

CORRESPONDENCE

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TO THE EDITOR IN CHIEF:

In his commentary, *Rape as a Crime under International Humanitarian Law* (87 AJIL 424 (1993)), Professor Theodor Meron provides a characteristically thorough review of humanitarian norms proscribing rape. Nonetheless, it should be stressed that rape might also be part of proscribed methods or tactics covered by Article II of the Convention on the Prevention and Punishment of the Crime of Genocide (especially under Art. II, paras. (b), (c) and (d)); such crimes against humanity need not involve “systematic governmental planning” or be “committed ‘against any civilian population’ ” as such. Of course, in *United States v. Altstoetter* (“The Justice Case” in the subsequent Nuremberg proceedings), the opinion and judgment affirmed the widespread expectation that the newly coined term “genocide” was “the prime illustration of a crime against humanity,” a recognition affirmed subsequently in *Attorney General of Israel v. Eichmann* and by the UN General Assembly. In its interim report, the UN Commission of Experts also noted that rape and sexual assault have been used as part of a strategy of “ethnic cleansing,” that “[t]hose practices constitute crimes against humanity and can be assimilated to specific war crimes,” and that “such acts could also fall within the meaning of the Genocide Convention” when engaged in as part of such a heinous scheme.¹

Importantly also, both “rape” and “abduction of girls and women for the purpose of enforced prostitution” were recognized violations of the customary laws of war in the list of war crimes contained in the 1919 Report of the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties presented to the Paris Peace Conference.² (Interestingly, “Serbia” was a member of the commission.) Such crimes could also form part of a process of “systematic terrorism” (crime No. 1), found within the same list, and a number of other crimes. Additionally, use of rape as a tactic or strategy and as part of the general strategy of “ethnic cleansing” has been so widespread and frequent in Bosnia-Herzegovina that its willful or deliberate and systematic nature is self-evident—local commanders and even those outside formal lines of authority did not need direct orders to understand that use of these strategies was expected and approved. In any event, these circumstances also lead unavoidably to criminal dereliction and/or complicity.

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¹ Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), UN Doc. S/25274, Ann. I, at 16, para. 56; see also *id.* at 17, para. 59.

² Reprinted in 14 AJIL 95, 114–15 (1920) (crimes Nos. 5, 6).