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[* Gay J. McDougall, Systematic rape, sexual slavery and slavery-like practices during armed conflict, UN Doc. E/CN.4/Sub.2/1998/13 (22 June 1998) " 2

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가	1 - 6
I.	7 - 19
A.	9 - 12
B.	13 - 19
.	20 - 33
A.	21 - 26
B.	27 - 33
.	34 - 73
A.	38 - 45
B.	46 - 47
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.	85 - 87
.	88 - 90
.	91 - 100
A.	91 - 94
B.	95 - 100
.	101 - 109
.	110 - 115

Gay J. McDougall()

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가

1. 45 (' ')
(Linda Chavez)
2. 46 , 47
가 (:)
1994/ 103
(working paper) 47
3. (E/CN.4/Sub.2/ 1995/38)
1995/ 14
가 (制裁)
(E/CN.4/Sub.2/ 1996/26) 48
4. 1997 5 49
가
(E/CN.4/Sub.2/ 1997/ 12) . 49
1997/ 114
(Gay J. McDougall)
5. .¹⁾
(s lavery)
6. 가 2
가 ' '(comfort stations) 20
(humanitarian law)
(crimes
against humanity)

1) : Stephen
Bowen, Mark Bromley, Alice M. Miller Alison N. Stewart. 가
: Kelly Askin, M. Cherif Bassiouni, Diane
Orentlicher, Patricia Viseur Sellers David Weissbrodt.

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camp)

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(*jus*
(rape

A.

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(交戰者)

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11.

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12. 가

(impunity) 가 가
2 가 가
(the International Criminal Tribunal for the Former Yugoslavia)
(the International Tribunal for Rwanda)

(: UN
1998 7 17 Doc. A/CONF.183/9(17 July 1998))
, 가

(venue),
가 가
가 (non-State actors)

B.

13.

.2) 가 가 가
가 가 : 1990 12 20 48/104
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¹(Declaration on the Elimination of Violence against Women)

2) Hilary Charlesworth, Christine Chinkin and Shelley Wright, "Feminist approaches to international law", *American Journal of International Law*, vol. 85, 1991

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14. 가

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15. , 가

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.3)

16. , ' ' (honour)

17. , " " (systematic)

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가 "

()" (sexual)

" "

(動産)

가

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가

18. , (gender implications)

(,)

가

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가

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(sexuality) ,

3) Madeline Morris, "By force of arms: rape, war, and military culture", *Duke Law Journal*, vol. 45, 1996.

가 . 4)

19. .5) 2 가 가 (新法)

20. ' (at tempt) ' (conspiracy), ' (inciting) ' (soliciting), ' (aiding and abetting)

A.

21. (sexuality) 가 .6)

22. 가 가 (the .7)

4) “ (gender) , 가 (gender) ‘ (sex) .” Donna Sullivan, *Integration of Women's Human Rights into the Work of the Special Rapporteurs* (New York: UNIFEM, 1996).

5) Beijing Declaration and Platform for Action (A/CONF.177/20), paras. 131- 149; Radhika Coomaraswamy, Report of the Special Rapporteur on violence against women, its causes and consequences (E/CN.4/ 1998/54), paras. 8- 18 .

6) M. Cherif Bassiouni, *Sexual Violence: An Invisible Weapon of War in the Former Yugoslavia*, Occasional Paper No. 1, International Human Rights Law Institute, DePaul University College of Law (1996), p. 3.

7) Human Rights Watch, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath*, New York, (1996) p. 62.

Office of the Prosecutor)

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(係)

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.8)

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.10)

(working definitions),

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(affirmative defense)

.12)

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.13)

26 .

"(systemic)

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8) International Criminal Tribunal for the Former Yugoslavia (ICTFY), *Prosecutor v. Tadic*, Case IT-94-1-T (Trial Chamber Judgment of 7 May 1997)

9) ICTFY, Indictment of Miljkovic and Others, Case IT-95-9-I (21 July 1995) para. 31.

10) Rape and Sexual Assault: A Legal Study. Final Report of the United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992) (S/1994/674/Add.2 (Vol. I), annex II), para. 2.

11) Ibid., note 4. ("

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12) ICTFY, Rules of procedure and evidence, (as amended on 25 July 1997), rule 96 (Evidence in cases of Sexual Assault); International Tribunal for Rwanda, Rules of procedure and evidence, entered into force 29 June 1995.

13) Ibid.

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B.

27. 1926

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" "(s lavery)

28.

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29.

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(危害)

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30. " ()"(sexual)

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. 16)

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. 17)

14) M. Cherif Bassiouni, "Enslavement as an International Crime", *New York University Journal of International Law and Politics*, vol. 23 (1991), p. 458.

15) ICTFY, Indictment of Gagovic and Others, case IT-96-23-I (26 June 1996) [hereinafter *Foca Indictment*].

16) Betsy Apple, *School for Rape: The Burmese Military and Sexual Violence* (1998), p. 49.

17) Coomaraswamy, (E/CN.4/1998/54, para. 42).

40.

(gender)

(persecution)

(正義)

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41.

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(Control Council)

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"(inhumane acts)

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44.

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(enslavement)

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3 30)

Journal of International Law, vol. 87, 1993, p. 428.

26) M. Cherif Bassiouni, *Crimes against Humanity in International Criminal Law* (Dordrecht, Boston: M. Nijhoff, 1992), p. 251. : “

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27) Charter of the International Military Tribunal, Nürnberg, art. 6 (c); Charter of the International Military Tribunal for the Far East, art. 5 (c); Allied Control Council Law No. 10, Punishment of Persons Guilty of War Crimes against Peace and against Humanity, art. 1 (c).

28) Ibid. Commission of Experts Report (S/1994/674), para. 107

29) Security Council resolution 827 (1993), annex.

30) Security Council resolution 955 (1994), annex.

45.

Foca

(準)

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(公海)

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31) *Foca* Indictment, *supra* note 15, Counts 56, 57, 61 and 62, paras. 12.2, 12.5.

32) *Barcelona Traction, Light and Power Co., Ltd. (Belgium v. Spain)*, *Judgement of 5 February 1970: I.C.J. Reports 1970*, p. 32.

33) John P. Humphrey, *The International Law of Human Rights in the Middle Twentieth Century*, reprinted in Richard B. Lillich, *International Human Rights: Problems of Law, Policy, and Practice* (2nd ed.) (Boston, Toronto: Little Brown & Co., 1991), p. 1. "1885

(General Act) ‘

1889

C.

48. (genocide)

.34)

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49. 가

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50.

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780 (1992)

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" .35)

51.

52.

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D.

53.

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34) *Advisory Opinion of the International Court of Justice on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, I.C.J. Reports 1951, p. 15.

35) Commission of Experts Report (S/1994/674), para. 313.

36) Yoram Dinstein, "International Criminal Law", *Israel Yearbook on Human Rights*, vol. 5, 1975, reprinted in Henry J. Steiner and Philip Alston, *International Human Rights in Context, Law, Politics, Morals* (Oxford: Clarendon Press, 1996), pp. 1025, 1028("

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.37) ,
 (custodial rape)
 54. < ,
 >() 1 " 가
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55. " , "

.38)
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E.

56. (the laws and customs of war)
 1949 , 1907
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 , 가 가

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57. 39)
 .40) " []
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37) Report of the Special Rapporteur on the question of torture to the Commission on Human Rights at its forty-second session (E/CN.4/1985/15, para. 119); International Human Rights Law Group, *Token Gestures: Women's Human Rights and UN Reporting*, 1993, pp. 6-11.

38) Committee on the Elimination of Discrimination against Women, general recommendation No. 19 (eleventh session, 1992), para. 6.

39) *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, Judgment of 27 June 1986, I.C.J. Reports 1986, p. 114 (

3 (elementary considerations of humanity).

40) Report of the International Law Commission on the work of its thirty-second session, Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 10 (A/32/10) (1980).

	.41)	가		
58.		가		
"	42)	"	.43)	4 147
	"	"	.44)	가
59.	"		.45)	
	(indecent assault)	"		4
27	"			
	(indecent assault)	"		1 가 76
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60.		(陸戰)	1907	4 (the 1907 Hague Convention No. IV concerning the Laws and Customs of War on Land) 46)
46	"가	"		
				가 가

41) 1949 8 12 (1), 49 ; 1949 8 12 (4), 146 .

42) 1949 " "(protected persons) 가 . 4 4 " 가 . 3 2 가 (Appeals Chamber) (Tadic)

가 . Theodor Meron, "The continuing role of custom in the formation of international humanitarian law", *American Journal of International Law*, vol. 90, p. 243.

43) . Commission of Experts Report (S/1994/674), para. 105 and Rape and Sexual Assault (S/1994/674/Add.2) (vol. I), annex II, para. 16.

44) International Committee of the Red Cross, Aide-Mémoire, 3 December 1992. Meron, *supra* note 25, p. 26 .

45) Ibid. Amnesty International, *Bosnia and Herzegovina: Rape and Sexual Abuses by Armed Forces*, 1993 .

46) 1907 4 1939 . Judgement of the Nürnberg Tribunal, in *American Journal of International Law*, vol. 41, 1947.

46

61.

가 , [] 6 (b) " .47)

62. 2 2 35

" " 가 , , .48)

63.

. 1945 " " 6 (b) 1907 .49)

64. 1949

.50) , , (sexual abuse) 4 147 " "(inhuman treatment) , .51)

47) Ibid.

48) U. Dolgopol and S. Paranjape, *Comfort Women: An Unfinished Ordeal*, International Commission of Jurists, 1993, pp. 135-36.

49) 가 46 . Bassiouni, *supra* note 52

14 . 4 27 147 50)

(3) 49-57

3 130 " ()"

"wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health" "

") 3

49-57 130 , Bassiouni, *supra* note 14, pp. 510-512.

51) Jean S. Pictet, *et al.* (eds.), *Commentary on the Geneva Conventions of 12 August 1949: Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958) p. 598 (14); Meron, *supra* note 25; Anne Tierney Goldstein, *Recognizing Forced Impregnation as a War Crime Under International Law*, 1993, pp. 9-11.

" " , " " ,
 " (wilfully causing great
 suffering or serious injury to body or health) "

65 .

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 9 (52)
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 ' (Lord's Resistance Army)
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68 .

1907 4 (Martens)
 " (civilized peoples) (usages), (laws of humanity)
 (the dictates of the public conscience)
 () . " 3

52) Foca Indictment, *supra* note 31.

53) Ibid., para. 10.2.

54) (internal violence)

1997/21

가 : (1) ; (2)
 (3) (international violence)
 가 (E/W.4/1998/87,para.40).

가 가 . 3

3 " 가

"(E/CN.4/1998/87, paras. 74, 85).

69. 4 27 3

가 가 가

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.55) 가 3

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"(elementary considerations of humanity)

.56)

70. 3 3

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(internal strife) .58)

71. 3

(the threshold of violence)

(substantial) . 가 3

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.59) 2 가 3 . 2 가

" (riots),

(internal disturbances and tensions)

"(1 2).

(strife) 3 2 가

55) ICFTY, *Tadic* case, Appeals Chamber decision, paras. 84, 89.

56) *Nicaragua v. United States*, *supra* note 39, p. 14.

57) 2 가 , 4 2 (" , , , "). ("outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault" . 1 가 75 2 (文言) " (outrages), ").

58) Theodor Meron, *Human Rights in Internal Strife: Their International Protection* (Cambridge, Grotius Publ., 1987), pp. 44-50.

59) Pictet, *supra* note 51, p. 36.

72. 가
 60) 3
 3 가
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73. ,
 , 가 , 가 (jurisdiction)
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74. ,
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 75. 가 , , ,
 (mens rea)

(defense) .61)
 76. 가 가
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60) Ibid. (3 “ 가 가 (embody) ” 3 가)

61) ICTFY Statute, art. 7; ITR Statute, art. 6.

62) Commission of Experts Report (S/1994/674), para. 55.

(Tutsi)

.66)

.67)

82.

가 가
(propaganda and incitement)

.68)

(reckless disregard)

83.

가 가
(非行)
(reasonable inquiry)

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(Maurice Papon)

.69)

(the Holocaust)

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460

(748,000)

84.

66) Human Rights Watch, *supra* note 7, pp. 15-19; Jamie Frederic Metz, "Rwandan genocide and the international law of radio jamming", *American Journal of International Law*, vol. 91, pp. 628-634, 650.

67) *Ibid.*, p. 18; Human Rights Watch, *War Crimes in Bosnia-Herzegovina*, vol. II (1993), pp. 166-167.

68) Metz, *supra* note 66, p. 636 (citing *Trial of the Major War Criminals Before the International Military Tribunal, Nürnberg, 1947*, p. 548).

69) Edith Coron, "Papon verdict condemns a collaborator and an era", *The European*, 6 April 1998.

85. 가 , , 가 가 가 가 가

86. 가 가 4 146 " 가 가 가 가 가 가 가

87. (statute of limitation)가 (Louis Joinet) (prescription) [] "(E/CN.4/Sub.2/1997/20/Rev.1, para. 31). < >(1968) < >(1974) 50 2 , .70) , ,

VI.

88. (Theo van Boven) " (fair and adequate) 가 (E/CN.4/Sub.2/1996/17, para. 7). (reparations) 가가 , , (satis fact ion) .71)

70) 1987 (Klaus Barbie) . *International Law Review*, vol. 78, 1988.

89.

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90.

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(E/CN.4/Sub.2/1996/17,

para. 9).

(ibid.).

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91.

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(E/CN.4/Sub.2/1997/20/Rev.1, para. 16).

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71) Ian Brownlie, *Principles of Public International Law*, 4th ed. (Oxford: Clarendon Press, 1990), p. 485.

93.

가 가

94.

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B.

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(competence) 가

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107 . (documentation).

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108 . 가
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109.

(gender-sensitive)

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(extra legal)

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IX.

110.

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"(A/51/306, para. 91).

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111.

(gender-responsive)

112. 가 , , 가 (1)
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113. , , 가
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114. 가 가

115. 가