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Scars on Women's Bodies: The Kunarac Case and the "Figuration" of the Crime of «New Forms of Slavery»*

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1. The Many Faces of "Violence Against Women"

That of "violence against women" is a macro-theme that highlights the need to analyze the many new facets that gender crimes take on today and the new challenges that women are faced with as victims of violence because they belong to a specific gender: that is, the female one. On the one hand, the concept of «female victim of gender violence» is complex. Even when looking through the lens of the legislative provisions of the member States of the European Union, there is a multitude of different legal concepts and diversified legal protection responses[1]. On the other hand, the recognition of violence against women as a violation of a fundamental right has only recently been accepted, recognized, and condemned in a specific manner also in the norms of international treaty law or in the norms of supranational law[2].

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[1] On these aspects see B.B. Garìn, *Gender Victim of Gender-Based Violence*, in A. Bartolini - R. Cippitani - V. Colcelli (eds.), *Dictionary of Statutes within EU Law*, Cham, 2019, p. 281 ff. It must be underlined, that most legal commentary hails the ad hoc with revolutionizing the prosecution of sexual violence in the context of female victims and overlooks sexual violence targeting male victims. ICTY's first case, and the first international war crimes trial since Nuremberg and Tokyo, was also the first-ever trial for sexual violence against men. After a three-year trial, the Trial Chamber handed down a guilty verdict. See ICTY, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Opinion and Judgment, 7 May 1997.

[2] The CEDAW Recommendation no. 19 on Violence Against Women paved the way for such recognition. After this first step, several other instruments that recognize gander-based violence like a violation of human rights, have been adopted. Nevertheless, the more important developments in this aspect have been raised in international jurisprudence. See on this, R.J. Cook (eds.), *Human Rights of Woman. National and International Perspectives*, Philadelphia, 1994.

In this regard, it is sufficient here to recall that the Resolution 48/104 of 20 December 1993 of the United Nations in the first two articles defines violence against women as: «(…) any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (art. 1);

(a) Physical, sexual, and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation, and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual, and psychological violence perpetrated or condoned by the State, wherever it occurs» (art. 2)[3].

Thus, violence against women is an umbrella term that can encompass a multitude of situations that must be recognized and condemned as gender-based violence which in turn constitutes an independent fundamental human right violation.

Often, however, violence against women takes shape within other phenomena. A forced relational bond that is not desired by the victim - such as the case of forced marriages - is the most common example[4].

Since the end of the last century, the issue of forced marriage has appeared on the public agenda in Western Europe being recognized gradually as an abuse of human rights in many United Nations (UN) treaties and other international documents[5]. Nevertheless, even the recognition of forced marriage as a form of violence against women is recent. Only in 2000 forced marriage has been officially classified as a specific form of violence against women and has been included within the framework of the elimination of violence against women[6]. Since then, the debate regarding this

[3] Declaration on the Elimination of Violence against Women - Proclaimed by General Assembly Resolution 48/104 of 20 December 1993. Full text in https://www.ohchr.org/en/professionalinterest/pages/violenceagainstwomen.aspx.

[4] See on this M. Enright, *Choice, Culture and the Politics of Belonging: The Emerging Law of Forced and Arrange Marriage*, in *The Modern Law Review*, 72, 3, 2009, p. 332.

[5] UN, Economic and Social Council, *Forced Marriage of the Girl Child*, Report of Secretary-General, E/CN.6/2008/4, December 2007, para. 10.

[6] Indeed, it was introduced as a problematic issue for the first time in 1995 by the UN General Assembly in the context of trafficking in human beings and subsequently, it was mentioned in a few international documents (UN General Assembly Resolution Traffic in women and girls, A/RES/50/167, December 1995). In 1997 the issue of forced marriage was included in the Resolution No. 41/5 of the Commission on the Status of Women. Even the recognition that the issue received by the documents of the Commission on Human Rights in 1999 occurred within the theme of trafficking in human beings (See Resolutions 1999/40 UN, Economic and Social Council, Commission on status of women). Only in 2000 forced marriage has been officially classified as a specific form of violence against women (UN Commission on Human Rights resolutions 2000/45).

phenomenon has been raised all over the world making multiple aspects of violence that take shape within forced marriages more and more interconnected with other forms as the ones of forced labor and slavery[7].

Taking into consideration that the evolutions related to the recognition of forms of violence against women are quite recent, the present contribution will focus on a caselaw of undoubted importance. In the monumental decisions of the *Kunarac and others* case, the International Criminal Tribunal for the former Yugoslavia (ICTY) - judgment of the Chamber of the first instance of 2001[8] confirmed in appeal with a judgment issued in 2002[9] – recognizes and condemns for the first time in history the new type of crime of «contemporary forms of slavery».

As the facts of the case will show, once more, it was inside a forced relational bond not desired by the victim - like the ones of the forced marriage - that the «new forms of slavery» took evidence in that case.

Moreover, before the *Kunarac* case, in the treaty law and in the previous international jurisprudence, slavery/servitude/ forced labor remained three different crimes, and forced labor was identified as a common element for the other two types of crimes[10]. According to the international jurisprudence up to then developed, forced labor was considered as a common element between slavery and servitude. However, if in the case of slavery there would be total power over the subject in such a way as to be treated or sold like an object, in the case of servitude the "domination", in addition to economic reasons, also differs in the aspect of psychological submission[11].

In the *Kunarac* case, in fact, the ICTY identified a hardcore of elements based on which it has diverged from the aforementioned traditional tripartition division - forced labor/slavery/servitude - outlining in the multiform crime of new slavery a synthesis tool capable of embracing the various facets of the crimes committed in the case in question.

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[7] See on this, among others, R.A. Edwige, *Forced Marriage in Council of Europe Member States, Comparative study of legislation and political initiatives*, Strasbourg, 2005; G. Gangoli - M. McCarry, *Criminalising Forced Marriage: Debate in the UK*, in *Criminal Justice Matters*, 74, 1, 2008, p. 44 ff.; N. Dostrovsky - R. Cook - M. Gagnon, *Annotated Bibliography on Comparative and International Law Relating to Forced Marriage*, Canada Department of Justice, 2007; M. Borowska, *The phenomenon of forced marriage*, in *Review of Comparative Law*, XVIII, 2013, p. 23 - 41.

[8] ICTY, *The Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, IT-96-23, Judgement 22 February 2001.

[9] ICTY, *The Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* IT-96-23/1, Appeals Chamber, Judgement, 12 June 2002.

[10] N. Siller, *'Modern Slavery': Does International Law Distinguish between Slavery, Enslavement and Trafficking?*, in *Journal of International Criminal Justice*, 14, 2, 2016, p. 405 ff.

[11] For a detailed analysis on these aspects see S. Cantoni, *Lavoro forzato e "nuove schiavitù" nel diritto internazionale*, Torino, 2018; K. Bales - P.T. Robbins, *No one shall be held in slavery or servitude: A critical analysis of international slaver agreements and concept of slavery*, in *Human Rights Review*, 2, 2001, p. 18 ff.; J. Allain (ed.), *The Legal Understanding of Slavery: From the Historical to the Contemporary*, Oxford, 2012; M.R. Saulle, *Schiavitù (dir. internaz.)*, in *Enc. Dir.*, XLI, 1989, p. 641 ff.

As the facts of the case will put in evidence the configuration of «the new forms of slavery» occurs in presence of circumstances that only when added to others contribute to defining the typical features of some recognized crimes as the ones of forced marriages, forced labor and shavings.

Therefore, in identifying the crime of new slavery, a set of factors contribute, which, taken individually, may not configure it or do not mean the configuration of any crime but, when added together, result in the final effect, precisely of the crime that the ICTY recognized for the first time in history in the *Kunarac* case.

2. The Facts of the Case Kunarac and others

The period is that of the sad page of the history that saw in the case of Bosnia-Herzegovina (BiH) the most atrocious facet of the ethnic revival that accompanied the disintegration of the Former Yugoslavia. The events take place in the Foca region in BiH in the period of ethnic apartheid against the Bosniak (Muslim) population, from 1992 to 1993.

The three defendants then convicted - Kunarac, Vukovic, and Kovac - were commanders (Kunarac) or senior leaders of the Serbian Armed Forces of Bosnia in the district/municipality of Foca. The task of this armed force was to carry out the ethnic cleansing of the territory of Foca from the presence of the Muslim population.

The specific target of this ethnic cleansing was not only the Bosnian fighters but also civilians. In the specific case of civilians, they were deported to some villages around the area: a separation was made between men, children, and women. The destiny of the males was that of being killed, as known from the Srebrenica massacre. Women, instead, were deported and imprisoned in masse in schools or other similar buildings, subjected to constant deportation and displacement from one detention center to another. During this period, mass rapes of women by soldiers belonging to the Serbian forces were reported[12]. More specifically, it was documented during the

[12] In some war conflicts rape has been used as a specific weapon of war with relative impunity. Only recently sexual violence against women and girls during times of conflict has gained recognition as a serious crime, becoming rape, therefore, subject of national and international jurisprudence. For some psychological reflections and debate on this aspect see E. Cherepanova, *Sexual and Gender-Based Violence as Warfare. Handbook of Interpersonal Violence and Abuse Across the Lifespan*, e-book, 2021; for some more juridical debate, see P. Kirby, *How is rape a weapon of war? Feminist International Relations, modes of critical explanation and the study of wartime sexual violence*, in *European Journal of International Relations*, 19, 4, 2013, p. 797-821; M. Roman, *Rape, the Least Condemned War Crime. Human Rights are Not Women's Rights*, Munich, 2019. With specific reference to the case of Bosnia see Ch. Benard, *Rape as terror: The case of Bosnia*, in *Terrorism and Political Violence*, 6, 1, 1994, p. 29-43; J.N. Clark, *Untangling Rape Causation and the Importance of the Micro Level: Elucidating the Use of Mass Rape during the Bosnian War*, in *Ethnopolitics*, 16, 4, 2017, p. 388-410; A. Doja, *Politics of mass rapes in ethnic conflict: a morpho dynamics of raw madness and cooked evil*, in *Crime, Law and Social Change*, 1, 5, 2019, pp. 541-580.

process that everything took place under the order of the commander of the Serbian forces in the area: Mr. Kunarac.

Several women who have suffered group rapes testified the following as the most recurring phrase: «now you will get pregnant with one of us, no matter who, but it will be a Serbian child anyway so the race will be cleaned up». Therefore, mass rape was used as a specific weapon with a very specific goal, namely, that of ethnic cleansing.

It happens that 5 women (including adolescents, therefore still minors) were transferred to a house where Mr. Kunarac lived almost permanently. They remained there for months: the alternative was to go back to schools (centers for gatherings and mass rape). The women were "divided" by preferences among the three defendants, being subjected to rape by friends brought to the house. They also had to do housework, cleaning, cooking for the condemned, and striptease shows under intimidation. During this stay, when the soldiers were absent for missions, they sent some family members of theirs to brought bags with food to the women. During their stay in the company of the defendants, the women had been seen at some bars or restaurants in the area. Finally, the women were sold to some Montenegrin citizens and were transported to Montenegro.

According to the defense, there was a love relationship between the women and the defendants; the women remained of their own free will in the house; there was no servitude or slavery since women could have easily left the house, as demonstrated by the fact that they had been spotted in bars and restaurants in the area; the accused took care of the women thereby sending provisions when they were away, and there had been no sale to Montenegrins but the defendants had paid for the women to be taken out to Montenegro for safety.

According to the prosecution, however, the story was quite another. There was no love affair, and the case was typical of forced relationships similar to that of forced marriages. As far as the innovative aspects of the decision are concerned, the fact that the entire Muslim population was under acts of ethnic purge excluded any willingness of women to remain of their own free will. Such a circumstance excluded any space of a possible form of effective freedom of movement for women. They were therefore to be considered slaves subjected to forced labor and forced sexual relations with the accused and there was a trafficking sale of the same in Montenegro.

3. The Court's Decision and the "Figuration" of the Crime of «New Forms of Slavery»

With reference to the allegations, the ICTY carries out a monumental work in its decision, focusing not only on international, supranational, jurisprudential decisions but also on the various constitutional provisions of the States of the world to outline

what was meant by, respectively, sexual abuse, sexual assault, rape, torture, slavery, bondage, hard labor[13].

Going into the merits of the decisions, more specifically, the Court affirms that - in the context of international criminal law - the distinction between forced labor, slavery, and servitude must be considered irrelevant[14]. The Court says that in the crime of slavery and reduction into slavery the factors of control and ownership, the limitation and control of autonomy, freedom of choice or movement, and often the obtaining of an advantage for the criminal, are presupposed. On the other hand, the consent or free will of the victim is absent; it is often rendered impossible or irrelevant through, for example: the threat or use of violence or other forms of coercion, fear of violence, willful misconduct, false promises, abuse of power, the vulnerability of the victim, imprisonment, psychological pressures, or socio-economic conditions.

In the present case, even if women had - in the periods of absence of the soldiers - the possibility to leave the apartment, there can be no doubt that their freedom of movement was minimal. This because belonging to the Bosnian ethnic group that was subject to ethnic cleansing they had nowhere else to go. Therefore, according to the Court, they were in an undoubted position of vulnerability and psychological pressures[15].

The first instance Chamber qualifies as "apparent", in some cases the distinction between slavery, servitude, and forced labor which, irrelevant to the punishment of international crimes, is still defended in other branches of international law. Then, the Court identified further elements of the crime of slavery such as unpaid work, sexual abuse, prostitution, human trafficking. In reference to this last aspect, in fact, the women were sold to Montenegrin men[16]. Furthermore, the compulsion to serve, to perform forced and unpaid labor, the Court reiterated, remains "slavery" even when the treatment of the victim does not reach heinous degrees of physical violence[17].

The position expressed by the Chamber of first instance is also accepted by the Appeals Chamber in the 2002 decision. In the appeal decision not only is reaffirmed that forced labor is an indicator of slavery and its presence must be taken into

[13] It is impossible here to dwell exhaustively on the specific motivations and arguments as well as on the differences between slavery and servitude. See generally J.R. McHenry III, *The Prosecution of Rape Under International Law: Justice That Is Long Overdue*, in *Vand. J. Transnat'l L.*, 35, 4, 2002, p. 1269, who discusses the history of sexual violence prosecution and the ICTY decision in *Prosecutor v. Kunarac* where enslavement was broadened to include sexual enslavement as a crime against humanity.

[14] ICTY, *The Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, IT-96-23, Judgement, cit., para. 542.

[15] *Ivi*, para. 577: « (…) The sole reason for this treatment of the civilians was their Muslim ethnicity» and para. 583: « (…) rape against the Muslim women were one of the many ways in which the Serbs could assert their superiority and victory over the Muslims. While raping FWS-183, the accused Dragoljub Kunarac told her that she should enjoy being 'fucked by a Serb'».

[16] *Ivi*, para. 775.

[17] *Ivi*, paras. 780 ff.

consideration to verify the condition of slaves but, for the first time in history, we have the identification of the category of «contemporary forms of slavery».

The step forward made by the Appeals Chamber precisely concerned the assumption according to which: where the facts of the case do not allow to identify all the elements necessary to configure the crime of «chattel slavery», the absence of some of the elements cannot lead to the impunity. The presence of only some of the elements of slavery, led the Court to identify for the first time the new type of crime of «contemporary forms of slavery».

Unlike the previously known categories, the «contemporary forms of slavery» are not characterized by a total control «exercise of the right of property in its most extreme form» as required by the 1926 Convention[18]. In this regard, the Appeals Chamber specifies that: «To establish whether a person is reduced to slavery, control over the individual's movements will have to be assessed» and «among others: psychological control, measures taken to prevent or discourage escape; cruel treatment and torture; control over sexuality and forced labor»[19] take specific relevance.

In practice, what remains of primary importance is the relationship that exists between victim and executioner.

With reference to the consent of the victim the Court emphasizes that the circumstances of the specific case (women moved from school to homes, women of an ethnic group subject to apartheid) are such that they exclude any space for consent even if requested. To put it in the words of the Court «(...) when the circumstances are such as to exclude the expression of a consent, they may be sufficient to infer the absence of consent»[20].

Therefore, to assess whether the treatment of a person constitutes a «new form of slavery», the discriminating element should be identified in the victim's inability to self-determine as the victim is totally subjected to another person who can dispose of the victim up to alienation.

Furthermore, in reaching its conclusions and condemning the accused, the International Criminal Tribunal for the former Yugoslavia after a rich and exhaustive

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[18] ICTY, *The Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* IT-96-23/1, Appeals Chamber, cit., para. 117. To put it with the words of the Court: «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».

[19] *Ivi*, para. 119.

[20] *Ivi*, para. 120.

analysis of the facts of the case and of the decisions of other courts comes to the confirmation that the jurisdictions called to apply humanitarian law are in favor of an extensive definition of slavery according to an orientation that emerged since the rulings of the Nuremberg Tribunal which had already considered unpaid forced labor as an element of slavery.

And finally, the Appeals Chamber explicitly states that «these new forms of slavery can be considered as the crime of slavery and, therefore, as international crimes prohibited by customary international law»[21].

4. *The Crime of New Forms of Slavery after the* Kunarac *Case*

Among the novelties of the *Kunarac* case the most important one undoubtedly concerns the "figuration"[22]- for the first time - of the new forms of slavery as a crime and multifaceted but of equal gravity as that of slavery.

Indeed, in its reasoning, the Court overcomes the traditional distinction between servitude and slavery which, although both identifying a fixed point in forced labor, remained, however, different in the other assumptions, figuring the «new forms of slavery» as a crime capable of embrace and unify slavery, servitude and forced labor. In carrying out this "figuration" of the new crime, the Court puts in correlation acts that individually may not meet the criteria of any type of crime, but when added together they configure the new crime as outlined by the Court.

Other important decisions have been based on the precedent *Kunarac* and on the identification of the elements of the crime of new slavery. The 2007 decision of the International Criminal Court in the *Katanga* case[23] and the 2008 decision of the Community Court of Justice of the West African States (ECOWAS), *Hadijatou Mani Koraou v. Niger*[24] are some of the most known examples. The influence of the *Kunarac* case, albeit in more recent times, is also reflected in the case law of the ECtHR. Indeed, even the ECtHR has remaining more anchored to the traditional approach of diversification between slavery and servitude, starting from 2012, however, in some decisions (e.g. *CN at al. v. France*) begins to accept the novelty introduced with the

[21] *Ivi*, para. 117.

[22] According to the idea of "figuration" as developed by Norbert Elias [*The process of civilization* (1939), trans. it., Bologna, 1988], for the broad analysis of which reference is made to M. Carducci, *Involvement, and detachment in world comparison*, in *Boletín Mexicano de Derecho Comparado*, 128, 2010, p. 595-621, especially p. 609 ff.

[23] International Criminal Court, *Katanga Case - The Prosecutor v. Germain Katanga,* ICC-01/04-01/07.

[24] *Hadijatou Mani Koraou v. The Republic of Niger*, ECW/CCJ/JUD/06/08, Economic Community of West African States (ECOWAS): Community Court of Justice, 27 October 2008.

Kunarac case and in *Rantev vs. Cyprus and Russia*, the ECtHR admits that it is «irrelevant to distinguish between slavery, servitude and forced labor in trafficking crimes»[25].

The novelties of the *Kunarac* case also had a significant impact in the proliferation of new institutions and instruments aimed at combating the «new forms of slavery».

In 1975 within the United Nations, there was the birth of a Special Working Group on New Forms of Slavery within a Sub-Commission. But, only starting from 2007 - a few years after the *Kunarac* case - a Special Rapporteur on Contemporary Forms of Slavery within the Council for Human Rights has been established[26]; various Reports have been adopted from the International Labor Organization (ILO), and from 2011 there are continuous Resolutions of the European Parliament on «contemporary forms of slavery»[27].

According to one of the latest reports of the ILO, slavery is a multifaceted crime: «an umbrella term - does not have an all-encompassing definition in the laws - and which basically refers to situations in which the victim cannot refuse or avoid out of fear because of the threat of violence, various coercions, and abuse of power»[28]. To this definition of the ILO, it can be added with the words of the Appeals Chamber that: the *mens rea* consists in the intentional exercise of this abuse of power for coercive purposes[29].

The denigration of the victim as belonging to a different ethnic group, the humiliations of the victim's dignity, the demand for forced labor (therefore unpaid or inadequately paid), are circumstances that individually may not constitute hypotheses of slavery, but if added together, they constitute a scheme through which the executioner assumes the position of "master" with respect to the victim, configuring the multiform crime of "new slavery" which, starting from the *Kunarac* case, is condemned on a par with the crime of slavery in jurisprudential practice and in various international and supranational documents.

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[25] EtCHR, *Case of Rantsev v. Cyprus and Russia* (Application no. 25965/04), 7 January 2010, in https://hudoc.echr.coe.int/fre?i=002-1142.

[26] See on these developments J. Allain (ed.), *The Legal Understanding of Slavery: From the Historical to the Contemporary*, cit.

[27] See the Report of the European Parliament, *Contemporary forms of slavery*, 2018 in https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603470/EXPO_STU(2018)603470_EN.pdf. It must be underlined that alongside soft law acts, Article 5 of the European Charter of Fundamental Rights (which is binding for EU institutions and EU Member States when they implement EU law) prohibits slavery, servitude, forced or compulsory labor, and trafficking in human beings.

[28] See R. Plant, *Modern slavery: the concepts and their practical implications*, ILO Working paper, 2015; also for more data on the new forms of slavery, see, the ILO Report, *Global Estimates of modern slavery*, Geneva, 2017 in https://www.alliance87.org/global_estimates_of_modern_slavery-forced_labour_and_forced_marriage.pdf.

[29] To say it with the words of the Court: «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»: ICTY, *The Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* IT-96-23/1, Appeals Chamber, cit., para. 122.

To conclude, I quote a passage from the decision of the Appeal that, in quoting the *Phole* case, helps to identify a crucial element of the crime of new forms of slavery: «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 labor – would remain. There is no such thing as benevolent slavery. Involuntary servitude, even if tempered by humane treatment, is still slavery»[30].

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Abstract: In various ways women are faced with as victims of violence because they belong to a specific gender: that is, the female one. On the one side, the recognition of violence against women as a violation of a fundamental right is quite recent. And, on the other, violence against women takes shape within other phenomena. A forced relational bond that is not desired by the victim is the most common example. Indeed, within this last one, many other forms of violence - forced labor, servitude, and slavery - takes shape. In the monumental decisions of the *Kunarac and others* the International Criminal Tribunal for the former Yugoslavia (ICTY) recognizes and condemns for the first time in history the new type of crime of «contemporary forms of slavery». The ICTY identified a hardcore of elements on the basis of which it has diverged from the traditional division - forced labor/slavery/servitude - outlining in the multiform crime of new slavery a synthesis tool capable of embracing the various facets of the crimes committed in the case in question.

Abstract: Le donne, in quanto appartenenti ad uno specifico genere, quello femminile, possono essere vittime di diversificate forme di violenza. Il riconoscimento della violenza contro le donne quale violazione di un diritto fondamentale è assai recente. Inoltre, la violenza contro le donne spesso, e quasi sempre, prende forma all'interno di altri fenomeni. Nelle monumentali sentenze del caso *Kunarac and others*, il Tribunale penale internazionale per l'ex Jugoslavia (ICTY) ha riconosciuto e ha condannato - per la prima volta nella storia - il nuovo tipo di reato delle «forme contemporanee di schiavitù». Nelle sue decisioni l'ICTY ha individuato un nocciolo duro di elementi in base ai quali si è discostato dalla tradizionale divisione - lavoro forzato/schiavitù/servitù - delineando nel multiforme reato delle «nuove forme di schiavitù» uno strumento di sintesi capace di abbracciare le varie sfaccettature dei reati commessi nel caso in questione.

[30] *Ivi*, para. 123.

Keywords: Violence against women – new forms of slavery – *Kunarac* case – International Criminal Tribunal for the former Yugoslavia.

Parole Chiave: Violenza contro le donne – nuove forme di schiavitù – caso *Kunarac* – Tribunale penale internazionale per l'ex-Jugoslavia.

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