**Profiting from Sexual Violence in Armed Conflict: A Case for the Resurrection of the Crime of Enforced Prostitution**

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“Yes, girls are a commodity increasingly in short supply.”

 (Anonymous, *A Woman in Berlin*, 1954)

**Abstract**

This article challenges the notion that the crime of enforced prostitution is subsumed by the newer characterisation of sexual slavery. Based on a fresh analysis of the historical jurisprudence, the authors argue that the blameworthy conduct at the core of enforced prostitution distinguishes the crime from sexual slavery because it focuses on the fact that the perpetrator seeks to profit from the coerced sexual acts to which the victims are subjected. Having regard to the context of modern atrocities, this article argues that enforced prostitution is closely tied to organised crime and human trafficking and therefore should be resurrected in such contexts as an appropriate category to target the profiteers of sexual violence who do more than enslave their victims by effectively systematising rape for profit. Rather than being viewed as an outdated offence, enforced prostitution should therefore be more actively considered by prosecutors as a primary or alternative charge in accordance with international principles on cumulative charges and convictions.

**I. Introduction**

1. The commodification and commercialisation of rape and other forms of sexual violence is an understudied dimension of modern armed conflicts, despite the increasing global attention being paid to the issue of wartime sexual atrocities.[[3]](#footnote-4) It is well-known that during the Second World War, the Japanese government authorised the sexual abuse of women and girls in the service of the Imperial Armed Forces. The victims of this “system of forced military prostitution” were euphemistically known as *ianfu* or “comfort women”.[[4]](#footnote-5) A resolution of the European Parliament in 2007 noted that: “the “comfort women” system included gang rape, forced abortions, humiliation, and sexual violence resulting in mutilation, death or eventual suicide, in one of the largest cases of human trafficking in the 20th century.”[[5]](#footnote-6) As witnessed in the conflicts in the former Yugoslavia and the persecution of minority groups such as the Rohingya and Yazidi, wartime sexual violence, especially when combined with deportation and the cross-border trade in human beings, continues to serve as a means to secure a financial benefit or to finance armed conflict directly or indirectly.

 2. As one of the earliest recognised war crimes, “enforced prostitution” was included in the list of “violations of the laws and customs of war” in the Report of the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties presented to the Preliminary Peace Conference at the conclusion of the First World War.[[6]](#footnote-7) This crime was prosecuted for the first time after the Second World War in a series of cases before a Dutch military tribunal relating to the so-called “comfort stations” established by the Japanese military.[[7]](#footnote-8) Enforced prostitution as a war crime in both international and non-international armed conflicts and as a crime against humanity is listed in the 1998 Rome Statute of the ICC alongside other forms of gender-based violence, such as rape, sexual slavery and forced marriage. It is similarly included in the Statutes of the ICTR and the SCSL, and the Law on the Kosovo Specialist Chambers.[[8]](#footnote-9) However, enforced prostitution has yet to be prosecuted in contemporary proceedings. In the year of the adoption of the Rome Statute, the Special Rapporteur on the topic of “systematic rape, sexual slavery and slavery-like practices during armed conflict” stated a clear preference for conduct which might amount to enforced prostitution to be characterised and prosecuted as sexual slavery.[[9]](#footnote-10) This was also the preference of the judges of the Women’s International War Crimes Tribunal for the Trial of Japan’s Military Sexual Slavery (“Women’s International War Crimes Tribunal”), established by Asian women’s organisations in 2000 as a people’s tribunal, who claimed that sexual slavery amounted to “a long overdue renaming of the crime of (en)forced prostitution”.[[10]](#footnote-11)

 3. This article challenges the notion that the newer characterisation of sexual slavery should replace enforced prostitution in all circumstances based on a fresh analysis of the historical jurisprudence which has not yet been studied in detail by legal scholars. Guided by this jurisprudence, the article examines and clarifies the legal elements of enforced prostitution as compared to sexual slavery and concludes that the former category is not subsumed by the latter. It then addresses the psychological and terminological aspects of the use of the term “prostitution” in the definition of an atrocity crime by reference to three criteria: gravity, voluntariness and stigma. Following this assessment, the category of enforced prostitution is defended as an appropriate characterisation when the element of pecuniary gain is prevalent. The article goes on to highlight some modern contexts where a close relationship between war crimes, crimes against humanity and human trafficking for prostitution is evident. It is suggested that the category of enforced prostitution should be resurrected in such contexts as an appropriate category to target the profiteers of sexual violence who do more than enslave and in effect systematise rape for profit. Enforced prostitution should therefore be more actively considered by prosecutors as a primary or alternative charge in accordance with international principles on cumulative charges and convictions.

**II. The Definition of Enforced Prostitution versus Sexual Slavery**

4. The negotiations that preceded the adoption of the Rome Statute of the ICC involved a vigorous debate over the listing of different forms of sexual violence.[[11]](#footnote-12) The inclusion in the list of sexual slavery as a war crime and crime against humanity – the first time this category had formally been recognised in an international instrument – proved uncontroversial.[[12]](#footnote-13) More contentious was the inclusion of the older category of enforced prostitution which appeared outmoded by comparison and difficult to differentiate from sexual slavery in terms of its constitutive elements.[[13]](#footnote-14) Notably, it was considered self-evident during the discussions that sexual slavery was the broader category.[[14]](#footnote-15) The Women’s Caucus for Gender Justice, which played an instrumental role in lobbying for the recognition of separate categories of sexual violence in the Statute, argued that enforced prostitution should be retained as a category involving “less than slave-like conditions”.[[15]](#footnote-16) In view of the uncertainties over the precise relationship between sexual slavery and enforced prostitution, and in recognition of the long heritage of the latter category as a war crime, delegates opted to retain both terms.[[16]](#footnote-17)

 5. Sexual slavery and enforced prostitution are mentioned three times in the Rome Statute, namely as crimes against humanity (Article 7(1)(g)), war crimes in an international armed conflict (Article 8(2)(b)(xxii)) and war crimes in a non-international armed conflict (Article 8(2)(e)(vi)).[[17]](#footnote-18) The elements of enforced prostitution, which are identical for the crime against humanity and the war crime in international and non-international armed conflict, except for the required context and the knowledge thereof, are listed in the ICC Elements of Crimes as follows:

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[[18]](#footnote-19) pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.

6. In comparison, the key elements of sexual slavery 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.[[19]](#footnote-20)
2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.

7. Thus, the non-sexual characteristic of enforced prostitution is the pecuniary or other advantage obtained or anticipated by the perpetrator or another person, while for sexual slavery it is the exercise of “powers attaching to the right of ownership” that the perpetrator claims over the victim.

 8. The elaboration of these elements was based on extensive discussion and some delicate compromises. During the debate as to the elements of sexual slavery, there was a gradual shift from a perceived requirement of commercial or pecuniary exchange towards an emphasis on the idea of “ownership”.[[20]](#footnote-21) The pecuniary aspect became the focus of the negotiations over the elements of enforced prostitution although delegates were initially divided over whether a “benefit” needed to be accrued (and if so, by whom) and whether the element of “control” could be defined in such a way as to make it distinguishable from enslavement.[[21]](#footnote-22) The divide was bridged by clarifying in the agreed elements that threats of force were sufficient to generate the requisite coercive environment, making explicit reference to the effect of this environment on the capacity to give genuine consent, and incorporating the notion of a “benefit” which was both inherent in the common understanding of prostitution and necessary to distinguish the crime from sexual slavery.[[22]](#footnote-23)

 9. As a result of the shared element of causing the victim to engage in acts of a sexual nature, “sexual slavery, perpetrated most commonly by enslavement to effectuate continuous rape, may also encompass enforced prostitution […]”.[[23]](#footnote-24) Consequently, the same historical precedents have been invoked in support of both categories.[[24]](#footnote-25) At the same time, modern prosecutions for sexual slavery and enslavement are likely to form an important backbone of any future prosecutions of enforced prostitution. The next section provides an overview of the historical precedents as a basis for an analysis of the legal and conceptual distinctions between the two categories.

*II. A. The Historical Precedents*

10. The Japanese military ran a large number of state sponsored “brothels” between 1932 and 1945 in which it is estimated that between 80,000 and 200,000 women and girls worked.[[25]](#footnote-26) While the majority of the victims came from Korea, others were Filipino, Chinese, Indonesian, Burmese, Dutch, and Japanese.[[26]](#footnote-27) Considering the brutality and inhumanity with which the victims were treated, the term “pay-to-rape centre” suggested by De Ming Fan seems more appropriate than “brothel”.[[27]](#footnote-28) While the IMTFE judgment addressed sexual violence, no charges of enforced prostitution were brought before the Tribunal.[[28]](#footnote-29) Slavery was only addressed in the context of non-sexual slavery as part of the slave labour system involving prisoners of war, civilian internees, and inhabitants of occupied territory.[[29]](#footnote-30)

 11. However, the crime of enforced prostitution was prosecuted before a Dutch Temporary Court Martial (*Temporaire Krijgsraad*) in Batavia operating under Dutch Ordinance No. 44 of 1946. Article 1(7) of the Ordinance concerning the “Definition of War Crimes” gave the court jurisdiction over “abduction of girls or women for the purpose of enforced prostitution, enforced prostitution”.[[30]](#footnote-31) The best known of these historical cases is that of Awochi Washio (“*Washio* case”). Washio was a civilian who from 1943 to 1945 ran a restaurant and brothel in Batavia called the Sakura Club together with his female associate, Lies Beerhorst. Washio was charged with the war crime of “enforced prostitution” constituted by the following conduct: recruiting women and girls to serve Japanese civilians in the Sakura Club or causing them to be recruited for that purpose; “under the direct or indirect threat of the KEMPEI (Military police […]) should they wish to leave, forcing them to commit prostitution” with members of the club; requiring them to reside in a closed-off part of the club which they were unable to leave freely; placing women and girls at the disposal of the club members “for the purpose of prostitution” and restricting their liberty of movement.[[31]](#footnote-32) Washio was convicted of enforced prostitution and sentenced to ten years’ imprisonment although he died in prison in 1949.[[32]](#footnote-33)

 12. A case originally against twelve jointly charged civilian and military defendants concerning events in Semarang (“*Semarang* case”) provides another important precedent and reveals the systematic nature of enforced prostitution during Japanese occupation more vividly than the *Washio* case.[[33]](#footnote-34) It is evident from the case that brothels established for the benefit of Japanese officers as well as for regular soldiers and civilians formed part of the wider system. One witness testified that her captor “threatened to send her to a soldiers brothel, where she would have to receive 15 men each day”.[[34]](#footnote-35) Indeed, the *Semarang* case concerned the establishment of brothels specifically to serve soldiers undergoing an accelerated programme at an officers’ cadet school, partly in a bid to reduce the rate of venereal disease among the cadets. The accused, including military officers, medical officers and “brothel keepers”, were charged with various combinations of rape, abduction for the purpose of enforced prostitution, enforced prostitution and ill-treatment. The victims in this case were taken from internment camps in Central Java to Semarang where they were moved between brothels and forced to work as prostitutes. According to the established facts, the women were not told what sort of work they would be doing when they were removed from the camps as the authorities knew they would face resistance and most of them were “forced by means of physical assault and physical coercion”[[35]](#footnote-36) to provide sexual services under threat of death and reprisals against the women’s families.[[36]](#footnote-37) One of the accused was convicted of all three crimes of abduction of women and girls for the purpose of enforced prostitution, enforced prostitution and rape, and sentenced to death. Two accused were acquitted and the remaining accused, including the four brothel keepers, received sentences of imprisonment ranging from two to twenty years.

 13. One of the original accused in the *Semarang* case, Colonel Shoichi Ikeda, was tried separately on health grounds (“*Ikeda* case”).[[37]](#footnote-38) The facts established in the earlier case were taken to have been proven and the only issue was as to Ikeda’s responsibility. Ikeda was a military officer who played a significant role in the elaboration and implementation of the plan to recruit women from internment camps to serve as prostitutes in newly established brothels intended for Japanese soldiers. He was found to be responsible as a senior officer for the conduct of his subordinates – both civilians and soldiers – on the basis that “he should have been aware that Dutch women and girls would be unwilling, in general and in principle, to leave their internment camps to work as prostitutes in Japanese brothels, and that they would only proceed to do so as a result of deceit and/or force”.[[38]](#footnote-39) He was sentenced to 15 years’ imprisonment for all three offences of abduction for enforced prostitution, enforced prostitution and rape, although notably there did not appear to be evidence that he had personally committed rape, pointing to the application of nascent ideas of command responsibility.

 14. While these cases concern only Dutch victims, there is evidence that Eurasian and Indonesian victims suffered a similar if not worse fate at the hands of the Japanese forces. Tanaka refers to two exceptional cases where the Dutch prosecuting authorities addressed the enforced prostitution of non-Dutch women. One case concerned the manager of a comfort station, Ishibashi Nakazaburd, who was charged with kidnapping several Indonesian women and forcing them to render sexual services to the Japanese, while another concerned the rape and enforced prostitution of ﬁve Indonesian women by the Japanese troops in Pontianak.[[39]](#footnote-40)

*II. B. The Element of Coercion*

15. The historical precedents illustrate the element of force, threat of force or coercion, or taking advantage of a coercive environment, that precludes voluntariness and by extension consent to the sexual acts for the purposes of the definition of enforced prostitution. It is clear from the judgment in *Washio* that irrespective of the manner of their recruitment, the women and girls were deprived of their freedom of movement and required to reside in a closed-off area of the Sakura Club.[[40]](#footnote-41) They were subjected to direct or indirect force to compel them to serve as prostitutes and to prevent them from escaping. The indirect application of force included the threat to turn over anyone who resisted to the Japanese military police which was “synonymous with ill-treatment, loss of liberty or worse”.[[41]](#footnote-42) Such an environment of “compulsion in all its possible forms” excluded the possibility of voluntariness on the part of the victims.[[42]](#footnote-43) Likewise, in *Semarang*, the court focused on the coercive environment and the absence of voluntariness on the part of the women and girls who had been deprived of their freedom and placed in a situation of dependence by the Japanese occupying forces. The court found that government representatives: “used this state of helplessness, dependence and subjection in an organised manner by deception and violence or threats when taking a number of women and girls from these camps, against their will, after submitting them to an offensive inspection.”[[43]](#footnote-44) The inhumane conditions in the internment camps left the women in a position where no real choice was possible. The circumstances of the “initial coercion” were key and meant that the subsequent surrender of the women to prostitution, after their resistance proved futile, could not be deemed voluntary.[[44]](#footnote-45) The lack of voluntariness was also demonstrated by the desperate actions of many victims after being taken to the brothels, some of whom attempted to run away, to commit suicide or simulated insanity and illness.

 16. In the *Katanga* case, the ICC Trial Chamber construed the phrase “powers attaching to the right of ownership” for the purposes of sexual slavery to mean: “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.”[[45]](#footnote-46) The Trial Chamber in the *Ntaganda* case explained that in determining whether the accused exercised powers attaching to the right of ownership, it must consider factors such as: “control of the victim’s movement, the nature of the physical environment, psychological control, measures taken to prevent or deter escape, use of force or threats of use of force or other forms of physical or mental coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality, forced labour, and the victim’s vulnerability.”[[46]](#footnote-47) The Pre-Trial Chamber in *Katanga* had previously accepted the view that sexual slavery could include “detention of women in “rape camps” or “comfort stations”, forced temporary “marriages” to soldiers and other practices involving the treatment of women as chattel”.[[47]](#footnote-48) Similarly, the list of indications of enslavement presented in the *Kunarac* case before the ICTY, which concerned women being taken to apartments and hotels run as brothels for Serb soldiers, included enforced prostitution.[[48]](#footnote-49) This suggests that “slavery” continues to be regarded as the broader category, capable of encompassing the characteristic facts underlying the crime of enforced prostitution.

 The elements of both enforced prostitution and sexual slavery require that the perpetrator “caused” the victim to engage in sexual acts. While for enforced prostitution, this must specifically be done through coercion, for sexual slavery, coercion forms part of the concept of exercising powers attaching to the right of ownership. If the ICC were to be presented with the facts of *Washio* and *Semarang* today, it seems likely that sexual slavery would be an alternative characterisation as those facts appear to meet the definition of “powers attaching to the right of ownership” set out in *Katanga*. However, it must be noted that *Katanga* was not a case of enforced prostitution and the court was merely providing an illustrative list of factors relevant to an understanding of the concept of powers attaching to the right of ownership. At most, the case demonstrates the conceptual overlap between sexual slavery and enforced prostitution where the victims are kept in slave-like conditions. Enforced prostitution remains the more specific characterisation due to the element of pecuniary or other advantage.

*II. C. The Element of Pecuniary or Other Advantage*

17. The judgment in *Washio* includes a clear condemnation of the financial motivation of the defendant. The brothel at the Sakura Club was set up as a business for profit “arising from [a] Japanese initiative and standing entirely under Japanese direction and control”.[[49]](#footnote-50) As the court found: “Some girls were required to earn a minimum of 450 guilders per evening, and thus to receive at least three visitors. No girl was allowed to receive less than two visitors every night.”[[50]](#footnote-51) The court also noted that the accused “had great financial interests in the takings of the club”.[[51]](#footnote-52) Aggravating factors included not only taking advantage for his own purposes of the fact that the women who went to the Sakura Club tended to be in “poverty-stricken and difficult circumstances” and the young age of some of the victims (sometimes between the ages of 12 and 14), but also that the accused drew a “very good income” from the club and the fact that the prostitutes were forced to work very hard to make the takings as high as possible.[[52]](#footnote-53) While the court did not seem to draw a clear distinction between the elements of the crime and factors going to personal guilt, it was clear that the aspects of profiting from the wartime context and difficult circumstances of the victims, and forcing them to work extra hard to improve income, made both the crime and the accused’s role in it exceptionally serious.[[53]](#footnote-54)

 18. The judgment in the *Semarang* case does not appear to mention any pecuniary benefit to the brothel keepers, who were civilian employees of the army.[[54]](#footnote-55) Nonetheless, the receipt of such a benefit might be understood from the reference to keeping a brothel as a profession and the “cold and business-like manner” in which the enterprise was conducted, resulting in severe punishment.[[55]](#footnote-56) Notably, it is not made clear if the two brothel keepers who were described as being new to the profession were motivated by profit.[[56]](#footnote-57) The fact that the notion of payment for sexual services is also inherent in the use of the word “prostitution” may explain why the Dutch Temporary Court Martial failed expressly to elaborate on this element in the *Semarang* case.[[57]](#footnote-58)

 19. Commenting on the wider context of the “comfort women” system, Tanaka describes how a group of Asian women in the Dutch East Indies were taken to a place called Flores Island and subjected to serial rape by all ranks from ordinary soldiers to officers. The example highlights the profiteering of the “comfort station manager” who: “received 1.5 guilders from each soldier, 2 guilders from an NCO, and the ofﬁcers” rate was between 3 and 8 guilders, depending on the time he spent with the woman”.[[58]](#footnote-59) A ticket system was in operation whereby each “client” received a ticket to hand to a “comfort woman” and each “comfort woman” had to collect a minimum of 100 tickets per week or face physical punishment by the manager.[[59]](#footnote-60) In the context of what it describes as the “façade of prostitution”, the judgment of the Women’s International War Crimes Tribunal explains that the soldiers who made use of the specially established brothels paid a fee set by military regulations.[[60]](#footnote-61) Most women did not receive any part of this fee although occasionally the money was split between the women and the managers of the brothels, with the managers taking the greater share.[[61]](#footnote-62) Some women were provided with food, clothing and makeup while others used what little money they received to buy basic necessities.[[62]](#footnote-63)

 20. These facts raise the issue of who must obtain the pecuniary or other advantage for liability to ensue. What distinguishes the definition in the ICC Elements of Crime from the conventional understanding of prostitution is that it is not the victim of the crime of enforced prostitution who obtains the pecuniary or other advantage, but rather the perpetrator or a third person.[[63]](#footnote-64) This understanding is supported by the existing case law which clearly reveals that although the common understanding of “prostitution” involves payment to the prostitute him or herself, the war crime or crime against humanity of enforced prostitution regards the “prostitute” as the victim of a violent crime carried out for profit by a third party. These third parties may be civilian owners of establishments where victims are forced to perform sexual acts or military commanders who institute the system on a local or more widespread basis. It is irrelevant for the crime of enforced prostitution that the victims themselves may receive some financial reward.[[64]](#footnote-65)

 21. It was agreed during the ICC Preparatory Commission negotiations that the “advantage” was not limited to financial gain and could be material (in the sense, for example, of an exchange of sex for goods or services) or psychological (in the sense, for example, of the power of the perpetrator or another person over the victim or the victim’s family or associates).[[65]](#footnote-66) This widens the definition beyond the factual circumstances of the “comfort women” system and suggests that where, for example, the access to victims for sexual acts is granted as part of the payment or reward for combat, this would count as “other advantage” even where there is no financial exchange. As O’Brien explains: “The perpetrator is profiting from the fear, oppression and pain of the victims, and that element of profiting needs to be recognised.”[[66]](#footnote-67) The use of the term “enforced prostitution” retains its relevance precisely by highlighting the aspect of “profiting” which is the core element distinguishing the crime from sexual slavery. Indeed, the Trial Chamber in both *Katanga* and *Ntaganda* confirmed this distinction by stating that the elements of sexual slavery were framed so that “the exercise of the right of ownership over someone need not entail a commercial transaction”.[[67]](#footnote-68)

*II. D. Is Enforced Prostitution Subsumed by Sexual Slavery?*

22. The historical cases illustrate the potential overlap between sexual slavery and enforced prostitution, but the facts of those cases also support the conclusion that the latter category is not automatically subsumed by the former. There can be situations in which a person is forced to perform sexual acts to avoid serious harm or even death where the circumstances do not amount to slavery, for example where women are coerced into submitting to sexual violence as a means of survival.[[68]](#footnote-69) In other words, some cases will “lack slavery-like conditions”.[[69]](#footnote-70) Undeniably, in many cases involving slavery-like conditions, the perpetrator will also gain a pecuniary or other advantage; indeed, it is difficult to imagine a situation where the perpetrator gives a third person a forced “wife” or sells a sex slave without receiving a pecuniary or other advantage. The permission to rape is usually granted as payment or encouragement for further military services or a reward for loyalty. Nevertheless, in some cases the pecuniary or other advantage will be more prominent than in others. In a case where a soldier is given a “wife” as a reward for his contribution to a certain military action, the benefit element will be less prominent than in cases where soldiers are given access to a rape camp as part of their remuneration in exchange for their service in combat. In the former case, where the forced wife must provide all kinds of labour and services including sexual acts, the enslavement element is more prominent compared to cases in which access to rape is granted explicitly in exchange for payment, potentially enriching opportunistic businesspersons or military leaders. Both offences typically include multiple rapes and other acts of sexual violence at the core of the perpetration, but each offence focuses on a different core wrongfulness which goes beyond the sexual violence.

 23. A court presented with these facts would need to decide in a given case whether condemnation of the wrongful conduct is better expressed by the crime of sexual slavery where the emphasis is on assuming ownership over a person or enforced prostitution which focuses on the profiteering aspect. Where the facts lead the court to conclude that it should condemn both wrongs, cumulative charges may be considered in order to reflect the wrongfulness captured by the different categories.[[70]](#footnote-71)

**III. The Problematic Label of Enforced Prostitution**

24. Criminal labels serve a dual function of recognising the experience of victims and characterising the blameworthiness of perpetrators. Before sexual slavery was formally identified as a separate offence, it was considered “important for the overt recognition of gender-based crimes that enforced prostitution was listed as a crime separate from rape”.[[71]](#footnote-72) When the list of gender-based crimes to be included in the Rome Statute was drawn up, the question was whether enforced prostitution should be listed as a crime separate from sexual slavery. Today, the question is whether it is important for the evolution of gender-based crimes for enforced prostitution to be prosecuted where relevant facts are presented. In order to answer this question, a deeper analysis of the psychological and terminological impact of the use of the label “enforced prostitution” is needed. A helpful analytical framework is provided by the finding of the Women’s International War Crimes Tribunal that sexual slavery should replace enforced prostitution because the latter terminology “obscures the terrible gravity of the crime, suggests a level of voluntariness, and stigmatizes its victims as immoral or ‘used goods’”.[[72]](#footnote-73)

*III.A. Gravity*

25. When the Elements of Crimes were being drawn up, the Women’s Caucus warned against allowing the use of the term “prostitution” to diminish the underlying brutality of the crime, which involves serial rape – “physically invasive and psychologically debilitating in the extreme” – rather than simply the “performance of degrading acts”.[[73]](#footnote-74) The historical cases expose these aspects of what is an old and established war crime and the sentences imposed by the Dutch Temporary Court Martial suggest that enforced prostitution was regarded as a grave offence. The culpability of the four brothel keepers in the *Semarang* case was deemed to be particularly serious as the abducted women and girls were placed under their “exclusive power” and far from taking steps to mitigate their fate, the brothel keepers “collaborated to break [their] resistance […] without showing any human sympathy or compassion”.[[74]](#footnote-75) The gravity of profiteering from the vulnerability of the victims was also emphasised by the court: “The war crimes that were committed are already of a serious nature. However, as they were committed against women and girls who had already been living for a long time in internment camps in extremely poor conditions, they qualify as being among the worst one can imagine.”[[75]](#footnote-76)

 26. Indeed, the “comfort women” system was marked by incredible brutality from the way the victims were brought into the system, to how they were mistreated and even to how many of them were left to die after the military withdrew.[[76]](#footnote-77) Enforced prostitution is regarded as a forcible act,[[77]](#footnote-78) and while extreme violence against the victims is not a legal element of the crime, in reality it is a common part of the victim’s experience. Thus, the term “enforced prostitution” connotes unimaginable brutality. Additionally, as O’Brien has pointed out, sexual slavery can mean that the victim is kept by one perpetrator, whereas enforced prostitution usually consists of rape by many different perpetrators which may increase the traumatic suffering[[78]](#footnote-79) although again, this is not a necessary element of the crime.

 27. The prohibition on slavery has an established status as *jus cogens*, recognised by the ICC Pre-Trial Chamber in *Katanga* where “comfort stations” were included in the list of “violations of the peremptory norm prohibiting slavery”.[[79]](#footnote-80) Indeed, the trend towards labelling enforced prostitution as a form of slavery[[80]](#footnote-81) means that the crime is incorporated into the broader category of crimes of equivalent status. Furthermore, all forms of sexual violence listed in the ICC Statute are of equal seriousness and among the most serious crimes under international law.[[81]](#footnote-82) This list does not distinguish the categories in terms of gravity and instead favours precision and correct labelling of criminal conduct. Thus, it is clear from the position of the crime in the Rome Statute alongside sexual slavery as well as from the historical cases that enforced prostitution is one of the most serious crimes, both in terms of the moral blameworthiness of the perpetrator and the suffering of the victim.

*III.B. Voluntariness*

28. It is undeniable that the term “prostitution” connotes some form of voluntarism[[82]](#footnote-83) and risks casting a shadow of ambiguity on the status of victims. Hall *et al.* point out that the term assumes some kind of exchange, even if under coercion, and even suggests that the sexual acts might be initiated by the victim rather than the perpetrator.[[83]](#footnote-84) While the term “slavery” indicates passivity and innocence on the side of the victim, the term “prostitution” implies some form of choice and thereby some form of legitimacy, as there is the assumption that prostitutes can leave their occupation any time they wish, that they are able to determine the nature of sexual services, e.g. whether to use protection, whether any form of violent act is accepted and that they receive remuneration for the services.[[84]](#footnote-85)

 29. The question of voluntariness was discussed at length in the cases before the Dutch Temporary Court Martial as there was evidence that some women were considered to have volunteered to work in the “comfort stations”.[[85]](#footnote-86) However, the cases demonstrate clearly that agreeing, often under deception, to work in the brothels cannot be compared to the ordinary understanding of voluntarily working as a prostitute. First, even those women who began their work freely were prevented from leaving, so that at this point at the latest one cannot speak any longer of voluntariness. Second, as the organised system of enforced prostitution became entrenched, the court questioned to what extent any agreement to work in a brothel was based on free choice rather than at least being indirectly forced by the dire circumstances of the occupation. Many women were the only breadwinners after their husbands had been imprisoned and prostitution was often the only way to survive. According to one witness, “in Batavia, the “sole cause” for “prostitution by European women was lack of money and hunger.”[[86]](#footnote-87) Other victims who were recruited from prison camps “volunteered” in order to take the place of other, often younger women or because the soldiers threatened to shoot other internees if the women would not follow them.[[87]](#footnote-88)

 In this context, therefore, the word “enforced” transforms an act that is normally regulated by domestic law into an international crime. Enforced prostitution is clearly distinguishable from “ordinary” prostitution as the use of the word “enforced” is designed to eliminate any connotation of voluntariness.

*III.C. Stigma*

30. The re-characterisation of enforced prostitution as sexual slavery by the Women’s International War Crimes Tribunal marked a response to concerns expressed by survivors of the “comfort system”.[[88]](#footnote-89) The Tribunal observed that these survivors “vehemently” objected to the crimes against them being classified as enforced prostitution due to the stigma associated with the use of the word “prostitute”.[[89]](#footnote-90) One of the judges on the Tribunal, Carmen Argibay, elaborated on this position in a subsequent article, pointing to discriminatory attitudes towards women contained in the word “prostitution” and arguing that enforced prostitution reflected the viewpoint of the “organizers, procurers, and those who take advantage of the system by raping the women”.[[90]](#footnote-91) By contrast, sexual slavery reflected the victim’s view by focusing on “the enslavement and the rape” and by capturing the “enormity of subordination and suffering”.[[91]](#footnote-92) Additionally, it must be recalled that prostitution is a criminal offence in many countries and therefore the very use of the term might associate the victim with criminal behaviour.[[92]](#footnote-93) As Demleitner points out, “while slaves have never been blamed for their status, in many cultures a stigma attaches to women lured or forced into prostitution”.[[93]](#footnote-94) Moreover, many victims of the Japanese comfort women system testified before the Women’s International War Crimes Tribunal that because they had been labelled “prostitutes”, they were exposed to shame and isolation when they returned to their communities.[[94]](#footnote-95)

 31. The issue of stigma certainly raises a concern in the application of a criminal characterisation that defines the status of the victim, but this is true both of enforced prostitution (“prostitute”) and sexual slavery (“slave”). There is, moreover, no evidence that former sexual slaves are better able to reintegrate into their communities than victims of enforced prostitution. Very often the fact alone of sexual relations outside marriage, made worse if it involves more than one man or members of an enemy group, causes the victim of rape to be ostracised. The original classification of war crimes concerning sexual violence as an attack on the victim’s honour and an outrage upon personal dignity[[95]](#footnote-96) failed to reflect the physical, psychological and social harm to victims and the long-term impact such crimes have on survivors and their communities. This has been corrected in the Rome Statute which transforms rape and other forms of sexual violence from out-dated notions of dignity and honour to a detailed list of war crimes. Thus, while it is understood that some victims reject the label of “prostitute”, the problem lies in the equalization of “prostitution” with “enforced prostitution”. Misconceptions surrounding the use of the term “enforced prostitution” should be corrected through outreach programmes rather than imprecise labelling in criminal proceedings.

 32. While it is accepted that the label of “enforced prostitution” should be applied only in circumstances in which the pursuit of justice helps to lift rather than reinforce stigmas against female victims, it must be recalled that the characterisation of a crime also denotes the understanding of the culpability of the perpetrator. The Dutch Temporary Court Martial alluded to the stigma attached to the term “prostitute” in the *Semarang* case, when it noted that the perpetrators were aware that the victims “were generally and in principle not willing to serve the enemy in a profession that is indecent and an infringement of respectability according to Western standards”.[[96]](#footnote-97) In this context, however, it was the perpetrators’ awareness of the additional psychological harm caused by their conduct that increased their culpability. Stigmatising the “procurers, brothel owners and managers, and financiers as well as the women’s customers”[[97]](#footnote-98) as profiteers of serial rape may be important for justice to be done. This does not mean prioritising the perpetrator’s viewpoint – that the victims are “mere prostitutes” – as Argibay cautioned against, but rather shifts the stigma associated with the commission of a grave crime to those who profit from its commission, thereby deterring future conduct of a similar kind. There is therefore no principled objection to the use of the label “enforced prostitution” that can be sustained in the modern era.

**IV.** **Enforced Prostitution in a Contemporary Context**

33. Modern armed conflicts, with their extensive refugee flows across borders opening opportunities for trafficking, create ideal conditions for the exploitation of the vulnerable for financial gain. Certain high profile examples such as the treatment of the Yazidi minority by Islamic State militants in the Sinjar region of Northern Iraq, involving conduct reminiscent of nineteenth century slave auctions (with a modern twist of “online shopping”), appear to fit most naturally within the definition of sexual slavery.[[98]](#footnote-99) Other factual presentations are arguably more nuanced. The ICC Prosecutor noted in 2017 that Libya, an ICC situation country, had become “a marketplace for the trafficking of human beings”[[99]](#footnote-100) and migrants in Libya are reportedly “extremely vulnerable to sex and labour trafficking”.[[100]](#footnote-101) There is evidence that “[p]rostitution rings […] subject sub-Saharan women and girls to sex trafficking in brothels, particularly in the towns of Ubari, Sebha, and Marzouq in southern Libya” while “Nigerian women and girls and Ivoirian women are at increased risk of forced prostitution in Libya”.[[101]](#footnote-102) Perpetrators of the sexual violence against women and girls are believed to include Libyan Government of National Accord officials, various armed groups, smugglers and traffickers.[[102]](#footnote-103)

 34. Amid allegations of genocide and other atrocities that have been brought before the ICJ[[103]](#footnote-104) and the ICC,[[104]](#footnote-105) there are reports of large scale enforced prostitution of Rohingya refugees who have fled to Bangladesh and are living in overcrowded refugee camps.[[105]](#footnote-106) A resolution of the European Parliament expressed concern at the “high incidence in the camps of forced prostitution, human trafficking and sexual violence, including child marriage, partner violence and sexual exploitation and abuse”.[[106]](#footnote-107) The same resolution called for the authorities in Bangladesh and Myanmar, in cooperation with the international community, to work towards breaking up the human trafficking and child prostitution network.[[107]](#footnote-108)

 35. Any investigation by the ICC into sexual atrocities in Libya and Myanmar/Bangladesh should focus on the actors who profit from their participation in sex trafficking networks, whether the crimes are ultimately characterised as enforced prostitution, sexual slavery and/or human trafficking. These examples illustrate the existence of a criminal network or enterprise that is often associated with the implementation of a system of enforced prostitution, with perpetrators involved at all stages from recruitment or abduction, to coercion and control. This was also evident in the historical cases, where Tanaka, for example, observes that the extensive transportation of women in the occupied territories “must have required a plan that was designed and implemented at a high level, by such Japanese military bodies as the Headquarters of Southern Army, and, most likely, in collaboration with the 16th Army which controlled all of Java”.[[108]](#footnote-109) Individual clients may be directly responsible for rape or complicity in the wider enterprise. These situations present the potential for enforced prostitution to be examined for the first time by the ICC and for this in turn to compel a coordinated response to the human trafficking problem leading to greater accountability at a domestic level.[[109]](#footnote-110)

 36. As these situations also illustrate, there is often a close connection between enforced prostitution and trafficking in women and girls.[[110]](#footnote-111) Trafficking in persons for sexual purposes was already prohibited in international law by the Second World War and the relevant instruments make reference to enforced prostitution.[[111]](#footnote-112) The connection between the war crime and the trafficking crime was highlighted in a case before the Dutch Temporary Court-Martial concerning a Dutch civilian, Franciska Hendrika Eckhart, who was convicted of trafficking in women in time of war on the basis that she helped to procure prostitutes for Japanese military brothels during the period of occupation.[[112]](#footnote-113) This link between enforced prostitution and human trafficking extends into the post-conflict phase, as perpetrators of enforced prostitution are able to take advantage of a lack of legal enforcement and contribute to organised crime consortiums.[[113]](#footnote-114) This means that even after the conflict has ended, the market created by the wartime enforced prostitution remains alive and increases sex trafficking to meet demand.[[114]](#footnote-115) Thus, the application of the label of enforced prostitution by an international court may be important to trigger investigations into the ongoing enforced prostitution and sex trafficking in the former conflict zone.

 37. The presence of a peacekeeping or foreign military force has in some instances been found to exacerbate the problem of trafficking for prostitution in the immediate post-conflict environment.[[115]](#footnote-116) Defeis explains that “prostitution in the peacekeeping context involves an imbalance of power and is inherently coercive”.[[116]](#footnote-117) Prostitution around US military bases in Asia has been prevalent since the Second World War, for example in Japan (Okinawa), South Korea, the Philippines, Thailand, Taiwan, and the Pacific Islands.[[117]](#footnote-118) Although most of the women do not claim to have been coerced directly, those in South Korea, for example, indicated that the US and Korean governments viewed them as commodities to help shore up the Korean economy by bringing in foreign currency in the years following the Korean War.[[118]](#footnote-119)

 38. According to a report by Amnesty International, after the arrival of NATO-led peacekeepers in Kosovo in 1999, Kosovo “became a major destination country for women trafficked into forced prostitution” and what was at the time a small local market for prostitution “was transformed into a large-scale industry based on trafficking predominantly run by organized criminal networks”.[[119]](#footnote-120) The Kosovo Specialist Chambers were established in part as a response to the limited investigations by other fora, such as the ICTY, into “organised crime and its connections with representatives of political institutions or in respect of war crimes committed against Serbians and Albanian Kosovars regarded as collaborators or as rivals of the dominant factions”.[[120]](#footnote-121) There would appear to be scope for the Chambers to take up the issue of the relationship between trafficking for prostitution and enforced prostitution as a war crime or crime against humanity within the framework of their jurisdiction.

 39. The situation in Kosovo is emblematic of a phenomenon with a far-reaching impact that has remained largely hidden from view. If cases against the lead profiteers were to be prosecuted at the international level, the label of enforced prostitution might emerge as being more appropriate than sexual slavery as often the women and girls are not physically kept locked up or bought and sold like property. Rather it is the commodification of the sexual services that the women are forced to offer that should be reflected in the charge. Moreover, as a military presence increases the demand for prostitution, an industry is built around it, which is unlikely to disappear after the military personnel have left. The highly profitable business centred on prostitution ranges from tourist agencies to hotels to transportations services[[121]](#footnote-122) and often includes corrupt police and government agencies. Wherever there is high demand for prostitution there is the potential for enforced prostitution. Because profit margins are so high and the number of beneficiaries so great, the problem of human trafficking coupled with enforced prostitution is likely to persist. Thus, it is essential that the international crime of enforced prostitution remains on the international radar as part of a coordinated response to organised crime, trafficking and the direct or indirect coercion of the vulnerable both during wartime and in the post-conflict environment.

**IV. Conclusion**

40. This article has presented an argument against treating the war crime and crime against humanity of enforced prostitution as a dead letter in the Rome Statute or before other modern tribunals such as the Kosovo Specialist Chambers. The historical precedents have been re-assessed to reveal the juridical foundations and elements of the war crime of enforced prostitution as measured against the elements of the newer category of sexual slavery. While the debate continues over proper characterisation and the need for multiple legal categories that capture the same underlying conduct,[[122]](#footnote-123) enforced prostitution has emerged as a category that is not automatically subsumed by sexual slavery. The problematic stigma associated with the term “enforced prostitution” has been seen to be closely associated with the experience of the former “comfort women” who have failed to this day to receive appropriate recognition from the Japanese government. Just as some victims have objected to the use of the term “prostitute”, others might resent being labelled a powerless “slave”, deprived of human dignity, with all the connotations of being treated as the property of another person. The issue of stigma should not prevent the category of enforced prostitution from acquiring meaning in the modern era, where the emphasis is on the identity of the perpetrators as procurers and profiteers rather than on the victims as “sex objects and marketable commodities.”[[123]](#footnote-124) However, precisely because the only prosecutions for enforced prostitution were in the post-Second World War period and modern cases have focused on enslavement or sexual slavery, there is a risk of overlooking the contemporary relevance of the war crime and crime against humanity of enforced prostitution.

 41. Now that the ICC Statute has been in effect for more than twenty years, it is time to revisit the assertion that: “[a]s a general principle […] in situations of armed conflict, most factual scenarios that could be described as forced prostitution would also amount to sexual slavery and could more appropriately and more easily be characterised and prosecuted as slavery.”[[124]](#footnote-125) Correct characterisation of criminal conduct is essential for international criminal justice to fulfil its role of denouncing the blameworthy acts of the perpetrator and the harm and suffering caused. The blameworthy conduct at the core of enforced prostitution is distinguishable from sexual slavery. The crime of enforced prostitution captures the fact that the perpetrator sought to benefit (financially or otherwise) from the sexual acts to which he or she forced the victims directly or by taking advantage of their vulnerability. It is not the degradation of a person to the status of a “slave” but profiting from sexual violence which is condemned and should be reflected in the verdict. Indeed, the ICC Office of the Prosecutor (OTP) produced policy papers in both 2003 and 2016 in which it indicated a focus respectively on “financial links with crimes”[[125]](#footnote-126) and the economic impact of international crimes on affected communities.[[126]](#footnote-127) While profiting from sexual violence was not specifically included among the OTP’s range of concerns, the economic aspect of wartime atrocities is clearly on its agenda. This presents an opportune moment for a modern conceptualisation of enforced prostitution that draws on the historical jurisprudence but begins to dissociate the elements of the crime in the ICC Statute from the unique experience of the former “comfort women”. Viewing enforced prostitution as the “commodification of repeated rape”,[[127]](#footnote-128) and a discrete crime of profiteering closely tied to organised crime and human trafficking, marks the start of a renewed conceptual journey.

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3. See e.g. Special Issue: Justice and Accountability for Sexual Violence in Conflict: Progress and Challenges in National Efforts to Address Impunity 18/2 Journal of International Criminal Justice (2020). [↑](#footnote-ref-4)
4. European Parliament resolution of 13 December 2007 on Justice for the “Comfort Women” (Sex Slaves in Asia before and during World War II), P6\_TA(2007)0632 (www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2007-0632&language=EN&ring=P6-RC-2007-0525 (accessed 08 July 2020)). [↑](#footnote-ref-5)
5. Ibid. [↑](#footnote-ref-6)
6. Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, Report Presented to the Preliminary Peace Conference, 29 March 1919, in: 14 American JIL (1920), 95, 114. Point (5) on the list: “Rape”; Point (6) on the list: “abduction of girls and women for the purpose of enforced prostitution”. [↑](#footnote-ref-7)
7. A summary of one of these cases appears in the Law Reports of the United Nations War Crimes Commission (UNWCC): Case No. 76, Trial of Washio Awochi, Netherlands Temporary Court-Martial at Batavia, UNWCC, XIII Law Reports of Trials of War Criminals (1949), 122 (“Washio case”). Two further case summaries from the Dutch archives have been translated: Case No. 72/1947 against 12 accused (“Semarang case”), (www.legal-tools.org/doc/ce5a84/ (accessed 08 July 2020)); Case No. 72A/1947 against Colonel Ikeda Shoichi (“Ikeda case”) (www.legal-tools.org/doc/205dfb/(accessed 08 July 2020)). Case No. 34/1948 against General Major Nozaki Seiji has also been referred to in the literature. See Nina H.B. Jørgensen and Danny Friedmann, Enforced Prostitution in International Law through the Prism of the Dutch Temporary Courts-Martial at Batavia, in: Morten Bergsmo, Wui Ling Cheah and Ping Yi (eds), 2 The Historical Origins of International Criminal Law (2014), 331-354. It is possible that further relevant materials are available in the Dutch archives, but these remain restricted until 2025. See Yuki Tanaka, Japan’s Comfort Women: The Military and Involuntary Prostitution during War and Occupation, Taylor and Francis (2001), 64. For a recent account of the available jurisprudence based on the original Dutch materials, see Fred L. Borch, Military Trials of War Criminals in the Netherlands East Indies 1946-1949 (OUP 2017), 128-153. [↑](#footnote-ref-8)
8. Law on Specialist Chambers and Specialist Prosecutor’s Office, Law No.05/L-053, Assembly of Republic of Kosovo (3 August 2015), Article 13(1)(g), as a crime against humanity under customary international law during the temporal jurisdiction of the Chambers; Article 14(1)(b)(xxii) as a “serious violations of the laws and customs applicable in international armed conflict, recognised as such in customary international law”; Article 14(1)(d)(vi) as a “serious violations of the laws and customs applicable in armed conflicts not of an international character, recognised as such in customary international law”. [↑](#footnote-ref-9)
9. UN Sub-Commission on the Promotion and Protection of Human Rights, Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflict: Final Report, Submitted by Gay J. McDougall, Special Rapporteur (22 June 1998), para. 33. [↑](#footnote-ref-10)
10. Women’s International War Crimes Tribunal, Judgment No. PT-2000-1-T (4 December 2000), para. 634. [↑](#footnote-ref-11)
11. For the negotiating history and agreement on the delineation of a list of sexual violence crimes reached in December 1997, see Valerie Oosterveld, Sexual Slavery and the International Criminal Court: Advancing International Law 25/3 Michigan JIL (2004), 605, 613-614. [↑](#footnote-ref-12)
12. Oosterveld, ibid, 607. [↑](#footnote-ref-13)
13. Oosterveld summarises the debate among academic and non-governmental commentators as to whether enforced prostitution should be distinguished from sexual slavery at the time of the ICC negotiations and subsequently at ibid, 618-622. [↑](#footnote-ref-14)
14. Oosterveld, ibid, 622 and footnotes 79 and 81. [↑](#footnote-ref-15)
15. Women’s Caucus for Gender Justice in the International Criminal Court, Recommendations and Commentary for December 1997 PrepCom on the Establishment of an International Criminal Court, United Nations Headquarters (1-12 December 1997), WC.5.6-12. [↑](#footnote-ref-16)
16. Oosterveld, above n.9, 622. [↑](#footnote-ref-17)
17. Notably, the Rome Statute uses the phrase “enforced prostitution” as opposed to “forced prostitution” although the terms appear to be interchangeable. According to the Oxford English Dictionary, “enforced” means: “That is forced upon or exacted from a person; that is produced by force; forced; constrained.” 1625 K. Long tr. Barclay’s Argenis v. x. 364 “The slavery of an enforced marriage”. 1837 HT. Martineau, Soc. Amer. II. 128 “A country where a degraded class is held to enforced labour.” V The Oxford English Dictionary (2nd ed., 1989), 245. Forced means: “Compelled, imposed, or exacted by force; enforced, compulsory; not spontaneous, voluntary, or optional. Spec. forced labour.” VI The Oxford English Dictionary, (2nd ed., 1989), 37. See also Borch, above n.5, 128, footnote 1. [↑](#footnote-ref-18)
18. Some delegates would have preferred to replace the words “or expected to obtain” with “or sought to obtain”. Proposals by the Delegations of Bolivia, Colombia, Chile, Cuba, Ecuador, Spain…regarding Crimes against Humanity in the Draft Elements of Crimes, Document PCNICC/2000/1.I/Rev.l/Add.2 (www.legal-tools.org/doc/874907/ (accessed 8 July 2020)). [↑](#footnote-ref-19)
19. According to Footnote 18 appended to this provision: “It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.” [↑](#footnote-ref-20)
20. For a detailed overview of the debate, see Oosterveld, above n.9, 627-641, who notes at 641 that: “the addition of [footnote 18] confirmed that commercial or pecuniary exchange or advantage was not necessary to demonstrate that a person exercised powers attaching to the right of ownership.” [↑](#footnote-ref-21)
21. See Oosterveld, above n.9, 643-644. An initial proposal by the United States listed the elements of the war crime of enforced prostitution as follows: “1. That the act took place in the course of international armed conflict. 2. That the accused intended to attack one or more persons by causing them to engage in acts of a sexual nature. 3. That the accused, in furtherance of this intent, deprived one or more persons of their liberty and forced them to engage in acts of a sexual nature with one or more other persons. 4. That the accused received some pecuniary or other material benefit in exchange for or in connection with the sex acts of the person or persons.” Preparatory Commission for the International Criminal Court, Proposals submitted by the United States of America, Draft Elements of Crimes, PCNICC/1999/DP.4/Add.2 (4 February 1999), 16 (www.legal-tools.org/doc/d6dfdc/ (accessed 8 July 2020)). This proposal marked a shift from one previously presented in a 1998 “reference paper” which described enforced prostitution in the context of crimes against humanity as “intentional sexual enslavement wherein the “forcible” element need not be present for each individual sex act, but is generally present regarding a mandated occupation that involves acts of a sexual nature related to rape or sexual abuse”. U.S. Reference Paper, Elements of Offences for the International Criminal Court (27 March 1998), 7 (www.legal-tools.org/doc/ccd73c/(accessed 8 July 2020)). A proposal by Belgium, Costa Rica, Finland, Hungary, the Republic of Korea, South Africa and Switzerland placed emphasis on the element of control as follows: “The perpetrator imposed conditions of control over a person and coerced that person to engage in sexual activity.” PCNICC/1999WGEC, INF.2 (14 July 1999), 54 (www.legal-tools.org/doc/d8ff04/ (accessed 8 July 2020)). [↑](#footnote-ref-22)
22. Oosterveld, above n.9, 644-645. Dörmann notes that the addition of the words “or other advantage” reflected a compromise between the delegates that objected to the requirement of pecuniary advantage and those that insisted on it. Knut Dörmann, Preparatory Commission for the International Criminal Court: The Elements of War Crimes, 83/842 International Review of the Red Cross (2001), 480. [↑](#footnote-ref-23)
23. Kelly D. Askin, Comfort Women – Shifting Shame and Stigma from Victims to Victimizers, 5 International Criminal LR (2001), 10. Special Rapporteur McDougall went further in stating that “sexual slavery encompasses most, if not all, forms of enforced prostitution” (above n.7, para. 31). [↑](#footnote-ref-24)
24. The Women’s International War Crimes Tribunal failed to elaborate on the elements of the crime of enforced prostitution as it viewed this crime, along with the prohibition on trafficking in persons for sexual purposes as a source of the newer international crime of sexual slavery. Women’s International War Crimes Tribunal, above n.8, para. 606. [↑](#footnote-ref-25)
25. David Boling, Mass Rape, Enforced Prostitution, and the Japanese Imperial Army: Japan Eschews International Legal Responsibility, 32 Columbia Journal of Transnational Law (1995), 533, 541. The German armed forces are also reported to have established hundreds of military and prison camp brothels for soldiers and privileged prisoners during the Second World War and there is ample evidence that women were forced to work in these institutions because of a shortage of volunteers. See Maren Röger and Emmanuel Debruyne, From Control to Terror: German Prostitution Policies in Eastern and Western European Territories during both World Wars 28/3 Gender & History (2016), 687, 702. [↑](#footnote-ref-26)
26. Boling, ibid, 541. [↑](#footnote-ref-27)
27. Mary De Ming Fan, Comment, The Fallacy of the Sovereign Prerogative to set *de minimus* Liability Rules for Sexual Slavery, 27 Yale JIL (2002), 395, 399. [↑](#footnote-ref-28)
28. Judgment of the International Military Tribunal for the Far East, Tokyo, Japan **1946–1948** Part C Chapter X, Verdicts (www.loc.gov/rr/frd/Military\_Law/Judgment\_IMTFE.html (accessed 8 July 2020)). See further, Tanaka, above n.5, 61-62, on the evidence of Japanese sexual violence against Dutch women in Indonesia presented to the Tokyo Tribunal. [↑](#footnote-ref-29)
29. Patricia Viseur Sellers, Wartime Female Slavery: Enslavement, 44 Cornell International Law Journal (2011), 115, 119. [↑](#footnote-ref-30)
30. Ordinance No. 44, Definition of War Crimes (Ordonnantie begripsomschrijving oorlogsmisdrijven) Bulletin of Act and Decrees of Dutch East Indies, 1946. See also Trial of Washio Awochi, above n.5, 124. The notes on the case indicate that the court was correct to “put the accent on “enforced prostitution” in itself” and that it would have been unjustifiable to have found that enforced prostitution was not punishable in the absence of any evidence of abduction, indicating for the first time a conceptual distinction between the war crime of “abduction of girls or women for the purpose of enforced prostitution” and “enforced prostitution”. [↑](#footnote-ref-31)
31. United Nations War Crimes Commission, Trial of Washio Awochi by a Netherlands Temporary Court-Martial at Batavia, 40/1946 (25 October 1946) (translation made available to the Secretariat by Commander M. W. Wouten, Netherlands Representative on the Commission) (www.legal-tools.org/doc/7742fc. (accessed 8 July 2020)). [↑](#footnote-ref-32)
32. Borch, above n.5, 138. [↑](#footnote-ref-33)
33. The accused were: Hiromu Mitsuhashi, Keiji Okada, Chiyomatsu Kawamura, Kuizo Murakami, Shiro Nakashima, Eiichi Ishida, Taranosuke Sai, Iwao Furuya, Shinji Shimoda, Yukio Morimoto, and Kenjiro Tsutaki. See Borch, above n.5, 138. Lieutenant-General Nozaki Seiji, who was the head of the cadet school and the main initiator of the scheme to remove women from internment camps to serve in specially established brothels, was tried separately in February 1949 and sentenced to 12 years’ imprisonment. See Tanaka, above n.5, 76-77. [↑](#footnote-ref-34)
34. Semarang case, above n.5, 14. It seems that some of the women based at the “comfort stations” in Semarang established for the use of officers were occasionally sent to those for the use of rank-and-file soldiers where they were required to serve larger numbers. See Tanaka, above n.5, 75-76. [↑](#footnote-ref-35)
35. Semarang case, above n.5, 27. [↑](#footnote-ref-36)
36. Borch, above n.5, 139. [↑](#footnote-ref-37)
37. Ibid. [↑](#footnote-ref-38)
38. Semarang case, above n.5, 9. [↑](#footnote-ref-39)
39. Tanaka, above n.5, 78-79. [↑](#footnote-ref-40)
40. The Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1994/45, Report on the Mission to the Democratic People’s Republic of Korea, the Republic of Korea and Japan on the Issue of Military Sexual Slavery in Wartime, E/CN.4/1996/53/Add.1 (4 January 1996), para. 33, supports the findings in Washio, stating that “any meaningful freedom of movement was evidently restricted and escape was almost invariably impossible”. [↑](#footnote-ref-41)
41. Trial of Washio Awochi by a Netherlands Temporary Court-Martial at Batavia, 40/1946, above n.29, 7; Borch, above n.5, 138. [↑](#footnote-ref-42)
42. Washio case, above n.5, 124. [↑](#footnote-ref-43)
43. Semarang case, above n.5, 41. A Report of a Study of Dutch Government Documents on the Forced Prostitution of Dutch Women in the Dutch East Indies during the Japanese Occupation by Bart van Poelgeest, Unofficial Translation (24 January 1994) (www.awf.or.jp/pdf/0205.pdf (accessed 8 July 2020)) suggests that the court interpreted “forced prostitution” to mean that refusal to leave the camps was impossible if the Japanese authorities applied physical force, although it would seem that the word “forced” includes deception and threats of violence. [↑](#footnote-ref-44)
44. Semarang case, above n.5, 42. [↑](#footnote-ref-45)
45. The Prosecutor v. Germain Katanga, Trial Chamber II, Judgment Pursuant to Article 74 of the Statute, No. ICC-01/04-01/07 (7 March 2014), para. 975. [↑](#footnote-ref-46)
46. The Prosecutor v. Bosco Ntaganda, Trial Chamber VI, Judgment, No. ICC-01/04-02/06-2359 (8 July 2019), para. 952. See also Prosecutor v. Kunarac et al., Trial Chamber, Judgment No. IT-96-23-T & IT-96-23/1-T (22 February 2001), para. 119, from which these factors are derived. [↑](#footnote-ref-47)
47. The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, Pre-Trial Chamber I, Decision on the Confirmation of Charges, No. ICC-01/04-01/07 (30 September 2008), para. 431, citing Report by Gay J. McDougall, Special Rapporteur, above n.7, para. 30. [↑](#footnote-ref-48)
48. “Further indications of enslavement include exploitation; the exaction of forced or compulsory labour or service, often without remuneration and often, though not necessarily, involving physical hardship; sex; prostitution; and human trafficking.” Prosecutor v. Kunarac et al., above n.44, para. 542. [↑](#footnote-ref-49)
49. Trial of Washio Awochi by a Netherlands Temporary Court-Martial at Batavia, 40/1946, above n.29, 6-7. [↑](#footnote-ref-50)
50. Washio case, above n.5, 123. [↑](#footnote-ref-51)
51. Washio case, above n.5, 125 (notes on the case), referring to the court’s findings on the personal guilt of the accused. [↑](#footnote-ref-52)
52. Trial of Washio Awochi by a Netherlands Temporary Court-Martial at Batavia, 40/1946, above n.29, 8. [↑](#footnote-ref-53)
53. Washio case, above n.5, 125. [↑](#footnote-ref-54)
54. Borch, above n.5, 143. [↑](#footnote-ref-55)
55. Semarang case, above n.5, 42. This interpretation is supported by the Report of a Study of Dutch Government Documents (above n.41), which states that for the purposes of the study, “the term prostitution refers to a woman’s providing a man with a service of a sexual nature in return for payment and within an establishment, specifically set up for that purpose”. [↑](#footnote-ref-56)
56. It is noted in the judgment summary, that: “the very fact that brothel boss was not their profession should have caused them to protest against their appointment to such a position.” Semarang case, ibid., 46. [↑](#footnote-ref-57)
57. During the negotiation of the ICC Statute, a majority of delegates “felt that the common understanding of prostitution encompasses the idea that the perpetrator or another person obtains or expects to obtain pecuniary or any other advantage in exchange for or in connection with the acts of a sexual nature.” See Eve La Haye, Article 8(2)(b)(xii)--Rape, Sexual Slavery, Enforced Prostitution, Forced Pregnancy, Enforced Sterilization, and Sexual Violence, in: Roy S.K. Lee et al. (eds), The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence (2001), 193. See also Knut Dörmann et al., Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary (2003), 329. [↑](#footnote-ref-58)
58. Tanaka, above n.5, 78. [↑](#footnote-ref-59)
59. Ibid. [↑](#footnote-ref-60)
60. Women’s International War Crimes Tribunal, above n.8, para. 343. [↑](#footnote-ref-61)
61. Ibid., paras 343-344. [↑](#footnote-ref-62)
62. Ibid., paras 346-347. [↑](#footnote-ref-63)
63. Christopher K. Hall, Joseph Powderly and Niamh Hayes in: Otto Triffterer and Kai Amos(eds), The Rome Statute and the International Criminal Court – A Commentary (2nd ed., 2016), 215. [↑](#footnote-ref-64)
64. It emerged in the ICC Preparatory Commission debates that the advantage would not need to accrue to the direct perpetrator and could possibly also accrue to the victim. See La Haye, above n.55, 193. This reflects the facts of the “comfort women” system, where some women received some money, but most of it was deducted for “the costs of clothing, cosmetics, medical treatment for illness or pregnancy, and pre-textual forced savings or contributions to ‘national defense’”, De Ming Fan, above n.25, 400. [↑](#footnote-ref-65)
65. Oosterveld, above n.9, 645. [↑](#footnote-ref-66)
66. Melanie O'Brien, “Don't Kill Them, Let's Choose Them as Wives”: The Development of the Crimes of Forced Marriage, Sexual Slavery and Enforced Prostitution in International Criminal Law, 20/3 The International Journal of Human Rights (2016), 386, 397. [↑](#footnote-ref-67)
67. Katanga Judgment, above n. 43, para 975; Ntaganda Judgment, above n.44, para. 952. [↑](#footnote-ref-68)
68. Women’s Caucus for Gender Justice, above n.13, WC 5.6-12. [↑](#footnote-ref-69)
69. Barbara Bedont and Katherine Hall-Martinez, Ending Impunity for Gender Crimes under the International Criminal Court, 6 Brown Journal of World Affairs (1999), 65, 73. [↑](#footnote-ref-70)
70. Cumulative charges have been allowed in international criminal tribunals “if each statutory provision involved has a materially distinct element not contained in the other”, i.e. the elements of one crime require proof of a fact which is not required by the other. (Prosecutor v. Zejnil Delalic, Zdravko Mucic (Aka “Pavo”), Hazim Delic and Esad Landžo (Aka “Zenga”) (“Čelebici Case”), Appeals Chamber, Judgment, No. IT-96-21-A (20 February 2001), para. 412. This test was followed by the ICTR (e.g. The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze, Appeals Chamber, Judgment, No. ICTR-99-52-A (28 November 2007), para. 1019, the SCSL (e.g. The Prosecutor against Issa Hassan Sesay, Morris Kallon and Augustine Gbao, Appeals Chamber, Judgment, No. SCSL-04-15-A (26 October 2009), paras 1190-1193 and the ECCC (Co-Prosecutors v. KAING Guek Eav alias “DUCH”, Appeal Judgment, No. 001/18-07-2007-ECCC/SC (12 February 2012), paras 291-300. The ICC adopted a similar test in the Bemba case, but applied it restrictively due to the additional burden placed on the defence in “responding to multiple charges for the same facts” and the risk of delays to the proceedings. (The Prosecutor v. Jean‐Pierre Bemba Gombo, Pre-Trial Chamber III, Decision on the Prosecutor’s Application for a Warrant of Arrest against Jean‐Pierre Bemba Gombo, No. ICC‐01/05‐01/08 (10 June 2008), para. 25. See also The Prosecutor v. Jean-Pierre Bemba Gombo, Pre-Trial Chamber II, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, No. ICC-01/05-01/08 (15 June 2009), para. 202.. Cumulative charges were also permitted in the Ongwen case where the Pre-Trial Chamber held that forced marriage could be charged as “other inhumane acts” and was not subsumed within sexual slavery (Pre-Trial Chamber II, Decision of the Pre-Trial Chamber on the Conﬁrmation of Charges against Dominic Ongwen, No. ICC-02/04-01/15 (23 March 2016), para. 95). [↑](#footnote-ref-71)
71. Oosterveld, above n.9, 618. [↑](#footnote-ref-72)
72. Women’s International War Crimes Tribunal, above n.8, para. 634. [↑](#footnote-ref-73)
73. Women’s Caucus for Gender Justice, above n.13, W.C.5.6-10. [↑](#footnote-ref-74)
74. Semarang case, above n.5, 45. [↑](#footnote-ref-75)
75. Semarang case, above n.5, 41. [↑](#footnote-ref-76)
76. Women’s International War Crimes Tribunal, above n.8, paras 269-284, 312-330 and 362. [↑](#footnote-ref-77)
77. La Haye, above n.55, 193. [↑](#footnote-ref-78)
78. O’Brien, above n.64, 397. [↑](#footnote-ref-79)
79. Katanga and Chui, Decision on the Confirmation of Charges, above n. 45, para. 431. [↑](#footnote-ref-80)
80. See Nora V. Demleitner, Forced Prostitution: Naming an International Offense, 18/1 Fordham International Law Journal (1994), 163, 176 and discussion at 191-192. [↑](#footnote-ref-81)
81. In addition to the enumerated categories, Article 7(1)(g) of the Rome Statute criminalises “any other form of sexual violence of comparable gravity”. See also La Haye, above n.55, 186. [↑](#footnote-ref-82)
82. Carmen M. Argibay, Sexual Slavery and the “Comfort Women” of World War II, 21 Berkeley JIL (2003), 375-389, 387. It must be acknowledged that the extent of any element of “choice” under the ordinary concept of prostitution is debated in the academic literature. Those who argue for abolition of regulated prostitution hold that any form of prostitution is a coercive practice as every prostitute is forced into this work either directly by pimps and traffickers or indirectly by their vulnerable position, often in the form of poverty, unemployment, lack of education and employment possibilities, and/or drug addiction. Opponents criticise this labelling of every prostitute as victim and instead offer a concept in which the independent adult woman’s choices should be respected. Catharine A. MacKinnon, Trafficking, Prostitution, and Inequality, 46/2 Harvard Civil Rights Civil Liberties LR (2011), 271-310. [↑](#footnote-ref-83)
83. Hall, Powderly and Hayes, above n.61, 214. [↑](#footnote-ref-84)
84. Askin, above n.21, 15. [↑](#footnote-ref-85)
85. Borch, above n.5, 138. [↑](#footnote-ref-86)
86. L. de Jong, The Collapse of a Colonial Society (2003 University of Washington Press), at 72 cited in: Borch, above n.5, 133. [↑](#footnote-ref-87)
87. Borch, above n.5, 140. [↑](#footnote-ref-88)
88. The Women’s International War Crimes Tribunal found that sexual slavery constituted a crime under international law between 1937 and 1945, even though the terminology of sexual slavery was not used at the time. Women’s International War Crimes Tribunal, above n.8, para. 621. [↑](#footnote-ref-89)
89. Ibid. para. 606. [↑](#footnote-ref-90)
90. Argibay, above n.80, 387. [↑](#footnote-ref-91)
91. Ibid. [↑](#footnote-ref-92)
92. Ibid. [↑](#footnote-ref-93)
93. Demleitner, above n.78, 195. [↑](#footnote-ref-94)
94. Argibay, above n.80, 387. [↑](#footnote-ref-95)
95. Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) 75 UNTS 287, Article 27 (2); Protocol Additional to the 1949 Geneva Conventions and Relating to the Protection of Victims of International Armed Conflicts (1979) 1125 UNTS 3, Article 75(2)(b). [↑](#footnote-ref-96)
96. Semarang case, above n.5, 28. [↑](#footnote-ref-97)
97. Demleitner, above n.78, 164. [↑](#footnote-ref-98)
98. See Report of the Independent International Commission of Inquiry on the Syrian Arab Republic: “They came to destroy”: ISIS Crimes Against the Yazidis (16 June 2016), para. 57 (www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx. (accessed 8 July 2020)). [↑](#footnote-ref-99)
99. Statement of ICC Prosecutor to the UNSC on the Situation in Libya (9 May 2017), para. 27 (www.icc-cpi.int/pages/item.aspx?name=170509-otp-stat-lib (accessed 8 July 2020)). [↑](#footnote-ref-100)
100. US Department of State, Trafficking in Persons Report (June 2019), 507 ([www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf](http://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf) (accessed 8 July 2020)). [↑](#footnote-ref-101)
101. Trafficking in Persons Report, ibid, 508. [↑](#footnote-ref-102)
102. Ibid. [↑](#footnote-ref-103)
103. See Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Order on Provisional Measures (23 January 2020). [↑](#footnote-ref-104)
104. Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, Pre-Trial Chamber III, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, No. ICC-01/19 (14 November 2019). [↑](#footnote-ref-105)
105. Nomia Iqbal, Rohingya Women in Bangladesh Face “Forced Prostitution”, BBC News (13 November 2017); Stefanie Glinski, Rohingya Muslim Women “being driven to prostitution to buy supplies” in Bangladesh Refugee Camps, The Independent (24 October 2017); BBC News, The Rohingya Children Trafficked for Sex (20 March 2018). [↑](#footnote-ref-106)
106. European Parliament resolution of 14 June 2018 on the Situation of Rohingya Refugees, in particular the Plight of Children (2018/2756(RSP)), (2020/C 28/09), Official Journal of the European Union, (27 January 2020), para. 6 (https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018IP0261&from=EN (accessed 8 July 2020)). [↑](#footnote-ref-107)
107. See also Trafficking in Persons Report, above n.98, 117, stating that in 2018 the government of Myanmar reported investigating 205 trafficking cases, of which 20 were cases of forced prostitution. [↑](#footnote-ref-108)
108. Tanaka, above n.5, 81-82. [↑](#footnote-ref-109)
109. See also Demleitner, above n.78, 197. [↑](#footnote-ref-110)
110. O’Brien, above n.64, 397. [↑](#footnote-ref-111)
111. E.g., League of Nations, International Convention for the Suppression of the Traffic in Women and Children, Geneva, 30 September 1921. The UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others was approved by the General Assembly on 2 December 1949 and came into effect on 25 July 1951. According to Article 1 of the Convention, State parties: “agree to punish any person who, to gratify the passions of another: (1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; (2) Exploits the prostitution of another person, even with the consent of that person.” Article 2 provides that anyone who “keeps or manages, or knowingly finances or takes part in the financing of a brothel” or “knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others” may also be punished. [↑](#footnote-ref-112)
112. Eckhart was not charged with war crimes due to the legal requirement that the victim had to be of a different nationality than the perpetrator. Borch, above n.5, 147-150. [↑](#footnote-ref-113)
113. O’Brien, above n.64, 397 [↑](#footnote-ref-114)
114. Demleitner, above n.78, 195, notes that: “It is the cultural context that often compels these women, even upon liberation from direct oppression, to return to prostitution because it is the only way of life that remains open to them.” [↑](#footnote-ref-115)
115. See Keith J. Allred, Peacekeepers and Prostitutes: How Deployed Forces Fuel the Demand for Trafficked Women and New Hope for Stopping It, 33/1 Armed Forces & Society (2006), 5, 8; Isabelle Talleyrand, Military Prostitution: How the Authorities Worldwide Aid and Abet International trafficking in Women, 27 Syracuse JIL and Commerce (2000), 151, 154; Sam R. Bell, Michael E. Flynn, and Carla Martinez Machain, U.N. Peacekeeping Forces and the Demand for Sex Trafficking 62 International Studies Quarterly (2018), 643, 645-646. [↑](#footnote-ref-116)
116. Elizabeth F. Defeis, U.N. Peacekeepers and Sexual Abuse and Exploitation: An End to Impunity, 7/2 Washington University Global Studies LR (2008), 185, 202. [↑](#footnote-ref-117)
117. Katherine H. S. Moon, Military Prostitution and the U.S. Military in Asia, 7/3 (no.6) The Asia-Pacific Journal (12 January 2009), 3. [↑](#footnote-ref-118)
118. Choe Sang-Hun, Ex-Prostitutes Say South Korea and U.S. Enabled Sex Trade Near Bases, New York Times (7 January 2009) (www.nytimes.com/2009/01/08/world/asia/08korea.html (accessed 8 July 2020)). [↑](#footnote-ref-119)
119. Amnesty International, Kosovo (Serbia & Montenegro) “So does that mean I have rights?”: Protecting the Human Rights of Women and Girls Trafficked for Forced Prostitution in Kosovo (6 May 2004), 7; Ian Traynor, Nato force “feeds Kosovo sex trade”, The Guardian (7 May 2004). Bosnia suffered a similar fate with the arrival of Nato peacekeepers in 1995. [↑](#footnote-ref-120)
120. Council of Europe Parliamentary Report by Dick Marty, Inhuman Treatment of People and Illicit Trafficking in Human Organs in Kosovo, (7 January 2011), para. 11. [↑](#footnote-ref-121)
121. Demleitner, above n.78, 190. [↑](#footnote-ref-122)
122. See e.g. Alexandra Adams, Sexual Slavery: Do We Need this Crime in addition to Enslavement, 29 Criminal Law Forum (2018), 279-323 and Harmen van der Wilt, Trafficking in Human Beings, Enslavement, Crimes Against Humanity: Unravelling the Concepts, 13 Chinese JIL (2014), 297–334. [↑](#footnote-ref-123)
123. Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi, A/CONF.116/28/Rev.1 (15-26 July 1985), para. 290. [↑](#footnote-ref-124)
124. McDougall, above n.7, para. 33. [↑](#footnote-ref-125)
125. ICC Office of the Prosecutor, Paper on Some Policy Issues Before the Office of the Prosecutor, (September 2003), 2-3 ([www.icc-cpi.int/NR/rdonlyres/1FA7C4C6-DE5F-42B7-8B25-60AA962ED8B6/143594/030905\_Policy\_Paper.pdf](http://www.icc-cpi.int/NR/rdonlyres/1FA7C4C6-DE5F-42B7-8B25-60AA962ED8B6/143594/030905_Policy_Paper.pdf) (accessed 8 July 2020)). [↑](#footnote-ref-126)
126. ICC Office of the Prosecutor, Policy Paper on Case Selection and Prioritisation (15 September 2016), para. 41 (www.icc-cpi.int/itemsDocuments/20160915\_OTP-Policy\_Case-Selection\_Eng.pdf (accessed 8 July 2020)). [↑](#footnote-ref-127)
127. De Ming Fan, above n.25, 397. [↑](#footnote-ref-128)