

## **Book Launch**

### **Prosecuting Conflict-Related Sexual Violence at the ICTY**

**Eds Baron Brammertz and Michelle Jarvis**

#### **Judith Gardam**

In my few words today I cannot hope to do justice to this work but I hope I can give you a sense of its richness in terms of detail and scholarship and the importance of its contribution to the literature in the field. But I also want to give you a sense of Michelle, the co-editor of this work, and the author or co-author of, as far as I can see, a majority of its Chapters, a truly breathtaking achievement for someone who has such a demanding job as Deputy to the Prosecutor of the ICTY and has a full and busy private life with her family and her many friends. I think and hope you will find it of interest to learn a little about how a quiet and unassuming young girl but, as it turns out, one of steely determination from a tiny town in the North of SA came to play such a major role in such an important milestone in the literature of international criminal law as the work I am launching today.

With that in mind I will share with you an anecdote that was the starting point of her unrivalled expertise in International Humanitarian Law (IHL) and also a very concrete example of what feminism is all about at the coal face. It arose in the early 1990's in the context of the US based student Jessup international law moot competition. Adelaide Law School had for some years failed to deliver in this competition. Two male students who had competed in the previous year in the national competition to no avail were determined to have another go. Consequently, when the time came for selection of the team that would represent Adelaide Law School they assumed that they were basically in charge and not me in my role as the Faculty Adviser to the team. However, four female students came to see me, one of whom was Michelle, to say that these young guys didn't mind some of them being on the five person team. Their participation must, however, be limited to the handmaiden's task of writing the argument that the male members of the team namely, they, would present in the prestige part of the competition, the oral arguments. This particular approach had little appeal to me. I told them that as far as I was concerned everyone on the team could have a go. They then refused to participate at all muttering prophecies of doom, disaster and disgrace to me and the Law School. The women went ahead in the competition (I might add with a male researcher) and the joy of it was as rank outsiders they not only won the competition at the national level but reached the quarter finals at Washington, clad not in the customary masculine black suit but in all colours of the rainbow.

Why I relate this story is not only to demonstrate a triumph for women but because a significant part of the moot problem concerned IHL. In those days before the proliferation of international tribunals and their national counterparts, IHL was not part of the armoury of the average international lawyer, let alone an undergraduate

student but was a somewhat arcane speciality confined in the main to a group of white Swiss men in Geneva and the military. I would be surprised if Michelle had ever heard of IHL before the mooted competition but she took on the whole responsibility for presenting the oral arguments on IHL. It was a very steep learning curve but it was then that I believe her passion was born for not only IHL but also that of the role of an advocate. And perhaps also her determination to make a difference for women.

After making light of the many boulders that she has encountered in her journey she has lived her dream and without doubt through her hard work, commitment and talent has made such a difference, as this work demonstrates, to how conflict-related gender-based violence is viewed at an international level and how it will be prosecuted in the future.

But Michelle has also a strong scholarly bent. She both enjoys and is stimulated by ideas and their written expression and the work under consideration is a fine example of her abilities in this area. I would not have needed to see her name on the book to identify her hand in it, in particular its carefully thought out structure, its unrivalled detail and the awe inspiring footnotes.

The book that we are celebrating today has its provenance in the establishment in 2009 by the Office of the Prosecutor (OTP) of a working group on prosecuting sexual violence crimes in armed conflict. The book is the outcome of this working group and is jointly edited by the Prosecutor of the ICTY, Serge Brammetz and Michelle and all the contributors are current or past staff members of the Office of the Prosecutor.

The literature on international criminal law and gender-based crimes has proliferated since the establishment of the ICTY and the other international criminal tribunals that have followed. It is not unreasonable to ask what does this particular work offer that is new and distinguishes it from this multitude of other publications in the field. First of all it is interesting – in fact quite riveting in places, although dealing with awful events that are difficult to comprehend in the scale of their horror. In terms of coverage the editors have wisely excluded areas where the existing literature is extensive as in the case of the definition of sexual violence crimes. Moreover, unlike many works that have chapters by different authors the present work is an integrated whole and you are not left with the impression that the authors never actually spoke to each other. This work was extensively work-shopped over a number of years and the end result reflects this with its seamless nature.

What this book offers in terms of substance is an invaluable historical account from this path-breaking international criminal tribunal of its quest for accountability and the end of impunity for gender crimes in times of armed conflict. This account is unique and will be of inestimable assistance to practitioners and scholars in the years to come. The book is a candid review of the record of the ICTY in this area and reflects on where they got it right and where they got in wrong.

But the authors whilst recognising that the historical record was important were far more ambitious for this work. They wanted to share their 20 years' experience, in

particular that as international criminal prosecutors, and the insights gained from it in the belief that this would be of assistance to those following in their efforts to achieve advances in accountability for gender crimes. The work documents how considerable obstacles were overcome to achieve prosecutions from events that are described in the preface by the head of UN Women as constituting “[o]ne of history’s greatest silences-sexual violence in armed conflict”. The Statute of the ICTY makes only limited references to sexual violence therefore a considerable shift in attitudes was necessary to achieve this outcome. The entrenched myths about gender-based violence had to be confronted and overcome, such as that sexual violence, unlike other conflict related crimes, is personal and isolated and unless widespread and strategic is not a core part of the prosecutors’ work; that sexual violence is not as serious as other war crimes; that it is too difficult to prove or to link to senior officials. And it is obvious from this book that this was not an easy task and much of this resistance appears to have been coming from within the OTP itself. This resistance is documented carefully and calmly but I think you have to read a little between the lines here to appreciate just what this task involved, the patience, commitment and constant dedication of those who were determined to achieve change.

In terms of facilitating accountability for gender crimes, one of the most powerful impressions for me on reading this work as an outsider, is the creativity displayed over a number of years by some in the OTP as to how best to formulate the charges so as to include sexual violence. In particular these individuals were determined that individual cases of rape or sexual violence would take their rightful place in the category of war crimes, such as *inter alia* torture, crimes against humanity or genocide. It makes quite engrossing reading. They had their failures that await another day but they succeeded in some 93 out of 161 cases that have gone to trial at the time of writing (the outcomes are contained in Annex B to the work). The book also reveals that the issue of sexual violence against men was placed in context within the OTP: dealt with fairly but firmly and although horrific not allowed to become a diversion from the main focus when talking about sexual violence in armed conflict, namely, its endemic nature for women in such times that has been ignored or belittled for centuries.

Although this work deals with accountability the authors are well aware that prevention is better than a cure. It is thus a forward-looking work that not only carefully and painstakingly documents the work of the Tribunal in terms of accountability, but also provides invaluable insights and recommendations as to how work of international prosecutors can support prevention strategies over and above the deterrent effect of prosecutions. To take just one example, the authors recommend and have themselves commenced developing evidentiary indicators of the foreseeability or predictability of the occurrence of sexual violence in armed conflict situations that will indicate awareness of such eventualities. Such information can serve several functions and can be useful to a wide range of actors not limited to prosecutors.

In conclusion Michelle and her colleagues’ work at the Tribunal has quite simply changed the world and we can see from this book how they achieved this against the odds. No longer can those involved in armed conflict regard gender-based violence

as part of the price of doing business, as the spoils of war or just boys being boys. They can no longer feel confident that despite some public posturing at the end of the day impunity remains the norm. Michelle and her colleagues should be congratulated on what they have achieved and is so vividly brought to life in this book.