one of them that Dragoljub Kunarac was their commander, just minutes before the following events took place:

After these events [the preceding rapes], "Gaga" told her to have a shower because his commander was coming, and he threatened to kill her if she did not satisfy the commander's desires. He repeated this when the accused Dragoljub Kunarac walked in. D.B. took off the trousers of the accused, kissed him all over the body, and then had vaginal intercourse with the accused. D.B. said she felt terribly humiliated because she had to take an active part in the events, which she did out of fear because of "Gaga's" threats earlier on; she had the impression that the accused knew that she was not acting of her own free will, but admitted after a question by Defence counsel that she was not sure if there would have been intercourse, had it not been for her taking some kind of initiative. After some time, "Gaga" returned to the room and

asked the accused whether he was satisfied, addressing him as “commander”, to which the latter did not reply. (Kunarac *et al.* sentencing judgment, 22 February 2001, para. 219, p. 84)

### Setting of the Crimes: Young Victims in Captivity

The common denominator in the chivalrous narratives of the sexual violence crimes is the fact that the perpetrator was at least twice the age of the victim. Kunarac, who received the longest custodial sentence of the group (28 years), was found guilty of acts of rape against one girl who was 15½ years old, two who were 19 years old, one who was 16, and one who was 17½. In Kovač’s case (sentenced to 20 years), the girls were 20 and 12 years old. In the case of Vuković (sentenced to 12 years), one of the victims was only 15½ years old and this was also the case in the Zelenović case (sentenced to 15 years). In blatant contrast to the sentence by the Trial Chamber, which found that these sexual relationships were abusive and involved the enslavement and terrorizing of the victims, the defence counsel attempted to construct an image that portrays the convicted perpetrators as lovers and the girls as temptresses who seek protection and comfort.

The fact that such a large group of the victims had been so young enabled the defence counsel of the accused men to construct a series of argument that there were purely sexual intentions behind the perpetrators acts, and that they were not discriminatory acts against Muslim women by Serb perpetrators. As Vuković’s defense counsel argued, he did not have hatred, only lust. Kunarac took pleasure in being the first to have forced sex with a girl who stated that she was a virgin, and claimed to have felt almost pressured to have sex with a young girl who allegedly seduced him.

In the discussions of the factors relevant for sentencing for the various crimes, the young ages of the victims were commented upon in the following ways: “this further increases the gravity of the crimes committed against her” (Zelenović sentencing judgment, 4 April 2007, para. 39, p. 13); “offences were committed against a particularly vulnerable and defenseless girl” (Kunarac *et al.* sentencing judgment, 22 February 2001, para. 879, p. 279); “the youthful age [...] and very young age are aggravating circumstances [...] against particularly vulnerable and defenseless girls and a woman” (Kunarac *et al.* sentencing judgment, 22 February 2001, para. 874, p. 278); and “the youthful age of certain of the victims of the offences [...] is considered an aggravating factor” (Kunarac *et al.* sentencing judgment, 22 February 2001, para. 864, p. 276).

In three of the four formulations regarding how the age of the victims was seen as an aggravating circumstance, the judgment also made specific mention of the fact that these were young *girls*. As young girls these victims were both children and adolescents and had come to a stage in their lives when they would be maturing both emotionally and physically. Witness FWS-191, who was 17 years old when the relevant events occurred, “told him she was a virgin and Dragoljub Kunarac said that he would then be the first” (Kunarac *et al.* sentencing judgment, 22 February 2001, para. 259, p. 95). At this crucial time, they were molested by multiple men, twice their age and over extended periods of time, under terrifying conditions. What this has done to the victims was not discussed at any length in the judgments, but from other studies we know that fears of being unattractive and unmarriageable and feelings of shame caused by such events can often be overwhelming (Skjelsbæk, 2012).

### Sentencing Discussions: Challenging Conceptualization of Normality

What do these acts mean for the perpetrators? Why would these men resort to violence against such young female victims and simultaneously see these as chivalrous acts? What actually motivated them to commit these acts at the time we will probably never know, but the ICTY’s legal proceedings require that a rationalization of the events

be presented to the court. The attempt by the defence counsel to portray the perpetrators as heroic or romantic/sexually driven men, was strongly dismissed by the judges. In Kunarac's case, the court commented that "the accused Dragoljub Kunarac used his bravery in combat to gain the respect of his men and he maintained it by providing them with women" (Kunarac *et al.* sentencing judgment, 22 February 2001, para. 585, p. 207). In relation to the situation with the girl who had been a virgin when she was raped by Kunarac, the court commented that "he rejoiced at the idea of being her 'first', thereby degrading her more" (Kunarac *et al.* sentencing judgment, 22 February, para. 724, p. 236). In relation to the alleged love affair between Kovač and FWS-87, the court commented: "The relationship between FWS-87 and Kovač was not one of love as the defence suggested, but rather one of cruel opportunism on Kovač's of constant abuses and domination over a girl who, at the relevant time, was only about 15 years old (Kunarac *et al.* sentencing judgment, 22 February 2001, para. 762, p. 245). At one point during their imprisonment in Kovač's apartment, the young girls were forced to dance naked on a table while Kovač watched them from the sofa, pointing weapons at them. The court made the following comments on that incident: "The accused Radmir Kovač certainly knew that having to stand naked on a table, while the accused watched them, was a painful and humiliating experience for the three women involved, even more so because of their young age. The Trial Chamber is satisfied that Kovač must have been aware of that fact but he nevertheless ordered them to gratify him by dancing naked for him" (Kunarac *et al.* sentencing judgment, 22 February 2001, para. 773, pp. 246–247). In the case of Zelenović, the court commented that "an important factor is the physical and mental trauma suffered by the victims, even long after the commission of the crime", and this comment was immediately followed by an account of the victims' ages: "In 1992, FWS-75 and FWS-87 were 25 and 15 years old, respectively" (Zelenović sentencing judgment, 4 April 2007, para. 40, p. 13).

As this discussion shows, acts of sexual violence, particularly against young girls, by military men in times of war will not enhance their masculinity in the eyes of the court, rather the contrary. Yet, sexual violence against young girls by men in uniform does lend itself to an attempted conceptualization of chivalrous behavior by the defence counsel. The soldiers had sex with the girls as a response to alleged infatuation (Kovač) and seduction (Kunarac) in addition to claiming that the involuntary sexual behavior was not so bad because it could have been worse (Zelenović), presumably by others. Sexual behavior is conceptualized as a masculine issue along the line of the "boys-will-be-boys argument"; the acts were seen as an expression of sexual lust which needed an outlet, in other words as normal male behavior. The response by the court suggests, however, that this viewpoint of the military perpetrator is strongly challenged.

### **Narratives of Opportunism – Abnormal Reaction to Abnormal (or Extreme) Situations?**

If we see the chivalrous narrative as one which situates the perpetrator as a soldier who is driven by a protection rationale and normal sexual desires, then the narratives of opportunism can be said to do the opposite. War provides opportunities to commit sexual violence crimes with impunity, but not all soldiers will take advantage of this situation. What, then, of those who do? How can perpetrators of sexual violence crimes be understood when these acts of crime happen in clearly coercive settings where the perpetrator is the prison guard? A closer look at what the court labelled "opportunistic perpetrators" reveals a second conceptualization of the military perpetrator, one in which sexual violence sets the perpetrator apart from fellow-soldiers in a non-chivalrous way. The cases discussed in this section relate to crimes of sexual violence committed by soldiers who worked in a range of different detention facilities. The sexual violence perpetrators in this group were all found guilty of having committed sexual crimes against women who were imprisoned and who were subjected to criminal sexual violation on multiple occasions in these detention facilities.

### Setting of the Crimes: Prison Inmates in Detention Facilities

We can start with Milorad Radić, who worked as prison guard shift leader at the Omarska concentration camp. In this camp a relatively small number of detainees, approximately 36 according to the ICTY, were women. The oldest of these were in their 60s, and only one of them was particularly young (Radić sentencing judgment, 2 November 2001, para. 98, p. 31), but they were all considered to be threats to the Serb regime (Radić sentencing judgment, 2 November 2001, para. 19, p. 7). In their testimonies, several of the women told of multiple rapes that were committed against them in a somewhat orderly fashion, where they would be taken out of the rooms where the women were being held to a different location, where they would be raped by several men, before typically being sent back to the rooms where the women were being kept. Under these circumstances, in addition to the direct traumas caused by individual acts of sexual violence, the women at the camp were continually traumatized by each other's experiences, as they would never know who would be next in line. This, the court commented, created a constant atmosphere of fear and terror for all. Ultimately, Milorad Radić was sentenced to 20 years' imprisonment for acts that included crimes of sexual violence at the Omarska camp in central Bosnia. In its assessment of the charges and evidence regarding Radić's involvement in crimes committed at the camp, the court stated:

The Trial Chamber heard compelling evidence that Radić was personally involved in the sexual harassment, humiliation, and violation of women in Omarska camp. He would call particular women out from their place of detention and when these women returned, it was apparent to the other women that something terrible had happened to them. Typically, they did not speak to or look at the other women. (Radić sentencing judgment, 2 November 2001, para. 546, p. 153)

Radić was found guilty of having abused Witness F by telling her that "he could help her if she agreed to sleep with him and that she would get out of the room where she was held one night when he was on duty. He then touched her 'female parts' of her body" (Radić sentencing judgment, 2 November 2001, para. 547, p. 153). According to a witness (Sifeta S.), he also grabbed another female inmate while she was clearing a table and told her, "It's better for me to rape you than somebody else did" (Radić sentencing judgment, 2 November 2001, para. 547, p. 153). Yet another victim, Witness J, was threatened with rape, though Radić did not succeed in carrying out this threat fully (Radić sentencing judgment, 2 November 2001, para. 548, p. 154), while Witnesses K, AT and A all testified that Radić had sexually assaulted them in various ways. On Radić's role on crimes committed at the camp, the court commented the following:

The Trial Chamber has found that Radić played a substantial role in the functioning of Omarska camp as a guard shift leader. He remained at the camp for its entire duration never missing a single shift, guards on his shift were notoriously brutal and he played a role in orchestrating the abuses, and he personally committed crimes of sexual violence against female detainees. Radić is thus a co-perpetrator of the joint criminal enterprise. (Radić sentencing judgment, 2 November 2001, para. 575, p. 161)

In the outline of the court's assessment of the crimes, the judges do not conceal their outrage at the crimes with which they had been presented. In mapping out the factors relevant for Radić's sentencing, the court stated that he had "grossly abused his position of power in the camp by forcing and coercing the women into sexual activity for his own pathetic gain (Radić sentencing judgment, 2 November 2001, para. 740, p. 202), adding that "by all indications Radić relished and actively encouraged criminal activity in the camp. He appeared to regard abuses as entertainment" (Radić sentencing judgment, 2 November 2001, para. 741, pp. 202–203). This was all made possible because the victims were in detention and Radić could do as he pleased. In other words, the opportunity

to commit acts of sexual violence with seemingly total impunity presented itself, and Radić seems to have thrived on the possibility, more so than others.

### **Role of the Perpetrator: Terrorizing and Unpredictable Behavior**

Similar personality traits (sadistic and abusive) were also described in the discussion of the sentencing factors pertaining to Hazim Delić. Delić was found guilty of raping two women in the Čelebići prison camp that had been set up close to the town of Konjic in southwestern Bosnia, where Serb prisoners were held by Croat (and Bosnian) defence council HVO<sup>xiv</sup> soldiers. Hazim Delić was the deputy commander at the camp from May to November 1992, and was alleged to have also been in charge during the last month before the camp was closed down in December 1992. Women held at the camp (the number of whom is not stated in the sentencing judgment) were housed in a separate building, but were taken to a separate room where they were held together for interrogation. One of the victim witnesses, Mrs Grozdana Čećež, said that she had been raped by Hazim Delić and four other men, in the presence of two more. Both before and after these events, she was asked about the whereabouts of her husband. Other witnesses reported that Hazim Delić would boast about this incident and of having raped at least 18 women, claiming that “it was his intention to rape more in the future” (Delić sentencing judgment, 16 November 1998, para. 928, p. 325). Mrs Čećež testified that Hazim Delić had told her, while she was being raped, that she was in the camp because of her husband (who was thought to be hiding in the vicinity of Konjic) and that she would not have been there if he had been around (Delić sentencing judgment, 16 November 1998, para. 929, p. 325). The other victim, Ms Antić, was raped on three occasions by Hazim Delić. Another witness, Witness P, stated that Hazim Delić had said that he was keeping Ms Antić for himself and that she was a virgin (Delić sentencing judgment, 16 November 1998, para. 948, p. 331). The story of Ms Antić is also mapped out in the judgment, where it is made clear that she was not married, was 44 years old at the time of the crimes, and was living with her mother when she was arrested in her village and taken to the Čelebići camp, where the following events took place:

Upon her arrival at the Čelebići prison-camp, she was immediately interrogated together with another woman, by Hazim Delić, Zdravko Mucić and another person. In answer to a question by Mr. Mucić, she stated that she was not married, at which point Mr. Mucić said to Mr. Delić, “[t]his is just the right type for you”. (Delić sentencing judgment, 16 November 1998, para. 955, p. 333)

The judgment then proceeds to detailed descriptions of rapes that were violent, intimidating and physically damaging for the victims. In its summary of how it viewed Hazim Delić’s behavior, the court wrote:

The rapes were committed inside the Čelebići prison-camp and on each occasion Hazim Delić was in uniform, armed and viciously threatening towards Ms. Antić. The purpose of these rapes was to intimidate, coerce and punish Ms. Antić. Further, at least with respect to the first rape, Delić’s purpose was to obtain information from Ms. Antić, as it was committed in the context of interrogation. In addition, the violence suffered by Ms. Antić in the form of rape, was inflicted upon her by Delić because she is a woman. As discussed above, this represents a form of discrimination which constitutes a prohibited purpose for the offence of torture. Finally, there can be no question that these rapes caused severe mental and physical pain and suffering to Ms. Antić. The effects of the rapes that she suffered at the hands of Hazim Delić, including the extreme pain of anal penetration and subsequent bleeding, the severe psychological distress evidenced by the victim while being raped under circumstance where Mr. Delić was armed and threatening her life, and the general depression of the victim, evidenced by her constant crying, the feeling that she

was going crazy and the fact that she was treated with tranquilizers, demonstrate most emphatically the severe pain and suffering that she endured. (Delić sentencing judgment, 16 November 1998, paras 963–964, p. 335)

Hazim Delić was found guilty of torture for the multiple rapes of Ms Antić. In the court's discussion of factors relevant for sentencing, a number of issues pertaining to Hazim Delić's personality were raised and the following formulation was used: "Hazim Delić [is] guilty of committing a series of violent crimes upon detainees who were at his mercy in the Čelebići prison camp" (Delić sentencing judgment, 16 November 1998, para. 1253, p. 429). In other words, the prisoners were not only extremely vulnerable owing to the fact of their incarceration, but had also been subject to Delić's whims and impulses, as the prosecution had pointed out. In its closing statements, the prosecution pointed out that "he participated in monstrous crimes [...] he brutally raped a number of the women in the prison camp and then boasted about it [...] he took sadistic pleasure in the infliction of pain [...] he would laugh in response to pleas for mercy from the victim" (Delić sentencing judgment, 16 November 1998, para. 1254, p. 429). Further, the prosecution submitted that the Trial Chamber should regard, as an aggravating factor, that the suffering of the victims took place within the context of the conditions of their imprisonment (Delić sentencing judgment, 16 November 1998, para. 1256, p. 429). The defence, on the other hand, argued that Delić had had no prior trouble with the law, had been charged with no criminal offences before this time, and had no training prior to his assignment to the prison camp (Delić sentencing judgment, 16 November 1998, para. 1257, p. 429). The court, however, found few mitigating circumstances for Hazim Delić. Rather, and in relation to the rapes in particular, the Trial Chamber pointed out that:

Hazim Delić is guilty of torture by way of the deplorable rapes of two women detainees in the Čelebići prison-camp. He subjected Grozdana Čećez not only to the inherent suffering involved in rape, but exacerbated her humiliation and degradation by raping her in the presence of his colleagues. The effects of this crime are readily apparent from the testimony of the victim when she said "... he trampled on my pride and I will never be able to be the woman that I was." Before the first rape of Milojka Antić, Hazim Delić threatened her and told her that, if she did not do whatever he asked, she would be sent to another prison-camp or shot. He then forced her to take her clothes off at gunpoint, ignored her pleas for mercy and cursed and threatened her while raping her. The following day he compounded her fear and suffering by stating " ... [w]hy are you crying? This will not be your last time". This rape was followed by two others, one of which involved painful and physically damaging anal penetration. These were committed by Hazim Delić when he was armed, in total disregard of his victim's pleas for mercy. Ms. Antić testified as to the effect these crimes had on her, including feelings of misery, constant crying and the feeling that she had gone crazy. In a victim impact statement submitted by the Prosecution for the purposes of sentencing, she stated, "[t]he wounds that I carry from the rapes in Čelebići will never go away". (Delić sentencing judgment, 16 November 1998, paras 1262–1263, p. 431)

The Trial Chamber further commented on the way in which Hazim Delić was said to have behaved in the prison facility, and concluded that both the crimes (and their underlying motivations) were some of the most serious offences a perpetrator can commit. Further, the Trial Chamber commented that the "manner in which these crimes were committed are indicative of a sadistic individual who, at times, displayed total disregard for the sanctity of human life and dignity (Delić sentencing judgment, 16 November 1998, para. 1268, p. 433). The next paragraph stated:

As well as having a general sadistic motivation, Hazim Delić was driven by feelings of revenge against the people of Serb ethnicity. Before raping Ms. Antić, he stated that “the Chetniks were guilty for everything that was going on. He [Delić] started to curse my Chetnic mother. (Delić sentencing judgment, 16 November 1998, para. 1269, p. 433)

Finally, Esad Landžo was also found guilty of crimes of sexual violence in the same judgment as that in which Hazim Delić was convicted and sentenced. Landžo, however, had not had a leadership role in the camp, nor did he commit acts of sexual violence against female detainees, but rather performed acts of sexual torture against male detainees by forcing two brothers to fellate each other and by tying a burning fuse-cord to the genitals of Vukasin Mrkajic. Landžo, a prison guard, had been a young man when the war started, only 19 years old, and the defence asserted that this should be taken into account as a mitigating circumstance – a view that received support from the prosecution. The defence further argued that he was only an ordinary soldier, with no higher responsibilities, and that he had simply committed acts he had been ordered to carry out (Landžo sentencing judgment, 16 November 1998, para. 1281, p. 438). The Trial Chamber rejected these claims, however, and interpreted the facts as indicating that the accused “took some perverse pleasure in the infliction of great pain and humiliation” (Landžo sentencing judgment, 16 November 1998, para. 1281, p. 438). Nevertheless, the Trial Chamber agreed with both parties that both Landžo’s age at the time of the offences and his family background, which was described as being poor, should be seen as mitigating circumstances, since they contributed to his “immune and fragile personality at the time” of the relevant events (Landžo sentencing judgment, 16 November 1998, para. 1283, p. 438). Furthermore, Landžo had received no military training or instructions as to how to conduct himself in relation to detainees, in conjunction with the overwhelmingly harsh environment because of the war. Yet, the offences for which he was found guilty were of such a nature that he was seen by the prosecution as constituting a continuing danger to society owing to personality problems ascribed to post-traumatic stress disorder. The Trial Chamber acknowledged that Esad Landžo has personality issues that would be taken into account in sentencing, and Landžo was sentenced to 15 years in prison.

### **Sentencing Discussion: Abnormal Personality Traits**

What sets these three sexual violence perpetrators apart from the three perpetrators in the past category is that they exercised a different power and control. All victims were held in different detention facilities and the perpetrator all had different levels of superior responsibilities in these facilities. In addition, they had different levels of professional training; Radić was a former policeman and served a shift guard in the camp; Delić had military background from the JNA (Jugoslavenska Narodna Armija, Yugoslav National Army) army but had worked as a locksmith in a wood working plant up until the war (in the camp he was the deputy commander); and Landžo had no formal education nor military training and was Delić’s subordinate as a prison guard. This context is different from the alleged homes in which the sexual violence victims in the former category were placed. The fact that Radić and Delić had a formal background which should have trained them to understand what to do and not in a prison setting is seen as particularly aggravating. In addition, their position of authority meant that their behavior set an example to others. In the case of Radić the court asserted that he “had substantial authority over guards on his shift in the camp and that he used his power to prevent crimes selectively” (Radić sentencing judgment, 2 November 2001, para. 526, p. 148).

Further, while the perpetrators in the former category were conceptualized as committing acts of sexual violence to boost their military status, the court is much more focused on sadistic aspects of the crimes committed by the perpetrators in the present category. The use of words like *pathetic pleasure*, *revenge*, *sadistic motivation*, *whims*

*and impulses, etc.* suggest that the court views the perpetrators as having low self-control and that the possibility to commit acts of sexual violence was something they sought out, because the opportunity was there. In addition, it is underscored that these perpetrators were particularly violent and their shifts when they were on guard stood out due to this. The fact that these men stood out in the setting they were in is further underscored by their respective defense lawyers who attempt to build a case narrative in which it is the perpetrators' deviant personalities which are in focus, and where attempts were made to view their deviant personalities as mitigating circumstances.

### **Narratives of Remorse – Normal Response to an Abnormal (or Extreme) Situation?**

A final narrative format which emerged in the sentencing judgments were those where remorse was expressed and a guilty plea was submitted. In these judgments it is the expression of guilt itself which is at the core and where the perpetrator himself agrees, by and large, to the factual basis and gives an assessment of his own behavior. In other words, these are the judgments where the perpetrators' voices are the most pronounced. How then do the perpetrators, in their own words, situate themselves as soldiers vis-à-vis these crimes?

#### **Role of the Perpetrator: Following Orders and Feeling Shame**

The final group of perpetrators of sexual violence consisted of three men who entered guilty pleas and expressed deep remorse for their actions: Miroslav Bralo, Milan Simić and Dragan Zelenović, who were sentenced to 20, 5 and 15 years imprisonment, respectively. Miroslav Bralo admitted guilt on all counts against him, including the rape and imprisonment of Witness A, whom he violated over a period of approximately two months. In his guilty plea, he expressed deep discomfort with the person he was at the time of the war and the actions and behaviors he admitted having carried out:

These were acts which I always knew to be wrong, which anyone would know to be wrong, and for which there really can be no excuse at all. I know I acted badly, and compounded this later by my words. Our wrongs were so terrible – I include others here – that we clung to them, and tried to justify them. I tried to be proud of my actions and to think they were the actions of a successful soldier. Today I am ashamed of my conduct and ashamed how I behaved. No, these were not the actions of the soldier I once wanted to be. I was present when women and children were gunned down in front of me, and at that moment the good soldier in me was gone, silent. (Bralo, guilty plea, 19 July 2005)

Unlike the other perpetrators in this sample, who had violated multiple women, Bralo had committed acts of sexual violence against a single woman, Witness A, over an extended period of time. In his guilty plea, he did not address the claims of sexual violence directly – a pattern that can be seen in all of the guilty pleas entered by the 28 people convicted of crimes of sexual violence by the ICTY. However, he clearly addressed his failed status as soldier. His behavior, according to his own statement, had been at odds with what that of a soldier should be. The two other perpetrators in the sample who entered guilty pleas talked about neither their rape charges nor their soldier identities, but addressed their personal struggles with what they had done. Milan Simić, for example, stated that:

I have done that, but in addition to my sincere regret and remorse and personal apology that I extended to them, I was still haunted by guilt and it continues so until this day. (Simić, guilty plea, 15 May 2002)

In entering a plea of guilty, Simić admitted his responsibility for having orchestrated acts of sexual torture against male victims in the following manner:

Safet Hadžialijagić was forced to pull down his pants, and one of the men accompanying Milan Simić brandished a knife and threatened to cut off Safet Hadžialijagić's penis; the other assailants were challenging and exhorting the man wielding the knife to cut off Safet Hadžialijagić's penis. (Simić sentencing judgment, 17 October 2002, para. 11, p. 5)

The judges agreed with the prosecutor's argument that "[t]he sexual, violent and humiliating nature of the acts are [...] considered in aggravation, as it would certainly have increased the mental suffering and feelings of degradation experienced by the victims" (Simić sentencing judgment, 17 October 2002, para. 63, p. 21). Yet, Simić's guilty plea (even though it was entered late in the proceedings)<sup>xv</sup> and his expression of remorse were considered mitigating factors, and the judges regarded his regrets as sincere since he both had taken the opportunity to publicly extend an apology to all his victims and had apologized personally to two of his victims (Simić sentencing judgment, 17 October 2002, para. 94, p. 30). In sum, the court found that the aggravating circumstances pertaining to Simić's case (for all of the crimes he had committed, both crimes of sexual violence and other forms of torture and killing) included: the circumstances in which the offences were committed, his official position, the vulnerability of the victims, and his discriminatory intent. The mitigating factors that led to a drastic reduction in his sentencing were: his admission of guilt and expression of remorse, his voluntary surrender, and his lack of a prior criminal record, along with his comportment in the Detention Unit and his attitude towards the proceedings (Simić sentencing judgment, 17 October 2002, para. 113, p. 35). For his crimes, Simić received only a five-year prison sentence.

### **Sentencing Discussions: Assessing Guilt and Remorse**

Dragan Zelenović was found guilty of committing, of aiding and abetting, and of co-perpetrating multiple rapes at various times and at different locations in Foča over an extended period of time in 1992. On 17 January 2007, he pleaded guilty to seven counts of rape and torture.<sup>xvi</sup> In his plea statement, he focused on the religious dimensions of his regrets:

Guided by Biblical teachings that the truth is not to be feared because that is the only thing that will help all, I have confessed as to my guilt, and I am prepared to bear all the consequences of that. I know that not a single form of punishment can erase the sufferings sustained by my victims. However, faith teaches us that admission of having committed injustice to someone is the best way of helping them. [...] I feel sorry for all the victims who were victimized by anything that I did, and that is why I express from this forum my deepest remorse and regret. I am a human being with virtues and vices, and I didn't know how to deal with these vices when I should have. [...] I will courageously take any sentence meted out, and I hope that God will give me strength to go through all of this and that I go back to my family. (Zelenović, guilty plea, 17 January 2007)

In the court's discussion of the particular aggravating and mitigating factors of this case, the judges commented that "rape is an inherently humiliating offence, and humiliation is generally taken into account when assessing the gravity of the crime" (Zelenović sentencing judgment, 4 April 2007, para. 36, p. 12). In addition, it was stated in the sentencing judgment that it was essential to take into account the vulnerability of the victims when assessing the gravity of a crime (Zelenović sentencing judgment, 4 April 2007, para. 39, p. 13), along with the physical and mental trauma suffered by the victims even long after the commission of the crime (Zelenović sentencing judgment, 4 April 2007, para. 40, p. 13). These elements would suggest a long sentence for Zelenović. However, as was pointed out in the sentencing judgment, entering a guilty plea was also given considerable weight, "since the admission of guilt may show honesty and readiness to take responsibility, it may help establishing the truth and contribute to reconciliation, and [...] because of the guilty plea victims are relieved from giving evidence in court

and thereby re-living their trauma” (Zelenović sentencing judgment, 4 April 2007, para. 45, pp. 14–15). It is interesting to note that the prosecution pointed out that the guilty plea entered by Zelenović was “the first time in the history of the Tribunal that a perpetrator admits to and confirms what happened to the female non-Serb population in Foča in 1992 [...] not only does [this contribute to] the establishment of the truth, but also to the reconciliation in the area” (Zelenović sentencing judgment, 4 April 2007, para. 48, pp. 14–15). In the summary of how the court viewed the mitigating circumstances, the following considerations were spelled out: “his family situation,<sup>xvii</sup> together with his health condition,<sup>xviii</sup> the fact that he had no prior convictions and his good behavior while in the United Nations Detention Unit. Taken together, these factors were assigned some, albeit limited, weight in mitigation (Zelenović sentencing judgment, 4 April 2007, para. 55, pp. 14–15). Zelenović was sentenced to 15 years’ imprisonment.

### **Setting of the Crimes: Aberrant Personality During War**

In all three of these cases, the fact that the accused entered a plea of guilty was given considerable weight by the court, and the sentences the accused men received for grave offences were substantially lighter than those in the other cases examined. The central element in the evaluation of the court was not just the fact that a plea of guilty had been entered, but also its timing, its wording and whether it was seen as being sincere and a true expression of remorse. The way in which this admission of guilt was formulated in the guilty pleas varied, but the central tenet was that the perpetrators distanced themselves from the persons they were at the time when the admitted crimes took place. Bralo saw himself as a damaged soldier; Simić saw himself as a person tormented by guilt (i.e., that he committed acts he knew to be wrong); and Zelenović described himself as a failed human being who did not deal appropriately with his own virtues and vices, for which he was prepared to pay the appropriate cost both in a legal and in a religious sense. All three cases contain descriptions of altered identities: the soldier, the person of conscience and the humane person. These insights and admissions were given considerable punitive leverage by the court, even though the crimes the accused men admitted to having committed were arguably among the gravest instances of humanitarian violation in the war.

## **The Normal-Abnormal Continuum**

The three different perpetrator narratives in the court conceptualize the intersectionality between militarism and masculinity along a normal to abnormal continuum. On the one extreme is the narrative of the sexual violence perpetrator as a chivalrous militarized individual. We are presented with the defense lawyers’ claim that the perpetrator(s) commit(s) acts of sexual violence out of lust and not hatred, that they could have been more violent (but refrained to be), that they are seduced (by very young girls) and that there is a love relationship between perpetrator and victim. All of these events are further set within the framework of a protectionist aim, and the sexual violence behavior is construed as part of normalized military behavior. These constructions were strongly contested by the judges and the prosecutors. At the other extreme is the narrative of opportunistic military perpetrators who commit acts of sexual violence because they have authority and access to defenseless women and because they display sadistic pleasure in inflicting humiliating pain. In these cases acts of sexual violence serve to set the perpetrators apart from other military individuals; they are seen as deviant and abnormal individuals. These narratives are mutually reinforced by the judges, defense lawyers and prosecutors, albeit with different legal concerns in mind. In addition to these opposite extremes, there are the remorseful perpetrators who plead guilty and express regret, shame and guilt. At the core of their guilty plea statements are what they portray as

failed soldiers. The acts for which they plead guilty are in contrast to how a good soldier should behave. Sexual violence, then, does not simply set these individuals apart from other soldiers, but becomes a different expression of a failed military identity altogether. What sets the remorseful narratives apart from the two others is that they refer to an aberrant, or temporarily abnormal, behavior which the perpetrator sees and recognizes in hindsight. The judges' assessment of the perpetrator focuses on the validity of this temporality: is the perpetrator really sincere in his expression of remorse and thereby distancing himself from who he was during the war?

How then do these narratives add to the understanding of perpetrators of mass atrocities in armed conflicts? What do these narratives represent? It is clear that the notions of the chivalrous, opportunistic and remorseful perpetrators to a large extent overlap with the categorizations by [Smeulers \(2008\)](#) and others. In different ways these narratives suggest criminal masterminds, fanatics, the criminal sadists, the profiteers, and devoted warriors, which Smeulers discusses in her overview. Yet, sexual violence crimes involve the notion of sexual pleasure in addition to the infliction of pain; a way of thinking which opens up for a conceptualization whereby the crimes can be narrated in a different way than as torture and mass atrocities. One could therefore question if these crimes come across as more normal to the perpetrators than other kinds of crimes: the victims are not seen as dehumanized in the context of the armed conflict, but as gendered object of masculine lust, which is what the chivalrous narratives would suggest is in a way a normal behavior. At the other extreme, sexual violence crimes set perpetrators apart from other perpetrators in the same setting as the opportunistic narrative would suggest, situating the perpetrators as abnormal individuals. Finally, the narrative of remorse is perhaps most in compliance with the more established conceptualization of perpetrators of mass atrocities: a new identity (the soldier) takes precedence over other identities and primes the individual for behaviors and reasoning that seem aberrant for the civilian in the aftermath.

## Conclusion

The focus of this article is the presentation and analysis of how sexual violence crimes are discussed *in theatre* in an international criminal court. By contributing to this social science analysis with a narrative psychological reading it has been possible to focus on how the court assesses the identities and responsibilities of individual sexual violence perpetrators. To reiterate: the court has assessed the individual and the crime. The analysis presented here has tried to map out how the court has assessed the societal and cultural dimensions (in addition to the law) which underpin the conceptualization of nine principal sexual violence perpetrators.

Having presented the three conceptualizations above, one could argue that acts of sexual violence place the perpetrators on a continuum where it is the notion of the militarized individual which is cast in different lights depending on how the discussions in the court unfold. These findings do not suggest a linear instrumental use of sexual violence on a group level as was [Cohen et al.'s \(2013\)](#) approach, but takes the acts themselves as the starting point and asks how they reflect back on the perpetrator and how the perpetrator is situated as a militarized individual through these acts. What we find by doing this is that sexual violence in war has at least two opposing consequences for the perpetrators: it can enhance a militarized masculinity, but it can also do the opposite.

In a discussion of the role of perpetrators in war, [Hutchings \(2008\)](#) asks whether war provides an arena for hegemonic masculinities to be played out or whether it could be that the so-called new wars force us to focus on the "formal, relational properties of masculinity as a concept" (p. 390)? Perhaps the discussions of the three perpetrators in this category constitute a good illustration of [Kaldor's \(1999\)](#) discussions of the so-called new-wars, as

Hutchings sees them. She argues that Kaldor diagnoses the “masculinity of the new warrior as pathological, something that takes a recognizable form of human behavior to new and extreme limits and that needs to be countered by responsible and autonomous action on the part of the cosmopolitan law enforcer” (Hutchings, 2008, p. 399). The nature of wars has changed and the display of hegemonic (and militarized) masculinity is seen as pathological, and the response is not a privileged status but potential international criminal prosecution. These insights suggest that the ICTY represents a strong conceptual shift from the *laissez-faire* attitude expressed in the memoirs of General Patton that “unquestionably there shall be some raping” (quoted in Brownmiller, 1975, p. 31), to harsh moral condemnation of this allegedly normal state of affairs.

## Notes

- i) However, both de Brouwer (2005) and Henry (2011) argue that there was evidence, but that it was ignored and overlooked.
- ii) In addition, a set of United Nations Council Resolutions (one adopted in June 2008 (UNSCR 1820), one in September 2009 (UNSCR 1888), one in December 2010 (UNSCR 1960), and one in June 2013 (UNSCR 2106)) have formulated how sexual violence in war is perceived by the international community at large. They all focus on the protection of women and vulnerable groups against sexual violence – based on the central argument that lack of protection perpetuates vulnerability, which in turn may be detrimental to international peace and security. This is the essence of the conceptual shift that has taken place regarding crimes of sexual violence.
- iii) Update from [www.icty.org](http://www.icty.org), 20 January 2015.
- iv) Xabier Agirre Aranburu (2010, p. 609), former senior analyst at the Office of the Prosecutor of the ICTY, writes of his experiences: “A pattern of crime is the aggregate of multiple incidents that share common features related to the victims, the perpetrators and the modus operandi. Pattern evidence and analysis have been used successfully, mainly in the investigations of large-scale killings, destruction and displacement; the use for sexual violence charges has been remarkably more limited.”
- v) This was a core theme of a presentation entitled “Rape as a War Crime: How To Investigate and Prosecute?” by Patricia Viseur Sellers, Legal Advisor for Gender Related Crimes and Acting Senior Trial Attorney at the ICTY, at a conference held in Oslo on 8 May 2007, entitled “The Impact of Armed Conflict on Women”, which was organized by the Peace Research Institute Oslo (PRIO) and the Norwegian Red Cross.
- vi) Despite their differences, there are certain narrative elements that characterize all of the sentencing judgments in the ICTY Trial Chamber: a list of the charges against the accused, the evidence presented to the court, a discussion of the applicable law, the findings of the Trial Chamber, and, finally, a discussion of the factors considered relevant for sentencing. In cases where a guilty plea has been entered by the accused, this plea is given considerable weight in the sentencing judgment.
- vii) See Commentary to Article 46 ‘Sentencing’, Draft Statute for an International Criminal Court, *Report of the International Law Commission on the work of its forty-sixth session*, UN Doc A/51/10 (1994), p. 123 (Article 46, Commentary, para. 1).
- viii) *Prosecutor v Tadić*, supra note 75, para. 61
- ix) Miller (2004), Zimbardo (2008) and Baum (2008) argue for a distinction between evil actions and evil inactions. This distinction proved very useful, because it permitted me to distinguish between those who had perpetrated acts of sexual violence with their own bodies or with tools/weapons they held and used directly on other persons and those who had not. The “inactive” perpetrators were by no means passive, but they were not as directly involved in the crimes of sexual violence for which they were held responsible as those who actually committed such acts. It turned out, however, that the “inaction category” needed to be further subdivided, as the cases classified under this heading comprised a wide variety of inactions. There was a subgroup to which the label “evil inaction” did not seem to fit, because the individuals concerned had given direct orders to others to commit acts of sexual abuse, rather than committing such acts themselves. These individuals seemed to fall somewhere between being personally active and being inactive. It therefore seemed useful to distinguish this group further into those who had instigated sexual violence by ordering or being physically present and those who had known about such

events but had not intervened to prevent them. In sum, the case material gave 15 people who had been found guilty of crimes of sexual violence on the basis of their inactions, and 4 who were held responsible because they had issued direct orders, but who had not themselves directly committed acts of sexual violence. All of the sentencing judgments for these cases were read through as background material, but do not form part of the material analyzed in this article.

x) This list is taken from the details of the *Kunarac, Kovač and Vuković* trial provided in [de Brouwer \(2005, pp. 363–364\)](#).

xi) Elsewhere Kunarac argued that he had been approached by a journalist who was writing a story in which it was claimed that Kunarac had raped young women in Foča, and that he wanted to find out who had given the journalist this information. The passage is his explanation to the court about what the journalist allegedly had misunderstood.

xii) 'FWS' stands for 'Foča Witness Statement'.

xiii) None of the defence witnesses had actually talked to the witness herself or seen the alleged letter. In a discussion about law, memory and justice in relation to rape crimes in war, [Henry \(2011, p. 86\)](#) quotes from an Institute for War and Peace Reporting (2000) interview with the woman in question, in which she explained that she had gone out with Kovač because he wanted her to go and she denied having been in love with him, saying "I was not in love, nor did I look like I was his girlfriend. I think that all the people who saw us in the café knew who I was and why I was with him."

xiv) In Croatian, Hrvatsko vijeće obrane

xv) Simić first pleaded not guilty to all charges against him, despite his voluntary surrender to the court on 14 February 1998. After the fourth amended indictment, however, he pleaded guilty to two counts of torture as crimes against humanity on 15 May 2002.

xvi) Dragan Zelenović pleaded guilty to aiding and abetting the rape against FWS-75 and committing rape against FWS-87 (which was defined as torture and rape as crimes against humanity). In addition, he pleaded guilty to co-perpetration of rape in relation to FWS-87 and two unidentified women, and to committing rape three times against FWS-75 and three times against FWS-87. (Zelenović sentencing judgment, 4 April 2007, para. 13, p. 4).

xvii) Zelenović had a wife and a son who was 13 years old at the time of the sentencing judgment.

xviii) Zelenović's medical conditions include diabetes mellitus type 2, and he is disabled with 80% established disability.

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