Chapter 2
The Crimes of Sexual Violence in the Jurisprudence of International Criminal Tribunals

ABSTRACT
This chapter concerns itself with strides made in defining and conceptualising sexual violence as crimes in international criminal law. The analysis presented in this chapter demonstrates that, after a long period of neglect of these crimes, wartime sexual violence appears to have gained recognition and firmly established as crimes in international criminal law. The author evidences the considerable contribution of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) to the current shift in thinking of international law regarding conflict-related sexual violence. Significantly, the author argues that the explicit criminalisation of different forms of sexual violence by the Rome Statute is a critical step forward in this regard. However, the analysis finally highlights continuing challenges in the prosecution of these crimes before international criminal tribunals.
Despite evidence of mass rapes and other acts of sexual violence committed during conflicts over the past centuries, historically very little attention has been paid to these crimes (A. Hagay-Frey, 2011, A. M. De Brouwer, 2005, K. D. Askin, 2003, R. Copelon, 2000). However, following massive atrocities in the 1990s, especially with the war in the former Yugoslavia and the genocide against Tutsi people in Rwanda during which rape was systematically used, these crimes ultimately got recognition before international criminal tribunals (C. E. Arrabal Ward, 2018). Until the creation of the International Criminal Tribunal for the former Yugoslavia (ICTY) and its sister for Rwanda (ICTR) as ad hoc tribunals, rape and other forms of sexual violence in conflict situations had never been defined. Despite the development of international humanitarian law proscribing sexual offenses in war, there had been no legal provisions on these offenses as specific crimes in international law. The limited attention on these crimes can be explained by the fact that rape has for too long been deemed as attached to the very nature of war.

Despite being proscribed by the law of the war, these crimes have thus been rarely prosecuted. Whereas sexual related offenses were committed in World War II, it is important to note that no rape prosecution was undertaken by any of the courts established in the wake of World War II to prosecute leaders for crimes against peace, war crimes and crimes against humanity (A. Cole, 2010). Except in the Control Council Law N° 10 where slight reference was made to rape to define crimes against humanity, neither the Charter of the Nuremberg International Military Tribunal (IMT), nor that for the Far East (IMTFE) provided for rape as a crime. However, these crimes were explicitly included in the statutes of the ICTY, ICTR as forms of other international crimes. The Rome Statute of the International Criminal Court (ICC) built on advances made by previous tribunals and significantly contributed toward an international law norm on these crimes by defining rape and other acts of sexual violence not simply a means of committing other international crimes but also independently as war crimes or crimes against humanity.

Indeed, within the last two decades, significant progress in addressing these crimes has been registered by the international criminal tribunals and courts. However, it is true to affirm that the effective international criminal prosecution of these crimes is still hindered by several challenges, despite an increasing legal benchmark in this regard. Since these crimes were only given cursory treatment in the post-World War II trials, the issue here is whether
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