

# Table of Contents

Acknowledgments	xiii
Foreword	xv
Prologue	1
Introduction	11
Chapter 1 Aetiology of Evil in Armed Conflicts	15
The Evil of War	15
A General Review of Human Capacity for Evil in Armed Conflicts	17
The Situational Theory of Evil	18
Hanna Arendt	18
Zygmunt Bauman, Stanley Milgram and Philip Zimbardo	33
The Dispositional Theory of Evil	43
Daniel Goldhagen	43
C Fred Alford	45
The Narcissistic Theory of Evil	50
The Eclectic Theory of Evil	53
Aetiology of Evil Viewed in the Context of the Law	60
Intent as Limiting the Theories of Aetiology of Evil	63
Uses in the Post-Conflict Quest for Justice and Reconciliation	64
Human Capacity for the Evil of Sexual Violence in Armed Conflicts	65
A Legislative Fact Amply Proved	68
Aetiology of the High Frequency of Sexual Violence during Armed Conflicts	72
The Theory of Inevitability of Sexual Violence during Armed Conflicts	72
An Evolutionary Theory of Rape	75
The Theory of Opportunism of Sexual Violence during Armed Conflicts	81
The Theory of Deliberate Policy of Sexual Violence during Armed Conflicts	83
Sexual Violence Traditionally Articulated as Policy	83
Sexual Violence Not Often Articulated as Policy—Systematic Connivance or Condonation	86
Conclusion	94

<b>Chapter 2 Superior Responsibility for the Rape of Women during Armed Conflicts</b>	<b>97</b>
Introduction	97
The Law as It Should Be	98
The Law as It Is	99
The Requirement of Knowledge	101
Routes around the Difficulties of the <i>Lex Lata</i>	103
Joint Criminal Enterprise	104
Much Ado About Joint Criminal Enterprise	109
Ordering	121
Planning and Instigating	125
Aiding and Abetting	126
Arguable Limits of Routes around the Difficulties of the <i>Lex Lata</i>	136
Superior Responsibility and the Duty to Punish	137
Conclusion	143
<b>Chapter 3 Defining Rape in International Criminal Law: An Unsettled Tug of War?</b>	<b>145</b>
Introduction	145
Primary Focus on the Violence of the Occasion	145
Reversion to Focus on Body Parts and Consent	146
Caught between Violence and Body Parts	148
Rape Law Reform in Domestic Jurisdictions	149
The Problems with Kunarac	151
Conclusion	157
<b>Chapter 4 Rape as Genocide and Some Questions Arising</b>	<b>159</b>
Introduction	159
Rape as Genocide in Light of the Debate regarding Intent to Destroy the Group in Whole or in (Substantial) Part	167
The Effect of the Debate on the Concept of Rape as Genocide	174
Joint Criminal Enterprise and Rape as Genocide	175
Conclusion	177
<b>Chapter 5 Armed Conflicts, Sexual Violence and the <i>Mens Rea</i> of the War Crime of Terrorism</b>	<b>179</b>
Introduction	179
The Conventional Source of the War Crime of Terrorism	179
The Origins of the Jurisprudence of Specific Intent	181
Terrorism and the <i>Mens Rea</i> of Sexual Slavery	185
(a) The Primary Purpose of Spreading Terror and the Nature and Circumstances of the Acts	185
(b) The Multi-Purpose Approach	189
(c) A Holistic View of Attack: A Campaign of Terror	190
Terrorism and Specific Intent: a Matter of General Principle	193
A Purposive Analysis of Terrorism as War Crime	193
Subjective and Objective Examination of Primary Purpose of Attack	195
The Statute of Rome on the War Crime of Terrorism	199
Conclusion	201

<b>Chapter 6</b>	<b>Internal Armed Conflicts, Sexual Violence and 'Grave Breaches'</b>	<b>203</b>
	Introduction	203
	Defining 'War Crimes'	204
	'Serious Violations' and 'Grave Breaches'	206
	Conclusion	219
<b>Chapter 7</b>	<b>Forced Marriage—an International Crime?</b>	<b>221</b>
	Introduction	221
	The Judgment of the Special Court for Sierra Leone	222
	A Proper Subject of International Criminal Law	224
	A Recognised Crime in International law?	226
	Evidential Problems of the SCSL Appeal's Chamber's Reasoning	229
	Doctrinal Problems of the SCSL Appeal's Chamber's Reasoning	233
	Forced Marriage and other Gender-oriented Crimes against Humanity	244
	Forced Marriage versus Sexual Slavery	245
	Forced Marriage versus Trafficking in Persons	252
	Conclusion	256
<b>Chapter 8</b>	<b>Prosecution of Sexual Violence against Women in Post-Conflict Societies</b>	<b>257</b>
	Introductory: A Question of Choices?	257
	The Importance of Sexual Violence Prosecution	260
	Post-Conflict Social (Re)Engineering as an Objective of the Prosecution Strategy	263
	The Need to Avoid Double Victimisation of Women	268
	Conclusion	269
<b>Chapter 9</b>	<b>Reparation for Female Victims of Sexual Violence in Armed Conflicts</b>	<b>271</b>
	Introduction	271
	The Theoretical Bases for Reparation	275
	(i) The Fault Basis for Reparation	278
	Regarding <i>Chorzów</i> Case as a Reference for Reparation	279
	Other Juristic Anchors for Reparation for Human Rights Violations	283
	(ii) Fault resulting from Actions	288
	(iii) Fault resulting from Omission	289
	(a) Fault resulting from Omissions of State of Nationality in respect of State Agents	289
	(b) Responsibility to Protect and National State's Omissions Regarding Rogue Agents of State and Non-State Actors	290
	(c) National State's Omissions Regarding Non-State Actors	296
	(d) Diplomatic Protection and National State's Omissions Regarding Foreign States	297
	Armed Conflicts and Diplomatic Protection	297
	Diplomatic Protection as a Question of Duty on the National State	300
	(e) The International Community and Fault resulting from Omissions	304
	(iv) A No-Fault Basis for Reparation	306
	The Special Focus on Female Victims	312
	Conclusion	314

xii *Table of Contents*

<b>Epilogue</b>	<b>315</b>
Summary of the Study	315
A Note of Optimism	318
<b>Bibliography</b>	<b>321</b>
<b>Index</b>	<b>345</b>