UDK - 34

ISSN 0352-5317

PRAVNI vjesnik

Tromjesečni glasnik za pravne i društveno-humanističke znanosti
Pravnoga fakulteta Sveučilišta J. J. Strossmayera u Osijeku

Vierteljahresschrift für Rechts - und Sozialwissenschaften
der Fakultät für Rechtswissenschaften der Universität
J. J. Strossmayer in Osijek

Journal trimestriel des sciences juridiques et sociales
Faculté de droit, Université J. J. Strossmayer à Ossiek

Quarterly Journal of Law and Social Sciences of the
Faculty of Law, J. J. Strossmayer University in Osijek

23 - 2007 - 1-2 - Osijek

PRAVNI VJESNIK GOD. 23 BR. 1-2 Str. 1 - 292 OSIJEK, siječanj-lipanj 2007.

UDK 341.321-055.2/.25
341.231.14-055.2
355.11-055.2
Izvorni znanstveni rad

NIVES MAZUR, Ph.D. Candidate, Department of International Law, J. J. Strossmayer University, Faculty of Law in Osijek
MARIO VINKOVIĆ, Ph.D. Candidate, Department of Labour and Social Security Law, J. J. Strossmayer University, Faculty of Law in Osijek

LEGAL PROTECTION OF WOMEN AND FEMALE CHILDREN IN ARMED CONFLICTS AND AT A TIME OF TRANSITION IN SOUTH – EASTERN EUROPE *

The example of South-Eastern Europe shows that women and female children are the most vulnerable parts of societies affected by wars and post-war period mostly because of their physiological particularities, traditional family roles and positions, overall poor economic situation (especially high unemployment rate that leads to trans-border illegal migrations) and insufficient legal and executive mechanisms for their protection in everyday life. The paper emphasizes the most common problems related to women and female children present both in time of war and peace, such as outrages upon personal dignity, in particular humiliating and degrading treatment, rape, forced transfers and deportation, trafficking for sexual exploitation, the worst forms of child and forced labour and other issues that need to be addressed as growing international problems and phenomenon of violating women's and female children's rights. Effects of hostilities are percieved through the special legal protection based on the principle of differentiated treatment between men and women and most legal observations concerned with armed conflicts in the Former Yugoslavia are based on the relevant case law of the International Criminal Tribunal for the Former Yugoslavia. The process of transition in South-Eastern Europe, characterized by the general pattern of discrimination against women and female children, numerous cases of trafficking in human beings and child labour, is summarized in the second part of the paper, through, inter alia, detailed description of relevant International Human Rights and Labour Law standards.

Key words: *women, female children, International Humanitarian Law, International Labour Law standards, South-Eastern Europe, transition.*

* This paper was presented on the scientific session of the International Conference "Impact of Global Issues on Women and Children", organized by the State University of Bangladesh and the McMaster University of Hamilton (Canada) in Dhaka, Bangladesh from February 12 – 16, 2006.

INTRODUCTORY REMARKS

Within abundance of historical changes, armed conflicts are a seldom example of the interpersonal relation constant, dependant only upon the *technological progress* and the *globalization process*. Instead of improving interstate cooperation and eliminating the disparity between the rich and the poor members of international community[1], these two phenomena have considerably contributed to the widening of the economic gap, interethnic intolerance and widespread increase of violence. Rapid development and propagation of technology have become revealed in military industry that has, by improvement of existing weapons and creating new ones, and by applying new methods of warfare, significantly changed the nature and ways of warfare, bringing them closer to the concept of the *total war*[2]. The ratio between the military and civil victims has become inversely proportional to the ratio characteristic for armed conflicts before the Second World War. These conflicts were characterized by about 10 percent of civilian victims, mostly in the notion of collateral damage, while today's conflicts have reached the incredible level of 90 percent of civilian victims[3]. Aspirations of the international community to protect mankind from future wars and alleviate the sufferings of protected persons[4] in the event of possible conflicts have been confirmed by the adoption of a great number of substantial legal regulations[5]. Using these regulations, more or less clear rules of warfare have been established and their severe violation has been specifically classified into a single category of war crimes. However, armed conflicts have neither been rooted out nor alleviated, but their brutality reached unexpected proportions so that the number of victims in these conflicts has considerably exceeded the number of people killed during the Second World War[6]. Under the conditions of applying non-discriminatory types of weapons, guerrilla war fashion (when it is often impossible to distinct between combatants and civilians) and an obvious increase of terrorist attacks, there is a question on how much *ius in bello* can eliminate negative effects of war destruction on the most vulnerable parts of population: women, children, the old and the helpless, that is, to exclude the element of civilian victims? The authors of this paper analyze the answer to this question through the illustration of non-international and international armed conflicts, which have marked the European and world history of the late 20th century. In the focus of their analysis there is the position of *female civilian population* of South-East Europe with a special emphasis on the problems which post-war transition period created for them.

[1] The aspiration stated hereinabove is confirmed by the Charter of the United Nations which Art. 1 para 3 states that one of the basic goals of this universal international organization is: "To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character...". See *Official Gazette of the Republic of Croatia – "International Treaties"*, No. 15/1993 of 16 December 1993; revised in No. 7/1994 of 2 August 1994. Although the world has radically changed since 1945, when the UN Charter was signed and came into force (26 June that is, 24 November 1945), these universal goals have undoubtedly outlived many historical changes during 60 years of existence of the United Nations.

[2] The concept of the *total war* has been derived from the elements of the French Revolution (1789 – 1799) and the Napoleonic Wars (1799 – 1815), and comprises of a perception of war as a "common enterprise" of all citizens of one state, soldiers as well as civilians. Bringing civilians into the blaze of war, the total war becomes a negation of the Rousseau's famous saying: "War was not a relationship between man and man but between State and State, where private persons were enemies only accidentally". Quoted by: Cassese, Antonio, *International Law*, Second Edition, Oxford University Press, 2005, at 400. This system was legally affirmed in the 1969 Constitution of the former Socialist Federal Republic of Yugoslavia: the so-called "All People's Defence/Total National Defence" integrated all citizens in the defence of the federation and aimed to utilize all resources to protect Yugoslavia from external attacks. See *Prosecutor v. Zejnil Delalić et al.*, Trial Judgement, Case No. IT-96-21-T, 16 November 1998, at para 93.

[3] See Krill, Françoise, *The Protection of Women in International Humanitarian Law*, Extract from the International Review of the Red Cross, November – December 1985, at 4.

[4] Under the notion of protected persons we consider people who do not take part in the fighting (civilians, medics, chaplains, aid workers) and those who can no longer fight (wounded, sick and shipwrecked troops, prisoners of war). See Official web pages of the International Committee of the Red Cross, World Wide Web URL http://www.icrc.org/Web/Eng/siteeng0.nsf/html/geneva-conventions.

[5] This primarily refers to the four Geneva Conventions of 12 August 1949: *First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (GC I), *Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea* (GC II), *Third Geneva Convention Relative to the Treatment of Prisoners of War* (GC III) and *Fourth Geneva Convention relative to the Treatment of Civilian Persons in Time of War* (GC IV), and two Additional Protocols to the Geneva Conventions from 8 June 1977: *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts* (AP I) and *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts* (AP II). Texts of the Geneva Conventions and their Additional Protocols see in *Official Gazette of the Republic of Croatia – "International Treaties"*, No. 5/1994 of 12 May 1994. The list and full texts of all relevant documents of International Humanitarian Law see on the Official web pages of International Committee of the Red Cross, World Wide Web URL http://www.icrc.org/ihl.

[6] It is estimated that the number of direct victims (dead and missing) of the WWII reaches a 50 million mark. See Bugnion, François, *The International Committee of the Red Cross and the Protection of War Victims*, International Committee of the Red Cross, 2003, at 168.

[7] See *Addressing the Needs of Women Affected by Armed Conflict*, An ICRC Guidance Document, ICRC, March 2004, at 8.

WOMEN RIGHTS PROTECTION IN THE INTERNATIONAL HUMANITARIAN LAW

Although usually perceived as extremely passive, the role of women can vary within a wide range from the position of a civilian victim, NGO activist, influential politician or campaigner for peace to the active participation in the capacity of a member of regular armed forces, armed groups or their support services[7], which from the International Law point of view results in the selection and activation of different legal norms in the field of International Humanitarian Law, International Criminal Law, Human Rights Law, Refugee Law and applicable rules of national legislation. In the event of armed conflict, International Humanitarian Law provides women a twofold legal protection: *general*, that is, the one that protects all persons (regardless of gender) who explicitly or implicitly are engaged in an armed conflict and *special*, which is, being based on specific features of the female gender and the principle of differentiated treatment between men and women, included in regulations assigned particularly in the protection of female population[8]. This *special* legal protection, especially for *female civilians*[9], is the basis for the beginning and further development of this paper. The analysis begins with a consideration of relevant provisions of 1949 Fourth Geneva Convention relative to the Treatment of Civilian Persons in Time of War (GC IV), 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of

[8] Out of 559 articles of the 1949 Geneva Conventions on Protection of War Victims and their 1977 Additional Protocols, 40 articles have been dedicated to a *special* protection of women: Art. 3 and 12 para 4 GC I; Art. 3 and 12 para 4 GC II; Art. 3, 14, 16, 25 para 4, 29, 49, 88 para 2 and 3, 97 para 4 and 108 para 2 GC III; Art. 3, 14 para 1, 16 para 1, 17, 21, 22 para 1, 23 para 1, 27 para 2, 38 para 1 (5), 50 para 5, 76 para 4, 85 para 4, 89 para 5, 91 para 2, 97 para 4, 98 para 3, 119 para 2, 124 para 3, 127 para 3 and 132 para 2 GC IV; Art. 8a, 70 para 1, 75 para 1 and 5 and 76 AP I and Art. 4 para 2e, 5 para 2a and 6 para 4 AP II.

Women were guaranteed special legal protection for the first time in 1929 by adopting *the Geneva Convention relative to the Treatment of Prisoners of War*, which Art. 3 regulates that: "Women shall be treated with all consideration due to their sex", whereas Art. 4 specifies that: "Differences of treatment between prisoners are permissible only if such differences are based on the military rank, the state of physical or mental health, the professional abilities, or the sex of those who benefit from them". The text of the 1929 Geneva Convention see on the Official web pages of the International Committee of the Red Cross, World Wide Web URL http://www.icrc.org/ihl.nsf/.

[9] According to Art. 50 para 1 of the AP I "A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 (A) (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol". *Loc. cit.* note 5 at 2. From provisions stated hereinabove it is obvious that a civilian can be anyone who is not a member of armed forces, that is, who doesn't actively participate in enmity.

Victims of International Armed Conflicts (AP I) and 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (AP II).

Legal norms on special protection of female civilians are characterized by a different approach to the subject matter so they are defined as either *generic*, in consistence with the general principle of discrimination ban and the principle of equality, or *more precisely*, specifying situations in which women have been awarded some additional rights. A flagrant example of generic provisions is represented in Art. 3 which is common to each of four Geneva Conventions on Protection of War Victims from 1949. Containing provisions that can be applied in non-international, internal armed conflicts, it also regulates the status of *hors de combat* persons and specifies the following: "Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, *sex*, birth or wealth, or any other similar criteria". Discrimination ban based on *gender criteria* has also been provided for in the cases that secure basic guarantees for humanely treatment of persons who are under the authority of the international armed conflict party (Art. 75. para. 1 of the AP I)[10], and *gender* is defined as an element that should, along with age and physical condition, be taken into account in the disciplinary punishments applicable to internees (Art. 119. para. 2 of the GC IV)[11].

Nevertheless, the greatest number of regulations from the three international documents stated hereinabove states women *explicite*, but it is important to emphasize that their rights are in the majority of cases connected to a reproductive role and they are guaranteed to women if they belong to the category of expectant mothers[12], mothers with infants and mothers of children under seven[13], and maternity cases[14]. The rights of women internees have also been regulated in a way that guarantees that they will be confined in separate quarters and put under the direct supervision of women[15]. Moreover, a woman internee shall not be searched except by a woman[16], and in the cases when they are situated at the same internment place with men, which is possible only as an exceptional and temporary measure, separate sleeping quarters and sanitary conveniences are to be obligatorily guaranteed[17]. Furthermore, in cases where families are detained or interned, women shall, whenever possible, be held in the same place and accommodated as family units[18]. And finally, although numerously inferior, it is crucial for female victims of armed conflicts to be guaranteed provisions which offer them a protection from any attack on their honour, in particular in rape, enforced prostitution, or any form of indecent assault[19]. The separation of women into a particular category of protected persons is an expression of the *principle of differentiated treatment* between women and men, "an example of a favourable distinction[20]" derived from the concept which takes into account three variables: *weakness*, *honour and modesty* and *pregnancy and child-birth*[21]. This special protection is not given to women instead of, but in addition to their general protection[22].

In combination with *the fundamental principle of the equality of women and men* which is a basis for generic provisions, *the principle of differentiated treatment between women and men* makes a legal framework for norms of the International Humanitarian Law, providing adequate and efficient protection of female victims of armed conflicts. However, have these aspirations of codifier come to life in practice, and can one draw a parallel with the mentioned *de iure* developments and also talk about *de facto* progress in the position of civilian female victims of armed conflicts?

INTERNATIONAL HUMANITARIAN LAW VIOLATION ON THE TERRITORY OF THE FORMER YUGOSLAVIA

Horrifying war experience of women in South-East Europe during 1990s shows that the war blaze and relating chaos can, to a great extent, annul the almost perfectly regulated set of rules of the International Humanitarian Law, particularly in the cases of inadequately defined sanctions and slow reaction of the international community. Atrocities committed in armed conflicts on the territory of the countries which have emerged after the fall of the former Socialist Federal Republic of Yugoslavia are a precedent in recent European history and they have served as a good reason for the re-examination of applicability and adjustment of some regulations of the International Humanitarian Law under different circumstances. Wars have, after the declaration of independence of the former

[10] *See ibid.*

[11] *See ibid.*

[12] *See ibid.*

[13] In the GC IV those are Art. 14 para 1, Art. 38 para 1 (5), Art. 50 para 5 and Art. 132 para 2; in the AP I those are Art. 70 para 1 and Art. 76 para 2 and 3 and in the AP II Art. 6 para 4.

[14] In the GC IV those are Art. 17, Art. 21, Art. 22 para 1, Art. 23 para 1, Art. 89 para 5, Art. 91 para 2 and Art. 127 para 3; in the AP I those are Art. 8a and Art. 70 para 1.

[15] Art. 76 para 4. and Art. 124 para 3 of the GC IV; Art. 75 para 5 of the AP I and Art. 5 para 2 of the AP II. This measure is considered to be complementary with the prohibition of outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault. See *infra*, note 17; Sandoz, Yves, *et al.* (ed.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, International Committee of the Red Cross, Geneva, 1987, at 1390.

[16] Art. 97 para 4 of the GC IV.

[17] Art. 85 para 4 of the GC IV.

[18] Art. 75 para 5 of the AP I.

[19] Art. 27 para 2 of the GC IV; Art. 76 para 1 of the AP I and Art. 4 para 2e of the AP II. Art. 76 of the AP I expands the field of application of these regulations to *all women* in the territories of the Parties to the conflict, consequently all women who are nationals of States who are not Parties to the Conventions and those of neutral and co-belligerent States, which is not the case with Art. 27 para 2 of the GC IV (about persons protected by the GC IV see Art. 4 of the Convention). In short, it applies both to women affected by armed conflict, and to other; to women protected by the Fourth Convention and to those who are not. Sandoz, Yves *et al.* (ed.), *op. cit.* (note 15), at 892-893.

[20] *The Geneva Conventions of 12 August 1949, Commentary on the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, First Reprint, International Committee of the Red Cross, Geneva, 1995, at 140.; *The Geneva Conventions of 12 August 1949, Commentary on the Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, First Reprint, International Committee of the Red Cross, Geneva, 1994, at 92. The notion "woman" encompasses both biologically and socially- or culturally-based characteristics, i. e. simultaneously the perception of women through both terms "sex" and "gender". See Lindsey, Charlotte *et al.*, *Women Facing War*, ICRC Study on the Impact of Armed Conflict on Women, ICRC, October 2001, at 35-36.

[21] See *The Geneva Conventions of 12 August 1949, Commentary on the Third Geneva Convention Relative to the Treatment of Prisoners of War*, First Reprint, International Committee of the Red Cross, Geneva, 1994, at 147. Although these three variables are defined in relation to the status of women war prisoners, they can be applied to other situations in armed conflicts, that is, female civilians as well. The most controversial variable, which can cause different connotations, *weakness*, in the GC III is primarily defined in relation to the working conditions of women prisoners, but still it can be discussed in case of interrelations between members of armed forces and unarmed female civilians. The notions *honour and modesty* have sublimated the protection of women from brutal treatment of every kind: rape, forced prostitution (i. e. the forcing of a woman into immorality by violence or threats) and any form of indecent assault, whereas *pregnancy and child-birth* are recognisable components of special treatment in the International Humanitarian Law. Based on the Commentary on the Third Geneva Convention Relative to the Treatment of Prisoners of War, the principle of differentiated treatment between women and men must be extensively interpreted in order to protect women in the cases that are not explicitly mentioned in the context of the application of this principle (e.g. in a series of provisions relating to insults and public curiosity, questioning, clothing, conditions for transfer, etc.).

[22] See *Commentary on the Fourth Geneva Convention, cf. ibid.*, at 135. See also *The Geneva Conventions of 12 August 1949, Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, First Reprint, International Committee of the Red Cross, Geneva, 1994, at 205 - 206.

Yugoslav Republics of Slovenia and Croatia on June 25, 1991, spread in a domino effect manner from one country to another: in 1991, the first one under attack was Croatia, and after that Bosnia and Herzegovina in 1992; Kosovo as a part of Federal Republic of Yugoslavia became a battle field during 1998, and finally conflicts in Macedonia erupted in 2001. Complex armed conflicts, based mostly on ethnical, national and religious intolerance, but also on different political and expansionistic aspirations of specific entities of the former Yugoslavia, went through a peculiar metamorphosis from internal disturbances into non-international armed conflicts and from non-international to international armed conflicts and some conflicts were even internationalized. Repercussions for the civilian population were immense – the estimated casualties are between 150 000 and 250 000, and the majority of them were civilian victims of armed conflicts[23]. If we consider the fact that half of the civilian victims were women, the position of women during the wars in this area assumes its true form. Unless victims of mass executions, women were greatly victims of different forms of sexual violence[24], among which rape was the most common one aiming not only at physical and psychological humiliation of women but also at committing forced impregnation, which in some cases grew to the proportion of a genocide[25]. Women formed the majority of refugee population and displaced persons, and that status was often based on previous mass deportations and forcible transfers. Economic breakdown due to the war was a fertile ground for the start of sexual exploitation machinery, and prostitution was not distracted by geographic boundaries of armed conflicts and the whole area of South-East Europe became a focus of trafficking in persons and sexual exploitation.

THE ESTABLISHMENT OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA - A HISTORICAL TURNING POINT IN THE INTERNATIONAL ADMINISTRATION OF JUSTICE

International community faced the problem of sanctioning severe crimes on the territory of the former Yugoslavia, which constituted flagrant violations of the International Humanitarian Law, considering that, at the beginning of the conflicts, national courts of

[23] According to Pupavac "it is unsurprising that there are such vast discrepancies in the casualty figures because they are cited by different sides in the war; however international sources on the numbers of the victims in the war also vary greatly…A dispassionate investigation and documentation of the victims of the war on all sides is required to undermine the nationalists claims and to promote future understanding and reconciliation ". Pupavac, Vanessa, *Disputes Over War Casualties in Former Yugoslavia*, The Radical Statistic Journal, No. 69/1998. We believe that the overall number of victims ranges between 150 000 and 200 000. The current estimate of Ewa Tabeau and Jakub Bijak, the researchers of the Demographic Unit of the Prosecutor's Office at the International Criminal Tribunal for the Former Yugoslavia, is that war-attributable fatalities on all sides of the conflicts in Bosnia and Herzegovina total **102 621** persons, out of which some 55 261 were civilians, and 47 360 members of the military. See Tabeau, Ewa; Bijak, Jakub, *War-related Deaths in the 1992–1995 Armed Conflicts in Bosnia and Herzegovina: A Critique of Previous Estimates and Recent Results*, European Journal of Population, Vol. 21, June 2005, at 187 – 215. It is estimated that between 70 and 80 % of victims were civilians. See Bilandžić, Dušan *et al.*, *Rat u Hrvatskoj i Bosni i Hercegovini 1991 – 1995*, Naklada Jesenski i Turk/DANI, Zagreb/Sarajevo, 1999, at 264. The number of casualties in Croatia is **13 538** persons. See Rudolf, Davorin, *Rat koji nismo htjeli*, Nakladni zavod Globus, Zagreb, 1999, at 376.

[24] *Sexual violence* is considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive. *Prosecutor v. Jean-Paul Akayesu*, Trial Judgement, Case No. ICTR-96-4-T, 2 Septmeber 1998, at para 598. It encompasses rape, forced prostitution, sexual slavery, forced impregnation, forced maternity, forced termination of pregnancy, enforced sterilization, indecent assault, trafficking, inappropriate medical examinations and strip searches. See *op. cit.* (note 7), at 25.

[25] In accordance to *the Convention on the Prevention and Punishment of the Crime of Genocide*, genocide also includes causing serious bodily or mental harm to members of the group (Art. 2 b) and imposing measures intended to prevent births within the group (Art. 2 d), committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group. A/RES/260 (III), 9 December 1948.

the countries in conflict were responsible for sanctioning of these violations which, at that time, were not ready to perform their functions. Historical decision about the founding of the International Criminal Tribunal for the former Yugoslavia (ICTY), based on the resolution 827 of the Security Council of the United Nations from 25 May 1993, represents the turning point in the world community, which initiated the international administration of justice, and thus women victims of armed conflicts were given a partial satisfaction[26]. In the resolution stated hereinabove, the given reasons for the establishment of the ICTY are: massive, organized and systematic rape of women (especially in the Republic of Bosnia and Herzegovina) and the continuance of the practice of "ethnic cleansing", of which victims were mostly women[27], and the need for a quick solution of this problem was pointed out by the first ICTY Report in 1994, which specifically marked women as victims of expansionistic conflicts on the territory of the former Yugoslavia[28]. These conflicts followed the existing trends of armed conflicts by which women comprised the majority of population exposed to sexual violence, deportation and forced transfers, whereas men made the greatest part of the detained and missing population[29].

WOMEN VICTIMS OF SEXUAL VIOLENCE ON THE TERRITORY OF THE FORMER YUGOSLAVIA

Initiated legal proceedings brought to light the proportion of sufferings of women victims, who endured physical and psychological abuse, and by the insight in the indictments, it is apparent that about 30% of them have elements for charges for sexual violence[30]. The estimated number of raped

[26] The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 is unique in modern history. It is the first *international* criminal tribunal ever to be established by the United Nations, because its only predecessors, the *multinational* military tribunals at Nürnberg and Tokyo, were created in different circumstances and were based on moral and juridical principles of a fundamentally different nature. More about the establishment of the Tribunal see *ICTY Annual Report 1994*, A/49/342 - S/1994/1007, 29 August 1994, at para 1-8. The ICTY is authorized for prosecution of persons who were involved in non-international and international armed conflicts in the former Yugoslavia and committed one of the 4 types of crimes: grave breaches of the 1949 Geneva Conventions, violations of the laws or customs of war, genocide and crimes against humanity. Rape is explicitly included in the category of crimes against humanity. See *Statute of the International Criminal Tribunal for the Former Yugoslavia (updated)*, The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, Public Information Services, April 2004, at 5 – 6.

[27] S/RES/827 (1993). *Ethnic cleansing* is defined in the 1995 ICTY Report as a "systematic and widespread persecution of civilian population" that includes also a *discriminatory intent*. See *ICTY Annual Report 1995*, A/50/365 - S/1995/728, 23 August 1995, at para 53. The existence of practice of ethnic cleansing in the territory of the former Yugoslavia is stated in e. g. *the Report of the Secretary General to the Security Council on the protection of civilians in armed conflicts*, S/1999/957, 8 September 1999, at para 2 and in the UN Security Council resolution S/RES/941 (1994), 23 September 1994.

[28] See *ICTY Annual Report 1994*, *op. cit.* (note 26), at para 82. Sexual assault is singled out in the report as a particular subject of interest in the rules of procedure and these rules refer generally to crimes of sexual assault, rather than to the specific category of rape. In legal proceedings, two rules are specifically prominent *in favorem* women victims of sexual assault: first, no corroboration of the victim's testimony is required in matters of sexual assault and second, the victim's previous sexual conduct is irrelevant and inadmissible, so if a defence of consent is raised, the Tribunal may take note of factors that vitiate consent, including physical violence and moral or psychological constraints.

[29] See Lindsey, *op. cit.* (note 20), at 29; Henckaerts, Jean-Marie; Doswald-Beck, Louise, *Customary International Humanitarian Law*, Vol. I: Rules, Cambridge University Press, 2005, at 477.

[30] See *Prosecutor v. Duško Tadić a/k/a "Dule"*, Case No. IT-94-1; *Prosecutor v. Dragan Nikolić a/k/a "Jenki"*, Case No. IT-94-2; *Prosecutor v. Mejakić et al.*, Case No. IT-02-65; *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Case No. IT-95-5/18; *Prosecutor v. Sikirica et al.*, Case No. IT-95-8; *Prosecutor v. Milan Martić*, Case No. IT-95-11; *Prosecutor v. Ivica Rajić*, Case No. IT-95-12; *Prosecutor v. Mile Mrkšić et al.*, Case No. IT-95-13/1; *Prosecutor v. Miroslav Bralo*, Case No. IT-95-17; *Prosecutor v. Anto Furundžija*, Case No. IT-95-17/1; *Prosecutor v. Zejnil Delalić et al.*, Case No. IT-96-21; *Prosecutor v. Gojko Janković et al.*, Case No. IT-96-23/2; *Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23 & 23/1; *Prosecutor v. Milan Kovačević et al.*, Case

women on the territory of former Yugoslavia is between 20 000 and 50 000[31], but the exact number will probably never be established, not just because of war circumstances and chaos in which the violence occurred, but also because of the disinclination of women to openly talk about their trauma, particularly also because of conservativeness and the lack of understanding of the society. Bosnia and Herzegovina records the biggest number of women victims of a massive, organized and systematic detention and rape among all the focuses of conflicts on the territory of the former Yugoslavia, which the UN Secretary General marked as "acts of unspeakable brutality"[32]. Women have become objects of sexual violence for several crucial reasons. Due to the perception of women as "bearers of cultural and ethnic identity and the producers of the future generations of the community"[33], sexual violence has evolved into a deliberate method of warfare and a weapon used to severely harm the enemy[34]. In addition, following the chaos of armed conflicts, the disintegration of families, a complete societal breakdown, and the breakdown of law and order, made the unarmed and vulnerable female population even more "accessible". Sexual violence played a noticeable role in expanding fear among people in order to make them leave a certain area. And finally, observed from the perspective of a direct victim of violence, it represented immeasurable physical and psychological pain and suffering, degradation and humiliation[35]. This "disturbing phenomenon"[36] on the territory of the former Yugoslavia reached the proportions of war crimes, crimes against humanity and genocide.

In 1995 the ICTY pressed the first charge in the history for rape as a crime against humanity in the *Tadić Case*, which was also the first legal proceeding led before the Tribunal[37]. The ruling in the *Tadić Case* is a testimony of women sufferings in the camps Omarska, Keraterm and Trnopolje in Bosnia and Herzegovina, particularly in the latter, which housed the largest number of women and girls. Girls between 16 and 19 were at the greatest risk, and the youngest victim was only 12 years old. In addition, there were

No. IT-97-24; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24; *Prosecutor v. Željko Ražnjatović*, Case No. IT-97-27; *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1; *Prosecutor v. Radoslav Brđanin*, Case No. IT-99-36; *Prosecutor v. Momir Talić*, Case No. IT-99-36/1; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-99-37; *Prosecutor v. Momčilo Krajišnik et al.*, Case No. IT-00-39 & 40; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54; *Prosecutor v. Predrag Banović et al.*, Case No. IT-02-65/1; *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67;Case No. IT-02-65/1; *Prosecutor v. Nebojša Pavlović et al.*, Case No. IT-03-70; *Prosecutor v. Jadranko Prlić et al.*, Case No. IT-04-74; *Prosecutor v. Goran Hadžić*, Case No. IT-04-75; *Prosecutor v.Mićo Stanišić*, Case No. IT-04-79; *Prosecutor v. Rasim Delić*, Case No. IT-05-83 and *Prosecutor v. Ramush Haradinaj et al.*, Case No. IT-05-84.

31 See Fisher, Siobhán K., *Occupation of the Womb: Forced Impregnation as Genocide*, Duke Law Journal, Vol. 46, No. 1, October 1996, note 4, at 91.

32 See S/RES/798 (1992), 18 December 1992.

33 See Lindsey, *op. cit.* (note 20), at 28.

34 Sexual violence is a method of warfare when used systematically to torture, injure, extract information, degrade, threaten, intimidate or punish in relation to an armed conflict. *Addressing the Needs of Women Affected by Armed Conflict*, *loc. cit.* (note 24).

35 As pointed out in the Trial Judgement in the *Stakić Case*, "for a woman, rape is by far the ultimate offence, sometimes even worse than death because it brings shame on her". *Prosecutor v. Milomir Stakić*, Trial Judgement, Case No. IT-97-24-T, 31 July 2003, at para 803.

36 See *Report of the Secretary-General on the protection of civilians in armed conflict*, S/2005/740, 28 November 2005, at para 5.

37 The accused, Duško Tadić a/k/a "Dule", participated in the attack on, seizure, murder and maltreatment of Bosnian Muslims and Croats in the County of Prijedor, Bosnia and Herzegovina both within the camps of Omarska, Keraterm and Trnopolje and outside the camps, between the period beginning about 23 May 1992 and ending about 31 December 1992. Counts 4.1., 4.2., 4.3. and 4.4. of the Initial Indictment (that is, counts 2-4 of the First Amended Indictment and 4-6 of the Second Amended Indictment), which serve as one of the basis for pressing charges, relate to the "Forcible Sexual Intercourse with F". See Initial Indictment, *Prosecutor v. Duško Tadić a/k/a "Dule"*, Case No. IT-94-1-I (13 February 1995); First Amended Indictment, *Prosecutor v. Duško Tadić a/k/a "Dule"*, Case No. IT-94-1-I (1 September 1995) and Second Amended Indictment, *Prosecutor v. Duško Tadić a/k/a "Dule"*, Case No. IT-94-1-I (14 December 1995).

women who were subjected to gang rapes[38]. In order to avoid repeated trauma of victims in the encounter with the accused, the Trial Chamber in the *Tadić Case* authorized the use of screening or other appropriate methods for alleged victims of sexual violence[39]. Rapes and other sexual violence of women in three above-mentioned camps are also a subject of the *Stakić Case*, the *Kvočka et al. Case*[40] and the *Brđanin Case*[41], Omarska and Keraterm camps are the subject of the *Mejakić et al. Case*[42], which is not yet closed[43], and Keraterm camp of the *Sikirica et al. Case*[44].

The first ICTY charge referred to the *Nikolić Case*, in which brutal women abuses have been found in Sušica camp in Bosnia and Herzegovina, where many of the detained women were subjected to sexual violence, including rape, degrading physical and verbal abuse[45]. The fact that Nikolić was validly found guilty for aiding and abetting rape proves the proportion of these abuses. Additionally, it was emphasized that "the situation in Sušica camp was that serious that the act of sexual violence rose to a level of gravity that falls within the ambit of Art. 5 of the ICTY Statute", that is, in the category of crimes against humanity[46]. In the verdict, the attention was specifically drawn to the vulnerability and weakness of the victims who, in the presence of armed men, were powerless and could not avoid daily humiliation, degradation or physical and mental abuse[47].

Brutal rapes of Bosnian women of Serbian ethnic affiliation that occurred at a detention facility in the village of Čelebići in the Konjic municipality, Bosnia and Herzegovina, during certain months in 1992, referring to the *Delalić Case*[48], have actualized the question of defining rape before the ICTY. Although the prohibition of rape under International Humanitarian Law was readily apparent, there was no convention or other international instrument containing a definition of the term itself, so that the Trial Chamber in the *Delalić Case* decided to draw guidance on this question from the judgment of the In-

38 *Prosecutor v. Duško Tadić a/k/a "Dule"*, Trial Judgement, Case No. IT-94-1-T, 7 May 1997, at para 175.

39 See *ICTY Annual Report 1995*, *op. cit* (note 28), at para 14; *ICTY Annual Report 1996*, A/51/292 - S/1996/665, 16 August 1996, at para 123.

40 *Prosecutor v. Miroslav Kvočka et al.*, Trial Judgement, Case No. IT-98-30/1-T, 2 November 2001. The judgement also refers to Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcač.

41 See *Stakić Case*, *op. cit.* (note 35); *Prosecutor v. Radoslav Brđanin*, Trial Judgement, Case No. IT-99-36-T, 1 September 2004.

42 Željko Meakić a/k/a Mejakić a/k/a Meagić, was in charge of the Omarska camp beginning in late June 1992, and was in the position of superior authority to everyone else in the camp. Consolidated Indictment for the Omarska and Keraterm Camps (Case No. IT-02-65, 21 November 2002) includes also four other men of Serbian ethnic affiliation who took part in the crimes: Momčilo Gruban, Dušan Knežević, Dušan Fuštar and Predrag Banović. In Consolidated Indictment it was pointed out that the Omarska and Keraterm camps were set up "in order to carry out a part of the overall objective of the *joint criminal enterprise* of the Bosnian Serb leadership, namely the permanent forcible removal of Bosnian Muslim, Bosnian Croat or other non-Serb inhabitants from the territory of the planned Serbian State in Bosnia and Herzegovina through the commission of crimes". From the International Law point of view the case is significant because it represents the first occasion that a charge of genocide has been brought before the Tribunal.

43 Sentencing Judgment has been brought only for Banović, who was a guard at the Keraterm camp. He was not specifically charged with rape. See *Prosecutor v. Banović*, Sentencing Judgment, Case No. IT-02-65/1-S, 23 October 2003.

44 In the case against Sikirica, the commander of the Keraterm camp, and Damir Došen and Dragan Kolundžija, shift commanders of the same camp during the summer of 1992, the sexual assaults of women have been confirmed. See *Prosecutor v. Sikirica et al.*, Sentencing Judgment, Case No. IT-95-8-S, 13 November 2001, at para 125.

45 During the summer of 1992 Dragan Nikolić was the commander of the Sušica prison camp in Vlasenica, Bosnia and Herzegovina and the direct participant in the beatings, torture, rape and murder that took place in the camp. He was charged for sexual assaults by the amended indictments (see Case No. IT-94-2-I, 12 February 1999, 15 February 2002, 27 June 2003 and 31 October 2003).

46 *Prosecutor v. Dragan Nikolić*, Sentencing Judgement, Case No. IT-94-2-S, 18 December 2003, at para 111.

47 *Ibid.*, at para. 185.

48 See Lindsey, *op. cit.* (note 20), at 59. The accused in this case were also the following members of the Bosnian Muslim forces: Esad Landžo, Hazim Delić, Zejnil Delalić and Zdravko Mucić.

ternational Criminal Tribunal for Rwanda in the *Akayesu Case*[49], the first case in which an international tribunal passed a judgment to a person accused of the crime of sexual violence. In that way, the ICTY accepted the definition by which rape is constituted as "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive"[50]. Later on, this definition was also applied in the *Furundžija Case*[51] and the *Kunarac et al. Case*[52], the first trial the subject of which were specifically sexual offences perpetrated against women in an armed conflict[53]. Its contribution to the definition of rape, the *Furundžija Case* enriched with specifying the *actus reus* of the crime of rape among which, in addition to the clarification of physical invasion, force, threat of force and coercion are stated[54]. The *Kunarac Case* also emphasizes the absence of consent or voluntary participation[55], and as the *mens rea* of the crime of rape it points out the intention and the knowledge that it occurs without the consent of the victim[56].

The phenomenon of frequent sexual violence of women on the territory of the former Yugoslavia can be attributed to normative oversight of the International Law documents that, until the enactment of the ICTY Statute, regulated the matter of the International Humanitarian Law, considering that sexual violence is not *explicite* included in *grave breaches* of the GC IV and the AP I, which as a category of war crimes make *ius cogens* of the International Law and are the subject of universal jurisdiction[57]. In later interpretations of some crimes of sexual violence committed on the territory of the former Yugoslavia, in the rulings of the ICTY a conclusion has been drawn stating that they can be included in the existing grave breaches: "torture and inhumane treatment" and "wilfully causing great suffering or serious injury to body or health"[58], which, of course, was an

[49] *Delalić et al. Case, op. cit.* (note 2), at para 478.

[50] *Akayesu Case, loc. cit.* (note 24). Rape is defined in the context of crimes against humanity.

[51] *Prosector v. Anto Furundžija,* Appeal Judgement, Case no. IT-95-17/1-A, 21 July 2000, para 437, 438. The subject of this case were rapes of Bosnian Muslim women in the village of Nadioci, Bosnia and Herzegovina in May 1993 by members of a special unit of the military police of the Croatian Defence Council known as "Jokers", whose local commander was Furundžija. He was prosecuted for the crime based on individual criminal responsibility, although he did not personally take part in the act of rape, because his "alleged acts of encouragement and his omissions were sufficient to trigger his individual criminal responsibility". *Ibid,* para 42. The same crime is the subject of the case *Prosecutor v. Miroslav Bralo*, Sentencing Judgement, Case No. IT-95-17-S, 7 December 2005.

[52] See *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, IT-96-23-T & IT-96-23/1-T, 22 February 2001, at para 437.

[53] This particular case deals with the subjugation of Muslim women in Foča, Bosnia and Herzegovina to a brutal regime of gang rape, torture and enslavement by Bosnian Serb soldiers, policemen and paramilitary groups in "rape camps" in April 1992, and the accused were Dragoljub Kunarac, Radomir Kovač and Zoran Vuković. See *ICTY Annual Report 1996, op. cit.* (note 39), at para 22.

[54] *Furundžija Case, op. cit.* (note 51), at para 185.

[55] *Kunarac et al. Case, op. cit.* (note 52), at para 438.

[56] *Ibid.*, at para 460.

[57] According to Osofsky "International Law recognizes that some norms of the international human rights regime are so fundamental that they could not be legally violated anywhere and that all nations have jurisdiction over their violations. Given that human rights violations are of a universal character, prosecution in any adequate national judicial forum is acceptable, even if not preferable. In addition to war crimes, there are some other abuses that meet the criteria for universal jurisdiction, such as torture, genocide, crimes against humanity, slave trade, apartheid, piracy, and perhaps certain acts of terrorism." See Osofsky, Hari M., *Domesticating International Criminal Law: Bringing Human Rights Violators to Justice*, The Yale Law Journal, Vol. 107, No. 1, October 1997, at 194 – 219.

[58] In *the Delalić et al. Case, op. cit.* (note 2), para 496 it is emphasized that "whenever rape and other forms of sexual violence meet the criteria for torture, they shall constitute a torture", and in para 494 elements of torture were listed by name. The Tribunal's vision of rape as a crime of torture was based on earlier verdicts of the Inter-American Commission on Human Rights, the European Court on Human Rights, the UN Special Rapporteur for Torture, the UN Special Rapporteur on Contemporary Forms of Slavery, Systematic Rape, Sexual Slavery and Slavery-like practices during Armed conflict and the ICTR. In *the Furundžija Case, op. cit.* (note 51), at para 210 it was confirmed that "international community has long recognized rape as a war crime" and the Lieber Code of 1863 and the practice of the International Military Tribunal in Tokyo (*ibid.* note 293) have been stated as historical examples of this confirmation. Rape and sexual assaults were not specifically prosecuted by the Nürnberg Tribunal.

adequate *a posteriori* solution that eliminated possible legal voids. Nevertheless, the explicit exclusion of sexual violence from the category of grave breaches irrefutably represents an oversight, because the perpetrators of war crimes on the territory of the former Yugoslavia neither had well-defined legal knowledge, nor were authorized to arbitrarily interpret some International Law regulations. Besides, at the time when the Geneva Conventions on Protection of War Victims (1949) and their Additional Protocols (1977) were adopted, there was no commonly accepted definition for torture and inhumane treatment: torture was defined for the first time in 1984 in the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment[59], whereas for inhuman treatment (or some similar notions like "degrading punishment") there is still no consensus regarding the definition[60]. The flaw of the Geneva Conventions and their Additional Protocols related to sexual violence was first "rectified" in 1993 in the Statute of the ICTY[61], and then in 1994 in the Statute of the International Criminal Tribunal for Rwanda (ICTR)[62], in 1998 in the Statute of the International Criminal Tribunal (ICC)[63] and, finally, in 2000 in the Statute of the Special Court for Sierra Leone[64].

As rape in the ICTY Statute was definitely included in crimes against humanity, the question of interrelationship between

[59] Art. 1 para 1: "For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions". A/RES/39/46, 10 December 1984.

[60] In the Commentary of the GC IV it is raised that the notion of *inhuman treatment* is "rather difficult to define", but the final conclusion of observations of all possible meanings of this term is that it does not only mean physical injury or injury to health, but also certain measures which could cause grave injury to human dignity. See *The Geneva Conventions of 12 August 1949, Commentary on the Fourth Geneva Convention, op. cit.* (note 21), at 598. In relation to torture "general understanding that inhuman treatment entails a lesser degree of severity, intensity, and cruelty of treatment than torture" prevails. Smith, Rhona K. M., *Textbook on International Human Rights*, Second Edition, Oxford University Press, 2005, at 226.

[61] Art.5 (g) defines *rape* as one of the Crimes against humanity.

[62] Art. 3 (g) defines *rape* as one of the Crimes against humanity, and Art. 4 (e) includes *outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault* in the category of Violations of Art. 3 Common to the Geneva Conventions and Additional Protocol II (that is, applicable only in situations of armed conflicts not of an international character). The text of *the Statute of the International Criminal Tribunal for Rwanda* see on Official web pages of the International Criminal Tribunal for Rwanda, World wide web URL http://65.18.216.88/ENGLISH/basicdocs/statute/2004.doc.

[63] Art. 7 para 1(g) includes *rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity* in Crimes against humanity, whereas Art. 8 para 2 b (xxii) includes *committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Art. 7, paragraph 2(f), enforced sterilization, or any other form of sexual violence also constituting grave breaches of the Geneva Conventions* in War crimes, and in Art. 8 para 2 e(vi) the same crimes *constitute serious violations of Art. 3 common to the four Geneva Conventions* (para 2 b is applicable in international armed conflicts, whereas para 2 e is applicable in armed conflicts not of an international character). *Rome Statute of the International Criminal Court, Official Gazette of the Republic of Croatia – "International Treaties"*, No. 5/2001 of 27 April 2001.

[64] Art. 2 (g) includes *rape, sexual slavery, enforced prostitution, forced pregnancy and other forms of sexual violence* in Crimes against humanity, whereas Art. 3 (e) includes *outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault* in Violations of Art. 3 common to the Geneva Conventions and of the Additional Protocol II. Obviously, the text of this Statute follows the expression of the ICTR Statute, and a unique feature of the Special Court for Sierra Leone is its jurisdiction for *offences relating to the abuse of girls under 13 years of age and between 13 – 15 years of age and relating to the abduction of a girl for immoral purposes* (Art. 5a i, ii, iii), which are crimes under Sierra Leonean Law. The text of *the Statute of the Special Court for Sierra Leone* see on Official web pages of the Special Court for Sierra Leone, World wide web URL http://www.sc-sl.org/scsl-statute.html.

this group of crimes and war crimes turned up in several cases, i. e. their mutual hierarchy. The cause was the verdict of the ICTR in the *Kambanda Case*, in which genocide was declared as "the crimes of crimes", crimes against humanity were put in the category of "crimes of extreme seriousness", and war crimes in the category of "crimes of a lesser seriousness"[65]. However, this hierarchy has never found its purpose before the ICTY, and so it was concluded in the *Blaškić Case* that the ICTY had not transposed the mentioned hierarchy of crimes to the sentencing phase and that the ICTY will assess seriousness of the crimes based on the circumstances of the case[66], whereas in the *Tadić Case* an earlier assertion from the *Justice Case* has been confirmed by which "war crimes may also constitute crimes against humanity; the same offences may amount to both types of crime[67]".

The above-mentioned ICTY cases that dealt with sexual violence against women considered rape either as a crime against humanity (recognized by Art. 5 (g) of the ICTY Statute)[68], a grave breach of the Geneva Conventions of 1949 (recognized by Art. 2 (b) of the ICTY Statute)[69], or a violation of the laws or customs of war (recognized by Art. 3 (1) (a) and (c) of the Geneva Conventions)[70]. The accused perpetrators were sentenced to long-term imprisonments, ranging from 15 to 32 years[71]. Recently, the question of considering rape as a crime of genocide has been raised, especially in relation to the Serb policy of forced impregnation[72] used against the Bosnian Muslim women. "Although forced impregnation is a crime distinct from rape, much of the evidence that there was a Serb policy of forced impregnation is linked to the

[65] See *Prosecutor v. Jean Kambanda*, Case No. ICTR 97-23-5, 4 September 1998, at para 14, 16.

[66] See *Prosecutor v. Tihomir Blaškić*, Trial Judgement, Case No. IT-95-14-T, 3 March 2000, at para 802.

[67] The Trial of Josef Altstötter and Others ("*Justice case*"), Vol. VI, Law Reports of Trials of War Criminals (UN War Crimes Commission London, 1949) – 39. Quoted by: *Tadić Case, op. cit.* (note 38), at para 700. In the *Tadić Case* a stand has been taken that rape can represent also the persecution if the latter notion is defined as "oppression, harassment or imposition of mental or physical harm based on discrimination". *Ibid.*, at para 703.

[68] "The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:...g) rape". To constitute a crime against humanity the act must be committed as a part of a widespread and systematic attack on a civilian population and rape committed in the conflict in the former Yugoslavia does meet these two criteria. Still, "even a single act by a perpetrator can constitute a crime against humanity, as long as there is a link with the widespread or systematic attack against a civilian population, a single act could qualify as crime against humanity". *Ibid.*, at para 649.

[69] "The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Conventions:...b) torture or inhuman treatment...c) wilfully causing great suffering or serious injury to body or helath".

[70] "...the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: a) violence to life, in particular murder of all kinds, mutilation, cruel treatment and torture,...c) outrages upon personal dignity, in particular humiliating and degrading treatment".

[71] For example, Sikirica and Landžo were sentenced to 15 years' imprisonment, Delić to 18 years' imprisonment, Tadić and Nikolić to 20 years' imprisonment, Žigić to 25 years' imprisonment, Kunarac to 28 years' imprisonment and Brđanin to 32 years' imprisonment. See Official web pages of the ICTY, World Wide Web URL http://www.un.org/icty/cases-e/index-e.htm.

[72] There is no provision that explicitly regulates forced impregnation, neither in the ICTY Statute nor in Statutes of other international criminal tribunals. However, the Statute of the Special Court for Sierra Leone and the ICC Statute do mention **forced pregnancy** that is closely interrelated with forced impregnation as its *ratio ultima*. The ICC Statute defines forced pregnancy as "the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law" (Art. 7 (2) (f) and it is considered to be a crime against humanity (*see* Art. 7 (1) (g) of the ICC Statute) and a war crime (*see* Art. 8 (2) (b) xxii and Art. 8 (2) (e) vi of the ICC Statute). See *Rome Statute, op. cit.* (note 63). According to the Statute of the Special Court for Sierra Leone, forced pregnancy also constitutes a crime against humanity (Art. 2 (g). For the text of *the Statute of the Special Court for Sierra Leone* see *op. cit.* (note 64). Although these provisions do not constitute a source of law for the ICTY, they are noteworthy as valeuable *de iure* achievements in the protection of women against sexual violence both in armed conflicts and in peacetime.

perpetration of mass rape. Hence, a discussion of forced impregnation in the Yugoslav conflict necessarily includes a discussion of the claims of the systematic rapes in the former Yugoslavia"[73]. The available evidence indicates that the systematic use of rape by Bosnian Serb soldiers was a part of their genocidal "ethnic cleansing" policy against Bosnian Muslim civilians[74] and as such was committed *with intent* to destroy, in whole or in part, this ethnic group[75]. It is difficult to estimate the number of victims subjected to forced impregnation, because conclusive data from investigative reports is currently unavailable. According to the 1993 Report of the Team of Experts of the UN Commission on Human Rights there were 119 pregnancies resulting from rape during 1992[76].

Today it is entirely undisputable that the ban of rape and other sexual assaults evolved in the rule of customary international law[77]. Customary international law in that way assumes criminal liability for serious violations of Art. 3 common to 1949 Geneva Conventions which implicitly refers to rape by its provision about an absolute ban of outrages upon personal dignity. Other universally accepted norms of the International Humanitarian Law which enhance the protection afforded by common Art. 3 (*e.g.*, Art. 4 (2) (e) of the AP II) have been given the status of the customary law and today they are applicable in any armed conflict. Apart from these provisions, it is necessary to emphasize the above-mentioned provisions about the obligation of treating women with all consideration due to their sex, the obligation to separate women deprived of their liberty from men, the requirement that pregnant women and mothers of young children, in particular nursing mothers, be treated with particular care, the prohibition on carrying out the death penalty on pregnant women and mothers of young children and finally, regulations about serious violations of the International Humanitarian Law that constitute war crimes ("grave breaches" of the Geneva Conventions and Additional Protocol I)[78].

The situation is similar to the system of the International Human Rights Law, which is complementary to the International Humanitarian Law[79]. Although there is no international human rights instrument which explicitly prohibits rape or other serious sexual violence, these severe crimes are banned by the general provisions safeguarding physical integrity, which "is a fundamental one, and is deniably part of customary International Law"[80]. Human Rights Law, which is applicable both in peacetime and in situations

[73] Fisher, *op. cit.* (note 31), at 107.

[74] This practice was confirmed in a number of international legal documents, e. g. *the UN General Assembly resolution on Rape and abuse of women in the areas of armed conflict in the former Yugoslavia* emphasizes that "this heinous practice constitutes a deliberate weapon of war in fulfilling the policy of "ethnic cleansing" carried out by Serbian forces in Bosnia and Herzegovina". A/RES/48/143, 20 December 1993. In another UN General Assembly resolution that deals with the Situation in Bosnia and Herzegovina, the practice of "ethnic cleansing" is defined as a form of genocide. A/RES/47/121, 18 December 1992.

[75] "Genocide means any of the following acts ommitted with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such...b) causing serious bodily or mental harm to members of the group; c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) imposing measures to intend to prevent births within the group..." Art. 4 para 2 of the ICTY Statute, *op. cit.* (note 26).

[76] "*Situation of Human Rights in the Territory of the Former Yugoslavia*", E/CN.4/1993/50, Annex II, 10 February 1993.

[77] See for example, *Furundžija Case, op. cit.* (note 51), at para 168; *Kunarac et al. Case, op. cit.* (note 52), at para 400, 436.

[78] See Henckaerts, Jean-Marie; Doswald-Beck, Louise, (ed.), *Customary International Humanitarian Law*, Vol. II: Procedure, Part 1, Cambridge University Press, 2005, at 475-479, 568, 584-585.

[79] International Humanitarian Law binds all parties to an armed conflict (government and armed opposition groups), while Human Rights Law lays down rules which bind governments in their relations with individuals (both in peacetime and in armed conflicts), but lately it can be heard that human rights law obliges and non-State actors. Lindsey, *op. cit.* (note 20), at 22.

[80] See *Furundžija Case, op. cit.* (note 51), at para 170.

of armed conflict, foresees the possibility of derogation of certain rights in cases of public emergency (such as armed conflicts), but some rights, in which the ban of torture or cruel, inhuman and degrading treatment is included, must remain intact. The most significant role in the protection of these fundamental rights has a great number of highly developed monitoring and enforcement mechanisms of the Human Rights Law system. The ban of some other forms of sexual exploitation, which are particularly intensified during armed conflicts (such as prostitution and trafficking in persons), has gradually grown into provisions of the customary law, considering a great number of countries that have accepted a significant number of International Law documents which regulate this matter as forms of unacceptable behaviour, and those bans are included *explicite* in their national legislation[81].

The awareness of the trauma of women victims (but also of witnesses) of rape and sexual violence encouraged the ICTY to establish a special Victims and Witnesses Unit within the Registry, an innovation of the International Law which became operational in April 1995, and which purpose is to provide legal and psychological help[82]. In the same year, a legal adviser for gender-related crimes was appointed, as a member of the Prosecutor's secretariat, with the three major areas of responsibility: "to provide advice on gender-related crimes and women's policy issues, including internal gender issues such as hiring and promotion; to work with the Prosecution Section to formulate the legal strategy and the development of international criminal law jurisprudence for sexual assaults; and to assist the Investigations Unit in developing an investigative strategy to pursue the evidence of sexual assaults"[83]. It is necessary to mention the great support of particular NGO's in identifying incidents that fall within the jurisdiction of the Tribunal, in tracing witnesses and, where possible, in providing direct evidence to be used by the Prosecutor, in supporting victims and witnesses (financially, psychologically or vocationally), in observing trials, in making the Tribunal's activities more widely known and better understood, etc.[84].

In the end, it is necessary to conclude that the establishment of the ICTY largely contributed to the affirmation of human rights standards and binding with the International Humanitarian and Criminal Law. By that, "humanitarian law has become less geared to military necessity and increasingly impregnated with human rights values"[85]. However, emphasizing its role of a tool for promoting reconciliation and the restoration and maintenance of true peace between the states that have emerged from the former Yugoslavia may be of the greatest importance.

DEPORTATION AND FORCIBLE TRANSFERS OF WOMEN DURING ARMED CONFLICTS IN THE FORMER YUGOSLAVIA

One of the basic means of accomplishing goals of expansionistic, extremely nationalistic and irredentist policies on the territory of the former Yugoslavia was the practice of ethnic cleansing, and among all women and children were the first to be exposed to its most common forms: numerous *deportations* and *forcible transfers*. Although of similar repercussions and equal substantial elements[86], deportation and forcible transfers should be differentiated in a sense that a deportation is defined as a forced displacement of persons by expulsion or other coercive acts from the area in which they are lawfully present, across a national border (both internationally recognized borders and *de facto* boundaries) without lawful grounds, whereas a forcible transfer is defined as a forced removal or displacement of people from one area to another which may take place within the same national borders[87]. Although a forcible transfer is not explicitly stated as a crime neither in the 1949 Geneva Conventions on Protection of War Victims nor in the ICTY Statute, it is considered that it can represent a persecutory act reaching the same level of gravity as the other acts that constitute crimes against humanity, because forcible transfers, like displacement (explicitly stated in Art. 5d of the ICTY Statute and Art. 147 of the GC IV) consist of "involuntary and unlawful displacement, or movement, or relocation, or removal of persons from the territory in which they reside"[88]. According to our opinion, it is a matter of an illusory legal gap, considering that *forcible transfer* could also be categorized under the term *unlawful transfer* being one of the grave breaches of the 1949 Geneva Conventions, because, as it is transparent from the definitions stated hereinabove, the term "forced" correlates with the term "unlawfu"[89]. It is also necessary to emphasize that the term "forced" is interpreted extensively and it is not exclusively limited to physical coercion, but it also includes various forms of threats and physical pressure having a goal to relegate population from a certain territory. In those situations women are particularly vulnerable, because they become an "all-too-easy target for harassment"[90]. People forced to leave their country of nationality or permanent residence (should) enjoy the protection of International Refugee Law, while there is the absence of an international legal framework spelling out the rights and freedoms of internally displaced persons (IDPs). They are in principle covered by the laws of their own country as well as by International Humanitarian Law applicable to victims of non-governmental conflicts and International Human Rights Law[91].

Cases of deportation and forcible transfers of women and children are confirmed in several verdicts of the ICTY, and the most often mentioned cases are: forcible transfers of non-Serb women and children from the Sušica prison camp in Vlasenica, Bosnia and Herzegovina to nearby Muslim are-

[81] For example, *the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; the 1990 African Charter on the Rights and Welfare of the Child; the 2000 Protocol on Child Trade, Prostitution and Pornography; the 2000 Protocol on Trafficking in Persons; the 2002 SAARC Convention on Preventing and Combating Trafficking in Women and Children*, etc. See Henckaerts, Jean-Marie; Doswald-Beck, Louise, (ed.), *Customary International Humanitarian Law*, Vol. II: Practice, Part 2, Cambridge University Press, 2005, at para 1555-1753.

[82] See *ICTY Annual Report 1994*, *op. cit.* (note 26), at para 81; *ICTY Annual Report 1995*, *op. cit.* (note 27), at para 108 – 117.

[83] *ICTY Annual Report 1995*, *ibid.*, at para 44.

[84] *ICTY Annual Report 1994*, *op. cit.* (note 26), at para 95 – 97 and 162. NGO's took part in the field work from the very beginning of conflicts in the former Yugoslavia, and in the first year of work of the ICTY about 100 of them offered collaboration with the Tribunal. See *ICTY Annual Report 1995*, *cf. ibid.*, at para 152 – 161.

[85] Cassese, *op. cit.* (note 2), at 404.

[86] These elements include: a) the unlawful character of the displacement, b) the area where the person displaced lawfully resided and the destination to which the person was displaced and c) the intent of the perpetrator to deport or forcibly transfer the victim. See *Prosecutor v. Simić et al.*, Trial Judgement, Case No. IT-95-9-T, 17 October 2003, at para 124.

[87] See *Prosecutor v. Mladen Naletilić a/k/a "Tuta" and Vinko Martinović a/k/a "Štela"*, Trial Judgement, Case No. IT-98-34-T, 31 March 2003, at para. 670; *Prosecutor v. Milorad Krnojelac*, Trial Judgement, Case No. IT-97-25-T, 15 March 2002, at para 474; *Prosecutor v. Radislav Krstić*, Trial Judgement, Case No. IT-98-33-T, 2 August 2001, at para. 520-523; *Simić et al. Case, ibid.*, at para 122.

[88] *Simić et al. Case*, *ibid.*, at para 121.

[89] Besides, unlawful deportation and transfer as one of the grave breaches of Art. 147 of the GC IV refer to breaches of the provisions of Art. 49 of the same Convention, in which mass *forcible transfers* are explicitly stated. See *The Commentary on the Fourth Geneva Convention*, *op. cit.* (note 21), at 599. It is necessary to emphasize that a forcible transfer is incorporated in crimes against humanity in Art. 7 para 1(d), and defined in Art. 7 para. 2(d) of *the ICC Statute*. Although in *de iure* sense significant in cases before the ICTY, this provision is not directly applicable, because *the ICC Statute* doesn't constitute binding international treaty law for the ICTY. Furthermore, *the ICC Statute* also mentions unlawful deportation and transfer in the context of war crimes (Art. 8 para 2a (vii), and deportation is categorized as a crime against humanity by *the ICTR Statute* (Art. 3 d) and *the Statute of the Special Court for Sierra Leone* (Art. 2 d).

[90] See *Addressing the Needs of Women Affected by Armed Conflict*, *op. cit.* (note 7), at 37.

[91] *Report of the Secretary General*, *op. cit.* (note 27), at para 12.

as[92]; unlawful deportation, forcible transfers and expulsion by force of hundreds of Bosnian Croat, Muslim and other non-Serb civilians from the area of Posavina, in the north-eastern part of Bosnia and Hercegovina (esp. Bosanski Šamac and Odžak municipalities) to Croatia and other parts of Bosnia[93]; forcible transfers of women and children of Muslim ethnic background from Mostar and surrounding municipalities in south-western part of Bosnia and Herzegovina controlled by the HVO (Croatian Defence Council) to other areas in Bosnia controlled by ABH (Muslim Army of Bosnia-Herzegovina)[94]; forcible transfers of Bosnian Muslim women and children outside the enclave of Srebrenica (Potočari) to the Bosnian Muslim-held territory near Kladanj[95]; forcible transfers of Bosnian Muslim civilians to zones outside the municipalities of Vitez, Busovača and Kiseljak to Muslim-dominated areas[96]; forcible transfers of the Bosnian Muslims from Ahmići and other villages in the Lašva Valley[97]; forcible transfers and deportations of Bosnian Muslims and Croats from Prijedor Municipality[98]; forcible transfer of Bosnian Muslims from the village of Glogova in Bratunac Municipality[99]; forcible transfer and deportation of Croats and other non-Serb civilians from the so-called SAO Krajina in Croatia[100], etc. All above-mentioned cases of forcible transfers and deportation are parts of the final valid verdicts of the ICTY and the list of cases is probably not complete because, in the future, one can expect verdicts for other examples of such crime like forcible transfers and deportations of large segments of the civilian population of Kosovo in the Federal Republic of Yugoslavia (both Albanian and Serb civilians)[101], Serbian civilian population from Croatia (especially during the so-called Operation Storm in 1995)[102] and Croats and other non-Serbs from about 30% of the Croatian territory occupied by Serbs in 1991[103].

[92] Beginning in the summer of 1992. Before being forcibly transferred they had to sign a document stating that they were leaving the area voluntarily and giving up their property. See *Prosecutor v. Dragan Nikolić*, Sentencing Judgement, Case No. IT-94-2-S, 18 December 2003.

[93] Beginning in April and July 1992. See *Prosecutor v. Simić et al.*, Judgement, Case No. IT-95-9-T, 17 October 2003. Jointly charged in this case were Blagoje Simić, Miroslav Tadić and Simo Zarić; *Prosecutor v. Stevan Todorović*, Sentenced Judgement, Case No. IT-95-9/1-S, 31 July 2001.

[94] Beginning in April 1993. See *Naletilić et al. Case, op. cit.* (note 87).

[95] Beginning on 12 July 1995. *Krstić Case, op. cit.* (note 87); *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Trial Judgement, Case No. IT-02-60-T, 17 January 2005; *Prosecutor v. Momir Nikolić*, Sentencing Judgement, Case No. IT-02-60/1-S, 2 December 2003; *Prosecutor v. Dragan Obrenović*, Sentencing Judgement, Case No. IT-02-60/2-S, 10 December 2003; *Prosecutor v. Biljana Plavšić*, Sentencing Judgement, Case No. IT-00-39&40/1-S, 27 February 2003 (including 36 other municipalities).

[96] Beginning in November 1991. See *Blaškić Case, op. cit.* (note 66).

[97] Beginning in April 1993. *Prosecutor v. Dario Kordić and Mario Čerkez*, Trial Judgement, Case No. IT-95-14/2-T, 26 February 2001; *Prosecutor v. Zoran Kupreškić et al.*, Trial Judgement, Case No. IT-96-16-T, 17 January 2000; *Prosecutor v. Miroslav Bralo*, Sentencing Judgement, Case No. IT-95-17-S, 7 December 2005.

[98] Beginning in April 1992. *Stakić Case, op. cit.* (note 35); *Brđanin Case, op. cit.* (note 41). The case also includes other municipalities of the so-called Autonomous Region of Krajina under Serbian control.

[99] Beginning in May 1992. *Prosecutor v. Miroslav Deronjić*, Sentencing Judgement, Case No. IT-02-61-S, 30 March 2004.

[100] Beginning in August 1991. *Prosecutor v. Milan Babić*, Sentencing Judgement, Case No. IT-03-72-S, 29 June 2004.

[101] See *Report of the Secretary General, op. cit.* (note 27), at para 11. "In reaction to military operations by the Serbian military in 1998 – 1999 roughly 600 000 Kosovars had fled to neighbouring states and an additional 850 000 – out of a total population of 2 million – had been displaced internally". Yoo, John, *Using Force*, The University of Chicago Law Review, Vol. 71, No. 3, Summer 2004, at 789.

[102] According to the Croatian Helsinki Committee for Human Rights (CHC), roughly 200 000 Serbs have fled the war affected areas in Croatia to Serbia and Bosnia and Herzegovina. See Barić, Nikica, *Srpska pobuna u Hrvatskoj 1990 – 1995*, Golden marketing, Zagreb, 2005, at 522; Bilandžić, Dušan, *Hrvatska moderna povijest*, Golden marketing, Zagreb, 1999, at 810.

[103] The number of displaced Croats is estimated at 260 000. See *Situation of Human Rights in the territory of the Former Yugoslavia, op. cit.* (note 76), at para 136. Altogether, there were nearly 718 000 refugees and internally displaced persons from August until December 1991. See Rudolf, *loc. cit.* (note 23).

Mass deportations and forcible transfers of women and children have brought to light the other side of this gender-based discrimination: the unenviable situation of male family members who were denied the opportunity to flee war zones and claim refugee status[104].

CONTRIBUTION OF THE ICTY TO INTERNATIONAL ADMINISTRATION OF JUSTICE AND SANCTIONING OF WOMEN RIGHTS VIOLATION

It is almost certain that all perpetrators will never be brought to justice and the ICTY can do very little in that respect, considering that the ICTY is dedicated to trying only the most senior-level persons who are accused of the most serious crimes, while other perpetrators remain under the authority of national courts[105]. Besides, "the Tribunal was not endowed with direct enforcement powers: it has no law enforcement agents at its disposal entitled to carry out investigations, subpoena witnesses, or serve arrest warrants in the territories of States Members of the United Nations. To fulfil all these tasks, the Tribunal must rely upon the domestic legal system and the enforcement machinery of each State. Consequently, all requests from the Tribunal for arrest, search, surrender or transfer of persons are addressed to, and processed by, the municipal system of the relevant State"[106]. Although states are bound to co-operation and judicial assistance by Art. 29 of the ICTY Statute and the UN Security Council resolution 827 (1993)[107], some of the "big fish" are still at large[108]. The Fugitive Intelligence Support Team operates within the Office of the Prosecutor of the ICTY and coordinates and assists in obtaining custody of persons accused by the Tribunal, and it is supported by the national police and national investigative entities, as well as International Law enforce-

[104] Lindsey, *op. cit.* (note 20), at 65.

[105] The ICTY tightly collaborates with the states in the region in order to provide an impartial and efficient trial before national judicial bodies. A positive example of this collaboration is the establishment of the Special War Crimes Chamber in Bosnia and Herzegovina. Speaking of the ICTY and national courts correlation, the ICTY doesn't monopolize criminal jurisdiction over certain categories of offences committed in the former Yugoslavia (e.g. war crimes and crimes against humanity), but it has been endowed with the power to intervene at any stage of national proceedings and take over from them whenever this proves to be in the interest of justice. Furthermore, the ICTY is not bound by national rules when it is up to its jurisdiction (nor by the procedure). See *ICTY Annual Report 1994, op. cit.* (note 26), at para 10 and 20. More about the correlation of the ICTY and national courts and their concurrent jurisdiction see *ibid.*, at para 84 - 94.

[106] *Ibid.*, at para 84.

[107] See *Statute of the International Criminal Tribunal for the Former Yugoslavia, op. cit.* (note 26), at 12 – 13. In order to accomplish the correlation stated hereinabove, the states are obliged to enact implementing legislation designed to bring their municipal legal system in line with the requirements of the Statute. *See* Pellandini, Cristina (ed.), *National Measures to Repress Violations of International Humanitarian Law (Civil Law Systems)*, Report on the Meeting of Experts, International Committee of the Red Cross, Geneva, 2000, at 85 – 97.

[108] Among the most wanted fugitives are Ratko Mladić and Radovan Karadžić, two former Bosnian Serb leaders, against whom an arrest warrant was issued on 25 July 1995. Among many accusations which charge them either on the basis of superior authority or direct responsibility (genocide, complicity in genocide, crimes against humanity, violations of the laws or customs of war, grave breaches of the Geneva Conventions of 1949; see *Prosecutor v. Radovan Karadžić and Ratko Mladić*, Case No. IT-95-5/18-I), the most serious one is the execution of 7 000 Bosnian Muslims within the "safe area" of Srebrenica (from 13 July to 19 July 1995). The massacre in Srebrenica caused catastrophic consequences for Bosnian Muslim community of Srebrenica. According to the *Krstić Case*, "in a patriarchal society, such as the one in which Bosnian Muslims of Srebrenica lived, the elimination of virtually all the men has made it almost impossible for the Bosnian Muslim women who survived the take-over of Srebrenica to successfully re-establish their lives". *Krstić Case, op. cit.* (note 87), at para 91. The life of Srebrenica women in exile was often below the level of humanity, e. g. they were often forced to live in collective accommodations, they could scarcely find a job and have an income, and many had difficulties in dealing with new tasks that they overtook as heads of the families. The trauma due to the loss of the closest family members, feelings of guilt for surviving the massacre and the apprehension because many victims have not been identified and properly buried yet, are sublimed in the psychological state recognized as a new pathology category, the so-called "Srebrenica Syndrome". See *Krstić Case, ibid.*, at para 93; *Report of the Secretary - General Pursuant to Res. 844 (1993)*, S/1994/555, 9 May 1994.

ment authorities such as the INTERPOL[109]. If the ICTY concludes that the fugitive in not arrested primarily due to the lack of collaboration of a particular state, the President of the ICTY can notify the UN Security Council accordingly[110]. Bosnia and Herzegovina, the Federal Republic of Yugoslavia, and Croatia formally acknowledged the ICTY and have been bound to collaboration immediately by signing the Dayton Accord in Paris on 14 December 1995, and Bosnia and Herzegovina and Croatia had, before the date, already enacted implementing legislation[111]. The explicit request for arresting fugitives was also declared by the UN Security Council in its resolutions about the ICTY Completion Strategy stating that all the Tribunal's investigations should be completed by the end of 2004, all trial activities at first instance by the end of 2008 and all work in 2010[112]. Bringing the people responsible for serious violations of International Humanitarian Law and Human Rights Law to justice is a significant satisfaction for victims on the territory of the former Yugoslavia, but also for the entire international community, which, with contempt, observed the sufferings of innocent civilians. Maybe the practice of the international administration of justice derived from the conflicts on the territory of the former Yugoslavia, is a beginning of a new culture, which the UN Secretary General in his report from 2005 symbolically called the "culture of protection", implying to the protection of civilians in armed conflicts[113].

Consolation can be found in the fact that, over the past five years, there has been a decrease in the level of armed conflicts[114], but for victims of about 30 armed conflicts recorded during the 2004, this fact probably does not mean much. The last report of the UN Secretary General from 28 November 2005 is of a greater importance, because the adopting of a promising UN Security Council resolution was announced. This resolution is expected to clearly define the need for "more systematic, comprehensive mandate for peacekeeping and peace-building missions, physical protection of civilians...and also the multi-sectoral monitoring and reporting mechanisms which would allow the UN Security Council to systematically identify areas of concern or assess the impact of its actions"[115]. With a new, more dynamic engagement of the UN Security Council, one would try to eliminate serious gaps that remain in the implementation of the current legal framework, ensure effective mandates that better meet current protection needs and better engage regional organizations in the protection of women and children civilians from sexual violence[116].

POST-WAR PERIOD AND WOMEN RIGHTS PROTECTION: A SURVEY OF RELEVANT INTERNATIONAL LAW DOCUMENTS AND NATIONAL LEGISLATION OF PARTICULAR COUNTRIES OF SOUTH-EASTERN EUROPE

Several years after the end of armed conflicts, the position of women from the territory of the former Yugoslavia has continued to draw attention of the world public, because

[109] See *ICTY Annual Report 1996, op. cit.* (note 39), at para 85.

[110] See *ICTY Annual Report 1994, op. cit.* (note 26), at para 93.

[111] See *ICTY Annual Report 1996, op. cit.* (note 39), at para 166, 183.

[112] S/RES/1503 (2003), 28 August 2003 and S/RES/1534 (2004), 26 March 2004. Nevertheless, this time limit does not mean that some criminals will avoid a trial because a great number of cases will be transferred to competent national jurisdictions (especially cases involving intermediate- and lower-rank accused). Besides, the gravest crimes of International Law have no statue of limitations, in accordance with provisions of *the United Nations Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity* of 26 November 1968. See *Official Gazette of the SFRY – International Treaties and Other Agreements*, No. 50/1970.

[113] See *Report of the Secretary-General, op. cit.* (note 36), at para 37.

[114] *Cf. ibid.*, at para 3, 7.

[115] *Cf. ibid.*, at para 36.

[116] *Cf. ibid.*, at para 34.

the chaotic war and post-war period has generated new and intensified several existing, specific forms of discrimination and women rights violation. Impoverished economy, unemployment, a great number of displaced and exiled persons and the growth of family violence are just some of the characteristics of transitional societies of the former Yugoslavia that have had a negative effect on the position and rights of women. Except from being hardly politically represented and discriminated at work, many of them are still victims of sexual abuse, among which trafficking and other forms of sexual exploitation are its worst forms. As a specific and common segment of abuse, trafficking involves one of the most developed illegal machineries, not only in the countries of the former Yugoslavia, but also in entire South-Eastern Europe, and the trichotomy of this area greatly contributes to the complexity of the problem: South-Eastern Europe is known as a place of "recruiting" victims, as a place of their transit, as well as their final destination. The exact figures of trafficked women in South-Eastern Europe are unknown for several reasons: their number fluctuates, it is almost impossible to trace all victims, and there is a great discrepancy between sources of their number. Nevertheless, the most frequently used figure is 120 000 trafficked women a year[117]. Although it is mostly the matter of victims of the international crime net who usually end up in the third countries, a certain number of women is also internally trafficked for sexual exploitation.

Trafficking is one of the first issues which, in the system of women rights protection, has been isolated and normatively regulated by international documents. Already in 1949, the United Nations adopted the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others[118], and in 1956, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery[119]. According to the 1949 Convention, trafficking is incompatible with the dignity and worth of the human person and endangers the welfare of the individual, the family and of the community, and particularly the respect for *human dignity* remained the central idea of the United Nations in adopting other documents about the prohibition of women rights violation. Among them the central and most comprehensive is the 1979 Convention on the Elimination of all forms of Discrimination against Women (CEDAW)[120] preceded

[117] Laczko, Fran; Klekowski von Koppenfels, Amanda; Barthel, Jana, *Trafficking in Women from Central and Eastern Europe: A Review of Statistical Data, in: New Challenges for Migration Policy in Central and Eastern Europe*, Laczko, Fran *et al.* (ed.), International Organization for Migratioan (IOM), International Centre for Migration Policy Development and T.M.C. Asser Press, The Hague, 2002, at 157; Fehér, Lenke, *Trafficking in human beings in candidate countries*, European Conference on Preventing and Combating Trafficking in Human Beings: Global Challenge for the 21st Century, Brussels, Belgium, 18-20 September 2002, World Wide Web URL http://www.belgium.iom.int/STOPConference/Confdocs/Confpapers/index.htm.

[118] A/RES/317 (IV), 2 December 1949. This Convention consolidated *the 1937 Draft Convention of the League of Nations* and the following instruments: *International Agreement of 18 May 1904 for the Suppression of the White Slave Traffic*, as amended by the Protocol approved by the UN General Assembly on 3 December 1948 (United Nations, Treaty Series, Vo. 92 p. 19); *International Convention of 4 May 1910 for the Suppression of the White Slave Traffic*, as amended by the abovementioned Protocol (United Nations, Treaty Series, Vol. 98 p. 109); *International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children*, as amended by the Protocol approved by the UN General Assembly on 20 October 1947 (United Nations, Treaty Series, Vol. 53 p. 39, Vol. 65 p. 333, Vol. 76 p. 281, and Vol. 77 p. 364) and *International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age*, as amended by the aforesaid Protocol (United Nations, Treaty Series, Vol. 53 p. 49, Vol. 65 p. 334, Vol. 76 p. 281, and Vol. 77 p. 365).

[119] E/1956/608 (XXI), 30 April 1956.

[120] A/RES/34/180, 18 December 1979. 180 countries are party to the Convention (as of 18 March 2005), which means that the number of ratifications was surpassed only by the Convention on the Rights of the Child. The Convention is one of the products of the United Nations activity during the United Nations Decade for Women (1976-1985). A significant obstacle for its complete implementation is an excessively high number of reservations. See Smith, *op. cit.* (note 60), at 347.

by the 1967 Declaration on Elimination of Discrimination against Women[121]. Some of the rights mentioned in the CEDAW include the equality of rights of men and women[122], maximum participation of women on equal terms with men in all fields, protection of women against any act of discrimination[123], full development and advancement of women, right to participate in the formulation of government policy[124], right to education, right to work, etc. Art. 6 explicitly deals with the problem of trafficking, prescribing that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women". For the purpose of considering the progress made in the implementation of the Convention and based on Art. 17 of the Convention, the Committee on the Elimination of Discrimination against Women has been established. Through the UN Economic and Social Council, it reports annually to the UN General Assembly "on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties"[125], and later on, this report the UN Secretary General transmits to the UN Commission on the Status of Women[126], for its implementation. In 1999 the Optional Protocol to the CEDAW was adopted, which binds the State Parties to recognize the competence of the Committee on the Elimination of Discrimination against Women to receive and consider communications under the Protocol. The Optional Protocol introduced a novelty connected to the communication procedure by enabling for either individuals or groups of individuals, under the jurisdiction of a State Party, to submit their individual complaints claiming to be victims of any of the rights set forth in the CEDAW[127].

For female victims of sexual exploitation and slavery through trafficking, the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime is of a great importance[128]. This is at

[121] A/RES/2263 (XXII), 7 November 1967.

[122] This principle of contemporary International Law finds its basis in the preamble of *the UN Charter* which emphasizes that the peoples of the United Nations are determined "to reaffirm faith in...the equal rights of men and women...". *Op. cit.* (note 2).

[123] For the purpose of the Convention "*discrimination against women* shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". *Op. cit.* (note 120), art. 1.

[124] This is a provision of Art. 7 of the Convention (*ibid.*) which regulates political rights of women. *The 1952 Convention on the Political Rights of Women* (A/RES/640 (VII), 20 December 1952).

[125] *Op. cit.* (note 120), art. 21 para 1.

[126] The UN Commission on the Status of Women (CSW) is a body established as a functional commission of the UN Economic and Social Council in 1946 (E/1946/11 (II), 21 June 1946) to prepare recommendations and reports to the Council on promoting women's rights in political, economic, civil, social and educational fields, esp. in those in which women are denied equality with men. The biggest normative success of this Commission is the CEDAW, a product of its 30-year-long work on the promotion and protection of women rights. A significant part of the servicing of the Commission is carried out by the Division for the Advancement of Women, which is part of the Department of the Economic and Social Affairs within the United Nations Secretariat. See Smith, *op. cit.* (note 60), at 61-62.

[127] *Optional Protocol to the 1979 Convention on the Elimination of all forms of Discrimination against Women*, A/RES/54/4, 15 October 1999, Art. 1, 2.

[128] *United Nations Convention against Transnational Organized Crime* and its two Protocols (*Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* and *Protocol Against the Smuggling of Migrants by Land, Sea and Air*) see in A/RES/55/25, 8 January 2001. The Convention is a comprehensive international instrument against transnational organized crime, and its Protocols focus on particularly dangerous types of organized crime for which prevention an affective international collaboration is necessary. Along with the Convention the Third Protocol was also adopted (*Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition*, A/RES/55/255, 8 June 2001).

the same time the most comprehensive international instrument which regulates the question of trafficking. The definition of trafficking is also incorporated into the text of the Protocol which defines trafficking as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"[129]. The goal of the Protocol is to prevent and combat trafficking in persons, paying particular attention to women and children, to protect and assist the victims of such trafficking, with full respect for their human rights, and to promote cooperation among States Parties in order to meet those objectives[130]. It is applied in the event of existing offences which are transnational in nature and if they involve an organized criminal group[131]. It requires States Parties to adopt legislative and other measures as may be necessary to establish as criminal offences acts that come under the definition of trafficking[132] and to assist and protect victims of trafficking[133]. The states are also obliged to provide repatriation for victims of trafficking[134] and to exercise prevention, cooperation and other measures necessary for accomplishing the goal of this Protocol[135].

Although actively included in the fight against trafficking since the late 1980s, the Council of Europe gave a concrete legal contribution in May 2005 by adopting the Convention on Action Against Trafficking in Human Beings, the first European legally binding instrument in this field[136]. This Convention does not affect the rights and obligations derived from the provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime, and is intended to enhance the protection afforded by it and develop the standards contained therein (Art. 39). The purposes of this Convention are to prevent and combat trafficking in human beings, while guaranteeing gender equality, to protect the human rights of the victims of trafficking, design a com-

[129] A/RES/55/25, *ibid.*, Annex II, Art. 3.

[130] *Cf. ibid.*, Art. 2.

[131] *Cf. ibid.*, Art. 4.

[132] *Cf. ibid.*, Art. 5.

[133] *Cf. ibid.*, Art. 6.

[134] *Cf. ibid.*, Art. 8.

[135] *Cf. ibid.*, Art. 9.

[136] Council of Europe Treaty Series, No. 197. The Committee of Ministers adopted the Council of Europe Convention on 3rd May 2005 and the Convention was opened for signature in Warsaw on 16 May 2005, on the occasion of the 3rd Summit of Heads of State and Government of the Council of Europe who underlined that this new Convention is a major step forward in the fight against trafficking. Among the activities that made an earlier legal framework of the Council of Europe, the recommendations of the Committee of Ministers should be mentioned. (*Rec (1991) 11 concerning sexual exploitation, pornography and prostitution of, and trafficking in children and young adults, (1997)13 concerning intimidation of witnesses and the rights of defence, (2000)11 on action against trafficking in human beings for the purpose of sexual exploitation, (2001)11 concerning guiding principles on the fight against organized crime, (2001)16 on the protection of children against sexual exploitation, (2001)18 on subsidiary protection and (2002)5 on the protection of women against violence and recommendations of the Parliamentary Assembly (Rec (1997) 1325 on traffic in women and forced prostitution in Council of Europe member States, (2000) 1450 Violence against women in Europe, (2001) 1523 on domestic slavery, (2001) 1526 on a campaign against trafficking in minors to put a stop to the east European route: the example of Moldova, (2002) 1545 on a campaign against trafficking in women, (2003) 1610 on migration connected with trafficking in women and prostitution, (2003) 1611on trafficking in organs in Europe and (2004) 1663 on domestic slavery: servitude, au pairs and mail-order brides)*. See Official web pages of the Council of Europe, World Wide Web URL http://www.coe.int/T/E/human_rights/Trafficking/3_Documents/International_legal_instruments/index.

prehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution and to promote international cooperation on action against trafficking in human beings (Art. 1). It applies to all forms of trafficking in human beings, whether national or transnational, whether or not connected with organised crime (Art. 2) and whoever the victim is: women, men or children. The Convention also includes an effective and independent monitoring mechanism for implementation of obligations by the Parties - the Group of experts on action against trafficking in human beings (see Chapter VII). With this Convention, the Council of Europe confirmed its role as one of the leading codifiers of the International Law, but also its commitment in the protection of human rights[137].

The basis of the legal improvement of the present contemporary system for the protection of women rights are final documents of the Fourth World Conference on Women, held in Beijing in 1995, the biggest international conference ever held under the auspices of the United Nations: the Beijing Declaration and the Platform for Action[138], that are "the most comprehensive review of women's rights and progress in achieving them"[139]. The Beijing Declaration about women's advancement and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process and access to power, presupposes the basis for the achievement of equality, development, conflict resolution and the promotion of lasting peace at all levels, and, as one of the fundamental prerequisites for accomplishing these aspirations, emphasizes the elimination of all forms of discrimination against women and the girl child[140]. It also calls for the prevention and elimination of all forms of violence against women and girls according to International Humanitarian Law[141]. A more detailed elaboration of the provisions stated hereinabove can be found in the Platform for Action, an agenda for women's empowerment. In this document, the violence against women, the effects of armed or other kinds of conflict on women and insufficient mechanisms at all levels to promote the advancement of women are pointed out as critical areas of concern, and the violent transition of some central and east European countries to parliamentary democracy is especially singled out as an example of the grave violations of women's rights[142]. The normative provisions of the Beijing Conference are a significant encouragement for further activities of the international community within the area of the protection of women rights, and this evolutionary process is heading for the adaptation of the norms considering specific manifestations of discrimination against women and formulating more effective exec-

[137] In the years ahead of us it will be clear if the intentions of the codifiers contribute to the fight against trafficking. The Council of Europe Convention has been signed by 25 states so far, including Albania, Bosnia and Herzegovina, Croatia, Macedonia, Moldova, Romania and Serbia and Montenegro (as of 24 January 2006). In order for the Convention to come into force, it has to be ratified by 10 states, including 8 Member States.

[138] *Report of the Fourth World Conference on Women, Beijing, 4 – 15 September 1995* (United Nations publication, Sales No. E. 96. IV. 13), chap. I, resolution I, annex I and annex II. The First World Conference on Women was held in Mexico in 1975, the Second in Copenhagen in 1980, and the Third in Nairobi in 1985. The Beijing Conference is ideologically mostly based on proclamations of the 1993 Vienna World Conference on Human Rights, contained in *the Vienna Declaration and the Programme of Action*. A great number of provisions on the protection of women rights have been implemented in the latter human rights instruments. As an inalienable, integral and indivisible part of universal human rights, women rights are considered to be one of the backbones of the future United Nations activities. Special attention is also drawn to all forms of sexual harassment and exploitation, including international trafficking which implies the national action and international cooperation. World Conference on Human Rights, Vienna, 14 – 25 June 1993, *Vienna Declaration and Programme of Action*, A/CONF.157/23, 12 July 1993, point 18, 37.

[139] Smith, *op. cit.* (note 60), at 190.

[140] *Report of the Fourth World Conference on Women*, *op. cit.* (note 138), point 13, 18, 24.

[141] *Cf. ibid.*, point 29, 33.

[142] *Cf. ibid.*, point 44, 15.

utive mechanisms for their protection in everyday life. Some of them were already pointed out during the twenty-third special session of the General Assembly on "Women 2000: gender equality, development and peace for the twenty-first century", which took place at the United Nations headquarters in New York in 2000[143]. Five years later, at the same place, a meeting known as "Ten-Year Review and Appraisal" was held as part of the UN Commission on the Status of Women forty-ninth session aiming at the evaluation of the Beijing Declaration implementation up to that moment[144].

According to the previous theses, it is easy to conclude that, over the last ten years, the interest for the protection of women rights has increased, and legislative efforts have been directed to the accomplishment of the principle of equality between men and women, removal of the barriers based on the perception of women through previously imposed roles and encouragement of emancipation of women in public life. Although we have limited ourselves for the purpose of this paper to mentioning only the most important International Law instruments, the list of instruments stated hereinabove is by no means final[145].

The South-Eastern European states are characterized by rather modern and non-discriminatory legislation that substantially conforms to the main international recognized human rights standards with regards to women: all of them are parties to the CEDAW, its Optional Protocol (except Moldova), the Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. However, practical application (especially in the discovery process) and enforcement measures of these regulations still need improvement.

For example, the Albanian Penal Code contains a significant number of provisions against trafficking in persons and corresponding criminal activities (including crimes committed by armed gangs and various criminal organizations), but the discovery, fact-finding and investigation against this phenomenon seem to be lacking[146]. Albania belongs to the category of an origin and transit country for trafficked women, due to deep poverty on one hand and well organized criminal activities of the Albanian gangs on the other. Trafficking and other forms of sexual exploitation have widely spread in Albania. The exact number of Albanian women trafficked for prostitution to Western Europe is not known, but during the second half of the 1990s, the INTERPOL in Tirana dealt with 103 cases, whereas in 2004 the Albanian police forwarded 274 victims to the reception centres[147]. Women are becoming victims of

[143] The meeting was held from 5 June to 9 June 2000, and concluded by the adoption of a *Political Declaration* and outcome document entitled "*Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action*". The texts of these two documents see in A/RES/S-23/2-3, 16 November 2000.

[144] The meeting was held from 28 February to 11 March 2005, and concluded by the adoption of a *Political Declaration*. Its text see in E/CN.6/2005/L.1, 3 March 2005.

[145] A great contribution to the protection of women rights was made by the accomplishments of the e. g. International Labour Organization (see *C105 Abolition of Forced Labour Convention*, 25 June 1957) and International Committee of the Red Cross (the 26th and the 27th International Conference of the Red Cross and Red Crescent).

[146] See *Consideration of Reports submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Initial and second periodic report of States Parties, Albania*, CEDAW/C/ALB/1-2, 23 May 2002, at 31. Other relevant national regulations on the National Laws and Action Plans see on Official web pages of the Council of Europe, World Wide Web URL http://www.coe.int/T/E/human_rights/Trafficking/3_Documents/National_laws/.

[147] The data on arrested and repatriated women reveal hundreds of trafficked women, but it is hard to estimate the numbers, considering the dynamics of this crime activity: traffickers often change methods, means of transport and places of crossing national borders. See *Initial and second periodic report of Albania*, *ibid.*; Official web pages of the U.S. Department of State, Trafficking in

trafficking blindly following empty promises of the guaranteed employment and a better life in the West, but some also consciously pay traffickers to be smuggled into Europe so they could work there as prostitutes (for example in Italy or Greece). Nevertheless, the number of Albanian women involved in the mentioned activities is decreasing, thanks to various awareness campaigns organized in schools and media by civil initiatives. Furthermore, a great number of non-Albanian women trafficked through Albania into Western Europe have become evident, and these are mostly young women from Moldova, Romania, Ukraine, Russia and Bulgaria[148]. In 2004 Albanian courts prosecuted 132 traffickers and handed down 121 convictions[149].

Romania, the country of origin and transit for internationally trafficked women, in the normative view, considerably differentiates from Albania, so except for the Romanian Penal Code, trafficking is incriminated by a significant number of other national laws[150]. A large number of women involved in trafficking plays its role as well. These are Romanian women as well as other women coming from Moldova, Ukraine and Russian Federation, who use Romania only as a transit territory on their way to Bosnia and Herzegovina (29%), FYROM (26%), Albania (17%), Kosovo-Serbia and Montenegro (14%), Italy (6%), Cambodia (2%) and other countries (6%)[151]. The greatest number of victims, about 33%, belongs to the age group from 18 to 20, and a thought-provoking data is, that girls between 13 and 15 years of age comprise 20% of the overall number of victims[152]. Comparative analyses performed by the Romanian authorities divided the causes of trafficking into two categories: a) internal causes (poverty, lack of workplace, social inequity, the desire for easy money, etc.) and b) external causes (the existence of a big "demand" from the rich countries, the unsure limitations decided by the destination countries for reducing the traffic demand), and as crucial features of trafficking they singled out the following: a) women status as vulnerable, poor and marginalized groups in societies, b) the traffic request aims especially at these groups, c) the profit is more than attractive in the conditions that everybody wins and d) punishing the traffickers did not take severe forms[153]. In spite of the excellent international co-operation with the countries in the region[154], there is still a black number of about 103 convicted persons for crimes of trafficking in persons in 2004[155].

Although the rate of trafficking in Bosnia and Herzegovina is decreasing in comparison to the years shortly after the war (beginning with 1996)[156], this part of Europe is still an important destination for women victims of trafficking, and to a lesser extent, a country of origin and transit. This problem has become extremely acute due to the causes such as the opening of state borders, transition to market economy, increase of unemployment and poverty, collapse of state structure, reduced control of movement in some parts of Europe, etc[157]. In the period between 2001 and 2002 about 460 women victims of trafficking were registered and illegally entered the country using forged passports or visas or someone else's passports and supported by a well organized network of criminals[158]. About 30% of trafficked women, mostly from Moldova, Ukraine, Romania, Bulgaria and increasingly, Serbia and Montenegro, claim that they were victims of trafficking, while others claim that they came by their own free will[159]. The basis of the national legal framework of Bosnia and Herzegovina in the fight against trafficking is made of provisions of the Constitution, the Criminal Code, the Law on Movement, Residence and Asylum for Foreigners in Bosnia and Herzegovina and the Action Plan for Prevention of Trafficking in Persons[160].

Trafficking is also a part of organized crime in Bulgaria, with several dozens of firms that have been engaged in such activities from the mid 90s, out of which a half of them are joint ventures with foreign partners[161]. Thereby Bulgaria is stressed out as a transit country and, to a lesser extent, a country of origin and destination, and trafficked women are mostly citizens of Ukraine, Romania, Moldova and Russia. The Penal Code makes a basis of anti-trafficking legislation, and as a stimulus of the anti-trafficking campaign, the Bulgarian Government adopted a National Anti-Trafficking Strategy and dedicated funding to support the work of the National Anti-Trafficking Commission in the beginning of the 2005[162]. The Ministry of Interior noted 474 victims of trafficking in 2004 and the government reported almost 900 sentences in 2004 for trafficking-related offences, including forced prostitution, inducement to prostitution, and people smuggling[163].

Illegal migration and trafficking in women in Macedonia escalated in the mid-90's and Macedonia became both a territory across which victims of human trafficking were illegally transferred and a territory of final destination, and the nationality of victims remained the same as in the above-men-

Persons Report, June 2005, Albania, World Wide Web URL http://www.state.gov/g/tip/rls/tiprpt/2005/46612.htm.

148 Until repatriation arrested women remain in prison, police station and recently in the National Reception Centre in Tirana. See *Initial and second periodic report of Albania, op. cit.* (note 146), at 31, 32.

149 Official web pages of the U.S. Department of State, *op. cit.* (note 147).

150 For example, *The Law No. 678 on preventing and combating the trafficking in human beings, The National Action Plan against trafficking in human beings, The Government Ordinance No. 112/2001 on sanctioning offences committed outside the Romanian territory by Romanian citizens or stateless persons with their domicile in Romania*, etc. In 2004 the Government approved a *National Action Plan* and opened the Trafficking Resources Centre for collecting country-wide trafficking data. See *Consideration of Reports submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Sixth periodic report of States Parties, Romania*, CEDAW/C/ROM/6, 15 December 2003, at 15. See other relevant national regulations on the National Laws and Action Plans, *loc. cit.* (note 146).

151 See *Sixth periodic report of Romania, cf. ibid.*, at 14.

152 In 2004 the Bucharest non government-run shelter assisted 100 trafficked women and Romanian embassies abroad assisted the repatriation of 350 victims of trafficking in persons. *Ibid.*; See also Official web pages of the U.S. Department of State, Trafficking in Persons Report, June 2005, Romania, World Wide Web URL http://www.state.gov/g/tip/rls/tiprpt/2005/46612.htm.

153 *Sixth periodic report of Romania, cf. ibid.*, at 21.

154 For example, within Bucharest-based South-Eastern Cooperation Initiative Centre for Combating Trans-border Crime and its Task Force dealing with trafficking in human beings. See *cf. ibid.*, at 18.

155 See Official web pages of the U.S. Department of State, *op. cit.* (note 152).

156 Owing to the harmonization of legislation in this matter, regular training of officials who are engaged in implementation of regulations, more active participation of intervention teams, forming and working of some institutions on the state and entity level (e. g. Ministries of Interior and State Border Service officials). *Consideration of Reports submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined initial, second and third periodic reports of States Parties, Bosnia and Herzegovina*, CEDAW/C/BIH/1-3, 18 April 2005, at 24.

157 *Cf. ibid.*, at 23.

158 There are also evidences that the local police, international police and SFOR participated in these criminal activities. During 2004, 47 criminal charges for trafficking were raised; a length of sentences imposed was often one year or less. *Cf. ibid.*, at 24, 25, 27; Official web pages of the U.S. Department of State, Trafficking in Persons Report, June 2005, Bosnia and Herzegovina, World Wide Web URL http://www.state.gov/g/tip/rls/tiprpt/2005/46612.htm.

159 See *Combined initial, second and third periodic reports of Bosnia and Herzegovina, loc. cit.* (note 157).

160 *Cf. ibid.*, at 22, 23, 24. See other relevant national regulations on the National Laws and Action Plans, *loc. cit.* (note 146).

161 See *Consideration of Reports submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Second and third periodic reports of States Parties, Bulgaria*, CEDAW/C/BGR/2-3, 3 November 1994, at 16.

162 During 2004 the Bulgarian Government provided a special legal protection for the victims of trafficking who were cooperating with investigations and prosecutions of traffickers. See Official web pages of the U.S. Department of State, Trafficking in Persons Report, June 2005, Bulgaria, World Wide Web URL http://www.state.gov/g/tip/rls/tiprpt/2005/46612.htm. See other relevant national regulations on the National Laws and Action Plans, *loc. cit.* (note 146).

163 Official web pages of the U.S. Department of State, *ibid.*

tioned cases of countries of South-East Europe[164]. However, a growing problem of internally trafficked Macedonian women has been noticed as well[165]. The Macedonian legislation is very dynamic considering its harmonization with the International Law standards that regulate trafficking, and the most significant development refer to the Criminal Code and the incorporation of the offence of "human trafficking" in 2002[166]. During 2004 the government reportedly investigated about 40 suspected human trafficking cases and assisted 28 victims, which is a significant decrease from 143 victims assisted the previous year[167].

According to the number of trafficked women Moldova is on the top of almost all statistic scales. Economic recession, evident especially in the mid 90s, had a disastrous effect on the development on the illegal migration in Moldova, a phenomenon that became interrelated to trafficking more than anywhere else. *De iure* and *de facto* data are characterized by great discrepancy, so, on one hand, there is the new Penal Code, adopted in April 2002, which prescribes rigorous sentences for perpetrators of criminal acts within the category of "Human Beings Trafficking" (25 years in prison and detention for life), and on the other hand, there is information that during the same 2002, over 9 000 trafficked young Moldovan women were arrested in Moscow alone.[168]. The Ministry of Interior's Anti-Trafficking Unit opened 274 investigations in 2004[169]. In spite of normative developments[170], official reports emphasize that trafficking in Moldova is mostly "a tolerated phenomena, being considered sometimes as a last solution to liquidation of poverty"[171].

The territory of Serbia and Montenegro shares a similar destiny of the countries that are at the same time a source, transit and destination for trafficking, but the situation is here a bit more complex considering the operating division of the country into three parts. Serbia and Montenegro consists of two republics which do not have joint counter-trafficking institutions, so the cooperation is achieved

[164] *Consideration of Reports submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined initial, second and third periodic reports of States Parties, The former Yugoslav Republic of Macedonia*, CEDAW/C/MKD/1-3, 5 August 2004, at 46.

[165] See Official web pages of the U.S. Department of State, Trafficking in Persons Report, June 2005, Macedonia, World Wide Web URL http://www.state.gov/g/tip/rls/tiprpt/2005/46612.htm.

[166] Decision for the Establishment of a National Commission for a Fight against Human Trafficking and Illegal Migration adopted in 2001 by the Macedonian Government is also significant. The National Commission hasn't finalized the National Working Program yet, and overall appreciable improvement must be demonstrated in enforcement of the existing legislation. See *Combined initial, second and third periodic reports of Macedonia, op. cit.* (note 164) at 47, 48. See other relevant national regulations on the National Laws and Action Plans, *loc. cit.* (note 146).

[167] Official web pages of the U.S. Department of State, *loc. cit.* (note 165).

[168] See *Consideration of Reports submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined second and third periodic reports of States Parties, Moldova*, CEDAW/C/MDA/2-3, 10 November 2004, at 19, 20. See other relevant national regulations on the National Laws and Action Plans, *loc. cit.* (note 146).

[169] Official web pages of the U.S. Department of State, Trafficking in Persons Report, June 2005, Moldova, http://www.state.gov/g/tip/rls/tiprpt/2005/46612.htm.

[170] In November 2001 *the National Plan* was adopted and the National Committee for counteracting human trafficking was set up, and in 2002 the Government passed *the Decision Concerning State Program of Combating Crime and Corruption for 2003 – 2005*. In 2005 the Government established a working group to draft a new *National Action Plan*. The text of the 2002 Decision see in *Decision of the Government of the Republic of Moldova Concerning State Program of Combating Crime and Corruption for 2003 – 2005*, No. 1693 of 27 December 2002, *Monitorul Official of the Republic of Moldova*, No. 185 – 189 of 31 December 2002, World Wide Web URL http://www.transparency.md/Laws/hg1693-02_en.pdf.

[171] *Combined second and third periodic reports of Moldova, loc. cit.* (note 168). It is unlikely to expect that the problem of trafficking in persons in Moldova will be soon solved, because it is a radical and developed form of crime – up to now, about 20 illegal trafficking channels have been found (in Turkey, the United Arab Emirates, Japan, Russia, Israel, Macedonia, Bosnia and Herzegovina and Albania). *Cf. ibid.*, at 21.

on an *ad hoc* basis. The third territory, Kosovo, is technically a part of Serbia and Montenegro, but it is governed by the United Nations Interim Administration for Kosovo (UNMIK), which "retains ultimate authority over anti-trafficking actors such as police and justice"[172]. During 2004, the police in Serbia and Montenegro filed criminal charges for about 70 suspects, but there are no official data about the number of victims. The only source in that respect is the UNMIK's Trafficking and Prostitution Investigation Unit that assisted 48 victims during 2004[173]. In spite of legislation efforts[174], the anti-trafficking prevention, sentencing and witness protection remains weak.

Comparing to other countries in the region, Croatia is in a better position concerning trafficking, especially according to the number of victims. From 2002 when the official statistics started, until the end of 2005, the overall number of 40 victims of trafficking were identified out of which 36 represented the cases of sexual exploitation[175]. The government reported 17 investigations and four convictions in 2004 and sentences ranged from seven months to nine years[176]. Although primarily a transit area and, to a lesser extent, a country of origin, Croatia has recently also become a destination country. A disturbing phenomenon noticed during 2005 is the age of victims: out of 5 registered victims (4 females), three were minors and one person was hardly an adult[177]. Those tendencies and the intention to synchronize national legislation with the International Law standards, have led to significant legislation activities and developments on the area of trafficking prevention. In that sense one should mention the Criminal Code[178], the Act on Office

[172] Official web pages of the U.S. Department of State, Trafficking in Persons Report, June 2005, Serbia and Montenegro, World Wide Web URL http://www.state.gov/g/tip/rls/tiprpt/2005/46612.htm.

[173] *Ibid.*

[174] Among the latter one should point out the Agency for the Coordination of Protection to Victims of Trafficking established in March 2004. In order to get complete evaluation of the administration of justice in Serbia and Montenegro, a state report that should be submitted to the Committee on the Elimination of Discrimination against Women in accordance with Art. 18 of the CEDAW is missing. We consider the latter to be relevant for the objective evaluation of the situation. See relevant national regulations of Serbia and Montenegro on the National Laws and Action Plans, *loc. cit.* (note 146).

[175] 12 trafficked women were Croatian citizens, whereas others were from Bosnia and Herzegovina, Bulgaria, Cameroon, Morocco, Rumania, Russian Federation, Slovakia, Serbia and Montenegro, Ukraine and mostly from Moldova. There is only one official shelter of a closed type for trafficked women on the territory of Croatia, financed by the Ministry of Health and Social Welfare. See Sokolar, Zlatko, *Activities of Borderline Police on the Area of the Suppression of Trafficking in Persons*, International Conference "Stop Trafficking in Human Beings", Cavtat, Croatia, 18-20 October 2005, World Wide Web URL http://www.ljudskapravavladarh.hr/Download/2005/12/16/Sokolar.ppt.

[176] Official web pages of the U.S. Department of State, Trafficking in Persons Report, June 2005, Croatia, World Wide Web URL http://www.state.gov/g/tip/rls/tiprpt/2005/46612.htm.

[177] The average age of trafficked victims was 24,4 years in 2004, and in 2005 this number decreased to only 17,5 years. See Sokolar, *loc. cit.* (note 175).

[178] *Official Gazette of the Republic of Croatia* No. 110/97, 27/98, 129/00, 51/01, 105/04. With the amendment of *the Criminal Law* in July 2004 the title of Art. 175 ("*Establishment of Slavery and Transport of Slaves*") was changed into "*Trafficking in Human Beings and Slavery*". The same Article in para 1 determines: "Whoever, in violation of the rules of international law, by force, threat to use force, deceit, kidnapping, misuse of position or authority recruits, buys, sells, hands over to another person, transports, transfers, encourages or mediates in the purchase, sale or handling over, hides or accepts a person for the purpose of establishment of slavery or similar status, forced labour and service, sexual abuse or intolerable transplantation or parts of human body, or holding a person in position of slavery or in a similar status, shall be punished by imprisonment from one to ten years". If the victim is a child or a minor, or if the criminal offence is committed by a group or a criminal organization, or against a larger number of persons, or caused death of one or more persons, the shortest possible imprisonment for a perpetrator is 5 years. It is of no importance for the existence of the criminal offence whether the person agreed to forced labour or service, sexual exploitation, slavery or relation similar to slavery. Art. 177 is also relevant because it regulates the question of illegal transfer of persons across the State border (the minimum punishment is a fine, and the maximum imprisonment is 5 years), Art. 178 refers to international prostitution (the minimum punishment is imprisonment for 6 months, and the maximum is sentenced by the court, but it can not be shorter than the imprisonment for 3 years) and Art. 196 sanctions the abuse of children or juveniles in pornography (the prescribed imprisonment is from 1 to 5 years). With the amendments of *the Criminal Code*, the punish-

for Fight against Corruption and Organized Crime[179], the Criminal Procedure Law [180], the Law on Protection of Witnesses[181], the Law on Foreign Persons[182], the Law on Asylum[183], the Law on the Responsibility of Legal persons for criminal acts[184], etc[185].

In May 2002 the Government established the National Committee for the Suppression of Trafficking in Persons[186], which was supported by the Operating Team and the Working Group for Trafficking in Children for the purpose of improving work efficiency[187]. The Office for Human Rights of the Government of the Republic of Croatia coordinates the activities of these bodies, within the framework of the Program for the Suppression of Trafficking in Persons.

Due to the fact that Croatia is surrounded by the countries in which trafficking in persons is widely spread, a huge attention is given to the regional collaboration, especially within the Council of Europe and the Organization for Security and Co-operation in Europe. In the context of women rights protection, it is necessary to mention the post-war situation in Croatia, which is characterized by an increase of violence against women in the family due to the post-trauma war syndrome noticed in a large number of once active soldiers and due to availability of weapons that remained in private possession after the armed conflicts. In relation to that, the Law on Protection from Domestic Violence was passed in 2003[188], where the "term violence has been defined, protection from domestic violence, forms and purposes of criminal legal sanctions have been prescribed, as well as precautionary measures for protection of injured party from further domestic violence"[189]. However, a similar phenomenon of violence increase due to specific post-war repercussions has been noticed in Bosnia and Herzegovina as well[190].

ments for the perpetrators that committed criminal acts connected to trafficking have been made more rigorous.

179 *Official Gazette of the Republic of Croatia* No. 88/01, 12/02.

180 *Official Gazette of the Republic of Croatia* No. 110/97, 27/98, 58/99, 112/99, 62/03.

181 *Official Gazette of the Republic of Croatia* No. 163/03. Provisions on measures for witness protection, like providing psychological, social, economic and legal assistance are written above all to encourage women to witness against traffickers in human beings (Art. 34). One of their basic obligations is giving specific information on the subject case (Art. 38).

182 *Official Gazette of the Republic of Croatia* No. 109/03. It regulates movement and sojourn of foreign persons, thus creating possibility to provide temporary residence for a victim of trafficking in human beings. *Consideration of Reports submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined second and third periodic reports of States Parties, Croatia*, CEDAW/C/CRO/2-3, 27 October 2003, at 28. Based on the Instruction of the Ministry of Internal Affairs about the temporary regulation of the residence of trafficked victims, a temporary license to reside over the period of maximum 2 years is given to the victim, regardless of the collaboration with the police officials or judicial bodies. By the end of 2005, 4 temporary licenses had been issued for foreign citizens. See Sokolar, *loc. cit.* (note 175).

183 *Official Gazette of the Republic of Croatia* No. 103/03.

184 *Official Gazette of the Republic of Croatia* No. 151/03. The law enables the punishment for all firms (bars, tourist agencies, etc.) that are involved in the criminal act of trafficking in persons for sexual or any other exploitation, i. e. organization of international prostitution.

185 According to Art. 140 of the Constitution of the Republic of Croatia, the international agreements which are concluded and ratified in accordance with the Constitution and made public are a part of internal legal order and in terms of legal effect are above law. *Official Gazette of the Republic of Croatia* No. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01.

186 *Official Gazette of the Republic of Croatia* No. 54/02. The National Committee is responsible for making a National Plan for Suppression of Trafficking in Persons. The National Coordinator has a leading coordinating and operating role in the work of the National Committee, and she/he is also the head of the Government Office for Human Rights. In December 2004 the Government adopted the National Programme for Suppression of Trafficking in Persons 2005 – 2008 and the relating Action Plan for the Suppression of Trafficking in Persons (it is made for every calendar year). By the and of September 2005, The National Committee also adopted the National Plan for Suppression of Children for the period from 1 October 2005 to 31 December 2007, which will be directed to a further Government procedure.

187 *Official Gazette of the Republic of Croatia*, No. 41/04.

188 *Official Gazette of the Republic of Croatia*, No. 116/03.

189 *Combined second and third periodic reports of Croatia, op. cit.* (note 182), at 14.

190 See *Combined initial, second and third periodic reports of Bosnia and Herzegovina, op. cit.* (note 156), at 21.

THE EFFECT OF WAR CONFLICTS ON THE POSITION OF WOMEN AND CHILDREN – ASPECTS OF THE INTERNATIONAL LABOUR LAW

International Labour Law *inter alia* observes the position of children and women during the transition time and armed conflicts through the social lenses and risks they can be exposed to as a subject of the Labour Law. In many cases, analyzing the dangers they confront, their physical integrity and the degree of freedom they enjoy in given circumstances, it can be concluded that women and children often become a legal object deprived of its fundamental rights and legal subjectivity. Poverty, natural disasters, war conflicts, transition, globalization and relating problems, then, social erosion and HIV/AIDS pandemic are just some of the causes of child labour and its worst forms, but also forced labour,[191] slavery,[192] practices similar to slavery,[193] debt bondage and trafficking. All the mentioned has an enormous effect both on women and children resulting in the increase of transnational organized crime and violence in general. Because of that, the International Labour Law stretches the focus of observation over its traditional sources to the line of first-class human rights treaties emphasizing the bond between labour and human dignity.

South-Eastern Europe and belonging countries started the transition process in the late 80s and early 90s of the last century and some even had to face the war on their way to independence. It was all accompanied by the breakdown of multinational countries established in the late 19th and the early 20th century or immediately after the Second World War. Transitions mostly had a two-way character - economic and political. In the first case it was a matter of transition from planned to market oriented economy, and in the second, a matter of transition from non-democratic to democratic political systems. Those two forms of transition significantly affected the territories stated hereinabove.

CHILD LABOUR IN THE PROCESS OF TRANSITION

Under the conditions of almost chronic poverty, single-parent families and families that belong to the so-called socially exclusive groups are the most endangered ones. Transition is simultaneously characterized by evident psychological elements such as the loss of state supports, "guaranteed" job or employment, the collapse of family incomes and the decrease of life standard, which consequently causes feelings of embarrassment, confusion, helplessness and marginalization, and it leads to social problems and virtual system abuse that only make the problem of deep-rooted poverty even more serious. Under those conditions, many transition countries are exposed not only to previously un-

191 In Art. 2(1) of its original *Forced Labour Convention (No. 29)*, from 1930, the ILO defines forced labour for the purpose of International Law as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". Other fundamental ILO instrument in this area, the *Abolition of Forced Labour Convention (No. 105)*, from 1957, by its Art. 1 specifies that forced labour can never be used for the purpose of economic development or as a means of political education, discrimination, labour discipline, or punishment for having participated in strike.

192 Slavery is a form of forced labour which involves absolute control of one person over another or perhaps one group of persons by another social group. Slavery was defined in Art. 1(1) of the first international instrument in this field, the *League of Nations Slavery Convention* of 1926, *mutatis mutandis* as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised". Adopted at the time when forced labour was widely exacted by colonial powers, contracting parties according to Art. 5 of this first adopted instrument were required to "take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery".

193 *United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, from 1956*, focused on structural issues such as debt bondage and serfdom. These "slavery-like practices" clearly encompass situations where individuals or social groups are forced to work for others.

known child labour,[194] but also to similar ominous occurrences such as forced labour, slavery, practices similar to slavery, debt bondage, trafficking etc.

Great poverty, disintegration of the family, erosion of the social welfare system, economic migrations, the increase of juvenile delinquency and drug abuse, with simultaneous impoverishment of the health protection system and the decline of education have resulted in possible children participation in a big and legally not regulated labour market, usually in informal and often illegal sectors. Inexperienced relating governments have done almost nothing in the struggle against child labour and its efficient elimination and prevention. Those problems, in the same or similar form, have marked transitions in many Asian countries as well.[195]

However, what is child labour? Is every form of child labour forbidden? Have all children been involved in child labour and its alternative forms?

In general, child labour could be defined as work of legally under-aged persons.[196] This definition is, although *prima facie* rather carefully stated and undoubtedly in conformity with relevant international sources, at the same time incomplete and unspecific. On the other hand, definitions that child labour define as work of children who earn money[197] are even more deficient and incorrect, because they cover only that segment of child labour that refers to the salary. At first they seem to be appropriate and statistically transparent, but simultaneously neglecting the whole spectrum of child labour forms in which the element of payment of such employment is missing, and also the element of a voluntary participation, because it is frequently a matter of its slave and forced forms.

The provisions of the Article 2 (1) and (3) of the ILO Convention No.138 answer the question which age is required for legal employment.[198] According to them, the age limit for employment cannot be lower than the age at which compulsory education is finished, and in any case, not lower that 15 years of age. In this manner a determined age creates a distinction between some work categories, but also between some children categories, because it distinguishes the jobs that children can do at the age of 15, and in some cases even earlier,[199]and those that children cannot do before the age of 18. For member countries of the ILO, whose economy and education are not sufficiently developed, the Convention No.138 offers an exception by which they can, after counselling with organizations of interested employers and employees (if they exist), establish the lowest age of 14 years.[200] That solution has contributed to a large number of countries in development, on African and Asian continent, simultaneously reflecting a dynamic nature of the Convention.

The above-mentioned provisions of the Convention No. 138 should be observed through the lenses of statistic data according to which the year 2000 detects 210.8 million economically active children[201] aged between

[194] *Cf., A Future Without Child Labour, Global Report under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work*, International Labour Office, Geneva, 2002, at 39.

[195] *Cf. ibid.*, at 40 - 41.

[196] *Cf., The New Encyclopedia Britannica*, Vol. 3, Encyclopedia Britannica, Inc., 1998, at 208.

[197] *Cf., The World Book Encyclopedia*, World Book International, Vol. 3, USA, 1994, at 410.

[198] ILO 1973 *Convention Concerning Minimum Age for Admission to Employment (No. 138).*

[199] Light work can be undertaken from age thirteen, or in countries where economy and educational facilities are insufficiently developed, from twelve years, on condition that does not jeopardize education. See *ibid.*, Art. 6 and 7.

[200] *Cf. ibid.*, Art. 2 para 4.

[201] *Every Child Counts, New Global Estimates on Child Labour*, International Programme on the Elimination of Child Labour (IPEC) & Statistical Information and Monitoring Programme on Child Labour (SIMPOC), International Labour Office, Geneva, April 2002, at 20. About 140,9 million economically active children between 15 and 17 years of age should be added to this number, so the overall figure of economically active children is

5 and 14. It is also necessary to stress that the term *economically active children* unites the most productive children activities, regardless whether these children are on the labour market or not, are they paid or not, are they working full- or part-time, occasionally or regularly, legally or illegally, and their school or house activities are excluded form the abovementioned activities. Moreover, in order to include a child in the denoted category which represents more a statistic specification than a legal definition that does not entirely coincide with the term child labour, it is necessary that the child works at least one hour during any day of the week (a week is a referent period).[202] Out of the mentioned number, about 186 million children across the world are included in the work that should be eliminated, including its worst forms.[203]

While analyzing the problem of child labour, many authors and international organizations, make a difference between the terms *child labour* and *child work*.[204] Thereby, it is often stressed, especially among Anglo-Saxon authors, that child work corresponds to the activities which adults use to direct children to integrating into societies and families of which they are a part, so child work has a developmental nature.[205] On the contrary, child labour is a consequence of *"impoverishment of a child and a family, market pressure and political apathy towards children rights"*[206] and it is also a synonym for its exploitation. Cullen contextually stresses that there is a difference in the quality of exploitation between child labour and child work when simultaneously differentiating a possible degree of exploitation, because child labour comes in conflict with normal physical, intellectual and moral development of a child.[207]

Regardless of the existing linguistic sophistication in defining the term child work, it is obvious that recent developmental studies emphasize that child's work abilities, including also benefits and negative consequences of such job, vary from child to child.[208] Furthermore, the studies show both positive and negative sides of labour, which often cannot be completely mutually isolated. It can be sometimes true that in impoverished educational systems, which are undoubtedly harmful for children development, a limited content of work can be useful to a child, at least in some societies. Observing the situations when a child itself feels that it is learning or acquiring skills while working, that kind of labour is considered less harmful and it is somewhat probably good for the child.[209]

While analyzing significant distinctions between the terms child labour and child work, it is necessary to say that some international authors use the English term *light work* in their works which *mutatis mutandis* coincides with the term *child work*. Furthermore, the same term is also found in official analy-

351,7 million, among which 245,5 million are children workers. *Cf. A Future Without Child Labour, op. cit.* (note 194), at 18.

[202] See *Future Without Child Labour, cf. ibid.*, at 15, note 23.

[203] *Cf. ibid.*, at 16.

[204] It is about terms *child labour* and *child work*. Within that context, considering all relevant scientific explanations, one could say that *child labour* most frequently means unacceptable child work, and *child work – children work*, an acceptable form of child labour, i.e. the one that does not damage children's health and development. However, numerous authors, who deal with relevant problematic often do not make a linguistic distinction between the mentioned terms *child labour* and *child work*, but they, under the term *child labour*, unite both child labour manifestations that are, however, different in terms of contents.

[205] Otis, J. , Mayers Pasztor, E. , McFadden, E. J. , *Child Labor: A Forgotten Focus for Child Welfare*, Child Welfare, Vol. 80, No. 5, Sep/Oct 2001, at 612.

[206] *Cf. ibid.*, at 613.

[207] Cullen, H., *The limits of international trade mechanisms in enforcing human rights: The case of child labour*, The International Journal of Children's Rights, Vol. 7, No. 1, 1999, at 3.

[208] Boyden, J., *The Impact of Children's Activities (Work and School) on their Wellbeing and Development*, Report for the Conference Child Centered Approaches to Child Work Issues, Oslo, 20- 21 April 1999, at 38-40.

[209] See Bachman, S. L., *A New Economics of Child Labor: Searching for Answers Behind Headlines*, Journal of International Affairs, Vol. 53, No. 2, Spring 2000, at 554.

ses and studies of international organizations. The authors who use it did not try to define it, but they point out that it is determined by its characteristics in the relevant international instruments.[210] Those kinds of views primarily refer to the content of Art 7(1) of the Convention No. 138. One can accordingly *mutatis mutandis* conclude that it is all about less demanding jobs done by persons between 13 and 15 years of age, which are not harmful to their health and development and do not harm their school attendance, their participation in professional orientation or education programmes approved by the authorities, or their abilities to enjoy the privileges of the class they attend. Bearing in mind the provisions of Art 7(3) of the Convention No. 138,[211] Picard emphasizes that *light work* should not be longer than two hours a day, regardless of the work during school days or school breaks, i.e. responsibilities in school and *light work* together should not take longer than seven hours a week.[212]

Child work and light work nearly represent synonyms that are mostly used in professional circles and by their contents and characteristics denote permissible jobs for children outside the semantic frames of *child labour*. Although they have an economic dimension; work for pay, their function is *prima facie* developmental in the context of child's upbringing and socialization. However, in the systems that do not possess terminological and linguistic barriers between the terms child labour and child work, it is necessary to more precisely define the range of child work as a more complex and undoubtedly larger idea.

Due to many critiques, complexity and problems in the application of the Convention from 1973 International Labour Organization encouraged international community to adopt a new convention on the most extreme forms of child labour in March 1996. The proposition was directed to completion of the existing international instruments that served as a protection of children rights and included all children under 18 and, at the same time binding every member country to instant measures in order to prevent all unacceptable forms of child labour.[213] With the new protection instrument, a desire has arisen to ban or abolish the worst forms of child labour and set free the children of the most extreme situations in which they could find themselves, and finally to enable development by providing direct and adequate help as a key element of this convention.[214] Under these circumstances, the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of the Child Labour (Convention No. 182)[215] was adopted in Geneva in 1999, which in Article 3 *"the worst forms of child labour"* defines as:

a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflicts;
b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
d) work which, by its nature or the circumstances in which it carried out, is likely to harm the health, safety or morals of children.

According to this, the worst forms of child labour can be classified into two groups:

- the ones that are, in every respect, unconditional (correspond to the items (a) – (c) of Art 3. of the Convention) and are in conflict with the basic human rights of a child, and are therefore forbidden to all persons under 18 years of age
- and the ones that are defined as hazardous jobs in national legislations, but can be performed in legal sectors of economic activities and are not less harmful to children workers.[216]

By the Convention No. 182 and its Recommendation 190, the forms stated hereinabove represent obvious examples of violation of the rights of the child as separate categories of human rights, established in 1989 by United Nations Convention on the Right's of the Child, and they suggest the necessity of a larger social attention on the international level. In that context, segmented terms such as economically active children, child labour, child work and the worst forms of child labour, enable us to distinguish visible differences among them, to determine the problem and give a specific meaning to child labour as a substantially bigger issue.

Finally, because of the fact that incorporation of the age is a particularly relevant element of its determination, we feel free to conclude that child labour, as a substantially bigger notion, includes:

- the labour of persons under the age of 18 and older than 15, that according to its character can be ***permissible***, if it corresponds to the standards of the International Labour Organization and other international organizations, as well as the regulations of national labour legislation (under the condition that it is coordinated with international sources), and it is not hazardous to health, security, development and moral of a child. It can also be ***impermissible***, if it does not correspond to the above-mentioned criteria, and
- the labour of persons under the age of 15 is impermissible, unless in cases when it corresponds to the description of what is stated as *child work* in the function of social development of child's personality, i.e. *child labour,* when national legislation in practical, theoretical and linguistic sense, does not make or know the difference between the terms child labour and child work, and/or when international sources and national regulations presuppose the possibility of child labour for the states and precise (*numerus clausus*) purposes, such as taking part in art performances, making movies, etc., but within the duration that does not interfere with child's development, education and childhood.[217]

In the context of transitions that hit and denoted the territory of South-East Europe the worst forms of the child labour are particularly the ones that draw social attention, because they represent flagrant violations of the fundamental labour standards and severe violation of the children rights as a separate category of the human rights in general. Moreover, every day's practice of European capitals, media news and social erosion of the society show how specific manifestations of the worst forms of child labour are present in all countries, including the economically most

[210] Picard, L., *Why new international instruments on child labour?*, in: *Protecting children in the world of work*, Labour Education, No. 108, 1997/3, International Labour Office, Geneva, 1997, at 12.

[211] Article 7, paragraph 3 of the *ILO Convention No. 138* regulates that the authorities of member countries, i.e. countries signers of the Convention, must establish activities which make employment and *light work* possible and also regulates the number of hours and conditions for doing that sort of employment and work.

[212] Picard, *loc. cit.* (note 210).

[213] *Cf.* Cooper, J., *Child Labour, Legal regimes, market pressures and the search for meaningful solutions*, International Journal, Vol. 52, No. 3, Summer 1997, at 418.

[214] Picard, *op. cit.* (note 210), at 15.

[215] See at World Wide Web URL http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182 .

[216] This division is noticeable in official studies of the ILO. *See A Future Without Child Labour*, *op. cit.* (note 194), at 11.

[217] *Cf.* Herman, V., Vinković, M., *Dječji rad u svjetlu članka 7. Europske socijalne povelje – prilog prilagodbi hrvatskog pravnog sustava odredbama Povelje*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Supplement No. 3, 2003, at 281.

developed ones. By representing a perfidious form of economic child exploitation, they are a part of crime spheres of the above-mentioned countries which are often connected with the organized transnational crime.

Roma children are the most noticeable problem on the streets of all urban centres of the countries that went through or are still going through the process of transitions in Europe. *Prima facie,* they are disproportionally involved in hazardous labour and high risk of poor health, delinquency and poverty.[218] Due to poverty, negligence form the parents' side and the lack of financial possibilities, they, in spite of compulsory legal regulation and the efforts of social services, frequently lose interest in primary and secondary education, and prefer or be forced to earn money primarily by begging, selling, collecting waste and row material, domestics and farm work. Thus, for example, since the war in Bosnia and Herzegovina, child labour has been reported among socially excluded groups such as Roma who now work long hours in informal economy.[219]

Although in the summer of 2005 there was no child labour in the Republic of Croatia according to the official statistics, Roma children have lost their lives while performing farm and agricultural work in the working conditions that are entirely inappropriate to their age (7-13 years of age), health condition, working hours and weather conditions. Considering the possibility that their parents or elder members of the family have not forced them to work, they have, without any doubt, performed the worst form of child labour. The impossibility of a concrete formal charge for forcing children to the worst form of child labour, does not reduce the responsibility of adults, for whom the children work, because they have to be aware of the risk these children have been exposed to. The situation is even more complex when, in the cases of poverty, failure of social services, inadequate and unavailable education possibilities and programmes, the children have no alternative, so child labour, even its worst form, is the only way for survival and nourishment. In that case, without quick and adequate help, all efforts fail before the only meaningful reason "the children's desire to survive".

Consequential to their GDP the developed countries have sufficient financial means to provide adequate social care for their children and future generations of their nation, as well as to those that are under their territory and jurisdiction. In poor countries around the world, the circular nature of poverty does not often offer an alternative on practical, everyday level, because over 790 million people in the world are hungry and without a regular daily meal, whereas 1.2 billion live on less than one dollar a day, which cannot satisfy their basic life necessities.[220] An additional problem is demography which contributes to poverty and implies a high rate of child labour, because 87% (nine out of ten children under 18) of children live in developing countries, and the population of children under 15 comprises 33,6% of the overall population of related countries.[221]

Therefore, poverty is strongly connected with child labour and it contributes to its wide extent, that is, to the satisfaction of demands. While observing child labour as a primary problem of poor families, neoclassical points of view are becoming integrated in the fundamental way of thinking of international organizations such as the UNICEF, the ILO and the WTO. The basic characteristic of their publications represents a moral preoccupation with child labour suppression through legislative and keen dedication to spreading western beliefs in the childhood values to poor families worldwide.[222] We believe that this kind of attitude implies its own internal trap, because it does not notice the necessity of adjustment to different economic conditions and to the degree of development of some societies worldwide.

The high level of child labour is indisputable in most developing countries, that is, in the countries with the lowest gross domestic product. However, although the growth of the GDP reduces the share of child labour, it does not completely disappear. Moreover, not even the World Bank could entirely explain those situations, except for interpreting them as statistic anomalies, cultural differences and a bigger share of child labour in general, in the societies where agriculture is a significant part of the GDP.[223] To those interpretations, one should also add the significance of different manifestations of child labour that exist regardless of the degree of social development and social awareness, so the establishment and implementations of international working standards must include their flexibility to the condition of the related society and the degree of its development.

The countries of the South-Eastern Europe are, due to their economic capacities and the degree of political development, in a better situation than poor countries of Asia and Africa, but they are not immune to the "street children" problem. Abandoned, runaway or separated from the family, they are surviving on the streets of big cities because they are involved in numerous illegal activities and forms of economic exploitation. Over the last two decades of transitions, they have drawn political attention and nongovernmental organization activities.[224] A study which was conducted in Russia, has established that the basic reason for child labour on the streets lies within the family, because only two out of five interviewed children has both parents.[225] Unsteady family conditions reflect even more on children who are involved in child prostitution and other criminal activities[226] as the worst forms of child labour performed on the streets of Russian cities. Poor socio-economic conditions in the family, an affirmative attitude of the parents towards child labour and child's desire for mere survival, most commonly result (in over 50% of cases) in giving the entire earnings to their parents, but also in a prevalent statement, that they started working on their own free will.[227] A bit smaller, but not unimportant, 23.3 % of children claim how they have been forced into the above-mentioned working activities on the streets.[228] Because of the fact that urban centres with available educational system are locations of child labour, this form testifies profound weaknesses of educational systems which are not adjusted to the needs of children and result in the lack of good social care programmes for poor children.

In Romania, the biggest part of street children are involved in begging which takes place on various locations; metro and bus stations, parking lots, supermarkets and generally in crowded places. The risks for their health are most frequently connected with extreme winters and summer temperatures,

[218] *Cf. A Future Without Child Labour, op. cit.* (note 194), at 40.

[219] *Cf.* Bosnia and Herzegovina *National Report on follow-up to the World Summit for Children,* Bosnia and Herzegovina Ministry of Foreign Affairs, 2000, at 14.

[220] *Human Development Report 2000,* United Nations Development Programme, 2000, at 33-34. See in pdf at World Wide Web URL www.undp.org/hdr2000/english/book/ch2.pdf .

[221] *The State of World's Children 1997,* UNICEF, 1997, at 24.

[222] Nieuwenhuys, O., *The Paradox of Child Labour and Anthropology,* Annual Review of Anthropology, Vol. 25, No.1, 1996, at 241.

[223] *Cf.* Bachman, *The Political Economy of Child Labor and Its Impacts on International Business,* Business Economics, Vol. 35, No. 3, 2000, at 35.

[224] *Cf. Action Against Child Labour 2000-2001: Progress and Future Priorities,* International Labour Office and International Programme on the Elimination of Child Labour (IPEC), Geneva, 2001, at 27.

[225] *In-Depth Analysis of the Situation of Working Street Children in the Leningrad Region 2001,* ILO/IPEC Working Paper, International Labour Office, St. Petersburg, 2001, at 28.

[226] *Ibid.*

[227] Alexandrescu, G., *Romania, Working Street Children in Bucharest: A Rapid Assessment,* International Labour Organization and International Programme on the Elimination of Child Labour (IPEC), Geneva, 2002, at 33-34.

[228] *Ibid.*

pollution and car accidents.[229] According to their ethnicity, over 49% of them are Roma children.[230] The Romanian study refers to two aspects in the relationship between education and child labour. Children engagement in the worst forms of child labour leads to a decrease in their school attendance. On the other hand the lack of the necessary resources to go to school proves child labour as the only alternative.[231] The Romanian legislation on child labour prohibits any form of employment of children under 15.[232] The legislation does not separate occasional work that children may perform within the family to help the parents artistic or sporting activities from child labour. The age segment 15-18 is treated differently by the law, the age of 16 is being considered an age of transition from light to industrial work. The fact that the consent of the parents is not compulsory in signing a labour contract for the children age between 16 and 18 places an extra responsibility on this age category.[233]

The reason for economic work for most children in Turkey is to contribute to household income. But, a significant number of children declare that they work simply because it is a family wish.[234] However, in urban places the second most important reason is "to learn a trade".[235] In 1999 57.6% of children were engaged in the agricultural sector, 21.8% in industry, 10.2% in trade and 10.4% in services. It is also significant that 58.8% of children aged 6-17 were employed as unpaid family workers and 39.4% as wage earners (permanent or temporary employees).[236] Not surprisingly, the proportion of female children employed as unpaid family workers is larger than their male counterparts.[237]

TRAFFICKING OF WOMEN AND CHILDREN IN INTERACTION WITH LABOUR MARKET

Except for the analyzed forms of child labour, the transition of these occurrences is significant and spatially and numerically characterized by already mentioned trafficking. Characterized as one of the worst forms of child labour, although not performed by children - they are its object (victims), trafficking is closely related to forced labour. Moreover, Report of an Expert Group on Trafficking in Human Beings, convened by the European Union in 2003, has identified forced labour exploitation as a "crucial element" of the Trafficking Protocol. According to the Report policy interventions should focus on forced labour and services, including forced sexual services, slavery and slavery-like outcomes of trafficking – no matter how people arrive in these conditions – rather than the mechanisms of trafficking itself.[238] In relation to that, states should criminalize any exploitation of human beings under forced labour, slavery or slavery like conditions, in line with the major human rights treaties that prohibit their use.[239]

By recruiting mostly women and children for victims, trafficking[240] is a consequence of

[229] *Cf. ibid.*, at 28.

[230] *Ibid.*

[231] 62.66% of the interviewed children having dropped out of school, and only 34.66% of children work and go to school. *Cf. ibid.*, at 29.

[232] See *The Labour Code*, adopted by Law No. 10/1972.

[233] *Ibid.*

[234] *Child labour in Turkey*, State Institute of Statistics & International Labour Organization, 1999, Table 25.

[235] Ibid.

[236] *Cf. ibid.*, Chart 10.

[237] While in 1994 81.6% and in 1999 78.9% of male children worked as unpaid family workers, the corresponding ratios for female children were 92.8% and 89.7% respectively. *Cf. ibid.*, charts 12, 13 and 14.

[238] *Cf. Report of the Experts group on trafficking in Human Beings*, European Commission, Brussels, December 2004, at 53.

[239] *Ibid.*

[240] In periods of armed conflicts, acts of forced prostitution and trafficking in persons can be prosecuted as war crimes (Art. 8, paragraph 2, subparagraph XXII of the *Rome Statute of the International Criminal Court*, Rome, 15 June – 17 July 1998). Also, trafficking in persons, in particular women and children (as enslavement) is included to the list of crimes against humanity (Art. 7, para. 2).

globalization, a process of "feminization of poverty" and other forms of their economic and social rights violation. The gender difference in this phenomenon is additionally intensified by traditional perception of male-female roles in the society, the lack of women participation in decision-making process on a private level and in public life, economic and social subordinance, that is, an inferior position toward adult, male family members, causing illegal migrations and an increasing risk for potential victims. All these factors contribute to the decision to migrate in search for a better life and consequently make women and children vulnerable to being trafficked. Moreover, women and children also suffer from domestic violence. The study which was conducted in Moldova determined that women are often incapable of reacting to family violence because of economic dependence, the lack of adequate legal protection measures, the fear of worsening the situation and greater exposition to violence and shame, so they are searching for a way out in paid advertisements for attractive jobs in developed countries. Those kinds of ads represent a bait for trafficking of women and children for sexual exploitation.[241] Most of them end up as victims in many brothels in Serbia, Kosovo, the FYR Macedonia, Albania and Bosnia and Herzegovina.

During the 1990s, out of overall 26 million lost work places in all countries in Central and South-East Europe and the former Soviet Union, 14 million belonged to female population.[242] Women absolutely prevailed in the unemployment rate in 1997 experienced as insecure and unwanted work force in the Czech Republic, Poland, Romania, Slovakia, Federal Republic of Yugoslavia, and a permanent growth of unemployment rate was also noticed. Legal systems on this territory at the time did not contain any basic clauses on the prohibition of sexual discrimination on the work place, in payment policies, employment system, professional enhancement and advancement and retirement. The situation has gradually changed by the time, since countries such as Bulgaria, Romania, Croatia, Turkey and Macedonia have focused themselves on the full EU membership, and started a legislation adjustments with the *aquis communautaire* and promoted a concept of equality of genders within their legal systems, but position of women in those countries is still far form the ideal one. Although those countries have been more frequently transit countries for victims of trafficking and smuggling,[243] rather then their final destination, the position of women in them, within the context of transitions that marked them, is still not negligible for getting a broader picture of this phenomenon.

Second Annual Report on Victims of Trafficking in South-East Europe says that trafficking for sexual exploitation remains the predominant form of exploitation experienced by victims originating from and trafficked to South-Eastern Europe.[244] Victims are mostly involved in organized prostitution, and also forced to dance or strip in a variety of different locations – bars, night clubs, street prostitution, escort agencies and private

[241] Kartusch, A., *Reference guide for anti-trafficking legislative review*, Ludwig Boltzman Institute of Human rights, Vienna, September 2001, at 20-21.

[242] *Women in Transition*, The MONEE Report, Regional Monitoring report No. 6, 1999, at 7.

[243] *"Smuggling of migrants"* shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident. Art. 3 (a) of the *Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organised Crime*. According to the definition smuggling implies a degree of consent between the transporting agent and the smuggled individual, while trafficking implies an absence of such consent.

[244] *Cf.* Surtees, R., *Second Annual Report on Victims of Trafficking in South-Eastern Europe 2005*, IOM (International Organisation for Migrations), Geneva, 2005, at 35.

apartments.[245] That kind of inhuman and humiliating treatment as a part of forced sexual exploitation exposes women and girls to unwanted pregnancies, sexual diseases, the risk of AIDS infection and evidences the actions of earnings dispossession and other forms of exploitation.

While trafficking for sexual exploitation has for its victims mostly women and children, and boys in some isolated cases in Romania and Bosnia, labour trafficking involves all gender and age categories. Men usually end up as workers in agriculture, industry and construction in the countries of the EU and Israel, and women as domestic workers and waitresses.[246] In all countries of this territory another form has been noticed - trafficking for begging and delinquency which especially puts girls in danger by being exposed to forced prostitution at night,[247] whereas in Bulgaria some cases of trafficking for adoption appeared.[248]

Women victims, if they have been lucky enough to survive, are severely traumatized by the experienced trafficking, e.g. they have succumbed to many veneral diseases and have been treated without any respect in legal cases because they are often being perceived as perpetrators of criminal actions.

The position of children as victims is even more complex and and represents a sensitive problem. They are victims *par exellance*, due to their psycho-physical condition, personal integrity, emotional and physical vulnerability which detects them as an inferior group, addicted to the adult world. By making them an object of trafficking, is an exemple of severe violation of United Nations *Convention on the Rights of the Child* as a generally accepted instrument for their protection, especially the right to childhood, acting *"in the best interests of the child"*, the right to free and compulsory education, protection from poverty, economical[249]and sexual abuse[250] etc.

Separated from their family and their natural surroundings, exposed to sexual exploitation and worst forms of labour in inappropriate conditions regarding their physical, psychological, moral, spiritual and social development, children represent, for their employers, desirable labour force, because they are capable of performing dull labour over a long period of time, they are not collectively organized and it's easy to intimidate, control, physically abuse and force them to work without being paid. The consequences are, however, immense; death, permanently distracted physical and psychological health, addiction to narcotics, family disintegration and, in connection with early sexual activity, a high degree of infection with sexual diseases and HIV/AIDS, injuries and undesirable pregnancies as well as permanent disorder of the reproductive organs.

Inter alia trafficking mirrors its social dimension, which is in most cases put into the background when faced with the dimension of punishment and violence. Aimed at the victim, its rehabilitation and forms of prevention, this dimension observes multiplied social discrimination; racism, ethnic discrimination, the general discrimination of illegal immigrants, the discrimination of people who are involved in the sexual industry and prostitution and are therefore subject to repetitious and systematic rape, drugging, beating, ID withdrawing and working in conditions deprived of fundamental labour standards and hygienic and health-protective measures.

The negative repercussions on their later life, the social wickedness which annuls the human dignity and turns people into slaves of a new era, the dimension of punishment and organisation of criminal groups which

[245] *Ibid.*

[246] *Cf. ibid.*, at 38.

[247] *Cf. ibid.*, at 39 and 43.

[248] *Cf. ibid.*, at 39-40.

[249] *Cf.* Article 32 of the Convention.

[250] *Cf.* Article 34 of the Convention.

are involved in trafficking, entail only one question. How to confront this global phenomenon?

Its repression implies confrontation with well organized criminal groups, who have access to material means and are infiltrated in various spheres of social life in the countries they live in. The readiness for corruption of the local authorities and the networking of the smuggling chains of the transnational crime, make their detection and braking hard to accomplish. Therefore the countries in those regions must multiply their efforts, strengthen the mutual cooperation and actively, legally and politically support the efforts of the regional international organisations and their applied programs. Law enforcement becomes particularly difficult in parts of the Eastern European countries, where trafficking is not a criminal offence,[251] therefore it's necessary to work systematically on further reforms of legal systems, inducing the necessary changes in the legislative and increasing punishments for the perpetrators. Because the borders of South East European countries are specifically endangered by corruption of customs and immigration authorities and by easy accessible forged documents[252] and the deficiency in equipped units who are supposed to guard the borders. The development of the general social awareness and education has an immense importance as well as the promotion of equality between men and women as equivalent units of the society and entities of the labour relation. While doing so, the promotion of the gender equality must have a thoroughly elaborated strategy, so as not to result in negative implications for women. For example, the praxis in Croatia has shown that anti-discriminatory measures in the context of the equality of genders and long maternity leave had discriminatory effects, because they turned women to undesirable labour force, consequently deepening her subordinate position in the society and in the family.[253]

While observing the victims, we perceive the urge to act from financial and legal assistance to psychological support, and support and protection for the families in the country of origin.[254] The sensibility of the public and the strengthening of the awareness of the danger of trafficking must be pointed towards the population of the concerned countries but also towards the identified individuals and groups at risk. The economical and social alternatives ask for enhanced educational opportunities, improvement encouragement, professional guidance and employment in the countries of the victims' origin[255] as well as adequate rehabilitation programs for women and children.

In the battle against slavery of the 21st century, the role of multinational companies and industries of high developed countries must not be neglected. Their indirect responsibility emerges from the relocation of the labour and production processes to economically undeveloped regions of the world in which they, using social dumping, indirectly applied child labour, often caused by trafficking, as well as took advantage of the absence of some fundamental labour standards. Social labelling and codes of conduct can, in this direction, result in certain positive movements.

[251] Smart, U., *Human trafficking: Simply a European Problem ?*, European Journal of Crime, Criminal Law and Criminal Justice, Vol. 11/2, 2003, at 174.

[252] *Ibid.*

[253] *Cf.* Barković, I., Vinković, M., *Gender Inequality in the Croatian Labour Market – legal and economic aspects*, in: Barković, D. (ed.), *Interdisziplinäre Managementforschung II/Interdisciplinary Management Research II*, J. J. Strossmayer University in Osijek and Pforzheim University of Applied Sciences, Osijek, 2006, at 484 - 504; Vinković, M., *The Motherhood in the Republic of Croatia-Protection of Biological Condition or Discrimination?*, Croatian Yearbook of European Law and Policy, Vol. II, 2006 (to be published).

[254] Aronowitz, A. A., *Smuggling and Trafficking in Human Beings: the Phenomen, the Markets that drive it and the Organizations that promote it*, European Journal on Criminal Policy and Research, Vol. 9, No. 2, 2001, at 187.

[255] *Cf. ibid.*, at. 186.

CHILD SOLDIERS AS THE WORST FORM OF THE CHILD LABOUR

Wars and armed conflicts are socially the hardest acceptable reasons for child labour with far more reaching consequences on the health and a normal integration for the survived children in the everyday life. Children have taken part in armed conflicts since the earliest of times, while in recent times such phenomena have been in most cases a result of pressure, forced recruitment, the loss of parents, poverty, depopulation, refugee status, separation from the family, fear and forced utilisation of narcotics.

Interstate wars have become a very rare appearance in the world, while at the same time the number of internal armed conflicts in which the area of war operations isn't clearly bounded increases, making it very hard to separate the participants of the conflict from the victims.[256] The concern of the public is growing jointly with the assessments that more than 300.000 people younger than 18 are taking part in armed conflicts all around the globe, while more than two million children have been killed in armed conflicts during the last decade, a million remained without parents, six million were injured having sustained serious or permanent consequences.[257] Children younger than 18 have, during 1997 and 1998, participated in armed conflicts in 36 countries, while children younger than 15 have participated in no less than 27 countries.[258]

As ''easy targets" for the idealistic propaganda, indoctrination and the influence of the grown-ups and the media who interpret armed conflicts not as an appearance harmful for children but even present the involved children as heroes,[259] the children are also being recruited voluntarily. However, the Convention 182 confined itself only to forced and compulsory recruitment of children (younger than 18) in armed conflicts, as the worst possible form of child labour.[260] By setting up the age census of 18 years, the Convention went a step further than the other international instruments of that time which predominantly set up an age census of 15 years.[261] Furthermore, children younger than 18 enjoy all the privileges guaranteed by the regulations of the 1989 United Nations Convention on the Rights of the Child, except for the recruiting into their armed forces.[262]

After the fall of the former Yugoslavia the newly founded states were imposed the war which devastated Croatia and Bosnia and Herzegovina, while Macedonia would be, 10 years later, exposed to armed conflicts between the local population and its organized armed detachments and the regular armed forces. Information about the children in Croatia and their participation in the war of is not available and is a part of personal findings of the author of this paper. In fact Croatia has, during the imposed war, reported cases of boys who were 16 and who voluntarily reported to army detachments. In Bosnia and Herzegovina, the situation is somewhat different due to the United Nations Reports. According to them in the northern part of Bosnia and Herzegovina in 1996, children aged 16-18 were caught up in forced labour brigades digging trenches, moving supplies, evacuating dead and wounded soldiers, acting as human shields, harvesting crops, cutting firewood and working in factories without payment. It is notable that most of them were from socially excluded groups among the Muslim, Croat and Roma communities.[263] In Macedonia there are indications of not only voluntary but even forced recruiting of children (under fifteen - UN standard, and under eighteen - national legislative standard) for "OVK" on the part of "OVK" in a number of European Countries.[264]

Due to their age and unobtrusiveness, it is possible to train children for a whole variety of useful but no less dangerous tasks, such as spying, carrying messages, luring the enemy out, clearing mines etc.[265]

However, in spite of everything, participation of children in armed conflicts presents undoubtedly a form of child abuse having very serious consequences including the post-traumatic stress disorder (PTSD), behavioural, cognitive, emotional and mental disorders,[266] the inability to integrate the survived children in a civil life later on, a criminal activity and other problems which require medical, psychological, spiritual and educational help in the processes of reintegration.[267] This all is a sufficient reason enough for international community to persist on lifting up the age census for participation in armed conflicts, in all relevant international instruments, on the age of 18. Formal accusations, such as those in Ruanda, that children have taken part in carrying out the crime of genocide, is a civilisation and moral shame of the society of the 21st century, which must not be repeated.

DO INTERNATIONAL LEGAL INSTRUMENTS OFFER SUFFICIENT LEVEL OF PROTECTION? – CONCLUDING REMARKS

Elaborated problems which marked processes of transition and armed conflicts in South- Eastern Europe impose the question of whether and up to which extent the international mechanisms are sufficient in protecting the victims of the child labour and its worst forms, forced labour, slavery and slavery like practice, gender inequality and trafficking.

The ILO Convention No. 182 undoubtedly went a step further than Convention No. 138 in protecting children from the worst forms of the child labour, increasing a minimum age level to 18 years for a hazardous work. However, a tripartite structure and fairly week implementation mechanisms[268] of the

[256] Harvey, R., *Children and Armed Conflict,* A Guide to international humanitarian and human rights law, International Bureau for Children's Rights, 2003, at 5.

[257] It is about the figures brought out by the special representative of the Secretary General of the UN for Children in Armed Conflicts. The figures comprise the period by February 1999. See UNSC Press RelaseSC/6642, *Plight of Civilians in Armed Conflict at Core of Security Council's Mandate,* Canada's Foreign Minister Tells Council, 12 February 1999, at 4 or *Report of the Secretary General to the Security Council on the implementation of resolution 1261 (1999) on children in armed conflict,* United Nations General Assembly, 55th Session, United Nations, New York, 2000.

[258] McManimon, S., *Use of Children as Soldiers,* Foreign Policy in Focus, Vol. 4, No. 2, November 1999, at 1.

[259] De Silva, H., Hobbs, C., Hanks, H., *Conscription of Children in Armed Conflict – A Form of Child Abuse. A study of 19 former Child Soldiers,* Child Abuse Review, Vol. 10, No. 2, 2001, at 126.

[260] *Cf.* Article 3(a) of the *ILO Convention No. 182.*

[261] The 1977 Additional Protocol I to the 1949 Geneva Conventions "The parties of the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces." (Article 77(2)); 1977 Additional Protocol II (internal conflicts) "Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities." (Art. 4(3) (c)).

[262] Art. 38 of the UN Convention on the Rights of the Child:

"2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those people who have attained the age of fifteen years but who have not attained age of eighteen years States Parties shall endeavour to give priority to those who are oldest".

[263] *Situation in the region of Banja Luka, northern Bosnia and Herzegovina,* Periodic Report of the Special Rapporteur of the Commission on Human Rights, United Nations, E/CN.4/1996/3, 1995.

[264] Bachanovic, O., *Victimization of Children and Modern Armed Conflicts with a Special Emphasis on the Situation in Macedonia,* European Journal of Crime, Criminal Law and Criminal Justice, Vol. 10, No. 2 - 3, 2002, at 167 - 168.

[265] Steiner, H. J., Alston, P., *International Human Rights in Context, Law, Politics, Moral,* Second Edition (First published 2000), Oxford University Press, 2000, at 534.

[266] De Silva, Hobbs, Hanks, *op. cit.* (note 259), at 125.

[267] McManimon, *loc. cit.* (note 258).

[268] "...the ILO conventions do not even have reporting or international examination requirements". See Silk, J.,

International Labour Organisation are inadequate in protection from the wide spectrum of the negative reflections which affect children and women in transitions and armed conflicts. Considering the fact that those activities are very often a part of the informal economy where regular employers and trade unions do not have much influence[269], the legal protection of the involved victims is far from adequate, and the criminal liability of the perpetrators is left to national legislative mechanisms of the involved countries. Adopting *Declaration on fundamental principles and rights at work*[270]in 1998, ILO had set fundamental principles and rights on universal level by adopting *core* conventions. According to the Article 2, Declaration proclaims the respect, promotion and realisation of the four fundamental principles and rights at work that are covered by the eight *core* conventions.[271] For the purpose of this paper, the main three from four principles are, as follows: 1) the elimination of all forms of forced or compulsory labour, 2) the effective abolition of the child labour, and 3) the elimination of discrimination in respect of employment and occupation. The specificity of the Declaration is in the binding upon all Member States, but without intention to impose new legal obligations for the states that did not ratify some or all of the *core* conventions.[272] Its intention is to fortify the importance of current fundamental rights, hold within the Constitution of the ILO, throughout the social policies, justice and democratic institutions of the Member states as inseparable factors in economic growth, social progress and eradication of poverty.[273]

The United Nations, as universal international organization, have fortified the legal status of the child in time of above mentioned circumstances by the provisions of *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*[274] and *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts.*[275] Obligating the states on incrimination of the sale of children and their sexual exploitation in prostitution and child pornography[276] the *Protocol* has also determined the commitment to promote awareness in the public at large of the preventive measures and harmful effects on the such forms of exploitation, in relation to ensuring appropriate assistance to the victims of such offences, including their full social reintegration and their full physical and psychological recovery.[277]

The protection of women through the sources of the UN, as well through legislative activities of the ILO, is focused on affirmation of the principle of equal treatment in society and community at large and business and family environment. However, only true commitment in overcoming deeply routed

Makonnen, M., *Ending Child Labour: A Role for International Human Rights Law?*, Saint Luis University Public Review, Vol. 22, 2003, at 363.

269 *Cf.* Alexander, S., Meuwese, S., Wolthuis, A., *Policies and Developments to the Sexual Exploitation of Children; the Legacy of the Stockholm Conference,* European Journal on Criminal Policy and Research, Vol. 8, No. 4, 2000, at 486.

270 World Wide Web URL http://www.ilo.ch/dyn/declaris/DECLARATIONWEB.static_jump?var_language=EN&var_pagename=DECLARATIONTEXT

271 Core ILO Conventions; *Convention No. 87* and *Convention No. 98* (on Freedom of association and collective barging), *Convention No. 29* and *Convention No. 105* (on Elimination of forced and compulsory labour), *Conventions No. 100* and *111* (on Elimination of discrimination in respect of employment and occupation) and *Conventions No. 138* and *182* (on Abolition of child labour).

272 Hanson, K., Vandaele, A., *Working children and international labour law: A critical analysis,* International Journal of Children's Rights, Vol.11, No. 1, 2003, at 110.

273 *Ibid.*

274 *Official Gazette of the Republic of Croatia – International Treaties,* No. 5, 2002.

275 *Official Gazette of the Republic of Croatia – International Treaties,* No. 5, 2002.

276 See Art. 3 of *the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.*

277 See Art. 9 (2) and (3) of the same Protocol.

prejudice about gender roles, as well as social perception on distribution of family obligations, can result in promotion of gender equality and empower of women as one out of eight *Millennium Development Goals*.[278]

All, in this paper mentioned and analyzed international sources, from area of the International Humanitarian Law as well from the International Labour Law, *prima facie* have substantial and nomotechnical quality of contained provisions in common interaction and supplementation. But often, their implementation mechanisms capitulate in confrontation with poverty, transitions, armed conflicts and transitional organised crime.

International cooperation among states and international organisations, stronger public awareness in highly developed countries, and development countries, a fight for quality and free public education and awareness of the international companies on adverse effects of social dumping, transition and globalization, are the elements of partial solution of the problems which deeply affect the world on doorstep of the New Millennium.

278 The eight Millennium Development Goals with target date of 2015 are; 1) eradicate extreme poverty and hunger, 2) achive universal primary education, 3) promote gender equality and empower women, 4) reduce child mortality, 5) Improve maternal health, 6) combat HIV/AIDS, malaria and other diseases, 7) ensure environmental sustainability and 8) develop global partnership for development. See World Wide Web URL http://www.un.org/millennium goals/index.asp .

BIBLIOGRAPHY

1. A Future Without Child Labour, Global Report under the Follow up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Office, Geneva, 2002.
2. Action Against Child Labour 2000-2001: Progress and Future Priorities, International Labour Office and International Programme on the Elimination of Child Labour (IPEC), Geneva, 2001.
3. Addressing the Needs of Women Affected by Armed Conflict, An ICRC Guidance Document, ICRC, March 2004.
4. Alexander, S., Meuwese, S., Wolthuis, A., Policies and Developments to the Sexual Exploitation of Children; the Legacy of the Stockholm Conference, European Journal on Criminal Policy and Research, Vol. 8, No. 4, 2000.
5. Alexandrescu, G., Romania, Working Street Children in Bucharest: A Rapid Assessment, International Labour Organization and International Programme on the Elimination of Child Labour (IPEC), Geneva, 2002.
6. Aronowitz, A. A., Smuggling and Trafficking in Human Beings: the Phenomen, the Markets that drive it and the Organizations that promote it, European Journal on Criminal Policy and Research, Vol. 9, No. 2, 2001.
7. Bachanovic, O., Victimization of Children and Modern Armed Conflicts with a Special Emphasis on the Situation in Macedonia, European Journal of Crime, Criminal Law and Criminal Justice, Vol. 10, No. 2-3, 2002.
8. Bachman, S. L., A New Economics of Child Labor: Searching for Answers Behind Headlines, Journal of International Affairs, Vol. 53, No. 2, Spring 2000.
9. Bachman, The Political Economy of Child Labor and Its Impacts on International Business, Business Economics, Vol. 35, No. 3, 2000.
10. Barić, Nikica, *Srpska pobuna u Hrvatskoj 1990 – 1995*, Golden marketing, Zagreb, 2005.
11. Barković, I. , Vinković, M., Gender Inequality in the Croatian Labour Market – legal and economic aspects, in: Barković, D. (ed.) , Interdisziplinäre Managementforschung II/Interdisciplinary Management Research II, J. J. Strossmayer University in Osijek and Pforzheim University of Aplied Sciences, Osijek, 2006.
12. Bilandžić, Dušan *et al.*, *Rat u Hrvatskoj i Bosni i Hercegovini 1991 – 1995*, Nakla-

da Jesenski i Turk/DANI, Zagreb/Sarajevo, 1999.

13. Bilandžić, Dušan, *Hrvatska moderna povijest*, Golden marketing, Zagreb, 1999.
14. Bosnia and Herzegovina National Report on follow-up to the World Summit for Children, Bosnia and Herzegovina Ministry of Foreign Affairs, 2000.
15. Boyden, J., The Impact of Children's Activities (Work and School) on their Wellbeing and Development, Report for the Conference Child Centered Approaches to Child Work Issues, Oslo, 20- 21 April 1999.
16. Bugnion, François, The International Committee of the Red Cross and the Protection of War Victims, International Committee of the Red Cross, 2003.
17. Cassese, Antonio, International Law, Second Edition, Oxford University Press, 2005.
18. Charter of the United Nations, Narodne novine – Međunarodni ugovori, br. 15/1993; ispravak u br. 7/1994.
19. Child labour in Turkey, State Institute of Statistics & International Labour Organization, 1999.
20. Consideration of Reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Initial and second periodic report of States Parties, Albania, CEDAW/C/ALB/1-2, 23 May 2002.
21. Consideration of Reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Sixth periodic report of States Parties, Romania, CEDAW/C/ROM/6, 15 December 2003.
22. Consideration of Reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined initial, second and third periodic reports of States Parties, Bosnia and Herzegovina, CEDAW/C/BIH/1-3, 18 April 2005.
23. Consideration of Reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined second and third periodic reports of States Parties, Croatia, CEDAW/C/CRO/2-3, 27 October 2003.
24. Consideration of Reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Second and third periodic reports of States Parties, Bulgaria, CEDAW/C/BGR/2-3, 3 November 1994.
25. Consideration of Reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined initial, second and third periodic reports of States Parties, The former Yugoslav Republic of Macedonia, CEDAW/C/MKD/1-3, 5 August 2004.
26. Consideration of Reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined second and third periodic reports of States Parties, Moldova, CEDAW/C/MDA/2-3, 10 November 2004.
27. Cooper, J., Child Labour, Legal regimes, market pressures and the search for meaningful solutions, International Journal, Vol. 52, No. 3, Summer 1997.
28. Cullen, H., The limits of international trade mechanisms in enforcing human rights: The case of child labour, The International Journal of Children's Rights, Vol. 7, No. 1, 1999.
29. De Silva, H., Hobbs, C., Hanks, H. , Conscription of Children in Armed Conflict – A Form of Child Abuse. A study of 19 former Child Soldiers, Child Abuse Review, Vol. 10, No. 2, 2001.
30. Every Child Counts, New Global Estimates on Child Labour, International Programme on the Elimination of Child Labour (IPEC) & Statistical Information and Monitoring Programme on Child Labour (SIMPOC), International Labour Office, Geneva, April 2002.
31. First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (GC I), Narodne novine – Međunarodni ugovori, br. 5/1994.
32. Fisher, Siobhán K., Occupation of the Womb: Forced Impregnation as Genocide, Duke Law Journal, Volume 46, October 1996, Number 1.
33. Fourth Geneva Convention relative to the Treatment of Civilian Persons in Time of War (GC IV), Narodne novine – Međunarodni ugovori, br. 5/1994.
34. Hanson, K., Vandaele, A., Working children and international labour law: A critical analysis, International Journal of Children's Rights, Vol.11, No. 1, 2003.
35. Harvey, R., Children and Armed Conflict, A Guide to international humanitarian and human rights law, International Bureau for Children's Rights, 2003.
36. Henckaerts, Jean-Marie; Doswald-Beck, Louise, Customary International Humanitarian Law, Volume I: Rules, Cambridge University Press, 2005.
37. Henckaerts, Jean-Marie; Doswald-Beck, Louise,(ed.), Customary International Humanitarian Law, Volume II: Practice, Part 1, Cambridge University Press, 2005.
38. Henckaerts, Jean-Marie; Doswald-Beck, Louise,(ed.), Customary International Humanitarian Law, Volume II: Practice, Part 2, Cambridge University Press, 2005.
39. Herman, V., Vinković, M., Dječji rad u svjetlu članka 7. Europske socijalne povelje – prilog prilagodbi hrvatskog pravnog sustava odredbama Povelje, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Supplement No. 3, 2003.
40. ICTY Annual Report 1994, A/49/342 - S/1994/1007, 29 August 1994.
41. ICTY Annual Report 1995, A/50/365 - S/1995/728, 23 August 1995.
42. ICTY Annual Report 1996, A/51/292 - S/1996/665, 16 August 1996.
43. ICTY Annual Report 1997, A/52/375 - S/1997/729, 18 September 1997.
44. ICTY Annual Report 1998, A/53/219 - S/1998/737, 10 August 1998.
45. ICTY Annual Report 1999, A/54/187 - S/1999/846, 25 August 1999.
46. ICTY Annual Report 2000, A/55/273 - S/2000/777, 7 August 2000.
47. ICTY Annual Report 2001, A/56/352 – S/2001/865, 17 September 2001.
48. ICTY Annual Report 2002, A/57/379 – S/2002/985, 4 September 2002.
49. ICTY Annual Report 2003, A/58/297 – S/2003/829, 20 August 2003.
50. ICTY Annual Report 2004, A/59/215 – S/2004/627, 16 August 2004.
51. ICTY Annual Report 2005, A/60/267 – S/2005/532, 17 August 2005.
52. In-Depth Analysis of the Situation of Working Street Children in the Leningrad Region 2001, ILO/IPEC Working Paper, International Labour Office, St. Petersburg, 2001.
53. Kartusch, A., Reference guide for anti-trafficking legislative review, Ludwig Boltzman Institute of Human rights, Vienna, September 2001.
54. Krill, Françoise, The Protection of Women in International Humanitarian Law, Extract from the International Review of the Red Cross, November – December 1985.
55. Laczko, Fran; Klekowski von Koppenfels, Amanda; Barthel, Jana, *Trafficking in Women from Central and Eastern Europe: A Review of Statistical Data, in: New Challenges for Migration Policy in Central and Eastern Europe*, Laczko, Fran *et al.* (ed.), International Organization for Migratioan (IOM), International Centre for Migration Policy Development and T.M.C. Asser Press, The Hague, 2002.

56. Lindsey, Charlotte et al., Women Facing War, ICRC Study on the Impact of Armed Conflict on Women, ICRC, October 2001.
57. McManimon, S., Use of Children as Soldiers, Foreign Policy in Focus, Vol. 4, No. 2, November 1999.
58. Nieuwenhuys, O., The Paradox of Child Labour and Anthropology, Annual Review of Anthropology, Vol. 25, No.1, 1996.
59. Nussbaum, Martha; Glover, Jonathan (Ed.), Women, Culture and Development, A Study of Human Capabilities, Clarendon Press, Oxford, 1995.
60. Osofsky, Hari M., *Domesticating International Criminal Law: Bringing Human Rights Violators to Justice*, The Yale Law Journal, Vol. 107, No. 1, October 1997.
61. Otis, J. , Mayers Pasztor, E. , McFadden, E. J. , Child Labor: A Forgotten Focus for Child Welfare, Child Welfare, Vol. 80, No. 5, Sep/Oct 2001.
62. Pellandini, Cristina (ed.), National Measures to Repress Violations of International Humanitarian Law (Civil Law Systems), Report on the Meeting of Experts, International Committee of the Red Cross, Geneva, 2000.
63. Picard, L., Why new international instruments on child labour?, in: Protecting children in the world of work, Labour Education, No. 108, 1997/3, International Labour Office, Geneva, 1997.
64. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (AP I), Narodne novine – Međunarodni ugovori, br. 5/1994.
65. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (AP II), Narodne novine – Međunarodni ugovori, br. 5/1994.
66. Pupavac, Vanessa, *Disputes Over War Casualties in Former Yugoslavia*, The Radical Statistic Journal, No. 69/1998.
67. Report of the Experts group on trafficking in Human Beings, European Commission, Brussels, December 2004.
68. Report of the Secretary - General Pursuant to Res. 844 (1993), S/1994/555, 9 May 1994.
69. Report of the Secretary General to the Security Council on the implementation of resolution 1261 (1999) on children in armed conflict, United Nations General Assembley, 55th Session, United Nations, New York, 2000.
70. Report of the Secretary General to the Security Council on the protection of civilians in armed conflicts, S/1999/957, 8 September 1999.
71. Report of the Secretary-General on the protection of civilians in armed conflict, S/2005/740, 28 November 2005.
72. Resolution of the UN Security Council, S/RES/827 (1993), 25 May 1993.
73. Resolution of the UN Security Council, S/RES/941 (1994), 23 September 1994.
74. Rudolf, Davorin, *Rat koji nismo htjeli*, Nakladni zavod Globus, Zagreb, 1999.
75. Sandoz, Yves et al. (ed.), Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, International Committee of the Red Cross, Geneva, 1987.
76. Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (GC II), Narodne novine – Međunarodni ugovori, br. 5/1994.
77. Silk, J., Makonnen, M., Ending Child Labour: A Role for International Human Rights Law?, Saint Luis University Public Review, Vol. 22, 2003.
78. Situation in the region of Banja Luka, northern Bosnia and Herzegovina, Periodic Report of the Special Rapporteur of the Commission on Human Rights, United Nations, doc. E/CN.4/1996/3, 1995.

79. Smart, U., Human trafficking: Simply a European Problem?, European Journal of Crime, Criminal Law and Criminal Justice, Vol. 11/2, 2003.
80. Smith, Rhona K. M., Textbook on International Human Rights, Second Edition, Oxford University Press, 2005.
81. Statute of the International Criminal Tribunal for the Former Yugoslavia (updated), The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, Public Information Services, April 2004.
82. Steiner, H. J., Alston, P. , International Human Rights in Context, Law, Politics, Moral, Second Edition (First published 2000), Oxford University Press, 2000.
83. Surtees, R., Second Annual Report on Victims of Trafficking in South-Eastern Europe 2005, IOM (International Organisation for Migrations), Geneva, 2005.
84. Tabeau, Ewa; Bijak, Jakub, *War-related Deaths in the 1992–1995 Armed Conflicts in Bosnia and Herzegovina: A Critique of Previous Estimates and Recent Results*, European Journal of Population, Vol. 21, June 2005.
85. The Geneva Conventions of 12 August 1949, Commentary on the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, First Reprint, International Committee of the Red Cross, Geneva, 1995.
86. The Geneva Conventions of 12 August 1949, Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, First Reprint, International Committee of the Red Cross, Geneva, 1994.
87. The Geneva Conventions of 12 August 1949, Commentary on the Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, First Reprint, International Committee of the Red Cross, Geneva, 1994.
88. The Geneva Conventions of 12 August 1949, Commentary on the Third Geneva Convention Relative to the Treatment of Prisoners of War, First Reprint, International Committee of the Red Cross, Geneva, 1994.
89. The New Encyclopedia Britannica, Vol. 3, Encyclopedia Britannica, Inc., 1998.
90. The State of World's Children 1997, UNICEF, 1997.
91. The World Book Encyclopedia, World Book International, Vol. 3, USA, 1994.
92. Third Geneva Convention Relative to the Treatment of Prisoners of War (GC III), Narodne novine – Međunarodni ugovori, br. 5/1994.
93. UNSC Press RelaseSC/6642, Plight of Civilians in Armed Conflict at Core of Security Council's Mandate, Canada's Foreign Minister Tells Council, 12. 2. 1999.
94. Women in Transition, The MONEE Report, Regional Monitoring report No. 6, 1999.
95. Yoo, John, *Using Force*, The University of Chicago Law Review, Vol. 71, No. 3, Summer 2004.