

Contents

Acknowledgements IX

List of Abbreviations X

Introduction 1

1 Research Gap 5

2 Methodology 8

3 Volume Structure 9

4 Aims of the Volume 12

1 Wartime Sexual Violence at the International Level Since Its Recognition Until 'Its Work in Progress' 15

1 Introduction 15

2 Background of the Volume 16

2.1 *Sexual Violence during the Holocaust and Far East Occupations: An Analysis of the International Military Tribunals in Nuremberg and Tokyo* 17

2.2 *International Instruments to Address Sexual Violence* 33

3 UN Resolutions 36

4 How the Ad Hoc Tribunals were Constituted and a Brief Introduction to Their Work 39

4.1 *Conflict in the Former Yugoslavia* 41

4.2 *Conflict in Rwanda* 45

4.3 *Conflict in Sierra Leone* 48

5 The International Criminal Court 51

5.1 *A Gender Conceptualization of the Crime* 54

5.2 *Opportunistic and Sporadic Sexual Violence* 55

6 Conclusions 57

2 Wartime Sexual Violence as a Crime against Humanity, Genocide and a War Crime 59

1 Introduction 59

2 Landmark Jurisprudence of Wartime Sexual Violence Prosecuted in the International Criminal Tribunal for the Former Yugoslavia, International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone 62

2.1 *As Crime against Humanity* 63

2.2 *As Genocide* 69

2.3 *As a War Crime* 71

- 3 Elements of Crimes Established in International Criminal Courts 75
 - 3.1 *Material and Mental Elements* 76
 - 3.2 *Common Elements of the Crime* 77
- 4 Conclusion 87

- 3 Wartime Rape and Other Forms of Sexual Violence at the International Criminal Court and the Invisibility of Opportunistic Sexual Violence during Armed Conflict 89**
 - 1 Introduction 89
 - 2 The Road to Judicial Acceptance at the International Criminal Court 91
 - 2.1 *Consensus on 'Gender Neutral Violence'* 94
 - 2.2 *Concerns Raised by Different Observers* 95
 - 2.3 *The Crime of Rape and Other Forms of Sexual Violence under the Rome Statute* 97
 - 2.4 *International Criminal Court Decisions* 99
 - 3 Instances of Opportunistic or Occasional Sexual Violence: Could Sexual Violence as An Attack on Physical Integrity, Instead of on the Body Politic, be Approached at the International Level? 110
 - 3.1 *Variation and Frequency of Wartime Sexual Violence during Armed Conflict* 110
 - 3.2 *Sporadic and Opportunistic Instances of Sexual Violence during Armed Conflict. Could These Instances Fall within the Different Categories of International Crimes?* 116
 - 3.3 *New Conceptualisation under International Criminal Law* 124
 - 4 Conclusion 127

- 4 Sexual Violence as a Separate Crime in International Criminal Law 129**
 - 1 Introduction 129
 - 2 What do Feminist Currents of Opinion Say? 131
 - 2.1 *Gender* 133
 - 2.2 *Feminist Movements* 138
 - 3 Wartime Sexual Violence against Men 141
 - 3.1 *Wartime Sexual Violence against Men* 149
 - 3.2 *Statistics and Reports* 151
 - 3.3 *Sexual Violence against Men is a Reality* 156
 - 4 Is It Possible to Prove that the Crime of Sexual Violence and Other Forms of Sexual Violence are Violations of Customary International Law? 165

5	Interactions between International Criminal Law, International Humanitarian Law and International Human Rights Law	171
5.1	<i>International Legal Frameworks</i>	172
5.2	<i>Definition of Sex and Gender</i>	173
5.3	<i>International Criminal Law</i>	174
6	Conclusion	177
5	Shaping a New Convention against Rape and Other Forms of Sexual Violence	180
1	Introduction	181
2	Historical Background of Other Conventions	183
2.1	<i>The 1949 Fourth Geneva Conventions and Additional Protocols</i>	184
2.2	<i>Convention Relating to the Status of Refugees of 1951</i>	186
2.3	<i>Convention for the Elimination of all Forms of Discrimination against Women</i>	188
2.4	<i>The 'Istanbul Convention'</i>	191
2.5	<i>Policy Paper: Declaration of Commitment to End Sexual Violence in Conflict</i>	193
2.6	<i>International Criminal Court Policy Paper</i>	195
3	Female, Male and Indeterminate Sexual Identities or Third Gender Individuals	196
4	Gender Neutrality	200
5	Opportunistic, Recreational and Sporadic Instances of Wartime Sexual Violence under International Law	206
6	Towards a Convention against Rape and Other Forms of Sexual Violence	213
7	Proposal for a Convention against Rape and Other Forms of Sexual Violence (CARSV)	215
8	Conclusion	219
6	Conclusion	220
	Bibliography	227
	Index	261