RIVISTA DI
DIRITTI COMPARATI

Rape and Sexual Violence in Conflict: From *Furundžija* to *Ongwen*[*]

Marina Castellaneta - Ignacio Tredici

1. Introduction

The commission of acts of sexual violence has been a tragic feature of armed conflicts throughout history. However, despite this dreadful prevalence since ancient times, the codification of sexual violence as an international crime is the result of a rather slow evolution that has had a definite boost by the work of the international criminal tribunals. The jurisprudence of both the *ad hoc* international criminal tribunals – the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY) – and the International Criminal Court (ICC) has provided a more precise and a broader approach to the criminalization of the crimes that fall within the legal concept of sexual violence. Since the creation of the ICC, this concept includes crimes such as enforced prostitution, forced pregnancy, forced sterilization and other forms of sexual violence of comparable gravity (as discussed *infra* we consider that forced pregnancy and forced sterilization are crimes against the reproductive autonomy of the victim, rather than her/his sexual freedom).

As we'll see in the pages that follow, a very important role in this evolution has been played by the adoption of the ICC Statute, which has taken important steps at crystalizing the definition of crimes[1].

[*] *Double-blind peer reviewed in accordance with the Journal guidelines*.

[1] See F. Pocar, *The Rome Statute of the International Criminal Court and Human Rights*, in M. Politi - G. Nesi (eds.), *The Rome Statute of the International Criminal Court*, Aldershot, 2001, p. 67 ff. See also G.

This paper aims at briefly describing the evolution of the criminalization of sexual crimes committed in the context of conflict, particularly during the period that goes from the creation of the *ad hoc* international criminal tribunals until the judgement issued by the ICC against Dominic Ongwen. This judgement is the first one to discuss the elements of crimes such as sexual slavery.

Among other improvements on the law on sexual violence, the ICC Statute finally drew a line between sexual crimes and «outrages against personal dignity». These two were closely related concepts in, for example, the IV Convention respecting the Laws and Customs of War on Land, sanctioned in The Hague (1907): adopting a rather patriarchal approach to defining the legally protected value in case of sexual violence, Regulation 46 of the Annex to the IV Convention reads, «Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected»[2].

In addition to being tragically ubiquitous in both internal and international conflicts, perpetrators of sexual violence have acted within every possible structure of power: state bodies, regular armies, rebel armies and even peacekeeping contingents. Acts of sexual violence have been committed against both women and men. Sexual violence has been perpetrated as both, the main objective of offenders, or as the by-product of ethnic or racial violence. It has been both: the consequence of violent circumstances (that allowed those crimes to go unpunished), as well as part of official policies dictated by perpetrators behind the men on the ground.

Depending on the specific elements and circumstances, rape and sexual violence committed in the context of conflict could be legally characterized as a crime against humanity (article 7.1(g) ICC Statute)[3], a war crime (arts. 8.2(b)(xxii) and 8.2(e)(vi) ICC Statute) or as genocide[4]. As it has been consistently held there is no hierarchy of international crimes: the commission of any of the three crimes can attract the same sentence[5]. As a matter of fact, the prosecution can decide, based on the availability of evidence and their trial strategy, whether to prosecute a fact as, for example, a crime against humanity (if they possess evidence of the attack against a civilian population) or a war crime (if evidence on the link between the crime and the conflict is clear and available). Furthermore, charging a set of facts, alternatively, as war crimes or crimes

Gaggioli, *Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law*, United Kigndom, 2015; P. Weiner, *The Evolving Jurisprudence of the Crime of Rape in International Criminal Law*, in *Boston College Law Review*, Symposium Issue, 2013, p. 2018 ff.

[2] Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, regulation 46, in: *https://ihl-databases.icrc.org/ihl/INTRO/195*.

[3] A. Cassese, *Crimes against Humanity: Comments on Some Problematic Aspects, in The International Legal System in Quest of Equity and Universality. Liber Amicorum Abi-Saab*, in L. Boisson de Chazournes - V. Gowland-Debbas (eds.), *The Human Dimension of International Law*, London, 2001, p. 429 ff.; L. Sunga, *The Emerging System of International Criminal Law*, London and Boston, 1997.

[4] ICTR, *Karemera and Ngirumpatse* (Appeal Judgement), 24 September 2014, para. 611.

[5] ICTR, *Kayishema and Ruzindana* (Appeal Judgement), 1 June 2001, para. 367.

against humanity was and is still a common practice at the international criminal tribunals.

Besides rape, the crime of sexual violence can take the form of enforced prostitution, forced pregnancy, forced sterilisation and sexual slavery (whereby slavery is executed with the aim of subjecting the victim to sexual acts). For the latter type of crime, we recall the so-called "comfort camps" ran by the Japanese forces during the Second World War[6]. The most recent case of sexual slavery dealt with by international tribunals is the *Ongwen* case where the accused, a former commander of the Ugandan Lord's Resistance Army, led by Joseph Kony, was charged with subjecting young girls to sexual slavery[7].

In addition to incorporating sexual slavery, forced pregnancy, and enforced sterilization, the ICC Statute adopted a residual category that criminalizes other acts of sexual violence, not described in article 7.1(g), of a gravity comparable to the other crimes therein mentioned.

Alongside the role played by international criminal law instruments (statutes, covenants, etc.) in defining sexual violence as a crime, the United Nations Security Council (UNSC) has also addressed sexual violence in conflict: UNSC Resolution 1820 (2008) stresses that the commission of sexual violence as a tactic of war significantly exacerbates conflicts, jeopardizing the restoration of international peace and security. The Resolution emphasises the need to exclude crimes of sexual violence from amnesty provisions in conflict resolution processes. Moreover, it calls on all State Members to comply with their obligations to prosecute perpetrators, and on to the United Nations Secretary General (UNSG) to continue implementing the policy of zero tolerance of sexual exploitation and abuse in United Nations peacekeeping operations[8].

Furthermore, a year later, through Resolution 1888 (2009), the UNSC called upon the UNSG, United Nations agencies and Member States to adopt a series of measures to prevent or to prosecute the commission of sexual violence. It further urged States to adopt all legal and judicial reforms to bring perpetrators of these crimes before courts as well as to ensure the protection of victims. The same Resolution requested the UNSG to appoint a Special Representative on Sexual Violence in Conflict Situations to lead, through the programme "UN Action Against Sexual Violence in Conflict", the bodies engaged in the fight against the abuse of women and to coordinate their efforts through the development of systematic strategies.

---

[6] G.J. McDougall, *Systematic rape, sexual slavery and slavery-like practices during armed conflict*, United Nations Special Rapporteur on systematic rape, sexual slavery, and slavery-like practices in armed conflict, in *https://documents-dds-ny.un.org/doc/UNDOC/GEN/G98/128/81/PDF/G9812881.pdf*, p. 38 ff.

[7] ICC, *The Prosecutor v. Dominic Ongwen* (Trial Chamber Judgement; case no. ICC-02/04-01/15), 4 February 2021, paras. 212 ff.

[8] In *https://www.un.org/ruleoflaw/blog/document/security-council-resolution-1820-2008-on-women-and-peace-and-security*, paras. 1 ff.

In addition to the measures described above, through Resolution 1888 the UNSC created, within the Secretariat, the so-called Team of experts on sexual violence, a group of rapidly deployable professionals able to assist countries and UN peacekeeping operations in preventing, investigating, and prosecuting sexual violence in conflict. The Team of experts deploys alone or jointly with the Justice and Corrections Standing Capacity that sits in Brindisi, Italy. Both units work for the consolidation of the rule of law in post-conflict settings, within the Office of Rule of Law and Security Institutions, Department of Peace Operations (former DPKO).

Today, it can be affirmed that there is a large body of law consisting of international humanitarian law, international criminal law, human rights treaties, and resolutions issued by bodies such as the UNSC that aim at preventing or minimizing the occurrence of sexual violence in conflict. In addition to this large body of norms a very important exegetical role has been played by the jurisprudence of the international criminal tribunals[9].

2. The Rules on the Prosecution of Wartime Sexual Violence in International Law

Moving on to a brief analysis of the laws that criminalize sexual violence in conflict[10], the first efforts at codifying this crime in recent times (as said, with a rather patriarchal approach though) were made in the IV Convention on the Laws and Customs of War on Land and its annex, adopted in The Hague (1907). Regulation 46 states that, during the occupation of foreign territories, the signatory States are obliged to respect «Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice». Despite that no specific mention of sexual violence is made, the reference to "family honour" was provided to address the commission of crimes of sexual nature: committing the heinous crime of rape was considered more a matter of attacking the honour of the woman's family rather than her sexual autonomy.

Neither the Charter of the International Military Tribunal (Nuremberg, 1945) nor that one of the International Military Tribunal for the Far East (Tokyo, 1945), included any specific rule criminalizing either rape or sexual violence. However, despite this omission, perpetrators of any of these two crimes could be prosecuted based on the characterization of their conducts as «other inhumane acts» as «crimes against humanity», a residual category that allowed the Tribunal, under certain circumstances, to prosecute the commission of crimes not specifically defined in the Charters but of a gravity comparable to other crimes against humanity[11].

[9] See C. O'Rourke, *Women's Rights in Armed Conflict under International Law,* Cambridge, 2020, p. 34 ff.

[10] See D. Nadj, *International Criminal Law and Sexual Violence Against Women*, Routledge, London, and New York, 2018, p. 40 ff.

[11] See article 6. (c) of the Charter.

By contrast, the crime of rape was included in Control Council Law No. 10 that guided the work of a series of post-Nuremberg trials led by American magistrates (1945). Specifically, article 2 includes among crimes against humanity «Atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated»[12]. However, rape was not included among the codified war crimes, remaining only a crime against humanity.

Despite the prevalence of rape during the II World War and the possibility to prosecute under article 2, no defendants were convicted for the commission of this crime by the tribunals set up under Control Council Law No. 10. As mentioned *infra*, a few doctors were convicted for the commission of "other inhuman acts" based on the conduct of sterilization experiments committed at both Auschwitz and Ravensbruck[13].

Four years later, the IV Geneva Convention concerning the Protection of Civilian Persons in Time of War[14] (1949), re-stablished the connection between "rape" and "honour", except that this time it referred to the woman's honour rather than the honour of the family as mentioned in the IV Convention of The Hague (1907) mentioned above. Article 27 of the IV Geneva Convention (1949), after stating that «Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs», specified that: «[w]omen shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault».

Nonetheless, the Commentary to the IV Geneva Convention (1958) disassociated the two terms again when it stated that, considering the crimes committed during the II World War, women had to be treated with special consideration as they had been «…subjected to outrages of the worst kind: rape committed in occupied territories, brutal treatment of every sort, mutilations etc». The Commentary clarifies that the provision is founded on the principles set forth in paragraph 1 on the notion of «respect for the person», «honour» and «family rights», making clear, however, that a woman should have an acknowledged right to special protection. The Commentary goes on saying: «The Conference listed as examples certain acts constituting an attack on women's honour, and expressly mentioned rape, enforced prostitution […] and any form of indecent assault. These acts are and remain

[12] In *https://avalon.law.yale.edu/imt/imt10.asp*.

[13] In *https://www.legal-tools.org/doc/595f3c/pdf*, p. 1.

[14] J.M. Henckaerts - L. Doswald-Beck, *Customary International Humanitarian Law,* vol. I, Rules, Cambridge, 2005, p. 115 ff. See also La Haye, *War Crimes in Internal Armed Conflicts,* Cambridge, 2008, p. 131 ff. ; J. Ancelle, *Les crimes de guerre dans les conflits armés non internationaux,* in L. Moreillon - A. Bichovsky - M. Massrouri (eds.), *Droit pénal humanitaire,* Bruxelles, 2009, p. 117 ff.

prohibited in all places and in all circumstances, and women, whatever their nationality, race, religious beliefs, age, marital status, or social condition have an absolute right to respect for their honour and their modesty, in short, for their dignity as women»[15].

It should be noted that the provision refers exclusively to those who, during a conflict, find themselves captive in a State of which they are not citizens, *i.e.*, civilian populations under the control of an occupying power. Later, the 1977 Additional Protocol to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (Protocol I) extended this protection to all women in a conflict area. Article 76 provides that «[w]omen shall be the object of special respect and shall be protected against rape, forced prostitution and any other form of indecent assault».

Article 4(1) of the 1977 Second Additional Protocol, on the Protection of Civilians in Internal Conflict establishes that «[a]ll persons who do not take a direct part or who have ceased to take part in hostilities, whether their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors», whereas subparagraph (e) of the second paragraph reaffirms the prohibition of «outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault».

As we see from the conventions and other international documents described above, the different drafters referred to attacks to the following legally protected values: "family honour", women's honour, "dignity as women".

It is only after the creation of the *ad hoc* international criminal tribunals that sexual autonomy of women is identified as the value to be legally protected. Articles 5 of the ICTY and 3 of the ICTR statutes, provide that the tribunals had the power to prosecute persons responsible for the commission of rape[16]. The UNSC, acting as the drafter of the statutes took a step forward by making no reference to the protection of either the family's honour, the victim's honour, or the dignity of the victim. It is recalled and, in this respect, we subscribed to the statement of the Special Rapporteur on Contemporary Forms of Slavery: «…international humanitarian law […] often contained provisions for the protection of women's 'honour', implying that the survivor of sexual violence is somehow 'dishonoured' in the attack. The present report

[15] In *https://ihl-databases.icrc.org/ihl/full/GCI-commentary*. See also L. Cameron - B. Demeyere - J.M. Henckaerts - E. La Haye - H. Niebergall-Lackner, *The Updated Commentary on the First Geneva Convention – A New Tool for Generating Respect for International Humanitarian Law*, in *Int. Rev. Red Cross*, 2016, p. 1209 ff.

[16] R. Cryer - D. Robinson - H. Friman - E. Wilmshurst, *An Introduction to International Criminal Law and Procedure,* IV ed., Cambridge, 2014. See also T. Meron, *International Criminalization of Internal Atrocities*, in *A.J.I.L.*, 1995, p. 554 ff.

maintains that such characterizations are incorrect, as the only party without honour in any rape or in any situation of sexual violence is the perpetrator»[17].

Article 7.1(g) of the ICC Statute provides for the criminalization of so-called sexual offences. Article 7.1(g) is reproduced, almost identically, but this time as a war crime, in arts. 8.2(b)(xxii) and 8.2(e)(vi): «Article 7. Crimes against humanity 1. For this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: […] (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity».

«Article 8. War crimes […] 2. For the purpose of this Statute, 'war crimes' means: […] (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: […] (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions; […] (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts: […] (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions».

Being precise at naming crimes based on the legal value that they protect, article 7.1(g) contains six offences that can be comfortably grouped into two distinct categories: on one hand, rape, sexual slavery, enforced prostitution and other forms of sexual violence, protect sexual autonomy in the context of conflict: meaning, the capacity to decide when, how or if a person wants to engage in acts of sexual nature. The crimes that target sexual autonomy are referred to as sexual violence. On the other hand, forced pregnancy and forced sterilization protect reproductive autonomy: meaning, when, how or if a person wishes to reproduce or not. These two crimes could be referred to as reproductive violence.

3. The Jurisprudence of the International ad hoc *Tribunals*

Despite the step forward of adopting rape as a crime, neither of the statutes of the ITCY or the ICTR, provide a definition of either rape or sexual violence in conflict. This omission has led to debates on the nature of both material and subjective elements of the crimes. The most controversial issue has been the definition of the mental

[17] G. McDougall, *Systematic rape, sexual slavery, and slavery-like practices during armed conflict: final report*, 1998, para. 16, in *https://www.refworld.org/docid/3b00f44114.html*.

element of sexual crimes. Particularly, the jurisprudence of the *ad hoc* international tribunals has swung between adopting concepts of "force", "coercion", or "lack of consent" as an element required for the legal characterization of rape.

3.1. The Akayesu Case

Turning to the main rulings of the *ad hoc* international tribunals, Akayesu was the first person to be convicted by the ICTR for the commission of both rape (under article 3(g), «crime against humanity») and sexual violence (under article 3(i), «other inhuman acts»). In respect of rape, the Trial Chamber of the ICTR noted in the trial judgement that, after having failed to find a commonly accepted definition in international law, they have adopted one that included the insertion of objects and/or the use of bodily orifices not considered to be intrinsically sexual: a physical invasion of a sexual nature, committed on a person under circumstances that are coercive.

Regarding sexual violence and citing the case of a victim that was forced to undress and to exercise naked in front of a crowd, the Trial Chamber defined it as any act of sexual nature, which may or may not involve penetration or even physical contact, committed on a person under circumstances that are coercive. The Trial Chamber further stated that sexual violence, can be qualified either as a crime against humanity (article 3(i), «other inhuman acts»), as a war crime (article 4(e), «outrages upon personal dignity») or as genocide (article 2(2)(b), in that it cause «bodily or mental harm» in the victim that, under specific circumstances like the ones that prevailed in Rwanda in 1994, can tantamount to genocide)[18].

Coercion, the Trial Chamber in *Akayesu* explained, maybe the result of direct force, threats and other forms of duress, or inherent to certain circumstances such as armed conflict or the presence of violent militiamen. One of the most important contributions of this definition is the recognition that coercion, and hence lack of consent, can be derived (and, most importantly for the prosecution: established) from the coercive circumstances that surrounded the commission of the acts of sexual violence.

Another important step taken by the ICTR is that the broad formulation of the definition of rape adopted in *Akayesu* is gender neutral: «a physical invasion of a sexual nature, committed on a person under circumstances that are coercive» which allows for the prosecution of a case where a male is the victim or a female the perpetrator.

[18] ICTR, *Prosecutor v. Jean-Paul Akayesu* (Trial Chamber Judgement; case no. ICTR-96-4-T), 2 September 1998, paras. 686-688, in *https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-96-04/MSC15217R0000619817.PDF*.

3.2. The Furundžija *Case*

Regarding the *Furundžija* case, a milestone for the definition of rape under the ICTY Statute, it is worth mentioning a few facts and background before analysing the legal aspects.

Anto Furundžija was a commander of a special unit of the Croatian Defence Council (HVO), known as the "Jokers", that operated in the Vitez municipality in central Bosnia and Herzegovina. This unit had constantly engaged in hostilities against the Muslim community in the Lašva Valley area, including an attack on the village of Ahmići. Furundžija was accused of participating in the commission of both torture and rape during his interrogation of a Muslim woman while she was being raped and subjected to sexual violence by a fellow commander of another unit of the HVO. Furundžija was found guilty of torture as a co-perpetrator as well as of rape as an aider and abettor, in both cases, as violations of the laws and customs of war (article 3 of the ICTY Statute, Violations of the laws and customs of war).

To be able to apply article 3 of the ICTY Statute, which does not make any specific mention of either rape or sexual violence, the Trial Chamber went on to analyse the evolution of these two concepts in international law. The Chamber quoted norms on the prohibition and criminalization of rape found in the Lieber Code (1863)[19], the Geneva Conventions (1949)[20], in Additional Protocol I to the 1949 Geneva Conventions (1977)[21], in Additional Protocol II (1977)[22], as well as in other documents and decisions already mentioned *supra*. Upon its analysis, the Trial Chamber concluded that it was indisputable that rape and sexual violence in conflict entailed the individual criminal liability of perpetrators.

Having noted that no clear definition of rape could be drawn from either international norms or the practice of international criminal tribunals, the Trial Chamber affirmed the need to draw it upon the general concepts and legal institutions of the main legal systems of the world, through the identification of common denominators to pinpoint the basic notions they share. In so doing the Trial Chamber construed a rather large definition of rape that included any type of sexual penetration of the annus or the vagina of the victim, or the penetration of the mouth of the victim by the penis of the perpetrator.

---

[19] See article 44, in *https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=B1CE1E21A4237EE6C12563CD00514C6C*.

[20] Article 27 of Geneva Convention IV.

[21] Article 76(1).

[22] Article 4(2)(e).

More importantly, the judges established that coercion, or force, or threat of force are constitutive elements of the crime[23]. They went even a step further by sanctioning that criminally relevant coercion could derive from force or threats exercised against a third person (for example, someone closely related to the victim)[24].

The *Furundžija* case was received with disappointment by prosecutors and scholars as it put a burden on the shoulders of the prosecution: apparently they were required to prove the existence of coercion exercised against the victim as lack of consent alleged by the victim seemed insufficient to successfully prosecute the case. Some sort of relief though was provided by the fact that the Chamber had decided that any form of captivity vitiates consent[25].

A couple of weeks before the delivery of the *Furundžija* case, another Trial Chamber from the ICTY in *Delalic*, had agreed with the *dictum* in *Akayesu* and defined rape as the physical invasion of a sexual nature, committed on a person under circumstances that are coercive[26].

3.3. The Kunarac *Case*

The *Furundžija* judgment served as an invaluable precedent in other rulings, and the jurisprudence that followed clarified and built upon it, particularly in respect to whether and how coercion had to be proved by the prosecution. The *Kunarac* case is worth mentioning in this evolution.

Dragoljub Kunarac was the leader of a reconnaissance unit of the Bosnian Serb Army (VRS) which formed part of the local Foča tactical group. He was convicted for the commission of rape (as both: crimes against humanity and violations of the laws and customs of war) against three victims, for aiding and abetting the acts of rape committed by his soldiers (again, as a crime against humanity as well as a violation of the laws and customs of war) and for raping and threatening to kill a witness.

The Trial Chamber adopted, *verbatim*, the first part of the *Furundžija* definition of rape[27]. Nonetheless, in respect to the second part, it considered necessary to conduct further research into the solutions found in common legal systems. Upon that research,

---

[23] See ICTR, *Prosecutor v. Anto Furundzija* (Trial Chamber Judgement; case no. IT-95-17/1-T), 10 December 1998, para. 185, in *https://www.icty.org/x/cases/furundzija/tjug/en/*.

[24] *Ivi*, para. 174.

[25] *Ivi*, para. 271.

[26] See ICTY, *Prosecutor v. Zdravko Mucic aka "Pavo", Hazim Delic, Esad Landzo aka "Zenga", Zejnil Delalic* (Trial Chamber Judgement; case no. IT-96-21-T), 16 November 1998, para. 479, in *https://www.icty.org/x/cases/mucic/tjug/en/*.

[27] Rape includes sexual penetration of the annus or the vagina of the victim, or the penetration of the mouth of the victim by the penis of the perpetrator. See ICTY, *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* (Trial Chamber Judgment; case no. IT-96-23-T & IT-96-23/1-T), 22 February 2001, para. 437 *et seq.* in *https://www.icty.org/x/cases/kunarac/tjug/en/kun-tj010222e.pdf*.

they concluded that the common denominator that unified the different systems is the penalization of the violation of sexual autonomy: absence of consent or voluntary participation of the victim in the sexual act[28]. The judges identified three approaches to defining this element: a) some jurisdictions require that the sexual act occurs by force or threat of force[29]; b) a number of jurisdictions provide that rape should occur either by force or by circumstances that put the victim in a state of vulnerability or that rendered him/her incapable to resist the sexual attack[30]; c) in most common law systems, it is the absence of the victim's free and genuine consent to sexual penetration which is the defining feature of rape[31]. On that basis, the Trial Chamber defined rape as the sexual penetration of the annus or the vagina of the victim, or the penetration of the mouth by the penis of the perpetrator, where it occurs without the consent of the victim. The judges further qualified consent as the one given voluntarily, because of the victim's free will, assessed in the context of the surrounding circumstances[32].

During trial the prosecution had unsuccessfully submitted that, based on rule 96 of the ICTY Rules of Procedure and Evidence[33], lack of consent from the victim could not be considered an element of the crime that required to be proved (beyond the testimony of the victim). Rule 96 ICTY RPE states that consent shall not be allowed as a defence if the victim has been subjected to or threatened with or has had reason to fear violence, duress, detention, or psychological oppression.

3.4. The Gacumbitsi *Case*

The lack of normative clarity resulting in the jurisprudential debate on the subjective elements of rape was somehow resolved by the ICTR Appeals Chamber in *Gacumbitsi*. The debate described above saw, on one hand, the Chambers holding that lack of consent was an element of the crime of rape while, on the other hand, the prosecution insisted that lack of consent should not be considered an element of the crime.

Notwithstanding that the Appeals Chamber followed the reasoning of *Kunarac* (lack of consent is an element of the crime), they affirmed that, in practice, the matter was sorted because: «The Prosecution can prove non-consent beyond reasonable doubt by proving the existence of coercive circumstances under which meaningful

[28] *Ivi*, para. 440.
[29] *Ivi*, para. 443.
[30] *Ivi*, para. 446.
[31] *Ivi*, para. 453.
[32] *Ivi*, para. 460.
[33] See ICTY, *Rules of Procedure and Evidence*, 2015, in *https://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032Rev50_en.pdf*.

consent is not possible»[34]. Moreover, the Appeals Chamber declared itself legally able to infer non-consent from background circumstances (for example, the prevailing violence, or the existence of a campaign of persecution against the victim's ethnic group).

Equally, said the Appeals Chamber, the Prosecution can prove knowledge by the perpetrator of the non-consensual nature of the rapport by establishing that the accused was aware of the prevalent coercive circumstances that undermined the possibility of genuine consent[35].

4. The ICC Statute and the Protection of Sexual and Reproductive Autonomy

4.1. The ICC Statute

The Statute of the ICC is much more precise regarding the definition of rape and sexual violence. Articles 7(g), 8.2(b)(xxii) and 8.2(e)(vi) of the ICC Statute criminalize rape, sexual slavery, enforced prostitution, forced pregnancy enforced sterilization and other forms of sexual violence of comparable gravity, when committed either as crimes against humanity (meaning in the context of a widespread or systematic attack directed against a civilian population) or war crimes (meaning in the context of conflict, be it internal or international).

Besides the provisions on rape and sexual violence that protect sexual autonomy in conflict, the ICC Statute introduces rules criminalizing attacks against the exercise of reproductive autonomy: forced pregnancy and enforced sterilization. Both crimes have been committed and charged in the past as crimes against humanity, as war crimes or as part of genocidal campaigns to change the ethnic composition of given populations. Nazis committed forced sterilization against Jewish and Roma people. The *Medical* case, for example, adjudicated by the post-Nuremberg American Tribunal under Control Council Law No. 10, dealt with forced sterilization conducted by Nazi medical doctors.[36] Fourty years later, during the 90's, thousands of women were victims of forced pregnancy in both Rwanda and the Former Yugoslavia as part of centralized policies to commit such crimes[37]. Forced sterilization has also been a feature of

[34] ICTR, *Silvestre Gacumbitsi v. The Prosecutor* (Appeal Chamber Judgement; case no. ICTR-2001-64-A), 7 July 2006, para. 155, in *https://unictr.irmct.org/sites/unictr.org/files/case-documents/ictr-01-64/appeals-chamber-judgements/en/060707.pdf*.

[35] *Ivi*, para. 157.

[36] See *United States of America v. Karl Brandt et al*, in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law*, 1949, in *https://www.legal-tools.org/doc/c18557/pdf*. See also an interesting summary of the conduct of the trial in *https://nuremberg.law.harvard.edu/nmt_1_intro#indictments*

[37] See R. Grey, *The ICC's First "Forced Pregnancy" Case in Historical Perspective*, in *Journal of International Criminal Justice*, 15, 5, 2017, p. 905 ff.

conflicts like the Colombian civil war, or the terrorist campaign conducted by the Islamic State[38].

4.2. The ICC Elements of the Crimes

The ICC Elements of the Crimes is a document containing the definitions of the different elements of the offences falling under the material jurisdictions of the Court[39]. Therein, the ICC legislator defines the objective element of rape as the penetration of the body of either the victim or the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. This rather large definition of the material element of the crime allows even for the prosecution of a perpetrator that forces the victim to penetrate him or her (with any object or any part of the body).

In respect to the jurisprudential debate described *supra* on whether coercion or lack of consent should be the element required to prove the commission of sexual violence, the ICC legislators dealt with this matter in the following way: «2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent».

The footnote to this article of reads as follows: «[i]t is understood that a person may be incapable of giving genuine consent if affected by natural, induced, or age-related incapacity. This footnote also applies to the corresponding elements of article 7 (1) (g)-3, 5 and 6»[40].

4.3. The ICC Rules of Procedure and Evidence

The elements of the crimes need to be read in conjunction with the applicable ICC Rules of Procedure and Evidence. Rule 70 (Principles of evidence in cases of sexual violence) states that: «In cases of sexual violence, the Court shall be guided by and, where appropriate, apply the following principles: (a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion

[38] See A. International, *Scarred bodies, hidden crimes*, London, 2004, p. 28 in https://www.amnesty.org/en/documents/amr23/040/2004/en/. See also NY Times, *To Maintain Supply of Sex Slaves, ISIS Pushes Birth Control*, 2016, in *https://www.nytimes.com/2016/03/13/world/middleeast/to-maintain-supply-of-sex-slaves-isis-pushes-birth-control.html*

[39] In *https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf.*

[40] In *https://cilrap-lexsitus.org/elements-crime-digest/7-1.*

or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent; (b) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent; (c) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence; (d) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness».

From the joint reading of the Elements and the Rules, it is possible to appreciate that the ICC legislator identified and sanctioned a relation of cause-and-effect between coercion or coercive circumstances or lack of capacity, and the resulting lack of genuine consent, whereby when a sexual crime is committed in a coercive context, consent cannot be inferred. Consent has to be proved by the defence.

5. Prosecution of Sexual Violence Before the ICC

5.1. Rape

The Trial Chamber judgement in *Ongwen*[41] is the most updated and comprehensive discussion of the ICC law on sexual violence. Rape, whether as a crime against humanity or as a war crime, is thereby defined as the penetration of the body of the victim or the perpetrator with a sexual organ, or of the anal or genital opening of the victim. To be criminally relevant the penetration must be performed in a coercive manner, in a coercive context or against a person that is incapable of giving genuine consent. As held in *Katanga*[42], and later reaffirmed in *Ntaganda*[43], the Trial Chamber in *Ongwen* held that once proven the coercive nature of the context, it was not necessary for the prosecution to further prove the victim's lack of consent. The Trial Chamber discussed coercion as follows: «Coercion may be inherent in certain circumstances, such as armed conflict or the military presence of hostile forces amongst the civilian population. Several factors may contribute to creating a coercive environment, such as the number of people involved in the commission of the crime, or whether the rape is committed during or immediately following a combat situation or is committed together with other crimes»[44].

5.2. Sexual Slavery

[41] ICC, *The Prosecutor v. Dominic Ongwen*, cit., para. 2708, in *https://www.icc-cpi.int/court-record/icc-02/04-01/15-1762-red.*

[42] ICC, *The Prosecutor v. Germain Katanga* (Trial Chamber Judgement; case no. ICC-01/04-01/07), 7 March 2014, para. 965, in *https://www.legal-tools.org/doc/f74b4f/pdf.*

[43] ICC, *The Prosecutor v. Bosco Ntaganda* (Trial Chamber Judgement; case no. ICC-01/04-02/06), 8 July 2019, para. 934, in *https://www.legal-tools.org/doc/80578a/pdf.*

[44] ICC, *The Prosecutor v. Dominic Ongwen,* cit., para. 2710.

Following settled jurisprudence[45], the Trial Chamber took a clear position in that it considered sexual slavery a *species* of the *genus slavery*: sexual slavery, whether as a crime against humanity or war crime, is committed when the material elements of enslavement (the exercise of the attributes of ownership over a person: use, enjoyment, disposition) is fulfilled, and the perpetrator also caused the victim to engage in non-consensual acts of a sexual nature.

In respect to the definition of acts of sexual nature the Trial Chamber held that it includes rape but are not limited to it: «Accordingly, they do not need involve penetration or even physical contact. The term 'sexual' may refer to acts carried out through sexual means or by targeting sexuality. Whether an act is sexual in nature must be determined on a case-by-case basis, depending on the specific facts and circumstances of a given case»[46].

Trial Chamber VI in *Ntaganda* further established that the prohibition of sexual slavery has the same status of the prohibition of slavery under international law, namely *jus cogens*. The Chamber noted «that rape can constitute an underlying act of torture or of genocide and that the prohibitions of torture and genocide are indisputably *jus cogens* norms. It has further been argued, and the majority of the Chamber accepts, that the prohibition on rape itself has similarly attained jus cogens status under international law»[47].

5.3. Forced Prostitution

Forced prostitution in the context of conflict (either as a war crime or a crime against humanity) is defined by the ICC Statute as the subjection of the victim to acts

[45] *Milch Case*, Control Council Law No. 10 Tribunals, Vol VII, Judgement, page 29; *Ministries Case*, Control Council Law No. 10 Tribunals, Judgement, page. 794; *Krupp Case*, Control Council Law No. 10 Tribunals, Judgement, page 145; ICTY, *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, cit., para. 539 *et seq*; Judgement, *Kaing Gueak Eav aka 'Duch'*, Khmer Rouge Tribunal Appeals Chamber (2007) para. 342; Judgement, *Sesay et al*, SCSL Trial Chamber (2009) para. 199.

[46] ICC, *The Prosecutor v. Dominic Ongwen,* cit., para. 2716.

[47] Second decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9, *Ntaganda,* ICC Trial Chamber VI (2017) para. 51 in *https://www.icc-cpi.int/court-record/icc-01/04-02/06-1707*. See also Judgement, *Brima et al*, SCSL Trial Chamber (2007) para. 705: "slavery for the purpose of sexual abuse is a jus cogens prohibition in the same manner as slavery for the purpose of physical labour"; See also, *Final report submitted by Special Rapporteur Gay J. McDougall, Contemporary Forms of Slavery - Systematic rape, sexual slavery and slavery like practices during armed conflict*, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Fiftieth session, (1998) *https://www.refworld.org/docid/3b00f44114.html*, para. 30, stating that «[i]n all respects and in all circumstances, sexual slavery is slavery, and its prohibition is a jus cogens norm».

of sexual nature by force, taking advantage of coercive circumstances or the lack of capacity to genuinely consent, with the aim of getting a profit.

Although it was not mentioned in the statutes of either the *ad hoc* or the hybrid tribunals, forced prostitution has long been part of international humanitarian law: as mentioned *supra*, it was explicitly prohibited by article 27 of the IV Geneva Convention, which states that «[w]omen shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault», and in article 76 (1) of Additional Protocol I which states that «[w]omen shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault».

Despite not having been explicitly listed as a grave breach in article 147 of the IV Geneva Convention, based on an interpretation of that norm by the International Committee of the Red Cross, forced prostitution can be subsumed in the definition of "inhuman treatment"[48]. In addition, forced prostitution, as well as rape and other forms of sexual abuse, including sexual slavery, should also be read into the prohibitions against "torture" and «wilfully causing great suffering or serious injury to body or health» - all of which are explicitly included as grave breaches.

5.4. Forced Pregnancy

Forced pregnancy in the context of conflict (either as a war crime or a crime against humanity) is defined by the Elements 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.

Ongwen is the first case of forced pregnancy dealt with by the ICC[49]. The Trial Chamber in *Ongwen* recalled that negotiations were driven by the memory of the atrocities of the war in the Former Yugoslavia, where Bosnian women were raped and then unlawfully detained with the intent of changing the ethnic composition of their group of origin by giving birth to half-Serb children[50].

Based on an analysis of the *travaux préparatoire* of the ICC Statute, the judges further defined forced pregnancy as the confinement of a forcibly pregnant woman to carry out grave violations of international law. They later affirmed that «[t]he crime of forced pregnancy depends on the unlawful confinement of a (forcibly made) pregnant woman, with the effect that the woman is deprived of reproductive autonomy»[51]. The

[48] See Commentary of 1958 to article 147 of the Convention (IV) relative to the Protection of Civilian Persons in Time of War, in *https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=659A26A51BB6FE7AC12563CD0042F063*

[49] R. Grey, *op.cit.*

[50] ICC, *The Prosecutor v. Dominic Ongwen*, cit., para. 2718.

[51] *Ivi*, para. 2729.

judges further held that the criminalization of forced pregnancy is grounded in the woman's right to personal and reproductive autonomy and the right to family (to plan a family rather, we should add)[52].

The Trial Chamber identified three elements of the crime: a) unlawful confinement (material or objective element); b) of a woman forcibly made pregnant (material element); c) with the intent to affect the ethnic composition of a population or to commit other grave violations of international law (subjective or mental element).

The confinement should not have been the consequence of a legitimate decision from a legal authority (or more than said decision)[53].

In respect to the coercive nature of the pregnancy, the term "forcibly" introduced by the provision should be interpreted in the sense seen above: the woman should have been made pregnant either by force, or in the context of coercive circumstances or because of her incapacity to understand, meaning, lacking ability to give genuine consent. Moreover, the Trial Chamber in *Ongwen* held that the forcible conception could have occurred prior to or during the unlawful confinement, and the perpetrator need not have personally made the victim pregnant.

Finally, the legislator required the specific *mens rea* element that the crime be committed with the intent of either «affecting the ethnic composition of any population or carrying out other grave violations of international law». Regarding the second part of the proposition, examples of other grave violations of international law could be trafficking of human beings or medical experiments conducted on human beings. As an example, we can recall the crimes described in the so-called "Medical Case", *United States of America vs. Karl Brandt et al.*[54], where a unit of Nazi German medical doctors were accused and convicted of having conducted a series of macabre tests on prisoners such as: high-altitude experiments; malaria experiments; sterilization experiments; freezing experiments; bone, muscle, and nerve regeneration, and bone transplant experiments; typhus and other vaccines experiments; poison experiments; etc. These tragic tests resulted in death or serious bodily or mental harm of adults, children, new-borns, and twins.

5.5. Forced Sterilization

Forced sterilization, as well as forced pregnancy, sanctions attacks against the legally protected value "reproductive autonomy" in the context of conflict. It is criminalized as both genocide, crime against humanity and war crime. Forced

[52] *Ivi*, para. 2717.

[53] International Covenant on Civil and Political Rights, arts. 9 and 10, in *https://www.legal-tools.org/doc/2838f3/pdf*.

[54] *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law* 10, Vol. I (US Government Printing Office, 1949), in *https://www.legal-tools.org/doc/c18557/pdf*. See also *https://nuremberg.law.harvard.edu/nmt_1_intro#indictments*.

sterilization occurs when the perpetrator deprived one or more persons, be them male or female, of biological reproductive capacity on a permanent basis, in circumstances which were neither justified by medical reasons, nor carried out with the genuine consent of the victim.

Forced sterilization has been a tragic feature in conflicts as seen in the Nazi Germany, in Rwanda, in the former Yugoslavia, as well as in other more recent conflicts. As referred above, the post-Nuremberg Medical Case, dealt with sterilization tests conducted on prisoners of war. From 1941 to 1945 a series of experiments were conducted at several concentration camps, with the aim of developing a method allowing the sterilization of millions of people, in the most effective way, in the shortest period. Nazi doctors used X-rays, surgery, and a number of different drugs, resulting in death, sterilization and serious bodily and mental harm[55].

5.6. Other Forms of Sexual Violence

The ICC legislator included a residual category that allows for the prosecution of other forms of sexual violence of gravity comparable to the rest of the crimes described in article 7.1(g).

The perpetrator is responsible for the commission of acts of sexual nature against the victim or, for engaging the victims in acts of sexual nature, by force, in the context of coercive circumstances or taking advantage of the incapacity of the victim to genuinely consent to the acts.

Trial Chambers have held that the sexual nature of a given act charged as "other form of sexual violence" has to be assessed on a case-by-case basis. The ICC Prosecutor in *Kenyatta* charged the accused with sexual violence as a crime against humanity committed against several men that had been subjected to forced circumcision or amputation of their penises. In one of the events under investigation «Luo men were 'rounded up and forcefully circumcised using pangas and broken bottles'»[56]. During the hearing on confirmation of charges the prosecution affirmed that «these weren't just attacks on men's sexual organs as such but were intended as attacks on men's identities as men within their societies and were designed to destroy their masculinities»[57]. On that basis, the Trial Chamber held that not every act of violence targeting parts of the body associated with sexual intercourse should be considered acts of sexual violence, that the sexual nature of the acts had to be assessed

[55] *Ibidem*.

[56] ICC, *The Prosecutor v. Francis Kirimi Muthaura Uhuru Muigai Kenyatta and Mohammed Hussein Ali* (Pre-Trial Chamber, Decision on the confirmation of charges pursuant to articles 61(7) (a) and (b) of the Rules of Procedure and Evidence; case no. ICC-01/09-02/11), 23 January 2012, para. 262, in *https://cilrap-lexsitus.org/case-law/7-1-g-6/4972c0*

[57] *Ivi*, para 264.

on a case-by-case basis, and that, in their opinion, the evidence showed that the acts were, rather, motivated by ethnic prejudice and, hence, they did not qualify as forms of sexual violence within the meaning of article 7.1(g) of the ICC Statute[58].

The provision requires a rather high threshold of gravity to criminalize the commission of acts of sexual violence. It is the same threshold used by the legislator in the case of article 7.1(k) of the ICC Statute, namely «[o]ther inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health».

Whether a given set of attacks of sexual nature reach the threshold of gravity allowing a prosecution under 7.1(k) *in fine*, «any other form of sexual violence», is a question of fact that must be assessed on a case-by-case basis.

6. Conclusion

Despite the universal prevalence of sexual violence in conflict the criminalization of rape and acts of sexual violence was not a common and clear feature of the main legal sources of international criminal law (conventions and criminal statutes). It is rather recently, only after the creation of the *ad hoc* international criminal tribunals, that serious discussions took place on the material and subjective elements of sexual crimes at the international level.

Moreover, the nature of the legally protected value by the criminalization of sexual violence has transitioned: from the protection of the family honour (IV Convention respecting the Laws and Customs of War on Land, adopted in The Hague,1907), to the protection of sexual autonomy of the victim. In addition, the ICC Statute criminalized attacks against the legally protected value reproductive autonomy: forced pregnancy and forced sterilization.

The debates held by the chambers of the ICTY and the ICTR have been instrumental in defining both the material and the mental elements of rape and sexual violence and whether lack of consent is to be proved. These debates have led to the adoption of more precise standards by the ICC, particularly in respect to the need to prove the coercive nature of the criminal act and how the prosecution can address that requirement.

As seen, Articles 7 and 8 of the ICC Statute, read in conjunction with the Elements of the Crimes and the applicable Rules of Procedure and Evidence, provide clarity and specificity in respect to other formulations adopted by the statutes of previous international tribunals and international conventions, highlighting crimes against women and men that are particularly heinous but had not always been considered in their true gravity.

[58] *Ivi*, para. 265.

Furthermore, the double configurability of sexual crimes as crimes against humanity or war crimes widens the possibilities to successfully prosecute perpetrators under the material jurisdiction of the Court. This is particularly relevant in, for example, the current conflict in Ukraine as, based on the last report by the Organization for Security and Cooperation in Europe, rape and other forms of sexual violence are being systematically perpetrated as both: crimes against humanity and war crimes[59].

As stated by the current UN Special Representative for Sexual Violence in Conflict, rape and sexual violence are increasing, tragic common features in every conflict around the world[60].

States should commit to the effective prevention of the commission of sexual violence by enforcing applicable rules of international humanitarian law as well as by building the capacity of their security forces and their military and civilian systems of administration of justice.

On the other hand, States as well as international criminal courts should employ all their available means to conduct effective investigations into sexual crimes. The jurisprudence of the international tribunals has provided clearer legal tools. They now need to be effectively used.

***

Abstract: Sexual violence in conflict has been a tragic, regular, ubiquitous feature since the beginning of times. Despite this, the rather slow evolution of the codification of sexual violence crimes has only been given significant impulse by the jurisprudence of the *ad hoc* international tribunals. A very important role in this evolution has also been played by the adoption of the ICC Statute, which has taken steps at crystallizing and codifying the elements of the crimes. In addition, the ICC Statute has innovated by codifying crimes of reproductive violence: forced pregnancy and forced sterilization. This paper aims at briefly describing the evolution of the codification and description of the elements of sexual crimes committed in the context of conflict, particularly during the period that goes from the creation of the *ad hoc* international criminal tribunals until the judgement issued by the ICC against Dominic Ongwen.

Abstract: La violenza sessuale nei conflitti è una caratteristica tragica, ricorrente e presente da sempre, sin dall'antichità. Nonostante ciò, vi è stata un'evoluzione lenta

[59] W. Benedek - V. Bilková - M. Sassòli, *Report on violations of International Humanitarian and Human rights law, war crimes and crimes against humanity committed in Ukraine since 24 February 2022*, ODIHIR.GAL/26/22/Rev.1, 2022, in *https://www.osce.org/odihr/515868*

[60] See statement of Ms. Patten before the Security Council, dated 13 April 2022, on the occasion of the presentation of her report, in *https://reliefweb.int/report/world/statement-srsg-svc-pramila-patten-security-council-open-debate-conflict-related-1*

nella codificazione dei crimini di violenza sessuale che ha ricevuto un impulso significativo solo dalla giurisprudenza dei tribunali penali internazionali *ad hoc*. Un ruolo molto importante in questa evoluzione è stato svolto anche grazie all'adozione dello Statuto della Corte penale internazionale, che ha compiuto passi per cristallizzare e codificare gli elementi dei crimini. Inoltre, lo Statuto della Corte penale internazionale ha innovato codificando i crimini di violenza riproduttiva: gravidanza forzata e sterilizzazione forzata. Il presente lavoro si propone di descrivere brevemente l'evoluzione della codificazione e della descrizione degli elementi dei crimini sessuali commessi nel contesto di un conflitto, in particolare nel periodo che va dalla creazione dei tribunali penali internazionali *ad hoc* fino alla sentenza emessa dalla CPI contro Dominic Ongwen

Keywords: sexual violence – armed conflicts – lack of consent – coercive circumstances – International Criminal Court.

Parole Chiave: Violenza sessuale – conflitti armati – mancanza del consenso – circostanze coercitive – Corte penale internazionale.

***

Marina Castellaneta – Full Professor of International Law, University of Bari (Italy) (marina.castellaneta@uniba.it)

Ignacio Tredici – Professor of Criminal International Law, University of Bari (ignacio.tredici@uniba.it)