Paras 32 to 133

N.B. As per the disclaimer [1]**, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents.** Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[**Source**: ICTY, The Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, IT-96-23 and IT-96-23/1, Appeals Chamber, Judgement, 12 June 2002; available on http://www.icty.org [2]; footnotes partially reproduced.]

[**N.B.**: The Judgement rendered on 22 February 2001 by Trial Chamber II is available on http://www.icty.org [2]]

[**See also** UN, Statute of the ICTY [3]]

IN THE APPEALS CHAMBER [...]

Judgement of:

12 June 2002

PROSECUTOR

AND

ZORAN VUKOVIC

JUDGEMENT

[...]

The Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 is seised of appeals against the Trial Judgement rendered by Trial Chamber II on 22 February 2001 in the case of *Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*.

Having considered the written and oral submissions of the parties, the Appeals Chamber

HEREBY RENDERS ITS JUDGEMENT. [...]

INTRODUCTION [...]

C. Findings of the Appeals Chamber

1. Convictions

32. The Appeals Chamber finds that it is unable to discern any error in the Trial Chamber's assessment of the evidence or its findings in relation to any of the grounds of appeal set out [...]. Therefore, the Appeals Chamber dismisses the appeals of each of the Appellants on their convictions, as well as all common grounds of appeal.

2. Sentencing

33. [...] The Appeals Chamber rejects the other grounds of appeal against sentence of the Appellants Kunarac and Vukovic and all those of the Appellant Kovac, on the basis

that the Trial Chamber came to reasonable conclusions and that no discernible errors have been identified. [...]

V. GROUNDS OF APPEAL RELATING TO THE TRIAL CHAMBER'S DEFINITION OF THE OFFENCES

A. Definition of the Crime of Enslavement (Dragoljub Kunarac and Radomir Kovac) [...]

2. Discussion

116. After a survey of various sources, the Trial Chamber concluded "that, at the time relevant to the indictment, enslavement as a crime against humanity in customary international law consisted of the exercise of any or all of the powers attaching to the right of ownership over a person". [143] It found that "the actus reus of the violation is the exercise of any or all of the powers attaching to the right of ownership over a person", and the "*mens rea* of the violation consists in the intentional exercise of such powers". [144]

117. The Appeals Chamber accepts the chief thesis of the Trial Chamber that the traditional concept of slavery, as defined in the 1926 Slavery Convention [available on http://www.ohchr.org [4]] and often referred to as "chattel slavery", has evolved to encompass various contemporary forms of slavery which are also based on the exercise of any or all of the powers attaching to the right of ownership. In the case of these various contemporary forms of slavery, the victim is not subject to the exercise of the more extreme rights of ownership associated with "chattel slavery", but in all cases, as a result of the exercise of any or all of the powers attaching to the right of ownership, there is some destruction of the juridical personality; the destruction is greater in the case of "chattel slavery" but the difference is one of degree. The Appeals Chamber considers that, at the time relevant to the alleged crimes, these contemporary forms of slavery formed part of enslavement as a crime against humanity under customary international law.

118. The Appeals Chamber will however observe that the law does not know of a "right of ownership over a person". [147] Article 1(1) of the 1926 Slavery Convention speaks more guardedly "of a person over whom any or all of the powers attaching to the right

of ownership are exercised." That language is to be preferred.

119. The Appeals Chamber considers that the question whether a particular phenomenon is a form of enslavement will depend on the operation of the factors or indicia of enslavement identified by the Trial Chamber. These factors include the "control of someone's movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour". [148] Consequently, it is not possible exhaustively to enumerate all of the contemporary forms of slavery which are comprehended in the expansion of the original idea; this Judgement is limited to the case in hand. In this respect, the Appeals Chamber would also like to refer to the finding of the Trial Chamber in paragraph 543 of the Trial Judgement stating:

> The Prosecutor also submitted that the mere ability to buy, sell, trade or inherit a person or his or her labours or services could be a relevant factor. The Trial Chamber considers that the mere ability to do so is insufficient; such actions actually occurring could be a relevant factor.

However, this particular aspect of the Trial Chamber's Judgement not having been the subject of argument, the Appeals Chamber does not consider it necessary to determine the point involved.

120. In these respects, the Appeals Chamber rejects the Appellants' contention that lack of resistance or the absence of a clear and constant lack of consent during the entire time of the detention can be interpreted as a sign of consent. Indeed, the Appeals Chamber does not accept the premise that lack of consent is an element of the crime since, in its view, enslavement flows from claimed rights of ownership; accordingly, lack of consent does not have to be proved by the Prosecutor as an element of the crime. However, consent may be relevant from an evidential point of view as going to the question whether the Prosecutor has established the element of the crime relating to the exercise by the accused of any or all of the powers attaching to the right of ownership. In this respect, the Appeals Chamber considers that circumstances which

render it impossible to express consent may be sufficient to presume the absence of consent. In the view of the Appeals Chamber, the circumstances in this case were of this kind.

121. The Appellants contend that another element of the crime of enslavement requires the victims to be enslaved for an indefinite or at least for a prolonged period of time. The Trial Chamber found that the duration of the detention is another factor that can be considered but that its importance will depend on the existence of other indications of enslavement. [149] The Appeals Chamber upholds this finding and observes that the duration of the enslavement is not an element of the crime. The question turns on the quality of the relationship between the accused and the victim. A number of factors determine that quality. One of them is the duration of the relationship. The Appeals Chamber considers that the period of time, which is appropriate, will depend on the particular circumstances of each case.

122. Lastly, as far as the *mens rea* of the crime of enslavement is concerned, the Appeals Chamber concurs with the Trial Chamber that the required *mens rea* consists of the intentional exercise of a power attaching to the right of ownership. [150] It is not required to prove that the accused intended to detain the victims under constant control for a prolonged period of time in order to use them for sexual acts.

123. Aside from the foregoing, the Appeals Chamber considers it appropriate in the circumstances of this case to emphasise the citation by the Trial Chamber of the following excerpt from the Pohl case [151]:

> Slavery may exist even without torture. Slaves may be well fed, well clothed, and comfortably housed, but they are still slaves if without lawful process they are deprived of their freedom by forceful restraint. We might eliminate all proof of ill-treatment, overlook the starvation, beatings, and other barbarous acts, but the admitted fact of slavery – compulsory uncompensated labour – would still remain. There is no such thing as benevolent slavery. Involuntary servitude, even if tempered by humane treatment, is still slavery.

The passage speaks of slavery; it applies equally to enslavement.

124. For the foregoing reasons, the Appeals Chamber is of the opinion that the Trial Chamber's definition of the crime of enslavement is not too broad and reflects customary international law at the time when the alleged crimes were committed. The Appellants' contentions are therefore rejected; the appeal relating to the definition of the crime of enslavement fails.

B. Definition of the Crime of Rape [...]

2. Discussion

127. After an extensive review of the Tribunal's jurisprudence and domestic laws from multiple jurisdictions, [156] the Trial Chamber concluded:

> 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) 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. [157]

128. The Appeals Chamber concurs with the Trial Chamber's definition of rape. Nonetheless, the Appeals Chamber believes that it is worth emphasising two points. 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 on the law and absurd on the facts.

129. 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. [158] However, in explaining its focus on the absence of consent as the *conditio 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 non-consent, but force is not an element *per se* of rape. [159] 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". [160] 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 consented by taking advantage of coercive circumstances without relying on physical force.

130. The Appeals Chamber notes, for example, that in some domestic jurisdictions, neither the use of a weapon nor the physical overpowering of a victim is necessary to demonstrate force. A threat to retaliate "in the future against the victim or any other person" is a sufficient indicium of force so long as "there is a reasonable possibility that the perpetrator will execute the threat". [161] 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.

131. Under the chapter entitled "Crimes Against Sexual Self-Determination," German substantive law contains a section penalising sexual acts with prisoners and persons in custody of public authority. The absence of consent is not an element of the crime. Increasingly, the state and national laws of the United States – designed for circumstances far removed from war contexts – support this line of reasoning. [...]

132. For the most part, the Appellants in this case were convicted of raping women held in *de facto* military headquarters, detention centres and apartments maintained as soldiers' residences. As the most egregious aspect of the conditions, the victims were considered the legitimate sexual prey of their captors. Typically, the women were raped by more than one perpetrator and with a regularity that is nearly inconceivable. (Those who initially sought help or resisted were treated to an extra level of brutality). Such detentions amount to circumstances that were so coercive as to negate any possibility of consent.

133. In conclusion, the Appeals Chamber agrees with the Trial Chamber's determination that the coercive circumstances present in this case made consent to the instant sexual acts by the Appellants impossible. The Appellants' grounds of appeal relating to the

definition of the crime of rape therefore fail. [...]

FOOTNOTES

- 143: Trial Judgement, para. 539 ?
- 144: Ibid., para. 540 ?
- 147: Trial Judgement, para. 539. **See also** Article 7(2)(c) of the Statute of the International Criminal Court, adopted in Rome on 17 July 1998 [**See** The International Criminal Court [Part A.] [5]] ?
- 148: Trial Judgement, para. 543. **See also** Trial Judgement, para. 542 ?
- 149: Judgement, para. 542 ?
- 150: Ibid., para. 540 ?
- 151: US v Oswald Pohl and Others, Judgement of 3 November 1947, reprinted in Trials of War Criminals Before the Nuremberg Military Tribunals under Control Council No. 10, Vol 5, (1997), pp. 958-970 ?
- 156: Trial Judgement, paras 447-456 ?
- 157: Ibid., para. 460 ?
- 158: See, e.g., Furundzija Trial Judgement, para. 185 [**available on** http://www.icty.org [2]] Prior attention has focused on force as the defining characteristic of rape. Under this line of reasoning, force or threat of force either nullifies the possibility of resistance through physical violence or renders the context so coercive that consent is impossible. ?
- 159: Trial Judgement, para. 458 ?
- 160: Ibid., para. 438 ?
- 161: California Penal Code 1999, Title 9, Section 261(a)(6). [...]. ?

Paras 179 to 290 and Disposition

VII. CUMULATIVE CONVICTIONS [...]

B. The Instant Convictions [...]

2. Intra-Article Convictions under Article 5 of the Statute

(a) Rape and Torture

179. The Appeals Chamber will now consider the Appellants' arguments regarding intra-Article convictions. The Appellants contend that the Trial Chamber erred by entering convictions for both torture under Article 5(f) and rape under Article 5(g) of the Statute on the theory that neither the law nor the facts can reasonably be interpreted to establish distinct crimes. The Trial Chamber found that the crimes of rape and torture each contain one materially distinct element not contained in the other, making convictions under both crimes permissible. [242] As its earlier discussion of the offences of rape and torture make clear, the Appeals Chamber agrees. The issue of cumulative convictions hinges on the definitions of distinct offences under the Statute which are amplified in the jurisprudence of the Tribunal. That torture and rape each contain a materially distinct element not contained by the other disposes of this ground of appeal. That is, that an element of the crime of rape is penetration, whereas an element for the crime of torture is a prohibited purpose, neither element being found in the other crime. [...]

181. In the Celebici Trial Judgement, the Trial Chamber considered the issue of torture through rape. [245] The Appeals Chamber overturned the Appellant's convictions under Article 3 of the Statute as improperly cumulative in relation to Article 2 of the Statute, but the Trial Chamber's extensive analysis of torture and rape remains persuasive. Grounding its analysis in a thorough survey of the jurisprudence of international bodies, the Trial Chamber concluded that rape may constitute torture. Both the Inter-American Commission on Human Rights and the European Court of Human Rights have found that torture may be committed through rape. And the United Nations Special Rapporteur on Torture listed forms of sexual assault as methods of torture. [246]

182. For rape to be categorised as torture, both the elements of rape and the elements of torture must be present. Summarising the international case-law, the Trial Chamber in the *Celebici* case concluded that "rape involves the infliction of suffering at a requisite level of severity to place it in the category of torture". [247] By way of

illustration, the Trial Chamber discussed the facts of two central cases, *Fernando and Raquel Mejca v Peru* from the Inter-American Commission and *Aydin v Turkey* from the European Commission for Human Rights. [248]

183. [...] [T]he Trial Chamber in the Celebici case observed that "one must not only look at the physical consequences, but also at the psychological and social consequences of the rape". [251]

185. In the circumstances of this case, the Appeals Chamber finds the Appellants' claim entirely unpersuasive. The physical pain, fear, anguish, uncertainty and humiliation to which the Appellants repeatedly subjected their victims elevate their acts to those of torture. These were not isolated instances. Rather, the deliberate and coordinated commission of rapes was carried out with breathtaking impunity over a long period of time. Nor did the age of the victims provide any protection from such acts. (Indeed, the Trial Chamber considered the youth of several of the victims as aggravating factors.) Whether rousted from their unquiet rest to endure the grim nightly ritual of selection or passed around in a vicious parody of processing at headquarters, the victims endured repeated rapes, implicating not only the offence of rape but also that of torture under Article 5 of the Statute. In the egregious circumstances of this case, the Appeals Chamber finds that all the elements of rape and torture are met. The Appeals Chamber rejects, therefore, the appeal on this point.

(b) Rape and Enslavement

186. Equally meritless is the Appellants' contention that Kunarac's and Kovac's convictions for enslavement under Article 5(c) and rape under Article 5(g) of the Statute are impermissibly cumulative. That the Appellants also forced their captives to endure rape as an especially odious form of their domestic servitude does not merge the two convictions. As the Appeals Chamber has previously explained in its discussion of enslavement, it finds that enslavement, even if based on sexual exploitation, is a distinct offence from that of rape. The Appeals Chamber, therefore, rejects this ground of appeal.

3. Article 3 of the Statute [...]

(b) Intra-Article Convictions under Article 3 of the Statute [...]

194. Article 3 of the Statute, as the Appeals Chamber has previously observed, also prohibits other serious violations of customary international law. The Appeals Chamber in the *Tadic* Jurisdiction Decision outlined four requirements to trigger Article 3 of the Statute [**See** ICTY, The Prosecutor v. Tadic [Part A., para. 94] [6]]:

> (i) the violation must constitute an infringement of a rule of international humanitarian law; (ii) the rule must be customary in nature...; (iii) the violation must be 'serious', that is to say, it must constitute a breach of a rule protecting important values ..; (iv) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule. [...]

> [R]ape is a "serious" war crime under customary international law entailing "individual criminal responsibility," [...].

195. In keeping with the jurisprudence of the Tribunal, the Appeals Chamber concludes that rape meets these requirements and, therefore, constitutes a recognised war crime under customary international law, which is punishable under Article 3 of the Statute. The universal criminalisation of rape in domestic jurisdictions, the explicit prohibitions contained in the fourth Geneva Convention and in the Additional Protocols I and II, and the recognition of the seriousness of the offence in the jurisprudence of international bodies, including the European Commission on Human Rights and the Inter-American Commission on Human Rights, all lead inexorably to this conclusion. [...]

VIII. ALLEGED ERRORS OF FACT (DRAGOLJUB KUNARAC) [...]

B. Convictions under Counts 1 to 4

1. Rapes of FWS-75 and D.B.

(a) Submissions of the Parties

(i) The Appellant (Kunarac) [...]

211. [...] [T]he Appellant argues that the Trial Chamber erred in finding that he possessed the requisite mens rea in relation to the rape of D.B.. The Appellant concedes that he had sexual intercourse with D.B. but denies being aware that D.B.'s consent was vitiated because of Gaga's threats, and stresses that D.B. initiated the sexual contact with him and not vice versa, because, until that moment, he had no interest in having sexual intercourse with her. Further, the Appellant alleges that the Trial Chamber erred in reaching the conclusion that he had committed the crimes with a discriminatory intent solely on the basis of the testimony of a single witness stating that, when he raped women, the Appellant told them that they would give birth to Serb babies or that they should "enjoy being fucked by a Serb".

(ii) The Respondent [...]

214. [...] [T]he Respondent recalls FWS-183's testimony that while a soldier was raping her after she had just been raped by the Appellant, "... he – Zaga (the Appellant) – was saying that I would have a son and that I would not know whose it was, but the most important thing was it would be a Serb child". The Respondent submits that the evidence provides a firm basis for the Trial Chamber's finding that the Appellant committed crimes for a discriminatory purpose.

(b) Discussion [...]

218. [...] [T]he Trial Chamber correctly inferred that the Appellant had a discriminatory intent on the basis, *inter alia*, of the evidence of FWS-183 regarding comments made by the Appellant during the rapes in which he was involved. [...] The special circumstances and the ethnic selection of victims support the Trial Chamber's conclusions. For these reasons, this part of the grounds of appeal must fail. [...]

E. Convictions under Counts 18 to 20 – Rapes and Enslavement of FWS-186 and

FWS-191

1. Submissions of the Parties

(a) The Appellant (Kunarac) [...]

251. The Appellant denies that FWS-191 was his personal property. He stresses that FWS-191 stated at trial that the Appellant protected her from being raped by a drunken soldier who had offered money to be with her. Furthermore, the Appellant contends that he did not have any role in keeping FWS -191 at the house in Trnovace because that house was the property of DP 6. He states that FWS-191 had asked DP 6 if she could stay in the house and that DP 6 had offered her security, explaining that if they left the house she and FWS-186 "would be raped by others".

(b) The Respondent [...]

253. As to the crime of enslavement, the Prosecutor argues that the Trial Chamber identified a comprehensive range of acts and omissions demonstrating the Appellant's exercise of the rights of ownership over FWS-186, thus satisfying the criteria of enslavement. [...] In the view of the Prosecutor, there is no contradiction in the finding of the Trial Chamber that the Appellant forbade other men to rape FWS-191. Rather, it submits, this fact indicates a level of control and ownership consistent with the crime of enslavement.

2. Discussion [...]

255. Lastly, as to the crime of enslavement, the Trial Chamber found that the women at Trnovace "were not free to go where they wanted to even if, as FWS-191 admitted, they were given the keys to the house at some point". [337] In coming to this finding, the Trial Chamber accepted that "... the girls, as described by FWS-191, had nowhere to go, and had no place to hide from Dragoljub Kunarac and DP 6, even if they had attempted to leave the house...". [338] The Appeals Chamber considers that, in light of the circumstances of the case at bar in which Serb soldiers had exclusive control over

the municipality of Foca and its inhabitants, and of the consistent testimony of the victims, the findings of the Trial Chamber are entirely reasonable. For the foregoing reasons, this ground of appeal fails.

F. Conclusion

For the foregoing reasons, the appeal of the Appellant Kunarac on factual findings is dismissed.

IX. ALLEGED ERRORS OF FACT (RADOMIR KOVAC) [...]

B. Conditions in Radomir Kovac's Apartment

1. Submissions of the Parties

(a) The Appellant (Kovac)

261. The Appellant contends that the Trial Chamber erred in not evaluating the evidence as to the *manner* in which, whilst at his apartment, FWS-75, FWS-87, A.S. and A.B. were allegedly subjected to rape and degrading and humiliating treatment, and, at times, slapped and exposed to threats. [...] He also contends that it was not, as the Trial Chamber has found, proved beyond reasonable doubt that he completely ignored the girls' diet and hygiene and that they were sometimes left without food. He maintains that the girls had access to the whole apartment, that they could watch television and videos, that they could cook and eat together with him and Jagos Kostic, and that they went to cafés in town.

(b) The Respondent

262. The Respondent argues that it was open to the Trial Chamber, on the basis of the evidence presented at trial, to conclude that FWS-75, FWS-87, A.S. and A.B. were detained in the Appellant's apartment and subjected to assault and rape. [...]

2. Discussion

263. The Appeals Chamber notes that the Trial Chamber discussed what the Appellant stated in his defence at trial. [362] Further, the Trial Chamber discussed at length the conditions in the Appellant's apartment, [363] with reference to the specific abuses suffered by the victims. [364] The proof accepted by the Trial Chamber describes in detail the manner in which the lives of the victims unfolded in the Appellant's apartment and in which physically humiliating treatment was meted out to them. The Appeals Chamber considers that the relevant findings of the Trial Chamber were carefully considered and that the correct conclusions were drawn in the Trial Judgement. The ground of appeal is obviously ill-founded and is therefore dismissed. [...]

H. Conclusion

290. For the foregoing reasons, the appeal of the Appellant Kovac on factual findings is dismissed. [...]

XII. DISPOSITION

For the foregoing reasons:

A. The Appeals of Dragoljub Kunarac against Convictions and Sentence

1. Convictions

The Appeals Chamber:

DISMISSES the appeal brought by Dragoljub Kunarac against his convictions. [...]

2. Sentence

The Appeals Chamber:

DISMISSES the appeal brought by Dragoljub Kunarac against his sentence; [...]

Accordingly, the Appeals Chamber AFFIRMS the sentence of 28 years' imprisonment as imposed by the Trial Chamber.

B. The Appeals of Radomir Kovac against Convictions and Sentence

1. Convictions

The Appeals Chamber:

DISMISSES the appeal brought by Radomir Kovac against his convictions. [...]

2. Sentence

The Appeals Chamber:

DISMISSES the appeal brought by Radomir Kovac against his sentence; [...]

Accordingly, the Appeals Chamber AFFIRMS the sentence of 20 years' imprisonment as imposed by the Trial Chamber [...]

Done in both English and French, the French text being authoritative. [...]

FOOTNOTES

- 242: **See** Trial Judgement, para. 557 ?
- 245: Celebici Trial Judgement, paras 475-496 [**available on** http://www.icty.org [2]]. ?
- 246: Ibid., para. 491, [...]. ?
- 247: Celebici Trial Judgement, para. 489 ?
- 248: Fernando and Raquel Mejia v Peru, Case No. 10,970, Judgement of

1 March 1996, [...], Inter-American Yearbook on Human Rights, 1996, p. 1120 [**available in** Annual Report 1995, http://www.cidh.org [7].] and Aydin v Turkey, Opinion of the European Commission of Human Rights, 7 March 1996, reprinted in European Court of Human Rights, ECHR 1997-VI, p. 1937, paras 186 and 189 ?

- 251: Celebici Trial Judgement, para. 486 ?
- 337: Trial Judgement, para. 740 ?
- 338: Ibid. ?
- 362: Trial Judgement, paras 151-157 ?
- 363: Ibid., paras 750-752 ?
- 364: Ibid., paras 757-759, 761-765 and 772-773 ?

Discussion

1. According to customary international law, is enslavement a crime against humanity? According to customary international humanitarian law (IHL)? Has this crime been codified in instruments other than the statutes of the ICTY and the International Criminal Court (ICC)? (Art. 6(c) of the Statute of the Nuremberg Military Tribunal [**available at** www.icrc.org [8]]; Art. 5(c) of the ICTY Statute [9] [**See** UN, Statute of the ICTY [3]]; Arts 7(1)(c) [10] and 7 (2)(c) of the ICC Statute [10] [**See** The International Criminal Court [11]])
2. a. Is the ban on slavery more a question of international human rights law? (Art. 8(1) of the International Covenant on Civil and Political Rights [available at http://www.ohchr.org [4]]) Is it a non-derogable human right?
   b. Does IHL address slavery as such? (P I [12], Art. 4(2)(f) [13])
   c. Does the fact that only Protocol II explicitly bans slavery mean that it remains legal during international armed conflicts? Or does Protocol II only act as a reminder that slavery "remain[s] prohibited at any time and in any place whatsoever"? (P II [14], Art. 4(2) [15])
3. During international armed conflicts, is rape committed by one of the belligerents outlawed by IHL? By IHL applicable to non-international armed conflicts? (GC I-IV, Art. 3

[16]; GC I-IV, Arts 50 [17]/51 [18]/130 [19]/147 [20] respectively; GC IV, Art. 27(2) [21]; P I, Art. 76(1) [22]; P II, Art. 4(2)(e) [23])

4. Is rape a war crime? (GC I-IV, Arts 50 [17]/51 [18]/130 [19]/147 [20] respectively; P I, Art. 85 [24]) Is it also a crime against humanity? Was the inclusion of rape as a crime against humanity in the Statutes of the ICTY and the ICTR an innovation? Today, with regard to international case-law and the ICC Statute, may this development of IHL be seen as having a customary component? (Art. 5(g) of the ICTY Statute [9] [**See** UN, Statute of the ICTY [3]]; Art. 3(g) of the ICTR Statute [25] [**See** UN, Statute of the ICTR [26]]; Art. 7(1)(g) of the ICC Statute [10] [**See** The International Criminal Court [11]; **See also** ICTR, The Prosecutor v. Jean-Paul Akayesu [27]]) Can rape only be considered as a crime against humanity if conditions specific to crimes against humanity are fulfilled? Which ones? If these conditions are not fulfilled, is it then a war crime?

Links

[1] https://casebook.icrc.org/disclaimer-and-copyright

[2] http://www.icty.org

[3] https://casebook.icrc.org/case-study/un-statute-icty

[4] http://www.ohchr.org

[5] https://casebook.icrc.org/case-study/international-criminal-court#icc_a_the_statute

[6] https://casebook.icrc.org/case-study/icty-prosecutor-v-tadic#parta_para94

[7] http://www.cidh.org

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[9] https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=066866D84BF31B79C12563FB0

[10] https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=058B44CF36EDB8CF412566900

[11] https://casebook.icrc.org/case-study/international-criminal-court

[12] https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=D9E6B6264D7723C3C12563CD002D6CE4&action=openDo

[13] https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=257D6F3C0D82073AC12563CD005

[14] https://ihl-

databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AA0C5BCBAB5C4A85C12563CD002D6D09&action=openI
[15] https://ihl-
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[19]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=DD77A07DBDF8B9A2C12563C
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https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F9CBD575D47CA6C8C12563CD
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https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=73D05A98B6CEB566C12563CD
[25]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=08BC7CE5D944A8E1C12563FB
[26] https://casebook.icrc.org/case-study/un-statute-ictr
[27] https://casebook.icrc.org/case-study/ictr-prosecutor-v-jean-paul-akayesu