International criminal law and the protection of women: tipification of new offences and old revisited crimes

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Good morning,

First, before starting my presentation about the protection of women in international criminal law, I will like to thank the colleagues who have put together this summer school and the opportunity that has been given to me to present my study in this fora.

The understanding and treatment in International Criminal law of sexual or gender crimes can only be described with a term that is far from international law, and that is REVOLUTION. In international law, changes are often a matter of time, and time passes in slow motion.

But the treatment of gender crimes has completely change in a matter of 70 years of history of international criminal law. From the silence and omission during the Nuremberg and Tokyo proceedings to the development of an independent category of crimes against humanity and war crimes. We, scholars, can only assert that the evolution has been outstanding. It is true that a lot of things can be done different and that the treatment of victims in international proceedings can change, but the definition of crimes, that first step to end impunity, has been remarkable.

In this presentation I will try to expose such evolution-revolution, from the first crimes codified in the international statutes till the present time represented by the Rome Statute for an International Criminal Court.

As I have mentioned before, neither the Nuremberg Tribunal nor its Asian counterpart, the Tokyo Tribunal, addressed the numerous sexual crimes committed during World War II. As such, the Statutes of the Tribunals did not contain an express prohibition condemning rape or the practices of enforce prostitution/sexual slavery. They were all situations covered by provisions related to family honor or ill treatment. And therefore, the sexual slavery of the “comfort wives” in the Japanese front or the rapes of Nanking, went unpunished.

After World War II, the treaties codifying the laws of war –the IV Geneva Conventions- inhered the silence of the prosecutions. And again, not even rape was expressly include in the grave breaches provisions. There are mentions to ill-treatment and honor, but the sexual crimes continued to be ignore. Only the IV Geneva Convention included a provision, article 27, which recognized that:

> *Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault".*

But this provision was not included into the grave breaches provision. And therefore, there were not considered as independent war crimes.

During the next decades the international community started developing treaties and conventions related to human rights and different international crimes.

The first one was the Genocide Convention of 1948. The genocide convention included a provision covering the so-called reproductive violence (imposing measures intended to prevent births within the group) and two acts that could implicitly covered other forms of sexual violence (causing serious bodily or mental harm to members of the group; and deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part).

Other international instruments for the development of human rights included among their prohibed practices some of the actual gender crimes, but none of them defined specific crimes to be persecute under international criminal law.

As an example, The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956 included among the definition of "slavery" a practice that could be assimilated to the future crime of "forced marriage" but the criminal sanctions were to be established under national law, urging states parties "to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority" as a mean to ensure voluntarily of the bond.

This situation underwent a first overturn with the constitution of the a*d hoc* international criminal tribunals of Yugoslavia and Rwanda during the 1990s, which expressly included different forms of gender crimes.

As is known, during the earlies 1990s, the international community witnessed scenes of unimaginable violence, both in the Former Yugoslavia and Rwanda. In both conflicts, mass rapes, sexual torture, sexual slavery and other forms of sexual violence were widespread and systematic and the international community decided to put an end on such impunity.

The Statute of the ICTY included for the first time the crime of rape as a crime against humanity and the genocidal conducts of reproductive violence, that we have mentioned before. The Statute of the ICTR included the previous ones and added the war crimes of rape, enforced prostitution and any form of indecent assault, as a violation of art. 3 common to the Geneva Conventions and Additional Protocol II of the Geneva Conventions.

Despite such provisions the prosecutors of the ad hoc tribunals initially did not proceed to include them in the indictments.

But then, the Akayesu case started at the ICTR and the change began. In 1997, and after the testimonies of two witnesses who spoke of multiple

rapes, the Prosecutor of the ICTR amended the indictment against Jean Paul Akayesu including rape and sexual violence as part of the counts of genocide, crimes against humanity and war crimes. The Prosecutors in both ad hoc tribunals started to use the provisions on sexual violence with different views, permitting the establishment of a corpus of case law defining different sexual crimes.

Rape was the first crime to be defined in the case law of these tribunals.

The Akayesu case was, as mentioned, a starting point for the case law regarding sexual crimes, and specially, rape. The Trial Chamber, in its 1998 Judgment, defined rape as a crime against humanity and as an act of genocide for the first time in international criminal law, establishing its legal elements and boundaries.

For the Trial Chamber:
"(…) while rape has been historically defined in national jurisdictions as non-consensual sexual intercourse, variations on the form of rape may include acts which involve the insertion of objects and/or the use of bodily orifices not considered to be intrinsically sexual. (…)

The Tribunal considers that rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts. The Tribunal also notes the cultural sensitivities involved in public discussion of intimate matters and recalls the painful reluctance and inability of witnesses to disclose graphic anatomical details of sexual violence they endured. The United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment does not catalogue specific acts in its definition of torture, focusing rather on the conceptual framework of state-sanctioned violence. The Tribunal finds this approach more useful in the context of international law. Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control

or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The Tribunal defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. The Tribunal considers sexual violence, which includes rape, as any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact. (…) The Tribunal notes in this context that coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances, such as armed conflict or the military presence of Interahamwe among refugee Tutsi women at the bureau communal. Sexual violence falls within the scope of "other inhumane acts", set forth Article 3(i) of the Tribunal's Statute, "outrages upon personal dignity," set forth in Article 4(e) of the Statute, and "serious bodily or mental harm," set forth in Article 2(2)(b) of the Statute".

This first international definition of the crime of rape –that is "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive"- put all the emphasis in the coactive element that was highlighted by the use of terms as "invasion" and "coercive".

But the Akayesu definition was almost coincident in time with another definition of rape- this time by one of the ICTY's Trial Chamber; the one laid down on the Furundžija case. The ICTY Trial Chamber, after affirming that no definition of rape could be found under international law, and reviewing both the case law and national criminal codes, adopted a mechanical description of the crime of rape, stating that:

"Thus, the Trial Chamber finds that the following may be accepted as the objective elements of rape: (i) the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) the mouth of the victim by the penis of the perpetrator; (ii) by coercion or force or threat of force against the victim or a third person".

So, in 1998, International Criminal law found itself with two case-law definitions of rape, and a long path ahead. The division between trial chambers was real, and each one applied the definition as its own will.

The Judgment in the Kunarac et al. case came to clarify the second element of the Furundžija definition: the element of force, rejecting that only force, threat of force or coercion could render an act of sexual penetration as non-consensual, and including other factors that influence a victim's free will to consent. The element of force was replace by the "lack of consent of the victim". The Chamber considered that:

"(…) the actus reus of the crime of rape in international law is constituted by: the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances. The mens rea is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim".

The Appeals Chamber in the case went further in clarifying the elements of rape, and especially the ones related to "lack of consent". For the

Appeals Chamber, it was worth to highlight two points, points that have been brought to these days' prosecutions of rape in other jurisdictions:

"First, it rejects the Appellants' «resistance» requirement, an addition for which they have offered no basis in customary international law. The Appellants' bald assertion that nothing short of continuous resistance provides adequate notice to the perpetrator that his attentions are unwanted is wrong in law and absurd on the facts. Secondly, with regard to the role of force in the definition of rape, the Appeals Chamber notes that the Trial Chamber appeared to depart from the Tribunal's prior definitions of rape. However, in explaining its focus on the absence of consent as the condition sine qua non of rape, the Trial Chamber did not disavow the Tribunal's earlier jurisprudence, but instead sought to explain the relationship between force and consent. Force or threat of force provides clear evidence of no consent, but force is not an element per se of rape. In particular, the Trial Chamber wished to explain that there are "factors other than force which would render an act of sexual penetration non-consensual or non-voluntary on the part of the victim". A narrow focus on force or threat of force could permit perpetrators to evade liability for sexual activity to which the other party had not consent by taking advantage of coercive circumstances without relying on physical force. (…) While it is true that a focus on one aspect gives a different shading to the offence, it is worth observing that the circumstances giving rise to the instant appeal and that prevail in most cases charged as either war crimes or crimes against humanity will be almost universally coercive. That is to say, true consent will not be possible".

The Kunarac definition was followed by the majority of the decisions containing the charge of rape (whether as war crime or as a crime against humanity). But both definitions, as stated by the ICTR, were not incompatible or substantially different, as one can complete the other,

permitting the Chambers to endorse the conceptual definition in Akayesu with the elements set out in Kunarac.

At this point, no one doubted that rape was a crime against humanity or a war crime by its own merits. But the acts of rape were conceived by the Chambers not only as a crime themselves but also as an act that could be covered by other crimes such as torture, persecution, enslavement, terrorism and, for the first time, part of the crime of crimes, genocide:

"With regard, particularly, to (…) rape and sexual violence, the Chamber wishes to underscore the fact that in its opinion, they constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such. Indeed, rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims and are even, according to the Chamber, one of the worst ways of inflict harm on the victim as he or she suffers both bodily and mental harm. In light of all the evidence before it, the Chamber is satisfied that the acts of rape and sexual violence described above, were committed solely against Tutsi women, many of whom were subjected to the worst public humiliation, mutilated, and raped several times, often in public, in the Bureau Communal premises or in other public places, and often by more than one assailant. These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole".

"Sexual assault" was the other type of sexual category which definition was developed in the case law of both tribunals, intending to cover other situations with a sexual nature that could not be describe or conceive as rape.

It is then a broader crime than rape and encompasses *"all serious abuses of a sexual nature inflicted upon the physical and moral integrity of a person by means of coercion, threat of force or intimidation in a way that is humiliating and degrading for the victim's dignity"*.

The Trial Chamber in the Sainović et *al.* Judgment identified the elements of sexual assault as follows

(a) The physical perpetrator commits an act of a sexual nature on another; this includes requiring that other person to perform such an act.
(b) That act infringes the victim's physical integrity or amounts to an outrage to the victim's personal dignity.
(c) The victim does not consent to the act.
(d) The physical perpetrator intentionally commits the act.
(e) The physical perpetrator is aware that the act occurred without the consent of the victim.

Even if it is evident that sexual assault requires that an act of a sexual nature take place, physical contact is, however, not required for an act to be qualified as sexual in nature. As stated by the Appeals Chamber in the Đorđević case:

"forcing a person to perform or witness certain acts may be sufficient, so long as the acts humiliate and/or degrade the victim in a sexual manner".

As happened with the crime of rape, sexual assaults could be part of other types of crimes, such as persecution or torture, or be persecuted under the "other inhumane acts" provision.

But the work of the ICTR-ICTY was not the only one covering sexual crimes. The Statute of SCSL went a step forward in their prosecution. Its Article 2 g) established that:

"The Special Court shall have the power to prosecute persons who committed the following crimes as part of a widespread or systematic attack against any civilian population: g. Rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence".

It is necessary to bear in mind that this Statute was designed after the Rome Statute –were the discussions about gender crimes concluded on a specific provision including the previous independent crimes, both as crimes against humanity and war crimes.

The main accomplishment regarding sexual crimes of the SCSL was the indictment and persecution of the first international cases of the practice of "forced marriages" as a crime against humanity. But its practice was highly controversial.

In the first case, the AFCR Case, the Prosecutor sustained that the practice of "forced marriages" had to be qualified as a crime against humanity of sexual slavery and any other form of sexual violence (count 7-article 2.g. of the Statute) and as a crime against humanity of other inhumane act (count 8-article 2.i. of the Statute), or in the alternative as a crime or war of outrages upon personal dignity as a violation of article 3 common to the Geneva Conventions and of Additional Protocol II (count 9-article 3.e. of the Statute).
After the dismissal of count 7 for its duplicity, Trial Chamber II studied its qualification as a crime against humanity of other inhumane acts in count 8, affirming that, based in its residual character, this category should be restrictively interpreted as applying only to acts of a non-sexual nature amounting to an affront to human dignity and that it had to comply with three additional requirements:

"1. The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act;

2. The act was of a gravity similar to the acts referred to in Article 2(a) to (h) of the Statute; and
3. The perpetrator was aware of the factual circumstances that established the character of the gravity of the act".

Trial Chamber II dismissed the charge after affirming that is was not satisfied that the evidence was capable of establishing the elements of a non-sexual crime of "forced marriage" independent of the crime of sexual slavery.

Both the defence and the Prosecutor appeal the Judgment, which allowed the Appeals Chamber to reconsider some of the decisions taken by the Trial Chamber.

Regarding the Trial Chamber's dismissal of Count 8 ("other Inhumane Acts"), the Appeals Chamber found that the Trial Chamber erred in law by finding that the category of "other inhumane acts" had to be restrictively interpreted. Furthermore, it did not see a reason justifying why the "exhaustive" listing of sexual crimes under Article 2.g. of the Statute should foreclose the possibility of charging as "Other Inhumane Acts" crimes which may among others have a sexual or gender component.

The Appeals Chamber continued holding that the trial record contained ample evidence that the perpetrators of forced marriage intended to impose a forced conjugal association upon the victims rather than exercise an ownership interest and that forced marriage is not predominantly a sexual crime. The Appeals Chamber concluded that:

"Based on the evidence on record, the Appeals Chamber finds that no tribunal could reasonably have found that forced marriage was subsumed in the crime against humanity of sexual slavery. While forced marriage shares certain elements with sexual slavery such as non-consensual sex

and deprivation of liberty, there are also distinguishing factors. First, forced marriage involves a perpetrator compelling a person by force or threat of force, through the words or conduct of the perpetrator or those associated with him, into a forced conjugal association with another person resulting in great suffering, or serious physical or mental injury on the part of the victim. Second, unlike sexual slavery, forced marriage implies a relationship of exclusivity between the «husband» and «wife», which could lead to disciplinary consequences for breach of this exclusive arrangement. These distinctions imply that forced marriage is not predominantly a sexual crime. The Trial Chamber, therefore, erred in holding that the evidence of forced marriages is subsumed in the elements of sexual slavery.

In light of the distinctions between forced marriage and sexual slavery, the Appeals Chamber finds that in the context of the Sierra Leone conflict, forced marriage describes a situation in which the perpetrator through his words or conduct, or those of someone for whose actions he is responsible, compels a person by force, threat of force, or coercion to serve as a conjugal partner resulting in severe suffering, or physical, mental or psychological injury to the victim".

As to the opinion of the Appeals Chamber, those practices amounting to forced marriages were of similar gravity to several of the crimes against humanity enumerated in the Statute and the forceful abduction and use of women and girls as forced conjugal partners as part of a widespread or systematic attack against the civilian population definitely constitute a crime against humanity of "other inhumane acts".

This controversial interpretation of sexual slavery and forced marriages as different crimes was followed by the Prosecutor Office in the RUF Case, but was later abandoned in the last case heard by the Court: the case in the Prosecutor against Charles Ghankay Taylor, former President of Liberia.

The indictment in the Taylor Case contemplated that the practices of “forced marriages” could only be charged as crimes against humanity of sexual slavery (count 5) and violations of common Article 3 (outrages upon personal dignity-count 6), abandoning the separate crime against humanity of other inhumane acts.

In the Trial Chamber's view, the Prosecution erred in various indictments by charging "forced marriage" as a crime that falls within the scope of the crime against humanity of other inhumane acts. Aiming to refute the case law laid down by the Appeals Chamber in the AFRC Appeals Judgement and the RUF Case, the Trial Chamber II started its analysis of the now-called “forced conjugal association” affirming that this practice satisfies the two elements required by the crime of sexual slavery (deprivation of liberty and the non-consensual sexual acts). And as such, it should rather be considered a conjugal form of enslavement. For Trial Chamber II, these “forced conjugal associations” constituted a form of enslavement in that the perpetrator exercised the powers attaching to the right of ownership over their "*bush wives*" and imposed on them a deprivation of liberty, causing them to engage in sexual acts as well as other acts. Finally, the Chamber declared: *“The Trial Chamber is of the view that the conjugal slavery best describes these acts, and while they may constitute more than sexual slavery, they nevertheless satisfy the elements of sexual slavery”.*

Even though these decisions of SCSL abandoned the treatment as a crime against humanity of “other inhumane acts”, the ECCC has again reopened the old approach considering that forced marriages should be included in the residual provision.

During the negotiations of the Rome Statute, it was make clear that gender and sexual crimes needed a special provision. The case law established by the ICTY and ICTR led to important developments that

were included in the debates of the Preparatory Committees for the Rome Conference between 1996 and 1998, as well as in the Conference of Rome itself, high lightening the major problem about prosecuting crimes of sexual nature: the inexistence of a separate and autonomous category of these crimes in the Statutes of the international criminal tribunals. And for the first time, different forms of sexual violence were included in the articles dedicated to crimes against humanity and war crimes.

As such, the following crimes were included: *Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity".*

Regarding the crime of rape, the DEC has determined the following elements for the conduct:
1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of 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.
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.

As can be easily point out, the DEC endorses the case law of the ICTY-ICTR regarding this crime. The definition of rape posses no further questions for the future prosecutions under the ICC Statute, having reached a status of customary international law.

2. Sexual Slavery
Even if the crime of sexual slavery is not new, the position of the ICC regarding the crime will be crucial in order to clarify whether the practice

of “force marriages” falls into this crime or is left to the “other inhumane acts” provision.

To this date, the OTP has included this crime (whether as a crime against humanity or as a war crime) under seven cases: KATANGA case; KENYATTA case; KONY et al case; NTAGANDA case; NGUDJOLO CHUI case; ONGWEN case, and AL HASSAN case. But only in the Katanga and Ngudjolo case the Chamber has reached a judgment on the charge of sexual slavery.

Under the DEC, the elements that define the crime are:
“1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.
2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature”.

Regarding the first element (the exercise of powers attaching to the right of ownership over one or more persons), the Chambers have agreed that in determining such element, they have to considered various factors collectively and that they do *“not consider that in the absence of other factors, mere imprisonment or its duration are sufficient to satisfy the element of ownership over the victim of the crime of sexual slavery”.*

The enumeration contained in the DEC is not an exhaustive list, as the “right of ownership” and the powers attaching to it may take many forms. For the Trial Chamber, this element “*must be construed as the use, enjoyment and disposal of a person who is regarded as property, by placing him or her in a situation of dependence which entails his or her deprivation of any form of autonomy”*.

The second element is of special importance as is the one that allows the conduct to be individualize from the general category of "enslavement", which is another type of crime. The sexual nature of the act will be considered under a case by case basis.

As it has been advance, the case law of the ICC will be clarifying the position of the practice of the so-called "forced marriages". It is necessary to highlight that the OTP and the Trial Chambers have followed a similar path that the one started by the SCSL: in the first cases, both the OTP and the Pre-Trial Chambers decided to include the practice under the sexual slavery charge, but this interpretation has changed in the case against Dominic Ongwen.

After analyzing the international case law regarding such practices, Pre-Trial Chamber II concluded that the crimes of sexual slavery and forced marriage are different. For Pre-Trial Chamber I, the crime of forced marriage has a distinct conduct, a distinct harm and protects different interests that the crime of sexual slavery, even though they are usually connected as a *matrioska*: one containing the other.

The central elements in the crime of forced marriage are the imposition of the "marriage" on the victim and the element of exclusivity of such conjugal union, which could lead to disciplinary consequences for breach of this arrangement. It is not important whether the union is recognized under the applicable national law, as the core element is the imposition of such union on the victim.

The protected interest, as mention above, on both crimes is different too. In the case of the crime of forced marriage, the conduct violates the basic right to consensually marry and establish a family, right that cannot be suspended in times of armed conflict. And in the protection of such interest is where the victims could suffer different harms summed up to the ones describe and contained in other crimes described at the Statute.

In the case of "sexual slavery", the aim of such prosecution is the protection of two fundamental human rights: the physical and sexual integrity, and the personal liberty of the victim.

This interpretation of the crime has been maintained in the last case brought to the Pre-Trial Chamber's attention, that is, the Al Hassad Case.

The rest of the crimes have not been part on any indictment so far, and for that we can only rely in the DEC for establishing their elements.
The crime of forced prostitution will need to elements:
1. The perpetrator caused one or more persons to engage in one or more acts of a sexual nature 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 persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.

Under these elements, the DEC has included the evolution of the concept of "lack of consent" and the necessary advantage that has to be obtain in connection or in exchange of the acts of sexual nature. The sexual nature of the acts will be asses under a case-by-case basis, following the Đorđević appeal judgment findings[1].

Regarding Forced pregnancy, it is defined 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".*

[1] Vide note 54.

The definition establishes a specific intent (mens rea) for this crime: the intent of affecting the ethnic composition of a population or carry out other grave violation of international law. Such intent applies to the confinement and not to the pregnancy itself or to its outcome.

Enforced sterilization protects the right to the biological reproductive capacity. The elements describe by the DEC are two:
1. The perpetrator deprived one or more persons of biological reproductive capacity.
2. The conduct was neither justified by the medical or hospital treatment of the person or persons concerned nor carried out with their genuine consent.

Finally, the residual provision intents to close the enumeration with an open provision of "Any other form of sexual violence of comparable gravity", that could be assimilated to the "sexual assaults" of ICTY.
The elements of such crimes will be:

> 1. The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature 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 persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
> 2. Such conduct was of a gravity comparable to the other offences in article 7, paragraph 1 (g), of the Statute.
> 3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.

At this point, scholars and professionals are demanding a new interpretation of such provisions, including the trafficking on human

beings under the provisions of sexual crimes and a better treatment of victims under these prosecutions.

After this presentation, we must conclude that the international community has walked a long line to established an international definition of one of the first crimes, rape, and that the understanding of the rest of sexual crimes is still needed of a more cohesive definition. The principles of international criminal law and the rule of law demand such cohesion, and so the victims of these crimes. The forgotten crimes are now in the public eye of the ICC.